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: Thursday, December 17, 2009

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

APPEARANCES:

On behalf of the Securities and Exchange Commission:
J. CINDY ESON, ESQ., Branch Chief
ROBERTO A. TERCERO, ESQ., Senior Counsel
NICHOLAS S. CHUNG, ESQ.
CHRISTOPHER J. MARTINEZ, ESQ.
LORRAINE PEARSON, CPA
Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
(323) 965-3891

On behalf of the Witness:
D. JEAN VETA, ESQ.
BENJAMIN J. RAZI, ESQ.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-5294

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MR. CHUNG: It's 8:59 a.m. on December 16 -- I'm sorry, December 17, 2009. We're here for the second day of Mr. Perry's investigative testimony.

Mr. Perry, do you understand that you remain under oath?

THE WITNESS: I do.

MR. CHUNG: All right. And, Mr. Perry, are you represented by counsel today?

THE WITNESS: I am.

MR. CHUNG: Would counsel please identify themselves?

MS. VETA: Good morning. Jean Veta from Covington & Burling representing Mr. Perry in his individual capacity.

MR. RAZI: And Benjamin Razi from Covington, also representing Mr. Perry.

MR. CHUNG: All right. And, Mr. Perry, just like yesterday, we have in front of you for your review if necessary, a copy of Exhibit 1, which is the SEC Form 1662, and a copy of the formal order of investigation in this matter.

Whereupon,

MICHAEL W. PERRY

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION

BY MS. ESON:

Q Mr. Perry, I'm just going to ask you a few questions about an exhibit that we saw yesterday, which is the minutes of the regular meeting of the Enterprise Risk Management Committee of the board of directors. It's number 636 and I believe it's in the pile in front of you and we can give you a copy of that exhibit.

(SEC Exhibit No. 636 was referred to.)

A Okay.

Q What I'd like to do is ask you -- what? I'm sorry.

MS. VETA: Ms. Eson, is it --

MR. CHUNG: No, that's it right there.

MS. VETA: Do you want me to find this one or --

MR. CHUNG: No, no, we just handed it to you.

MS. VETA: Okay. Yes. And is that the one you want Mr. Perry to look at?

THE WITNESS: Yeah, I've got it.

MS. VETA: Oh, he has it? Okay. Sorry.

BY MS. ESON:

Q I'd like you to turn to page 008227, do you see that number in the --

A I do.

Q -- lower-right corner? Under the -- towards the

bottom of the page there's a heading that says "Loss Mitigation Strategic Plan," could you please review that -- those few paragraphs that carry over to the following page? And once you've had a moment to review that I'm going to ask you questions about what -- about Mr. Olinski's presentation.

A Okay.

Q Under the heading "Loss Mitigation Strategic Plan" there is mention of a credit risk mitigation group. Are you familiar with that group?

A You know, I don't recall -- I mean I understand the term, I'm not sure who were the, you know, members of that group.

Q Was Mr. Olinski a member of that group?

A I'm not sure. He might have been the leader of that group.

Q I'd like to direct your attention to the second sentence in that section that starts, "He emphasized that the group's focus is on IndyMac-owned loans and loans where IndyMac owns the credit risk." What is your understanding of IndyMac-owned loans?

A Those would be loans, whole loans, that were on our balance sheet.

Q And with respect to loans where IndyMac owns the credit risk, what does that refer to?

A I believe that refers to loans that were sold in a

securitization where we might have retained the non-investment-grade or residual securities. So we had a concentrated credit risk still even though we had sold the bulk of the securities.

Q What is your understanding of how the credit risk group addressed loans where IndyMac owned the credit risk rather than having a whole loan on its balance sheet?

A You mean in terms of a securitization?

Q Yes, in terms of where IndyMac retained a residual interest.

A Yeah, where we retained a residual -- and what was the question about those?

Q The question is as to what were the efforts made by the credit risk mitigation group to try to diminish IndyMac's exposure?

A I wasn't familiar with the specific procedures that we were doing in there. I knew that we were bolstering our efforts to mitigate credit losses across the spectrum.

Q Do you have any understanding as to how that was done with respect to loans where IndyMac retained the credit risk as opposed to whole loans?

A My, you know, I don't have a specific understanding of that, no.

Q Do you have an understanding as to what IndyMac Bank's obligations were with respect to servicing of loans

that had been sold off in a securitization?

A Just generally.

Q And what is your understanding?

A That our obligations were that we needed to, you know, do a professional and appropriate job and that there were industry standards with respect to servicing and loss mitigation that we needed to meet and I believe we did.

Q Are you aware whether loan modifications where IndyMac retained the credit risk were more likely to be granted?

A I'm not -- I'm sorry.

Q If a borrower came to IndyMac wanting to modify their loan was more -- preference was given to the borrower whose loan was included in a securitization where IndyMac owned the residual risk?

A I don't recall being aware of that, no.

Q Are you aware of any difference in terms of granting of loan modifications requested by a borrower between where IndyMac owned the loan versus where IndyMac owned the -- a residual interest in the securitization?

A Not specifically.

Q Do you have a general understanding?

A Well, my general understanding is that we had more flexibility to modify a loan that was on our balance sheet than we had flexibility to modify a loan, whether we owned

the residual or not, in a securitization because the legal documents governing that securitization also governed how far we could go in modifying a loan.

Q What is your understanding as to how the limitations in the legal documents you refer to are monitored?

A What do you mean?

Q In other words, how does IndyMac keep track of the various requirements under the different securitizations that IndyMac did?

A As it relates to modifications?

Q Yes.

A I didn't have the specific details regarding that.

Q In the next paragraph on Exhibit 636 under the "Loss Mitigation Strategic Plan," it says, "Mr. Gabriel suggested that a granular stratification of the loans the company holds credit risk on may be useful in loss mitigation efforts." Do you recall that suggestion?

A No, I don't.

Q Do you have an understanding as to why a stratification of the loans where IndyMac held the credit risk would be useful in loss mitigation efforts?

A I'm sorry, could you repeat that one more time?

Q Yes.

A I'm just trying to think through it and lost my

question there.

Q Did you have an understanding as to why a granular stratification of the loans where IndyMac held the credit risk would be useful in loss mitigation efforts?

A I'm not seeing that from this sentence, you know, not recalling an understanding.

Q Please turn to the next page on Exhibit 636. And the minutes state, "Mr. Perry reminded the committee that though the loss mitigation group is primarily focused on the loans where the company owns the credit risk, the group's procedures cover the entire servicing portfolio." What is that referring to?

A I'm, you know, I'm not sure. I'm, you know, I'm not sure during this time period I was reviewing the minutes, but, you know, I mean, I'm not sure exactly what I was referring to there.

Q Mr. Perry, I've asked the court reporter today to mark Exhibit 321. The first page of Exhibit 321 appears to be an e-mail from someone named Bachul Koul to Mr. Olinski. It's dated Friday, April 11, 2008, and there is a attachment to the e-mail, "Loss Mitigation Strategic Plan," a PowerPoint. On the second page of Exhibit 321 is a document identifier OLINSKI_J_00042875. And I would like you to focus, Mr. Perry, not on the e-mail but on the attachment. If you would turn to what is marked as page 3 of the

PowerPoint and tell me if you recognize this page of the PowerPoint that's titled "CRM will primarily focus on IMB-owned loans and credit risk securities."

(SEC Exhibit No. 321 was marked for identification.)

A I'm not sure if -- I recognize this page but I'm not sure if I -- if -- I think there were multiple versions of this done at various timeframes so I'm not sure if I've seen this exact one but I do recognize this page generally.

Q And, again, your understanding of the primarily focus on IMB-owned loans and credit risk securities, what was that referring to?

A I'm sorry, say that again?

Q Yes. The heading is "CRM will primarily focus on IMB-owned loans and credit risk securities," what is your understanding of what that refers to?

A Well, I mean, this helps refresh my memory a little bit in seeing this and I think what we were talking about is that we had an extensive group in the loan servicing area, you know, hundreds of people if not more, who were focused on loss mitigation and the servicing aspects of the loan. We set up, as part of keeping IndyMac safe and sound, an additional group that was not part of the normal servicing and loss mitigation operation, to focus specifically on the assets that we had credit risk on and that's what this

group's focus was. So it was in addition to the normal procedures and group that handled our entire servicing portfolio. This was a small team that was focused just on the assets that we had credit risk on.

Q What is your understanding as to how that group went about reducing IndyMac exposure with respect to the credit risk securities?

A You know, I don't have a specific recollection of that.

Q With respect to IndyMac-owned loans, what steps could this group take with respect to loss mitigation with respect to loans that IndyMac had --

A Whole loans on our balance sheet?

Q Yes.

A Well, you know, as I said earlier, they weren't inhibited by the contractual provisions that were in the securitization documents so it's possible, I don't know the details, but they could have done modifications with more freedom than were done in the securitizations with the whole loans on our balance sheet.

Q Are you aware of what efforts this credit risk mitigation group made with respect to residual securities that IndyMac owned?

A Well they would -- they wouldn't be making efforts on residual securities, you have to make the efforts on the

underlying loans. I'm not -- I don't specifically recall what our efforts were in that area.

Q Do you have any recollection of what the efforts were in that area?

A Not -- I mean maybe if I had more time to think about it, but just not here and right now.

BY MR. MARTINEZ:

Q To your knowledge did loss mitigation efforts and/or servicing protocols that were within securitization transactions IndyMac retained versus non-retained credit risk deals?

A Not to my knowledge.

BY MS. ESON:

Q Did IndyMac have any more flexibility to modify loans that were included as part of a securitization where IndyMac retained the residual interest?

A I don't believe -- I don't believe we did. Why I'm pausing is, you know, the question is if you owned enough of the bonds did you, you know, were you deemed, you know, the primary investor and I'm not -- I'm just not sure about that. I don't believe we did.

Q What do you mean by "deemed the primary investor?"

A In other words, if you owned all the bonds, just to take it to an extreme, you know, you -- you know, even though it is a securitization you essentially can do, you know --

you don't have a -- you're the same party on the other end of the contract. And I think there was great debate, you know, within the industry and especially within the securitization industry, as to the fact that different bondholders at different levels had different interests and that was one of the challenges for the entire industry in modifying loans. How to do that properly was a challenge.

Q And what did IndyMac do to address that challenge as you described?

A My understanding is that, you know, we consulted counsel on that and that we followed counsel's advice in terms of the -- in terms of what we could do under the contractual agreements related to our securitizations and that we had to apply that equally to loans that we -- equally to a securitization whether we owned credit risk or we had sold the credit risk away.

BY MR. MARTINEZ:

Q And that's why I'm -- what is meant by "focus on credit risk securities" given that you were indicating to us any loan in the securitization is going to be serviced according to these industry-established or transaction-specific loan --?

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

BY MR. MARTINEZ:

Q Yeah. The presentation has a header, "focus on --" let's like not the IMB-owned loans -- there's going to be a focus on credit risk securities, which to me is assets that are in securitizations where IndyMac -- non-investment-grade securities. What was meant by the focus given that you've indicated that there should not have been distinctions made in the servicing and/or modification and/or loss mitigation efforts within deals in securitized transactions?

A I think we -- and this is just a vague, vague recollection, it would be things that they would go into an individual deal where we did own the credit risk and they would look at the practices overall in loss mitigation and recommend changes in their practice which would benefit both the one that we owned the credit risk on as well as the ones that we didn't because they would change the practices across the board.

BY MS. ESON:

Q Who's "they" in that sentence? "They" would --

A Well there, you know, as I said, we had a multi-thousand person loan servicing group and within that a loss mitigation group that mitigated loss on all of our loans, and that group had no idea whether we owned the credit risk or not. They didn't, you know, they had no -- they had no information as to whether that was a loan that we owned credit risk on or didn't, so they were performing their

procedures totally independent of that.

This small team here was focused on keeping the bank safe and sound and looking at ways that we could improve our loss mitigation practices and, you know, as I've said, on the whole loan transactions we had more flexibility because they weren't in a securitization agreement. On the securitizations, you know, I mean I don't know the detailed procedures but, you know, as I said, it was more along the lines of okay, go into a credit run, and if they found something that they thought could be improved they were recommending that that improvement be implemented in the loan servicing operation in general.

Q So whatever the changes were applied to all of the loans in that securitization?

A That's my understanding, yes.

Q And what is your understanding based on?

A Just based on my recollection and my experience.

Q Recollection of communication with another person or what is that based on?

A It's been along time, just my general recollection.

Q And how do you know that the home loan servicing operations had no visibility into whether IndyMac owned a residual interest or not?

A That's just my general recollection and, you know, and also based on my experience that, you know, they -- we

weren't -- they weren't tracking by, you know, they didn't know -- they might have known that this is in a securitization but they didn't know what we owned on the balance sheet level. Those were, you know, completely different systems. There's really -- I don't know 100 percent but I'm just saying they were different systems.

BY MR. MARTINEZ:

Q You indicated that there may have been change to practices in the servicing of the assets. To what extent was there any concern about exercising excessive servicing discretion, specifically in the context of gain on sale and rules of FAS 140.

A You know, I don't recall that specifically, you know, I mean that -- vaguely I recall that you had to pay attention to that issue and that our team was paying attention to that issue.

BY MS. ESON:

Q Could you identify any practices that were changed as a result of the focus that this credit risk mitigation group was taking?

A Not of the top of my head, no.

BY MR. TERCERO:

Q Mr. Perry, with regard to home loan servicing not being able to see whether the bank had an interest in the securitization, I'd like to talk to you about the information

that home loan servicing did have. How could home loan servicing determine whether a particular loan was in a securitization or not -- whether or not the bank owns some interest in the deal?

A You know, I'm not specifically. I, you know, I do know that under the overall servicing umbrella they had to do investor reporting to the various investors, so as part of the servicing system was the investor reporting system. I'm not sure at the loan level when you are a loss mitigator whether you knew that that was in a securitization or not and what the procedures were but I, you know, I'm pretty confident that our team had developed procedures so that they knew that there were different procedures for loans in securities versus loans that we -- or whole loans that we owned.

Q Then another question, you testified about how certain servicing aspects that home loan servicing did were limited in securitization deals by the contractual documents. What was the method by which home loan servicing would know with regard to this loan or this pool of loans these are the loans that we must follow pursuant to those contractual terms?

A Okay that was -- that's what I was saying earlier, I don't -- I don't know that -- I mean that was the management team in that area and we had a very strong and

experienced management team who handled those issues.

MS. ESON: Okay. Thank you very much.

THE WITNESS: Okay. Thank you.

MR. CHUNG: I neglected to handle some housekeeping matters when we began today's testimony. Just to identify the SEC staff in the room at this time, I'm Nicholas Chung and with me are Cindy Eson, Lorraine Pearson, Christopher Martinez, and Roberto Tercero. Okay, with that out of the way let's go back to the chronology that we were covering yesterday.

BY MR. CHUNG:

Q Can you tell me what your involvement was in the preparation and review of the IndyMac form 10-K for the year ended 2007?

A My involvement in the preparation of that document was, you know, minimal if not nil. We had a very experienced team, you know, who prepared that consistently in working with outside counsel, in working with our auditors. My primary process was the SOX certification process, which we had an extensive one, and primarily I focused on the issues in that SOX certification process. We also had our audit committee. It was very diligent and would read the 10-K from cover to cover.

Q Did you read the form 10-K cover to cover before it was filed?

A No, I did not.

Q Did you look at portions of drafts of the 10-K before they were filed, specifically the 2007 10-K?

A I don't recall whether I did or didn't.

Q And had that been your practice in the past?

A Yes, it had.

Q And the SOX certification process, at what point did that occur prior to the actual filing of the 10-K?

A I don't recall specifically in that -- for that 10-K, but generally, you know, we had a SOX certification process each quarter that we would go through, and I don't recall specifically for the 10-K though.

Q Now did you think it was unusual for the CEO and chairman of a company not to read the 10-K cover to cover before it was filed with the SEC?

A I never thought about it as being unusual or not unusual. I think that we had a very extensive group of senior managers, executive committee members, outside counsel, auditors, audit committee, all reviewing and I went through the key judgmental issues and other issues that were in our SOX certification process, you know, every quarter. But -- and if there was a particular section of the Q -- of the Q or the K that I, you know, in my mind thought was important for me to review I would read it, but I did not read the drafts or the final filing cover to cover.

Q For purposes of the SOX certification process for the 2007 10-K, do you have an understanding as to which group or person would be responsible for disclosure of regulatory issues like the double-risk weighting of subprime loans?

A Not specifically.

Q Generally do you have an understanding of that?

A Well, I mean there were a lot of hands involved in preparing -- you know, as I just went through, in preparing and editing the 10-K's and 10-Q's and, you know, generally speaking I would say that, you know, it was a combination of our investor reporting group and our finance group that would be handling most of the disclosures.

Q Well, do you recall there being any discussions about disclosing the waiver, IVOTS, of the double-risk weighting of subprime loans in the 2007 form 10-K?

A No, I don't.

Q Do you have an understanding as to whether that issue was discussed with counsel?

A I don't recall.

Q Let me hand to you what has previously been marked as Exhibit 548. Exhibit 548 is a copy of IndyMac's form 10-K for the year ended December 31, 2007. This is a, obviously, a very voluminous document, it's 226 pages. Let me just ask you, did you sign this form 10-K?

(SEC Exhibit No. 548 was referred to.)

A I believe I did, yes.
Q And did you sign the SOX certifications for this 10-k as well?
A I believe I did, yes.
Q And you did not read this 10-K prior to its filing?
A Yeah, as I said, I don't believe I read this document cover to cover, no.
Q Well, and I think I asked you if you read portions of it and do you recall reading portions of this prior to this filing?
A I don't recall reading portions of this document before its filing.
Q Okay. I just want to clarify the cover to cover response that you gave. When -- do you recall a time period when you would read portions of an IndyMac form 10-K or 10-Q prior to its filing?
A Not specifically, no.
Q Were you aware, generally, of disclosure of the double-risk weighting of subprime loans requirement in prior IndyMac SEC filings?
A I -- yeah, I can't recall being aware of it.
BY MS. ESON:
Q Mr. Perry, is it that you don't remember reviewing portions of this 10-K specifically or is it that it wasn't your -- well, let's start with that one.

A Okay, so --
Q So my question is, is it that you don't remember whether or not you reviewed portions of the 10-K?
A I don't -- I don't remember -- I can't say for sure whether I reviewed this. I do not think I did.
BY MR. CHUNG:
Q Because it was not your practice to do so?
A Correct.
MS. ESON: Wait a minute, his practice to do so, do read it cover to cover.
MR. CHUNG: Or any portion of it.
THE WITNESS: No, of -- that's too strong. I, as I said, I would read certain sections from time to time that were either brought to my attention or were something that, you know, hey, I think we should add "x," you know, to a document. But -- and I have read a 10-K cover to cover at one point and made -- at one point where I made numerous suggestions for changing the format of the entire document. But I didn't -- as a pattern in practice I wasn't part of the review chain where I would read this and -- on a regular basis and provide edited comments, you know, or suggestions for changes to our team. We had a really strong team. As you pointed out, this document is voluminous, and, you know, I had lots of other responsibilities.
BY MR. CHUNG:

Q Well, who were the persons that you were in direct contact with who would elevate comments on the 10-K to your attention I this time period?
A I don't recall -- I don't recall having comments being elevated on this 10-K to my attention.
Q No comments whatsoever?
A I don't recall that.
Q Let me now hand to you what's just been marked as Exhibit 665. Exhibit 665 is IndyMac's form 10-K for the year ended December 31, 2006. Again, this is a voluminous document, it's -- I'm not exactly sure how many pages it is but it is over 100 pages. Do you recall reviewing this document before it was filed with the SEC?
(SEC Exhibit No. 665 was marked for identification.)
A I don't recall specifically reviewing this document before it was filed, no.
Q Do you have a general recollection of reviewing it before it was filed?
A I don't.
Q And did you sign this 10-K before it was filed with the SEC?
A I did.
Q And you signed the Sarbanes Oxley certifications as well?

A I did.
Q Let me direct your attention to page F-44, it's near the back of the document. All right, the second full paragraph on page F-44 reads, "The OTS issued guidance for subprime lending programs which requires a lender to quantify --"
A I'm sorry, I'm not --
MS. VETA: F-44.
THE WITNESS: I'm sorry.
BY MR. CHUNG:
Q Okay. "The OTS issued guidance for subprime lending programs which requires a lender to quantify the additional risks in its subprime lending activities and determine the appropriate amounts of allowances for loan losses and capital it needs to offset those risks. The company generally classifies all non-GSE loans in a first lien position with a FICO score less than 620 and all non-GSE loans in a second lien position with a FICO score less than 660 as subprime. We report our subprime loan calculation in an addendum to the thrift financial report that we file with the OTS. Subprime loans held for investment and subprime loans held for sale which are either delinquent or more than 90 days old since origination are supported by capital two times that of similar subprime loans -- similar prime loans" I should say, excuse me. "These subprime loans totaled

$101.6 million at December 31, 2006. The impact of the additional risk-weighting criteria related to subprime loans had the effect of reducing IndyMac's total risk-based capital by six basis points."

MS. VETA: Mr. Chung, I think it says five basis points.

MR. CHUNG: I'm sorry, five basis points.

BY MR. CHUNG:

Q Did you have an understanding generally that IndyMac's SEC filings, particularly the form 10-K's, prior to 2007 contained -- prior to this January 2008 contained disclosure of this nature?

A I don't recall having that understanding, no.

Q Do you recall ever reading language to this effect in an SEC filing in the past?

A No, I don't.

Q On the next page, page F-45, in this -- in the table near the top of this page IndyMac is reporting for the December 31, 2006 time period the as reported pre-subprime risk weighting ratios and the adjusted for additional subprime risk weighting ratios as well, do you see that?

A I do.

Q All right. Did you have an understanding that IndyMac in its SEC filings reported its risk -- capital ratios adjusted for additional subprime risk weighting?

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

Q Did you have an understanding that IndyMac reported in its SEC filings its capital ratios as adjusted for additional subprime risk weighting?

A I don't recall having that understanding, no.

Q And so just to close out this issue as it relates to the 2007 form 10-K, do you recall any discussions about disclosure of the double-risk weighting of subprime loans in that 10-K?

A I do not.

Q Do you recall any discussions about disclosing the subprime adjusted capital ratios in the 2007 10-K?

A I don't.

Q Okay, we're going to hand you what has previously been marked as Exhibit 563. Exhibit 563 is an e-mail dated March 3, 2008, from Michael Perry to Pam Marsh and others. The subject of the e-mail is "Capital Update." Please take a look at this e-mail and let me know if you recognize it.

(SEC Exhibit No. 563 was referred to.)

(The witness examined the document.)

A You know, I vaguely recall this.

Q Okay. Well what do you recall generally about this e-mail?

A I mean I just recall the e-mail just generally

speaking. I'd be happy to answer any question you have on it.

Q Well what do you recall, if anything, about the circumstances at the time that this e-mail was sent, discussions you may have had regarding the subject matter of the e-mail, anything like that?

A You know, I don't -- other than the e-mail I recall vaguely I don't recall anything surrounding the events, you know, any other events other than that.

Q Okay. Well if you look at the e-mail that began this string of e-mails, there's Marsh's e-mail on February 29, 2008.

A Yes.

Q On the second page of this exhibit near the end of that first paragraph she's written here, "All other things being equal, using this MSR value our risk-based capital ratio is projected to be 10.61 percent at quarter end without adding any new capital (this does factor in removing the subprime double-risk weighting). With the $11.2 million of new capital the ratio increases eight basis points to 10.69 percent." Do you have any recollection that around this time period that forecasting was factoring in the removal of the subprime double-risk weighting requirement?

A Independent of these e-mails, no.

Q Do you recall considering whether the forecasts you

were getting at this point were accurate in terms of the forecasted capital ratios?

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

Q Right. Do you remember having or considering whether the forecasts you were receiving in this time period, March 2008, whether they were accurate or not?

A Well, you know, as we discussed yesterday, you know, I knew and as we disclosed in our public filings, forecasting was extremely difficult in this period of time and we were doing our very best to forecast.

Q So how much credence did you put into the forecast that you received on the first quarter 2008 risk-based capital ratio?

A It was -- I don't -- I wouldn't use that word "how much credence I put into it" it was the best data that I had and so it, you know, you -- it was definitely data that we used to make decisions because it was the best data that we had.

Q Did you take that information with a grain of salt, so to speak?

A Well I certainly knew that there could be significant variability around any forecast that was provided me.

Q Do you recall any discussions around this early march 2008 time period about possible capital contributions

from the holding company to the bank?

A I'm sorry, say that again.

Q Do you recall discussions in this early March 2008 time period about the possible dollar amount of capital contributions from the holding company to the bank?

A I -- no, I don't recall that specifically. We were having general, you know, discussions about capital contributions from the holding company to the bank given how close we were to that total risk-based capital limit.

Q And just so I understand, was there any formula for that dollar amount of the contributions from the holding company to the bank?

A I don't recall a specific formula. As we were discussing yesterday, we -- our goal was to contribute -- to raise as much capital and contribute as much capital as we could to keep IndyMac well-capitalized in the first quarter.

Q Well, yesterday we talked about a particular proposed contribution that was about the amount of the estimated loss for the first quarter of 2008. How did that factor in to analyses of, you know, the proposed dollar amounts of capital contributions from the holding company to the bank?

A Yeah, I don't remember specifically. It was -- there was no mathematical formula, it wasn't a perfect science. You were trying to raise as much capital as you

could to keep -- and contribute that down to the bank to keep the bank safe and sound and well-capitalized.

Q And do you recall any discussions in the early March 2008 time period about suspending the dividends on the trust preferred and the bank preferred dividends?

A No, I don't recall -- I don't recall those specific discussions, no.

Q Let me hand to you what's been previously been marked as Exhibit 595. Exhibit 595 is an e-mail dated March 5, 2008, from Mr. Perry to the IndyMac executive committee and others. The subject of the e-mail is "IMB's investment trade MBS portfolio, confidential."

(SEC Exhibit No. 595 was referred to.)

(The witness examined the document.)

A Okay.

Q All right. Now, Mr. Perry, do you recognize Exhibit 595?

A I do.

Q Okay. Did you write this e-mail on or about March 5, 2008?

A I did.

Q Okay. Do you have any recollection of this e-mail?

A I do.

Q Generally what do you remember about this e-mail?

A I pretty much recall everything in it.

Q Okay. Well, your e-mail begins with a discussion about the MBS marketplace. What was your understanding of the marketplace for Alt-A securities during the time period?

A Well, I think that's explained here in this e-mail better than I could explain verbally. I think you look at the third paragraph here, "no functioning marketplace for Alt-A securities."

Q Okay. Well, you're e-mail also proposes moving to fair value FAS 157 accounting or MBS valuation.

A No, not moving to it, following it.

Q Okay, following it? But had IndyMac reported MBS valuations using fair value or FAS 154 methodology prior to the first quarter of 2008?

A My understanding -- it's 157 -- my understanding is that we were using FAS 157 prior to this quarter but I'm not -- I wasn't -- I can't be sure about that.

Q Well, maybe it's more accurate to call it level 3 accounting.

A On -- yeah, level 3 accounting under FAS 157.

Q Okay. Was it your understanding that IndyMac was following level 3 FAS 157 accounting prior to the first quarter of 2008?

A I don't know if I had a specific understanding of what assets were or were not or whether any were under level

3 methodology, you know, prior to, you know, prior to the first quarter of 2008.

Q What was your understanding as to market pricing of mortgage-backed securities in this time period?

A Well, as I said, the market wasn't functioning and the only types of sales that were occurring were distress sales, primarily from institutions that were failing or getting were getting margin called and having to -- and the -- having to -- getting their lines of credit pulled and having to forced sell those securities into the marketplace.

Q Well, on the second page of your e-mail, the first full paragraph, you wrote here that the bids that you're receiving from Wall Street are not coming from traders but the credit departments. Can you explain in a little more detail the significance of that?

A Well, I -- I mean, this is what I was told by our team and the point being, you know, if you're getting bids from traders there's an active market going on. And the traders were -- had no authority to make bids any longer, they were coming from a credit department and you didn't even know if those bids -- when you went an got -- even if you went to say, "Yes, I'm ready to hit that bid," whether it would be, you know, accepted. But it was just another point in showing that the market had ceased to function.

BY MR. MARTINEZ:

Q Clarifying point. Indicative bids here you're talking solely securities in Alt-A or are you actually talking about getting marks for whole loans in Alt-A assets?

A I'm not sure that -- what they were specifically getting bids on. My presumption was that it was securities.

BY MR. CHUNG:

Q Up until this point in 2008, as of March 5, 2008 approximately, did you have an understanding as to whether IndyMac was able to securitize any of its loans?

A Explain -- say that question again, please.

Q Do you have an understanding if as of March 5, 2008, for that calendar year, if IndyMac had been able to securitize any of its loans?

A In the private label market or the GSE marketplace? We might have issued some GSE securities in the first quarter.

Q Okay. Do you recall any of the private label securitizations?

A I vaguely recall at some point, and I could be confusing dates, but at some point in this disruption we were able -- and it could have been in '07, it could have been in '08 -- we got -- but it was in a period where it would -- it was -- there was significant disruption. We did have a private label securitization structured where one of the federal home loan banks bought the triple A bond.

Q Was this environment, in early 2008, was it a very difficult environment to securitize a private label MBS?

A Yeah, absolutely it was. As I said yesterday, that that private label market essentially closed in, you know, August, September timeframe of 2007. There were very little, if any, transactions being done after that point in time.

Q All right. Well, looking back at the second page of your e-mail you've listed seven items here near the bottom of the page. I just want to go through a few of them with you to remember -- if you recall any discussions. If you look at number 1 it says, "We are prepared to contribute $45 million in holding company cash to the bank for quarter end." Do you recall discussions about that during this point in time?

A You know, not specifically, no.

Q Do you have an understanding as to what that dollar amount would have been based on at this point in time?

A It was probably based on the availability of the capital at the holding company more than anything.

Q Okay and moving down to item number 5 you've written here, "We are exploring suspending both the trust-preferred dividend at the holding company and the bank-preferred dividend starting in Q2 '07. We can defer the trust-preferred for five years and the preferred indefinitely although at some point the preferred has the right to nominate two directors at the bank level. Combined, these raise about $70 million of capital a year. Apparently some public banks, Irwin Financial out of Indiana, have already done this. Alston and Bird is exploring this matter for us." Do you recall discussions around that time period about what I just read to you?

A Just -- I don't recall it around that time period in the -- as part of the first-quarter close I vaguely recall those discussions, yes.

Q But is that when you recall discussions first occurring in the -- in connection with the quarter close?

A Well, in connection with, you know, at some point in the first quarter through closing, yes, we started to have some discussions about that issue.

Q Well, what do you mean by "close?"

A Well, when we filed our financials in May.

MS. VETA: Mr. Chung, is this a good time for a break?

MR. CHUNG: Sure. It's 10:05, why don't we go off the record for a break.

(A brief recess was taken.)

MR. CHUNG: All right. We're back on the record at 10:12 a.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: And just for the record, Cindy Eson and Christopher Martinez have left the room.

BY MR. CHUNG:

Q Let me now hand to you what's previously been marked as Exhibit 597. Exhibit 597 is an e-mail dated March 20, 2008, from Mr. Perry to Francisco Nebot and others. Subject of the e-mail is "Update on Q1 '08 and 2008 forecast, confidential." You should take a read through this e-mail and let me know if you remember it.

(SEC Exhibit No. 597 was referred to.)

(The witness examined the document.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 597?

A I do.

Q Did you write this e-mail on or about March 20, 2008?

A I did.

Q Okay. Do you generally have any memory of this string of e-mails?

A I do.

Q What do you recall about these e-mails other than what's written in them?

A I mean, I think -- you know, again, I think the

information here is pretty self-explanatory. I'd be happy to answer any questions you have.

Q Okay. Well, look to the second page of your e-mail dated March 19, 2008, at 5:54 p.m. to the OTS. You've written here that IndyMac is forecasting to be well-capitalized at 3/31/08 and have solidly improved capital ratios from 12/31/07 as a result of contributing $75 million of additional capital from the holding company before quarter end. Do you remember discussions about that around the time of this e-mail?

A I mean, not specifically -- no, I don't remember any specific discussions around the time of this e-mail.

Q Well, generally, how did you arrive at this $75 million figure?

A Well, I would have been provided the information by our financial people.

Q And who specifically?

A I'm not sure specifically. It could have been Pam Marsh, Brian Carter, Scott Keys or a combination of that group.

Q And what information would you have looked at or relied on at arriving at that $75 million figure?

A I'm not sure specifically. It could have been anything from a verbal number that they gave me, "If we contribute $75 million our capital ratio is "x" and I'll get

you more details," too, I reviewed a forecast.

Q You remember reviewing a forecast?

A No, it could have -- I said it could have been either all the way from a verbal update from that group to them giving me an actual forecast.

Q But you don't have a memory either way?

A I don't.

Q All right. Near the bottom of that e-mail, the last paragraph you've written, "With the above said I feel strongly that we need your support on two issues. One, our composite CAMELS rating will be incredibly important for IndyMac to retain the necessary flexibility and the market confidence to maneuver through this crisis period." What did you mean by that?

A Well, I meant specifically that, you know, as a result of a CAMELS rating if we received a formal enforcement order that would have to be public that would make things very difficult for us.

Q Well, around this time period did you have any expectation that IndyMac would receive a CAMELS 4 composite rating?

A I didn't have -- I mean I certainly knew it was possible.

Q Well, did you know whether it was likely or not?

A I didn't.

Q Did you have an understanding as to what factors the OTS would look at in terms of determining whether IndyMac should be downgraded to a CAMELS 4 composite rating? I mean was there an overriding factor like capital that would drive the OTS's decision on either a CAMELS 4 or a CAMELS 4 rating?

A You're saying as of March 19th?

Q Yes.

A Yeah, I don't recall having an understanding of that, no.

Q Well, just generally, irregardless of timeframe, did you have an understanding as to what the primary factor was for the OTS in determining whether they grant an institution a CAMELS 4 or CAMELS 3 rating?

A You know, I mean, I think the CAMELS ratings, you know, from one rating to another there's a lot of judgment that's applied in how those ratings are determined and there isn't a specific formula, as I understand it, that causes an institution to be one rating or another.

Q Okay. Do you remember speaking to Mr. Nebot about a $75 million contribution before you sent this e-mail on March 19, 2008?

A I don't remember. It's possible that I did but I don't remember that.

Q Okay. And then just looking at Mr. Nebot's e-mail, do you remember having a general reaction to that e-mail

other than what you've written here?

A Yes, I do.

Q What was that response?

A My general reaction had nothing to do with the substance here, it had to do with -- remember how we missed that forecast in the fourth quarter of '06 and we put in place tighter procedures for forecasting, doing our forecasts and financial planning, and this was kind of an indication to me that somebody missed a step in that forecasting process. So I was kind of -- my e-mail at the top is ignoring the substance of what he was saying and what Pam, you know, what the other e-mail was and addressing the fact that somewhere -- he wouldn't have been writing his e-mail, given that he was a key component of the forecast, if he had provided his forecast and the forecasting group had updated him. So I was expressing concern about the forecasting process in general.

Q Well, would Mr. Nebot have visibility on the full forecast or just his department's forecast?

A He would have visibility just on his department's but he was treasurer and so capital contributions from the holding company would have been absolutely in his realm.

Q Okay. So your understanding was that Mr. Nebot would have been involved I the recommendation of a dollar amount of that capital contribution in this time period?

A Absolutely. He also was responsible for the holding company for matters like this.

Q Well, did Mr. Nebot, in prior time periods, have such involvement?

A I'm not sure, but he -- I would assume he would have, yes.

Q Just going through some of the issues that Mr. Nebot raises in his e-mail, he mentions the cash available on hand at the bank as of that date, approximately $75 million and then he runs through the amount of capital that's being raised, about $1.5 million on average a day, which would give IndyMac an additional $12 million of cash before the quarter's end. And then he goes over approximately $2 million of operating expenses a quarter, $2.7 million payment to you by July 15, 2008, under a deferral plan, and -- which he adds up to approximately $12 million in cash to cover those expenses. And then he mentions that it does not provide for the payment of interest expense for trust-preferred debt. Do you remember a discussion in response to Mr. Nebot's e-mail about how much money should be set aside for payments on the trust-preferred debt?

A I don't recall a specific discussion about that, no.

Q Generally do you recall any discussion about that?

A No. I think what I was responding here is, "You

guys need to work this out and coordinate better," is what my e-mail is saying.

Q Right, but I'm just asking you if you had a discussion or meeting to discuss the -- that issue that's being raised in Mr. Nebot's e-mail about having money to pay the trust-preferred debt going forward.

A I mean, obviously, at some point we had to have discussions about that because we ultimately, you know, before we filed our financials made a recommendation to the board to suspend those. But I don't recall specifically those discussions, no.

Q Well, the discussions that I'm referring to would have been related to and around the time of the capital contribution from the holding company to the bank at the end of the quarter, first quarter of 2008. Do you remember any discussions around that time period?

A I don't. I don't recall any.

Q When you say "you guys need to figure this out," who are you referring to?

A The financial group, including Francisco as treasurer, Scott Keys as CFO, and Pam and Brian who were doing the financial planning and forecasting. Coordinate better is what I was saying here.

Q Do you have an understanding that they met and discussed the issues raised by Mr. Nebot?

A I don't have a recollection that it didn't get worked out. I have a -- I have a -- my sense -- I don't have a recollection that it didn't get worked out. I don't -- I would say it got resolved.

Q And how did you become aware of that resolution?

A By not -- by it not coming back to me as a problem issue.

Q So basically just the silence from the other side, from your reports?

A Well, the -- you know, my understanding is that they worked it out.

Q Based on them not coming back to you?

A And continuing to provide updated forecasts.

Q Okay. Do you remember any discussions around this time period about management's intent to defer payment on the trust-preferred debt?

A As I said earlier, I don't recall specifically when those discussions started to occur but, you know, as I said earlier, we didn't make a decision to recommend to the board that we were going to suspend those until much later, very close to when we filed our financial statements.

Q Well, did you have an understanding around this time period of the impact of suspending dividends on IndyMac's preferred and trust-preferred debt?

A I don't recall at this time whether I had an

understanding of the impact, no.

Q Well, did you know generally that -- did you have an understanding that generally if IndyMac suspended dividends on its trust-preferred and preferred debt that IndyMac's common stock price would drop?

A I mean I -- it's clear, you know, I read this e-mails, it's clear that people had that view that that could be -- that that could occur.

Q Did you have a view on that subject?

A I wasn't sure.

Q Why not? I mean what's the contrary argument?

A The contrary argument to the stock dropping?

Q Yes. I mean what --

A Well, the common shareholder's interest was on safety and soundness and deferring the preferred dividends allowed -- protected the common shareholder.

Q Well, did you have an understanding as to whether common shareholders would view nonpayment of preferred dividends as a sign of liquidity problems at the Bancorp?

A No, I think that my view would have been, as a common holder and I was a common holder, that that was a positive.

Q Did you have an understanding as to whether others shared that view?

A I definitely had an understanding that there were

lots of views about and uncertainty about what would happen if we did suspend those dividends.

Q Okay. What about the impact of suspending the trust-preferred dividends impacting IndyMac's ability to raise additional capital through the DSPP? Did you have that understanding during this time period?

A I didn't have a specific understanding but in some of our forecasts we made an assumption that we wouldn't be able to raise capital if we suspended those dividends. So, you know, that was -- we were kind of using a worst case assumption that, you know, if the people who viewed that it was going to be negative to the common stock that -- and that we wouldn't be able to raise capital through the DSPP, we made that assumption in some of our forecasts.

Q Okay. Can you explain what the rationale for that connection is, the connection between suspending the trust-preferred debt and the inability to raise capital through the DSPP? I mean what's the correlation there?

A Well, I didn't come up with that view, you know, there were views like Francisco had here and we, in our forecast, as I said, made the conservative assumption that we wouldn't be able to if we suspended.

Q Well I'm just asking about the causation. I mean what was your understanding of, you know, that effect of suspending the trust-preferred debt payments?

A My understanding -- I was uncertain as to what the effect would be if we suspended those.

Q Specifically relating to raising -- the ability to raise additional capital through the DSPP?

A Right.

Q Okay and then on the second page of Mr. Nebot's e-mail he suggests keeping at least three-quarters of interest payments on the trust-preferred debt, approximately $22.5 million, to ensure continued access to the DSPP. Do you remember discussion about that during this time period?

A Other than this e-mail, no.

Q Did you have an opinion on that recommendation from Mr. Nebot?

A You know, as I said, my issue, bigger picture, was I wasn't addressing in my e-mail the substance of the forecast and Francisco's concerns, I was saying, "You guys need to get together and coordinate better and resolve this matter," and so -- I'm sorry, what was the question again?

Q Well the question is did you have an opinion on Mr. Nebot's recommendation that Bancorp retain approximately $22.5 million or three-quarters worth of interest payments on the trust-preferred debt.

A Yeah, I mean not a strong opinion because whether we contributed $52 million like he recommended or $75 million, both of those scenarios would have resulted in us

being significantly well-capitalized based on this forecast.

Q Well, I think looking at Mr. Nebot's math, you know, approximately $75 million contribution at this point would virtually -- would take IndyMac Bancorp's cash position to near zero. I mean if you consider the $75 million cash on hand as of March 20th and -- well, that would -- with the $75 million contribution that's being proposed in the e-mail of March 19th would take it -- to zero, that cash position. And then he's anticipating $12 million of cash at that point between March 20th and the end of the quarter, but that $12 million of cash would be used to pay the operating expenses for the end of the year and other operating expense. Did you have an understanding as to whether the -- I mean did you consider at the time of deciding how much capital should be contributed from the holding company to the bank whether IndyMac's -- the holding company would -- should or would have zero dollars in cash or near zero after the actual contribution from the holding company to the bank?

A I wasn't focused on that at this time. I mean if you look at his recommendation versus the one that was in the forecast that our team provided me, as I said, there would have been relatively no material difference in the capital ratio at the bank and the bank still would have been well-capitalized by a fair margin.

Q Well, I'm interested more on the cash available at

the holding company to pay the trust-preferred debt. We looked yesterday at the earnings presentation for the first -- I'm sorry, for the end of 2007 and one of the slides in that presentation was that IndyMac had enough cash at the holding company level to pay two years worth of interest payments on the preferred debt. At this point even with just a $52 million capital infusion that is -- that takes the cash position, at least according to Mr. Nebot's e-mail, down to three-quarters of cash to fund future interest payments.

A Yeah.

Q I'm just wondering whether that was something that you considered when you ultimately decided on what that dollar amount of the contribution should be.

A Let me just kind of go back here for just a second. I don't have my calculator here or the numbers but based upon the e-mail below to Mr. Dochow it says, "As we stand now we are forecasting to be well-capitalized at 3/31 and have solidly improved capital ratios from 12/31." So intuitively my math would say that we didn't even have to contribute a dime of the $52 million or the $75 million and we still would have been well-capitalized. So my point that I would make is that we hadn't worked it out at this point.

Q Well, no, I think your e-mail says "as a result of contributing the $75 million of additional capital."

A Right, but solidly improved capital ratios from

12/31/07 would have meant something like 10.70 or 10.60 and if you back out $75 million I believe you still would have been above the 10 or you would have been very close. The point being we didn't need to contribute $52 million at this point or $75 million. Based on the forecast we could have contributed either nothing or something substantially lower than that and still had a lot of liquidity. The point being that none of that had been worked out yet and, you know, it was still, you know, we still had, you know, 10, 11 days in the quarter.

We were still -- you know, every day events were changing and we were working on, you know, finishing out and closing the quarter and there were a lot of moving parts and at this stage it was too preliminary to make a final decision on any of these issue and I was saying "work it out guys, figure this out." So it wasn't -- there wasn't a detailed focus at this point in time in, you know, we have to -- we're going -- you know, we have to suspend the dividends, we, you know, or any of those issues, how much capital we exactly had to contribute to the bank.

Q Well, do you remember the, you know, generally what the timing was on capital contributions from the holding company to the bank in prior time periods, say, in December of 2007, when that amount was decided relative to the, you know, December 31st '07 end of the year?

A I don't. You know, as you recall, yesterday I testified that they were perfunctory, so I don't recall specifically when we did it in prior quarters and certainly the -- this was a unique period of time and so prior practice wouldn't necessarily been -- would definitely not have been the case in this quarter.

Q Okay. Well, I'm just sort of testing whether, you know, you're statement that there was still plenty of time until the end of the quarter was consistent with, you know, prior time periods in terms of the timing of the contribution relative to the end of quarter or year.

A Yeah, I don't know if it was or wasn't consistent. Probably wasn't. But it shouldn't have been given that this was the first period where we had one of our ratios being close to the well-capitalized minimum. So we would have had a heightened sense of awareness, more urgency, more review of it, and last-minute decisions being made.

Q Okay but that, what you just said, seems to me inconsistent that you didn't think that IndyMac had to contribute a dime to the bank in order to maintain its, you know, 10 percent risk-based capital ratio.

A Oh, I was saying that as a -- as just very factual statement based on this e-mail that our capital ratio, based on this forecast that's here, with contributing $75 million would have had us above the ratios at 12/31/07. So if you

took $75 million out completely my back-of-the-napkin math in my head, I need to calculate it, would be, you know -- I don't -- I'm not sure that $75 million would take 70 basis points of capital out, 60 or 70 basis points of capital out. It would be close but it wouldn't -- we wouldn't need to contribute $75 million or even $52 million, as Francisco recommended, to stay well-capitalized based on this forecast.

Q Okay but do you remember actually seeing forecasts which, you know, essentially said that you could contribute zero from the Bancorp to the bank and still maintain a risk-based capital ratio above 10 percent or are you just looking at this e-mail and sort of drawing that assumption?

A I'm doing the latter.

Q Okay and then just going back to Mr. Nebot's e-mail, he is recommending a capital infusion of approximately $52 million instead of $75 million. Do you remember a discussion about that?

A I don't. As I said earlier, I wasn't focused on the substance here, I was focused on the fact that these two groups needed to work it out and come to me with a resolution.

Q Okay. Mr. Nebot also writes, "If it is management's intent to defer the interest do we have an obligation to announce the intent before we continue to raise capital? Are we running a risk?" Do you have an

understanding as to what Mr. Nebot is referring to here about running a risk?

A Well I think he's saying, you know, at the point that we make a decision that we're going to defer the dividends do we have an obligation to disclose that before we raise any more capital through the Direct Stock Purchase Plan.

Q And did you -- do you have an understanding as to whether discussions about that issue occurred during this time period?

A I have a vague recollection that there were discussions at some point about whether we'd continue to raise capital through the Direct Stock Purchase Plan and whether there was additional disclosure required.

Q And who was involved in those discussions?

A You know, I just have a vague recollection that it was discussed at a board meeting.

Q Okay. Now let's look at your e-mail on the top of the first page of Exhibit 597. So what did you mean by your first statement, "That sounds like we still don't have our act together in financial planning?"

A You know as I said earlier, this was my -- you know, I said at the beginning of this, this was the -- when we missed our forecast in the fourth quarter of '06, when we found out that in '07 we instituted a much more rigorous

financial planning process that incurred -- that included kind of a mini-SOX kind of certification process where each of the units would certify their individual forecast that rolled up into the overall forecast. And what I was saying here is that Francisco's forecast, in terms of capital and capital contributions from the bank, are part of that and obviously if we have a forecast that we have out and I've communicated it and then now he's expressing concerns, either he changed his mind or they didn't properly follow the procedure to get his certification. And so it was a, you know, I wanted them to tighten -- make sure that process was as tight as I understood it to be.

Q Well, did you have an understanding as to the -- whether, you know, the cash available at the holding company was dependent solely on Mr. Nebot's certification and department or if it was dependent on, you know, any of the other business units?

A Well, the holding company had no operating activities and he points out the outflows at the holding company, it's a relatively finite and small list of outflows that occur at the holding company and he was responsible for both those inflow and outflows of the holding company as the treasurer.

Q Okay. And just, again, going back to your e-mail, you mention that -- in this e-mail that you -- that, I guess,

IndyMac wanted to give a forecast to the OTS yesterday and that you had stopped that. What are you referring to there?

A Well, I think what I probably mean is that I was going to follow up with the detailed forecast to provide the regulators from this e-mail --

Q From which e-mail?

A -- from the March 19th one that's attached -- and that when -- after Francisco expressed concerns I -- and we were going to review -- it sounds like we were going to review it with the management team too, I said, "Hold it off until you guys resolve these issues and we'll -- and when you resolve them then we'll provide that forecast to the regulators and to the management team."

Q Well, I'm not sure I -- that is consistent with the chronology here because your e-mail is March 19th to the OTS and then on the 20th you say that you had stopped the forecast from going to the OTS yesterday, meaning the 19th I'm presuming by what you've written here. But you don't get Mr. Nebot's concerns until the 20th so I don't -- I'm not necessarily --

A Well, it's just -- it's possible that forecasting group, you know, the fact that I said, "I'll provide you a detail forecast," I say, "likely tomorrow afternoon," and Mr. Nebot, tomorrow is the Thursday and he expressed the concerns at 6:43 in the morning and so I would -- I held it up.

Q Well, did you see that forecast, the one that was supposed to go to the OTS either on the 19th or the 20th?

A I probably did but I don't recall.

Q Do you remember whether that forecast showed a very low risk-based capital ratio at the end of the first quarter of 2008?

A Well, I don't recall specifically. It, you know, in the e-mail to Mr. Dochow it says it provides solidly improved capital ratios from 12/31/07, so it wouldn't have been a very low one. That was my point that I was making earlier.

Q Right, but my question is whether the one that was supposed to go to the OTS that you stopped showed a low risk-based capital ratio and the one that was eventually sent to the OTS, I guess the next day, the 20th or the 21st, showed what you wrote here that they had solidly improved capital ratio at the bank.

A No, I think -- my recollection, I could be wrong about this, but my recollection is that they provided me a forecast that showed -- with the $75 million capital contribution that showed solidly improved capital ratios from 12/31/07. And, you know, and maybe they hadn't gotten it all done but they had given me some preliminary numbers so I wrote this e-mail, came, you know, you can clearly see the sequence, came in the next morning and I have an e-mail from

Francisco expressing concern about that forecast and the $75 million contribution and I said, "Stop, we're not going to send this to the regulators and we're not going to send it to the management team and review it with our management team until you, both you groups, resolve this issue. Is if $52 million or $75 million?"

Q And who was the "you" in the sentence that "I take it financial planning did not obtain a forecast and certification from you for the forecast that they wanted to give to the OTS yesterday?" Who -- I'm sorry, who is the "they" in the sentence?

A Financial planning.

Q And why did you cancel the executive committee meeting that was scheduled for that morning?

A Well, because it was probably primary purpose was to review the financial forecast.

Q And near the end of your e-mail on the first page of Exhibit 597 you've written, "I want this fairly formal as I never want a manager -- never want to have a manager raise an issue like the one below again ever."

A Mm-hmm.

Q What did you mean by that?

A What I mean is if the process was working properly each of those managers would be providing their forecast for their unit and so it would have been impossible for them to

then express a concern about the very numbers that they provided themselves.

Q Well --

A In other words, Francisco was supposed to provide the capital contribution from the holding company to the bank.

Q What's your basis for that?

A He was the holding company -- he was the treasurer of the holding company and he was specifically responsible for the cash flows in and out of the holding company. So he -- they -- the central financial planning group could not provide a forecast for contributions from the holding company unless that forecast came from him.

Q But --

A That's my point.

Q So your understanding is that Mr. Nebot's forecast that was provided to financial planning included a forecasted capital contribution amount?

A At a minimum they would have had to have gone to Mr. Nebot and said, "Francisco, we're proposing to contribute $75 million of capital from the holding company, are you okay with that?" That would have been the minimum required to do a proper forecast.

Q But how did you get that understanding that that's what financial planning actually did or that was their normal

procedure?

A Because a year ago when, as I said earlier, when we missed our forecast --

Q Right, well that was --

A -- we set up a system where each manager had to formally sign off that the information that they were feeding into the forecast came from them, okay, so that we had -- so it wasn't a top-down forecast, it was a bottoms-up forecast with kind of a SOX-type certification process.

Q Well, again, I'm -- so was it your understanding that besides just reporting how much cash is, you know, at the holding company level that the treasurer, Mr. Nebot, included in his forecast a recommended or projected capital contribution amount as well?

A No, what I'm saying is -- and that may have come from Pam and Brian would have taken the bank's forecast, rolled it up, and they would have said, "We need "x" amount of capital in order to be well-capitalized. We need to get $75 million from the holding company." They, if following proper procedures that we had put in place a year ago, they couldn't just go, "I'm taking $75 million of capital from the holding company," they had to go talk to the person who was responsible for the holding company cash flows, which is the treasurer, Francisco Nebot, and get him to sign off on that before the forecast was complete and sent to me or others.

That's why I cancelled this until they resolved that issue.

Q Okay. So that was your understanding of the procedures, but did you have an understanding as to whether that actually occurred beginning in 2007 after the missed earnings?

A Yeah, I had an understanding that that had actually occurred. I think given how frequently we were doing forecasting at this point, my guess is they probably missed that step and I was chewing them here, saying I didn't like the fact that they had missed that step and I didn't like the fact that I got this e-mail which is evidence that they missed that step and I don't want it to happen again.

Q You didn't want to get the e-mail from Mr. Nebot?

A I didn't want to get an e-mail from Mr. Nebot that indicated that they weren't following the proper procedures in rolling up their forecast.

Q Well, did you have any issues with not just IndyMac not following the procedures that you thought had been set up in response to the 2006 earnings missed forecast, but the actual issues raised by Mr. Nebot, you know, in terms of contributing more than $52 million from the holding company to the bank in order to fund future trust-preferred debt payments?

MS. VETA: Are you suggesting -- are you trying to ask the question was Mr. Perry trying to stifle comments of

this type that Mr. Nebot was raising?

BY MR. CHUNG:

Q I don't know that stifle is the proper adjective or word to describe that, I'm just wondering whether that was something that you never wanted to happen again.

A No, that wasn't -- that was -- as I testified earlier, I was not focused on the substance of his e-mail because the substance of his e-mail, whether it was a $52 million contribution or a $75 million was immaterial and would have -- both scenarios would have resulted in us being well-capitalized based upon the e-mail below. Okay? Because 18, you know, $23 million of capital, given the fact that our capital ratios would be higher than 12/31/07, we would have still been very well-capitalized. I mean in terms of, you know, very close to that 12/31/07 number, okay?

So the e-mail that Mr. Nebot is raising is non-substantive from a capital standpoint. My issue was the forecasting process and that's what I was addressing here. I was asking them to coordinate better, to follow procedures, to work it out, and I knew that if they couldn't work it out it would come back to me as an issue to resolve.

Q Okay. So how did this issue get worked out? I mean what was the dollar amount that was ultimately contributed by the Bancorp to the bank prior to the end of the first quarter of 2008?

A I don't recall specifically.
Q Do you recall a $70 million figure?
A I don't recall specifically the figure.
Q Okay. Let me hand to you what's previously been marked as Exhibit 580. Exhibit 580 is an e-mail dated March 21, 2008, from Mr. Perry to Darrel Dochow at the OTS and to others. The subject of the e-mail is "Updated forecast" Would you look through this e-mail and let me know if you recognize it.
(SEC Exhibit No. 580 was referred to.)
(The witness examined the document.)
A Okay. I recognize it, yes.
Q Okay. Do you recall the circumstances surrounding this e-mail?
A I, you know, I don't recall the specific circumstances it was just our pattern and practice during this time period to keep everyone, our board, our management team, and our regulators, our auditors, all updated as to our current financial condition and our current financial forecast.
Q Do you have an understanding as to whether the certifications that you discussed earlier had been performed prior to this forecast being sent to the OTS?
A I don't have a specific understanding of that. I

didn't review the -- there wasn't a formal written certification that came to me the way Sarbanes Oxley process worked for external financial reporting, but I would assume given the concerns that I expressed in that previous e-mail we covered that they did their job properly here.
Q Okay. Looking at page 1 of the forecast under "current forecast assumptions," the forecast -- assumption number 2 I should say, reads "this forecast assumes that IndyMac maintains a CAMELS rating of 3 throughout the year." Do recall having any concerns around this time period that IndyMac would get a rating lower than 3 in 2008?
A You know, as I said earlier in my earlier testimony, I mean, we were uncertain as to what our rating would be at this point in time.
Q Okay. And looking at item 4 it says, "Payment of both the trust-preferred dividends and the perpetual-preferred dividends is continued all year as we believe that suspending these could have negative ramifications on both -- on our ability to both raise new capital through the DSPP and to raise deposits." Did you agree with that statement at this time?
A I think this was the majority view and I didn't disagree with it. As I said, I had -- I was on the fence, I didn't know. And this definitely was the majority view.
Q Okay. And looking at page 3 of the forecast, if

you'll look near the bottom for the first quarter 2008, the projected risk-based capital ratio is 10.95.
A Correct.
Q Do you have an understanding as to whether that includes a capital contribution from the holding company to the bank?
A I mean I don't recall specifically whether that included it or not.
Q Well, just based on that number being closer to 11 than 10 do you have an understanding as to whether just based on that alone whether this would reflect a capital contribution from the holding company to the bank?
A Well, it could have included capital contributions prior to that March 20th date which could -- may have been made, I don't recall specifically. It probably did include a capital contribution but I'm not -- I'm not -- I couldn't say for sure. I don't recall.
Q Did you have any concerns that this projection for the first quarter of 2008 was overly optimistic, specifically as it relates to the projected risk-based capital ratio at the end of the first quarter?
A You know, I didn't have any specific concerns that this was overly optimistic. This was our best -- this was our roll up of our forecast and our, you know, our best estimate of our -- of what we thought would happen at this

point in time.
Q Do you recall any discussions with the OTS in response to this forecast being transmitted to them?
A I don't specifically, no.
Q Do you recall any changes in the likelihood or your perception of the likelihood that IndyMac would receive a CAMELS 4 rating occurring in the days following March 21, 2008?
A You mean all the way through to July 11th?
Q Well I should say until late March, early April 2008.
A No, I don't recall a changing view about our CAMELS rating during that period of time.
Q Okay. Let me hand to you what's previously been marked as Exhibit 630. Exhibit 630 is an e-mail dated March 22, 2008, from Mr. Perry to Scott Keys with a copy to Brian Carter. I'll let you read through that e-mail and let me know if you remember it.
(SEC Exhibit No. 630 was referred to.)
A I've read it.
Q Okay. Do you recognize Exhibit 630?
A I do.
Q Did you send this e-mail on or about March 22, 2008?

A I did.

Q Do you remember the circumstances behind your writing of this e-mail?

A You know, I don't remember the specific circumstances around it. I mean it clearly was a note that I was sending to Scott to buck him up. You know, it was obviously a very challenging period and stressful period and I think Scott, more than other managers, was having a difficult time dealing with it. So it was kind of a, you know, an e-mail send to buck him up.

Q Well, you've written here that "It could not be any other way. Our survival and recovery would not make a great story unless we were a 4/"troubled" institution. Clearly, with the largest financial institutions in the world who have diversified business models on the ropes and asking for government help with this housing crisis there is no way, given our focus on U.S. housing and the magnitude of the crisis, that we could avoid being a troubled institution. While the odds of failure increase I still believe we can do it, even if we receive a public MOU. The reality is the markets have already priced our likely failure into our stock and most don't think we are going to make it. We have nothing to lose, let's fight our way through this. I hope you can get some rest and recharge over this Easter break." What -- do you -- were you, at this time, thinking or under

the assumption that IndyMac would receive a CAMELS 4 or a troubled institution rating?

A You know, as I said earlier, I think that the rating is an extremely judgmental issue and there's no hard-and-fast rule. And my recollection is it was waffling between a three and the four from this period and, you know, we really didn't have an idea for sure which way it was going to go. It might have been -- I'm speculating here -- it might have been someone like our regulatory relations person told him that she thought we were going to get a four and that may have been what I'm, you know, kind of trying to buck him up on because he's negative on. But even if we were a four, that's not something that's public information unless it is incorporated with an enforcement order that is public.

Q Well, around this time do you recall forecasts being changed to reflect a possible CAMELS 4 rating?

A My vague recollection is that the OTS asked us to do forecasts assuming both and we complied with that.

Q Do you recall approximately when that request from the OTS came through?

A I don't specifically. I mean I would probably say it -- if you look at the forecasts it probably came through just before the first forecast that you start to see with two -- the threes and the fours being two different scenarios.

Q Do you have an understanding as to why the OTS requested that IndyMac forecast a possible CAMELS 4 rating?

A I mean just a vague understanding.

Q And what is that understanding?

A It, you know, it'd just be generally they wanted to see what, you know, what the impact would be either way and that they, themselves, were on the fence in debating whether we were going to be a three or a four.

Q And do you remember who from the OTS made that request to see a CAMELS 4 forecast?

A Well, they made their request to do the forecast both ways.

Q Okay.

A I don't recall specifically.

Q Do you remember speaking to anyone about that with the OTS -- from the OTS?

A Not -- I just recall it vaguely that they made the request.

Q Okay. Let me hand to you what's previously been marked as Exhibit 581. Exhibit 581 is an e-mail dated March 25, 2008, from Mr. Perry to Pam March and others. The subject of the e-mail is "Forecast update. Forecast update, confidential." Could you look through this exhibit and let me know if you recognize it?

(SEC Exhibit No. 581 was referred

to.)

(The witness examined the document.)

A I've read it.

Q Okay. Do you recall the circumstances behind sending this e-mail?

A You know, as I said, I don't recall specifically. My vague recollection is that the OTS asked us to prepare both financial scenarios as a CAMELS 3 and as a CAMELS 4 and this was the first -- I think my vague recollection is this is the first CAMELS 4 scenario that we prepared.

Q And, again, this is just four days since your March 21, 2008 transmittal of a forecast to the OTS, do you remember specifically if within those four days whether you had communications with the OTS about a possible CAMELS downgrade?

A I don't recall specifically.

Q Okay. And one of the assumptions under the CAMELS 4 scenario is that IndyMac would cease to pay interest payments on the trust-preferred and the perpetual-preferred stock. Do you remember any discussions about that?

A No, I mean I remember this being one of the assumptions under the CAMELS 4. The other thing we made an assumption on, which was conservative in this CAMELS 4 scenario, is that this would be a publicly disclosed enforcement -- accompanied with a publicly disclosed

enforcement order. That's why we were -- if it wasn't, you know, we made the assumption that it would be accompanied with it and there are scenarios where it would -- you would -- you might not receive a publicly -- a public enforcement order. So we made that -- this has the more conservative assumptions. So if you already have a public enforcement order, you know, the assumption that you're also eliminating your dividend payments is -- was also a conservative assumption too, would follow along.

Q Well, I'm not sure I understand the connection between the CAMELS 4 and the suspension of the dividends on the preferred and trust-preferred shares. What connection is there?

A Well, that's what I'm saying. There isn't a connection unless the four is accompanied with a formal publicly -- required to be publicly disclosed enforcement order.

Q Well, why does the public enforcement order precede the suspension or coincide with the suspension of the dividends on the preferred and trust-preferred debt?

A Well, I mean, at that point, you know, if you have a public enforcement order that's out in the marketplace, we felt that our common stock price would come down dramatically and that we wouldn't be able to raise any more capital through the Direct Stock Purchase Plan if that were to occur.

And as a result, to keep the institution safe and sound we would have felt that it was prudent to suspend those preferred dividends at that point in time. So that was the logic.

Q To preserve capital?

A To preserve capital.

Q Now, if you look at your e-mail near the bottom, the last paragraph, it says that, "Right now, apparently, $2.5 million was being raised daily through the DSPP." Was that increased -- was that an increase from previously that quarter?

A I believe it was.

Q Do you have an understanding as to why?

A Yeah, I mean, as I said earlier, we were going to try to raise as much capital as we could through the Direct Stock Purchase Plan to keep the institution safe and sound.

Q Right, but looking at your forecast for March 21, 2008, Exhibit 580 -- I want to pull that up here, there it is -- look at page 1 under the current forecast assumptions. You're assuming a average capital raise of $1 million a day and the average at this point, it's written here, about $1.4 million per day. Under the March 25, 2008 forecast that number has gone up to $2.5 million a day and I'm wondering what had happened between those days resulting in that increased -- increase in the capital raised through the DSPP.

A Well, I don't recall specifically. As I said, there was a, you know, there was an amount that you could raise through this plan and it was based upon the number of shares that traded and your stock price, so it's possible -- we were going to try to raise as much as we could without having, you know, a big impact downward on the stock price and so it's possible that the stock price was rising here. I'm not sure. But we were able to raise more and we would have raised as much as we could through that Direct Stock Purchase Plan to keep the institution safe and sound.

Q Was there any consideration, that you were aware of, given to possibly disclosing IndyMac's CAMELS or financial situation as it relates to the raising of capital through the DSPP?

A Well, these forecasts here show dramatically reduced losses, dramatically, from the fourth quarter of '06, and improved capital ratios, which would have been positive news, you know, to the marketplace. I think our viewpoint is that wouldn't have been prudent to disclose given the fact that forecasts, as we had also disclosed, weren't, you know, were very challenging to prepare during this period of time given all the uncertainties in the business.

Q But did you consider whether it was appropriate to continue to raise money through the DSPP given that your regulator had asked you to run forecasts including a possible

CAMELS 4 downgrade?

A Well, as I said, your CAMELS ratios are non-public information, they're confidential. The only time that your regulatory ratings are, you know, the -- your ratings are not disclosed, the only time that, in my understanding, that you publicly disclose is when you receive and if you receive a formal enforcement order.

Q Okay. Well, I'm not asking about the publicly available nature of a CAMELS 4 downgrade, I'm asking if you considered whether it was appropriate to continue to raise money through the DSPP by issuing common shares to shareholders in light of the fact that the OTS had asked IndyMac to run these forecasts assuming a possible CAMELS downgrade.

A I believe at one point, as I testified earlier, that that was discussed at one of the board meetings with the directors, whether it was appropriate to continue to raise capital through the Direct Stock Purchase Plan.

Q And what was the decision at that board meeting?

A My understanding and recollection is that we consulted outside counsel on that matter.

Q Were there any discussions outside the presence of counsel as it relates to whether the -- whether IndyMac should continue to raise money through the DSPP in light of these circumstances?

A I don't recall specifically. I mean, I would say that the forecast that you have here, if we had publicly disclosed this, would have been positive to the stock price and allowed us to raise more capital.

Q Well, what part of this forecast are you saying would be positive?

A The substantially reduced loss that was forecast for the first quarter and the improved capital ratios.

Q But what was your understanding as to the market effect of, you know, disclosing the assumptions built in to the forecast, the assumptions on page 1?

A Well, as I said, we're not -- we're prohibited from disclosing our CAMELS rating. It's a confidential rating.

Q Well, the assumptions on page 1 don't refer to a CAMELS downgrade, they just refer to increased FDIC premiums and increased OTS assessment fee, suspension of the dividend and no capital being raised through the DSPP.

MS. VETA: So what's the question?

BY MR. CHUNG:

Q Do you have an understanding as to whether public disclosure of those assumptions would have had a positive effect on the market for IndyMac common stock?

A I wouldn't be able to say specifically, you know, I believe the forecast would have had a -- the overall forecast would have had a positive influence on the stock.

Q Now, if you look at the last page, the very last page of this exhibit, there's the e-mail identifier and it provides blind copy information. Apparently this was blind copied to Mr. Dochow at the OTS and others at the OTS including Mr. Hewes and Mr. Gregovich. Do you remember speaking to anyone from the OTS after you sent this e-mail to them?

A I, you know, I don't recall speaking to them after I sent this. It's possible I did but I don't recall.

MS. VETA: Mr. Chung, should we -- would it be a convenient time to take a break?

MR. CHUNG: Sure. It's 11:24, let's go off the record.

(A brief recess was taken.)

MR. CHUNG: Okay. We're back on the record at 11:31 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. Let me hand to you what's previously been marked as Exhibit 639. Exhibit 639 are the minutes of a March 24, 2008, joint special telephonic committee meeting of the board of directors of IndyMac Bancorp and IndyMac Bank. The document is Bates numbered 471659 through 471672.

(SEC Exhibit No. 639 was referred to.)

(The witness examined the document.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 639?

A I recognize it generally as the minutes of a board meeting, yes.

Q Okay. In your -- well, in -- on the first page of Exhibit 639, the two paragraphs on the bottom it states here, "Mr. Perry began by updating the members on the call he received from Darrell Dochow, Office of Thrift Supervision, Regional Director, wherein Mr. Dochow indicated the bank may receive a composite CAMELS rating of 4." Do you remember that phone call from Mr. Dochow?

A I don't.

Q Do you remember the discussion on a possible CAMELS 4 rating at this joint board meeting on March 25th?

A Just generally I do, yes.

Q Generally what do you remember outside of what's written here in the minutes?

A I mean I don't recall anything specifically outside of what's written in the minutes.

Q Well, was it -- did you have an impression at this point whether the OTS was leaning towards a CAMELS 4 rating for IndyMac at this point in time?

A I, you know, I don't remember specifically if I had an impression that, you know, a 4 was more likely than a 3. I definitely, you know, sitting here today I would say I, you know, I can't recall, you know, which way, you know, I had a -- whether I had a view at this point in time or not what might occur.

Q Well, do you remember anyone from the OTS ever telling you that the FDIC had already arrived at a CAMELS 4 composite rating for IndyMac?

A I don't remember -- I don't remember that, no.

Q Do you recall ever having a phone conversation with Mr. Dochow where he stated something to the effect that the OTS was also approaching a CAMELS 4 conclusion?

A I might have. I don't recall that specifically, no.

Q And I'm referring to the late March 2008 timeframe. I'm not sure what you're recollection period --

A I mean I have a vague recollection that sometime, you know, in, you know, sometime in that challenging period -- this challenging period, March, April, May, June period, that Mr. Dochow communicated to me that, you know, it was more likely that we were going to be a 4 if we didn't raise a significant amount of capital.

Q A big slug of capital?

A That's -- that might have been the terminology

used, but significant amount of capital.

Q Can you be any more specific on the time period, March, April, May?

A I could -- I can't be without seeing some documents.

Q Okay. Was it your recollection that the OTS or Mr. Dochow told you that without the big capital raise that IndyMac was to receive a CAMELS 4?

A I don't ever recall him saying that specifically, you know, he tended to kind of hedge his discussions and so I do vaguely recall at some point that it would -- that at some point that he did raise that issue and say that it was likely that we would be a 4 if we didn't raise a significant amount of capital.

Q Well, just looking at the minutes of this special telephonic committee meeting, was this committee meeting scheduled specifically to discuss the possibility of a CAMELS 4 downgrade?

A Yeah, I don't recall specifically. It looks like it was.

Q Okay and attached to the minutes are a unanimous written consent of the IndyMac board of directors authorizing the offer and sale of up to 10 million shares of common stock through the DSPP. Do you see that?

A I do.

Q And is that your signature on the second page of the unanimous written consent?

A It is.

Q Do you recall a discussion about the appropriateness of raising additional money through the DSPP in light of the possibility, again, that IndyMac would receive a CAMELS 4 composite rating?

A Say that question again, please.

Q Do you recall any discussion in connection with the signing of this unanimous written consent about whether it was appropriate that IndyMac sell additional common shares through the DSPP in light of the possibility that it would receive a CAMELS 4 rating?

A As I said earlier, I do recall at some board meeting that that issue was raised and then it was discussed with counsel and that we continued to raise capital after discussing that with counsel.

Q But do you remember any discussion in connection with the signing of this UWC?

A I don't remember any.

Q Let me hand to you what's just been marked as Exhibit 666. Exhibit 666 is an e-mail dated March 26, 2008, from Mr. Perry to Robert Hunt and others. The subject of the e-mail is "Direct Stock Purchase Plan, DSPP, update, confidential." Take a look at this e-mail and let me know if you recognize it.

(SEC Exhibit No. 666 was marked for identification.)

(The witness examined the document.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 666?

A Yes. Yes, I do.

Q Did you send this e-mail on or about March 26, 2008?

A I did.

Q Okay. Do you remember anything behind the circumstances of this string of e-mails?

A Well, it's just part of our efforts to keep everyone informed of the -- of one of the key issues in helping keep IndyMac safe and sound which was raising capital. And so it was an update to the OTS with respect to our capital-raising efforts.

Q Well, is that -- were IndyMac's capital-raising efforts something that the OTS specifically identified as a concern to them around this time period?

A I don't recall specifically, you know, when the OTS raised it. You know, yesterday when we were reviewing documents, and I don't remember the chronology, you know, you can see that at one point Mr. Dochow expressed, you know,

more capital is better. And we clearly knew that and were working as hard as we could on that issue and communicating with everyone our efforts.

Q Okay. In your e-mail to Mr. Dochow at the bottom of the first page of Exhibit 666 you've written that "In recent days we have stepped up our daily capital raise. Today we raised $3.2 million. As a result we expect to raise between $35 and $40 million by quarter end and raise an additional $25 to $50 million in April before we release Q1 '08 earnings on May 1st." Do you recall any concerted effort at this point in time to raise or increase the amount of money being raised through the DSPP on a daily basis at this point in time?

A I mean just generally I recall that, you know, we were getting -- we had reinstituted the program, we were getting better at running the framework of that program and that our goal, as I said earlier, was to raise as much capital as we could to keep the institution safe and sound.

Q Well, do you recall decisions made around this time period about shortening the window of time in which the weighted average price of stock was considered for, you know, in order to meet the threshold price so that sales could occur?

A I do generally recall that, yes.

Q Do you recall how many times those time windows

were adjusted in this early 2008 time period?

A I don't recall specifically, but we were definitely adjusting it to maximize our capital-raising efforts.

Q And did you have decision-making authority on shortening those time windows?

A I don't remember if it was my idea or not but at one point the -- when we had a long window and didn't get any investment we discussed shortening the window and I was aware of that and approved of that.

Q Okay and generally were you made aware and/or approve any additional shortenings of the time windows if such things occurred?

A Yeah, generally I was either made aware and/or approved it.

Q All right. Did you have any discussions with Mr. Hunt about the possibility of IndyMac getting a CAMELS 4 composite rating outside of what's in this e-mail string?

A It's possible but I don't recall that.

Q In your e-mail at the top you wrote, "P.S. We are getting feedback from the OTS that they intend at the highest levels to stand up and "fight" the FDIC." What were you referring to there?

A I'm not sure specifically, you know, what I was referring to there.

Q Did you have an understanding of the work that the

FDIC was doing in conjunction with the OTS during this time period in terms of examining IndyMac Bank?

A Only in the very vaguest sense that they -- that OTS had invited them out to participate in the exam.

Q And did you have an understanding that the FDIC was also examining what the appropriate CAMELS rating should be for IndyMac?

A You know, I didn't have a specific understanding about that, no.

Q Generally did you have an understanding --

A No.

Q -- about what the FDIC was doing there?

A They were participating in the exam but I didn't -- if you're asking me did I understand what their authority over ratings versus the OTS's was the answer is no.

Q Had the FDIC participated in OTS exams of IndyMac in the past, prior to 2008?

A They had.

Q Did you have an understanding as to what they were doing in those prior exams?

A Not any -- not in any detail, no.

Q Well, did you have an understanding that in those prior exams the FDIC was also determining an appropriate CAMELS rating for IndyMac?

A My recollection is that in the first exam that

they -- that was performed on IndyMac that the FDIC had a view about our CAMELS rating and the OTS had a different view and that the OTS changed their view to be the FDIC's view. But beyond that, that is the only time that I -- I don't know the mechanism for that or how they coordinate in terms of making their decisions with respect to ratings.

Q When you say "the very first exam" are you referring to an exam in 2000?

A Well, I think it was probably 2001, but our first CAMELS exam.

Q Did you have an understanding as to the process by which IndyMac obtained approval from the OTS to pay dividends on preferred or trust-preferred debt?

A At points in time it had been explained to me in a summary fashion, so I had some understanding of it.

Q Well, generally, what's your understanding as to when or if IndyMac needed approval from the OTS to pay a dividend?

A I don't recall that -- the specific parameters on the preferreds. I think there was -- I think the one that I recall more generally was dividends from the bank to the holding company and there being a requirement that you couldn't dividend up more than some sort of cumulative earnings that you had over a period of time. I think I had a, you know, a vague recollection that if you -- I can't

remember if it was, you know, whether you had an MOU or an enforcement order or it was tied to your CAMELS ratings, but that there was some permissions required to pay various dividends, but I can't remember the specifics around that.

Q Did the holding company have any significant sources of cash other than dividends from the bank?

A Or capital, debt or equity raisings from outside parties. A little bit of earnings -- there were a few assets at the holding company that threw off earnings but other than raising capital, debt or equity, borrowings, it had a line of credit, or dividends from the bank, you know, no, it didn't have any other business activities of any substance.

Q And so were there any concerns in the early 2008 time period about whether the OTS would approve future dividend payments by the bank?

A To the holding company?

Q Well, I presume the OTS would have to approve dividend payments by the bank to anybody, including to Bancorp, is that correct?

A Well, there was, you know, the -- my recollection is there was two sources, there was the bank-preferred stock and there was the common stock that was owned by the holding company.

Q Right. I'm just talking about -- asking about dividends paid by the bank as opposed to the Bancorp.

A Yeah, I understand.
MS. VETA: I think he's answering your question.
THE WITNESS: There's two at the bank level.
MR. CHUNG: Okay.
THE WITNESS: Yeah, there was a preferred that was at the bank level, a bank-preferred, and there was common. And with respect to the common, we were actually streaming capital the other way, right, we were contributing capital down from the holding company to the bank to keep the bank safe and sound and well-capitalized and so we were under no expectations to dividend capital up to the holding company to pay holding company dividends or other expenses. And I -- and as I said earlier, I think there's a restriction on that tied with you can't dividend up more than some cumulative earnings or something like that. And there might also be a restriction tied to CAMELS ratings or enforcement orders but I'm not -- I don't recall the specific mechanisms.
I also think on that bank-preferred that there was some mechanism that required permission or approval tied in with that, but I don't recall the specific mechanism. I do vaguely recall that there was a discussion during this timeframe with the regulators that we could continue to pay these dividends, both the bank-preferred and the trust-preferred at the holding company, if we were raising more capital through the debt Direct Stock Purchase Plan on a

quarterly basis then those payments were going out of the institution.
BY MR. CHUNG:
Q Well, do you recall any discussions about IndyMac's ability to do that?
A To do what?
Q To pay more -- contribute more in capital to the bank than the bank was paying in dividends.
A I mean just generally, yes, I do.
Q And what were those discussions?
A Well, just, you know, from a general big-picture standpoint if we weren't able to contribute more capital -- raise capital and contribute capital to the bank then the bank was paying out in the form of the preferred dividend that the -- that we would have to -- that the regulators at some point would say, "We want you to suspend these payments."
Q Okay. But, again, was there any discussions that you can remember where anyone may have voiced opinions about the bank -- the Bancorp I should say, being able to continue to contribute more capital to the bank than the bank paid out in dividends?
A I'm sure there were I just don't recall them specifically.
Q Let me hand to you what's previously been marked as

Exhibit 640. Exhibit 640 is an e-mail dated March 30, 2008, from Michael Perry to Scott Keys. The subject is "Confidential." Why don't you read through this e-mail and let me know if you've seen it before today.
(SEC Exhibit No. 640 was referred to.)
A Okay.
Q All right. Mr. Perry, do you recognize Exhibit 640?
A I vaguely recall this, yes.
Q Is this an e-mail that you wrote on or about March 30, 2008?
A It is.
Q Okay. Do you have an understanding as to what Mr. Keys is referring to in his e-mail about a letter that may have created unintended consequences?
A I don't, you know, I read that here. I don't recall what letter he's talking about here.
Q Okay. Why don't you keep Exhibit 640 in front of you while I hand to you what's been previously marked as Exhibit 583.
A Okay.
Q Exhibit 583 is an e-mail dated March 28, 2008, from Brian Carter to the IndyMac board among other persons. Attached to the e-mail is a letter from the OTS to Michael

Perry dated March 27, 2008.
(SEC Exhibit No. 583 was referred to.)
A Okay.
Q All right. Mr. Perry, do you recognize Exhibit 583?
A I do vaguely.
Q Is this an e-mail that you received on or about March 28, 2008?
A I believe it is.
Q And what do you recall the circumstances behind Mr. Carter sending this e-mail?
A I don't recall specifically the circumstances behind it. I assume he had sent it probably on my behalf with the attached, you know, with the attached communication that we had received from the OTS here, this letter.
Q All right. Did -- had you received a copy of this attached March 27, 2008, letter from the OTS?
A I'm sure I did I just don't remember it.
Q Okay. What was your understanding about what this letter said in terms of IndyMac's ability to pay IndyMac Bank and its ability to pay dividends on its preferred stocks going forward?
A Well, I think the letter is self-evident in terms of the -- what it says. It provides a contingent approval to

pay those dividends if certain circumstances are met, not only now but going forward.

Q Does this refresh your memory as to any discussions you had about, again, IndyMac's ability to -- the bank's ability to receive more in capital from the Bancorp than the bank paid out in dividends?

A Well, I said that earlier, that I do recall that issue.

Q Okay. But do you recall any specific discussions based on your readings of this Exhibit 583?

A No, I don't.

Q Turning back to Exhibit 640, do you now have an understanding of what unintended consequences Mr. Keys is referring to?

A Not really.

Q Do you have an understanding as to whether the letter Mr. Keys is referring to in Exhibit 640 is the letter from Mr. Gregovich attached to Exhibit 583?

A I mean it appears to be the letter that he's referring to in his e-mail -- that Mr. Keys is referring to in his e-mail.

Q Now both Mr. Keys' e-mail in Exhibit 640 and Mr. Carter's e-mail in Exhibit 583 references the OTS attempting to document their supervision of IndyMac. Do you have an understanding as to why the OTS was doing that specifically

here in this time period?

A No, not -- no, I don't, not specifically.

Q Okay and Mr. Carter's e-mail, Exhibit 583, references the OTS's desire to have the IndyMac board formally approve the current financial plan prior to an April 4th board meeting. What do you remember about that?

A In terms of the approval?

Q Why the OTS wanted the board to approve that plan prior to the April 4th meeting.

A Well, I mean, that was their pattern and practice that, you know, that they -- whenever they wanted a formal plan they wanted it approved by the board, and so they were asking the board to formally approve that plan prior to the meeting with us.

Q Well, was that -- was the OTS requesting approval of a formal plan by the board, was the common or a rare occurrence?

A It was a common occurrence annually for them to approve a plan and we certainly gave them, during this time period, lots of financial plans that had not been approved by the board. And certainly, I think, in this crisis period, they asked for the board to approve, you know, as I recall maybe one or two, maybe more, of these interim plans that -- before they met with the board.

Q Well, what's your understanding of the significance

of the board approval of a financial plan?

A Well, I mean, I think that the significance would be that the board has reviewed it, has determined that it's a reasonable plan, and is, you know, and doesn't have -- and is supportive of that plan. They wanted to make sure the board was onboard with the -- with that plan.

Q Okay and going back to Exhibit 640, Mr. Keys' e-mail, says that -- here in the middle of that paragraph, "I let him know also that our plans were to make as large a capital contribution as we prudently could and that we would continue to use the DSPP in April." Do you remember any discussions during that time period about the capital contributions to the bank?

A I don't recall specifically any discussions, you know, beyond -- beyond what you're seeing in these e-mails.

Q Well, the -- specifically do you remember any discussions about the Bancorp contributing as much capital to the bank as could prudently be done in this time period?

MS. VETA: Other than what he's already testified to?

MR. CHUNG: Yes.

THE WITNESS: No, I don't.

BY MR. CHUNG:

Q Okay. Let me hand to you what's previously been marked as Exhibit 614. Exhibit 614 is a memo dated March 31,

2008, from Francisco -- I'm sorry, from David Hayes to Mike Perry and Scott Keys with a copy to Francisco Nebot. And the second page appears to be a authorization for wire transfer dated March 31, 2008, in the amount of $70 million. Look at this exhibit and let me know if you recognize it.

(SEC Exhibit No. 614 was referred to.)

A I do.

Q Okay. What is this Exhibit 614, the first page?

A It looks like it's the approval of the capital contribution made in, you know, in the last week of March.

Q Of 2008?

A Correct.

Q Okay. Now, is this something that was standard practice in terms of signing a document like this on a quarterly basis whenever a contribution from the Bancorp to the bank occurred?

A Yeah, as I testified yesterday, I'm not -- my recollection is vague whether I approved all of them. As I said, you know, they were so frequent over the years on a quarterly basis that they were a relatively administrative and perfunctory matter. And, you know, I had the authority to do them under my CEO authority document, that it was approved by the board of directors, and what I'm doing here is essentially approving up to a $75 million contribution to

be made.

Q Okay. Do you remember the circumstances under which this was -- first of all, is this your signature on the first page of Exhibit 614?

A Yes, it appears to be.

Q And did you sign it on March 31, 2008?

A It looks like I did.

Q Is that your handwriting also, the date?

A Yep. Yes, it looks like it.

Q Okay. Do you remember the circumstances under which this was signed?

A It was probably they were looking to make that contribution that Scott referred to in his previous e-mail at quarter end.

Q Right, but do you remember who brought this form for you to sign, what discussion may have occurred when you signed this, anything like that, anything behind the background surrounding the circumstances of your signing of this document?

A I don't.

Q Do you recall any discussion about whether the Bancorp should contribute to the bank an amount equal to $55, $65, $70 or $75 million?

A I don't recall that specific discussion. As I said, I think I approved that this team could contribute up

to $75 million.

Q And so you left that decision to someone else's judgment?

A That's correct.

Q And who specifically did you leave that judgment to?

A I left that -- I believe I left that judgment to Francisco, Scott, and David Hayes.

Q Okay. Do you remember when you signed this Exhibit 614 whether Mr. Keys' signature was already on the form?

A I don't remember that. I don't remember whether or not it was or it wasn't.

Q Do you recognize the handwriting next to the circled $70 million on the first page?

A Only that it -- the "S" looks like Scott's "S" below.

Q Do you remember looking at any documents in connection with the decision on, you know, how much capital to contribute to the bank?

A Well, this document has the, you know, two most important ones, which are the core and -- tier-one core and total risk-based capital ratios post, you know, the capital contribution as well as the holding company liquidity ratio amount and the liquidity policy at that point in time.

Q Okay. Did you have an understanding at the time,

in March -- on March 31, 2008, that the ranges of proposed capital contributions would put IndyMac out of compliance with its liquidity requirements?

A Yeah. As I testified yesterday, I was fully prepared to have us temporarily violate an internal holding company liquidity policy in order to keep the bank strongly well-capitalized, as well-capitalized as we possibly could.

Q Did you -- do you recall having a general understanding as to the cash left at the holding company level after the contribution to the bank?

A Well, I had it -- I had more than a general, I had a specific understanding because they laid it out here.

Q Right, but as you've testified, you left the ultimate decision to Mr. Keys and others, I'm just wondering whether you remember having any discussion or considering the projected cash balances at the Bancorp after the various projected -- or approved ranges of capital contributions from the holding company to the bank.

A I don't recall a specific discussion about that issue but I knew that our goal would have been to continue to raise capital through the direct stock purchase plan and replenish capital at the holding company and continue to contribute capital down to the bank in the second quarter.

Q Were you also -- were you then considering future contributions in the second quarter of 2008, in the March 31,

2008 timeframe? I mean is that something you were already looking ahead to?

A It was in our financial forecast, yes. As well -- our base financial forecast has us continuing to raise capital through the direct stock purchase plan and continuing to pay the dividends was our base forecast at the point in time.

Q Okay. Do you remember reviewing any other documents besides this Exhibit 614, at least the first page?

A Related to this capital contribution?

Q Yes.

A I -- no, I don't.

Q And, again, the time period would have been around March 313, 2008.

A I don't.

Q There's a reference to a corporate forecast dated March 21, 2008 in this Exhibit 614, do you remember reviewing that in connection with the decision to authorize up to $70 million of capital to the bank?

A Well I previously reviewed that forecast. I don't recall reviewing it again when I signed this document.

Q Okay. Now, do you recognize any part of the second page of Exhibit 614?

A I don't recall seeing the second page of this. It's possible that I did but I don't recall.

Q Let me hand to you what's previously been marked as Exhibit 606. Exhibit 606 is a series of contribution sensitivity analyses for contributions of capital ranging from $55 million to $75 million. Why don't you thumb through that and let me know if this looks familiar to you?

(SEC Exhibit No. 606 was referred to.)

A The format looks familiar to me. It was the format for forecasting holding company liquidity that we used, and I had seen previous versions of it.

Q Okay.

A I'm not sure if I've seen this version.

Q Well, in what context would you see previous versions of documents like Exhibit 606?

A You know, when -- I don't recall specifically but -- when people had reviewed it with me.

Q But for what purpose?

A To show me the forecast for holding company liquidity.

Q In connection with the contribution of capital?

A It's possible, I don't recall specifically.

Q Okay. Do you have any recollection of reviewing a document like this, Exhibit 606, in connection with the authorization in Exhibit 614?

A I mean, I don't have a recollection of the meeting

or who brought this document to me, so I --

Q Exhibit 614?

A Yes. So I don't have a recollection of this but it -- I can clearly see from just quickly looking at the numbers that this is the subsidiary document that provided the liquidity summary numbers that were presented to me here.

Q In Exhibit 614?

A Correct.

Q Do you remember receiving daily reports from the treasury in 2008?

A I do.

Q And what --

A It might not have been daily but close to daily.

Q Okay. Well, let me hand to you what's previously been marked Exhibit 617. Exhibit 617 is an e-mail dated March 31, 2008, from a Eugene Soo-Hoo to Francisco Nebot and others. The subject of the e-mail is "Daily report 3/31/08," and attached to the e-mail is a daily treasury/corporate finance report to -- with a date issued -- with an issuance date of March 31, 2008.

(SEC Exhibit No. 617 was referred to.)

A Okay.

Q And, Mr. Perry, do you recognize Exhibit 617, at least the report part of it, not the e-mail?

A It -- this specific report?

Q Well, just the part -- do you recognize the format of the report?

A I know I'm on the copy list but I don't recall specifically the format of this report, no.

Q Do you remember receiving these reports in the March 2008 time period?

A No, I don't remember receiving it -- this wasn't the daily report that I was talking about.

Q What daily report were you referring to?

A I was talking about towards the end when I was receiving a daily report from treasury. You had asked me in 2008 towards the end when I was receiving a daily report from treasury regarding our depository outflows.

Q This would be in the July 2008 time period?

A I believe so, either late June or early July.

Q So you're not familiar with the format of this daily treasury corporate finance report?

A It's possible I might have seen this but I was not on the -- even though I was on the distribution list I didn't receive this report on a daily basis.

Q That's your best recollection?

A Yes, it is.

Q Just looking at it now, though, is there any information there that you would need or use on a daily basis

at IndyMac?

A Boy, there's so many numbers on here. We could, you know, it -- yeah, I mean it's definitely possible that there's something -- some numbers on here that I'd be interested in seeing on a daily basis.

Q What about on the -- this -- well, it's the first page, page number 1, on the lower right-hand corner, the daily -- treasury daily summary for internal corporate finance/treasury use only. On the lower-left-hand corner there's holding company cash that's being reported here. Did you receiving regular updates on that information during this time period?

A You mean like daily updates?

Q Daily, weekly, with any sort of regularity.

A No, I didn't. Irregularly I was receiving updates on our holding company liquidity in 2008, but not on any regular basis.

Q Well, when you said that you were pointing to exhibit --

A Well, no, I wasn't. I was pointing to kind of, you know, something like this.

Q Exhibit 614?

A Yeah. So like a point in time when -- where somebody was saying, "Our liquidity after doing "X" is "Y," but I didn't receive daily or regular updates on our holding

company liquidity. What I was talking about would have been, you know, like daily capital ratios that were in this report. Well, just, you know, in terms of -- you asked me is there something in here you would have liked to have seen daily, sure, you know, capital ratios.

Q Okay. All right, let me hand to you what's previously been marked as Exhibit 616. Exhibit 616 is an e-mail dated March 31, 2008, from Mr. Perry to Darrell Dochow and others. The subject of the e-mail is "Update on 3/31/08 capital ratios, confidential."

(SEC Exhibit No. 616 was referred to.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 616?

A I do.

Q Do you remember -- well, is this an e-mail that you sent on March 31, 2008?

A Yes, it is.

Q Okay and do you remember anything behind the circumstances in which this e-mail was sent?

A It just was, you know, continuing to provide as current an update to all interested parties as I possibly could and that's what I was doing here, continuing to update on our forecast and our efforts to keep IndyMac safe and

sound.

Q Okay. In the first paragraph of your e-mail you've written here that "we calculate that our core and total risk-based capital ratio would be roughly 6.25 percent and 10.50 percent at 3/31/07." Did you mean 3/31/08?

A I probably did, yes.

Q Okay.

A I'm sure I did.

Q Where did you get these numbers, the percentages for the capital ratios?

A I would have gotten them from our financial forecasting group.

Q And who would that be specifically?

A Pam Marsh or Brian Carter, you know, Pam's on the distribution -- on the copy list here so it's probably Pam and Brian Carter, possibly Scott Keys.

Q Can you tell me why the 10.5 percent number is used here when we saw earlier in Exhibit 614 that the projected capital ratios that same day, March 31, 2008, was projected to be 11.06 percent based on a $70 million capital contribution?

A I'm not sure.

Q Now, at some point that --

A Might have been different timing -- timing of these. Obviously, you know, there was a lot going on during

this period of time. I'm not sure if they used -- they used a forecast that was March 21st in these numbers. They may not have used the current forecast that Pam and Brian had developed subsequent to March 21st.

Q Okay. Now, at some point on March 31st did you become aware that the capital contribution amount from the holding company to the bank was $70 million?

A Well, it -- I'm -- say that again?

Q Did you become aware at some point on March 31, 2008, that the amount of the capital contribution from the Bancorp to the bank was $70 million?

A Well, it looks like I did because it's in this e-mail.

Q Right. So how would you have gotten that information?

A I'm not sure exactly. Someone would have told me.

Q And you also write in this e-mail, Exhibit 616, let's see, the third paragraph from the top, third sentence in that paragraph, "After the $70 million capital contribution we still have $21 million of equity capital available at the holding company and plan to continue to raise $1 to $3 million a business day every day during the second quarter." Was that $21 million of equity capital available at quarter's end, was that approximately three-quarters worth of dividend payments on the

trust-preferred shares?

A I'm not sure. It was -- you can see that from this other exhibit it's the $21 million that they forecast here.

Q Right, but do you -- did you have an understanding at that point in time roughly how many quarters worth of preferred dividend payments the $21 amounted to?

A I'm not sure I focused specifically on that issue because I knew that we were going to continue to raise capital through the Direct Stock Purchase Plan. You know, and we were raising it in, you know, increasing increments during this time period and that, you know, we would continue to do that, and that our forecast showed us being able to stay well-capitalized, continue to raise capital through the Direct Stock Purchase Plan and continue to pay those dividends.

Q Did you -- are you aware of anyone -- well, let me start off with what you were thinking during this time period. Did you consider whether IndyMac should disclose that it had only $21 million of cash available at the end of the first quarter of 2008 in connection with sales of the DSPP?

A I don't believe I considered that, no.

Q Do you have an understanding as to whether anyone at IndyMac considered that?

A I don't have an, you know, I don't know if anyone

considered that.

Q Okay and at March 31, 2008, was there any discussion about discontinuing the DSPP in light of the liquidity position at the holding company?

A I don't recall any discussion regarding that. You know, as I said, I felt that the market would react favorably to the -- this earnings forecast that's here and so that would have benefited common shareholders.

Q Okay but did you consider how the marketplace would react if it was made aware that the holding company had $21 million of cash on hand?

A Say that question again, please.

Q Did you consider how the market would have reacted if it had become aware that at March 31, 2008, the holding company had $21 million of cash on hand?

A No, I didn't consider that.

Q Do you know if anyone at IndyMac did?

A I don't know.

Q Okay. Looking at the bottom of this page, Exhibit 616, there's a reference to a triple A MBS trade that got delayed. Can you -- do you know if that trade was accomplished?

A As I recall it was.

Q And was it the next day as referenced in your e-mail?

A I'm not sure.

Q Do you have an understanding as to how that trade got accomplished given the disruption in the markets during this time period?

A No, I -- not the details, no.

Q What's your general understanding about this securitization in late March, early April, 2008, the deal terms specifically?

A My understanding is the deal terms were, you know, reasonable terms.

Q Well, do you remember any details about those deal terms?

A I don't remember any details. I wasn't involved in that, the trading or the structuring of that securitization.

Q Did you have an understanding as to why the FHLB of Seattle was purchasing these triple A mortgage-backed securities at this point in time?

A I didn't have an understanding, although I was thrilled they were. It was providing support, clearly, to the private label market.

Q Now -- and why -- so was this a private label securitization?

A Yes, it was.

Q Do you know who the other purchasers of the other tranches of the MBS were?

A I don't -- I'm not sure if there were other purchasers of other tranches.

Q Well, did IndyMac retain a proportion of this securitization?

A I believe we did but I can't say for sure.

Q Do you have an understanding as to why a private label securitization was used rather than using IndyMac shelves for this securitization?

A Well, that's what I mean when I refer to it as private label. IndyMac shelves are private label -- in the nomenclature of private label securitization, IndyMac shelves are part of the private label securities market. The public market was Fannie, Freddie, Ginnie, anything -- and the way I refer to it and the way generally I've heard it referred to in the industry as anything else, is private label securitizations.

Q Okay. Well, do you have an understanding that this trade of mortgage-backed securities in early April 2008 was a whole loan sale to an investment bank who then securitized the loan and sold a portion to the FHLB of Seattle?

A I don't -- I'm not sure if I was aware of that or not. I don't recall being aware of that.

Q Do you remember at -- whether IndyMac considered securitizing the loans for the mortgage-backed securities itself rather than using a Wall Street firm?

A Well, we were not -- we had set up a securities corp, I can't remember exactly when, but we hadn't reached the point where we were able to structure and distribute our own securities. All of our private label securitizations were done in conjunction with working with a Wall Street firm who structured and distributed the securities.

Q But did you have an understanding that the names of these securitizations were based on the issue of whether it's IndyMac or Barclays or Deutsche Bank and so on and whether this April 2008 securitization was labeled as an IndyMac securitization versus a Barclays securitization?

A I mean my recollection, and I could be completely wrong, is that this was an IndyMac securitization, but I could be wrong about that. I wasn't involved in the details of it.

Q In Exhibit 616 you've also written at the bottom that "This potential trade plus Treasury Secretary Paulson's remarks today on FAS 157 level 3 accounting should both be positive relative to our current valuation of our MBS portfolio." Could you tell me what you meant by that?

A Well, I think what I'm referring to there is I think Secretary Paulson was making some favorable statements with respect to the disruptions in the marketplace and the appropriateness of level 3 accounting under FAS 157.

Q Well, what about as it relates to the potential

trade with the FHLB in Seattle relative to the --

A Yeah, I'm not sure what I meant with respect to that piece at this point in time.

MS. VETA: Mr. Chung, it's now 20 to 1:00, about getting close to a break?

MR. CHUNG: Yes, very close. Let me just follow up on this Exhibit 616.

THE WITNESS: Sure.

BY MR. CHUNG:

Q Did you have an understanding that this trade with the FHLB in Seattle was going to be used to price IndyMac's MBS portfolio for the first quarter of 2008?

A I had a vague understanding that that was one of the data points that would be used in a variety of data points in the FAS 157 accounting for the first quarter.

Q How did you get that understanding?

A Someone told me.

Q Do you have -- do you remember who?

A It might have been Scott Keys, our CFO, I don't recall specifically.

Q Well, do you have an understanding as to whether this securitization was put together, the trade to the FHLB of Seattle, specifically to help price IndyMac's mortgage-backed securities portfolio for that first quarter of 2008?

A I don't recall that specifically that that would have been the purpose for it.

Q Generally do you have an understanding?

A No, I don't.

MR. CHUNG: All right, it's 12:40, why don't we take our lunch break at this time. We're off the record.

(Whereupon, at 12:40 p.m., a luncheon recess was taken.)

AFTERNOON SESSION

MR. CHUNG: We're back on the record at 1:44 p.m. following our lunch break. 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. TERCERO:

Q Mr. Perry, I'd like to ask you a couple more questions about Exhibit 616, if you wouldn't mind putting that in front of you. That is the e-mail, appears to be from you with a date of March 31, 2008, to two individuals at the OTS and a copy to various other individuals. To go back to the bottom of the very first page and the P.S. or post script that is there, there is the reference to what we were talking about before our break, which was this trade. First, can you tell me how it is that you learned about this potential trade?

A What, you know, one of our managers would have told me about it.

Q Do you have an actual recollection of somebody informing you about the potential trade?

A If I -- I would only be guessing.

Q Oh, well we don't want you to guess, but of course, if you did have a recollection you can certainly share it with us but I understand your answer. Before writing the e-mail, Exhibit 616, did you have an understanding as to how the trade or proposed transaction came about? For instance, was this a situation where an investment bank approached IndyMac or where the FHLB approached IndyMac or where IndyMac approached others? Do you have any information as to how the trade came about?

A I don't. I don't have a recollection of that.

Q And then just for clarity's sake, do you have an understanding as to whether this was a whole loan sale transaction or a private label securitization?

A Well, as I testified earlier, in my mind I thought it was off of our shelf in a private label securitization, but now, you know, in talking to Mr. Chung, I'm not sure.

Q Were you aware of any previous transactions, whether whole loan sale transaction or private label securitization, in the 2008 timeframe where the FHLB was a purchaser of either loans or mortgage-backed securities?

A I -- well there's different FHLBs and I was aware that some of the Federal Home Loan Banks had mortgage loan purchase programs that were, you know, similar to -- similar but not quite the same as selling loans to Fannie and Freddie. I think I was generally aware that some of the Federal Home Loan Banks bought private label -- highly rated private label mortgage-backed securities.

Q And since when were you aware of that?

A You know, as I said, that's a general recollection. I don't have a specific recollection of dates.

Q The post script identifies Pat Hymel and Scott, is that Scott Keys?

A Correct.

Q Do you have an understanding as to which part of the bank was working on this proposed transaction or trade?

A I'm sorry, can you say that again?

Q Do you have an understanding as to which part of the bank was working on this potential trade?

A I think I have a general understanding of that.

Q What is that, sir?

A I think the -- well, Pat was chief investment officer. We were really not originating any new non-conforming loans of any size because we had converted to a GSE lender by this point in time, so, you know, my general thought would be that this, and I could be wrong, but my

general thought would be that these were loans coming -- they were being securitized out of the investment portfolio.

Q I see. And is that the held for investment portion of IndyMac Bank's assets?

A I think -- I believe that would -- that's what I would think was occurring here, I'm not certain about that.

Q Now, did you have that understanding at the time of the e-mail, Exhibit 616?

A I probably did, yes.

Q Okay. Is that your best recollection?

A Yes, it is.

Q All right. Well, thank you very much.

A Okay.

BY MR. CHUNG:

Q All right. Mr. Perry, let me hand to you what's previously been marked as Exhibit 641. Exhibit 641 are the minutes of an April 3, 2008, joint special telephonic committee meeting of the board of directors of IndyMac Bancorp and IndyMac Bank. The document is Bates numbered 471673 through 471698. Why don't you thumb through this document and let me know if you're familiar with it.

(SEC Exhibit No. 641 was referred to.)

A Okay. Sorry.

Q That's all right.

A Sorry I took so long on that.

Q No, you should take your time to be as familiar as you think you need to which each of these documents that I've shown you. So are you familiar with Exhibit 641?

A I am.

Q Are these the minutes of joint special telephonic committee meeting of the board of directors of the Bancorp and the bank on April 3, 2008?

A I believe they are.

Q Okay. Do you have an understanding as to why this meeting was called?

A Well, I think from a reading of these minutes I think the primary purpose was to call the board together to review the financial plan as the regulators had requested and to get board approval for our 2008 financial plan.

Q All right. Now, turning to the second page of this exhibit, under "regulatory update" there's a discussion there that's -- in which it appears that you, Ruthann Melbourne and Christina Hunt-Fuhr are providing the update. Do you remember that?

A Just vaguely.

Q Well generally what do you remember about that presentation?

A Well, I don't recall that I was making it, I think Ms. Melbourne and Ms. Hunt-Fuhr were making that

presentation.

Q Okay, but what do you remember about that presentation other than what's in these minutes?

A I don't recall anything other than what's in these minutes.

Q Okay, well in that first paragraph under "regulatory update" near the end of that first paragraph it says, "Ms. Melbourne noted that David Hewes , OTS examiner in charge, indicated that he would push for a 3 rating if the bank comes in above the well-capitalized limits." Do you remember that discussion?

A I don't remember the discussion, I just remember, you know, I remember after rereading the, you know, reading these here, you know, that someone had told me that that's what he was intended to do.

Q "He" being Mr. Hewes?

A Correct.

Q Well, based on what's written there, that portion that I just read to you, did you have an understanding that the OTS was leaning towards a 4 rating this time?

A You know, as I said, I can't recall what my view was kind of on a specific date. I knew that they were leaning between a 3 or a 4 and I can't recollection, you know, what my view as to which one they would give us ultimately would be at, you know, at this point in time.

Q Well, do you remember any documents, like an e-mail perhaps or handwritten notes, anything that you may have kept contemporaneously in the early part of 2008 that would have indicated when you became aware that the OTS was likely to conclude that IndyMac deserved a CAMELS 4 composite rating?

A My recollection was that they hadn't, you know, made a decision even, you know, up until, literally, we had received our report, which was in June.

Q Okay. And that next sentence from what I was reading earlier, on the second page of Exhibit 641, it says, "Mr. Perry added that the OTS has decided to leave the exam open through the end of April 2008." Do you remember where you heard that information?

A I don't remember where I heard that, probably from our team that was dealing with them.

Q What's your understanding as to why the OTS was leaving the exam open until the end of April?

A I mean I have a vague recollection that they wanted to see, you know, how we ended up in the first quarter and how our efforts were going in raising capital.

Q Well, what do you mean in terms of where IndyMac ended up in that first quarter?

A Well, after our books were closed and certified and we released first quarter information they wanted that to be complete and done and they also wanted to see how our efforts

in raising capital were going before they made a decision I think.

Q Well, when you were --

A And they were also continuing to do work all the way along.

Q Well, when you refer to reporting are you referring to SEC reporting or OTS regulatory reporting?

A I would say both. They were waiting for both to be completed.

Q Do you have a general understanding as to how long these OTS exams typically took in the past?

A Yes, I do.

Q And what's that understanding?

A A shorter timeframe than this one was taking.

Q How much shorter? And just ballpark that.

A Well, it's -- let's try to do that. So they started the exam sometime in January and now they were saying they weren't going to have it completed until April so that would -- the end -- is it the end of April, so that's four months. And typically I would see roughly about half that --my guesstimate would be roughly about half that timeframe.

Q Was the typical duration of an OTS exam?

A Well, the exam in the field might have been shorter and then they went back and wrote their report and had a

review process, I'm sure, before they actually released that report. So I'm encompassing all that from the beginning of exam to when we would receive a report would typically be, you know -- well, 60 days is probably too short, probably 90 -- probably three months between the, you know, 60 to 90 days, somewhere in that timeframe.

Q Okay and did -- so what was your understanding of the exam staying open until the end of 2008, was that your understanding that the fieldwork would end in end April 2008 or that a report would be issued?

A I don't think I had a clear understanding of what that exactly meant. I'm getting -- I was getting it secondhand probably from our team. The point was we weren't going to see a report anytime soon.

Q And did you have an understanding as to why it was taking the OTS longer in 2008 to conclude its exam as compared to prior periods?

A Just a general understanding based on my experience of what was going on during that time period.

Q And what's that?

A Well, we had a lot of issue. There was tremendous uncertainty in the marketplace, closing our books was taking longer, the SOX certification process was taking longer, the audit review was taking longer, because everyone was being very careful about how to do all of those things and making

sure, given the illiquidity in the marketplace, that we did them right. And I think the OTS naturally had the same issues and stretched both out.

Q Okay and on that second page under item 2, "Memo from A&B dated April 2, 2008, regarding -- under the Direct Stock Purchase Plan." Do you remember any third parties being present for that discussion?

A Well, it appears from the minutes that there -- the regulatory counsel, Dwight Smith, was on that call.

Q Well, by third parties I meant people -- someone other than counsel on the one hand and IndyMac management and board members on the other.

A You know, I would think they would be noted here and -- as participating if there was.

Q But what was your memory if you have one?

A I don't have a memory of that.

Q Let me hand to you what's previously been marked Exhibit 642. Exhibit 642 are the minutes of an April 4, 2008, joint special telephonic committee meeting of the board of directors at IndyMac Bancorp and IndyMac Bank. The document is Bates numbered 471699 through 471702. Take a look at these minutes and let me know if you're familiar with them.

(SEC Exhibit No. 642 was referred to.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 642?

A I do.

Q Are these the minutes for the joint special telephonic committee meeting of the board of directors with IndyMac Bancorp and Bank on April 4, 2008?

A I believe they are.

Q Okay. Do you have an understanding of why this meeting was called?

A I think this -- my vague recollection is that this meeting was called at the request of the OTS to review the financial plan that the board had approved the previous day, that they had requested that the board approve, and to have a general update and discussion with the board as to that status of the regulatory exam.

Q Okay. Let's look at page 2 of Exhibit 642, the second paragraph. It says that, "While Mr. Perry was reviewing change number 2, Darrell Dochow, Western Region Director OTS, joined by phone and asked about the discount associated with the increased estimated MBS mark to market valuation for spread widening. Mr. Keys responded that it was about 10 percent discount from the original valuation." Can you explain to me what this refers to about the spread widening on the MBS mark to market valuation?

A I think this, you know, this is part and parcel of some of the other testimony that we've talked about that there was, you know, tremendous illiquidity in this marketplace and you were seeing distressed sales were the only sales that were occurring in this market. And so on -- you know, we were implementing FAS 157 and under that accounting pronouncement we were writing that portfolio down to fair value. I think they're referring to the write-down under the fair value provisions of FAS 157.

Q So is Mr. Keys saying here that the write-down is about 10 percent?

A I believe that's what he's saying or he might be saying from a previous valuation, not 10 percent in absolute but 10 percent from a previous valuation. It could be either way, I can't tell from the wording here.

Q Okay. Do you remember any additional discussion on that topic at this meeting?

A I don't recall any other additional discussion on that topic at this meeting.

Q Okay. So you've read these minutes here today?

A I have.

Q Do you remember a discussion about the possibility of the OTS rating IndyMac Bank as a CAMELS 4 at this meeting?

A I remember that we reviewed both a CAMELS 3 and a CAMELS 4 scenario with them and I don't recall them

expressing a view at the meeting as to what our rating would be.

Q Do you remember anything -- any discussions at this meeting to the effect that IndyMac would receive a CAMELS 4 composite rating absent a raise of a big slug of capital?

A I don't recall -- I don't recall that at this meeting. I vaguely recall at some point them telling us something along those lines.

Q When you say "them" can you be specific?

A The OTS.

Q Well, can you specify a person from the OTS?

A I don't recall specifically who it was, and it's possible that it didn't come directly from the OTS to me but through intermediary -- through my management team.

Q Looking at the third page of Exhibit 642 and the second paragraph it says, "Mr. Dochow then asked why the risk profile is not increasing. Mr. Perry indicated that the risk profile is decreasing due to the significant decline in -- and sales to a GSE," and then it goes on. Do you remember anything beyond what's in these minutes about which direction the risk profile was heading?

A I don't.

Q Let me now hand to you what has been previously marked as Exhibit 600. Exhibit 600 is an e-mail dated April 4, 2008, from Michael Perry to the IndyMac board dashboard

and others. The subject of the e-mail is "Q1 '08 earnings release date." Take a look at that and let me know if you recognize this.

(SEC Exhibit No. 600 was referred to.)

A I do recognize this.

Q Okay. Is this an e-mail that you wrote on or about April 4, 2008?

A It is.

Q Okay. What do you remember about this e-mail other than what's written in it?

A I don't recall anything other than what's written in it.

Q Well, do you recall a discussion about separating the shareholder's meeting on May 1st from the first quarter 2008 earnings release date?

A No, I don't recall specifically the discussion. I, you know, I read this e-mail and I recall this issue coming up.

Q You recall it coming up?

A Yes.

Q What do you recall about the discussion leading up to this recommendation?

A I just recall that Pam Marsh -- just vaguely recall Pam Marsh saying, "Hey, I think, you know, we should separate

the earnings release from the shareholder's meeting." We had -- we were unusual in that we did the shareholder's meeting and the earning release at the same time, most companies didn't do that, and we had -- we -- and we had done it for the past several years. We decided not to do it here because of all the open items that still needed to be resolved in order to close the books and complete our SOX certification process.

Q Well, your e-mail does mention some unresolved regulatory issues and accounting and auditor issues. Can you first tell me what the unresolved regulatory issues were at this point in time?

A Well, one of the issues that the auditors always did was talk to the regulators and confirm that they were comfortable with all the issues that would be appropriately reflected in our financial statements and disclosures, and especially they would do that if there was an open exam going on at that time. And so there was an open exam going on, the OTS -- they would have wanted to confirm with the OTS things like "Are you comfortable with loan loss reserves? We're comfortable. Are you comfortable?" so that, you know, they wouldn't be off-track with each other before they gave their approval to move forward with our financial statements.

Q Okay. Any other regulatory issues that you were aware of that were unresolved at this time?

A I think just generally it was things like that, the -- you know, loan loss reserves, secondary market warranty reserve, how we did mark to market accounting, a lot of kind of valuation type issues that require a lot of models, uncertainty and judgment.

Q And so we're talking about the OTS and their issues?

A Well, what we're talking about is the auditors wanting to get the OTS's view and signoff that they were comfortable with all of those issue before Ernst & Young would be willing to sign off.

Q Okay. Were there separate auditor accounting issues then?

A There weren't any issues, there were just open items, and those open items, as I said, how we valued our mortgage-backed securities portfolio, loan loss reserves, all of those issues were, you know, more challenging issues given the uncertainty in the environment regarding housing prices, delinquencies, defaults, loss severities, all of those types of things.

Q Did you have an understanding as to how IndyMac valued its mortgage-backed securities portfolio in this April 2008 timeframe?

A You mean as of March 31st?

Q Yes.

A I didn't have a specific understanding of the methodology that we were using, no.

Q Did you at some point get an understanding of that methodology prior to the filing of the form 10-Q for the first quarter --

A A high-level understanding, yes.

Q And how did you get that understanding?

A I believe our team, as part of the SOX certification process, reviewed high-level PowerPoint slides on how they did the valuation.

Q When you say "your team," who are you --

A The financial team.

Q So you were present for a presentation from the financial team?

A I'm not sure, I mean, that was one of the last issues that got resolved. I'm not sure if that was a formal presentation or, you know, "Here's how we did it, Mike," and a couple people walked in my office and walked me through a few summary pages on it.

Q And so who were the persons giving that presentation to you?

A Well this was, I believe, subsequent to Mr. Keys departure and -- or after Mr. Keys departure and it would, I believe, have been Blair Abernathy, but I could be wrong about that, and then his name escapes me, he was a very sharp young man who was a public -- was a financial accounting standards expert and a securities expert. I'm trying to remember his name, I can't remember his name.

Q What department or group was he in?

A He was in the accounting group.

MS. PEARSON: Was it Mr. Scribner?

THE WITNESS: Yeah, Ted Scribner.

BY MR. CHUNG:

Q When do you recall this presentation occurring relative to May 12th when the form 10-Q for the first quarter was filed?

A Around the -- it was either the last week before we, you know, I think we filed on a Monday, as I recall, and so it would have been the preceding week or maybe a -- maybe the week before that, but it was very much towards the end.

Q Now, did you consider whether these unresolved regulatory accounting and auditor issues were significant unresolved issues?

A No, I didn't view them as significant. I -- that they were kind of normal course of business given the uncertainties in the marketplace at that time.

Q And so did you think it was a good idea to separate the shareholder's meeting from the earnings release date and push the earnings release date to May 12th?

A Yeah, I thought it was a very good idea.

Q Why did you think that?

A It just gave us more time to do the work without being rushed and to do it properly.

Q And the work being resolving these issues?

A Working on all of the open items and making sure that every "T" was crossed and "I" was dotted in our entire SOX certification process so that, you know, we didn't make any errors when we went to report our numbers for the first quarter.

Q Did you consider whether it was appropriate to continue to raise additional capital through the DSPP in this, you know, the 11 additional days between the May 1st shareholder's meeting and the May 12th earnings release date in light of these unresolved issues?

A Well, as I said, I don't think these unresolved issues were in any way material disclosure items. They were open items that were normal course of business in most quarters and because of the illiquidity in the secondary markets where all public companies who owned private label securities were struggling with issues like "what's the valuation methodology for these." And certainly all financial institutions were struggling with the uncertainties about how to develop and document things like allowance for loan losses where you have tremendous uncertainty in the future about housing prices and delinquencies. I, I mean, I

felt that those were all very normal issues in an abnormal time and we just needed a little more time to have those issues -- make sure that everybody was comfortable that we did them right.

Q Well, did you consider whether these abnormal times, as you referred to it, affected the difficulty of setting things like that allowance for loan losses and mortgage-backed securities valuations? And following up on that, considering the impact of these various changes to IndyMac's financials on its capital ratios?

A You lost me on that question. Can -- if you could repeat that again?

Q Did you consider that in these difficult financial times, as you put it, that setting of the allowance for loan losses, mortgage-backed securities valuations, and so forth, be extremely judgmental in that how those values were set would impact IndyMac's capital ratios?

A That, I mean, absolutely. The, I mean -- and we had a lot of disclosure around the fact that these were all judgmental items that had, you know, ranges of reasonable valuation and we had a lot of documented policies and procedures in how we documented those and certainly any or all of those could affect capital ratios. We were doing those valuations though, completely independently of the capital ratios. We were doing those valuations the --

following all of the rules, in the appropriate manner, completely away from how the capital ratios ended up.

Q Well, did you have any concerns as to whether, again, how those mortgage-backed securities were valued or how much of an allowance for loan losses that needed to be set would potentially push IndyMac's risk-based capital ratio below 10 percent during this time period?

A I absolutely had concerns about that. Any or all of those could have pushed it below 10 percent, and I told my team, "Just do it the right -- just follow the rules and do the right thing."

Q Okay. So, again, my question is, in light of those concerns and what you just said about any one of those things affecting IndyMac's capital ratio to the extent that it would be below 10 percent, did you consider whether it was appropriate to continue to raise DSPP money for these 11 additional days by moving, you know, the release date on the earnings for the first quarter of 2008?

A I didn't -- no, I didn't specifically consider whether it was appropriate to do that, but I -- I think you can see that we discussed the appropriateness of continuing to raise capital through the Direct Stock Purchase Plan at the board level and with outside counsel and received a comfort level that we could continue to do so.

Q What I'm wondering is, depending on what those

earnings release number -- what those earnings number are, if they're released on May 1st you may not raise money on May 2nd, 3rd or 4th, but by pushing that date to May 12th you're giving yourself an additional 11 days to raise capital through the DSPP without providing that earnings information to the purchases. Again, so my question is did you consider that when you made the recommendation to move the earnings release date to May 12th?

A I don't recall considering that. And, you know, I point out, as we discussed earlier, there were no purchasers of the direct stock purchase plan, that those investors were shorting the stock and not owning it directly.

Q Well, that was your understanding?

A Yes, it -- yes, it was.

Q Had you ever talked to these investors to verify that?

A No, I hadn't directly talked to them to verify that.

Q Had you talked to anyone who had verified that?

A It's just what my team had told me and what the administrator years ago had told me how that program worked, the third-party administrator.

Q Someone from Mellon?

A Well, probably somebody from Bear Stearns when it was the Bear Stearns program before Mellon.

Q How far back are we going here?

A A long --

Q I don't know when Bear Stearns --

A Yeah, years ago, but it's the same program.

Q Let me hand to you what's previously been marked Exhibit 586. Exhibit 586 is another e-mail, this one's also dated April 4, 2008, from Mr. Perry to the board dashboard among other persons. And the subject of the e-mail is "Our regulatory meeting today, confidential."

(SEC Exhibit No. 586 was referred to.)

A Okay.

Q Mr. Perry, do you recognize Exhibit 586?

A I do.

Q Is this an e-mail that you sent on or about April 4, 2008?

A It is.

Q All right. In your e-mail you've written something near the very end, last paragraph. You attribute a statement to David Hewes to the effect, "The only way to get a 3 is to raise a big slug before our report." Do you remember that statement by Mr. Hewes at the April 4, 2008, special committee meeting?

A I don't remember that specific statement but I don't have any doubt that he said something along those

lines.

Q Well, can you add any color to that? I mean, other than what's written in this e-mail, is this -- does reading this e-mail refresh your memory of what may have been said about, you know, the possibility of getting a CAMELS 3 of 4 given certain scenarios?

A Well, it certainly sounds like in the meeting at some point they said, based on this e-mail, it didn't reflect in the minutes that we just went through but it reflects more clearly here that at some point in the meeting they raised that issue which I had described earlier that, "Hey, unless you raise a big slug of capital you're likely going to be a 4."

Q Okay and what was your reaction to that?

A Well, I think you can see my -- this e-mail is my reaction to it.

Q Well, did you feel that that was a threat, that OTS was going to hold you to, hold IndyMac to?

A I mean I didn't, you know, as I said here, I think that they were putting pressure on us to raise a big slug of capital to take the safety and soundness issues off the table and I understand why they were doing that. It was, you know, it was their role to take the safety and soundness issues off the table and we were going to do everything in our power to assist them in doing that.

Q Do you remember any discussions with the OTS in response to the statement from them that the only way to get a 3 is to raise a big slug of capital?

A Say that again.

Q Do you remember any discussions with the OTS after April 4, 2008, regarding their statement that the only way to get a 3 is to raise a big slug of capital?

A I do -- I do remember one distinctive call that I had with Mr. Dochow on this issue.

Q When was that?

A Sometime after this, I can't remember specifically. Sometime after this period of time, but I can't remember specifically when.

Q Well, generally can you place it in terms of using as a sort of guideline or guidepost the May 12th filing of the form 10-Q?

A Yeah, I recall it being before that.

Q Okay.

A And --

Q What did Mr. Perry say?

A Mr. Dochow.

Q I'm sorry, Mr. Dochow.

A He kind of reiterated the need to raise a big slug of capital. I recall it being like the day after Washington Mutual, it was public, or the day of or the day after

Washington Mutual publicly raised $7 billion of capital with private investors. He, you know, my recollection is he picked up the phone and called me and said, "I want you to raise a bunch of capital like Washington Mutual just did," and my response was, "I will do my best to do that and -- but that given how close we are to the quarter end and it's almost May, I can't go out and raise it until we release earnings -- try to raise it until we release earnings and have those financials to review with investors."

Q Well, in that discussion that you had with Mr. Dochow, was there a reference or any statement made in terms of IndyMac's likelihood to get a CAMELS 4 rating if it was not able to raise a substantial amount of capital?

A I don't recall the CAMELS ratings being discussed. It was more along the lines of, you know, "Mike, I really want to see you try, you know, do your best to try to raise a big slug of capital."

Q Okay. Now, after the end of the quarter, after March 31, 2008 and before the filing of the 10-Q on May 12th, what's your understanding as to the time and effort it was taking to calculate IndyMac's capital ratios within IndyMac?

A Well, the -- I wouldn't say there was a time and effort being taken to calculate our capital ratios, I would say that the time and effort was being focused on completing all the steps and processes necessary to close the books, to

make sure that our regulators were comfortable, our auditors were comfortable. And our auditors even, at this point, were -- we were a special monitored account with Ernst & Young and they had their national practice reviewing all of our key issues and so, you know, it wasn't just the region that was reviewing these things. And so that was -- that whole process was, you know, taking place and, you know, there were a couple of preliminary closes along the way where capital ratios flowed out of that process.

Q Did you have an understanding as to whether it was taking an inordinate amount of time to close the books at IndyMac for this first quarter of 2008?

A It certainly was taking a much longer timeframe -- a longer timeframe -- I, you know, it's hard to say much longer, I'd have to calculate it out, but longer timeframe than normal. I wasn't surprised about that. One of the things I do recall that Ernst & Young wanted to see is some of the other financial institutions file their reports and review how they did fair value accounting on their mortgage-backed securities portfolio, and I got a general sense that they were being a little slow in their process to -- so that they could see some of those filings before they signed off on how -- and ultimately signed off on our fair value accounting.

Q You mentioned that IndyMac was a special monitored

account --

A Yes.

Q -- by Ernst & Young. What does that mean?

A I don't know exactly what it means other than they told us that and told our board that and that national office was monitoring our financial -- their audit work and all of the key financial issues arising out of our quarterly and annual closing. And that had been in place, I believe at some point in 2007 they notified us of that and they said that a number of accounts that were in the financial services industry and securitization industry were also made a special monitored account given that, you know, the environment that we were all in.

Q Let me hand to you what's previously been marked as Exhibit 643. Exhibit 643 is an e-mail dated April 15, 2008, from Michael Perry to Darrell Dochow and others. Take a look at this e-mail and let me know if you're familiar with it.

(SEC Exhibit No. 643 was referred to.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 643?

A I do.

Q Is this an e-mail that you sent on or about April 15, 2008?

A It is.

Q Okay. Looking at this e-mail, item 2, you've written here, "Our books will not be closed until later this week and I have not had a chance to review any numbers but at present I am hearing that as a result of some additional credit reserves and the mark on the investment grade MBS portfolio that our loss for the quarter is likely to be around $150 million or so. Based on this figure we are going to be well-capitalized on tier-one core and tier-one risk based but very close on total risk-based capital." Do you recall who gave you this information?

A I don't recall specifically, no.

Q Generally who would be giving you this type of information at this point in time?

A It wouldn't have been one person that was consistently giving it to me. It could have been anyone from Pam Marsh to Brian Carter to Scott Keys to Blair -- well probably not Blair, April 15th, I think Scott was still there at that point, so probably one of those three.

Q How did a loss of $150 million compare to what had been previously forecasted?

A I think it was more than double, a little more than double, that had, you know, we were just looking at it earlier this morning and it was, what, $60 or $70 million, something like that.

Q Okay and what was your reaction to that revised estimate?

A Well, I mean, I obviously wasn't happy about it but, you know, the bottom line is the results are the results and you have to live with them and deal with them.

Q Well, were you given any update on how the mark for the investment-grade MBS portfolio had been set?

A I'm not sure that I was during this timeframe.

Q Okay and you've also written that it would be very close on -- in terms of the total risk-based capital ratio. Do you recall how close it was projected to be on that ratio?

A I don't recall at this point in time how close it was, no.

Q Okay. Let me hand to you what's previously been marked as Exhibit 599. Exhibit 599 is an e-mail dated April 21, 2008, from Michael Perry to the IndyMac senior managers and others. The subject of the e-mail is "Confidential."

(SEC Exhibit No. 599 was referred to.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 599?

A I do.

Q Is this an e-mail that you wrote on or about April 21, 2008?

A It is.

Q Okay. You've written here, "It looks like we are going to be well-capitalized on all three capital ratios at 3/31/08 with the one closest to the minimum being total risk-based capital which should be roughly 10.15 percent." Do you recall who gave you that information?

A I don't.

Q Do you have an understanding as to whether the books at IndyMac had been closed as of April 21, 2008?

A I'm not sure. We were close, you know, I -- it sounds like we were close from this but I'm not sure if they were closed. And they're really never closed until your SOX certification process is complete, including an audit committee and board review. I mean there's been changes, you know, in numbers, you know, up until we've filed.

Q The 10-K or 10-Q?

A Yes.

Q Well, let me hand to you what's previously been marked as Exhibit 644. Exhibit 644 is an e-mail dated April 23, 2008, from Mr. Perry to the IndyMac senior managers mailing list among other persons. The subject of the e-mail is "Market needs and DSPP update." Let me know if you recognize this document.

(SEC Exhibit No. 644 was referred to.)

A I do recognize this.
Q Okay. Did you send this e-mail on or about April 23, 2008?
A I did.
Q Okay. Do you recall anything behind the circumstances in which you sent this e-mail?
A Other than just, you know, keeping the senior management team and board updated on the current state of the closing process for the first quarter.
Q And do you remember who would have told you that IndyMac was still well-capitalized at this point?
A I don't recall specifically who told me that.
Q No? Do you remember what was going on internally at IndyMac around April 23, 2008, in terms of what you were working on on a day-to-day basis?
A I don't remember what I was working on. It was a pretty chaotic time period. I think this was just after Mr. Keys left the firm or, you know, taken a leave of absence.
Q Actually I think it might be --
A The day --
Q -- before --
A Was it before?
Q This e-mail is before April 24th but, I mean, we'll see documents.
A Right. Yeah, okay. Right around that time period

where, you know, he was having difficult issues. I'm not -- I don't recall anything specifically, no.
Q Well, do you remember anything happening at IndyMac around April 23rd or 24th which made you question whether IndyMac could survive as a, you know, as a thrift?
A No. Not specifically, no.
Q Do you remember looking into creating a retention plan for IndyMac employees at that point in time?
A I believe, you know, we created a retention program at some point. We did create a retention program. I don't remember the exact point in time, but we created that.
Q And why was a retention plan created in 2008?
A Well, the, you know, the name is self-explanatory. It was to retain people during a very challenging and difficult period of time.
Q Well, why at that particular point as opposed to some other time?
A Well, people were working incredible hours, you know, trying to keep IndyMac safe and sound under tremendous pressure. Our CFO was having, you know, issues and, you know, emotional issues and having a really difficult time dealing with all the pressure. We all were having a difficult time dealing with the pressure. It was an incredibly tough period for everyone and you worried -- and the regulators, as I recall, also expressed concern about

that and retaining your team and so I recall kind of a combination of all of those things and I think -- I don't remember exactly whether I or all those issues or someone bringing it to me directly, but it got me to focus on it and we worked on developing one that we reviewed with our board and with the regulators and both were enthusiastic about implementing it.
Q Well, were you -- did you have any concerns around this point in time, around April 23, 2008, that people or employees at IndyMac would leave the company due to its financial situation?
A Well, certainly, that was, you know, kind of the case with Scott, right, that, you know, he, by this point, didn't really want to be there any longer. I think around this timeframe he was telling me that he -- or told me that he had looked at possibly interviewing or had interviewed for a potential position. And, you know, so you worry, you know, with that, one of your key people leaving in the middle of this. That added more kind of fuel to saying, "Hey, we maybe need to address this for people so that they feel comfortable that if the worse case happened they still have something."
Q Worse case being what?
A That they weren't retained at IndyMac for some reason.
Q Well, beyond Mr. Keys are you aware of any

widespread discontent at IndyMac Bank because of its financial situation and whether people could count on still having a job, you know, going forward?
MS. VETA: Wait a minute. That's a -- forgive me, that was quite compound. Can you break that down into pieces?
BY MR. CHUNG:
Q Well I think you testified a little bit about your concerns with Mr. Keys not wanting to be there anymore, did you have a sense that other employees at IndyMac had similar concerns about, you know, IndyMac's viability and whether they would have a job going forward?
A I mean there were definitely employees and managers who had concerns about viability, just like there were in 1998 when we were dealing with the global liquidity crisis, and I probably was one of the ones in 1998 who had concerns about whether we were going to make it through that period. I think that's a natural thing when you're -- a company's dealing with the kind of issues that we were dealing with and the magnitude of the financial crisis that we were dealing with. And so there were people all over the spectrum about that issue and certainly the retention plan was designed for those on the spectrum who were worried about their jobs and worried about whether we would make it or not and the goal was to help them reduce that worry in the event that the

worse case happened.

Q Okay. Let me hand to you what's just been marked as Exhibit 667.

(SEC Exhibit No. 667 was marked for identification.)

A I mean just to further add to that, I would tell you that I didn't think we weren't going to make it. There was not a point there that I thought we were -- that we were at risk of not making it. We were a well-capitalized institution.

Q Well, I -- what do you mean by "not going to make it?"

A Not going to survive as a viable financial institution.

Q You mean being closed by the OTS?

A Yes.

Q Okay. Exhibit 667 is an e-mail dated April 24, 2008, from Michael Perry to Raymond Mathoda and others. Look at this e-mail and let me know if you remember it.

A Very vaguely.

Q Okay. Did you send this e-mail on or about April 24, 2008?

A I'm sure I did.

Q Okay. It appears from this e-mail that it was sent fairly early in the morning, 7:56 a.m. that day. You've

written here, "Please see me on a retention plan for senior management and other key employees first thing this morning. We will need to work with counsel and the MBC committee of the board." Why at this point in time did you want to see staff about needing the retention plan?

A You know, I don't recall specifically. It, you know, it was as I discussed a few minutes ago, that, you know, that there certainly were people who were worried about their jobs and about IndyMac and we had our CFO who, you know, was wanting to not be at IndyMac any longer and, you know, and really had a really -- a breakdown under the stress of the whole environment.

Q Well, do you remember any triggering event that made you think about creating a retention plan at this particular point in time?

MS. VETA: I think he's answered that question, Mr. Chung.

THE WITNESS: Yeah, I mean, as I testified earlier, I don't remember a specific triggering event. It's possible that just Scott's issue triggered it with me. It's possible that a director might have raised it with me. I can't, I mean, I'd just be speculating. I can't remember.

BY MR. CHUNG:

Q Well, let me hand to you what' has previously been marked as Exhibit 645. Well, actually, before we get to

that, going back to Exhibit 667, you've also written here -- Exhibit 667, "Plus, I would like to pay for Kurt's vacation on the April 40th trip," what trip are you referring to?

MS. VETA: I think that says April 30th.

BY MR. CHUNG:

Q I'm sorry, April 30th trip.

A I'm not sure what trip, you know, I was saying. Kurt was the guy managing the -- he was a key senior manager in the investment portfolio group and he was working night and day dealing with the models and building models and working on our valuation of our non-investment-grade mortgage-backed securities portfolio and, you know, and so, you know, I mean, I -- the focus for me was trying to keep people, you know, take care of people in this very challenging time and make sure that we retained our key people.

Q Well, where did Kurt Johnson go on vacation?

A No idea. Well, oh, you know, oh, I -- not that you say that I think he -- we had to have him miss his vacation because of the work that he was doing on the close. He missed his vacation and so I was saying, "I understand you're missing this but we'll pay for your vacation. I'm sorry."

Q Are you fairly certain that Mr. Johnson missed his vacation?

A I'm not fairly certain. That's my recollection.

Q And do you remember where he was supposed to go on vacation?

A I don't.

Q And --

A He didn't invite me.

Q Was it unusual for you to pay for someone else's vacation?

A Yes, it would have been unusual for me to pay for someone's vacation but not unusual in the sense that if -- not unusual if someone missed their scheduled vacation because they had to be here to help IndyMac do something. Even in good times I would have done that.

Q Well, is that something you actually did in the past?

A I did things like that over the years. I can't point or recollect to a specific one like that but I did things like that, yes.

Q Do you know what Mr. Johnson was working on at this point in time around April 24, 2008?

A I don't know specifically what he was working on, no.

Q Do you have an understanding as to whether Mr. Johnson was working on the valuation of IndyMac's MBS portfolio?

A I don't believe he was working on the one that we

just went through, the investment-grade one. He was responsible for the non-investment-grade portfolio.

Q Okay. Sorry. Turning back to Exhibit 645. This is a document entitled "Forecast scenarios, April 24, 2008." It's Bates numbered 651620 through 651626. Take a look at this document and let me know if you've seen this before.

(SEC Exhibit No. 645 was referred to.)

A I'm not sure for sure but I probably did.

Q Why do you say that?

A Well, I mean the other ones that you've shown me, you know, were included with somebody either sending it to me or me writing a memo on top of it. There were lots of forecasts, you know, I'm not -- and I'm not sure if this is a preliminary or final forecast. I can't say for sure that I saw this but, I mean, I -- and I just can't say for sure.

Q Well, is there anything about these -- this particular forecast that you remember?

A I mean, not particularly. I think the numbers are in the general ballpark of the forecast, you know, my recollection of what the forecast would be around this time period.

Q Okay. Do you remember a downgrade of IndyMac's mortgage-backed securities, certain IndyMac mortgage-backed securities, on April 23, 2008, by Moody's?

A I don't specifically remember that date or whether it was Moody's but I do remember that we had some downgrades subsequent to quarter end but before we closed our books for the first quarter.

Q Okay and how did you become aware of that downgrade?

A Someone brought it to my attention.

Q And do you remember forecasts being created to factor in those downgrades?

A I don't recall whether we had a forecast at that point that was done or we were taking the preliminary financials for the first quarter and adjusting them for any potential impact under GAAP accounting for the downgrade.

Q You don't remember?

A I don't remember.

Q Well, do you remember at some point having a discussion about whether the profit and loss impact of the MBS downgrade should be reflected in either the first quarter of 2008 or the second quarter of 2008?

A I recall that generally, yes.

Q What do you remember about that discussion?

A That our accounting personnel, folks like Ted Scribner, were assessing and working with our auditor -- I'm sorry -- and were working with our auditors on that issue, addressing it to make sure that we appropriately addressed

it.

Q Okay and what do you remember coming out of that discussion?

A That there was some impact under GAAP accounting related to the downgrades that occurred subsequent to quarter end that would be reflected in the first quarter and some that would be reflected in the second quarter.

Q Okay. So who was involved in these discussions besides Mr. Scribner and yourself?

A As I said, the discussions with me were high level, you know, like a summary page showing me what the actual results were. I believe Mr. Scribner discussed those with Mr. Abernathy and also external auditors and that was the primary group that worked together on that.

Q But -- so what was your understanding though as to what portion of MBS downgrade should be reflected in the profit and loss statement of IndyMac in either the first quarter or the second quarter of 2008?

A I'm sorry. Say that again, please.

Q What was your understanding as to when an MBS should impact the first quarter of 2008 versus the second quarter considering that the downgrade occurred on April 23rd?

A I have a general understanding of this. I wasn't involved in nor had knowledge of the specifics of it.

Q Okay. What's your general understanding?

A My general understanding is that our investment portfolio team in the mortgage-backed securities area was using the actual performance of the underlying collateral to estimate downgrades and to estimate the value of the mortgage-backed securities. It was part of the fair value calculation and they would make that estimate at 3/31 and, you know, essentially close their books subject to the whole review and certification process. That when these downgrades occurred they went in -- back into the first quarter to see if as a result of the downgrades their -- they could have had a better estimation of fair value at 3/31. And that's about as much as, kind of, I know in terms of how, you know, and so there was -- so and a portion of it was associated with the first quarter, the right down, and a -- from a P&L and from another comprehensive income standpoint and another portion flowed into the second quarter. And I know our team worked on that very carefully following the accounting rules and then worked on it very carefully with our external auditors and then reviewed it with the audit committee.

Q And so would this have been Mr. Scribner working on this?

A I believe so, Mr. Scribner working on it with the investment portfolio group and with Mr. Abernathy.

Q Well, are you familiar with the term "other than

temporary impairment?"

A I am.

Q And do you know if that term factored into the assessment of whether to take the profit and loss impact of an MBS downgrade in one quarter as opposed to another?

A I'm not sure that that particular term effected whether it was in one quarter or not. I just -- I don't know the answer to that.

Q Okay and so do you remember ever seeing forecast scenarios considering the profit and loss impact of an MBS downgrade in various quarters?

MS. VETA: What timeframe are you talking about?

MR. CHUNG: April 2008.

THE WITNESS: I'm sorry. Can you repeat that for me pleas?

BY MR. CHUNG:

Q Do you remember seeing various forecast scenarios providing the impact -- providing financial information considering the impact of an MBS downgrade in one quarter as opposed to another?

A I recall seeing them showing me a PowerPoint maybe slide that showed me their application of the accounting principles that had been, you know, reviewed and signed off by Ernst & Young and showed me which piece of the fair value adjustments went in the first quarter and the second quarter.

Q Okay. When do you recall seeing that slide?

A I, you know, it would have been in the last several weeks before we filed our financial statements but I'm not -- I don't recall specifically.

Q Well, why don't you look back at Exhibit 645 please and --

A Okay.

Q -- there appear to be three different scenarios here. Scenario one is the second and third pages of this exhibit. Scenario is to "continue to raise capital MBS Q1." The second scenario is "continue to raise capital MBS Q2." And the third scenario is "continue to raise capital MBS Q1 and other adjustments below." And if you'll look, let's start with the first scenario on page 2, if you'll look at the assumptions, additional assumptions at that bottom it says, "No dividend payments, common or preferred." And if you'll look at the second scenario, which starts on page 4 -- did you want to turn to page 4?

A Yeah, just a minute, I'm just looking at those assumptions. Okay.

Q Turn to page 4, the assumption for MBS Q2, no dividend payments common or preferred is the assumption there as well. And the third assumption, which is -- the third scenario starting on page 6, again, is "no dividend payments common or preferred." Do you remember seeing scenarios -- a

set of scenarios in which each scenario assumed that there would be no dividend payments on the preferred shares?

A I don't recall seeing or focusing on these assumptions down below here. These -- and -- but it's possible that I saw this, I'm not sure.

Q Okay. Well, looking at page 2, the assumption there -- another assumption at the bottom, the last one is "MBS downgrade full P&L impact in Q1 with full capital impact in Q2" and the projected --

A Which page? I'm sorry.

Q Page 2.

A You know, I don't have the page numbers on mine.

Q It's hard to make out but it's in the lower-right-hand corner.

A Okay. Okay, I'm sorry.

Q Again, the assumption -- the last assumption of the four there is "MBS downgrade, full P&L impact in Q1 with full capital impact in Q2" and the -- what's listed here under "actual Q1 '02" for the risk-based capital ratio is 9.85. Do you see that?

A I do.

Q Okay. Do you have an understanding as to what that number reflects?

A Well, I mean, it reflects this forecast.

Q Okay. Do you remember reviewing a forecast

which -- around the time period of a 9.85 percent risk-based capital ratio?

A I mean that's -- I mean I remember seeing forecasts in the first quarter, some of the scenarios having below a well-capitalized number. I don't remember specifically reviewing this forecast as of April 24th.

Q But would you have reviewed forecasts after the Moody's MBS downgrade in April?

A When was the date of the Moody's downgrade?

Q April 23, 2008.

A I mean I was getting regular forecast updates so, I mean, it's definitely possible I reviewed these forecasts here, I just don't recall it specifically.

Q Well --

A I mean most of them, right, that I reviewed I sent a note on that I had reviewed it and here's the numbers.

Q When you say "a note," what --

A An e-mail or something.

Q Well, to the extent that you received the forecast electronically?

A Correct.

Q Okay. Sometimes would you receive just a paper copy?

A It's possible, yes.

Q Okay. Did you have anything else to add or --

A To this? No.
Q Okay. Well, when you became aware of the MBS downgrades in April of 2008, were you concerned about the impact of those downgrades on IndyMac's capital ratio?
A As of 3/31?
Q Yes.
A Not initially, not until someone brought to my attention that there could be some impact related to the first quarter.
Q Do you recall when that happened?
A I don't.
Q Okay. Let's look at page 4 and the last three digits on the document identifier number are 623 there. One of the assumptions or the last assumption on this page is "MBS downgrade, full P&L impact in Q2 with full capital impact in Q2," and the risk-based capital ratio for the first quarter of 2008 is shown here as 9.98 percent. Do you remember that particular number ever being forecasted for the first quarter of 2008?
A You know, as I said, I definitely saw a forecast that showed us not being well-capitalized, scenarios of forecasts. I don't recall specifically this forecast and this capital ratio here.
Q All right. Looking at page 6 which is -- the last digits of the document identifier number is 625. One of the

assumptions here is "MBS downgrade full P&L impact in Q2 with full capital impact in Q2."
MS. VETA: I'm sorry, what page are you on?
THE WITNESS: He's on 6, right?
MR. CHUNG: Yes.
MS. VETA: Thank you.
THE WITNESS: Document 625.
BY MR. CHUNG:
Q Thank you. Well, that assumption that I just read to you correlates in this schedule to risk-based capital ratio in the first quarter of 2008 of 10.08 percent. Does that number, that ratio, sound familiar to you in terms of your recall of seeing a forecast with that number?
A All of the ratios sound familiar to me because the number was all over the map for, you know, almost every week. So every one of these numbers sounds familiar to me because they're all in the ballpark.
Q Okay. But at some point after the Moody's MBS downgrade on April 23, 2008, did you become aware that IndyMac would have to suspend its preferred dividends in order to maintain its well-capitalized risk-based capital ratio?
MS. VETA: Mr. Chung, if you're moving on to a different topic could we take a break at an appropriate point?

MR. CHUNG: Well, it's related to Exhibit 645.
MS. VETA: Okay.
BY MR. CHUNG:
Q Because those are the assumptions that I read off to you earlier that "no dividend payments common or preferred" for each of these three scenarios. I'm wondering whether you became aware at some point after the Moody's MBS downgrade in April of 2008, that in order to maintain its well-capitalized risk-based capital ratio IndyMac would have to suspend its preferred dividends.
A I wouldn't phrase it like that.
Q How would you phrase it?
A I mean, well, you don't become aware -- well, ask me the question again, please.
Q Did you become aware at some point after the Moody's MBS downgrade in April of 2008, that in order to maintain its risk-based capital ratio above 10 percent that IndyMac would have to suspend its preferred dividends?
A The answer to that, factually, would be no because the quarter was done, right? We were in the process of closing the quarter. The suspension of dividends would only benefit prospectively from that point on.
Q I see what you're saying. So just to alter my question then, as a result of the MBS downgrades were you aware at some point after those downgrades that in order to

maintain or help maintain a risk-based capital ratio above 10 percent going forward that IndyMac would have to suspend its preferred dividends?
A Well, I wasn't aware -- I mean at some point after that point --
Q Which point?
A The downgrades, okay?
Q Okay.
A After the downgrades --
MS. VETA: At some point after the downgrades?
THE WITNESS: Yes, at some point after the downgrades but before we released earnings we started to have more serious discussions about saying, "Maybe it's time that we do need to, you know, eliminate these dividends and make that proposal to the board and that it's prudent -- that it would be prudent to do that. It's going to be what the regulators ultimately want to see us do and we're just going to have to see if it really impacts the stock or not."
BY MR. CHUNG:
Q Okay. Well -- and I'm trying to help you pinpoint when those discussions occurred.
A Yeah.
Q I'm asking -- my question to you is if Exhibit 645, which is, again, a forecast scenario dated April 24, 2008, helps you pinpoint when those discussions occurred?

A Yeah, it's possible that this is the pinpoint date, I just can't recall that. It's possible that I requested them to do these scenarios. Do you see what I'm saying? I just can't -- I can't remember it that specifically. If there was a memo around it I could recall it better.

Q Do you remember a memo about it?

A I didn't remember a lot of these memos until we reread them again.

MR. CHUNG: Okay. Well, why don't we take a break at this time. It's 3:20, we're off the record.

(A brief recess was taken.)

MR. CHUNG: We're back on the record at 3:26 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.

BY MR. CHUNG:

Q All right. Let me hand to you what has previously been marked as Exhibit 618. Exhibit 618 is an e-mail dated April 24, 2008, from Michael Perry to Francisco Nebot and others. Subject of the e-mail is "Incident with S. Keys approximately 1:00 p.m. Pacific Standard Time, 4/24/08, strictly confidential."

(SEC Exhibit No. 618 was referred to.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 618?

A I do.

Q Did you write this e-mail on April 2, 2008?

A I did.

Q Okay. Looking at the second page of this e-mail, specifically Raymond Mathoda's e-mail on April 24, 2008, at 2:37 p.m., have you had a chance to read his e-mail?

A Her.

Q I'm sorry, her e-mail.

A I have.

Q Okay. Does this accurately summarize the events that transpired that day in connection with Mr. Keys' departure from IndyMac?

A It does.

Q Okay. So this -- occurred in your office?

A Yes.

Q Why was Mr. Keys in your office that day?

A Give me a --

Q You need to take a moment?

MR. CHUNG: Would you like to off the record?

MS. VETA: Yeah.

MR. CHUNG: Okay. It's 3:30, let's go off the record.

(A brief recess was taken.)

MR. CHUNG: All right, it's 3:31, we're back on the record. Just so the record is clear we took a break because Mr. Perry did appear to get a little emotional by the subject matter of this Exhibit 618. But, Mr. Perry, you're prepared to continue on at the moment?

THE WITNESS: Yes, yes.

BY MR. CHUNG:

Q Okay. Let me ask you, Mr. Perry, what had transpired that day prior to Mr. Keys coming into your office leading up to Ms. Mathoda's e-mail?

A My recollection is that I was talking to Hugh Grant, who was our audit committee chairman, that morning in expressing -- I had my door shut and I was telling him that I know our goal was to get through the quarter with Scott but I was getting very worried about him and I didn't think he was going to make it. And after, kind of, I finished that -- those discussions with Mr. Grant, who, you know, very much wanted to finish the quarter out with Scott but he understood what I was saying, and after -- at some point after I got done with that discussion I opened my door and it wasn't very long after that that Scott came in and this e-mail ensued.

Q Well, first of all, why were you concerned about Mr. Keys on that date?

A He had, for a few weeks, had been experiencing, you know, there was erratic behavior and he just was -- he was

very, you know, it was a very stressful time, you know, we were all doing our best under a lot of pressure. And he was having a really hard time.

Q Can you give me some examples of Mr. Keys' erratic behavior?

A It was more other people coming in to me -- I mean I could see he was down and I knew that he didn't want to be there anymore. And other managers were coming in telling me, "Mike, you've got to do something about this, you know, he's just, you know, he's not going to make it. I'm worried about him." And so, you know, that, you know, just kind of a combination of me seeing his behavior -- and I can't really describe anything in particular other than him being very down and other people being very concerned and coming in to me individually and expressing concern that, you know, caused me to say, "This is just not right. We can't, you know --" he had -- I had asked him to stay through the end of the quarter to help us finish this out. It was obviously an incredibly challenging period, having your CFO leave in the middle of this, what a nightmare, right? And so, you know, I mean that's the reasons that Hugh and I wanted him to be able to stay, he just couldn't, you know, and that's kind of where we were.

Q Well, do you know if there were particular aspects of Mr. Keys' job that was causing him this stress at this

point in time?

A I don't think there was any particular aspect of it. I think, you know, the CFO job, you know, in an environment like the CO job is a horrible job during this time period -- during a time period like this. It's horrible.

Q Okay. So when Mr. Keys came in to your office what did he say?

A You know, it was along the lines that are here.

Q Well, there's really nothing here before Ms. Mathoda walked into your office. I'm just wondering what you remember.

A Well, I think that most of the time he had his head down, you know, in his hands and he was crying like I am here. And he was very emotionally distraught and was having trouble breathing and I thought he was having a heart attack or a nervous breakdown or something, I couldn't, you know, and I was really just mostly concerned about that.

Q Did Mr. Keys express any concern about IndyMac's financial situation when he was in your office that day?

A In terms of whether we would survive or not?

Q Anything related to IndyMac's financials including its viability.

A Not that I recall, no.

Q Do you have an understanding as to whether there

was a triggering event that caused him to come into your office that day?

A You know, I don't know if it was because my door was shut that morning, you know, I just don't know. I don't know what the triggering -- I could definitely -- the reason I was on the phone with the audit committee chairman that morning is he was acting very strangely that -- even that morning and it was just, you know, getting worse and worse. And I was telling the audit committee chairman, you know, "Hugh, I know we wanted to try to see him through the quarter and get through the quarter with him but I don't -- we're not going to make it. It's not fair to him, it's not the right thing to do and I should just talk to him about it." And before I could have -- before I had the chance to talk to him he came in and had this breakdown.

Q Do you know if the Moody's MBS downgrade the previous day had any effect on Mr. Keys?

A I mean it's possible. He didn't mention -- I don't recall him mentioning that.

Q Do you have an understanding as to whether Mr. Keys was working on that issue just prior to him coming into your office in the approximately day between, you know, the pronouncement of the downgrade and the day he walked in your office?

A I mean until you just said it I didn't even connect

the two, to be honest with you.

Q Well, in Ms. Mathoda's e-mail on the second page --

A Yes.

Q -- she attributes a statement to Mr. Keys. It's the fourth line down under the bold-type Scott. It says, "I walked in here to tell you that I'm not doing okay right now. I know I'm being unpredictable from issue to issue. I can't even trust my own judgment right now." Did he mention -- Mr. Keys mention to you any particular accounting issues that he was being unpredictable on?

A No, the only issue that I do recall having, you know, not being happy with him for even considering is when I raised the issue that we need to consider level 3 accounting, he completely dismissed it. And I'm like, "What -- what? Why would you dismiss it? It's totally legitimate." And so other than that, you know, general concept, and that was not, you know, in the last week or even two it was earlier in the quarter, you know, one of those times when I wrote the e-mail, one of those e-mails, and said, "We need to consider level 3 accounting under FAS -- what is it, 157," and, you know, he -- and he totally dismissed it and I, you know, and we had a "Why?" I had a "Why? Why would you totally dismiss that? I just read the FASB, it's a perfectly legitimate accounting." So, I mean, that was it.

Q What did you do after Mr. Keys left IndyMac in

terms of finding a successor CFO?

A Well, our -- I want to say one other thing. Why I got so emotional about this is I felt he let us down, you know, and today I don't feel that way.

BY MS. ESON:

Q You feel bad that at the time --

A Yeah.

Q -- you thought he let you down and now you have a different point of view?

A Yes. It was an incredibly difficult period.

BY MR. CHUNG:

Q You perceived Mr. Keys as being weak?

A Yeah, abandoning ship. I don't feel that way today.

BY MS. ESON:

Q Why not?

A Well, maybe I'm a better human being today, I don't know. I've had a lot of time to reflect on it.

MS. ESON: Would you like to take a break?

MS. VETA: Why don't we just take a short break.

MS. ESON: Sure, can we go off the record?

MR. CHUNG: All right. Let's -- it's 3:40, let's go off the record.

(A brief recess was taken.)

MR. CHUNG: It's 3:43. 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 Okay. After Mr. Keys left IndyMac did you ever get an understanding as to why he had this episode on April 24, 2008?

A I mean, you know, my sense is he -- some people handle stress better than others and, I mean, this was an incredibly stressful period where lots of normal people, you know, cracked. And, you know, as I said, I, you know, I felt badly because, you know, I haven't had the chance to, you know, because of this whole thing, say to him that I'm sorry that I didn't feel differently about that issue with him.

Q Okay. Well, did you ever talk to Mr. Keys after April 24, 2008?

A I probably talked to him a few times, you know, once or twice over the phone to check on him, see how he was doing, and then once he called me and asked me to provide a reference for him, and then related to that reference we went to lunch one day.

Q Okay and in those calls and meetings was there any discussion about, you know, why he had this episode on April 24th?

A I think he -- my recollection was he tried to

downplay it and just say he was overworked at that time and hadn't, you know, hadn't gotten, you know, his proper sleep.

Q Okay and in Ms. Mathoda's e-mail, at the very bottom of the second page, she's written that Richard Wohl and Brian Carter drove Mr. Keys home that day.

A Yeah.

Q Did you ever talk to Mr. Wohl or Mr. Carter to get an understanding as to whether they spoke to Mr. Keys about why he had this episode?

A I'm sure they did and I did talk to them. They told me, you know, what was going on when they drove him home but it was more, kind of, health-related issues than it was, you know, business issues.

Q Okay and so after Mr. Keys left IndyMac, what did you do in terms of finding a successor for him in the CFO position?

A Yeah, I can't remember if I had already, you know, because I had told you I called Mr. Grant that morning, and I can't remember if I had already talked to Blair Abernathy before that, you know, because I tended to like to have a solution, or talked to him after that but, I mean, if it was after it was right after. And Blair graciously, you know, said he would step in and perform the role and he was well-qualified to do that. He had been head of capital markets. He had been our chief investment officer. He was a

CPA and he'd been a CFO of another bank in the past. I don't recall him ever being our CFO but he was -- he knew all the issues and especially like issues like mortgage-backed securities, he was the capital markets guy, he was the chief investment officer.

Q Did you consider any other persons for the CFO position besides Mr. Abernathy?

A I did not. There really wasn't somebody internally who could step up who would be near as strong as he was and we certainly going to get anybody externally in the time period that we had to finish our financials and close our books.

Q Well, did you consider anyone within Mr. Keys' or the finance accounting part -- section of IndyMac, such as the chief accounting officer, for a replacement CFO?

A Just very briefly. He was -- he didn't have the level of capital markets background. As chief accounting officer, Scott really had all those technical securitization capital markets background. So Greg Sosnovich who was the chief accounting officer, was more kind of the generalist and I felt we really needed to have somebody with a capital markets background as our CFO because that's -- that was our business. And so I didn't feel that Greg, you know, had those, you know, was the right person for that job.

Q Well, in terms of Mr. Abernathy's qualifications,

did you consider whether he had knowledge of current accounting rules in order to take on this position?

A I did and I felt his knowledge was a little rusty but we had people like Ted Scribner who were experts at that and I felt that Blair working with an individual like Ted Scribner they could do a fine job. In fact, I would tell you I thought he did a tremendous job in finishing out the quarter and working with not only our accounting team but with Ernst & Young and the audit committee, a Herculean job.

Q Do you remember having a telephone conference call with any members of IndyMac's board of directors to inform them of this incident with Mr. Keys?

A I remember, besides discussing with Hugh, I mean we were discussing with outside counsel and I'm sure we had some sort of discussion with the full board about this. And I know we filed -- I'm pretty sure we filed an 8-K on it trying to be, you know, as sensitive as we possibly could, you know, to the issues for Scott -- from Scott's perspective.

Q Okay. Let me hand to you what's just been marked as Exhibit 668. Exhibit 668 is the minutes of a joint special telephonic committee meeting of the board of directors of IndyMac Bancorp and IndyMac Bank on April 24, 2008. The document is Bates numbered 471748 through 74 -- I'm sorry, 471760.

(SEC Exhibit No. 668 was marked for

identification.)

(The witness examined the document.)

Okay, Mr. Perry, do you recognize Exhibit 668?

A I do.

Q Are these the minutes of a joint special telephonic committee meeting of the board of directors of IndyMac Bancorp and Bank on April 24, 2008?

A They are.

Q Other than what's written here in the minutes for this meeting, do you remember anything else that was discussed that day during that call?

A I don't.

Q Looking at the first page of Exhibit 668, the second paragraph under the heading "Update on Moody's downgrade of bonds and capital raising efforts," it's written in here, "Mr. Perry informed the members that Moody's downgraded 165 bonds to non-investment grade yesterday of which the company owns 20. Mr. Perry further explained the extent of the downgrades and the potential resulting impacts to capital." Do you remember that discussion about the potential resulting impact to capital?

A I don't remember that discussion.

Q Well, earlier we looked at Exhibit 645 which were those forecast scenarios dated April 24th. Do you know if you would have had this document, Exhibit 645, for this

committee call on April 24th with the special telephonic committee?

A I'm not sure.

Q Do you remember discussing with the committee members on April 24th that the MBS downgrade by Moody's would lower IndyMac's total risk-based capital ratio below 10 percent?

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

Q Do you remember any discussions with the committee on April 24, 2008, that the Moody's downgrade could drive IndyMac's risk-based capital ratio below 10 percent?

A I don't recall that specific discussion, no. It looks like we did discuss capital ratios or impact on capital but I don't recall specifically what that discussion was about.

Q Do you remember any discussions about suspending the dividends on the preferred or trust-preferred shares in this April 24th call?

A I don't. I think this call really, I mean, just to put this in perspective, was really just about Scott. And the Moody's thing was lumped in because it was something that just recently occurred. That probably -- I would have dealt with that via an e-mail or a note to them versus, you know, being in this committee meeting. This is really just a chance to inform the board of what happened and have them ask

questions or, you know, seek answers. One thing I do remember about Scott's departure also is that Ernst & Young folks talked to him and I -- and I have a recollection that maybe the regulators did too. And I think both more on the side of just checking up to make sure he was okay.

Q As opposed to why he left?

A They may have done both, I'm not sure.

Q Okay. I'm sorry I --

A I'm sorry.

Q -- Exhibit 668, but on that same paragraph, the last sentence there reads, "Mr. Perry also discussed the potential exposure to future downgrades." What were you referring to there?

A Well, what we were trying to do is to get ahead of this issue of these surprise downgrades, you know, where you had no idea they were coming and then all of a sudden they get dropped on you. And so what we were trying to do, you know, if you recall, like in the shareholders letter that I issued in February we hadn't had one triple A Alt-A bond downgraded ever and they'd been reviewed multiple times. And now, all of a sudden, we're starting to get massive downgrades, you know, in April and on and so what we were trying to do was build a model that would predict those downgrades so that we could then build that into our forecast of our risk-based capital going forward.

Q Well, at this point were you expecting additional downgrades from Standard and Poor's?

A I, you know, I don't know if we were expecting -- I don't think we were expecting or not expecting, I think what we were trying to do was build a model from the underlying performance of the bonds that would help us predict future downgrades by the rating agencies just generally.

Q Okay and looking at the last paragraph on the first page of Exhibit 668 it says, "In response to a request Mr. Gabriel Mr. Perry also provided an update on the company's capital-raising efforts. He indicated that updated first quarter financials along with a 2008 forecast will be distributed to the members as soon as possible." Do you remember that happening, the updating of the first quarter financials and 2008 forecast being created and distributed to the members of the committee?

A I'm not sure when it was but obviously we did do that as part of our earnings release a few weeks later. It's possible that there was one or more other forecasts that were sent to them in the interim but I don't recall specifically.

Q Is it possible that Exhibit 645, the forecast scenarios dated April 24, 2008, was sent to the members of IndyMac -- the IndyMac board of directors?

A It's possible.

Q Okay and attached to this Exhibit 668 is another

unanimous written consent of the board of directors authorizing the sale of another 10 million shares of IndyMac common stock through the DSPP. Do you recall any discussion about this UWC?

A I don't.

Q Is that your signature on the second page of this UWC?

A It is.

Q Do you know if -- do you remember if there was any discussion about the appropriateness of issuing additional DSPP shares in light of the MBS downgrades and the potential impact of that downgrade on IndyMac's capital ratios?

A I don't believe there was a discussion about that. The downgrades were public information. They were publicly disclosed information, the rating agencies disclosed it, the downgrades, who the issuers were. I don't know, you know, during this time period my vague recollection is we were also providing some disclosure on the blog about the IMB report, about some of these types of issues, but I don't recall specific discussion related to the Direct Stock Purchase Plan.

Q Well, did IndyMac publicly disclose what securities, either investment grade or non-investment grade, that the company held on its books?

MS. VETA: What -- during what period of time? At

what date?

MR. CHUNG: In 2008.

THE WITNESS: I'm sorry, say that again, please.

BY MR. CHUNG:

Q Did IndyMac publicly disclose which mortgage-backed securities it held on its own books, either investment grade or non-investment grade? I mean you said --

A Yes.

Q -- the fact of the downgrades were public information and apparently 100 --

A We did --

MS. VETA: Let Mr. Chung finish his question.

THE WITNESS: I'm sorry.

BY MR. CHUNG:

Q Apparently 165 bonds were downgraded by Moody's on April 23rd, I'm wondering whether any investor could use that information and trace those downgraded bonds to IndyMac's holdings.

A It would -- I don't believe they could do that, you're correct in pointing that out.

Q Do you recall any disclosure by IndyMac on its individual MBS holdings?

A You mean CUSIP number by CUSIP number?

Q Well, issuer name.

A What do you mean by issuer -- the issuer was

IndyMac, right?

Q Right, but each mortgage-backed security has its own -- is an issuer and there's an issuer of those mortgage-backed securities. Typically aren't those trusts that are formed?

A Right. There's a specific trust or CUSIP number for each bond.

Q Okay.

A You know, we didn't provide that level of detail in our SEC filings, no.

Q Okay. Well, is that information available through other ways like you mentioned the IMB report, the blog, I'm not sure -- press releases or --

A Well, I know we disclosed in the May 12th filing the impact of the bond downgrades on our financials and even went further and disclosed what the impact would have been if those downgrades had occurred at 3/31 and the fact that we wouldn't have been adequately -- we wouldn't have well-capitalized. We kind of disclosed in footnote form that our capital ratio, I -- my recollection is would have been like 9.40 as of 3/31 if those bond downgrades had occurred at 3/31.

Q Let me hand to you what has previously been marked as Exhibit 516. Exhibit 516 is an e-mail dated April 28, 2008, from Gregory Sosnovich to Brian Carter with copies to

Peter Luttenberger and Cecelia Conde. The subject of the e-mail is "Update on Q1 '08." So I realize you wouldn't have received that top e-mail but the e-mail below that is an e-mail dated that same day, April 28, 2008, at 5:18 p.m. from you to Mr. Sosnovich and others. If you could look at that e-mail and the one below that and let me know when you're done.

(SEC Exhibit No. 516 was referred to.)

A Okay. (Examining.)

Q Okay. Mr. Perry, do you recognize the second and third e-mails on Exhibit 516?

A I do.

Q Are those e-mails that you've sent at IndyMac?

A They are.

Q Okay. Looking at the second page of this exhibit, your original e-mail to Mr. Dochow and others at the OTS on April 28th, you've written here that "Based on the analysis of -- based on our analysis of the Alt-A MBS downgrades from Moody's on April 23rd of last week we calculate our loss for Q1 '08 to be $185.6 million and our total risk-based capital to be 10.17 percent, well-capitalized on all three ratios." Do you remember how you became aware of that 10.17 percent risk-based capital ratio?

A Well, it looks like from the -- from Greg's top

e-mail that Brian Carter brought it -- those numbers in to me.

Q Okay. But apart from what's stated in this e-mail do you have an understanding as to who would have given you that ratio?

A I don't have a recollection of it, no, apart from this e-mail.

Q I think in your prior testimony you said the persons who were giving you ratios, capital ratios, in the first quarter of 2008 were Mr. Carter, Ms. Marsh, and the CFO, who previously had been Mr. Keys but after he left did Mr. Abernathy start to provide you with capital ratio estimates as well?

A You know, I don't recall. I mean certainly Brian and Pam Marsh pitched in a lot more after Scott left to help Blair, you know, and everybody kind of pitched in to help get through the quarter. And so my guess is Greg's, you know, my, you know, based on the e-mail here it's probably accurate that Brian gave that to me.

Q Well, were you aware at the time that the accounting group and the regulatory reporting group potentially were coming up with different risk-based capital ratios than what financial planning may have been providing you?

A I wasn't aware of that at the time.

Q Did you become aware of that later?

A Only in preparation, no. So, no.

Q Only in preparation for testimony?

A Correct.

Q Okay. Let me hand to you what's just been marked as Exhibit 669. Exhibit 669 is an e-mail from Mr. Perry dated May 27, 2008, to Christina Hunt-Fuhr and Ruthann Melbourne. The subject of the e-mail is board and management duties and attached to the e-mail is what appears to be a forwarded e-mail, also -- well, it's dated May 1, 2008, from David Hewes of the OTS to Christina Hunt-Fuhr and Ruthann Melbourne and attached to that is a "Update Meeting" document dated May 1, 2008.

(SEC Exhibit No. 669 was marked for identification.)

(The witness examined the document.)

A Okay.

Q Mr. Perry, do you recognize Exhibit 669?

A The thing that, I mean, that is unusual is this first page looks funny to me somehow. And, I mean, it's to the right "to's" you know, Christina Hunt-Fuhr and Ruthann Melbourne, but I don't understand why it says board and management duties when it's a regulatory report. You know, it just -- it doesn't -- it could be right it just doesn't feel right to me. I don't know. It isn't one that I can --

I mean I -- it's kind of like it doesn't really fit with the rest of the document in some form or fashion.

Q Okay. Well, you'll see the attachments that are listed here to this e-mail on the first page of Exhibit 669, one is update meeting May 1.doc and if you look at the next page that's the heading at the top left, update meeting May 1.doc, and that's apparently the subject of this e-mail from Mr. Hewes on May 1, 2008. I'm not sure if that clarifies anything for you but I want to draw your attention to the attachment to Mr. Hewes' e-mail, the update meeting dated May 1, 2008. Does this look familiar to you?

A It looks vaguely familiar to me, yes.

Q Did you receive these update meeting agendas?

A Did I receive this document, is that what you're saying?

Q Yes or documents like this.

A Generally I did and I probably did this one, I'm just having a vague -- I'm not, you know, most of these I recall pretty clearly, I'm not recalling this one clearly.

Q Well, do you recall ever seeing an agenda from the OTS for its meetings with Ms. Hunt-Fuhr and Ruthann Melbourne where it said something to the effect on -- up on page 303 under "overall bias towards 4 composite rating."

MS. VETA: And what's the question?

THE WITNESS: Do I recall this -- seeing this

report with this information?

BY MR. CHUNG:

Q Right, a report or agenda, whatever this is, with information to the effect that the OTS had a bias towards a 4 composite rating.

A I probably saw this but I just -- it's not as clear in my mind as some of the other documents. It doesn't -- you know, I look at it and go, "Everything in here makes sense to me."

Q What do you mean "makes sense?"

A It makes sense that they would be saying this around this time period and it makes sense that I would have read it.

Q And it's consistent with your memory of the time period?

A Do I remember this document specifically? Not like some of the others is what I'm saying. I don't remember this document specifically. But what I would tell you is I think I got this, I think I read it, and I think it's right, but I'm not 100 percent sure -- I'm not totally sure about that.

Q Okay. Let me hand to you what has previously been marked as Exhibit 620. Exhibit 620 is a forecast update dated May 2, 2008. Take a look at this and let me know if this looks familiar to you.

(SEC Exhibit No. 620 was referred

to.)

A You know, as I said, I think this, I mean, definitely looks familiar to me. I probably got this, I probably read it but I can't -- I couldn't tell you for sure.

Q Okay. If you'll look on the second page of the forecast under the profit and loss statement, near the middle of the page there's a row entitled "perpetual preferred dividend." And if you'll look at the projection for the second, third, and fourth quarters of 2008 there are dashes meaning no dividend payments. Do you remember around May 2, 2008, seeing forecasts or discussions about suspension of the preferred dividends?

A Not specifically but that probably would have been about the right timeframe that I would have seen a forecast because we were -- we were definitely considering it at that point.

Q What do you remember generally about the decision to suspend the dividends on the preferred and trust-preferred shares? I mean what -- was there some event or fact that became known that began the discussion leading up to the recommendation to suspend those dividends?

A I don't remember what the triggering event was but certainly in this timeframe we were beginning -- having the discussions about whether given the -- our financial condition whether we can continue to pay those dividends or

not and whether it would be prudent to continue to pay those dividends or not. And I certainly think around this timeframe my mind was forming about a recommendation to the board for a decision on that issue. And I can't -- I couldn't tell you -- I mean I might be able to with documents but I couldn't tell you off the top of my head what specific day my mind had settled that, you know, I need to recommend this to the board.

Q Well, are you aware of the existence of documents that would refresh your memory on that issue?

A No, but there -- I wasn't aware of a lot of -- I had forgotten about a lot of these documents. I'm just saying if there were documents, I -- that could be helpful in my -- refresh my memory about when my mind was settled that I'm going to make a recommendation to the board that we suspend these payments.

Q Okay. And in your preparation for testimony do you remember seeing documents that helped you pinpoint when that decision was made?

MS. VETA: I'm not sure you're entitled to ask him that question.

MR. CHUNG: I'm just wondering if he saw a document.

MS. VETA: You can ask him whether he's seen any documents that have refreshed his recollection.

THE WITNESS: Yeah, I --

MR. CHUNG: Okay.

MS. VETA: Answer that question.

THE WITNESS: No, I haven't seen one that refreshed my recollection on that. I mean -- I mean I think, you know, ultimately that would have been a board decision. And, you know, we were working towards a board meeting that was in advance of the earnings release and so I mean I knew that I had to make a decision one way or another before that board meeting and recommendation. And that's kind of my -- so I knew that ultimately I had to make decision about that issue.

BY MR. CHUNG:

Q And so the timing of that decision was tied to the scheduling of a board meeting?

A It was tied to the earnings release being the ultimate trigger and a board meeting that wasn't, you know, the dates were fluctuating because it had to be after everybody was done with their work. And it ended up, you know, I think some of those meetings ended up being on a Saturday.

Q Well, as a result of the MBS downgrades and their impact on Future quarters at IndyMac do you recall any discussion about whether, you know, the future capital ratio impact of the MBS downgrades in April would force IndyMac to suspend the dividend payments on its preferred and

trust-preferred shares?

A I don't recall specifically that issue alone being the trigger, you know, in terms of setting my mind. But, you know, more -- I mean if you just asked me just generically or generally, more just the totality of all of the events leading up to the earnings release that kind of -- and I knew that I had to make a decision, you know, before we took it to the board and before we, you know, discussed with our -- we had to decide before we -- because we needed to tell shareholders what we were going to do.

Q Well, you had mentioned that there was disclosure in the 10-Q that had IndyMac taken the impact of the -- the P&L impact of the MBS downgrades in the first quarter that the risk-based capital ratio would have been 9.4 I think you said.

MS. VETA: No, I don't think that's what his testimony was. It wasn't the P&L impact.

BY MR. CHUNG:

Q The -- I'm sorry, was it the risk-weighting impact?

A The risk-weighting impact, yes.

Q Okay. And so in the second quarter what was the projection at that point based on the risk-weighted impact of the MBS downgrades? Was that below 10 percent?

A Say that again.

Q Was the forecast for the second quarter of 2008's

risk-based capital ratio below 10 percent due to the risk-weighting impact of the MBS downgrades in April 2008?

A I'm not sure I'm going to answer that question exactly because it was so long. You want to -- either I'll try to answer or you try to give me a more -- little smaller bite.

MS. VETA: If you don't understand the question --

THE WITNESS: Okay.

MS. VETA: -- just tell Mr. Chung you don't understand it.

BY MR. CHUNG:

Q Okay. You had said --

A It's not that I don't understand it, its complex.

Q Well, these are obviously complex issues. My question is because of the risk-weighting impact of the MBS downgrades --

A Yes.

Q -- IndyMac was projecting that its capital ratio was going to be below 10 percent in the second quarter of 2008, is that correct?

A I'm not sure about that. I haven't, you know, seen that yet in any of the documents that you've shown me, but I do recall that we disclosed that if the risk -- if the downgrades had occurred at 3/31 the risk -- we would have had to adjust our risk-based capital calculations at 3/31 and we

would have not been well-capitalized. And we footnote disclosed that and showed something like a 9.40-something total risk-based capital ratio and we said, "If those downgrades had occurred at 3/31 our capital ratio at 3/31 would have been 9.40, but what we were not taking into account is the capital that we raised subsequent to 3/31.

So in answering your question, were we no longer well-capitalized as a result of those downgrades in the second quarter, it's possible in the forecast, but it's also possible that we raised -- we were projecting to raise enough capital through the Direct Stock Purchase Plan and also shrink the balance sheet such that we were still well-capitalized. I'm just not sure, I'd need to see a forecast for the second quarter, you know, post those downgrades.

Q Well, I mean, we've seen a couple of those forecasts. The forecast that was dated April 24, 2008, which showed the ratios going below 10 percent in the first quarter, I don't know if that refreshes your memory.

A Well, does this one show it? This one --

MS. VETA: Just does it -- just answer his question, does it refresh your memory.

THE WITNESS: The -- well, I -- I didn't look at the second quarter. I -- you want me to look at the second quarter of this one?

BY MR. CHUNG:

Q Well, no, I don't know that this -- well, this -- these forecasts don't show ratios going below 10 percent in the second, third, or fourth quarters.

A Okay.

Q But if you look back at Exhibit 645 -- well, I suppose there's no need, these forecasts don't show the ratios going below 10 in the second or third or fourth quarters either.

A Okay.

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

MR. CHUNG: Okay, it's 4:26, let's go off the record.

(A brief recess was taken.)

MR. CHUNG: All right, it's 4:32. And during our break, Mr. Perry, were there any substantive communications between you and the SEC staff?

THE WITNESS: No, there were not.

BY MR. CHUNG:

Q Let me hand to you what has previously been marked as Exhibit 631. Exhibit 631 is an e-mail that's dated May 6, 2008, from Mr. Perry to the IndyMac board among other persons. The subject of the e-mail is "Update on the quarter and the board meeting." Why don't you read through this and

let me know if you recognize it?

(SEC Exhibit No. 631 was referred to.)

(The witness examined the document.)

A Okay.

Q All right. Mr. Perry, do you recognize Exhibit 631?

A I do.

Q Is this an e-mail that you sent on or about May 6, 2008?

A It is.

Q Okay. In this e-mail at the very end in the "P.S." portion it says, "Christina Ching will be circulating a unanimous written consent, along with our formal materials recommending it, to suspend payment of the trust-preferred and preferred dividends indefinitely. We will need this approved as we plan to announce this as part of our earnings release." Can you remember discussions about this recommendation to suspend the dividends on the trust-preferred and preferred dividends -- trust-preferred and preferred shares prior to sending this e-mail?

A I don't recall specific discussions. I'm sure there were discussions though.

Q And in reading this now does this trigger any memory as to what event may have occurred to come to this

recommendation?
A It doesn't.
Q Do you recall any discussions with Mr. Abernathy specifically relating to whether IndyMac should suspend the payments on its trust-preferred and preferred dividends?
A No, I don't.
Q Let me hand to you what's previously been marked as Exhibit 660. Exhibit 660 is an e-mail dated May 6, 2008, from Blair Abernathy to Michael Perry. The subject of the e-mail is "Article: Countrywide Loss Focuses Attention on Underwriting."
(SEC Exhibit No. 660 was referred to.)
A Okay.
Q All right. Mr. Perry, do you recognize Exhibit 660?
A I do.
Q Is this an e-mail that you received on or about May 6, 2008?
A I vaguely recall this e-mail, yes.
Q Does this -- well, let me ask you what you recall generally about this e-mail.
A Just generally that Blair was proposing to continue the dividend payments for an additional quarter.
Q Okay. Does this refresh your memory as to actual

discussions about that topic?
A It doesn't.
Q So beyond what's in Mr. Abernathy's e-mail do you remember any additional discussion there may have been about whether to continue or suspend the preferred dividends?
A I mean, no, I just think he's expressing a different view about how we should do this.
Q Do you remember any discussion around this time period about the likelihood of the regulators continuing to approve payments on the bank's dividends?
A I don't recall -- I don't recall those discussions, no.
Q Okay. So this is May 6, 2008, it's approximately a week before IndyMac files its form 10-Q on May 12th. What do you recall as the significant accounting issues that were perhaps still unresolved prior to the filing of the 10-Q?
A I don't recall specifically. I know that Ernst & Young had yet to sign off on our financial statements at this point in time. I vaguely recall this week that were still working on the mortgage-backed securities valuation and that it -- I do remember at one point the past audit differences came up as an issue during this week.
Q Okay. Well, let's start off with the mortgage-backed securities valuation. What was your understanding as to the work that was being done in that area

in the final week before the 10-Q was filed?
A My understanding is that our team was working with Ernst & Young and making sure that we followed, appropriately, FAS 157 and that Ernst & Young in the region was coordinating with its New York office and its experts at its national level. As I said, we were a special monitored account at this point in time with Ernst & Young.
Q Okay. Did you have an understanding as to the variance in MBS valuations at this point in time?
A No, I wasn't involved in the details of that. I expressed my view about level 3 accounting and I left my team to the details. I had a lot of confidence in that group.
Q Well, were you receiving updates on what IndyMac's risk-based capital ratio would be depending on the outcome of the MBS valuation issue?
A No, I don't recall receiving that. I -- you know, as I said earlier, the closing the books and resolving our financials was a totally independent decision from our capital ratios. If closing the books meant we were going to be not well-capitalized, we were going to be not well-capitalized.
Q Well, I wasn't insinuating that they were interconnected, I'm just asking if you received updates on if the MBS valuation is "X" our capital ratio will be "Y," something like that.

A I don't recall -- no, I don't recall seeing that.
Q Okay. Let me now hand to you what's just been marked as Exhibit 670. Exhibit 670 is an e-mail dated May 7, 2008, from Michael Perry to Scott Albinson, A-l-b-i-n-s-o-n, at JP Morgan Chase, and John Chrin, C-h-r-i-n, also at JP Morgan. The subject of the e-mail is "Confidential, draft Q1 earnings release."
(SEC Exhibit No. 670 was marked for identification.)
(The witness examined the document.)
A Okay.
Q All right. Mr. Perry, do you recognize Exhibit 670?
A I do.
Q Are these e-mails that you wrote on May 7, 2008?
A Yes, they are.
Q Okay. You've written on the top e-mail to folks at JP Morgan that "If we "lose" on the MBS issue with E&Y, which we should know tomorrow, my guesstimate is our GAAP loss will be roughly $50 million after pretax, higher than our common equity because of the OCI hit on AFS would come down another $235 million or so and we would just miss being well-capitalized on total risk-based capital unless we were to receive the reverse mortgage servicing waiver." What did you mean about losing on the MBS issue with Ernst & Young?

A I'm not sure at this point in time. It doesn't ring a bell with me, but, you know, my assumption here would be that we have a -- we laid out our fair value accounting for FAS 157 level 3 accounting and if we lost that view and they made us market to market at level 2 maybe, I don't know. I'm just -- I probably just got the big picture or it's still up in the air, Ernst & Young is considering it, national office is reviewing it, if we lose these are the numbers.

Q Well, by May 7, 2008, would you have sat in on that presentation that you referred to earlier where you saw a slide with Mr. Abernathy and Mr. Scribner about the methodology for level 3 valuation?

A At some point in the last few weeks before we released earnings I recall Mr. Scribner and/or Mr. Abernathy showing me a slide or two on this issue and how -- actually, more than a slide or two. They showed me a PowerPoint presentation, you know, it's coming back to me know, and that PowerPoint presentation laid out their whole methodology for how they did fair value accounting and I did walk through it. I mean I didn't spend hours on it or even an hour, I walked through it in, you know, few minutes with them and the methodology seemed appropriate to me and I didn't get into the details of it more than that.

Q Did you get any information on Ernst & Young's response to IndyMac's level 3 valuation methodology?

A Ask me that question again, please.

Q Did you receive information on what Ernst & Young's response was to IndyMac's level 3 valuation methodology?

A I don't recall specifically how the mortgage-backed securities valuation was resolved with Ernst & Young, but I just know that they, you know, that they both were satisfied at a point. I don't know what the details were behind that. I don't recall being updated on the details of that.

Q Okay and so going back to Exhibit 670, what's the basis for your guesstimate that IndyMac would be -- would just miss being well-capitalized on total risk-based capital if IndyMac lost on the MBS issue with E&Y?

A Someone either probably told me that or provided me some schedule of that and I was relaying that on. These guys were -- Scott Albinson and John Chrin, were helping us try to raise the big slug of capital. And so what was planned was that I would be, after we released earnings, going out and trying to raise the big slug of capital. And -- which is what we were trying to do after we released earnings.

Q Okay and you mentioned some adjustments that were being discussed with Ernst & Young during this time period as well, can you go into the background of that issue?

A The past audit differences?

Q Yes.

A Generally that was an issue that came up right

towards the end. My vague recollection is, you know, right in this time period, this Wednesday, Thursday, Friday time period, it was like, "Okay, we're done with Ernst & Young on the fair value on the MBS and we're well-capitalized and we're at --" I don't even -- it was close, it was like -- it might have been even 10.01 -- and I'm like, "Whew."

And then all of a sudden somebody comes in, this is the environment, everything was negative, "Well, Ernst & Young has a different view about materiality now." "What do you mean Ernst & Young has a different view about materiality?" "Well, Ernst & Young has a different view this quarter about materiality. It's no longer based on the size of our balance sheet, our capital, our revenues, it's based on whether these audit differences result in us being well-capitalized or adequately-capitalized. And if they book these audit differences that they had passed in prior quarters this quarter we would no longer be well-capitalized." So that's the materiality threshold. So we're, you know, we're all done and we're not adequately capitalized -- I mean we're not well-capitalized, right? That was the -- that was what I remember the audit difference issue being.

And then, you know, my recollection of that was that I read the literature, which I hate to do but I read the literature, and it was like, "They're right. You know, I

mean I see where that is in the literature, they're right." Okay. And then -- and I had a recollection with Blair that he, you know, coming in independently as the new CFO he was walking through these audit differences going, "A lot of these are not audit differences." And so he started to talk to them about that, that, you know, these audit differences from prior periods, a lot of them he didn't agree were audit differences. But it's kind of like arguing with your mom about how many cookies you take out of the cookie jar, it, you know, it just really isn't worth arguing about. So that's the recollection on the audit difference issue.

Q Well, just generally, what is an audit difference?

A It's -- and I'm speaking as a former CPA and really a layperson, but my understanding is that an audit difference is either an error or, you know, or a misapplication of an accounting -- a technical accounting issue that would result in a change in your financial statements, and that these were, in prior quarters, individually and cumulatively considered immaterial and had been passed. And that this quarter, as a result of the materiality threshold being changed by the auditors, that they weren't going to be passed.

Q And do you have an understanding as to the impact of IndyMac's capital ratios if it had taken those passed audit differences?

A Yes, we would have not been -- that -- with that issue alone, and again, our books weren't closed, we were still discussing these audit differences with them -- but if we -- if that was the end we would have not been well-capitalized.

Q Do you remember what the differences were, you know, before and after --

A It was like going from like 10.01 to -- or, you know, I mean it was like two basis points, something like that in the capital ratio, two or three, you know, it was very small.

Q Okay and was there any discussion or debate with Ernst & Young on whether these audit differences should be taken?

A As I said, Blair was having that discussion. He was kind of coming in as the new CFO, he's looking at a number, I even looked at a few too and said, "This is not an audit difference, they're wrong on this issue." But you don't want to have arguments with your auditors, right, it wasn't -- I mean you just don't want to have arguments with your auditors.

Q Well, were there -- was there any work done on what the differences were, I mean what the ratio, capital-ratio would be if certain adjustments were taken and certain adjustments were not?

A I'm not sure about that. I know these discussions were going on on Thursday and into Friday and Blair thought he could successfully resolve those issues with the auditors. You know, and this kind of gets into the -- probably the next question you're going to ask me --

MS. VETA: Just stick with this question.

THE WITNESS: -- but -- okay.

BY MR. CHUNG:

Q Okay. Well, when did it all come to a head in terms of Ernst & Young's position on whether IndyMac would be required to take those adjustments or not?

A Well, it all came to a head on that Friday, and in the afternoon -- on the Friday afternoon or evening I -- on the 9th, Blair came in and said, "Mike, we're not going to get them to move on the audit difference issue."

Q And what was your response to that?

A Well, I had already that morning contributed -- had Francisco contribute 50 million of capital from the holding company to the bank and I had recalled that our previous CFO, Scott Keys, had mentioned to me that he thought we could book a receivable at the bank level for the holding company capital and so had that in the back of my mind as potentially something that we could do if we lost the audit difference issue. I contributed the capital, the 50 million in capital, in the morning with the idea that if we did lose that

argument with Ernst & Young that I was going to call the head of the OTS western region and ask him if I could book a receivable for the 18 million of cash that we held at the holding company at 3/31 and would have contributed down if we'd have known -- in cash, we would have contributed it in cash down if we'd have known all these issues that were subsequently impacting our 3/31 numbers.

Q And you said you had talked to Mr. Nebot about booking a receivable?

A No, I asked Mr. Nebot to contribute 50 million of cash from the holding company down to the bank as capital that morning.

Q Okay. I thought you used the word receivable.

MS. VETA: He didn't use it then. That, I mean, that was what he said.

BY MS. ESON:

Q With Mr. Keys -- did you have a discussion with Mr. Keys regarding booking the receivable at the bank level?

A Yeah, much earlier. Much earlier. He had this idea that, you know, because of this very issue, you know, where you're closing your books and you don't know really where you're at, you know, that, you know, he was even, you know, thinking of a mechanism where we would have an automatic receivable that would occur. Not for cash that you raised subsequent to quarter end, but for any capital that

you had at the holding company at quarter end.

BY MR. CHUNG:

Q Did Mr. Keys have a word for that?

A I don't recall a specific word, he called it a receivable.

Q Do you know if a receivable was booked by the bank prior to May 9, 2008?

A Well, we booked a receivable, and got permission from our regulator to do so, from the holding -- from -- at the bank level for that 18 million.

Q Right, but was that done prior to -- the booking of the receivable, was that booked prior to May 9, 2008, prior to the actual transfer of the money on May 9th?

A It was not, it was booked subsequent --

Q Okay.

A -- to that cash that was received. The cash, the 50 million in cash, went in the morning, was wired from the holding company down, and the receivable was booked that afternoon or possibly over the weekend.

Q But you had mentioned that you had talked to Mr. Keys about what you called an automatic note.

A No, he had mentioned that as something that he would like to see be an automatic process every quarter.

MS. VETA: And also, Mr. Chung, just to be clear, and I think Ms. Eson caught it as well, I don't think Mr.

Perry made any reference to a note.
THE WITNESS: No, receivable.
MR. CHUNG: No, but he just said there was an automatic not or automatic receivable.
MS. VETA: I don't --
THE WITNESS: Well, I meant to say receivable.
MR. CHUNG: Okay. I'm sorry.
THE WITNESS: Yeah.
MS. VETA: I mean the record is what it is, I just didn't recall hearing him say note.
BY MR. CHUNG:
Q Was there ever a note recorded --
A No.
Q -- prior to May 9, 2008, for this excess cash --
A No.
Q -- at the holding company level?
A No.
Q Okay and so when did Mr. Keys bring up, you know, this automatic note?
MS. VETA: Wait a minute, Mr. Chung.
THE WITNESS: Receivable.
MR. CHUNG: Okay.
MS. VETA: You keep using the phrase "automatic note" --
MR. CHUNG: Okay, I'll --

MS. VETA: -- and I don't think that's what the testimony says.
MR. CHUNG: Okay.
MS. VETA: I mean, maybe I'm mistaken.
MR. CHUNG: I'm sorry. Automatic receivable.
THE WITNESS: I'm not sure, sometime in the first quarter and sometime prior to him leaving.
BY MR. CHUNG:
Q Was that the first time Mr. Keys brought up an automatic receivable, in the first quarter of 2008?
A Yes, it was.
Q Was that discussed with others or was that just a discussion between you and Mr. Keys?
A I don't remember. It was -- it, you know, was -- I don't remember specifically.
Q Was it discussed on more than one occasion?
A I don't remember.
Q Was there a discussion with the OTS or any other third party about this automatic receivable prior to May 9, 2008?
A I don't recall.
Q Do you have an understanding as to whether Mr. Keys asked the OTS prior to his departure from the company whether IndyMac could make a contribution from the holding company to the bank and have it count towards that earlier, first

quarter 2008, time period?
A Well, you use "make a contribution."
Q Yes.
A Do you want to phrase that as book a receivable? Make a contribution -- if you're making a cash contribution at -- from the -- like the 50 million that was made in the morning, that's not capital at 3/31.
Q What is it?
A It's -- the 50 million is capital in the second quarter.
Q Okay. The entire 50 million?
MS. VETA: Wait a minute. You all are talking hypotheticals and I think you are ships passing in the night. So stay away from the hypotheticals, let Mr. Chung ask his question and then you just answer it.
MR. CHUNG: Okay. Thank you. I think that's the best way to go.
BY MR. CHUNG:
Q Do you know if Mr. Keys, prior to his leaving the company, had asked the OTS if it was acceptable for IndyMac to make a payment -- the holding company make a contribution to the bank after March 31, 2008, but have that contribution count as if it had been made prior -- on or prior to March 31, 2008?
A I do not know that.

BY MS. ESON:
Q If you used a different phrase than make a contribution would that change your answer?
A It would not.
BY MR. CHUNG:
Q Okay. So let's go back to the events of May 9, 2008.
A Okay.
Q Do you remember meeting with anyone that morning when you got the news about the -- about Ernst & Young not budging on this issue with the past audit adjustments?
A Well, I think it was in the afternoon or evening that that occurred.
Q Well, do you recall a meeting that morning on what IndyMac should do if E&Y would not budge on its stance on the past audit differences?
A I don't recall that. It's possible that that occurred but I don't recall it.
Q Specifically, do you remember having a meeting with Mr. Abernathy, Ms. Marsh, Mr. Carter, Mr. Sosnovich, Ms. Arredondo, and Mr. Scribner on that issue?
A It's possible but I just don't recall it.
Q Okay. So in the morning of May 9th you instructed Mr. Nebot to transfer $50 million from the holding company to the bank?

A That's correct.
Q Is there any documentation of that?
A I'm not sure.
Q Let me hand to you what has previously been marked as Exhibit 621. Exhibit 621 is a memo dated May 9, 2008, from Mr. Nebot to Mike Perry and Blair Abernathy. The subject of the e-mail is "Approval of up to $50 million capital contribution from Bancorp to bank," and the second page is an authorization for a wire transfer in the amount of $50 million. Do you recognize Exhibit 621?
(SEC Exhibit No. 621 was referred to.)
A I do.
Q What parts do you recognize?
A I recognize the entire document.
Q Okay. Is that your signature on the first page of Exhibit 621?
A Well, I recognize the -- I'm sorry, can I edit that? I recognize the first page -- the entire document.
Q Okay.
A Yes, it is my signature.
Q Can you tell me the circumstances in which you signed this first page of Exhibit 621?
A I don't recall when, you know, when I signed this on that date.

Q You don't know if you signed this in the morning as opposed to some other time?
A I don't.
Q Well, do you remember whether you signed this memo prior to the actual transfer?
A I don't.
Q Do you have an understanding as to whether Mr. Abernathy had signed this form prior to your signing of it?
A I don't. As I said, I mean, this is my management team executing on my request. It was definitely my decision to contribute the 50 million capital from the holding company down to the bank and they're following through on that decision. It might have been as a result of a group meeting but I just don't recall that group meeting, but it was my decision.
Q Well, do you remember having any discussion with Mr. Abernathy about this transfer of $50 million?
A I don't remember it but might have either in that meeting or independently.
Q Which meeting?
A Well, the meeting that you were -- you were asking me that potentially had occurred.
Q Well, I -- and you said you didn't remember if --
A I didn't remember it, no.
Q Okay. All right. So in the evening in -- when Mr. Abernathy told you about Ernst & Young's position on the past audit differences, what happened then?

A Well, so then, you know, I had had this idea from Scott in my mind and I knew that we had that $18 million at the holding company, we had not closed our books, it was -- I knew that it was accrual accounting. We were using accrual accounting, and so we were, you know, I was proposing to accrue for the capital that was at the holding company, the 18 million, in the form of a receivable and book that as capital, as an accrual. We were doing lots of other accruals subsequent to quarter end. And so I made a call to Mr. Dochow and I believe because of the time -- I might have called his office first, I can't remember, but because of the time and it was a Friday evening, I ended up, I believe, reaching him at home and telling him the entire circumstances of what was going on that week.
Q Well, before we --
A Okay, I'm sorry.
Q What -- how late in the evening was it on Friday when you made this call?
A I don't remember specifically, there were two calls.
Q Oh, well, the first call I should say.
A I don't remember specifically.
Q But it -- was it after business hours?

MS. VETA: How are you defining business hours?
BY MR. CHUNG:
Q 5:00 p.m.
A I don't recall specifically.
Q And how did you -- did you have Mr. Dochow's home phone number?
A I had -- he had given it to me the previous summer when he had called me on a Friday evening when Countrywide was having its bank run and he wanted to be kept update -- this was in the summer of '07 and they had their bank run and he was checking on us, on our liquidity position, and he said, "Mike, here's my home number in case there's any emergencies or issues you can call -- you can reach me here." And I don't believe I ever used that up until that May 9th date.
Q All right. So in that first phone call to Mr. Dochow at home was there anyone else in the room with you during that call?
A Not that I recall.
Q Okay. You said you told him everything, but if you could tell me everything that you remember specifically telling Mr. Dochow during that first phone call.
A Well, I was updating him generally on our financial position.
Q What did you say?

A Well, just the general issues with respect to what our earnings were, our balance sheet size, the capital ratios, and then telling him that, you know, we were now down to one issue and explaining the audit difference issue to him and the materiality issue and how that dropped us below from well-capitalized to adequately-capitalized. And then I explained to him that I had an idea, that I wanted to be able to book a receivable for not the 50 million but for the 18 million that we did have at 3/31 as an accrual, it's part of our accrual accounting, and book that at the bank level as a receivable and count that as capital at 3/31 in closing our books. I further told him that I didn't think that it -- our auditors would have an issue with this because in consolidation that receivable is eliminated so it's not a, you know, it's not a consolidated item. And he was supportive of that and kind of -- I ended that call. And I might have asked him, you know, "Would you mind if I had our auditors call you back," but I can't remember distinctly, and we did call him back.

Q Well, did you tell Mr. Dochow that there was no receivable on the books of the bank prior to May 9, 2008 for this proposed $18 million contribution?

A I told him specifically that I wanted to book the receivable at the bank.

Q Right, but in terms of whether IndyMac had a note

or receivable at the bank level for this $18 million contribution, was there any discussion on that, the existence of a receivable or a note prior to the phone call, prior to May 9, 2008?

A Well, we wouldn't have done this as a note, it's an intercompany transaction between a wholly owned subsidiary. It was -- I was asking permission to accrue, under our accrual accounting, a receivable at 3/31 for capital that we did have at 3/31 at the holding company and to count that receivable as part of our regulatory capital.

Q Okay, but was there a discussion -- any discussion about whether a receivable was actually on the books of the bank as of March 31, 2008?

A Well, by implication, asking to book it now, the answer would be no, there was no discussion about that. Lots of entries were booked after 3/31 that applied to 3/31, probably hundreds of entries. That's what accrual accounting is all about.

Q Okay, but I'm just asking if there was an explicit statement. I mean you're saying by inference or by logical reasoning that wasn't the case, but did you make that explicit statement?

A No, but in the subsequent -- in either that first call or the subsequent call, I think it was the subsequent one, he directed me to amend the thrift report, directed to

amend the thrift report to book that receivable. I am -- he used the exact words, "I am directing you to amend your thrift report to book that receivable."

Q Okay, but I'm not sure what that has to do with whether the receivable was in existence as of March 31, 2008, so --

MS. VETA: Mr. Chung, are you trying to ask Mr. Perry based on your conversation with Mr. Dochow, do you think he believed that you already had booked a receivable on IndyMac's books before you called him to ask his permission to book the receivable?

THE WITNESS: Are you asking that, that I booked it before I got permission to book it?

MR. CHUNG: No, whether you told Mr. Dochow that.

THE WITNESS: Whether --

MS. VETA: Did you tell Mr. Dochow that?

THE WITNESS: That I had already booked it?

MR. CHUNG: Yes.

THE WITNESS: On that day?

MR. CHUNG: No, on March 31st. Well, maybe we were not --

MS. VETA: Mr. Chung, why don't you ask him that question? Did he tell Mr. Dochow that he had already booked the receivable back on March 31 --

MR. CHUNG: Well --

MS. VETA: -- and then ask him for subsequent periods, just so you can get a clear record here.

MR. CHUNG: Okay, but before that I think it might help to clarify what a receivable is. As I am using the term it's an IOU, if you will --

THE WITNESS: Yes.

MR. CHUNG: -- of what the Bancorp might owe the bank. So when I say was there a receivable --

THE WITNESS: I'm sorry, say that again.

MR. CHUNG: I'm sorry?

THE WITNESS: It's what the Bancorp -- in this case, yes.

MR. CHUNG: Yeah, what the -- an IOU that the bank would hold as money owed to it by the Bancorp.

THE WITNESS: Correct.

MR. CHUNG: Okay. And I'm wondering whether you told Mr. Perry that --

MS. VETA: Told Mr. Dochow.

MR. CHUNG: -- I'm sorry -- told Mr. Dochow that such an IOU existed on the bank's books as of March 31, 2008?

THE WITNESS: I did not tell him that, no.

BY MR. CHUNG:

Q Did he have an understanding as, you know, through the course of your conversation with Mr. Dochow whether he had that understanding, that misunderstanding?

A I don't think he had any misunderstanding about what I was proposing in any way, shape or form.

Q Okay. So as of May 9, 2008, IndyMac had already filed a TFR, is that correct?

A We -- yeah, there's a -- you have to file it by April 30th, 30 days after the quarter end.

Q All right. And did you have an understanding as to what capital ratio was reported in that TFR? A I do and that capital ratio, as -- my recall is right around 10.15.

Q Okay and how did you know that?

A I just -- I remember roughly that it was in that range.

Q Because somebody at that time informed you of that?

A Well, I think it was in one of these memos and it refreshed my recollection that it was around that range.

Q Okay and now as IndyMac was closing its books on May 9th, what -- did you tell Mr. Dochow what the ratio was at that point, if it had changed?

A I did.

Q And what was it at that point?

A Well, I told him that if we had to book these audit differences and if we couldn't book the receivable we would be at 9.99 or 9.97, it was, you know, right around that level, and we would be adequately capitalized on that ratio.

Q Okay. And, I'm sorry, was this on that first phone

call?

A Correct.

Q Is there anything else you told Mr. Dochow that you haven't already testified to for that first phone call with him?

A What -- not that I can recall, no.

Q Did he say anything to you in that first phone call other than what you've already testified to?

A Not that I can recall.

Q Okay. So then what happened next in the sequence of events?

A So then -- I don't recall specifically but I probably talked to some of the managers who were working that Friday night and on the close and said, "Good news, you know, here's what Darrell said about that idea." And I go, "I'm going to go grab the Ernst & Young auditors," because, you know, it was just me in the room and I want to have -- I want to call him back, you know, with the auditors on the phone and I want the auditors to be able to hear it directly from him.

Q Well, who are the managers that you spoke to?

A I don't recall specifically, you know, it probably would have been Pam and Brian and Blair but I don't recall specifically. They were -- all had their offices really close to mine.

Q So did someone go get the Ernst & Young auditors?

A I think so, I don't recall who did.

Q Okay and what happened next?

A So Dayton, Dayton Lierly, who is the audit -- who is the audit -- there were two audit partners on the job but he's the senior one, came in my office and my recollection it was just him and I, but we called Darrell back and Darrell -- and we went through the issues. I don't -- Dayton asked him a few questions, I don't recall exactly what he asked him --

Q Asked --

A You know, I mean, he talked. I, you know, I don't remember what he said. Dayton said something I just can't remember what he said, you know, just, you know, might have asked him to confirm it or, I -- you know, I don't recall exactly what he said. But Darrell confirmed our previous discussion and in one of those two calls he directed me to amend the thrift report, which we did, and to book the receivable.

Q You mean update the TFR so that capital ratio would reflect the $18 million contribution?

A Correct.

Q Okay, but before we get to there, in that second call between yourself, Mr. Lierly and Mr. Dochow, were there any other persons in that room?

A That's what I said, I can't remember. I mean those

are the only three parties that I remembered to that conversation.

Q And it's fairly critical, you've said Mr. Lierly said something to Mr. Dochow but you don't remember what, I mean, do you have any recollection at all as to what Mr. Lierly said?

A You know, I was so worn out and happy with that resolution I, you know, I was just, you know, I mean it was, you know, we were killing ourselves, you know, so, I mean, I don't remember specifically what he said. It wasn't anything that caught my attention, it was kind of more of -- my recollection is just very vague form, you know, just kind of something form or, you know, might of, you know, just -- I don't even recall.

Q Okay.

A And it's possible he didn't say anything and I kind of imagined it here, you know, I mean I'm -- seriously.

Q Okay and then what was said in this -- in the rest of the call?

A Well, it was a reconfirmation of the earlier call.

Q Well, how was that reconfirmation done?

A We went through the -- pretty much the exact same issues. I don't know if we went through the audit difference issues but we went through and discussed the fact that Darrell was authorizing us to book the receivable at the --

from the holding company and amend the thrift report to reflect that.

Q Okay, but was there a discussion about IndyMac being below, potentially below 10 percent on its risk-based capital ratio before the $18 million contribution during that second call with Mr. Dochow?

A I can't remember specifically whether we discussed every single point that I discussed in the first call in the second call and I don't remember that specifically.

Q Was there any discussion about the consequences to IndyMac if the $18 million contribution is not permitted to count towards the first quarter of 2008?

A I don't recall that. I -- everybody knew what the consequences were.

Q Well, how do you know that?

A They were all very senior people.

Q You mean Mr. Dochow and Mr. Lierly?

A Yes.

Q Well, what was your understanding of the consequences to IndyMac if --

A We would have been adequately-capitalized on one of our ratios.

Q Well, did you consider whether IndyMac would just not file its form 10-Q if -- and, you know, refuse to book the --

A No, we wouldn't have done that. If Mr. Dochow had not approved the booking of the receivable we would have been adequately-capitalized and moved on.

Q Did you discuss that possibility with anyone that evening?

A Well, not after he said we could book the receivable.

Q I'm just wondering if you had considered that possibility with anyone before the phone call?

A Well, I mean, I think, you know, what we disclosed when we filed our financials is that there were definitely scenarios going forward that we could be adequately-capitalized. And that was in -- I remember that distinctly in our disclosure and in the PowerPoints of the positives and negatives where I went through the CAMELS risk framework and in the capital section one of the negatives that I discussed was there are scenarios where we could be adequately-capitalized in the second quarter, you know, going forward.

Q Okay, but -- and my question is whether you had considered, prior to the calls with Mr. Dochow, you know, if permission was not given to count that $18 million toward the first quarter whether IndyMac would just not file a form 10-Q on May 12th as it was required to do?

A I hadn't considered that. I would have moved

forward and -- I mean I'm -- it's kind of like hypothetical but my -- in my mind the number was going to be the number. We had to do everything possible that was right to stay well-capitalized, that was the appropriate and responsible thing to keep the institution safe and sound, but beyond -- but once we did everything possible that was appropriate and right, if we ended up adequately-capitalized, we were adequately-capitalized and we just had to move on.

Q Well, did you consider whether it, in fact, was appropriate to count the $18 million that was contributed on May 9th as if it had occurred on March 31, 2008?

A Well, I think the wording of your question -- I -- the wording of your question -- I considered it appropriate to book that receivable for the $18 million. I absolutely did or I wouldn't have asked for it.

Q Did you have an understanding as to whether that kind of accounting treatment was in accordance with generally accepted accounting principles?

A I felt that if -- I knew that general concept that that receivable, if it -- in consolidation in our public filings was eliminated. I understood that and that's -- and I also understood that it was up to the regulators to decide whether we could book that receivable or not. And I also felt very comfortable that after Dayton reviewed it he was comfortable with it, you know, he was the audit partner in

charge, well-respected technical partner, and they were -- I knew they were also reviewing these -- all of our key issues with their national practice office.

Q Well, first of all, did Mr. Lierly appear to be surprised by the OTS approval of this accounting treatment?

A I mean I couldn't say, I mean, he's an auditor, he didn't have a lot of emotion one way or the other. I didn't detect any surprise.

Q And do you know if E&Y went back to his national office on whether IndyMac should be permitted to let this $18 million contribution count towards the first quarter of 2008?

A I don't.

MS. VETA: Mr. Chung, are you getting to a good breaking point? It's about 5:30.

MR. CHUNG: Well, why don't we take a quick break off the record and just see if we have any additional questions on this topic and then we can pursue from there.

MS. VETA: That would be fine.

MR. CHUNG: It's 5:26, we're off the record.

(A brief recess was taken.)

MR. CHUNG: Let's go back on the record at 5:30. And I do have just a few questions before we conclude for this evening.

THE WITNESS: Sure.

BY MR. CHUNG:

Q Mr. Perry, are you familiar with Mr. Keys ever using the term springing note? It's what you call the automatic receivable.

A I only heard that term in preparation in that somebody brought it to my attention.

Q "That term" being springing note?

A Yeah, I haven't -- I didn't -- I wasn't familiar with it, no.

Q Okay. In your calls to Dochow on the evening -- Mr. Dochow on the evening of May 9th, did you ever tell him that IndyMac needed a decision on whether it could file an amended TFR?

A I don't recall telling them, I recall him directing me. And I was kind of surprised by the language that he used, "I am directing you to amend the thrift report." I mean it -- I -- so my recollection is I didn't ask for anything and he responded with that very formal language and, I mean, I -- and so it -- it just kind of surprised me a little bit but it was -- but, I mean, it just surprised me a little bit.

Q Why did it surprise you?

A Because I -- I'm just not used to the "I am directing you to amend the thrift report."

Q Well, just the language?

A I had -- well and I hadn't made any request. My

recollection is I hadn't made any request to do that, he just kind of said it.

Q Well, were you surprised by the language that he used or the fact that he was telling you to file an amended TFR? The formality of --

A Well, of course we would need to file an amended TFR, I just was surprised with the language on the call. You know, I mean, I just hadn't even focused on that, I was just really focused on would he give us permission to do this or not.

Q Okay, so you told -- did you tell Mr. Dochow that IndyMac had $50 million in cash that it had available to put into the bank?

A What I told him -- my recollection is what I told him is "I'd like to book this receivable and I paid it back this morning," I think that was the, you know, I paid it back plus contributed $32 million more of capital.

Q Well that, to me, seems a little ambiguous as to when the receivable was booked, the IOU. So when you phrase it that way it seems a little inconsistent with your prior testimony.

A I don't view it as at all inconsistent with my prior testimony. One was an accrual accounting of $18 million at 3/31, okay? We had not closed our books yet, we were doing accrual accounting. The other was now we're in

real time and I'm saying, "I paid that receivable back this morning via a $50 million cash contribution from the holding company to the bank."

Q So you were saying you had booked a receivable that morning and paid it back that same morning?

MS. VETA: Mr. Chung, that is not his testimony.

MR. CHUNG: Well, I'm just trying to clarify, I'm not trying to put words in his mouth.

MS. VETA: I mean he's told you several times.

THE WITNESS: No, what I'm saying is we were doing accrual accounting and there's lots of entries that get done under accrual accounting subsequent to a quarter end that get reflected in the books as of a quarter end. This was one of the entries that was part of our accrual accounting as of 3/31 and it was, in particular, one that Mr. Dochow had given me permission to book as a receivable and I was saying, "Mr. Dochow, as further evidence of my intent to pay that receivable back, I paid it back this morning on -- in -- I paid that March receivable back on May 9th, this morning, $18 million, plus I contributed $32 million more of capital."

BY MR. CHUNG:

Q You said there was a March receivable?

A It's considered a March receivable under accrual accounting.

Q Okay. This is -- I'm sorry, it's been a little

confusing to me, the way you've phrased this, but just to put some finality on that specific issue, did you make it clear to Mr. Dochow that there was not a receivable on IndyMac's books or a capital contribution of $18 million or any other amount as of March 31, 2008?

A We booked a receivable -- I made it clear that I was asking permission on March -- I mean on May 9th under accrual accounting to book a receivable for $18 million as of 3/31 in our accrual accounting. He was clear on that, I was clear on that, Dayton Lierly, the audit partner at Ernst & Young was clear on that, and Mr. Dochow directed me to amend the thrift report to reflect the booking of that receivable.

Q And did you have a specific discussion about the cash that was available at March 31, 2008, to pay that receivable?

A At the holding company you mean?

Q Yes.

A I did not because I was only discussing what we contributed -- had already contributed down that morning to the bank.

Q Which was $50 million?

A Correct.

Q Okay. Well, was there a discussion about how much of that $50 million would count towards the first quarter of 3008?

A None of it counted towards the first quarter of 2008, it was -- that $50 million was in -- as I described it to Mr. Dochow and as it applied, that $50 million was in two parts, it was an $18 million payback of the receivable and a $32 million capital contribution, additional capital contribution. It was a second quarter event.

Q But the $18 million receivable would be used to calculate IndyMac's capital ratios for that March 31, 2008 time period?

A That's correct.

Q Did you ever tell Mr. Dochow that recording the $18 million transfer as a receivable was in accordance with GAAP?

A I don't recall discussing whether that was GAAP accounting or not with Mr. Dochow. I don't recall that.

Q Do you know if Mr. Lierly ever made that statement to Mr. Dochow?

A As I said earlier, I don't recall what Mr. Lierly said to Mr. Dochow, if he said anything. I just have a vague recollection he might have said something.

Q Did Mr. Dochow -- did you ever tell Mr. Dochow that Ernst & Young had said it was appropriate to include the $18 million contribution in the company's SEC filings as, you know, as counting towards that quarter's capital ratios?

A Say that again.

Q Did you ever tell Mr. Dochow that Ernst & Young had said that it was appropriate to include the $18 million receivable as part of IndyMac's capital ratios in the first quarter 2008 SEC filing?

A I'm sorry, you're going to have to do that once -- it's getting late and that was a long one and --

MR. RAZI: Maybe do it in two parts.

THE WITNESS: I think the answer is no because of the way you're asking that question.

MS. VETA: Let him break up the question.

BY MR. CHUNG:

Q Okay. Did E&Y ever say that IndyMac could count the $18 million receivable in its capital ratios for the first quarter 2008 form 10-Q.

A Now you've changed the question, you said now, "Does E&Y."

MS. VETA: That's right.

BY MR. CHUNG:

Q Yeah, I'm trying to break it down.

A Okay, so say that one -- say it -- because now I wasn't prepared for that, you changed that.

Q Okay. Did E&Y ever tell you that it was appropriate to count the $18 million receivable in the calculation of IndyMac's capital ratios as reported in its first quarter 2008 form 10-Q?

A No, they didn't directly tell me that but by implication of approving it --

Q Well, before --

MS. VETA: Let him finish his answer.

MR. CHUNG: Okay.

THE WITNESS: By their implication of approving it and being aware of it and even after that waiving their audit differences the implication was that was appropriate.

BY MR. CHUNG:

Q No, I meant prior to the calls with Mr. Dochow.

A I don't recall asking E&Y whether it was appropriate or not before I called Mr. Dochow. It's possible I did, I just don't recall it.

Q Did you ever tell Mr. Dochow that E&Y had said it was appropriate to count that $18 million receivable in the calculation of IndyMac's risk-based capital ratio as reported in the form 10-Q?

A I'm not sure but I don't think so. I don't recall that.

Q Did you tell Mr. Dochow that Ernst & Young could not complete its quarterly review in time for the form 10-Q filing?

A In that -- those calls on Friday evening?

Q Yes.

A Say that again.

Q Did you tell Mr. Dochow that E&Y could not complete its quarterly review in time for the form 10-Q filing?

MS. VETA: What do you mean by quarterly review?

MR. CHUNG: Well --

THE WITNESS: They're quarterly review to sign off on it. No, I don't recall that being discussed at all, no.

BY MR. CHUNG:

Q Did you tell Mr. Dochow that IndyMac's risk-based capital ratio would be below 10 percent if it took Ernst & Young's past audit differences?

A I did. I said that previously in my testimony.

MR. CHUNG: All right. Well, those are all the questions that I have for you today. Do you understand, Mr. Perry, that you remain under subpoena until tomorrow at 8:00 a.m. -- I'm sorry, 9:00 a.m.

THE WITNESS: I do.

MR. CHUNG: All right. It's 9:41 p.m., we're off the --

MS. VETA: Five --

MR. CHUNG: I'm sorry, 5:41, we're off the record.

(Whereupon, at 5:41 p.m., the examination was adjourned.)

* * * * *

REPORTER'S CERTIFICATE

I, Christopher Cutchall, reporter, hereby certify that the foregoing transcript of 236 pages is a complete, true and accurate transcript of the testimony indicated, held on December 17, 2009, at 8:59 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.

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Witness: Michael W. Perry
File Number: LA-03517-A
Date: Thursday, December 17, 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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