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: Friday, December 18, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 a.m.

APPEARANCES:

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PROCEEDINGS

MR. CHUNG: We're on the record at 9:00 a.m. on December 18, 2009. My name is Nicholas Chung. I'm here today with Lorraine Pearson and Roberto Tercero. We're all officers of the Commission for the purposes of this proceeding. We're here for the third day of Michael Perry's investigative testimony 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 MR. CHUNG:

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

A I do.

Q All right and, Mr. Perry, are you represented by counsel today?

A I am.

MR. CHUNG: Would counsel please identify themselves?

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

MR. RAZI: Good morning. Benjamin Razi from

Covington and Burling, also representing Mr. Perry.

MR. CHUNG: Thank you, Counsel.

(SEC Exhibit No. 1 was referred to.)

BY MR. CHUNG:

Q And, as with the prior two days of testimony, Mr. Perry, we have in front of you and available for your review a copy of the SEC Form 1662 and a copy of the formal order of investigation. Again, feel free to reference those documents if you need them today.

Continuing from where we left off yesterday, I would like to talk about the events of May 9, 2008. And I think where we left off is after your second phone call with Mr. Dochow, you had meetings with managers that were still there at the company at that late house?

A Just briefly and told them what had transpired. And, you know, and then I also called the chairman of the audit committee, Hugh Grant, and went through the whole circumstances of what had transpired.

Q All right. Before you -- and then what happened after you spoke to Mr. Grant?

A Well, as I recall, the -- we had scheduled an audit committee meeting for the next day and the team started working on completing kind of the final close, because that was the last issue, and getting all the documents ready for the audit committee meeting the next day.

Q All right and at what time did you leave work that evening?

A It wasn't long after that. You know, they didn't need my help to do -- to do that close and finish the documents. And I don't know, I recall leaving relatively shortly thereafter.

Q Before you left IndyMac that evening, did you talk to anyone about notifying the persons who worked on the TFR, to inform them of the change in the capital contribution?

A I don't believe I did, no.

Q Do you recall speaking to Brian Carter about letting others at the company know about the approved contribution from the OTS?

A I don't recall specifically saying that. I talked to -- I probably talked to Brian but I don't recall exactly. Brian, Blair, Pam Marsh, that group. And I'm confident that they talked to their team appropriately to get that implemented.

Q Well, do you remember calculating IndyMac's capital ratios in light of the additional $18 million contribution for the first quarter of 2008?

A I don't. I don't remember specifically. I think, before I left to go home, someone told me that, with the 18 million and the fact that the auditors now were waiving the audit differences, I think that somebody gave me an estimate

of what they thought that the total risk-based capital ratio would be.

Q Do you remember who that person was?

A I don't specifically, no.

Q Do you remember what the ratio they gave you was?

A I want to say it was like 10.22, but I can't remember specifically.

Q Was that same ratio then reported in the form 10-Q?

A I don't remember specifically if what somebody told me verbally Friday night as an estimate was exactly the same number we reported in the 10-Q or not.

(SEC Exhibit No. 529 was referred to.)

BY MR. CHUNG:

Q Exhibit 529 is an e-mail dated May 9, 2008, from Brian Carter to Peter Luttenberger and others. The subject of the e-mail is 3/31 Capital Contribution Receivable.

A Okay.

Q All right, Mr. Perry, I realize you're not copied on this e-mail from Mr. Carter. But have you seen this before today?

MS. VETA: Again, excluding what you may have been shown in preparation.

THE WITNESS: Excluding that, no.

BY MR. CHUNG:

Q Well, have you ever seen a version of this e-mail before?

A Not that I recall.

Q Do you remember dictating an e-mail like this to Mr. Carter on the evening of May 9, 2008?

A I don't.

Q Okay, the contribution -- the transfer of cash from the holding company to the bank on May 9, 2008, apart from the 18 million, why was the 32 million transferred that day as well?

A Well, we were going to have to contribute capital, more capital from the holding company to the Bank. That was the purpose of raising capital through the direct stock purchase plan. And so, you know, it was just a judgment, a judgment that I wanted to contribute a larger number than the 18 million.

Q But for what purpose?

A Well, I knew we were going to need more capital in the Bank in the second quarter, you know, and it was just the start of putting more capital in the Bank in the second quarter from the holding company. We might have -- I can't recall if we had put more before that already. But in my mind, it was, we had it, we were going to have to contribute it, you know, as I said in my previous testimony, the purpose of raising capital at the holding company was to contribute

it to the Bank.

Q Well, was it unusual to contribute money from the holding company to the Bank so far in advance of the end of a quarter?

A As I said in my previous testimony, the capital contributions were, you know, done on a -- were done consistently over the years as we were growing and they had become such a perfunctory and administrative matter that I wasn't aware specifically of the time frames in which they contributed that capital. I don't have a recollection about what the dates were that they were contributing the capital.

Q Did you have an understanding as to how much cash the holding company had after the transfer of $50 million on May 9?

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

Q Well, is that something you would have checked prior to authorizing the transfer of the $50 million, how much cash was available at the holding company?

A Probably. But I just don't recall it.

Q Who would you have asked for that information?

A Probably Francisco, who I was asking to make that -- make the 50 million capital contribution.

Q Do you have any recollection of transferring all the available cash at the holding company to the Bank on May 9?

A No, I don't.

Q Did you, on May 9, after the transfer of the $50 million, have any understanding at that point as to whether IndyMac Bancorp would be able to access money through the -- access capital through the DSPP going forward?

A You know, as I stated previously, I think we were uncertain going forward whether we were going to be able to access capital through the DSPP or not.

Q Well, by May 9, 2008, did you have a general understanding of what financials would be reported by IndyMac on the following Monday, May 12?

A By the evening of May 9, yes.

Q And by that point, did you have an understanding as to how the market would react to the financials and the disclosure in the Form 10-Q?

A I mean, I don't recall how I'm sitting here today how it reacted but I think that there could be arguments made either way. I would have made the argument that the market would react favorably to the release that we had for the first quarter.

Q And what's your basis for saying that?

A The -- the loss that we booked for the first quarter was reduced substantially from the fourth quarter. I think it was down roughly two-thirds, maybe, something like that. We were still well capitalized, we had a financial

forecast showing that we were going to continue to remain well capitalized.

Q Well, did you have concerns about the disclosure that you discussed yesterday about IndyMac's capital ratios in the first quarter 2008 if it had taken the risk weighting impacts of the MBS downgrades in that quarter?

A Excuse me? Say that again, please.

Q Were you concerned about the market reaction to the disclosure in the 10-Q of the risk-based capital ratio at IndyMac being below 10 percent if it had taken the risk weighting impact of the MBS downgrades for that quarter?

A I don't think I specifically considered that issue in my views about being concerned or not at that point in time.

(SEC Exhibit No. 671 was marked for identification.)

BY MR. CHUNG:

Q Okay, let me hand to you what's just been marked as Exhibit 671. Exhibit 671 is an e-mail dated May 10, 2008, from Mr. Perry to Darrel Dochow. There's no subject to the e-mail.

Mr. Perry, do you recognize Exhibit 671?

A I recognize it, but I don't recall sending it.

Q Okay, well, is this an e-mail -- does it appear to be an e-mail that you sent on May 10, 2008?

A It looks like it.

Q All right. It's a very short e-mail; let me just read it into the record. It says, "Darrel, thank you for your help last night. Have a good weekend. Mike."

Why did you send this e-mail?

A Well, obviously I was happy about the help that they provided us in agreeing to book the receivable. Which obviously was the difference between us being well capitalized on that total risk-based ratio or adequately capitalized.

As I said, I don't recall sending this. I'm sure I sent it. But I don't recall why I did on Saturday -- Saturday evening.

Q After May 9, 2008, when is the next time that -- the next instance in which you spoke to Mr. Dochow?

A I don't recall specifically when the next time I spoke to him was.

Q Did you ever speak to Mr. Dochow again about the May 9 approval of the $18 million receivable?

A Not that I recall.

Q All right, and then the next day, on May 10, 2008, was there an IndyMac Bancorp audit committee meeting that day?

A I believe there was, yes.

(SEC Exhibit No. 661 was referred

to.)

BY MR. CHUNG:

Q Let me hand to you what has previously been marked as Exhibit 661. Exhibit 661 is a unanimous written consent of the audit committee of the board of directors. Attached to that are the minutes of the May 7 and May 10, 2008, audit committee meetings. The document is Bates numbered 971832 through 971844.

A Okay. I'm sorry.

Q Mr. Perry, do you recognize Exhibit 661?

A I recognize them. I don't recall whether I ever reviewed them, you know, prior to this time period here.

Q "This time period" being 2009?

A Yes.

Q Okay. Just briefly, before we get into the May 10, 2008, audit committee meeting, you had mentioned you had a phone call with Mr. Grant the prior evening. As best as you can recall, can you tell me what you said and what he said during this phone conversation?

A I just relayed to him all of the issues that had transpired over the previous few days that we discussed yesterday evening and -- very clearly, all of the issues, and gave him the -- you know, told him of the resolution of the matter and what the regulators had approved and that the auditors were involved.

Q Sorry, can you go into a little more detail, you know, to the extent you have a memory of it, what you told Mr. Hugh Grant and what Mr. Grant may have said in response?

A My recollection is that I told him about -- you know, just as I did with Mr. Dochow, about the circumstances surrounding the audit difference issues. Something, obviously, Mr. Grant would fully understand. He is a former vice chairman of Ernst and Young, an auditor.

So I went through, you know, how we got down to the end, we were well capitalized, barely, on that last ratio, the total risk-based ratio, and that the auditors had raised a view that materiality should now be whether we're well capitalized or adequately capitalized. And, as a result, these audit differences which I hadn't been aware of in prior periods, these past audit differences, they were deeming them material.

And, you know, if we booked those, that we would have been not well capitalized on that ratio, that total risk-based ratio. And I explained the idea that I had on that Friday about the -- and the wire in the morning of the $50 million cash that was contributed down from the holding company to the Bank as well as the idea to book the receivable.

And I explained the calls that were made to Mr. Dochow at the OTS to seek his permission to get the

receivable, as well as Mr. Lierly's participation in that call. And that we had gotten approval to do that, we were closing our books to do that. And my recollection is I probably gave him the estimate of the capital ratio now with that taking place.

Q Did Mr. Grant say anything during this phone conversation?

A I think he -- I don't recall specifically. My vague recollection is that he was pleased with that result.

Q Well, did Mr. Grant express any surprise that the OTS had approved the booking of the receivable?

A I don't recall him expressing any surprise, no.

Q Do you remember Mr. Grant expressing any surprise about Ernst and Young approving the booking of the receivable?

A I don't recall him expressing any concern or surprise about Ernst and Young approving it, either.

Q What if anything do you remember Mr. Grant saying during this call?

A I don't remember specifically other than I have a vague recollection that he was pleased with the result and approved of the result. And we might have talked just administratively about the audit committee meeting, because he was chair of the audit committee, which was going to occur the next day.

Q Okay, so then let's move to the audit committee meeting on May 10. Was there a discussion about the $18 million receivable at that meeting?

A You know, in preparing for this, I didn't recall. I didn't recall specifically discussing it at the meeting. But I'm -- I'm pretty confident it was. In preparation for this, I understand that a number of other people have confirmed that it was discussed. It's totally logical, it would have been the first thing we would have discussed.

Q What do you mean other people have confirmed it?

A My understanding is that other people have recalled that issue.

Q Which persons are you referring to?

A I don't know specifically. It's my -- my attorneys have told me that.

MS. VETA: You need to stay away from communications with counsel.

BY MR. CHUNG:

Q Aside from discussions with counsel, you have no memory of -- do you have any memory of any discussion about either the $18 million receivable or the $50 million transfer at the May 10 audit committee meeting?

A I don't have any specific memory of it, no.

Q Well, looking at the minutes of the May 10 meeting, which starts on what's Bates numbered 841, the last three

digits?

A Yes.

Q Okay. In the second paragraph at the top, there's a reference to a committee package and handouts. Did you receive either of those documents?

A I don't recall specifically. I probably did.

Q Was that -- did you generally receive documents that board or committee members received if you attended such meetings?

A Yeah, if I attended the meeting, they would have been available to me in the meeting. So I'm saying I probably did receive them, I just don't recall it.

Q All right. And moving down to the third paragraph under the heading Review Investor Presentation and Earnings Projections, do you recall reviewing a draft of the first quarter review at this meeting?

A I vaguely recall doing that, yes.

Q What do you remember about that review?

A Really, all I remember is that, you know, I went in -- I mean, I have a vague recollection that I was involved in the meeting to give an update on where we were. And, you know, I can't recall specifically discussing that issue but I'm sure I did, the 18 million. I mean, I just can't -- my mind just can't recall it but I'm sure I did, because my policy was always to disclose everything.

I had called the audit committee chairman the night before to immediately tell him about it. I know it was discussed. I just can't remember it.

And so my goal was to just go through the initial investor presentation and let the audit committee get on with its work. I had plenty of other work to do in preparation for the earnings release on Monday.

Q Can you tell me the process in which the investor presentation was prepared and reviewed prior to its filing with the SEC on May 12, 2008?

A I can't tell you the specific process. But I know that we had a very careful process that I was highly involved in reviewing the PowerPoint slides, slide by slide and even developing some of those slides. Very involved in the shareholders letter -- not shareholders letter but the earnings release, press release, in reviewing and editing that. And I did review sections, just like I did with the 10-K, reviewed sections of the 10-Q and 10-K and was very comfortable and confident that we had done those appropriately and that all of our disclosures were appropriate.

Q All right, well, just generally, though, how many drafts of the first quarter review, the investor presentation, do you recall reviewing before it was final and filed with the SEC?

A More than one, probably more than two and probably less than 10. But, I mean, it's vague. You know? It was not unusual to go through multiple drafts of the investor presentation, the PowerPoint presentation, where we were adding slides, checking -- you know, checking them with care to make sure that the information was all completely accurate in the same form and manner that we did our SOX certification in filing the 10-Q.

Q And would you generally review the -- again, this is for the first quarter review for the first quarter of 2008. Do you remember reviewing that investor presentation by yourself or with others?

A I probably did both. As I said, those investor presentations and the press release were -- I was the ultimate person signing off on those, those two documents, the -- the press releases and the PowerPoint presentations -- I can't recall a quarter that I wasn't the ultimate person editing, controlling those two documents.

Q Okay, and again, specifically for the first quarter 2008, the investor presentation for that quarter, how many meetings do you remember having to review that presentation?

A I don't remember. They weren't -- I wouldn't call them "meetings" because we were working on it over the weekend. And, you know, you can see from the minutes that I left the meeting, the audit committee meeting, immediately

after kind of going through a draft of the investor presentation with the audit committee. And my recollection is Pam Marsh and I went back with her team and were working on it all afternoon.

Q Okay, when do you recall -- well, who else besides Ms. Marsh worked on that presentation with you?

A I don't recall specifically.

Q Well, historically speaking --

A Well, we would have counsel --

MS. VETA: Let him finish his question and then you answer it.

THE WITNESS: Okay.

BY MR. CHUNG:

Q Historically speaking, who else besides Ms. Marsh and the investor relations department would help you with preparing the quarterly reviews?

A The quarterly press release and investor presentation?

Q Correct, yes.

Q Well, our head of -- Pam Marsh would take kind of primary responsibility for the PowerPoint presentation and Grove Nichols generally would take primary responsibility for the press release. But both would coordinate together and then they would have a team -- they had extensive teams under them assisting them in that process.

And we also reviewed both documents with outside counsel and lots of -- and they reviewed it with lots of other senior managers to make sure that what we were saying was consistent with our 10-Q, was accurate with respect to our 10-Q, and -- was consistent and accurate with our 10-Q.

Q For purposes of Ms. Marsh's involvement with the investor presentation, do you have an understanding as to specifically who within her staff was helping her with that?

A I don't recall specifically that weekend. One of her right-hand people was Meg --

Q Wade?

A Meg Wade. And then I'm not sure on Grove's side, you know, who was helping him.

Q Well, do you know if Meg Wade was at the company during this time period? During the early May 2008 time period?

A My -- I'm not sure. My recollection was she was. But there was a point where she took maternity leave and my recollection was she was, but I'm not sure.

Q Well, do you recall someone within Pam Marsh's group named Carole Reuter working with her on the investor presentation?

A I don't recall that name. I don't recall that name.

Q So over the weekend, prior to the May 12 filing of

the investor presentation, do you remember meetings with Pam Marsh and someone from her group going over drafts of the investor presentation?

MS. VETA: He just answered that question.

BY MR. CHUNG:

Q I'm just trying to --

A I mean, I definitely met with Pam Marsh because she and I were working on that presentation. People were coming and going, you know, bringing slides in. I've got this slide done -- because people were working on different slides. So there were definitely other people who came in and out of those and they might have even sat down and discussed their slide. I'm just saying I can't remember specifically. You know, it was very, you know, a chaotic period, right, and we were working on the weekend trying to get something done that, you know, had taken a very long period of time and we were trying to do it right. So I don't remember who those people were, exactly.

Q Well, do you recall Brian Carter providing assistance on the drafting and review of the first quarter investor presentation?

A Vaguely recall Brian -- he was in the mix, definitely.

Q And what role do you remember Mr. Carter having in the drafting and the preparation of that investor

presentation?

A I don't recall any specific role, other than he was in the mix and assisting us. I do recall one other person, I think Yun-Ni Chen, who was head of the investment grade bond portfolio. I remember her being one who brought some of the bond slides in.

Q All right, but going back to Mr. Carter, do you remember Mr. Carter being responsible for any specific slides in the presentation?

A I don't.

Q Do you recall whether Mr. Abernathy had any involvement in the drafting or preparation of the investor presentation?

A You know, as I said, you know, he was focused on the 10-Q; I was focused on the PowerPoint investor presentation and the press release. I know, just as I looked at the 10-Q portions of it and was confident in it, I'm pretty confident that he looked at the press release and PowerPoint presentation. I don't recall specifically what role he played in them, though.

Q How did you provide your comments to drafts of the investor presentation?

A I don't recall specifically for that quarter, but I could tell you generally how I did it, in other quarters.

Q Please.

A Okay. Generally speaking, Pam and I might meet weeks in advance of a quarter end and we'd talk about, based on our experience of what had gone on in that quarter, what the key things that we thought we should focus on. And we'd start with the prior -- generally the prior quarter's investor presentation. And we'd take the slides, un-staple them and we'd kind of go, well, this one still applies this quarter, this one was unique to that quarter, it comes out. And then we'd talk about -- and we'd do an outline and we'd talk about our theme about how we -- you know, how best to explain clearly to our shareholders and to other interested parties what happened that quarter.

And so we would develop generally either an outline, either informally or formally, and then we would begin to work to build that package. She would generally come in at some point with a draft of that package to me and I would kind of look at it and might change the order of the slides, you know, cover this first, cover this second. This slide isn't -- you know, this slide isn't what I wanted, I want this slide. You know, and it would be a joint work product that ultimately we would get to a comfort level of this is -- this is the best disclosure to our shareholders of what occurred in this quarter in -- you know, in a big picture way.

It wasn't designed to be the Q, right? It was

designed to kind of, in summary, explain what I felt and what we felt as a management team were the most important things to highlight. And so then generally I would get a draft and I would go through it and edit it, both the words and the format and the text and maybe even the numbers. If I go, this number is wrong, you know, blah, blah, blah. And I might just go, here's my edits. And then from there, it would be more of an -- oftentimes, a closer working relationship where she might even really come in my office and we're working through slides sitting at my table.

(SEC Exhibit No. 602 was referred to.)

BY MR. CHUNG:

Q All right. Let me hand to you what has previously been marked as Exhibit 602. Exhibit 602 is an e-mail dated May 10, 2008, from Ms. Marsh to Mr. Perry, among others. The subject of the e-mail is, Presentation, Q1 '08 Earnings, Draft v11.PowerPoint. And attached to that e-mail is a draft of the IndyMac Bancorp first quarter review.

A Okay.

Q All right, Mr. Perry, do you recognize Exhibit 602?

A I do.

Q Is this an e-mail that you received on or about May 10, 2008?

A It -- it is.

Q Okay. Looking at this draft of the investor presentation, does this refresh your memory as to any discussion at the audit committee meeting on May 10 regarding this earnings presentation?

A Well, I think this is the presentation that I reviewed at the audit committee meeting, this draft here.

Q Okay. But looking at it now, does it refresh your memory as to any specific sections that were reviewed and discussed at the audit committee meeting?

A No, not specifically.

Q If you would turn to page 3 of the presentation, the slide entitled Positives and Negatives in the Quarter, do you have an understanding as to who was responsible for this specific slide in the presentation?

A Well, in terms of its design and --

Q Content.

A I was -- as I said, I was responsible for this entire presentation. Okay. I was reviewing and editing it.

Q Right.

A I read every word of it, I edited it. It's my -- you know, it's my responsibility, this document.

Q Okay, but you had mentioned earlier how, for instance, Yun-Ni Chen was -- provided slides related to mortgage-backed securities?

A Yes, correct.

Q But for this particular slide that I'm referencing here, Positives and Negatives in the Quarter, page 3, is there anyone who was primarily responsible for this specific slide?

A You're talking subordinate to me?

Q Yes.

A Other than Pam, you know, who also kind of was coordinating this whole thing, I don't recall anybody specifically working on this slide.

Q Anybody besides yourself?

A Or -- and Pam.

Q Okay. And so do you remember who drafted the capital section of this slide? In other words, the lower half?

A My recollection is that I did the initial draft of these -- these two pages -- these pages on the CAMELS. I did it myself without -- you know, kind of what I thought the positives and negatives were and then Pam brought some ideas to the table, we edited from there. But, you know -- and so it was kind of a mutual work product between Pam and myself.

Q All right, looking at the first bullet point next to Capital on the bottom half of this slide, I'll just read that into the record. It says, "Our Bank capital levels continue to exceed the levels defined as well capitalized by our regulators. The Bancorp contributed $70 million to the

Bank during Q1 '08 and another $50 million on May 9. We forecast remaining well capitalized and improving our capital ratios throughout 2008."

Do you recall who drafted that specific language in this draft of the earnings presentation?

A I don't.

Q Do you remember any review of that language prior to its becoming finalized?

A Well, I think, you know, my memory has been refreshed on this. But I would read this language and say this isn't worded exactly right.

Q Why do you say that?

A Because the 50 million on May 9 was not a capital contribution, as we discussed in my testimony yesterday evening; 38 million was a capital contribution --

Q Wait, 38 million?

A Thirty-eight million was a capital contribution in the second quarter and --

MS. VETA: Wait, you said --

THE WITNESS: Thirty-two.

MR. CHUNG: Let him finish.

THE WITNESS: Thirty-two. And 18 was the repayment of the receivable.

BY MR. CHUNG:

Q Okay, I'm sorry. Can you go over the numbers

again? Sorry for the interruption.

A Yeah, what I'm saying is the 50 million cash that was contributed down on May 9 was, as we discussed last night, had two parts: A repayment of a receivable, as we discussed last night, of 18 million and a $32 million capital contribution in the second quarter.

Q All right. So would it, in your mind, have been more accurate to say, "another 32 million on May 9"? Is that what you're saying?

A Well, in my mind, it would have been accurate to say that -- that Bancorp contributed 88 million of capital during Q1 '08 and 32 million in the second quarter, or something along those lines.

Q Well, did you have any concerns that wording it that way, 88 million to the bank during -- and I'm emphasizing "during" -- Q1 '08 would imply that $88 million was actually contributed during that quarter? In other words, on or prior to March 31, 2008?

A I mean, I think you're parsing language too carefully there. The 18 million receivable was as of 3/31, as we discussed yesterday evening. Lots of issues in accrual accounting are done after quarter end that are as of 3/31. And when you refer to them in investor presentations, using the word "during" wouldn't be, you know, a misleading word. It's during or as of 3/31 in accrual accounting. It's not

cash-based accounting here.

Q All right. But, again, did you have any concerns that investors may interpret this language differently? In other words, that $88 million was actually transferred and contributed to the Bank on or before March 31, 2008?

A Well, 88 million of capital was contributed as of 3/31 to the Bank, 70 million in cash and 18 million in a receivable.

Q Again, you're not answering the question.

Did you have that concern that investors would interpret this language differently, as I have described?

A I didn't have that concern. I don't think that investors would be focused on that issue.

Q And why is that?

A I don't think that would have been a material issue. They just cared whether we were well capitalized or not, as deemed by our regulators.

Q But did you have an understanding that this $18 million receivable was not an entry in IndyMac Bank's books and records prior to May 9, 2008?

A The $18 million receivable was a receivable as of 3/31, like all other accrual entries.

Q But again, my question was, was there an actual entry on IndyMac's books and records prior to May 9, 2008, to reflect that receivable?

MR. RAZI: Well, that wasn't the last question. I mean, you're changing the question.

MR. CHUNG: Okay, well --

THE WITNESS: I'm sorry, say that again, please?

BY MR. CHUNG:

Q Did you have an understanding that the $18 million receivable was not an entry in IndyMac's books and records prior to May 9, 2008?

A Yes, I did.

Q And given that understanding, again, did you have any understanding that -- any understanding that the language you were proposing, again, the Bancorp contributing $88 million to the bank "during Q1 '08" would be unclear to investors when that total $88 million dollar amount was actually contributed from the Bancorp to the Bank?

A I didn't have a concern about that. I didn't have a concern about that at all.

Q Did you discuss that with anyone in your staff?

A I don't recall discussing that with anyone in my staff, no.

Q Did anyone in particular in your staff help you revise this language that I've read to you on page 3 of the earnings presentation, this draft of it?

A I don't have a specific recollection about that. But, you know, I think it did get revised, is my

recollection. I don't remember specifically how it got revised. But I or someone else caught this language here, which is not correct, I believe. That's my recollection.

(SEC Exhibit No. 603 was referred to.)

BY MR. CHUNG:

Q Let me hand to you what has previously been marked as Exhibit 603. Exhibit 603 is a draft of the IndyMac first quarter 2008 earnings presentation with handwritten notations in it.

Why don't you thumb through this and let me know if you recognize any of the handwriting in this document.

A I do. Some of it is mine.

Q Okay. Well, on the first page, there's "Mike" written here in handwriting. Can you recognize that handwriting?

A It's not mine. I don't recognize that.

Q Well, do you recognize this draft generally?

A I certainly recognize my handwriting and recall some of these edits. So I have no doubt these are my edits.

Q All of them or just some of them?

A The ones with my handwriting.

Q Okay, do you recognize anyone else's handwriting in this document?

A I'm just quickly going through this and it looks

like there might be two more -- I see two handwritings other than mine in here, it looks like to me.

Q And whose handwriting do you recognize?

A I would only -- I would only be making an educated guess on that.

Q Well, what's your educated guess?

A On the second page here on the -- on the page on the Net Positives and Negatives, on the bottom at the right, that handwriting, I don't recall. I wouldn't have a good guess for you on that one.

MS. VETA: Wait a minute. Just so the record is clear, is this the page that has the number 4 down in the right-hand corner?

THE WITNESS: Yeah, I'm sorry. And that handwriting that's over in the corner, that's definitely not my handwriting. I don't recognize that handwriting and I don't even have a guess on that one.

The handwriting that is on page 8, for example, and this is the first page I'm seeing it on, that's kind of a little semi -- what's my handwriting called? The one that has partial cursive in it here at the top of page 8, I think that's Pam Marsh's, but I'm not sure.

BY MR. CHUNG:

Q You mean where it says, "How did this change?"

A Yes.

Q Okay.

A But, I mean, as I said, that's just an educated guess.

Q And have you looked through the other pages to see if you recognize anyone else's handwriting in this document? Page 12, for instance?

A That looks like that same handwriting as page 8. And if I had to guess -- educated guess being that that would be Pam's.

Q All right. And just thumbing through the rest of this, do you recognize any other person's handwriting in this besides Ms. Marsh's?

A As I said, I'm not sure I recognize Pam's.

Q Okay, possibly Ms. Marsh's.

A I don't.

Q Turning to page 3 of this draft presentation, do you recognize the handwriting next to the capital discussion near the bottom, the 88 and the 32 numbers?

A Those definitely appear to be my handwriting.

Q Okay, do you remember a meeting in which these edits were done? Or do you remember doing this, I guess, by yourself?

A Well, there's multiple people editing here. You know, my guess is that I went through this by myself and wrote my edits and gave it to Pam. She wrote her edits and

probably gave it to her team, is my guess to what happened here.

Q And when you made these edits, did you discuss these changes with anyone?

A You know, the way the process worked, right, is that, you know, I would provide my edits to Pam and she and her team would check them. And if, you know, for example I made a wrong number or they had a question about something, because they would check it against all of our 10-Q filing information, you know, come back to me and say, Mike, you know, you made an error here; we didn't put this edit in because you were wrong.

Q Right, but do you remember going through your comments one by one with anyone in the review of this specific earnings presentation before it was filed?

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

Q Did you have a practice of doing that in conjunction with the preparation and review of prior earnings presentations?

A You know, as I said, we would generally have some of those meetings. But we were at a point now where this document, you know, you can see was in relatively good shape. And so generally at the point where it was in relatively good shape and you were giving what I'd consider to be relatively

minor edits throughout, oftentimes I would just take the document, give my edits to Pam and go, here's my edits. And I think that's what occurred here, but I can't say for sure.

Q And looking at the bottom half of page 3 of this Exhibit 603, the word "very" has been crossed out with an X, with a line to an X there at that page. Can you recognize any of that writing?

A That's mine.

Q Do you remember a discussion about the removal of that "very" in that sentence?

A No. I would just say it's a pet peeve of mine where I'm doing investor presentations that adjectives, you know, you're -- aren't what you really should be doing here. You should be saying we're close. That's -- we're close. And I think, you know, the number speaks for itself.

Q Turning to page 6 of the presentation, again here 70 million has been crossed out and 88 has been handwritten in. Do you recognize that handwriting?

MS. VETA: I'm sorry, what page are you on?

MR. CHUNG: Page 6.

THE WITNESS: I do. That looks like my writing again.

BY MR. CHUNG:

Q Now, in conjunction with the preparation of this earnings presentation, do you recall any discussion about

disclosing the OTS approval of booking the $18 million receivable for the first quarter of 2008?

A No. I mean, I don't -- you know, I don't recall any discussion about disclosing that.

Q Did you personally consider it?

A No. I mean, I think that there are lots of issues that you -- that are minor details in closing your quarter. Our regulators had deemed us well capitalized. That was the important issue for shareholders, whether our regulators considered us well capitalized and whether we were well capitalized, and we were.

Q Well, did you consider disclosing that, without that OTS approval, that IndyMac would have been below 10 percent on its risk-based capital ratios?

A I don't recall considering disclosing that. I think we disclosed, if you look, in the positives and negatives --

Q Which page?

A On page 3, that there -- you know, in the capital section, there are scenarios where we could be adequately capitalized during this crisis. Regulatory response to being adequately capitalized is not known. That's in the negatives on the capital section here. I specifically put that wording in.

And we also, as I discussed yesterday, we footnoted

the capital ratios in the 10-Q for the first quarter, disclosing that if the bond downgrades had occurred at 3/31, we would have had -- we would not have been well capitalized and what those capital ratios would have been. I think the total risk-based ratio would have been like 9.40.

The other thing I would point out here is that the edit that I made to the 88 million also made it consistent in both the draft and this forecast on page 6 with the bar chart table, which showed it at 88 million, in both the draft and this forecast.

MS. VETA: And when you say "the draft," just so the record is clear, you're referring to Exhibit 602 --

THE WITNESS: Correct.

MS. VETA: -- at page 6?

THE WITNESS: Yes, where both showed 88 million.

BY MR. CHUNG:

Q Now, in the drafting and review of this first quarter 2008 investor presentation, do you remember any discussion about disclosing the waiver from the OTS on double risk weighting subprime loans?

A No, I don't.

Q Did you consider whether it was important to disclose that?

A I did not. I -- probably by this point, there were so many issues we had dealt with to get to this point to

close for the quarter, it -- I had long forgotten about that issue.

Q Well, do you remember considering or did anyone bring to your attention that without that waiver from the OTS on the double risk weighting of subprime loans, that IndyMac may have been below 10 percent at the end of the quarter on its risk-based capital ratio?

A I don't remember considering that or thinking about it and I don't recall anybody bringing that to my attention.

Q Now, are you aware of a certification process internally at IndyMac relating to the accuracy of the earnings presentation?

A Of just the earnings presentation as opposed to the 10-Q?

Q Yes.

A I don't know about a specific certification process. I know that, just like we did for financial planning, we tried to build a mini SOX-type process for this PowerPoint presentation and the press release to make sure that, as I said earlier, they were completely accurate and consistent with our 10-Q filing, which obviously had a higher level SOX certification process.

Q Did you play any role in the certification process for the -- for this first quarter 2008 earnings presentation?

A Other than I'm ultimately responsible for all of

the information that we disclosed publicly, no direct role.

Q Well, what is your understanding as to the persons internally at IndyMac who are responsible for that certification?

A I believe --

MS. VETA: Mr. Chung, you keep referring to it as a certification, and I don't think that was Mr. Perry's testimony.

THE WITNESS: Well, it wasn't a SOX certification.

MR. CHUNG: And I didn't refer to it as such.

THE WITNESS: There was a process, my understanding is, where various people had reviewed this document for accuracy and my general understanding and recollection is that Pam Marsh was responsible for this PowerPoint presentation, coordinating that and completing it, and her team. And my general recollection is, for the press release, it was Grove Nichols. But it might have been Pam Marsh for that, too.

BY MR. TERCERO:

Q Mr. Perry, just a clarifying question. In referencing risk-based capital, you used a figure which was 9.40. Is that the same as saying 9.4 percent?

A Yes.

Q And at an earlier time, I believe it was yesterday, you used again in the context of risk-based capital something

along the lines of 10.70. Is that another way of saying 10.7 percent?

A Yes, it is.

MR. TERCERO: Thank you for the clarification.

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

MR. CHUNG: Sure. It's 10:14, let's go off the record.

(A brief recess was taken.)

MR. CHUNG: We're back on the record at 10:25 a.m.

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

THE WITNESS: No, there weren't.

(SEC Exhibit No. 672 was marked for identification.)

BY MR. CHUNG:

Q Let me hand you what has just been marked as Exhibit 672. Exhibit 672 is another draft of the May 12, 2008, IndyMac Bancorp First Quarter Review. This one is numbered PERRY000988 through PERRY001034.

If you would thumb through this document and let me know if you recognize it?

A Yes, I do. It appears to be another draft, preliminary draft of that first quarter PowerPoint presentation.

Q And did you recognize any of the handwriting in this Exhibit 672?

A Yes, I did. I mean, I went through pretty quickly but it looks to be all my handwriting.

Q Okay, do you have any sense as to the date in which you made these comments on this draft of the earnings presentation?

A Well, it looks like it's subsequent to that last draft, because my edits are fewer this time around.

Q Okay. Looking at page 3 of the presentation, can you read what's at the very top next to "quarter"?

A Yeah, it says, "green and red."

Q What does that refer to?

A I was just saying, put the positives in green and the negatives in red, I think, is what I was saying. So that they would focus people more -- these are the positives, these are the negatives. We used color sometimes in our presentations.

Q Do you have an understanding as to whether anyone from the OTS reviewed this earnings presentation before it was filed with the SEC?

A I mean, I just have a general understanding that that wasn't the pattern and practice, as I recall.

Q What was the pattern?

A That they didn't review it prior to it being filed.

But, as I said in my earlier testimony, that they often listened in on the conference calls, the earnings conference calls. And based on feedback that we had received from them, they often reviewed the materials that we did on our earnings releases.

Q Right. Well, at any point -- at any point, meaning before or after this earnings presentation was filed with the SEC, did you talk to anyone at the OTS about this earnings presentation for the first quarter of 2008?

A I don't recall. It's possible that I could have even sent this to them in advance of the earnings release, like electronically, for example.

Q Okay, but you don't --

A I don't recall specifically.

Q And do you have an understanding as to whether anyone from Ernst and Young reviewed this first quarter 2008 earnings presentation before it was filed with the SEC?

A My understanding is that Ernst and Young reviewed the 10-Q, the PowerPoint presentation and the press release, word for word, cover to cover.

Q What's the basis for your understanding?

A Just, you know, my understanding about the role that they played and the review process that they did, which was extensive.

Q And again, the review of these documents by Ernst

and Young, to your understanding, was before these documents were actually filed with the SEC?

A That's my understanding.

Q Okay, did you discuss the first quarter 2008 earnings review -- earnings presentation with anyone from Ernst and Young before it was filed with the SEC?

A No, it wasn't my pattern and practice to do that.

Q All right, and did you speak to anyone at Ernst and Young after it was filed with the SEC, the earnings presentation?

A I don't recall doing that, no.

(SEC Exhibit No. 604 was referred to.)

BY MR. CHUNG:

Q Okay, let me hand to you what's previously been marked as Exhibit 604. Exhibit 604 is a one-page document. It is entitled Earnings Press Release and Webcast Approval/Authorization Form.

A Okay.

Q All right, Mr. Perry, do you recognize Exhibit 604?

A I do not.

Q Are you familiar with this form at IndyMac?

A I am not.

Q Do you recognize any of the signatures on this document?

A I mean, generally, yes.

Q Okay, well, specifically which signatures do you recognize?

A Well, I recognize Blair's. Pam's and Greg's, I'm not sure I would recognize but for their name being typed below it.

Q But are you familiar with Mr. Abernathy's signature?

A I am.

Q Okay, and does this refresh your memory as to a certification process that existed at IndyMac in relation to the quarterly earnings releases?

A Well, I think this certification here is the lower level one, not the SOX certification for the 10-Q. This is the lower level one for the PowerPoint presentation and the press release. And as part of -- I don't think most companies do these in such a formal manner, and it's just part and parcel of the seriousness with which we took these activities. But I have not seen this before.

Q Right, but my question was, are you familiar with the certification process?

A Just -- just generally that I was aware that they were doing one.

Q For the earnings presentation?

A For the earnings presentation and the press release, yes.

BY MR. TERCERO:

Q Sir, just one additional question on the exhibit. It appears that there may be a signature in the upper right-hand corner and then in printing it says Dennis Sison. Do you know if that's Mr. Sison's signature?

A I don't know who Mr. Sison is.

Q Thank you, sir.

A Okay, thanks.

BY MR. CHUNG:

Q Mr. Perry, did you review the final version of the investor presentation for the first quarter of 2008 before it was filed with the SEC?

A I'm not sure. We might have been down to like a last few edits and I said, Pam -- you know, because I think we filed it on Sunday night is my recollection, but I could be wrong. And it was like down to the nits and gnats and I'm like, "Pam, do your process; I don't need to see it again."

So I'm not -- and that generally was kind of pattern and practice. I probably didn't review the final, final last nits and gnats before it got released.

Q Well, do you have an understanding as to whether documents can be filed with the SEC on non-business days?

A I don't have an understanding of that.

(SEC Exhibit No. 673 was marked for identification.)

BY MR. CHUNG:

Q Let me hand to you what has just been marked as Exhibit 673. Exhibit 673 is an IndyMac Bancorp Form 8-K for May 12, 2008. And attached to this is the IndyMac Bancorp press release dated May 12, 2008, and the IndyMac Bancorp webcast presentation, also dated May 12, 2008.

I certainly don't expect you to review every page of this Exhibit 673 but, Mr. Perry, after this 8-K was filed with the SEC, did you review it?

A After the -- well, I made a presentation to -- my recollection is I did an investor call that Monday. So I reviewed the -- I reviewed, as you can see, numerous drafts of it, and very carefully. I might not have reviewed the last draft, every last nit and gnat. But I gave approval to Pam to finish it out and file it electronically.

And then my recollection is, when I came in Monday morning, the final versions were sitting on my desk. And I probably quickly looked at those. And my pattern and practice was to jot down some notes in preparation for the investor call.

Q Okay. So turning to page 3 of the earnings presentation, it's after the press release. It's the Positives and Negatives in the Quarter slide, page 3. Again, I'll just read that first bullet point next to Capital into

the record. It says, "Our Bank capital levels continue to exceed the levels defined as well capitalized by our regulators. The Bancorp contributed $88 million to the Bank during Q1 '08. We forecast remaining well capitalized and improving our capital ratios throughout 2008."

Did you have an understanding that that language would appear in the final 8-K as filed with the SEC on May 12, 2008?

A I did.

Q Okay, do you remember any discussion about that information during the earnings call on May 12?

A I don't.

BY MR. TERCERO:

Q Sir, on that document and in that passage, when you say -- when it says "our regulators," what is your understanding of who precisely "our regulators" is? And I'm again referring to the first box next to the word Capital on page 3.

A Well, my -- the reference here would have been to our primary regulator, the Office of Thrift Supervision.

Q What about the FDIC?

A You know, the OTS was our primary regulator. My thought wouldn't have been -- and, you know, we hadn't dealt directly with the FDIC hardly ever. My thought in my mind in writing that would have been the Office of Thrift Supervision

was our primary regulator.

Q With regard to the $18 million, did you or anyone -- well, did you ever seek to contact anyone from the FDIC concerning that issue?

A I did not.

Q Are you aware of anyone else from IndyMac Bank doing so?

A I'm not aware of anyone else doing that.

Q Are you aware of anyone from Bancorp doing so?

A I'm not aware of anyone from Bancorp doing so.

Q Did you think of contacting the FDIC regarding that issue?

A I wouldn't have thought of contacting the FDIC on that issue.

Q And with regard to that last question, why?

A Well, because the Office of Thrift Supervision was our primary regulator. And I knew they were communicating and coordinating closely with the FDIC.

Q How did you know that, sir?

A Because they had invited them out on the exam and they had told me that they were communicating closely with the FDIC.

Q This was the 2008 exam?

A Correct.

Q And when you say "they had told me," who is "they"

in your response?

A The OTS.

Q Who at the OTS?

A I don't remember specifically. But they had said that -- I have a vague recollection it was Darrel. You know, "We're coordinating closely with the FDIC on this examination, given the environment."

Q To the extent that you can recall, when did you learn that information?

A As I said, it's vague and I can't say for sure it was Mr. Dochow.

MR. TERCERO: All right, thank you.

BY MR. CHUNG:

Q At IndyMac in the period in 2008 between January and July 2008, did you have an assistant?

A I had an administrative assistant and also a chief of staff.

Q Who was the administrative assistant?

A Charie Laugharn.

Q Could you spell that for the record, please?

A I can. C-h-a-r-i-e, L-a-u-g-h-a-r-n.

Q And who was the chief of staff?

A I had had numerous chiefs of staff over the years. My recollection is that Brian Carter was serving that dual role and also chief management accountant.

Q And did Ms. Laugharn have any assistants?

A Ms. Laugharn?

Q Ms. Laugharn, I'm sorry.

A Yeah. I'm not sure if any other, you know, administrative people, you know, reported to her. It's possible, but I don't recall that.

Q Okay, and did you ever receive -- do you recall receiving in early 2008 drafts of the first quarter 2008 Form 10-Q from an assistant? I guess specifically Ms. Laugharn.

A Do I remember like in -- ask that question again, please?

Q Do you recall receiving in 2008 any drafts of the first quarter 2008 Form 10-Q from Ms. Laugharn or some other administrative person?

A I don't have that recollection, no.

Q Was there ever a practice of receiving drafts from assistants, drafts of SEC filings?

A I wouldn't say that I have a recollection that there was a practice of that, no.

BY MR. TERCERO:

Q Sir, one additional question with regard to the $18 million in capital. Did you at any time ever learn whether the OTS informed the FDIC about the $18 million contribution?

A No, I didn't.

(SEC Exhibit No. 674 was marked for

identification.)

BY MR. CHUNG:

Q Let me hand to you what has just been marked as Exhibit 674. Exhibit 674 is an e-mail dated April 30, 2008, from Dennis Sison to Andrew Mokhov and others. The subject of the e-mail is First Draft 10-Q to Disclosure Committee Members.

I realize you're not copied on that e-mail. And I want to draw your attention to Mr. Sison's e-mail preceding that e-mail on April 30, 2008, at 12:49 p.m. The one at 12:12 p.m. is addressed to different persons. And in that e-mail, Mr. Sison on the second page says, next to Draft 10-Q, "Attached is the first draft of the 10-Q for the first quarter of 2008 for your comments." Below that, it says, "Assistants --- please ensure that they get a copy of the draft Form 10-Q ASAP."

And so turning to the first page again, looking at Mr. Sison's e-mail at 12:12 p.m. on April 30, 2008, can you look at the recipient list and let me know if any of the persons who are receiving that e-mail from Mr. Sison was an assistant to you?

A You know, as I said, my assistant was Charie Laugharn and I don't see her on this distribution list. Brian Carter, who was serving in a dual role as my chief of staff and also chief management accountant is copied on this

list.

Q Okay, do you remember Mr. Carter ever providing you with a draft of the first quarter 2008 Form 10-Q?

A I don't recall that, no.

Q Do you know who Vanessa Perry is? She's one of the persons c.c.ed on Mr. Sison's e-mail of 12:12 p.m.?

A She's not a relation of mine. It's a common name. I don't recall who Vanessa Perry is, no.

Q And were you a member of IndyMac's disclosure committee in 2008?

A Not that I recall.

Q Were you ever a member of IndyMac's disclosure committee?

A I don't believe so.

(SEC Exhibit No. 675 was marked for identification.)

BY MR. CHUNG:

Q Let me hand to you what has just been marked as Exhibit 675. Exhibit 675 is IndyMac Bancorp's Form 10-Q for the quarterly period ended March 31, 2008.

Okay, Mr. Perry, do you recognize Exhibit 675?

A I'm sorry, is this the final one that was filed?

Q Yes.

A I do recognize it, yes.

Q Just for the record, I printed this from the SEC.gov website.

A I do recognize it.

Q Okay. If you could turn to page 31? On page 31, which is a page entitled Capital, near the bottom, I'll just read the last paragraph into the record. It says, "During April 2008, Moody's Investor Services, 'Moody's,' and Standard and Poor's Rating Services, 'S&P,' downgraded the ratings on significant number of MBS backed by nonagency collateral, including certain of those issued by IndyMac and for which IndyMac has retained interests in its MBS portfolio. A total of 29 bonds with carrying value of $160 million were downgraded. These downgrades will negatively impact the company's tier one risk-based capital ratio and total risk-based capital ratio as of June 30, 2008, as the risk weighting of MBS is dependent upon the ratings provided by these ratings agencies. Had these lower ratings been in effect at March 31, 2008, our capital ratios would have been 5.74 percent tier one core and 8.01 percent tier one risk based and 9.27 percent total risk based."

Mr. Perry, do you remember reviewing that language prior to its inclusion in the final Form 10-Q that was filed?

A I don't.

Q Were you aware that that language was going to be included in the 10-Q?

A I don't recall being aware of that.

Q Do you recall any discussion about inclusion of such language in the 10-Q?

A I do not.

Q Turning to page 44, this is a page entitled Fair Value of Financial Instruments. Looking at the third paragraph on that page, the very last sentence reads, "In addition, given the current market illiquidity characterized by a lack of relevant and reliable market inputs for the private label mortgage-related securities, had we relied solely on broker market indications, the fair value of the trading securities would have declined by approximately $120 million."

Were you aware at the time of the filing of this Form 10-Q, had IndyMac relied solely on broker market indications of fair values for the trading securities, that the valuation reported would have declined by $120 million?

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

Q Can you turn to -- it's four pages from the end, it's Exhibit 31.1? It's a certification, I guess, for the chairman of the board of directors and the CEO, Mr. Perry. Did you physically sign a certification like this for this Form 10-Q?

A I believe I did.

Q Did you read the certification before you signed it?

A I did.
Q And was it your practice to sign a physical certification like this for prior Forms 10-Q and 10-K that were filed at IndyMac?
A Can you repeat that question, please?
Q Was it your practice to sign a physical certification like this Exhibit 31.1 of Exhibit 675 in prior 10-Q and 10-K filings?
A My recollection, it was.
Q And did you read the certification before you signed it, typically?
A I probably didn't read it as carefully as I should have, but I had scanned it and was familiar with it and familiar with the terms. And I had read it thoroughly several times.
Q Did you understand when you signed this certificate, certification, Exhibit 31.1 to Exhibit 675, were you aware when you signed this certification that you were certifying that you had reviewed this quarterly report on Form 10-Q of IndyMac Bancorp?
A I was aware of that.
Q Had you, in fact, reviewed the quarterly report on Form 10-Q prior to signing the certification?
A I had reviewed portions of it, yes, the key portions that I felt were important. Plus I had gone through

the very extensive SOX certification process, which discussed the key issues, you know, similar to what the audit committee went through in terms of the key valuation issues from mortgage-backed securities to loan loss reserves to litigation and a number of other factors. And I also knew that we had extensive cover-to-cover review by my management team, by our auditors, by outside counsel and by our audit committee, who read it cover to cover.
Q Now, I thought in prior testimony, either yesterday or the day before, you had said you did not recall reviewing portions of this Form 10-Q?
A No, I believe -- I believe -- I don't recall what my testimony was yesterday, but my recollection is I reviewed pieces of this 10-Q.
Q Okay, well, are there specific portions that you recall reviewing prior to the filing of this Form 10-Q?
A I don't recall today what specific portions I reviewed, no.
Q Did you read this Form 10-Q cover to cover?
A I did not.
Q After this Form 10-Q was filed, did you discuss it with anyone from the OTS?
A I don't recall discussing it with anyone from the OTS, no.
Q Are you aware of anyone from the OTS reviewing the

Form 10-Q before it was filed with the OTS?
A I'm not aware of that.
Q I'm sorry, before it was filed with the SEC. Let me ask the question again.
Do you recall anyone from the OTS reviewing a copy of the Form 10-Q before it was filed with the SEC?
A I'm not aware of that.
Q And did you discuss any draft of the Form 10-Q with anyone from Ernst and Young before it was filed with the SEC?
A I didn't personally, no.
Q Did you discuss this Form 10-Q with anyone from the --
A Can we step back on that question? Can you ask me that previous question again, please?
Q Did you discuss with anyone from Ernst and Young drafts of the Form 10-Q before it was filed with the SEC?
A I don't recall specifically. It's possible.
Q And did you discuss the Form 10-Q with anyone from Ernst and Young after it was filed with the SEC?
A Not that I can recall.
Q Before this 10-Q was filed with the SEC, did you yourself consider whether the $18 million receivable should have been disclosed in this Form 10-Q?
A You asked me that question already. I didn't consider that.

Q Did you consider whether the waiver by the OTS on the double risk weighting of subprime loans should have been disclosed in this Form 10-Q?
MS. VETA: Mr. Chung, didn't you already go through this line of questions?
BY MR. CHUNG:
Q Well, if you could just answer the question?
A Can you repeat -- repeat that one more time?
Q Do you recall considering whether to disclose the OTS's waiver of the double risk weighting of subprime loans in this Form 10-Q?
A I don't recall that.
(SEC Exhibit No. 625 was referred to.)
BY MR. CHUNG:
Q Let me hand to you what has previously been marked as Exhibit 625. Exhibit 625 is an e-mail dated May 11, 2008, from Michael Perry to Robert Hunt and others. The subject of the e-mail is First Quarter Observations.
A Okay.
Q All right, Mr. Perry, do you recognize Exhibit 625?
A I do.
Q Is this an e-mail that you sent on or about May 11, 2008?
A It is.

Q Okay. I just want to take you through Mr. Hunt's e-mail, the one dated May 11, 2008, at 7:14 p.m. Item two of his e-mail reads, "Valuation of MBS portfolio both available for sale and trading." It says, "No active sales data was available for MBS portfolios at quarter end because of the lack of liquidity in the market. And, as a result, industry participants reported significant differences in their portfolio valuations at quarter end. The company was forced to analyze the methodologies and valuation parameters used by others to ensure that we utilized appropriate techniques. Given our tight capital ratios, our audits gravitated to an extremely conservative approach. Mike and the team spent countless hours dissecting disclosure data from the competition and determined that the approach utilized by us produced a result that was somewhere in the midrange of reported results."

Do you remember telling Mr. Hunt that the approach used by IndyMac on valuing the MBS portfolio resulted in numbers that were somewhere in the midrange of reported results?

A No, I don't.

Q Do you have an understanding as to whether anyone else at IndyMac may have made such a statement?

A Well, Mr. Hunt was on the audit committee and they reviewed the valuation of the mortgage-backed securities and

the methodology and discussed that with the external auditors, both in the meeting and in executive session. So I imagine that it occurred during that process that he obtained that view.

Q Turning to the next page, it says, item three, Moody's and S&P Downgrades, "Subsequent to quarter end, we received notification that various MBS securities that the company held were downgraded by the rating agencies. The financial statement of these downgrades had to be accounted for as of March 31. The impact of these downgrades had a significant impact on our capital ratios as the required capital on a number of the securities was increased to 100 percent from a 2 percent risk weighting."

Do you have an understanding as to what Mr. Hunt meant when he referred to the financial statement impact of these downgrades had to be accounted for as of March 31?

A I think what he was referring to is there was a GAAP impact as a result of those downgrades that had to be taken into account in closing our books at 3/31.

Q Do you recall a specific discussion with Mr. Hunt about that?

A I don't recall a specific discussion with Mr. Hunt regarding that, no.

Q Okay, item four, Change in Status of the CFO says, "With Scott's medical leave, we had a chance to see Blair and

the rest of the accounting team step up to meet the challenge. We also were able to observe a change in attitude of the management team, as Scott's negative and doomsday influence was eliminated."

Do you have an understanding as to what Mr. Hunt meant when he wrote "Scott's negative and doomsday influence"?

A Yeah, I think we talked about that yesterday when we were talking about Mr. Keys. He definitely was, you know, feeling enormous stress and pressure and was not holding up well with that pressure. And as I testified yesterday, a number of managers came in to me and said, Mike, you know, you need to do something about Scott, he is in very rough shape.

Q I believe you characterized his behavior, Mr. Keys's behavior, as erratic. But in terms of "doomsday influence" in Mr. Hunt's e-mail, Exhibit 625, do you have an understanding as to what that referred to?

A Generally, I do.

Q What is that general understanding?

A Well, I think, you know, towards the end of his tenure, he had a pessimistic view about whether we were going to make it.

Q Let's move down on Exhibit 625 to item six, Consultation with the OTS. It says, "Throughout the closing

process, Mike stayed in constant contact with the regulators. This continuing dialogue and the respect that the OTS has for Mike and his team was rewarded when Darrel Dochow agreed to permit an amendment to the first quarter thrift financial report. The amendment had the effect of increasing our regulatory capital by $18 million and bolstering our risk-based capital ratio to 10.26 percent."

Do you remember telling members of the audit committee that Mr. Dochow had agreed to permit an amendment to the first quarter TFR?

A I don't remember that specific language. As I said, I can't recall discussing that issue. Remember, I recall calling Hugh Grant and telling him in great detail that Friday evening, May 9. And then the next morning with the audit committee, in the minutes it shows that I did the investor presentation. But I just can't recall discussing the 18 million then. I'm absolutely confident that I did, even though I can't recall it. And I think this comment here, in six, is further evidence that I did, because Mr. Hunt is a member of the audit committee and is providing this update to the full board on Sunday.

Q Do you remember telling Mr. Hunt or any other member of the IndyMac audit committee that Mr. Dochow had directed you to file an amended TFR for the first quarter of 2008?

A As I said, I don't remember. I remember telling that to Mr. Grant on Friday evening. I don't remember what I told the audit committee on Saturday morning; I don't have a recollection of that.

Q Earlier, I had asked you if you had ever spoken to Mr. Dochow about the $18 million receivable after May 9, 2008. Now I want to ask you if you had spoken to anyone from the OTS after May 9, 2008, regarding that $18 million receivable?

A Not that I recall. I mean, I didn't generally deal directly with our regulators. You know, we had a strong and extensive management team, a senior manager in charge of regulatory relations who was very experienced. And so I generally was not -- other than the e-mails that I sent Mr. Dochow and his staff to keep them informed of our financial status, I wasn't in regular communications with the OTS or other regulators.

Q Well, were you aware then of any communications between any of your staff at IndyMac on the one hand and anyone from the OTS on the other relating to the $18 million receivable?

A Not that I can recall.

MR. CHUNG: All right, it's 11:09. Let's go off the record.

(A brief recess was taken.)

MS. PEARSON: We're back on the record at 11:17.

BY MS. PEARSON:

Q Mr. Perry, during the break, was there any substantive discussion between you and the SEC staff?

A No, there as not.

Q Mr. Perry, did Mr. Keys ever tell you that he had discussed the possible capital contribution of $18 million as of March 31, 2008, with anyone from the OTS?

A Not that I can recall.

Q And did you ever learn that Mr. Keys had had any such discussion?

A I did not.

(SEC Exhibit No. 676 was marked for identification.)

BY MS. PEARSON:

Q Mr. Perry, I'm handing you what has been marked as Exhibit Number 676. The exhibit consists of two e-mails, the top one on the first page appears to be from Mr. Perry, sent to Pat and team. The lower e-mail on the page appears to be from Patrick Hymel sent to Michael Perry.

MR. RAZI: I just note for the record, the "to" recipients aren't listed on the top e-mail. I don't know what that indicates.

MS. PEARSON: You're correct and I do not see them. The second page of the exhibit provides the metadata to the

message, and that also does not have anything for "to."

THE WITNESS: Okay.

BY MS. PEARSON:

Q Mr. Perry, do you know if you sent the e-mail at the top of the first page of Exhibit 676?

A I recall sending it, yes. I recall sending it, yes.

Q The p.s. to that e-mail reads, "I have asked Grove and Pam to work on a short blog regarding the trade for Monday."

Do you have if a blog was prepared?

A I don't recall specifically. If it was, you can find it on the IMBReport.com.

Q Did you read the e-mail from Mr. Hymel?

A I did.

Q The first paragraph of that e-mail, the second sentence reads, "On April 1, we traded $335 million of held-for-sale and held-for-investment prime jumbo hybrid ARMs, which will settle on April 15."

And in the second paragraph, he writes that -- the first sentence reads, "We sold roughly 235 million of a AAA-rated MBS LIBOR floater at LIBOR plus 165 BPS for a price of par (100) to FHLB Seattle."

Considering the fact that private label MBS was disrupted at this time, did you have any questions as to how

IndyMac was able to sell the bond at part?

A I mean, you want me to give you my rationale for that?

Q Yes.

A It was -- it was kind of, you know, in my mind, twofold. One, you can see there is tremendous subordination, you know, to that bond. There is 335 million in collateral and the AAA MBS floater that they bought, which I believe the most senior bond -- so there is essentially 100 million of credit protection below their bond. So, you know, it was, I think, a combination of the -- of a very strong floating yield, LIBOR plus 165, the fact that the bond was rated AAA and not only rated AAA but unprecedented subordination below the bond.

Q The second sentence in the second paragraph in the e-mail from Mr. Hymel begins, we sold -- I'm sorry, "We retained approximately 100 million in bonds." Was that your understanding, that IndyMac retained the remainder of the transaction?

A That was my understanding.

Q Did you discuss this transaction with anyone at IndyMac?

MS. VETA: Other than the e-mail?

BY MS. PEARSON:

Q Yes, did you have any discussions?

A I don't recall having discussions, no.
Q Did you have any discussions with anyone from E&Y?
A I don't recall having any discussions with anyone from E&Y.

(SEC Exhibit No. 677 was marked for identification.)

BY MS. PEARSON:

Q Mr. Perry, Exhibit 677 appears to consist of two e-mails, the top one on the first page appears to be from you, dated April 9, 2008, to Randall S. Kroszner.
A Okay.
Q Do you recognize this e-mail?
A I do.
Q Did you send it?
A I did.
Q And why did you send it?
A To Mr. Kroszner? Governor Kroszner?
Q Yes.
A He was the Federal Reserve Board liaison to the Thrift Industry Advisory Council, of which I was a member. And, you know, one of our duties being on that council was to keep him and the Federal Reserve informed of activities that were going on in our -- in our marketplace.
Q Did you receive a reply?
A I don't recall specifically.

(SEC Exhibit No. 678 was marked for identification.)

BY MS. PEARSON:

Q Mr. Perry, I'm handing you a copy of what has been marked as Exhibit 678. It appears to be a copy of the same e-mail as the -- the same e-mails as make up Exhibit 676, except that in Exhibit 678, the individuals that the e-mail at the top of the page was sent to are included.
A Okay.
Q I just enter it for the record.
A I thought you had some gotcha.
Q It was a gotcha on me.

(SEC Exhibit No. 679 was marked for identification.)

BY MS. PEARSON:

Q Mr. Perry, I'm handing you what has been marked as Exhibit 679. It appears to be an e-mail that you sent on April 30, 2008, with the subject, FAS 157 Fair Value on Our Investment Grade MBS Portfolio, Confidential.
A Okay.
Q Mr. Perry, the p.s. to the e-mail reads, "I told Eric how we took the AAA 'super senior' bond that we sold to the FHLB of Seattle at 99.75 on April 1 and sent it to the dealers to bid on it and how they came in with a price nearly 10 points lower with our arm's length sale ... he said,

'Exactly, these dealers right now are providing nothing but forced sale bids. That is why we are not using them.'"
Do you know how you learned that the bond had been sent to dealers to bid on?
A I don't recall specifically, no. Someone obviously on our team told me that.
Q Do you have an understanding as to which dealers were contacted?
A I don't have a recollection that they told me which dealers.
Q And do you have an understanding as to how many dealers were contacted?
A No, I don't.

(SEC Exhibit No. 680 was marked for identification.)

BY MS. PEARSON:

Q Mr. Perry, I'm handing you what has been marked as Exhibit Number 680. It appears to be a PowerPoint presentation. The first page is headed Comparison of MBS Valuations as of 3/31/08 to External Parties. And on the last page, the document identifier is PERRY_M_00105509.
A Okay.
Q Mr. Perry, do you recognize Exhibit Number 680?
A I do.
Q What is it?

A This is the document I was talking about in previous testimony that I recalled Mr. Scribner and possibly Mr. Abernathy reviewing with me in terms of their high-level view about how they took their approach to valuing our mortgage-backed securities portfolio under FAS 157. And I believe this was reviewed -- this was reviewed with the auditors and the audit committee.
Q On the first page of Exhibit Number 680, under the heading of Executive Summary, besides the first bullet, it reads, "IMB used a level three valuation methodology based on an actual third party, nonagency MBS trade executed on 4/1/98 with FHLB of Seattle."
Did you ever have any discussions -- strike that.
Was it your understanding that the level three methodology was based on this trade?
A My recollection was that it was based on all of the -- all of these data points that you see in here, looking at that trade, what Ernst and Young wanted us to look at, also what others had disclosed related to their first quarter in their financial statements, and you can see a lot of discussion about that. I don't recall it specifically being based on that one trade.
Q Do you recall if during your meeting to review Exhibit Number 680 if you had any questions?
A If I had any questions about the presentation?

Q Yes.

A I vaguely recall I had some questions about it. I asked some questions, but I can't remember specifically what they were.

(SEC Exhibit No. 663 was referred to.)

BY MS. PEARSON:

Q I am handing you what has previously been marked as Exhibit Number 663.

Mr. Perry, do you recognize Exhibit Number 663?

And for the record, Exhibit 663, the first page appears to be an e-mail from Canise Arredondo to various individuals. The subject is, Handout, Financial Reporting Matters. And the document identifier is SOSNOVICH_G_00072191.

A I mean, I recognize it generally as being a similar document to one -- one or both of these I reviewed.

Q Do you know if you saw Exhibit 663 at an audit committee meeting?

A You know, my general recollection is I wasn't attending audit committee meetings, you know, during this time frame. It's possible but I don't recall that.

Q Do you know if you saw it at the May 10, 2008, audit committee meeting?

A I don't believe I did because, as those minutes

show, and my recollection is refreshed, I went through the investor presentation and then excused myself from the meeting to continue to work on the press release and PowerPoint presentation.

Q If you could please turn to page 15 in Exhibit Number 663?

MS. VETA: This is in the appendix?

BY MS. PEARSON:

Q Yes, appendix, level three valuation methodology.

Do you know if you have seen the information on page 15 before?

A I'm not sure. If you -- if you ask me -- I'm not sure.

Q Do you have an understanding as to whether the MBS sale to the Federal Home Loan Bank of Seattle was compared to information given to IndyMac by Merrill Lynch?

A Can you repeat that one more time for me?

Q Sure. Do you have an understanding in the development of the level three valuation methodology, the sale by IndyMac to the Federal Home Loan Bank of Seattle was compared to a pricing, a quote of a price given by Merrill Lynch?

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

Q Do you have an understanding as to whether an

algorithm was developed in order to value the MBS at the end of first quarter 2008?

A I wouldn't use that specific terminology. But I have a vague recollection that, as I said earlier, that they used that -- you know, being refreshed here and seeing the PowerPoint presentation, that they used that Seattle -- FHLB Seattle trade, that they looked at other entities that were filing that had similar securities and how they valued it and the procedures that they took. And that they had developed some methodology in which they mathematically calculated fair value under level three.

And from my perspective as the CEO, I wasn't so much concerned about the details of that methodology as I was the high-level view that we were using level three accounting and that that methodology was done with rigor and attention and was appropriate and that our auditors had reviewed it and were comfortable with it. And I even knew that their national practice had reviewed it and were comfortable with it.

Q And how did you know that the auditors' national practice had reviewed it?

A Well, as I said earlier, I knew we were a special monitored account and my vague recollection is that our team at points told me that, oh, it's being reviewed by national office.

Q Do you have an understanding as to whether the mathematical calculation of the level three valuation consisted of the discounting of the spread that was provided from dealers?

A I don't. I have a more bigger picture one that, when you look at that FHLB trade that was around par, we were -- whatever methodology they used, it came in at well below par in terms of their fair value accounting. It was below 90. But beyond that, the details of how they benchmarked off of these various -- whether it was the FHLB trade, the disclosures of other financial institutions, broker dealer quotes and how they benchmarked that and determined the methodology, I don't recall going through that level of detail. And, as I said, that wasn't my concern.

Q Do you know if there was another MBS sale through the Federal Home Loan Bank of Seattle in February 2008?

A I'm not sure. I don't recall that. I --

MR. CHUNG: Were you going to say something, Mr. Perry?

MS. VETA: Do you have a different answer to the question? Do you recall whether there was a sale to the Federal Home Loan Bank in February?

THE WITNESS: No, I don't have a different answer to that question.

BY MS. PEARSON:

Q Did you hear any discussion as to whether it was reasonable to use the sale to the FHLB of Seattle in evaluation in light of the fact that IndyMac bought $100 million of the securitization?

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

Q Were there any guarantees associated with the MBS purchase by the Federal Home Loan Bank of Seattle in April 2008?

A Ask that -- say that question again?

Q Sure. Were there any guarantees associated with the sale of the MBS to the Federal Home Loan Bank --

A By IndyMac?

Q Yes.

A I'm not aware of that or I don't recall being aware of that. I think the information that I received was -- what I recall receiving was that e-mail from Pat Hymel.

Q Was there any swap associated with the MBS purchased by the Federal Home Loan Bank of Seattle in April 2008?

A I'm not sure.

Q Did anyone ever tell you there was such a swap?

A I don't recall. I don't recall that.

Q Did anyone ever tell you that there was no swap?

A I don't recall that, either.

Q Did anyone ever tell you that the securitization in April 2008 called for interest rate support to be provided to the certificates purchased by the Federal Home Loan Bank of Seattle?

A I don't recall that.

Q Did anyone ever tell you that IndyMac purchased an interest rate swap from Barclays in connection with the MBS purchased by the Federal Home Loan Bank of Seattle?

A I don't recall. I don't recall that.

Q Did you discuss the Federal Home Loan Bank of Seattle purchase during the first quarter 2008 investment call?

A That's what I was starting to talk about.

We got questions regarding this, primarily from people who were like, where did you trade this? We need a trade; we want to trade there. But that's what I remember just generally, is that it created a little bit of furor and I don't think the Federal Home Loan Bank of Seattle was entirely thrilled that we highlighted this trade.

Q Why do you think they were not thrilled?

A Because they got a lot of calls.

Q They got a lot of calls from whom?

A My understanding, just generally from broker dealers wanting to trade collateral with them.

Q Was it your understanding that they received those calls because it was unusual at the time for such an MBS to be traded at or near par?

MS. VETA: I'm sorry, would you repeat your question again?

BY MS. PEARSON:

Q Sure. Is it your understanding that the FHLB of Seattle received those calls because it was unusual for an MBS to be traded at or near par at the time?

A It was really my understanding that the -- my understanding was that it was somebody was buying. You know, a reasonable buyer was out there. And I really didn't focus on whether it was par or 98, you know, the exact price of the bond.

Q Did you talk to Mr. Abernathy about -- about what had been said during the earnings call?

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

Q How did you learn that the FHLB of Seattle was not thrilled with your disclosure?

A Somebody told me that, that they had called.

Q Okay, do you know who?

A I don't. I can't remember specifically.

Q Did you discuss with whoever told you that what, if any, response could be made to the Federal Home Loan Bank of Seattle?

A I mean, not really. I just felt it was kind of a

natural reaction, given the marketplace. There's a buyer.

I also felt the Federal Home Loan Banks were stepping up, because we had -- you know, one of those e-mails had in it, others -- other Federal Home Loan Banks had expressed interest. And you were going, this is the role that Federal Home Loan Banks should be playing in an environment like this.

Q And specifically what do you mean by "the role"?

A You know, providing liquidity to the housing and mortgage finance market. That was their role and mission.

Q Would that have been another reason why the bond would have sold at par?

A I don't think so. The Federal Home Loan Banks had to operate in their self-interest with their own fiduciary duties. It was strictly a third-party trade. And, as I said, there was -- you know, you saw the loan-to-value ratio in that pool and the FICO scores. A 724 FICO and a 74 percent LTV pool of loans, that's a good quality pool of loans. And then they got 100 million of subordination below their 200 million of bonds. That's a pretty good trade.

BY MR. TERCERO:

Q Mr. Perry, you said in your previous answer that the FHLB Seattle was strictly an arm's length transaction; is that correct?

A It's a third party entity that we had -- you know,

we had no -- we were just trading with, like any other third party entity. This was a total arm's length transaction.

Q Was there another FHLB entity that provided IndyMac Bank advances?

A I believe the Federal Home Loan Bank of San Francisco did.

MR. TERCERO: Thank you.

BY MS. PEARSON:

Q Did you ever hear anyone say that the FHLB of Seattle could be told that, in your earnings call, you were indicating the value of the transaction in total, including the servicing and excess and not the specific bond price?

A You lost me on that one.

Q Did you ever hear anyone say that, in response to the calls that the FHLB of Seattle was getting, they could indicate that the value that you presented in the earnings call was the transaction in total, including the servicing and the excess and not the specific bond price?

MS. VETA: Ms. Pearson, I'm sorry, I don't understand that question, either. I don't know who "they" is or can you break it down into parts?

MS. PEARSON: Sure.

BY MS. PEARSON:

Q Did you ever hear in discussion of what the FHLB could be told in connection with them being less than

thrilled at your disclosure during the earnings call, that what you had said was not the specific bond price of 99.75 but, rather, the value of the transaction in total, including the servicing?

MR. RAZI: By whom?

MS. PEARSON: Let me try one more time.

THE WITNESS: You lost me again on that. But I can answer more generically. I don't recall any more details regarding the -- or conversation with anybody about a price related to the bond or what we disclosed. And I can't recall specifically what I disclosed on that earnings call without a document. I don't know if that helps.

BY MS. PEARSON:

Q No, that helps. And it would also help me -- is it your understanding that the FHLB of Seattle was less than thrilled because they were identified as the purchaser?

A And received calls.

Q Do you have any understanding that the FHLB of Seattle was less than thrilled because you had disclosed the price?

A I think the answer would be just we had disclosed -- we had disclosed the trade and -- which included the price. And when you looked at that trade, it was a fair price. And so that's why they were getting calls, because there were no fair prices being traded in the marketplace,

given the illiquidity in the market at that time.

Q Did you ever hear that the FHLB of Seattle was not interested in doing any further deals because of the disclosure in the earnings call?

A I don't recall that. I don't recall that specifically. It's possible that they said that; I just don't recall it.

Q Did you have any discussions with Ernst and Young personnel regarding the valuation of the MBS as of March 31, 2008?

A Only my high-level memos that I copied them on, on my views that these assets largely should be accounted for using level three accounting under FAS 157. That's -- that's the only communication, and it was by e-mail. And there might have been -- you know, Andrew Mokhov might have walked by my office and I might have said, "Andrew, I think these are level three," you know, or something like that. But other than that, I don't recall any specific discussions, no.

Q Do you have an understanding as to the methodology that Ernst and Young proposed to be used to value that MBS as of March 31, 2008?

MS. VETA: At what point in time?

BY MS. PEARSON:

Q I'm referring to the e-mail we discussed yesterday, when you say, if we lose to E&Y?

A Yeah, I didn't have -- I was getting that second hand. And so I didn't see any of the detail between what E&Y's view or our view was on that issue. I was just being told that by somebody on our team.

Q And you don't have an understanding as to how the methodology that E&Y was using differed from IndyMac's?

A I did not.

BY MR. TERCERO:

Q Sir, a few follow-up questions from me and then just a touch more.

We talked on Wednesday, which was the first day of your testimony, about being informed -- whether you were informed of the percentage of loans with fraud or misrepresentation in them as reported by the post purchase quality control unit. I just wanted to follow up a little bit more.

In 2007, did anyone inform you that the S&P LEVELS lifetime loan loss estimate might not accurately reflect the loan production quality of IndyMac Bank?

A I don't recall anyone specifically telling me that in 2007.

Q Do you have a general recollection?

A I think there was general debate as to how effective anybody's model was. And I -- and I think the view was -- my view was certainly and the bulk of the management

team view, that the best model available, we wanted -- regulators encouraged it, auditors encouraged it to have a third party model, and a third party model that was widely used. And, in my opinion, what better third party model than a national statistical rating agency's model that's at the loan level and that is used to structure securities that are bought by hundreds if not thousands of investors around the world? So, you know, I felt that model was -- you know, it was what the investors were buying bonds off of. I felt that model was the best available model out there for us to use. And so did -- you know, so did the bulk of my management team, if not all of it. I can't speak for every single person, but --

Q How do you know, though, that any of your management team had that view?

A Well, no one expressed, that I can recall, a view that we should use some other model.

Q Now, you mentioned discussions about the topic of which model to use. Among whom within IndyMac Bank were those discussions?

A I don't recall any of those discussions in 2007. It would have been years earlier, when I was more directly involved in the mortgage bank.

Q And at that time, with whom were these discussions?

A You know, it's been so long ago, I couldn't

specifically recall who was involved in those discussions. I just recall them generally.

Q Okay, and what is it that you recall generally, other than as you've just testified?

A Just generally debating whether we should use an internal model or a third party model.

(SEC Exhibit No. 541 was referred to.)

BY MR. TERCERO:

Q Let me hand you what previously was marked as Government Exhibit 541. You will see that Government Exhibit 541 appears to be the Form 10-Q report of IndyMac Bancorp for the quarterly period ending September 30 of 2007.

Generally, and understanding that you are not going to look at it on a page-by-page basis, have you seen this document before?

A I have.

Q Did you approve it for filing with the Commission?

A I did.

Q And did you sign the report on Form 10-Q?

A I did.

Q Could you please take a look at page 39 of the document. You will see that there are page numbers either at the bottom or somewhere in the middle. What I am going to ask you about is the paragraph at the bottom of the page.

There is a heading that says Secondary Market Reserve.

A Okay.

Q Within that paragraph -- and of course take the time that you wish to review the paragraph -- about three lines down there begins, "We have made significant investments in our preproduction and post production quality control processes, to identify potential issues that could cause repurchases. We believe that these efforts have improved our production quality. However, possible increases in default rates could cause the overall rate of repurchases to increase."

Do you have an understanding as to what the preproduction quality control processes identified here were?

A You know, I mean, I probably had an understanding of some of them at that time but, sitting here today, I don't have a good recollection of that, no.

Q Please share with us what recollection you do have.

A You know, as I said, I don't -- I don't have a recollection of it.

Q There is also a reference to post production quality control processes. Do you have an understanding as to what that refers to?

A I have an understanding -- I know what post production quality control is.

Q Okay, what is that?

A It's the quality control function after loans are funded.

Q All right, and did you have that understanding prior to the time of the filing of the exhibit with the Commission?

A Did I have an understanding of what post -- what generally post production quality control was?

Q Yes, as set forth here in the document?

A Do you mean in terms of the improvements?

Q Just in terms of what post production quality control processes, what that -- what those were.

A I had a general understanding of them based upon my years of experience. But, as we discussed in my testimony on Wednesday, this area reported several layers down in the organization and so I wasn't intimately familiar with all of the procedures, processes and improvements that they had been making in this area.

Q At the time of the filing of the report on 10-Q, did you have an understanding that post production quality control processes included the post purchase quality control unit at IndyMac Bank?

A Included the unit?

Q Yes.

A Yes.

Q Now, do you have a recollection as to who prepared

that text that we've been going over on page 39 of Exhibit 541? Do you have an understanding as to who prepared that text, whether it was in connection with this particular report on 10-Q or whether the text was prepared at an earlier time?

A I don't have a recollection as to who prepared this specific text. You know, as I said, I didn't review the Qs and Ks cover to cover, but I was aware of all of the key disclosure items, was very confident in our procedures and processes. And in looking back with hindsight at all of our disclosures, sitting here today, I'm very proud of our disclosures and the extensive nature of them. We got compliments regarding our disclosures.

And, for example, at the next page at the top, very familiar with and monitored, you know, with respect to this key area the loan repurchases, which was a very objective measure of loan quality and the trends regarding that. And as we discussed on Wednesday, when I became aware that that was impacting our financial results, we took steps and I got very involved in taking steps to reduce loan purchases.

But even here, where they were elevating, they were still less than 1 percent of our loan sales. So 99 -- more than 99 percent of our loans were not being -- our investors were QCing them and an independent third party was not asking us to repurchase 99 percent plus of our loans.

Q Well, now, these refer to repurchases rather than repurchase demands; is that correct? That portion --

A Yes, that's correct.

Q I will represent to you that the portion on page 39 that I identified for you appears in previous periodic reports, whether Form 10-K or 10-Q, of IndyMac Bancorp. So just to make sure I've covered the area, do you recall at any time who was responsible for the preparation of those phrases?

A I don't.

Q Actually, if you could keep that open to that page --

MS. VETA: Page 39.

MR. TERCERO: Yes, page 39.

(SEC Exhibit No. 548 was referred to.)

BY MR. TERCERO:

Q What I am now going to do is hand you what previously was marked as Government Exhibit 548. We have seen this, I believe, before during your testimony. It is the report on Form 10-K of IndyMac Bancorp for the fiscal year ended December 31 of 2007. And again, sir, you need not review every single page unless you wish to. But what my first question is, do you generally recognize the document?

A Not generally in this format. But, yes, I

recognize the document. It's printed in a little different format but, yes.

Q And I will represent to you that this is the report of IndyMac Bancorp on Form 10-K for the fiscal year ended December 31, 2007.

If you could now look at what at the bottom is page 59?

A Okay.

Q There is again text that -- in the middle of the page and the first three words say, "Secondary market reserve."

A Okay.

Q If you look through that portion, there is no reference to the preproduction nor the post production quality control processes that we saw on page 39 of the 10-Q for the third quarter of 2007, which is Exhibit 541.

Do you have any understanding as to why that text does not appear in the Form 10-K report?

A You know, as I said, and I didn't read these documents cover to cover. I was very familiar with all the key and important issues in these documents. You know, the only thing that I can -- that I would venture as a possibility is, have you looked at previous Ks? Is this language in previous Ks?

Q I haven't. I will check. But do you have an

understanding as to why -- other than as you've just testified, do you have an understanding as to why that text does not appear in Exhibit 548 but does in 541?

And specifically let me ask, do you recall any discussion regarding the removal of that text from the Form 10-K report for fiscal year ended 2007?

A I do not.

Q Then if you look at page -- again, using the bottom pages, if you look at page 81 --

A Of the 10-K?

Q Of the 10-K, so we're still on Exhibit 548. If you look about a third of the way down, you will see text on page 81 which says, "We are subject to fraud and compliance risk." Let me give you a moment to identify that portion of the document.

A Boy, it's really hard to read this format, where it doesn't have the headings.

Q I understand, sir.

A I mean, I'll -- I'll do it. Where is it? One-third of the way down the page?

Q Yes.

A Okay, and starts with?

Q "We are subject to fraud and compliance risk."

MR. TERCERO: Counsel, if you wish, and up to you, I can show the witness the SEC.gov version, if that will

assist him in answering questions. But again, up to you.
THE WITNESS: Can you point to where we're at? I'm having a hard time finding that.
MR. TERCERO: Sure --
THE WITNESS: It's on page 81. How many lines down?
Oh, okay. And you want me to read from that point?
MS. VETA: "Subject to fraud and compliance risk"? Is that where you are, Mr. Tercero?
BY MR. TERCERO:
Q Yes. And if you can go about 10 lines down and the phrase is, "Adverse impact on our earnings." So once you've done that, just let me know and then we'll proceed.
But again, I do have available, at least on the Internet, the report on 10-K. But I'm going to leave it up to your counsel as to whether it's okay or not to review it in that form.
A Okay, I've read that.
Q I will represent to you that that text does not appear in the report on Form 10-Q that we looked at, which is Exhibit Number 541.
Do you have an understanding as to why that text does not appear -- well, why that text appeared in the Form 10-K report?
A No specific understanding.

Q What is your understanding?
A Well, I mean, my understanding is that the 10-K, you know, traditionally incorporates a much more extensive disclosure of all issues. And that's why it's a much larger document. So that would be my only understanding of the issue, that there would be more extensive disclosures on everything in the 10-K versus a 10-Q.
Q I will represent to you that, in looking at the 10-Q -- I'm sorry, the 10-K for fiscal year ended 2006, the text in the Secondary Market Reserve section regarding preproduction and post production quality control processes does appear in the 10-K.
Does that help you in any way to inform us why there was that change between the 10-Q for Q3 2007 and the 10-K for 2007?
A So what you're saying is that that text was removed from K to K?
Q No, it wasn't -- yes, it was removed from K to K. It was also removed --
A From Q to K.
Q -- from Q3 of '07 to 10-K of '07, yes.
A I don't have any specific information that would help you on that matter.
MR. TERCERO: And if the court reporter could mark the document using the 200 series, please, that would be appreciated.

(SEC Exhibit No. 213 was marked for identification.)
BY MR. TERCERO:
Q The court reporter has handed to you, sir, Government Exhibit 213. Could you take a look at that document and let me know if you recognize it?
Exhibit 213 is a multipage document bearing production numbers PERRY018786 and it ends on 788.
Sir, take the time that you need so that you can let me know if you recognize the exhibit.
A I recognize the document.
Q And can you describe for us your understanding as to what the document is, please?
A This is a handwritten note that I wrote myself and it really is -- I have a vague recollection that I wrote it sometime in the first quarter of 2008, but I'm not entirely sure about that.
Q What was the purpose in your writing the note?
A Well, it was part of how I managed, which was you basically sit back and -- and you lay out the things that you could have done better in a very clear, you know, way so that you can identify them and work on ways to improve going forward.
Q Could you read for us number 1?

A Sure. "Labeling ourselves an Alt A lender and poor labeling of doc types."
Q Why was that a big mistake?
A Well, it wasn't a big mistake. And you have to understand, this is a note. And, you know, there's no particular order of this note. These were just off-the-top-of-my-head thoughts, sitting there in the first quarter of 2008, probably likely just after I had learned of our large fourth quarter loss. Okay. And that would be my rough guess of when this was.
Q All right --
A So I think the "Big Mistakes" label is not a fair label here. It just is -- these are personal notes to myself in helping me manage the company better.
Q But the "Big Mistakes" heading at the top, that is your handwriting?
A It is, definitely.
Q But is it your testimony that, upon further reflection since the time that you prepared the notes, that what is listed here in the exhibit are not, in fact, big mistakes?
A That's correct. I would say -- and, you know, we can go through them one by one. But I would say that most of them are issues for improvement, pet peeves of mine and, you know, really a list to help me frame some of the things that

we learned from this crisis period so that we could improve the company going forward.

And some of them aren't, with the benefit of hindsight, very fair to my management team.

Q Very fair?

A In other words, I'm using the benefit of hindsight to write this list.

Q Are not very fair?

A Yes.

Q Thank you for the clarification.

Yes, I do want to go through them just so that I can understand precisely what's written. But, sir, if you wouldn't mind identifying as we go through whether something is a pet peeve, to use your phrase, or something else that you described. That would be very helpful to the Staff.

So you have read what is number 1. Why did you place that on the list?

A You know, as I said, the order here is in no order of importance, okay?

Q Understood.

A Okay. And this is a pet peeve. Okay, labeling ourselves as an Alt A lender. You know, clearly my focus is on objective, objectivity. And -- and in my viewpoint, what we should be laying out and what we did lay out was our loan product by type, by LTVs, by FICOs, by CLTVs, by all the

different product types. And we should lay that out very clearly.

And then there are all kinds of labels related to documentation types of loans. You know, limited doc, full doc, alt doc, you know, and I could go on and on about doc types. And my viewpoint is, we literally should have said, here are the procedures that we perform and here are the procedures that we don't perform by type.

And so my pet peeve was, get out of the labels and get into more objective descriptions of our business. And I think we had a lot of this. I just -- you know, I am a perfectionist. And -- and a lot of these are perfectionist goals.

Q And is this one of those?

A Definitely.

Q And then number 2, what does that state?

A "Allowing too much of our production to be sold private label and not enough to the GSEs, FHA, VA."

Q Why did you place that particular item on the list?

A Well, this is one of those unfair ones to my team. This is sitting back in the first quarter of 2008 and the secondary market for private label transactions has collapsed. And so we would have been better off, instead of having two-thirds of our production or more being in the private label securitization market, having two-thirds or

more of our production being in the GSE market, because we had to take a 90 degree turn and radically change our business when the secondary market collapsed in, what was it, August, September of '07.

Q And just to follow up, is this also a hindsight issue?

A Absolutely.

Q Okay. What does number 3 say?

A "Giving up on documenting income."

Q And why did you place that on the list? And, again, understanding that there is no particular order.

A Well, I think the whole industry moved towards far greater percentage of loans being without fully income -- full income documentation. You had Fannie and Freddie doing it. I read an article where 47 percent of the loans in Great Britain were limited documentation loans.

And in -- you know, I'm sitting here again unfairly with the benefit of hindsight and saying, if all of our loans were full doc, they would all be saleable. Because there wasn't a limited doc market any longer, so similar to number 2.

Q Then number 4, what does that state, sir?

A "Giving up on the GSE and FHA/VA for first-time homebuyers and going piggyback."

Q What does that mean?

A Well, this is a wholly unfair one because the Fannie and Freddie limits in our state here in California didn't grow with the growth in home prices. And so a piggyback market emerged, a private label piggyback with a first and a second, to take into account that growth, where Fannie and Freddie and FHA/VA loan limits weren't keeping up.

Now when we've had this crisis, the federal government has come in and raised those limits and that's why you see in Southern California I think recently the market share of FHA went from under 1 percent, I think it was three-tenths of 1 percent to something like 38 percent.

So it's really -- you know, it's not a fair comment to my team. It's kind of a playing hindsight here.

Q Now, just for clarity of the record, what did you mean by "piggyback" in Government Exhibit 213 in that particular number that we're looking at, number 4?

A A piggyback loan is a combination of a first mortgage and a second mortgage.

Q Number 5, what does that state?

A Well, again, this is with the benefit of hindsight that, you know, clearly our guidelines went too far. And as we discussed on Wednesday, when I started to see that occurring -- which, you know, the first time I noticed it was in the first quarter of '07 in early January and I started to tighten the guidelines and eliminate early payment defaults.

And so I just thought with the benefit of hindsight, we had gone too far in our guidelines, like virtually everyone in the industry, you know, from a credit perspective. And I think that the reason behind that was the housing bubble. The housing bubble masked delinquency trends for the entire industry.

Q Now, you just testified about starting to tighten guidelines in the first quarter of 2007. Are you aware of any tightening of guidelines at IndyMac Bank prior to that time?

A It's not coming to my immediate recollection.

Q What does number 6 state?

A "Poor oversight in secondary, servicing, treasury and accounting of business units." And this is a combination of a pet peeve and perfectionist -- my perfectionist views.

Q All right, and what did you mean by that particular portion of the list? And, of course, if you would like to break it down because there are some commas in there, go ahead, sir.

A No, it was a -- it's a general comment. And what I'm saying is, these areas, secondary marketing, loan servicing, treasury and accounting, touch all of the business units, the operating units. And they see those units from a control standpoint and they -- and what I'm saying is I wanted them to be as tough on our business units as they

would be -- and have as high of expectations on our business units as they would with a third party.

Q When you say "they" in your answer just now, to whom do you refer?

A The leaders of these units.

Q Number 7, what does it state?

A "Secondary selling loans that they knew did not meet our reps and warranties, in particular conduit, and not get contracts tight despite repeated requests from CEO. Contracts for bad times, not good."

Q All right, and how would you now characterize that particular entry? We have a number of categories that we talked about including peeve and --

A Yeah. I wouldn't characterize it as a "big mistake" because, you know, as I said in my earlier testimony, some of these contracts, we couldn't -- you know, we couldn't get, you know, changes. With Fannie and Freddie, they were contracts of adhesion.

But the focus here was -- my focus was, you know, we had a multimillion dollar accrual for rep and warranty violations and fraud and monitored that very carefully. And my goal was to get those rep and warranty violations down to zero. And that was my focus here.

Q Was a component of number 7 also mirroring reps and warranties given to IndyMac Bank when it purchased or funded

loans on the one hand, compared to selling loans, whether it was to GSEs, whole loan sale transactions or private label securitizations?

A Yeah, there definitely was a component of that focus because the more we could mirror reps and warranties, the less rep and warranty risk we would have.

Q Number 8, what does it state?

A "Conduit justifying not investing in basic infrastructure, controls and discipline through strong volumes and profits."

Q And what does that mean?

A Well, with any business unit, there's a tradeoff between business, growth, revenues, profits and controls. And I felt with the benefit of hindsight in looking back over this period, that we had been too far, from a business judgment standpoint, we had been too far on the growth, revenues, profits and not as much on the controls. And so I was expressing a view with hindsight that we should have had -- you know, should have had a stronger focus in this unit on controls.

Q Other than hindsight, how would you now characterize that particular entry? We've talked about a point for improvement, and other --

A I wouldn't characterize it as a "big mistake," because I think, you know, that the issues that were big,

that caused our big losses, were macroeconomic issues. These were all things to get to a level of perfection.

I strongly believed that I had one of the strongest and best management teams in the business and that our business model -- and we were operating at a very high level relative to the industry. But my -- I didn't care where the industry was at; my level was perfection. That was the focus from my standpoint.

Q You used the phrase "macroeconomic." Are you referring to the general economic conditions?

A And in particular also in housing and in the capital markets for mortgage-backed securities.

Q Number 9, what does it state?

A "Raising capital via preferred versus issuing common stock. Issuing common and carry excess capital in good times."

Q Okay, and why did you place that on your list as you were doing your overall --

A I think --

MS. VETA: Let him finish his question and then you answer.

THE WITNESS: I'm sorry.

BY MR. TERCERO:

Q And why did you place that on the list as you were doing your overall big picture thinking of the Bank?

A Yeah. And again, I wouldn't say this is a "big mistake." It's a hindsight. And I think everybody has said the latter part, is that banks should carry more capital in the good times, and for a variety of reasons. You can raise it at a high stock price so it's less dilutive to your shareholders. And there's been a lot of discussion about that. Spain does that and we don't; our capital rules tend to be pro cyclical and cause the cycles to be worse.

And so -- and I think, you know, the same thing is, you know, I'm saying in the good times, with the benefit of hindsight, we should have more common equity than preferred or debt. And that's all I was saying. Is just, in the future, you know, that's what we would do.

Q And number 10, what does that state?

A "Not reducing our reliance on Wall Street one iota on private securitizations."

Q And why is that on the list?

A Well, this is a pet peeve of mine. I had a belief that kind of during this illiquid period, that Wall Street, you know, you might laugh and you'd say they were looking out for themselves all the time. But I definitely had a belief in this time period, you know, that they were also -- they were not only helping us underwrite and they were distributing our securities with their broker dealer, but they were also competing with us, too. And I had a view

that, you know, they were obviously going to look out for themselves and their securities and distributing their stuff ahead of ours. And for that reason, for the reason that they are competing in our origination business, we were in the process of vertically integrating and having our -- we had a -- we had set up the legal entity for the broker dealer.

But even more importantly, I felt it was important to get more direct -- a more direct relationship with investors. So rather than being -- having the Wall Street firms being the intermediary there.

Q On page 2, what does number 11 state?

A "Poor forecasting and poor communication despite huge number of accountants and analysts. Business unit margins, MBR, thrift, net interest margin."

And, you know, this one is really unfair because you look at it and you go, yes, in hindsight, our forecasting, you know, we missed it time after time. So did everybody else in the industry, so did the government. Every level had no idea how bad this crisis was going to get and continue, and it just kept getting worse and worse, you know, all the way along.

And part of that is that forecasting models are built on recent history. And recent history was nothing like the future that we all experienced in this crisis.

Q Number 12, what does it state?

A "Little to no command and control of credit risk."

Q What does that mean?

A Well, this is a CEO complaining that from '07, January of '07, when I became aware that, you know, credit was becoming an issue, that I took on a very strong leadership role in that area for now more than a year. And I think that it's not a very fair comment and it's not an accurate comment in that we had strong people in these areas. But the economy had been so good and housing had been so good, there really wasn't a lot to manage until delinquencies start to explode in '07 and '08. And then it was trying to catch up, you know, and survive.

Q And is it accurate to state that that view that you just put forward in your last response was something that you communicated in 2007 to members of IndyMac Bank's executive committee, senior managers, board of directors?

MS. VETA: Mr. Tercero, I'm not sure what you mean by "communicating that."

MR. TERCERO: Oh, command and control of credit risk.

MS. VETA: So would you ask your question again, please?

BY MR. TERCERO:

Q Sure. Did you communicate the level of command and control over credit risk to your senior managers beginning in

2007?

A Yes. I mean, I was actively involved from the moment that I -- you know, we saw that earnings miss for the fourth quarter of '06 involved in our entire credit risk management function all the way along.

Q Did you say first quarter '06 or fourth?

A Fourth quarter '06, which was in the first quarter of '07 that I learned about it.

Q And did you also communicate the little or no overall command and control over credit risk item, which is number 12, to the board of IndyMac Bank?

A I think that terminology that I'm using here is not fair or accurate. You know, this is a handwritten note that I used.

And we certainly had command and control of credit risk. I -- you know, it was a CEO expressing his frustration with, you know, the level of involvement that I had to have in the credit risk management function, which was necessary, you know, given the unprecedented environment we, like a lot of financial institutions, found ourselves in.

Q Number 13, what does it state?

A "Risk-based pricing is being polluted by competition and margins."

Q And what does that mean?

A That's a pet peeve of mine. Okay, you know, we had

built e-MITS, our risk-based pricing system, and -- you know, which embedded in it included S&P LEVELS into it. And you basically, you know, as I said, we could take a loan with 55 data fields or so and we could pull credit and get an automated appraisal and in some cases we needed to get a full appraisal. And we could tranche out the bonds from an individual loan and risk base, price that loan and calculate what I would call a profitless risk-based price. We would then add our profit margin onto that and that would be our theoretical price to the market.

The problem is, you have competition and that theoretical profit margin, you know, could be eroded. And that's what I was talking about here.

Q And then the next one?

A "Little to no overall command and control of costs and efficiency."

Q That's number 14. Why did you place this on the list?

A Well, you know, we -- again, I'd say the terminology, "little to no command and control" is not accurate language. It's a note for myself and I'm a tough -- a tough grader here.

But I was, you know, expressing the concern that, you know, we had been a growth enterprise for a lot of years. And growth enterprises, you know, don't have as strong of

cost controls as an enterprise that has, you know, flat or declining revenues. And so, you know, we had spent, you know, the last -- the last year or so doing something that I just hate to do, which was eliminating staff. And this was some of that frustration coming out here, you know, having to right size the organization which is, you know, an incredibly painful thing to do.

Q And number 15, what does it state?

A "A business model where we have little to no command and control over revenues or costs."

Q And why did you place that on the list?

A Well, the cost one I just discussed. But the revenue one was -- it just was our business. The fact that we didn't control profit margins in our industry. Now, that was a good thing for consumers, right, that it was such a commodity business and there were so many competitors that, you know, we had to take the price that was in the market.

Now, as I said earlier, when we took that price, we compared it to the risk-based profitless price and we would not do a loan at a loss. Okay? There was a minimum profit threshold. So we would let that business go away.

But I was just expressing a frustration here that, unlike other industries who could control their price, for example Fannie and Freddie could control their profit margin.

Q And the next one, I believe, is number 16.

A "Virtually no command and control over hiring decisions, pay plans, performance plans, et cetera."

Q And why was that -- why did you place that on the list?

A This was part of my -- this was a pet peeve and part of me being a perfectionist. I, you know, was a big believer in the silent hand. In other words, I didn't believe that you -- that I needed to tell you what to do. I felt that if I properly aligned your pay plans and we agreed on a strategic plan and goals and objectives, that if I had designed your pay plan properly, you would be rewarded if you were achieving those goals and you would be penalized if you weren't.

And similar for hiring decisions. We were trying to build, literally, a model to hire based upon turnover. So we were looking at turnover like a loan loss and saying, what people are leaving the company? What types of people are leaving the company? And, you know, within the labor laws, going, we want to design a program for the people who are -- you know, the people who are going to be successful in the hiring process. So we were trying to get better at that.

Q Now, if you turn to the last page of the exhibit, there is another list that goes 1 through 7. Would you please state what that list represents?

A Well, I think, you know, as I said, the document

was a handwritten note that I recall writing sometime in the first quarter of 2008. And the idea was, you sit down with everything that's occurred and write a list of things that you think we could have done better on. And then from that, kind of develop a vision for who are we going to be going forward from this point on.

And so, as I recall, this is kind of a very notepad, scratch vision of IndyMac Bank going forward.

Q And could you read each of those for me, please?

A The first one says, "Keep our machine going, competitive pricing, first-time homebuyer products, retaining residual securities, conforming and jumbo." And then off to the side, it says, "Better sales and marketing."

Q And conforming and jumbo are types of loans?

A Correct.

Q When it says "machine," what does that refer to?

A Well, our revenue machine was producing loans and then securitizing them into the secondary market and that was our primary revenue machine in our hybrid thrift mortgage banking model.

Q Now, in that last response when you say "securitizing," does that include agencies, whole loan sales transactions and private label securitization?

A Well, it does in normal times. In this period, it was largely just sales to Fannie and Freddie and FHA and VA.

Q What does number 2 state?
A "Build retail and consumer direct."
Q What does that mean?
A Well, my long-held view is that we wanted to be more of a direct lender and for a variety of reasons. We could control loan quality better, the profit margin was better all the way along, and it was a more value-added business where we weren't reliant on a third party to originate the loans.
Q Number 3, what does that state?
A "Distribute our own securities."
Q And what does that mean?
A Well, you know, as I said earlier, we did not distribute our own securities; we used underwriting firms, Wall Street underwriting firms who helped us structure -- took the collateral, helped us structure the bonds. They worked with the rating agencies on that. And then they sold the bonds for us, on our behalf.
And there are a lot of conflicts related to that, in that most of these Wall Street firms had vertically integrated and were competing with us in our primary business of originating loans, which is obviously a concern. And so, you know, that was a reason to distribute our own securities.
Another reason was if we could get that other chain of profit, the underwriting profit, then we could accept an

overall lower margin and be competitive in the overall business. And then the last, you know, fundamental reason to do that is we'd have better communications directly with investors about the types of bonds that they really wanted to see, not what Wall Street was structuring.
Q What does the next one, number 4, read?
A "Manage credit risk better, protect ourselves in loan sales."
Q What do you mean by that?
A Well, just -- you know, we were getting better and better and better and better in credit risk management. And like all financial institutions in this period where you're going from, you know, almost no issues and then a huge ramp up in nonperforming assets, and we were getting pretty sharp in managing credit risk, that my goal was perfection in this area. And the sub bullet point, as I said before, my goal was to make -- you know, we had this multimillion dollar warranty reserve. My goal was to make it so that we weren't having to buy back loans for rep and warranty violations.
Q What does number 5 state?
A "Fair lending and suitability."
Q And what does that mean?
A Well, we always complied with the fair lending laws and we had good reviews on those, cared about that. We did a lot of fair lending and did a great job.

The suitability issue, there was no requirement to determine if a home loan was suitable for a consumer. And coming through this crisis, I came to the view that we should be doing that. And I led an initiative to do that, where I had almost universal resistance in my management team to that. And -- but we did implement it, because I felt it was not only the right thing to do, but I also felt we would have better loan quality as a result of it.
Q When was this suitability practice or component to IndyMac Bank's business introduced to the Bank?
A I'm pretty sure it was introduced -- you know, we were in crisis mode right in 2008, but it was -- I'm pretty sure we implemented pieces of it in the -- in the -- as my recollection is, either at the end of the first quarter or the second quarter of 2008.
Q And number 6, what does that state?
A "Drive our costs down."
Q I think that's pretty self-evident. And then number 7?
A "Capital markets preferred."
Q What does that mean?
A I can't recall what that means.
Q Now, in or about July of 2008, you left IndyMac Bank?
A Well not voluntarily.

MS. VETA: Just answer his questions.
THE WITNESS: Yes.
BY MR. TERCERO:
Q Since that time, have you engaged in any other type of business?
A I'm doing some part-time advisory work.
Q Since when have you done that?
A Since September of this year.
Q And please describe just generally what the advisory work is.
A It's advising on a large development project in Las Vegas.
Q And what type of development? What type of business line?
A It's a combination of hotel, leisure and condominiums.
MR. TERCERO: Why don't we go off the record at 12:53 p.m.
(A brief recess was taken.)
MR. TERCERO: We are back on the record at 12:55 p.m. During the course of our very brief break, there were no communications of substance concerning the investigation between the staff of the Commission on the one hand and the witness and counsel on the other. Would you agree, Counsel?
MS. VETA: I would.

MR. TERCERO: Sir, do you wish to clarify anything or add anything to the responses that you have made during the course of this proceeding over the last two-and-a-half days?

THE WITNESS: No, I don't.

MR. TERCERO: Counsel, do you wish to ask any clarifying questions?

MS. VETA: No, I don't.

MR. TERCERO: We have no further questions at this time. We may, however, ask you again to testify in this investigation. Mr. Perry, should this be necessary, we will contact your counsel.

We are now off the record at 12:55 p.m. on December 18, 2008.

(Whereupon, at 12:55 p.m., the examination was concluded.)

* * * * *

REPORTER'S CERTIFICATE

I, Christopher Cutchall, reporter, hereby certify that the foregoing transcript of 118 pages is a complete, true and accurate transcript of the testimony indicated, held on December 18, 2009, at 9:00 a.m. in the matter of: IndyMac Bancorp, Inc.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: _____

Official Reporter: _____

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

In the Matter of: INDYMAC BANCORP, INC.
Witness: Michael W. Perry
File Number: LA-03517-A
Date: Friday, December 18, 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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(Proofreader's Name) (Date)

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