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2011 DEC 16 P 4: 15

Arizona Corporation Commission

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AZ CORP COMMISSION  
DOCKET CONTROL

DEC 16 2011

DOCKETED BY

10 *Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch,*  
11 *Berta Walder, Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners, LLC*

12 **BEFORE THE ARIZONA CORPORATION COMMISSION**

13 In the matter of:

DOCKET NO. S-20660A-09-0107

14 RADICAL BUNNY, L.L.C., an Arizona  
15 limited liability company,

16 HORIZON PARTNERS, L.L.C., an  
17 Arizona limited liability company,

**RESPONDENTS' PROPOSED  
HOFFMAN DEPOSITION  
EXCERPTS**

18 TOM HIRSCH (aka TOMAS N.  
19 HIRSCH)and DIANE ROSE HIRSCH,  
20 husband and wife;

21 BERTA FRIEDMAN. WALDER (aka  
22 BUNNY WALDER, a married person,

23 HOWARD EVAN WALDER, a  
24 married person,

**(Assigned to the Honorable  
Lyn Farmer)**

25 HARISH PANNALAL SHAH and  
26 MADHAVI H. SHAH, husband and  
27 wife,

Respondents.

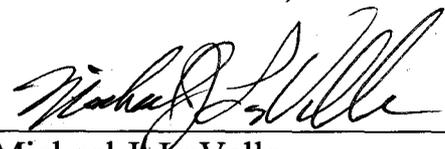
28 Respondents' proposal is that the hearing officer watch the video of pages  
237, line 25 to page 314, line 14 and page 324, line 4 to page 356, line 7 of the  
Hoffman deposition.

1 If the hearing officer rules that it will see the video, Respondents will  
2 attempt to obtain it and will provide a free copy to staff. The hearing officer has  
3 been given a complete copy of the transcript.

4 Enclosed are the portions of the deposition Respondents wish to have  
5 considered.

6  
7 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of December, 2011.

8 **LAVELLE & LAVELLE, PLC**

9  
10  
11 By: 

12 Michael J. LaVelle

13 2525 East Camelback Road, Suite 888

14 Phoenix, Arizona 85016

15 *Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch, Berta Walder,  
16 Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners,  
17 LLC*

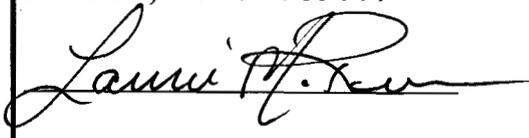
18 ORIGINAL and 13 COPIES filed this  
19 16<sup>th</sup> day of December, 2011 with:

20 **ARIZONA CORPORATION COMMISSION**  
21 Securities Division  
22 1200 West Washington, Third Floor  
23 Phoenix, Arizona 85007

24 COPY of the foregoing MAILED this  
25 16<sup>th</sup> day of December, 2011 to:

26 Lyn Farmer  
27 Chief Administrative Law Judge  
28 **ARIZONA CORPORATION COMMISSION**  
1200 West Washington  
Phoenix, Arizona 85007

1 Julie Coleman  
2 ARIZONA CORPORATION COMMISSION  
3 Securities Division  
4 1300 West Washington, Third Floor  
5 Phoenix, Arizona 85007

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United States District Court  
District of Arizona

Robert Facciola, et al. )  
 )  
Plaintiffs, )  
 )  
vs. ) No.  
 ) 2:10-cv-01025-F  
Greenberg Traurig, et al., ) JM  
 )  
Defendants, )  
 )

DEPOSITION OF CHRISTIAN J. HOFFMANN, III  
(Volume 2 - Pages 232 - 368, inclusive)  
VIDEOTAPED

Phoenix, Arizona  
September 23, 2011  
9:34 A.M. - 2:04 P.M.

Prepared for:  
JULIE A. COLEMAN, ESQ.  
Arizona Corporation Commission,  
Securities Division

Reported by:  
Sandy (Konugres) Waldo, RPR  
AZ Certified Reporter #50311

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& TOLEU Ltd.**  
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4625 S. Wendler Drive, Suite 216  
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Telephone (602) 254-5479  
FAX (602) 254-5013

1 THE VIDEOGRAPHER: Today is Friday,  
2 September 23rd, 2011. The time on the video screen  
3 is approximately 9:34 A.M.

4 This is the beginning of Volume No. 2 of the  
5 videotaped Deposition of Christian Hoffmann noticed  
6 by counsel for the lead plaintiffs in the matter of  
7 Robert Facciola, et al. versus Greenberg Traurig,  
8 LLP, et al., United States District Court, District  
9 of Arizona, Case No. 2:10-cv-010225-FJM.

10 All individuals in attendance during Volume  
11 No. 1 at this deposition are also in attendance  
12 today. There are no additions. The witness is still  
13 under oath.

14 Thank you, counsel.

15  
16 CHRISTIAN J. HOFFMANN, III,  
17 a witness herein, having been previously duly sworn  
18 by the Certified Reporter to speak the truth and  
19 nothing but the truth, was examined and testified as  
20 follows:

21  
22 EXAMINATION (Continuing)

23 BY MR. FRIEDMAN:

24 Q. Good morning, Mr. Hoffmann.

25 After your May 2nd, 2007 conference call with

1 Radical Bunny principals in which you told them in no  
2 uncertain terms that they had violated the securities  
3 laws and that they had to immediately stop selling  
4 new participations or rolling over prior  
5 participations, did you tell Mr. Bornhoft about your  
6 conversation and your advice?

7 A. My general practice is to keep my partners  
8 and those working on the matter informed.

9 Q. The question was whether you told  
10 Mr. Bornhoft.

11 A. So I don't specifically remember an occasion,  
12 but I believe that I did. Followed my general  
13 practice.

14 Q. So you have no specific recollection of any  
15 conversation with Mr. Bornhoft in which you advised  
16 him that you had told Radical Bunny to stop selling;  
17 correct?

18 A. The day of, the day after my advice, on May  
19 3rd, when we had the conversation with Mr. Kant,  
20 after Mr. Kant was off the line, the conference  
21 continued with Bob Bornhoft, Gary Shullaw, and I'm  
22 not sure if Mr. Moya stayed on the line or not, but  
23 we discussed our, in general, my recollection is that  
24 we discussed the strategy that our firm was going to  
25 employ regarding getting collateral and regarding

1 preparing an offering memorandum, and; in that  
2 context, my recollection is that we discussed the  
3 message that was delivered.

4 Q. I'd like a direct answer to my question.

5 Do you have any specific recollection of  
6 telling Mr. Bornhoft, after your May 2nd, 2007 call  
7 with your clients that you had told them to stop  
8 selling securities and stop rollovers?

9 A. I don't have a specific recollection.

10 Q. And the only basis for your belief that you  
11 told Mr. Bornhoft or may have told Mr. Bornhoft about  
12 that advice is based upon your general custom and  
13 practice?

14 MR. GOODING: Objection to form.

15 THE WITNESS: Are you going to restate the  
16 question?

17 Q. (BY MR. FRIEDMAN) No.

18 A. I think, as I mentioned, as I just told you,  
19 my general recollection is we discussed the overall  
20 program that our firm was going to employ after the  
21 call.

22 Q. What do you --

23 A. I can't remember the specific words that I  
24 used.

25 Q. What is your best general recollection of

1 what you told Mr. Bornhoft on May 3rd, 2007  
2 concerning your advice to your client the day before  
3 that they were required to stop selling or rolling  
4 over participations because they were operating in  
5 violation of the securities laws?

6 A. I'm sorry. Could you repeat that?

7 (Last question was read back.)

8 THE WITNESS: I think I just gave you that.  
9 I had general discussion about what we discussed the  
10 day before and what our advice had been. I don't  
11 know how specific that I got.

12 Q. (BY MR. FRIEDMAN) Well, I want you to tell me  
13 now exactly what your general recollection is as best  
14 you can.

15 MR. GOODING: Objection to the form. It's  
16 been asked and answered.

17 THE WITNESS: That's all I can say.

18 Q. (BY MR. FRIEDMAN) Well, why do you have this  
19 general recollection; in other words, what is it  
20 about the conversation that you can recall that  
21 provides you this general recollection?

22 A. Could I see my notes from that day to  
23 refresh.

24 Q. Yes. They should be here. The exhibits are  
25 right here.

1           Is there any portion of your notes that  
2 relate to your separate discussion with Mr. Bornhoft  
3 and perhaps Mr. Moya?

4           A. No. The second page of my notes was the  
5 continuation of that meeting that I was telling you  
6 about after Mr. Kant dropped off the line.

7           Q. And where does that begin?

8           A. On page 2.

9           Q. The entire page is the part after Mr. Kant  
10 dropped off or does it start somewhere in the second  
11 page?

12          A. I believe it's the whole second page.

13          Q. And there is no reference in your notes to  
14 your having told Mr. Bornhoft or Mr. Moya in a  
15 separate call that you had advised your client the  
16 day before that it was operating in violation of  
17 securities laws or told them to stop selling or  
18 rolling over; correct?

19          A. Correct.

20          Q. You understood at this time that Mr. Bornhoft  
21 was dealing on an ongoing basis both with Radical  
22 Bunny and with Mortgages, Ltd. concerning collateral  
23 and finance issues; correct?

24          A. I don't know if he was dealing with  
25 Mortgages, Ltd. He was dealing with their counsel.

1 Q. Okay. That's what I meant. I'm sorry. But  
2 you knew that; right?

3 A. Yes.

4 Q. It would be important for Mr. Bornhoft to  
5 know that you had told the client that it was  
6 operating in violation of securities laws and that  
7 you had advised the client that it had to stop  
8 selling or rolling over participations, wouldn't it?

9 A. Yes.

10 Q. And you don't recall specifically or  
11 generally what words you used to impart any of this  
12 to Mr. Bornhoft; correct?

13 A. No. That's not true. I said generally,  
14 generally we discussed the program that we had  
15 recommended as a firm going forward. And what I  
16 can't remember specifically, if I said to Bob all of  
17 the points that were in my discussion the day before  
18 with the client.

19 Q. The question was do you have any general or  
20 specific recollection of words that you used to tell  
21 Mr. Bornhoft that you had advised the client that it  
22 was operating in violation of the securities laws and  
23 that it had to stop selling and rolling over  
24 participations?

25 A. As I sit here today, I can't remember.

1 Q. And I assume, then, you would have no  
2 recollection of any reaction by Mr. Bornhoft?

3 MR. GOODING: Objection to the form.

4 Q. (BY MR. FRIEDMAN) Do you recall whether  
5 Mr. Bornhoft had any reaction to whatever it is you  
6 did say to him about your advice to the client the  
7 prior day they had to stop selling and rolling over?

8 A. I don't recall.

9 Q. Can you recall any occasion, after May 3rd,  
10 2007, when you told Mr. Bornhoft or discussed with  
11 Mr. Bornhoft the fact that you had advised Radical  
12 Bunny to stop selling securities and stop rolling  
13 over securities?

14 A. I can't recall specifically.

15 Q. Do you recall generally any such occasion?

16 A. Over the -- I just can't recall.

17 Q. Other than the possibility that you may have  
18 raised the subject, in the separate call with  
19 Mr. Moya and Mr. Bornhoft on May 3rd, 2007, when  
20 Mr. Kant hung up, do you have any recollection of  
21 ever discussing or telling Mr. Moya after that date  
22 that you had advised Radical Bunny to stop selling  
23 securities in violation of the securities laws and to  
24 stop rolling over securities?

25 A. I can't recall if we had that discussion.

1 Q. And you are not aware of any documentation  
2 that would indicate you had such a discussion with  
3 either Mr. Bornhoft or Mr. Moya; correct?

4 A. I'm not -- I don't know. I haven't reviewed  
5 the file in that sense to look at it.

6 Q. You don't recall any such --

7 A. I don't recall.

8 Q. And I think you said you turned the reins  
9 over to Mr. Moya sometime in late July or August, and  
10 he became partner in charge dealing with Radical  
11 Bunny securities issues from that point forward?

12 A. I wouldn't use those words to describe it,  
13 but --

14 Q. Okay. You did turn over the reins to  
15 Mr. Moya at some point; correct?

16 A. Again, I wouldn't use those, that term to  
17 describe it.

18 What happened was Bob became involved in this  
19 because we were trying to get collateral, and we were  
20 dealing with a worthy adversary Mr. Kant. Bob Moya  
21 and Bob Kant have a good working relationship, and we  
22 felt it would be better to have Bob Moya interface  
23 with Bob Kant on those issues.

24 Secondly, during that period during the  
25 summer, there were a couple of meetings that I wasn't

1 able to attend and so that was a good point at which  
2 Bob Moya would attend those meetings.

3 So out of those meetings came various  
4 documents, and he stayed involved at that point.

5 Q. From late July or early August forward, you  
6 had very little involvement in this engagement; is  
7 that fair to say?

8 A. That's correct. Actually, since -- that  
9 would be about the right time frame?

10 Q. And Mr. Moya was the senior securities lawyer  
11 associated with Quarles & Brady who took over the  
12 role that you previously had held; correct?

13 A. He took over some of the functions, yes.

14 Q. To the extent there were securities  
15 compliance or securities --

16 A. Issues.

17 Q. -- issues, Mr. Moya would have been the  
18 senior-most person at Quarles & Brady responsible for  
19 that; correct?

20 A. That's correct.

21 Q. So it would be important for him to know, I  
22 presume, that you had up told the client previously  
23 that it had been violating securities laws, and that  
24 you had told the client that it could no longer sell  
25 or roll over participations, would you agree?

1           A. That would be important, yes. Now, Bob Moya  
2 is an experienced securities lawyer. He sat in on  
3 the call with Bob Kant as did Bob Bornhoft.

4           And when I had used my terminology to Bob  
5 Kant that you are not going to get anymore funds,  
6 that's my recollection, the post-call, in describing  
7 why did you say that, I can't get specific, I can't  
8 remember specifically the words that I used to my  
9 partners, but they understood what our policy was, as  
10 far as I was concerned, regarding what our advice  
11 was.

12          Q. And the basis for your conclusion that they  
13 had to -- strike that.

14           During the conversation, all you had said,  
15 according to your testimony yesterday, is that  
16 Mortgages, Ltd. was not, I mean, that Radical Bunny  
17 was not going to provide anymore funding to  
18 Mortgages, Ltd. without the collateral issue being  
19 cleared up; right?

20          A. Correct.

21          Q. And you can't remember anything you said  
22 after that during your subsequent discussions with  
23 Mr. Moya on that subject; correct?

24          A. Well, when you say anything, I remember  
25 having some general discussion about it.

1 Q. You are not even certain whether Mr. Moya  
2 remained on the call after Mr. Kant hung up.

3 Didn't you say that?

4 A. I'm sorry. I don't know if he was on or he  
5 wasn't.

6 Q. Okay. Now, did you ever tell any of the  
7 associates working on this engagement that you had  
8 advised the client that it was operating in violation  
9 of securities laws and that it had to stop selling or  
10 rolling over participations?

11 A. Mr. Shullaw was in my meeting or our meeting  
12 of May 2nd, and he heard the entire conversation.

13 Q. Other than Mr. Shullaw, did you tell any of  
14 the other associates about your advice to the client  
15 on May 2nd, 2007?

16 A. Not that I recall.

17 Q. Did you have any subsequent conversations  
18 with Mr. Shullaw in which it was discussed that you  
19 had told Radical Bunny to stop selling securities?

20 A. I can't remember if he was in the call that  
21 we had on or about the June 19. I'd need to see my  
22 records on that.

23 Q. I will just tell you that your notes don't  
24 reflect that Mr. Shullaw did participate.

25 But let's put it this way: That's the only

1 other occasion you can recall when you might have, to  
2 the best of your recollection, discussed with  
3 Mr. Shullaw or in the presence of Mr. Shullaw that  
4 you had told Radical Bunny that it had to stop  
5 selling participations and stop rolling over any  
6 participations?

7 A. Well, that wouldn't be true. We were working  
8 on documents to implement the program. Implicit in  
9 all that was our advice on May 2nd.

10 Q. I wasn't concerned about what was implicit.

11 I'm asking about your recollection of any  
12 occasions, other than the possibility of the June  
13 19th call, in which you discussed with Mr. Shullaw  
14 the fact that you had told Radical Bunny to stop  
15 selling its participations and stop rolling over the  
16 participations.

17 A. I can't remember explicitly.

18 Q. And you have no general recollection of any  
19 such conversation either, do you?

20 A. Not at the present.

21 Q. Now, when you met with Radical Bunny, in  
22 February of 2007, you understood that they were  
23 selling participations at that point in time; right?

24 A. I'm sorry. What was the date again?

25 Q. February 2007, your initial meetings with

1 Radical Bunny?

2 A. I'm not sure that was the date.

3 Q. Okay.

4 A. Which meeting are you referring to?

5 Q. I believe that you testified yesterday that  
6 at the conclusion of your meeting on February 12th,  
7 2007 referenced in Exhibit 55 that you gave a little  
8 speech to your clients about how you preliminarily  
9 had concluded they were violating the securities laws  
10 and told them all of the consequences if your  
11 preliminary conclusion proved to be true.

12 MR. DOWNEY: Object to the form.

13 THE WITNESS: We had a meeting on February  
14 12, and I gave them some advice.

15 Q. (BY MR. FRIEDMAN) And you described that  
16 yesterday; right?

17 A. I did describe that yesterday.

18 Q. And did you, at that meeting, advise them or  
19 suggest that they should suspend sales of securities  
20 or participations until Quarles & Brady had a chance  
21 to analyze and draw conclusions about whether there  
22 were ongoing violations?

23 A. Yes.

24 Q. So it's your testimony you told them then  
25 they should stop selling?

1           A. That wasn't my testimony. My testimony  
2 was that if, indeed, we determined that these  
3 participations were securities that they would have  
4 violations of the federal and state securities laws.

5           Q. Right. The question is did you recommend to  
6 them right then that they stop selling the securities  
7 which you had preliminarily concluded violated  
8 securities laws until you were able to reach a final  
9 conclusion?

10          A. At this point, we weren't even engaged.

11          Q. You have to answer the question, sir.

12                 Did you tell them or suggest to them in that  
13 meeting that they should stop selling securities that  
14 you had preliminarily concluded were in violation of  
15 securities laws until you had a chance to come to  
16 some final conclusion?

17          A. No, we did not.

18          Q. Thank you. So as far as you knew, between  
19 February and May of 2007, Radical Bunny was  
20 continuing to sell securities or, at least,  
21 participations that you preliminarily had concluded  
22 would violate the federal and criminal securities  
23 laws?

24          A. We didn't have knowledge of what they were  
25 doing at that point.

1 Q. You assumed they were continuing to sell,  
2 didn't you?

3 A. I didn't assume anything.

4 Q. Did you have any basis to believe they just  
5 stopped selling?

6 A. I didn't have any basis to believe either  
7 way.

8 Q. Did Mr. Hirsch tell you they were going to  
9 stop selling?

10 A. No.

11 Q. Did you ask whether they were going to stop  
12 selling?

13 A. No, I did not.

14 Q. Did you make any effort to see whether they  
15 were continuing to sell, during a several month  
16 period, in violation of the securities laws?

17 MR. GOODING: Objection to the form.

18 THE WITNESS: I'm sorry. Repeat the  
19 question.

20 MR. FRIEDMAN: Would you read the question  
21 back, please.

22 (Last question was read back.)

23 THE WITNESS: I don't recall if we did or  
24 didn't.

25 Q. (BY MR. FRIEDMAN) You don't recall?

1 A. I don't recall.

2 Q. Would you please get Exhibit 55 before you.

3 It may be right there.

4 Would you turn to the next to the last page  
5 of Exhibit 55 which I'll remind you are your  
6 handwritten notes associated with your February 12th,  
7 2007 meeting with the Radical Bunny principals.

8 MR. DOWNEY: I'm sorry. Could you just  
9 repeat the last, the number again.

10 MR. FRIEDMAN: The exhibit number or the page  
11 number?

12 MR. DOWNEY: The page number.

13 MR. FRIEDMAN: It's the next to the last page  
14 with the last two digits of 66.

15 Q. (BY MR. FRIEDMAN) And just so we can all see  
16 it, I highlighted, there is a phrase there that is in  
17 quotations that says "risk of one borrower."

18 Do you see that?

19 A. Yes.

20 Q. And by that you meant that you understood  
21 that there was a risk because they had told you, the  
22 Radical Bunny people had told you that Mortgages,  
23 Ltd. was their only borrower; correct?

24 A. I'm not -- I don't remember specifically if  
25 that was the reference.

1 Q. Why don't you take a look at what you told  
2 the securities division in your testimony under oath  
3 there. And, specifically, I'll direct you to page  
4 806 beginning at line 16 through 807, line 7.

5 A. Yes.

6 Q. And then the same subject, at that point, you  
7 testified with reference to these same notes that you  
8 were concerned that there was a risk of a single  
9 borrower meaning that there is only one entity which  
10 was their debtor, and that was Mortgages, Ltd;  
11 correct?

12 MR. GOODING: Well, objection to the form.

13 THE WITNESS: Are you going to quote from the  
14 transcript or what's your --

15 MR. GOODING: Is there question pending?

16 THE WITNESS: Is there a question in that?

17 Q. (BY MR. FRIEDMAN) Didn't you tell the  
18 Securities Division in reference to the same notes  
19 that are Exhibit 55 that the reference of risk of one  
20 borrower meant that you had been told that Mortgages,  
21 Ltd. was the only borrower of Radical Bunny?

22 MR. GOODING: Objection to the form. I  
23 don't think you are accurately characterizing the  
24 testimony.

25 THE WITNESS: What I said in the ACC was,

1 again, reading from this transcript is "that you have  
2 the risk of a single borrower, meaning there's only  
3 one entity here that is your, which is your debtor,  
4 which is Mortgages, Limited."

5 Q. You are referring to Radical Bunny having  
6 only one borrower?

7 A. Correct.

8 Q. And would you turn to page 843 of your  
9 testimony before the Securities Division and,  
10 specifically, lines 8 through 11, and you were asked  
11 this question, "I think you told us you were told  
12 that Mortgages Limited was the only borrower of  
13 Radical Bunny funds; is that right?" Answer, "That's  
14 what we were told."

15 Do you see that?

16 A. I do.

17 Q. Does that refresh your recollection  
18 concerning whether you were told towards the  
19 inception of your engagement that Mortgages, Ltd. was  
20 the only borrower of Radical Bunny?

21 A. Yes. So my --

22 MR. GOODING: Just answer his question.

23 MR. FRIEDMAN: He is in the middle of an  
24 answer, Bob.

25 THE WITNESS: Say it again.

1 MR. FRIEDMAN: Would you read the question  
2 back.

3 (Question was read back as follows:

4 QUESTION: Does that refresh  
5 your recollection concerning  
6 whether you were told towards  
7 the inception of your  
8 engagement that Mortgages,  
9 ltd. was the only borrower of  
10 Radical Bunny?)

11 THE WITNESS: The inception of our  
12 engagement, at somewhere early in our engagement, I  
13 came to that understanding.

14 Q. (BY MR. FRIEDMAN) And that was reflected by  
15 this quote that you wrote down in your notes from  
16 that February 12th, 2007 meeting, "risk of one  
17 borrower"; right?

18 A. That's the quote. What I'm not sure about is  
19 the reference here to risk of one borrower whether I  
20 was told that or whether it was one of my issue  
21 spotting, is there a risk of one borrower. I didn't  
22 have information at this point.

23 Q. In any event, certainly, before the momentous  
24 call on May 2nd of 2007, you were aware and had been  
25 told that Mortgages, Ltd. was the only borrower of

1 Radical Bunny; correct?

2 A. If not the only borrower, the principal  
3 borrower. I can't recall if it's the sole borrower  
4 or not.

5 Q. You just testified that you were told towards  
6 the beginning of your engagement that they were the  
7 only borrower.

8 MR. GOODING: Objection to form.

9 THE WITNESS: I'm sorry. Are we referring to  
10 the 2/17? We weren't engaged at this point.

11 Q. (BY MR. FRIEDMAN) No. We are referring to  
12 your testimony five minutes ago when you said that  
13 you were told, consistent with what you told the  
14 Corporation Commission, that Mortgages, Ltd. was the  
15 only borrower of Radical Bunny. That's what we are  
16 talking about.

17 You understood that at the time you told them  
18 to stop selling securities, didn't you?

19 A. I'm sorry. Yes, I did.

20 Q. Thank you. Now, going back to what you said  
21 yesterday, I made a list of what I believed you  
22 testified were the things that were necessary for  
23 Radical Bunny to engage in a compliant, meaning, an  
24 offering to comply with securities laws.

25 Do you remember that discussion yesterday,

1 don't you?

2 A. Yes.

3 THE VIDEOGRAPHER: Do you want to go this  
4 way, counsel?

5 MR. FRIEDMAN: Or just flip the page over for  
6 me.

7 Would you pan so we can just have a record of  
8 what's displayed on the large pad there.

9 Q. (BY MR. FRIEDMAN) Now, that's the list that I  
10 took down based upon your testimony.

11 Would you review it and make sure that it is  
12 correct. And let me tell you that the last item,  
13 specific loan pools, I put a question mark because I  
14 think you said that was a question in your mind or  
15 hadn't yet been determined whether there would be  
16 specific loan pools.

17 MR. GOODING: So what's the question?

18 MR. FRIEDMAN: The question is whether that  
19 list accurately sets forth the items that he believed  
20 and testified to yesterday would be necessary for  
21 there to be a compliant offering.

22 MR. GOODING: Are you going to mark this as  
23 an exhibit to the deposition?

24 MR. FRIEDMAN: I am.

25 MR. GOODING: Okay.

1 THE WITNESS: That's not complete or  
2 accurate.

3 Q. (BY MR. FRIEDMAN) What needs to be changed?  
4 I want to make sure we have an accurate list.

5 A. We don't have new program.

6 Q. I'll add these to the list if I can.

7 So I should add new program. That would be  
8 an accurate list?

9 A. If you want it to be this list --

10 Q. No. I want it to be accurate with your  
11 testimony yesterday. You went through and you told  
12 us what was necessary whether it would be --

13 (Court reporter interruption to clarify the  
14 record.)

15 Q. (BY MR. FRIEDMAN) I simply want to get a list  
16 that summarizes, in list form, the items that you  
17 believed and you testified to yesterday were  
18 necessary for there to be any compliant offering  
19 going forward for Radical Bunny.

20 MR. GOODING: All right. And I'm objecting  
21 to this because his testimony on that subject is in  
22 the record from yesterday.

23 MR. FRIEDMAN: Fine. Your objection is  
24 noted.

25 Q. (BY MR. FRIEDMAN) You can answer the

1 question.

2           The question is is there anything else that  
3 you need to change this list or add to this list to  
4 make it accurate?

5           A.    So new program.   New participation.

6           Q.    And what do you mean by new participation?

7           A.    Meaning new form of Participation Agreement.

8           Q.    Okay.  We'll add that to the list.  But I had  
9 tried to capture that with the new contractual  
10 documents.  But that's fine.

11          A.    I don't know what you meant by that.

12          Q.    That's fine.  Should I -- that's fine.

13          A.    And then No. 4 would be the investor  
14 questionnaire.

15          Q.    So I'll just write investor next to that.

16          A.    And then closing of the offering fully invest  
17 until new loan portfolio is available and a new  
18 program.

19          Q.    So if I write close of offering that would be  
20 okay?

21          A.    For shorthand.

22          Q.    So should I put closing of offering?

23          A.    Closing of offering - new loan portfolios --  
24 portfolio, and new program.

25          Q.    And should I cross out No. 3 because you

1 weren't clear what I was referring to there?

2 A. Well, new contractual documents include  
3 additional documents beside the new participation,  
4 loan Participation Agreement.

5 Q. Okay. So with those changes, is this list  
6 now accurate?

7 A. No. We have risks yet.

8 Q. That wouldn't be covered by the PPM?

9 A. Risks regarding integration with the old  
10 program.

11 Q. Okay. I'm going to flip the page here  
12 because I ran out of room.

13 And what you're saying there is you would  
14 have to deal with the risks of integration; correct?

15 A. To have a compliant program.

16 Q. So I should put deal with risks, integration  
17 risks?

18 A. Integration risks. Deal with integration  
19 risks.

20 Q. Anything else?

21 A. Could you flip it back, please.

22 Q. Yes, sir.

23 A. And then the other issue, of course, is with  
24 respect to what they had, whether how and if there  
25 would be a program for nonaccredited investors if

1 they could be included at all in --

2 (Court reporter interruption to clarify the  
3 record.)

4 THE WITNESS: How they could be included in a  
5 separate program.

6 Q. (BY MR. FRIEDMAN) Should I make that as  
7 another list or should I make it a separate item like  
8 below the line?

9 A. It's a sidebar.

10 Q. And I will put separate compliant offering  
11 for unaccredited.

12 A. Separate nonaccredited offering.

13 Q. Does that complete the list?

14 A. From my May 2nd, yes, list. It's a summary  
15 of it.

16 Q. Understood.

17 MR. FRIEDMAN: Would you mark that as an  
18 exhibit, please?

19 (Hoffmann Exhibit No. 66 marked for  
20 identification.)

21 Q. (BY MR. FRIEDMAN) With those changes and  
22 additions, does Exhibit 66 now accurately represent  
23 what you concluded as of May 2nd, 2007 would be  
24 necessary for a compliant offering by Radical Bunny  
25 going forward?

1           A.   As an outline it does.  Obviously, it's an  
2 outline.

3           Q.   Did you provide your client with any  
4 estimate of a timeline that would be reasonable  
5 for concluding all of these items?

6           A.   We did not discuss that.

7           Q.   So you did not provide them with any estimate  
8 of how long this process would take before they could  
9 have a compliant offering?

10          A.   I can't recall if we had a specific  
11 discussion on it.

12          Q.   Do you have any general recollection of ever  
13 providing your client with an estimate of a timeline,  
14 in the May or June 2007 timeframe, for how long it  
15 would take to complete all of those items on the list  
16 and have a compliant offering?

17          A.   We didn't at that point.

18          Q.   Did Mr. Hirsch or the Walders ask you, when  
19 you told them you have to shut down your business,  
20 essentially -- strike that.

21                 Did they ask you, when you told them they had  
22 to stop selling participations or rolling over  
23 participations for the only borrower you knew of, how  
24 long this might take?

25          A.   Our chief concern, at that point, was getting

1 the collateral, and everybody knew that was top  
2 priority.

3 We initially, right after this meeting,  
4 started to obtain information from them and begin  
5 preparation of parts of that advice, parts of those  
6 documents.

7 Q. That wasn't the question.

8 The question was, when you told Mr. Hirsch  
9 and the Walders you have to stop selling  
10 participations or rolling over on this investment  
11 program involving their only borrower, did any of  
12 them ask you how long the process would likely take?

13 A. Not that I recall.

14 Q. Now, did you, in your own mind, have any idea  
15 how long this process might drag out or would likely  
16 drag out before Radical Bunny would have a compliant  
17 offering and could begin selling participations or  
18 securities again?

19 MR. GOODING: Objection to the form.

20 THE WITNESS: I know generally how long it  
21 takes to prepare a Private Placement Memorandum. I  
22 know that timeframe.

23 Q. (BY MR. FRIEDMAN) But there was much more  
24 involved here than preparing a Private Placement  
25 Memorandum, wasn't there?

1           A.    There was another key step before anything  
2 could happen.

3           Q.    So my question was -- and you're talking  
4 about the collateral issue?

5           A.    The collateral.

6           Q.    My question was did you, in your own mind,  
7 form any conclusion or estimate as to how long this  
8 process would likely take?

9           A.    Which process?

10          Q.    The process for Radical Bunny to prepare,  
11 finalize, and have a compliant securities offering  
12 so it could begin selling investments to investors?

13          A.    I didn't form that at that point.

14          Q.    Now, as far as you know -- let me back up.

15                Certainly, do you believe, based upon your  
16 communications with your client, that Mr. Hirsch and  
17 the Walders understood that all of these steps would  
18 be necessary and there would be some indeterminate  
19 time before they would have a compliant securities  
20 offering?

21           MR. GOODING:    Could I just hear that back,  
22 please?

23                (Last question was read back.)

24           MR. GOODING:    Objection to the form.

25           THE WITNESS:    I believe, based on my

1 discussions with them, that they understood it was a  
2 process and was going to take some time.

3 Q. (BY MR. FRIEDMAN) And you've already  
4 testified that you were aware that Mortgages, Ltd.  
5 was the only borrower of Radical Bunny or you had  
6 been told that; correct?

7 A. Yes.

8 Q. And you also understood that Radical Bunny  
9 was earning revenues of \$2.8 million a year in  
10 compensation as a result of the loan program  
11 involving its only borrower Mortgages, Ltd; correct?

12 MR. GOODING: Objection to the form.

13 THE WITNESS: I'm sorry. Could you read that  
14 back.

15 MR. FRIEDMAN: Please reread the question.

16 (Last question was read back.)

17 THE WITNESS: I'm not sure what number I  
18 knew, but I was told that they were earning  
19 compensation.

20 Q. (BY MR. FRIEDMAN) Well, we went through this  
21 yesterday. Two percent of \$140 million is \$2.8  
22 million, and you used that when you were giving them  
23 an initial estimate of the buyout; right?

24 A. No. I didn't give them. Tom Hirsch gave me  
25 those numbers.

1 Q. That's the only information you had; that's  
2 my point.

3 Based upon what you had been told, you  
4 understood that Radical Bunny was earning something  
5 like \$2.8 million a year in compensation for the  
6 Mortgages, Ltd. program.

7 A. I agree with that statement.

8 Q. And you were not aware, in May of 2007, of  
9 any other source of revenue that Radical Bunny had,  
10 were you?

11 A. I didn't know one way or another, that's  
12 correct.

13 Q. So essentially, you were telling Tom Hirsch  
14 and the Walders that they were going to have to shut  
15 down the Mortgages, Ltd. program involving their only  
16 borrower and stop compensation of about \$3 million,  
17 \$2.8 million a year.

18 You understood that; right?

19 MR. GOODING: Objection to the form.

20 THE WITNESS: I don't know -- repeat the  
21 question, please.

22 Q. (BY MR. FRIEDMAN) I'll reask the question.

23 You understood, at least, based upon what you  
24 knew at the time that when you told Tom Hirsch and  
25 the Walders that they had to stop selling securities

1 or participations that you were essentially shutting  
2 down the only source of revenue that you knew Radical  
3 Bunny had?

4 A. I didn't know what sources of revenue they  
5 had. And I don't think it's accurate to say that  
6 they were shutting those down.

7 The existing portfolio was still in place.  
8 They were continuing to receive their two percent off  
9 of those payments that were coming in as far as I  
10 knew. I don't know what happened.

11 Q. Now, when you told Mr. Hirsch and the Walders  
12 that they had to stop selling participations or  
13 rolling participations over, the only reaction that  
14 you can recall is that Mr. Hirsch said we understand  
15 and want to do the right thing or words to that  
16 effect?

17 A. And, yes, and we want to be compliant.

18 Q. There was no objection from Mr. Hirsch about  
19 having to stop all of the sales to existing investors  
20 or rolling over?

21 A. There was no objection.

22 Q. No complaint?

23 A. No complaint except, as I indicated  
24 yesterday, he did say the implication of this is that  
25 our business is going to shrink or words to that

1 effect, whatever I had said yesterday from my notes.

2 Q. Now, as far as you knew, Radical Bunny  
3 remained a client of Quarles & Brady until June of  
4 2008?

5 A. That's about the date, I believe.

6 Q. And you were aware that, at least, until  
7 October of 2007, Quarles & Brady was continuing to  
8 provide legal services and advice to its client  
9 Radical Bunny; correct?

10 A. I'm sorry. October what year?

11 Q. 2007. I may have misspoke.

12 A. I'd have to see the time records.

13 Q. If that helps you, sure.

14 A. Your question again was?

15 Q. Let me just ask a different question.

16 During the time after you were not involved  
17 in this engagement on a day-to-day practice, did you  
18 keep generally informed about what was going on with  
19 the client consistent with the custom and practice  
20 you described earlier?

21 A. In a very high level, I was being kept  
22 informed.

23 Q. Would that be coming from Mr. Moya primarily?

24 A. Primarily from Mr. Bornhoft, and I was  
25 getting copied on certain documents.

1 Q. And you believed that during that entire year  
2 period, from May of 2007 through June of 2008 that  
3 Radical Bunny had not sold any new participations to  
4 investors or rolled over any of the existing  
5 participations?

6 A. I had no indication to that effect that they  
7 had been selling or rolling over.

8 Q. And so you believed that they weren't; right?

9 A. I believed that they weren't.

10 Q. And I think you testified earlier or  
11 yesterday that given the nature of the one year notes  
12 that Mortgages, Ltd. was issuing to Radical Bunny,  
13 you would assume that or conclude that over a year  
14 period, those notes, if they weren't rolled over,  
15 would have been retired; correct?

16 A. Well, I'm not sure if they were all one year  
17 notes, first of all. But I would have assumed that  
18 they were reaching their maturities and being repaid.

19 Q. And you knew from the early days of your  
20 engagement, when the program was described to you,  
21 that you were told, at least, that the predominant  
22 term of the notes from, were one year?

23 A. Without checking, I think, I don't know if  
24 it's predominant, but there was a large proportion,  
25 some proportion were one year notes. I can't recall

1 that very well.

2 Q. So, basically, you believed that month after  
3 month, for a period of over a year, that Radical  
4 Bunny's business essentially ran off the books, that  
5 those investments were running off the book or, at  
6 least, a substantial portion of them?

7 MR. GOODING: Objection to the form.

8 THE WITNESS: Actually, I wasn't thinking  
9 about that.

10 Q. (BY MR. FRIEDMAN) The thought never  
11 occurred to you that, gee, 12 months have gone  
12 by with my client's only borrower, and they have  
13 not been selling new participations or rolling  
14 anybody over, it didn't occur to you that maybe  
15 you should ask whether they were selling securities  
16 again?

17 A. I had nothing to cause me to make that  
18 inquiry.

19 Q. And you never did make that inquiry, did you?

20 A. I did not.

21 MR. FRIEDMAN: This is probably a good time  
22 to take a break.

23 THE VIDEOGRAPHER: We are going off the  
24 record. The time is 10:26 A.M.

25 (Recess taken - 10:26 A.M. to 10:37 A.M.)

1           (Hoffmann Exhibit Nos. 67 and 68 marked for  
2 identification.)

3           THE VIDEOGRAPHER: We are back on the record  
4 to continue the videotaped deposition of Christian  
5 Hoffmann. The time is 10:37 A.M. This is the  
6 beginning of video cassette No. 2 of Volume No. 2.

7           For the record, video cassette No. 1 of  
8 Volume No. 2 concluded at 10:26 A.M.

9           Thank you, counsel.

10          Q. (BY MR. FRIEDMAN) Mr. Hoffmann, when you  
11 informed the Radical Bunny principals about their  
12 securities law violations in May of 2007, you told  
13 them that you would begin to work on documents that  
14 would let Radical Bunny continue its investment  
15 program on an interim basis while a compliant program  
16 was developed and put in place; is that true?

17          A. No. That's not true.

18          Q. Let me hand you Exhibit No. 67 and 68. Here  
19 is 67. Can I have -- that's okay. 68.

20          MR. DOWNEY: Could you just help us out which  
21 is which?

22          MR. FRIEDMAN: Participation Agreement. The  
23 document entitled Participation Agreement, 67, and  
24 the document entitled Participant Record is 68.

25          Q. (BY MR. FRIEDMAN) Mr. Hoffmann, you've seen

1 Exhibit No. 67 in one form or another before, haven't  
2 you?

3 A. I can't say if it's the same document, but  
4 I've seen forms of Participation Agreements.

5 MR. GOODING: Would you just bear with me one  
6 second.

7 MR. KENNEDY: Go off the record.

8 THE VIDEOGRAPHER: Keep going or do you want  
9 me to go off the video record?

10 (Mr. Gooding and Mr. Kennedy talking out of  
11 hearing of reporter.)

12 THE WITNESS: I'm not sure if this is a  
13 document our firm prepared or not. I would need to  
14 compare it against -- because you said if I've seen  
15 it before. I don't know if I've seen this exact  
16 document before.

17 Q. (BY MR. FRIEDMAN) But you know that your firm  
18 began to prepare a document like this in May of 2007  
19 after the May 2nd, 2007 phone call?

20 A. We did prepare a Participation Agreement. I  
21 don't know if this is -- I just don't know this  
22 document unless I would compare it to documents in my  
23 file.

24 Q. Okay. What document would you want to see,  
25 if necessary, to satisfy yourself that this is a

1 document that you prepared?

2 I'll tell you what. Why don't you assume  
3 that this is a copy of one document that was prepared  
4 by your firm, and we can verify that as we proceed.

5 The point is this document, this  
6 participation, this formal Participation Agreement  
7 was something that was drafted by you and Mr. Shullaw  
8 together; correct?

9 A. Again, I don't know, unless I see that the  
10 document came from our firm, I don't know if this  
11 was, if any changes were made to this document.

12 I see it's RBO notation on here. What does  
13 that mean?

14 Q. Okay. You can't tell, from looking at the  
15 document yourself, whether it's one you prepared?

16 A. Not without -- no. The answer is no.

17 MR. FRIEDMAN: Let's take a short break. I'm  
18 get one with a QB designation so we can make sure we  
19 can proceed.

20 MR. GOODING: Also, Andy, this document, you  
21 know, has another document attached to it which I'm  
22 not sure whether you intended to attach them together  
23 like this, but it's a different document.

24 MR. FRIEDMAN: I'll check. We are going to  
25 try to get the other one anyway.

1 THE VIDEOGRAPHER: We are going off the  
2 record. The time is 10:42 A.M.

3 (Recess taken - 10:42 A.M. to 11:02 A.M.)

4 (Hoffmann Exhibit Nos. 69 and 70 marked for  
5 identification.)

6 THE VIDEOGRAPHER: We are back on the  
7 record. The time is 11:02 A.M.

8 Q. (BY MR. FRIEDMAN) Mr. Hoffmann, we have taken  
9 a break while I obtained some documents to show you.  
10 They come from the Quarles & Brady files. I think  
11 that was the issue that we departed on.

12 First let me hand you Exhibit No. 69. This  
13 document is entitled Participation Agreement; right?

14 A. It is.

15 Q. And this is a document that was drafted by  
16 your lawfirm; correct?

17 A. It appears to be.

18 Q. And this is a document which was initially  
19 drafted by Mr. Shullaw and later reviewed by you?

20 A. I can't remember. I reviewed various  
21 versions of this so I don't know if I reviewed this  
22 version.

23 Q. Mr. Shullaw is the author of the document  
24 though, correct, he drafted the initial version?

25 A. I can't recall that.

1 Q. But you do recall reviewing versions of this  
2 particular document?

3 A. Correct.

4 Q. And let me hand you Exhibit No. 70. And this  
5 is a document entitled Loan Participation Disclosure  
6 Statement and Acknowledgements; right?

7 A. Correct.

8 Q. And this is also a document that was prepared  
9 by your firm?

10 A. It appears to be, yes.

11 Q. In fact, each of these documents have your  
12 firm's computer --

13 A. Yes.

14 Q. -- footer on them showing that they were  
15 generated by your firm; correct?

16 A. Yes. Correct.

17 Q. And they have a Quarles & Brady production  
18 number in the lower right-hand corner; correct?

19 A. Correct.

20 Q. And Exhibit 70 would have been another  
21 document that was reviewed by you, in one version or  
22 another, at the time you were working on the Radical  
23 Bunny engagement; correct?

24 A. Yes.

25 Q. And are these two documents related in any

1 way?

2 MR. GOODING: Objection to the form.

3 THE WITNESS: What do you mean?

4 Q. (BY MR. FRIEDMAN) Let's take a look at the  
5 time records.

6 Before we do that, let me just ask it this  
7 way: Both of these documents were drafted by Quarles  
8 & Brady as an interim step to allow Radical Bunny to  
9 continue security sales before a compliant program  
10 was in place; correct?

11 A. No. Not correct.

12 Q. Okay. Let's look at the timing of the  
13 preparation of these documents.

14 Would you look at Exhibit 48, which is the  
15 Quarles & Brady billing statements, and turn to the  
16 time entry for May 7th of 2007. It appears at page  
17 109.

18 Do you see that?

19 A. I do.

20 Q. And this is a time entry from Mr. Shullaw;  
21 correct? There is a time entry for Mr. Shullaw for  
22 May 8th, 2007?

23 MR. GOODING: I thought you were looking at  
24 May 7th.

25 MR. FRIEDMAN: I'm sorry. Thank you, Bob.

1 Q. (BY MR. FRIEDMAN) May 7th, 2007, do you see  
2 Mr. Shullaw's time entry?

3 A. I see it.

4 Q. He indicates, on that day, he began working  
5 on Participation Agreement.

6 Do you see that?

7 A. Yes.

8 Q. And that would have been the document that  
9 ultimately emerged in one version or one draft as  
10 Exhibit 69?

11 A. One version; correct.

12 Q. So that's when, according to, at least,  
13 Mr. Shullaw's time records, he began working on the  
14 Participation Agreement on May 7th, 2007; right?

15 A. Actually, it looks like he began drafting it  
16 earlier than that?

17 Q. Where do you see him beginning drafting a  
18 participation statement?

19 A. April 25th.

20 Q. Which date?

21 A. April 25.

22 Q. Okay. And then on May 7th, his, at least,  
23 his time entry indicates, and I'm quote it, "begin  
24 working on Participation Agreement."

25 Do you see that?

1 A. I see it.

2 Q. Anyway, it's clear that Mr. Shullaw was  
3 working on the Participation Agreement within a  
4 matter of days after the May 2nd, 2007 telephone call  
5 where you informed Radical Bunny that their  
6 participation offerings had violated the federal and  
7 state securities laws; correct?

8 A. We began working on it shortly after. I  
9 disagree with some of your characterization there.

10 Q. You began working on --

11 A. On the draft of the Participation Agreement.

12 Q. -- within days after your May 2nd, 2007 phone  
13 call with the Radical Bunny principals?

14 A. Correct.

15 Q. And if you will look at the time entry for  
16 May 10th for Mr. Shullaw of 2007, this is  
17 approximately a week after your May 2nd, 2007 phone  
18 call with Radical Bunny principals, and according to  
19 Mr. Shullaw's time entries, he completed preparation  
20 of the draft Participation Agreement and worked on  
21 risk factors; correct?

22 A. Well, just May 10 just says he's -- that's  
23 correct. That's what it says.

24 Q. And if you look at Exhibit No. 70, the Loan  
25 Participation Disclosure Statement, that's where

1 there were draft risk factors that your firm  
2 prepared; correct?

3 A. Correct.

4 Q. That would indicate to you that about a week  
5 after the May 2nd, '2000' phone call with Radical  
6 Bunny, in which you informed him of your advice  
7 concerning their securities violations, Mr. Shullaw  
8 began to work on Exhibit No. 70, the Loan  
9 Participation Disclosure Statement with risk  
10 disclosures; correct?

11 A. Correct.

12 Q. And the reason that all of this work began so  
13 quickly after the May 2nd, 2007 telephone call was  
14 because, given the effect on Radical Bunny's  
15 business, Quarles & Brady had undertaken to draft  
16 documents to be used on interim basis as quickly as  
17 possible so that Radical Bunny could continue its  
18 securities sales; correct?

19 A. Not correct.

20 Q. Well, at the time that these documents were  
21 being prepared, close in time to the May 2nd, 2007  
22 phone call, you didn't even know the structure of  
23 what the compliant program, what it would be, did  
24 you?

25 A. Say that again, please.

1 Q. Sure. As of the time that these documents  
2 were drafted, shortly after the May 2nd, 2007  
3 telephone call, you did not then know what the  
4 structure of any compliant offering would be, did  
5 you?

6 A. We had thoughts in our mind, but we hadn't  
7 completed discussions with the client regarding  
8 that. So --

9 Q. So there had been no decision, at that point,  
10 about what the structure of any compliant program  
11 would be; correct?

12 A. Correct.

13 Q. And there had been no decision, at that  
14 point, about what the details of any compliant  
15 program would be that could ultimately come into  
16 effect; correct?

17 A. Correct.

18 Q. But you did know the structure of the  
19 existing program which you had concluded violated  
20 securities laws; correct?

21 A. I'm sorry. The existing program prior to May  
22 2nd?

23 Q. Yes.

24 A. Yes. We did know that.

25 Q. And these new documents that you were

1 drafting for Radical Bunny were intended as an  
2 interim step to provide some protection to Radical  
3 Bunny against liability for ongoing securities  
4 violations; correct?

5 A. That's not true.

6 Q. What was the purpose for drafting these  
7 documents?

8 A. This was the first, as you recall, on my May  
9 2nd talking points and the program that I outlined  
10 there, one of the steps of a number of steps that we  
11 had to take to arrive at a point where a compliant  
12 offering could even be made was to deal with the  
13 contractual problems between Radical Bunny and its  
14 investors. These are the documents we started on  
15 first --

16 Q. So is it --

17 A. -- the draft.

18 Q. Is it your testimony that the documents that  
19 were drafted in early May, copies of which are  
20 Exhibit 69 and 70 were prepared only and solely for  
21 use as part of a compliant offering?

22 A. That's correct.

23 Q. For no other purpose?

24 A. For no other purpose.

25 Q. And you are certain of that?

1 A. I am certain of that.

2 (Hoffmann Exhibit No. 71 marked for  
3 identification.)

4 Q. (BY MR. FRIEDMAN) Would you turn back to your  
5 time records, please. And this indicates that on May  
6 21st, 2007, you personally reviewed and revised  
7 disclosure documents and Participation Agreement;  
8 correct?

9 A. Correct.

10 Q. And there you are referring to the documents  
11 which have been marked as Exhibits 69 and 70;  
12 correct?

13 A. I'm not sure if those were the versions or  
14 not, but they were forms of that.

15 Q. It will be some version of these documents?

16 A. Correct.

17 Q. And you spent two hours, according to your  
18 time records, reviewing and revising those documents;  
19 correct?

20 A. Correct.

21 Q. And when you were done reviewing and revising  
22 those documents, you sent them to Tom Hirsch at  
23 Radical Bunny that same day, didn't you?

24 A. I can't remember what the date was.

25 Q. Let me hand you Exhibit No. 71. This is a

1 copy of a fax that you sent to Mr. Hirsch; correct?

2 A. Yes.

3 Q. And according to this document, that was sent  
4 to Mr. Hirsch on May 21st at about 7:22 in the  
5 evening; correct?

6 A. Correct.

7 Q. And with this facsimile transmission, you  
8 were sending him a copy of the Participation  
9 Agreement that we have been talking about; right?

10 A. Correct.

11 Q. It indicates that you would be sending him  
12 momentarily another document; right?

13 A. Yes.

14 Q. And what document were you going to be  
15 sending him momentarily?

16 A. Well, the fax cover sheet says will contain  
17 disclosures, the fax will contain disclosures about  
18 the loan itself.

19 (Hoffmann Exhibit No. 72 marked for  
20 identification.)

21 Q. (BY MR. FRIEDMAN) Let me hand you what's been  
22 marked as Exhibit No. 72, and this is a copy of a fax  
23 that you sent at 7:25 on May 21st, 2007 to  
24 Mr. Hirsch; correct?

25 A. Yes. Correct.

1 Q. And this is the disclosure document that you  
2 had said, in your earlier email, would be arriving  
3 momentarily?

4 A. Correct.

5 Q. And this is a version of the disclosure  
6 statement that was marked previously as Exhibit 70?

7 A. I'm sorry. Say that again.

8 Q. Exhibit 70?

9 A. Yes.

10 Q. Now, was this fax sent from some computer  
11 system or is it a manual fax?

12 A. I can't tell. I don't know.

13 Q. The reason I ask is I've seen references to a  
14 fax server, and I don't see that reference on here.  
15 But that wouldn't help you.

16 Okay.

17 MR. GOODING: There is a reference to fax  
18 server on here at the top.

19 MR. FRIEDMAN: Oh. That's right. Thank you.

20 Q. (BY MR. FRIEDMAN) See the upper left-hand  
21 corner there is a fax server reference?

22 A. Yes.

23 Q. Do you if that, does that help you as to  
24 whether this was generated by a computer system or  
25 manually?

1           A.    I don't know enough about it.  It could be,  
2 could be a fax, a automated fax.

3           Q.    In any event, you authored this fax, didn't  
4 you?

5                   MR. GOODING:  Which one are you talking  
6 about?

7           Q.    (BY MR. FRIEDMAN) 71 with a message to Tom,  
8 Bunny, and Howard?

9           A.    You mean the transmittal note?

10          Q.    Yes.

11          A.    Yes, I did.

12          Q.    You chose the words that appear in that note?

13          A.    I drafted it, yes.

14          Q.    And I'll put a copy up on the screen here,  
15 and in this message to your clients, on May 21st, you  
16 indicated that you were attaching, for their review,  
17 a draft, quote, "of the Participation Agreement we  
18 are recommending as an interim step."

19                   Do you see that?

20          A.    I do.

21          Q.    And when you said, we are recommending that  
22 the Participation Agreement as an interim step, were  
23 you referring to yourself and Gary Shullaw?  Who is  
24 the we?

25          A.    When I use "we," I am usually speaking about

1 the firm.

2 Q. So in any event, this was Quarles & Brady's  
3 recommendation to its client Radical Bunny; correct?

4 A. Correct.

5 Q. And you were recommending that Radical Bunny  
6 use the Participation Agreement, to use your words,  
7 as a, "interim step"; correct?

8 A. That's not true. That's not what the  
9 document says.

10 Q. It says, okay, you were recommending the  
11 Participation Agreement as a, "interim step"; right?

12 A. That's what the words say, yes.

13 Q. Well, those are the words you chose; correct?

14 A. Correct. So your question is?

15 Q. Question is you were recommending that that  
16 Participation Agreement be an interim step of some  
17 sort; right?

18 A. Or that the draft is an interim step. There  
19 are a number of ways to interpret this.

20 Q. Well, there is no question pending right  
21 now.

22 But let me ask you this: When you sent this  
23 fax to your client stating that you were giving them  
24 a Participation Agreement which, "we are recommending  
25 as an interim step," what did you mean to say?

1           A.    So I don't have a specific recollection about  
2 this fax cover sheet.

3           Q.    So you don't know what you meant to say?

4           A.    However, it could be a reference, I think it  
5 may be a reference to our steps that I outlined on  
6 May 2nd where we put together a number of steps that  
7 needed to be accomplished before a compliant program  
8 could be put together. One of those steps was to  
9 prepare documents for the contractual documents.

10          Q.    But you are not sure that's what you meant  
11 when you sent this fax?

12                   MR. GOODING:  Objection to form.

13                   THE WITNESS:  I don't have a recollection of  
14 the specific context.

15          Q.    (BY MR. FRIEDMAN) Well, another reading of  
16 this would be that you were recommending that your  
17 client use this agreement when it was finalizing as  
18 an interim step; correct?

19                   MR. GOODING:  Objection to form.

20                   THE WITNESS:  That's not correct.

21          Q.    (BY MR. FRIEDMAN) You think it's not, that no  
22 reasonable person would conclude, reading this  
23 transmission, that you were recommending, as an  
24 interim step, that this Participation Agreement be  
25 finalized and used?

1 MR. GOODING: Objection to form.

2 THE WITNESS: I don't agree.

3 Q. (BY MR. FRIEDMAN) The fact of the matter is  
4 this was being prepared, and you were sending it to  
5 your client, recommending as an interim step,"  
6 because you were recommending it as an interim step  
7 before the compliant offering was finished and  
8 available to be made; correct?

9 A. That's not true.

10 Q. How can you interpret this, when you say you  
11 are recommending it as an interim step, what was the  
12 recommendation there?

13 MR. GOODING: Objection to the form.

14 THE WITNESS: What do you mean what was the  
15 recommendation?

16 Q. (BY MR. FRIEDMAN) Yes. It says you were, "we  
17 are recommending as an interim step"; what were you  
18 recommending?

19 A. We were recommending a draft and couple  
20 interpretations of this that I, in the context of the  
21 time, one is an interim step regarding our five  
22 program points to move forward toward a compliant  
23 offering.

24 So Participation Agreement is just one of  
25 those steps along with all the other steps that I set

1 forth preparing a Private Placement Memorandum, a  
2 disclosure document, and, of course, most important,  
3 getting the collateral as this point.

4 Q. Is there any other interpretation of this?  
5 You said that's one interpretation. What other  
6 interpretation is there?

7 A. I can't speculate on that.

8 Q. That's the only interpretation that you can  
9 think of?

10 MR. GOODING: Objection to form.

11 THE WITNESS: I can't speculate about what  
12 somebody else might interpret this to mean.

13 Q. (BY MR. FRIEDMAN) I'm asking you for your  
14 interpretation of what you think is reasonable.

15 The interpretation you just gave is the only  
16 reasonable interpretation of this document in your  
17 judgment?

18 A. Well, another reasonable interpretation is  
19 that the draft is an interim step to getting to a  
20 final Participation Agreement.

21 Q. Well, how would that be if you are  
22 recommending it as an interim step?

23 A. That the draft is an interim step along the  
24 path to completing a final document.

25 Q. And another interpretation would be that this

1 Participation Agreement was to be used on an interim  
2 basis before there was a compliant offering; correct?

3 A. That's not reasonable interpretation.

4 Q. And the reason you think that's not  
5 reasonable is because these documents were only to be  
6 used in connection with and as part of a compliant  
7 program; right?

8 A. That's correct. When they were finalized.

9 Q. And that would include all of the steps that  
10 are on the Exhibit 66?

11 A. Among others. Those are shorthand that you  
12 have there.

13 Q. Do you know whether this document was  
14 produced to the S.E.C. in connection with your  
15 testimony there?

16 MR. GOODING: Which document?

17 Q. (BY MR. FRIEDMAN) The Exhibit No. 71, the one  
18 we have been talking about?

19 A. I don't know if it was or wasn't.

20 Q. Do you have any explanation for why this  
21 Exhibit 71, why this document would not still today  
22 be in the files at Quarles & Brady?

23 MR. GOODING: Objection to form.

24 THE WITNESS: Which document?

25 Q. (BY MR. FRIEDMAN) Exhibit 71 which you'll see

1 is produced by Radical Bunny?

2 A. I don't know. I don't know.

3 Q. If your normal protocols had been followed,  
4 you would expect a copy of this to be in the files at  
5 Quarles & Brady, wouldn't you?

6 A. I don't know that the protocols weren't  
7 followed.

8 Q. That wasn't my question.

9 The question was if your usual custom and  
10 practice and the protocols at your lawfirm had been  
11 followed, you would expect this document to be  
12 maintained with the client files at Quarles & Brady,  
13 wouldn't you?

14 A. Yes.

15 Q. And that would also be true of Exhibit 72,  
16 your fax transmitting the risk disclosures to Radical  
17 Bunny; correct?

18 A. That what would be true?

19 Q. That had normal protocols been followed, you  
20 would expect this to be in the Quarles & Brady client  
21 files, a copy of it?

22 A. Correct.

23 Q. Why is it that you were sending these  
24 documents over to Radical Bunny, in May of 2007,  
25 before the structure of any compliant arrangement had

1 even been established?

2 A. We needed to begin the process of moving  
3 along the interim steps to get to a final compliant  
4 offering, and this was a logical place to start.

5 Q. And at this time, had work begun on a Private  
6 Placement Memorandum?

7 A. No, it had not.

8 (Hoffmann Exhibit No. 73 marked for  
9 identification.)

10 Q. (BY MR. FRIEDMAN) Handing you Exhibit 73,  
11 this is another facsimile transmission to Radical  
12 Bunny; correct?

13 A. Yes, it is.

14 Q. And it was sent by Mr. Shullaw or on his  
15 behalf on May 23rd, 2007 at about 9:30 in the  
16 morning?

17 A. Yes.

18 Q. And attached to the fax or with the fax cover  
19 sheet was something called Investor Subscription  
20 Procedures?

21 A. Yes.

22 Q. And Mr. Shullaw, in his fax cover sheet, told  
23 Radical Bunny that the process summary that was  
24 attached was to be used, "for new investors along  
25 with a flow chart of the process for your use."

1 Do you see that?

2 A. I do.

3 Q. And the reason that he was sending this two  
4 days after you had sent the earlier drafts was  
5 because this document, like the earlier one, was to  
6 be used with new investors as an interim step before  
7 a compliant offering; correct?

8 A. That's not correct.

9 Q. You testified earlier -- take a look at  
10 Exhibit 71 and, specifically, at the attached  
11 Participation Agreement.

12 Do you have that in front of you?

13 A. Yes.

14 Q. You testified earlier, and you confirmed on  
15 our list as Exhibit 66 that to be compliant, a new  
16 offering would be required to be issued by a new  
17 entity; correct? You don't need to look at the  
18 document to answer that question.

19 A. I don't know that my testimony -- you'd  
20 have to read my testimony back. You are  
21 characterizing my testimony.

22 Q. The first item on the list that we agreed to  
23 earlier, and I will tell you that it is, what you  
24 said in your testimony, is that to be compliant, a  
25 new offering would need to be issued by a new entity;

1 correct?

2 A. That was a structural issue that still had to  
3 be determined.

4 Q. Do you want to correct your prior testimony  
5 about that?

6 A. I'm sorry.

7 Q. You said earlier, and what's in the record,  
8 and we'll have it out for the jury in this case, and  
9 it's on the list that a requirement of a compliant  
10 offering, one requirement was a new entity; correct?

11 A. That's correct. I didn't understand your  
12 question.

13 Q. A new entity, meaning, some entity other than  
14 Radical Bunny LLC?

15 A. Correct.

16 Q. And what is the entity listed in the  
17 Participation Agreement which has been marked as  
18 Exhibit 71 that you have testified is only to be used  
19 as part of a compliant offering?

20 A. So I'm sorry. Say that again.

21 Q. What is the issuer of the Participation  
22 Agreement that you sent on May 21st with the interim  
23 step language to your client?

24 MR. GOODING: Objection to form.

25 Q. (BY MR. FRIEDMAN) Let me rephrase it.

1           The Participation Agreement that you sent to  
2 your client, on May 21st, 2007, which is attachment  
3 to Exhibit 71, lists Radical Bunny LLC as the lender;  
4 correct?

5           A. It does.

6           Q. That's not a new entity, is it?

7           A. This is a draft -- it is not a new entity,  
8 but this is a draft. There hadn't been a new entity  
9 formed.

10          Q. Well, and you were sending them documents  
11 using the old entity; correct?

12          A. Sending them documents using a place saver.

13          Q. Elsewhere in this document, when you had a  
14 place saver, you had blanks, didn't you?

15          A. Sometimes, yes.

16          Q. But you chose to put Radical Bunny, the  
17 existing entity, in this document rather than putting  
18 a place holder of any kind suggesting a new entity  
19 which is what you have testified would be required  
20 for a compliant offering; correct?

21          A. Again, it was a draft.

22          Q. Question was you chose to put the existing  
23 entity in rather than a place holder for a new  
24 entity; correct?

25          A. Yes, we did.

1 Q. Now, I'd like to continue along discussing  
2 whether the documents that you have identified were,  
3 in fact, for use with a compliant offering or rather  
4 were an interim step for a compliant offering.

5 Would you take a look at the process summary  
6 marked as Exhibit 73.

7 Do you have that in front of you, sir?

8 A. Yes.

9 Q. Now, this, and I'll put it up on the screen  
10 for us, this was the process summary that Mr. Shullaw  
11 had prepared and transmitted to Radical Bunny on the  
12 23rd for use with, to use his language, "new  
13 investors"; right?

14 A. Correct.

15 Q. And this is a step-by-step set of procedures  
16 for Radical Bunny to follow in issuing the new  
17 contemplated securities; right?

18 A. It's a draft of that, yes.

19 Q. But it was a draft of a process, at least,  
20 that you understood would apply, ultimately, once the  
21 other things occurred; right?

22 A. No. It was a draft of where we stood at that  
23 point in the structuring.

24 Q. Well, it was a draft reflecting the  
25 procedures that you were sending to your client for

1 use in future offerings at this point in time;  
2 correct?

3 A. Yes. At that point in time.

4 Q. Well, let's walk through it step-by-step.

5 Step 1 was that the new investors would  
6 "Review and complete the Participation Agreement."

7 Do you see that?

8 A. Yes.

9 Q. And that's referring to the Participation  
10 Agreement, once it was finalized, that was attached  
11 to Exhibit 71 that you would send over a couple days  
12 earlier; correct?

13 A. Or a form of it. I don't know if that was  
14 it.

15 Q. But that, that's the document you are  
16 referring to when it says Participation Agreement,  
17 that's the document this reflects?

18 A. Correct.

19 Q. Okay. And the second step was to "Review and  
20 complete the Loan Participation Disclosure Statement  
21 attached to the Participation Agreement as Exhibit  
22 C"; right?

23 A. Yes.

24 Q. And that was the document that you faxed  
25 moments later on the 21st as Exhibit C to the

1 Participation Agreement which has been marked here as  
2 Exhibit 72; right?

3 A. Yes.

4 Q. And the next step was, the purpose for that  
5 was to ensure that you, that Radical Bunny was  
6 dealing with accredited investors; correct?

7 A. Correct.

8 Q. And it also included risk disclosures;  
9 correct?

10 A. Yes.

11 Q. Step 3 in the process was to "Submit payment  
12 for the amount invested as set forth in the  
13 Participation Agreement"; correct?

14 A. Correct.

15 Q. And then it indicates that "Upon completion  
16 of the items listed above and Radical Bunny's  
17 acceptance of the same, investors will receive a  
18 signed copy of the Participation Agreement"; correct?

19 A. Yes.

20 Q. A copy of a promissory note issued by  
21 Mortgages, Ltd. to Radical Bunny; correct?

22 A. It says a secured promissory note.

23 Q. Okay. And "A copy of the Security Agreement  
24 between Radical Bunny and Mortgages, Ltd"; correct?

25 A. Correct.

1 Q. And this was to be done when Radical Bunny  
2 accepted and received monies from the new investors  
3 to whom this offering was going to be made; correct?

4 A. After, in a compliant offering.

5 Q. Well, is there any reference here anywhere  
6 that these investors were to be provided with a  
7 Private Placement Memorandum?

8 A. There isn't in this document.

9 Q. Is there any place holder here for a  
10 provision of any Private Placement Memorandum in this  
11 subscription procedure document that you sent to the  
12 client?

13 A. Not in this draft.

14 Q. And the risk disclosures that you prepared  
15 and sent over, which are attached to Exhibit 72,  
16 those certainly would not qualify as a Private  
17 Placement Memorandum, would they?

18 A. They weren't intend -- no.

19 Q. In fact, at the time of -- strike that.  
20 Why did you prepare a document if it was to  
21 be used for a compliant offering that had Radical  
22 Bunny accepting money and providing documents without  
23 any Private Placement Memorandum?

24 A. We prepared a draft of the document along  
25 with all these other drafts that we continued to work

1 on from May to June.

2 So these are just, what you've done is taken  
3 one or two documents here, and these are drafts that  
4 continually moved along the process.

5 Q. Well, there is no other draft of any set of  
6 procedures that was ever prepared by Quarles & Brady  
7 and given to Radical Bunny that provided for a  
8 Private Placement Memorandum as a step in the  
9 process, was there?

10 A. No.

11 Q. The document that you prepared or Mr. Shullaw  
12 prepared and you approved and sent over had  
13 subscription procedures that made no provision for  
14 any Private Placement Memorandum; correct?

15 A. That's not true. The draft, this is a draft  
16 document. We never got to the point of preparing a  
17 Private Placement Memorandum.

18 Q. Right. But what you did send to your client  
19 made no provision for a Private Placement Memorandum,  
20 did it?

21 A. Let's get our terms straight. What do you  
22 mean by a Private Placement Memorandum.

23 Q. Anything that would qualify as a Private  
24 Placement Memorandum, and you testified to that  
25 yesterday, and it's sitting on the list and marked as

1 Exhibit 66?

2 MR. GOODING: Objection to the form.

3 THE WITNESS: Do you want to rephrase that?

4 Q. (BY MR. FRIEDMAN) I don't. Why don't you  
5 answer the question.

6 MR. GOODING: Let's hear the question back  
7 then.

8 (Question read back as follows:

9 QUESTION: Anything that would  
10 qualify as a Private Placement  
11 Memorandum, and you testified  
12 to that yesterday, and it's  
13 sitting on the list and marked  
14 as Exhibit 66?)

15 MR. FRIEDMAN: I'm sorry. You need to go  
16 back to the prior question.

17 (Question was read back as follows:

18 QUESTION: Right. But what you  
19 did send to your client made  
20 no provision for a Private  
21 Placement Memorandum, did it?)

22 THE WITNESS: That's not true.

23 Q. (BY MR. FRIEDMAN) Where does this  
24 subscription procedure make provision for a Private  
25 Placement Memorandum?

1           A.    In the draft -- you don't have this draft out  
2 yet, but in one of the drafts of these documents that  
3 occurred later, we have a place holder for the  
4 additional information.

5                    We hadn't decided, at that point, what form  
6 it would take.  So these are titles of documents.  
7 The documents are still in process.

8           Q.    The question was whether the subscription  
9 procedures made any provision for a Private Placement  
10 Memorandum?

11           A.    And I just said yes.

12           Q.    The same subscription procedures were revised  
13 later?

14           A.    No.  Your question was do they make  
15 provision.  There is a reference in here to a loan  
16 disclosure statement, and there were to be exhibits  
17 to that as you would see in later drafts.

18           Q.    So you are saying that the loan disclosure  
19 statement which itself was not satisfying a Private  
20 Placement Memorandum which was attached to Exhibit 72  
21 was modified later to include a Private Placement  
22 Memorandum?

23           A.    No.  We never reached that point.  But your  
24 question was was implicit within this a Private  
25 Placement Memorandum.

1           This is a draft, and later on, it was  
2 contemplated that, in some form, there would be  
3 attached to that either a private -- attached to the  
4 Loan Participation Disclosure Statement a draft  
5 private placement. We never got there.

6           Q. I want to know what's explicit, not what's  
7 implicit.

8           There is no reference in the draft you sent  
9 over or that Mr. Shullaw sent on May 23rd to any  
10 Private Placement Memorandum, is there?

11          A. There isn't.

12          Q. And it's your testimony that a later draft of  
13 the document, which has been marked as Exhibit 72,  
14 was prepared that referenced a Private Placement  
15 Memorandum?

16          MR. GOODING: Objection to the form.

17          THE WITNESS: No. That's not what I said.

18          Q. (BY MR. FRIEDMAN) You said, I thought, the  
19 disclosure statement was amended in a later draft to  
20 reference a Private Placement Memorandum.

21                 Did I misunderstand you?

22          A. That's not what I said.

23          Q. What did you say?

24          A. I said that there is a -- we should get the  
25 draft, but there is a reference in the draft to

1 additional information that needed to be compiled to  
2 continue along the path of the draft.

3 Q. A draft of which document? I just need to  
4 know what document to pull out to take a look at.  
5 Which document contained that reference that you are  
6 talking about now?

7 A. I believe it was the Loan Participation  
8 Disclosure Statement.

9 Q. And when was that version prepared?

10 A. Sometime in June, I believe.

11 Q. And did you provide a copy of that to your  
12 clients?

13 A. Yes, I believe so.

14 Q. Would you be able to identify that if I were  
15 to give it to you? We can make copies of this, but  
16 I'll give you three other versions -- well, strike  
17 that.

18 This, the one that you are referring to here,  
19 the Loan Participation Disclosure Statement is, bears  
20 a number at the bottom that ends with the number .2;  
21 correct?

22 A. Correct.

23 Q. And that would be reflective as version No. 2  
24 of this document, draft No. 2?

25 A. Yes.

1 Q. And was there later a draft No. 3?

2 A. I'm not sure. I'd have to look.

3 Q. Let me just hand you this document, we can  
4 get copies made, and ask you if that is the version  
5 of the later draft of the disclosure statement that  
6 you contend made reference to a Private Placement  
7 Memorandum or comparable information?

8 A. Yes. This version 3 of the -- it now became  
9 a document entitled Acknowledgements.

10 MR. GOODING: Let's have that marked.

11 MR. FRIEDMAN: Let me mark that as an exhibit  
12 then.

13 (Hoffmann Exhibit No. 74 marked for  
14 identification.)

15 Q. (BY MR. FRIEDMAN) And this is Exhibit No. 74;  
16 correct? And this is the subsequent draft of the  
17 document that you were referring to earlier;  
18 correct?

19 A. Correct. This is a later draft?

20 Q. And where is the place or a reference here  
21 for Private Placement Memorandum?

22 A. Up under paragraph 1, any other documents,  
23 information, so forth.

24 Q. Let's put this up on the screen. There is  
25 no --

1 MR. GOODING: Andy, can we get copies of  
2 this?

3 MR. FRIEDMAN: You can look over his  
4 shoulder. I'm sure you've both seen this before.  
5 But I want to finish my questioning of the witness  
6 right now. If you need time to look over his  
7 shoulder, feel free.

8 But this is a document that Quarles & Brady  
9 has produced, and let me put it up on the screen  
10 here.

11 Q. (BY MR. FRIEDMAN) Now, your testimony is that  
12 this is, the language that I circled that's up on the  
13 screen is what you say was the reference for a  
14 Private Placement Memorandum or some information, the  
15 comprehensive type of information that would be in a  
16 Private Placement Memorandum.

17 Is that your testimony?

18 A. No. I'm sorry. This is a draft -- say it  
19 again.

20 Q. Sure. The reference that I've circled up on  
21 the screen is the language that you say refers to  
22 either a Private Placement Memorandum or its  
23 equivalent?

24 A. A disclose -- additional disclosure that  
25 would be required in connection with a compliant

1 program.

2 Q. Meaning the information, meaning a Private  
3 Placement Memorandum or all of that information you  
4 described yesterday that would be included in a  
5 Private Placement Memorandum; correct?

6 A. Yes. This is a place holder for that.

7 Q. That's your testimony?

8 MR. GOODING: Let him finish his answer.

9 MR. FRIEDMAN: Sure. That's fine.

10 THE WITNESS: We hadn't reached that point in  
11 the drafting as to what form these documents would  
12 take.

13 Q. (BY MR. FRIEDMAN) Well, you -- sorry.

14 Is there any reference in this document to a  
15 Private Placement Memorandum?

16 A. No, there isn't.

17 Q. Is there any reference in this document to  
18 a list of the sorts of information that would be  
19 included in a private placements memorandum?

20 A. No, there isn't.

21 Q. It's your testimony that this notation, "any  
22 other documents?" i.e. information related to  
23 specific properties?" that's the only language you  
24 can point to that you say would satisfy or refer to a  
25 Private Placement Memorandum?

1 MR. GOODING: Objection to the form.

2 THE WITNESS: I don't agree with that.

3 Q. (BY MR. FRIEDMAN) Well, that's the language  
4 in this document that you indicated.

5 Is there any other language in this document  
6 that's a place holder or reference to a Private  
7 Placement Memorandum or its equivalent?

8 A. No, there isn't.

9 Q. You new, at the time you reviewed and  
10 approved this document, that a formal Private  
11 Placement Memorandum was contemplated and would be  
12 prepared, didn't you?

13 A. We were still moving along that step, those  
14 steps, yes.

15 Q. And you knew that would be required?

16 A. Yes.

17 Q. But the language that you are pointing to now  
18 that you say indicates there was intent to satisfy  
19 the requirement is "any other documents?" With a  
20 question mark?

21 MR. GOODING: Objection to form.

22 Q. (BY MR. FRIEDMAN) Correct?

23 A. Could you state it again, please.

24 Q. Sure. The language that you point to to  
25 support your testimony that, gee, there was a

1 subsequent draft that did reference a compliant  
2 private placement offering is a notation in the draft  
3 saying, quote, "any other documents?"

4 MR. GOODING: Objection to the form.

5 Q. (BY MR. FRIEDMAN) Am I right?

6 A. Again, it's just a draft of part of a number  
7 of steps that we were taking, and we hadn't reached  
8 the point and didn't need to reach the point for a  
9 Private Placement Memorandum. We hadn't gotten the  
10 information yet or disclosure information from the  
11 client.

12 Q. At the time that you --

13 MR. GOODING: Let him finish his answer.

14 Q. (BY MR. FRIEDMAN) Were you finished?

15 A. So at the time, we were moving along that  
16 process. There were a number of other steps we would  
17 have had to take before we ever got to the point of  
18 having a Private Placement Memorandum. We would have  
19 sent the full due diligence questionnaire to the  
20 client, and we never got to that point.

21 Remember, during this period, from May  
22 through middle of June, we are in the process of  
23 still trying to obtain collateral. In mid-June our  
24 firm had sent out a demand letter to Mortgages, Ltd.  
25 that our collateral needed to be, we needed to get

1 collateral in place.

2           So during this whole period that you are  
3 referencing in these documents, these are all drafts  
4 while that was going on. Everybody understood that  
5 these documents were just drafts. They are  
6 incomplete as they stand.

7           Q. Well, when you raised the question right here  
8 and claim that this is the reference to a Private  
9 Placement Memorandum, "any other documents?" you knew  
10 at the time that there would need to be a Private  
11 Placement Memorandum if this was going to be a  
12 compliant offering; right?

13           A. Correct.

14           MR. GOODING: Objection to the form. Asked  
15 and answered.

16           Q. (BY MR. FRIEDMAN) And all the drafts that you  
17 prepared in May and in June, none them actually make  
18 a specific reference to any Private Placement  
19 Memorandum, do they, to your knowledge?

20           A. They don't.

21           Q. And so, in fact, if someone were to use the  
22 documents that you prepared in May or June of 2007  
23 and sent to your client recommending as an interim  
24 step that would not comply with securities laws,  
25 would it?

1           A. We didn't recommend it as an interim step for  
2 any of these documents to be used.

3           Q. The documents that you sent to your client,  
4 in May and June of 2007, which are marked as exhibits  
5 in this case, with your cover memorandum referencing,  
6 quote, "interim step," close quote, would not have  
7 complied with the securities laws, would they?

8           A. No, they wouldn't.

9           Q. And if your client had used those documents,  
10 there would be an ongoing securities violation?

11          A. There would have.

12          Q. The disclosure document that, the draft  
13 disclosure document that we've seen including the,  
14 well, the final, I think it was the final draft of  
15 that document marked as Exhibit 74 include this  
16 acknowledgement of risk section; correct?

17          A. Correct.

18          Q. Any Private Placement Memorandum would have  
19 included a far more extensive risk disclosure than  
20 this, wouldn't it?

21          A. Exactly.

22          Q. So what was the purpose of even including  
23 these risk disclosures in this particular  
24 acknowledgement or disclosure form if there was going  
25 to be a contemporaneous Private Placement Memorandum?

1           A.    These -- well, I can't tell you how the  
2 Private Placement Memorandum was going to be  
3 structured at that point. We hadn't even started the  
4 draft. The reason these are in here is they  
5 specifically relate to the loans themselves.

6           Q.    Well, so would the Private Placement  
7 Memorandum, wouldn't it?

8           A.    Right. And there is no harm in saying it  
9 twice.

10          Q.    But can you think of any other reason for  
11 including risk disclosures that were going to be  
12 covered more comprehensively in a compliant  
13 securities offering document called the Private  
14 Placement Memorandum?

15               MR. GOODING:  Objection to the form.

16          Q.    (BY MR. FRIEDMAN) Well, one explanation for  
17 this would be that you were doing this as an interim  
18 step providing some risk disclosure, provide some  
19 limited protection to your client before you could  
20 finish a compliant offering; right?

21               MR. GOODING:  Objection to form.

22               THE WITNESS:  That's not true.

23          Q.    (BY MR. FRIEDMAN) The faxes that you sent to  
24 Radical Bunny enclosing these documents, did any of  
25 them prohibit Radical Bunny from using the documents?

1 A. Could I hear that again.

2 (Last question was read back as follows:

3 *QUESTION: The faxes that you*  
4 *sent to Radical Bunny*  
5 *enclosing these documents,*  
6 *did any of them prohibit*  
7 *radical Bunny from using*  
8 *the documents?)*

9 MR. GOODING: Objection to form.

10 THE WITNESS: Which faxes are you referring  
11 to?

12 Q. (BY MR. FRIEDMAN) The faxes that you and  
13 Mr. Shullaw sent which have been marked as exhibits  
14 sending over these documents, the interim step  
15 documents, none of those faxes limited the use of the  
16 attached documents, did they?

17 A. Well, which fax are you referring to?

18 Q. Any of them?

19 A. So the fax as Exhibit 71 is merely a fax  
20 transmitting the draft.

21 Q. Okay. But my question is was there any  
22 language in your cover facsimile transmission which  
23 you told Radical Bunny you are not to use this or  
24 words to that effect?

25 A. Not to use one of our drafts?

1 Q. Yes.

2 A. No. There isn't any language in that.

3 Q. Is there any language in any facsimile  
4 transmission that you ever sent to Radical Bunny  
5 prohibiting or limiting their use of the documents  
6 that you had prepared and sent to them and charged  
7 them for?

8 A. I wouldn't -- I can't recall.

9 Q. Can you recall any written communication to  
10 Radical Bunny or its principals that prohibited them  
11 or limited them from using the documents that Quarles  
12 & Brady prepared and charged them for?

13 A. I can't recall that. The draft documents you  
14 are referring to?

15 Q. Correct. I think we are probably running up  
16 against a lunch break here.

17 MR. GOODING: Okay.

18 THE VIDEOGRAPHER: We are going off the  
19 record. The time is 12:06 P.M. This is end of video  
20 cassette No. 2 of Volume No. 2 in the deposition of  
21 Christian Hoffmann.

22 (Lunch recess - 12:06 P.M. to 12:40 P.M.)

23 THE VIDEOGRAPHER: We are back on the record  
24 to continue the videotaped deposition of Christian  
25 Hoffmann. The time is 12:40 P.M. This is the

1 again.

2 (Hoffmann Exhibit No. 76 marked for  
3 identification.)

4 Q. (BY MR. FRIEDMAN) I hand you Exhibit 76.  
5 Let's just first discuss the format of this  
6 document.

7 This is a copy of a facsimile transmission to  
8 Radical Bunny that was on the same day as your phone  
9 call June 12th, 2007, right, the cover page?

10 A. Yes. It appears to be transmitted on the  
11 12th.

12 Q. And then it indicates at the top that at the  
13 time this document was transmitted, there were three  
14 pages including the cover sheet.

15 Do you see that?

16 A. Yes.

17 Q. And then there are some pages attached to the  
18 cover sheet, and it would appear that the first, that  
19 the transmission that was made on June 12th would  
20 have included only the first three pages from this  
21 particular version of this document.

22 Do you agree with that?

23 A. Yes.

24 Q. And there is what looks to be a note on the  
25 front that states, "See back of doc."

1 Do you see that?

2 A. Yes.

3 Q. And then there is a final page to this  
4 particular version of this with handwritten notes  
5 bearing the date June 19th, 2007 at the top; right?

6 A. Correct.

7 Q. Have you looked at the original or the file  
8 document from Quarles & Brady's file of this  
9 particular document?

10 A. I'm sorry. At any point?

11 Q. Well, I wonder if you know, from personal  
12 observation, whether the last page of this document  
13 with the handwritten notes is, actually, on the  
14 original document, handwritten on the back page of  
15 the document?

16 A. Originally I wrote these notes on the back  
17 page of the fax. Flipped it over.

18 Q. Right.

19 A. So what was your question now?

20 Q. I think you just answered it. If we had the  
21 original document here, rather than a copy of it, or  
22 if it had been prepared to look like what was in  
23 Quarles & Brady's file, you would see that the  
24 handwritten note, the last page, actually, would  
25 appear to the back of the third page of the facsimile

1 transmission?

2 A. Right.

3 Q. Okay. Now, this fax was sent, and attached  
4 to the fax was another copy of the Investor  
5 Subscription Procedures that Mr. Shullaw had sent  
6 over on May 23rd earlier?

7 A. Yes.

8 Q. Do you know why another copy of those same  
9 subscription procedures was being transmitted to  
10 Radical Bunny the day of this phone call?

11 A. I don't recall that.

12 Q. Do you recall anything else from the phone  
13 call other than what you've told us based upon your  
14 notes, anything that you can remember?

15 A. No. Not based on my notes.

16 Q. Or based on your recollection; correct?

17 A. My general recollection, no.

18 Q. Any recollection you may have whether it's  
19 general or specific, you don't have --

20 A. As I sit here now, yes.

21 Q. Do you remember whether there was any  
22 discussion about Radical Bunny becoming a real estate  
23 investment advisor?

24 A. I don't recall that.

25 Q. Do you remember whether there was any

1 discussion about something called a trust deed  
2 investment company; TDIC?

3 A. I don't recall them.

4 Q. Do you remember any discussion about the  
5 collateral issue that was outstanding and any sort of  
6 term sheet that had been sent to Mr. Kant by  
7 Mr. Bornhoft during this call?

8 A. I don't recall that.

9 Q. Do you remember any discussion about what  
10 Radical Bunny is and there was some reference to  
11 something called the Platypus?

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

13 Q. Okay. Do you remember any discussion about a  
14 proposal that had been made by Mortgages, Ltd. for  
15 the principals of Radical Bunny to become employees  
16 of Mortgages, Ltd., and, again, during this  
17 discussion?

18 A. I don't recall that.

19 Q. Do you remember whether there was any  
20 discussion at all about the securities violations,  
21 again, during this conversation?

22 A. What securities violations?

23 Q. Radical Bunny security violations?

24 A. You mean, are you speaking about their past  
25 violations?

1 Q. Yes.

2 A. In this, and this is the --

3 Q. June 12th?

4 A. June 12.

5 Q. 2007.

6 A. I'm sorry. This is the June 12th meeting is  
7 what you are saying?

8 Q. Phone call.

9 A. Or phone call, I'm sorry.

10 Q. Yes. All of these questions I have been  
11 asking.

12 A. We don't -- no. Not that I recall.

13 Q. Do you remember whether there was any  
14 discussion about Mortgages, Ltd. using Radical Bunny  
15 as simply a finder for loans or investors?

16 A. Not on this call, no.

17 Q. Do you recall any discussion about the draft  
18 interim step documents that had been sent over  
19 earlier and the procedures that were transmitted by  
20 fax that same day to Radical Bunny?

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

22 Q. So you have no recollection of any of those  
23 things; correct?

24 MR. GOODING: In this call?

25 Q. (BY MR. FRIEDMAN) In this call? Thank you.

1 A. In this call; correct.

2 Q. Do you recall any discussion about whether  
3 the documents that had been sent over previously,  
4 meaning, the loan disclosure and the risk disclosures  
5 and the procedures would provide some degree of  
6 protection for Radical Bunny investors or the Radical  
7 Bunny principals?

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

9 Q. And you can recall nothing else about this  
10 particular conversation; right?

11 A. I can't.

12 Q. During this conversation, at least, you do  
13 not recall reminding the Radical Bunny principals  
14 that they were to be making no sales or rollovers of  
15 participations?

16 A. Are you speaking about the 12th again?

17 Q. Yes. During the June 12th, 2007 telephone  
18 call.

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

20 Q. If there had been that sort of discussion,  
21 would you have noted it in your handwritten notes?

22 MR. GOODING: Objection to form.

23 THE WITNESS: I don't know if I would have or  
24 wouldn't have. Speculative.

25 Q. (BY MR. FRIEDMAN) Now, you had a subsequent

1 call with Radical Bunny principals on June 19th;  
2 correct? Just look at your time entries.

3 A. Yes.

4 Q. And just based on your independent  
5 recollection, do you have any recollection of what  
6 was discussed during that telephone call?

7 A. In general, this was around the time that  
8 we were continuing to review and revise drafts  
9 back and forth with Radical Bunny principals  
10 regarding loan Participation Agreement, the investor  
11 disclosure document that we referred to earlier  
12 which is Exhibit -- which was one of our exhibits.

13 Q. You are talking about --

14 A. It was an earlier draft.

15 Q. You are talking about the documents that were  
16 faxed over on May 21st and 23rd, 2007; those types of  
17 documents?

18 A. Correct. So we -- I'm sorry.

19 Q. I thought you were done, but I'm wrong.

20 A. So what is the question?

21 Q. Let me ask a new question. That's fine.

22 MR. GOODING: Well, I'd like him to finish.

23 MR. FRIEDMAN: Why don't you read it back?

24 MR. GOODING: He was in the middle of an  
25 answer, I think. We sort of got sidetracked.

1 MR. FRIEDMAN: Read back for the witness what  
2 he was saying so he can get back on track.

3 (Testimony referred to was read back as  
4 follows:

5 QUESTION: And just based  
6 on your independent  
7 recollection, do you  
8 have any recollection of  
9 what was discussed during  
10 that telephone call?

11 ANSWER: In general this was  
12 around the time that we  
13 were continuing to review  
14 and revise drafts back and  
15 forth with Radical Bunny  
16 principals regarding loan  
17 Participation Agreement,  
18 the investor disclosure  
19 document that we referred  
20 to earlier which is Exhibit --  
21 which was one of our exhibits.)

22 THE WITNESS: And we were dealing with issues  
23 within those documents which were not yet final  
24 including some of the issue we talked about earlier  
25 about what type of additional disclosures might be

1 required relating to a and form of, potentially, a  
2 Private Placement Memorandum and whether it would be  
3 in that form. So it was that, generally, that  
4 general kind of discussion.

5 Q. (BY MR. FRIEDMAN) Anything else can you  
6 recall from this conversation, from your independent  
7 recollection?

8 A. No.

9 Q. And had you exchanged documents before? In  
10 other words, you said you were discussing drafts of  
11 the documents. Do you know whether any new drafts  
12 had been sent over to Radical Bunny or exchanged  
13 between May 23rd and this phone call on June 19th?

14 A. So the other thing that happened in that call  
15 was at the end of it, I went through my script,  
16 again, with them regarding various points that I  
17 wanted to make.

18 Some were rehashes of my old 5/2 discussion.  
19 And I also told them at that point, since our drafts  
20 were moving along the line, the Quarles & Brady  
21 drafts were moving along the line that you, of  
22 course, know that these drafts are just part of the  
23 steps that we outline to get to a compliant offering,  
24 and you shouldn't use these, they are not ready.

25 Q. And do you have an independent recollection

1 of that portion of the conversation?

2 A. Yes, I do.

3 Q. You have, is it a fairly vivid recollection?

4 A. Yes, I do.

5 Q. But you have no vivid recollection about the  
6 remainder of the conversation; correct?

7 MR. GOODING: Objection to form.

8 THE WITNESS: I don't know what you mean.

9 Q. (BY MR. FRIEDMAN) Well, other than saying  
10 that you discussed some of the drafts and some of the  
11 issues to be decided, can you remember specifically  
12 what was, from your recollection, what was said about  
13 those topics?

14 A. You mean some of the topics that were being  
15 discussed?

16 Q. Sure. Other than you saying, other than your  
17 testimony that you have vivid recollection of telling  
18 them no sales, no rollovers, and these are only draft  
19 documents, I'm trying to figure out what other  
20 specifics, if any, you can recall from that  
21 conversation.

22 A. There were issues outstanding if I had, if I  
23 had -- there were certain issues outstanding that we  
24 were dealing with.

25 Q. And I want to know what you can remember

1 about those issues.

2 A. I don't recall specifically.

3 Q. Okay. Now --

4 (Hoffmann Hoffmann Exhibit No. 77 marked for  
5 identification.)

6 Q. (BY MR. FRIEDMAN) Handing you Exhibit 77, is  
7 that a copy of your handwritten notes from that  
8 conversation?

9 A. Yes.

10 Q. And in this particular occasion, your notes  
11 reflect that the only participants were you and Tom  
12 Hirsch and Bunny Walder and Howard Walder; correct?

13 A. That's what the notes reflect.

14 Q. You have no reason to believe that anybody  
15 else participated in that call, do you?

16 A. Well, looking at Mr. Shullaw's time entry, it  
17 looks like, unless that was a different conference  
18 call, he had a conference call. It says conference  
19 call with Radical Bunny. I don't know if he's on the  
20 call or not, if that was the same call or not.

21 Q. You have no independent recollection of  
22 whether he was on this call or whether his time entry  
23 refers to some other call he may have had?

24 A. Correct. I don't know.

25 Q. But your notes would seem to indicate that he

1 was not on the call; right?

2 A. They would seem to indicate that, yes.

3 Q. Wouldn't you have listed him as a participant  
4 if he was there on the call?

5 MR. GOODING: Objection to form.

6 Q. (BY MR. FRIEDMAN) That would be certainly  
7 your normal practice?

8 A. It would be my practice.

9 Q. Now, you testified earlier, when you said you  
10 had the one portion of the conversation you do have a  
11 vivid recollection of, you referenced a script.

12 Did I hear you right?

13 A. Correct.

14 Q. And are you referring to the last page of  
15 Exhibit 76?

16 A. Yes.

17 Q. And you have a recollection of handwriting  
18 these notes on the back of this particular facsimile  
19 that had been sent over on June 12th, about a week  
20 earlier?

21 A. Yes. This -- yes.

22 Q. What was it that you can recall about how  
23 that came about?

24 A. So this was in advance of our call, I made a  
25 script much like I had done earlier in May because we

1 were, at about this time, experiencing some  
2 difficult, difficulties with Mortgages, Ltd. in terms  
3 of getting collateral such, I know my part -- I  
4 remember that my partner Bob Bornhoft was engaged in  
5 that pursuit, and we weren't making much progress.

6           So some, around that time, we sent a demand,  
7 our firm sent a demand letter on behalf of Radical  
8 Bunny to get the collateral in place.

9           Q. And so you --

10           MR. GOODING: Were you done with your  
11 answer?

12           MR. FRIEDMAN: I'm sorry.

13           THE WITNESS: So I indicate in my notes, top  
14 priority, you must get collateral in place for  
15 existing notes. When I said notes, I meant  
16 participation.

17           Q. (BY MR. FRIEDMAN) You lost me there. You are  
18 referring Exhibit 76 and, specifically, the  
19 handwritten things that are on the back of the  
20 original document?

21           A. Correct.

22           Q. And this is in advance of your call on the  
23 19th, you sat down and wrote these things on the back  
24 of the document?

25           A. Yes.

1 Q. And these are the things that you wanted to  
2 deal with during the call?

3 A. Yes. That's right.

4 Q. And how far in advance of the call did you  
5 sit down and write these items out?

6 A. At some point before the call that day.

7 Q. Don't recall at what point in time, in  
8 relation to the call, did you that?

9 A. I don't recall that.

10 Q. Now, you said, I think, that these items are  
11 what you covered at the end of the call?

12 A. Yes. Sometime during the call. I don't know  
13 if it was before or if it was at the end, during the  
14 middle, but some point.

15 Q. Well, you said earlier you remember at the  
16 end. I just want to make sure we are clear on this.

17 When during the call -- did you actually go  
18 through your list one-by-one during the call?

19 A. Which list?

20 Q. Well, you are calling the script that you  
21 prepared in advance of the call, did you go through  
22 them one issue after another?

23 A. Yes, I did. My recollection is it would have  
24 been at the end, it probably was at the end of the  
25 call.

1 Q. Okay. So you had this list out in front of  
2 you which is the back of the last page of Exhibit 76  
3 and you had a legal pad in front of you, and you took  
4 notes during the call as you dealt with the issues;  
5 correct?

6 A. Yes.

7 Q. And those handwritten notes are Exhibit 77;  
8 right?

9 A. Correct.

10 Q. And the very first thing that these notes say  
11 is -- well, I don't have a clean copy, "document  
12 package available."

13 Do you see that?

14 A. Yes.

15 Q. And is that the document package containing  
16 the loan participation and disclosure documents and  
17 the other drafts that you have been talking about  
18 today?

19 A. No. That's not the reference.

20 Q. What document package that referring to?

21 A. So this was an earlier, or this was a early  
22 reference to the type of documents and disclosures  
23 that we might need for a Private Placement Memorandum  
24 or a disclosure document.

25 Q. And when it says, "document package

1 available," what do you mean by that?

2 A. We need to have a document package available  
3 in the future.

4 Q. You weren't saying that there was a document  
5 package available?

6 A. No.

7 Q. That was a question you are asking, is there  
8 a document package we can use?

9 A. No. It's a to-do item.

10 Q. Okay. And you have no more specifics other  
11 than document package here.

12 Did you describe all of the documents that  
13 you wanted?

14 A. I can't remember how specific the discussion  
15 got.

16 Q. Well, I remember, in the beginning of your  
17 engagement, when you wanted documents from the  
18 client, you put together a written list in a letter.

19 Do you remember that?

20 A. Yes.

21 Q. Did you ever put a written list in a letter  
22 or any other form to Radical Bunny listing the types  
23 of documents that were necessary for a Private  
24 Placement Memorandum?

25 A. No, I didn't.

1 Q. Did you ever give them an exhaustive list  
2 orally of all those things you would need?

3 A. An exhaustive list, no.

4 Q. Or extensive list?

5 A. Not an extensive list.

6 Q. Is there any reference, in your handwritten  
7 notes, to your telling them, reminding them that  
8 there were to be no new sales?

9 A. In Exhibit 77?

10 Q. Yes, sir.

11 A. No.

12 Q. And I think you said you went through these  
13 at the end of the conversation.

14 Do you see any reference, at the end of the  
15 conversation, reminding them that the top priority  
16 was to put the collateral in place?

17 MR. GOODING: You mean at the end of the  
18 notes?

19 MR. FRIEDMAN: Yes.

20 THE WITNESS: No.

21 Q. (BY MR. FRIEDMAN) Or anywhere in the notes?

22 A. No.

23 Q. Do you see any reference, anywhere in your  
24 notes, indicating that you told them that there was  
25 to be no use of the Quarles & Brady documents, and by

1 that, I think, you meant the draft sorts of documents  
2 we have been about today?

3 A. There is no reference in Exhibit 77.

4 Q. Is there any reference in Exhibit 77 anywhere  
5 to a Private Placement Memorandum?

6 A. Except for -- none except for the one I  
7 pointed out that we needed to make a document package  
8 available and get moving on that.

9 Q. But there is no reference anywhere  
10 specifically to a Private Placement Memorandum by  
11 name, is there?

12 A. Not in those terms, not in that parlance.

13 Q. Do you know whether the original version of  
14 your handwritten script, as you call it, that is at  
15 the back of Exhibit 76 was maintained in the files at  
16 Quarles & Brady?

17 A. I don't know.

18 Q. If we had the original, we would be able to  
19 actually to see the color of the pen and actual  
20 writing on it; correct?

21 MR. GOODING: Objection to form.

22 THE WITNESS: I don't know what the color of  
23 the pen, I don't know.

24 Q. (BY MR. FRIEDMAN) You would be able to see  
25 that it was handwritten in pen; that's my point.

1 A. Oh, I see.

2 Q. Right?

3 A. Maybe. You might be able to.

4 Q. Well, there is a note in this document with  
5 the handwritten notes at the end of Exhibit 76 that  
6 says, To RB."

7 That's your handwritten script or whatever  
8 you are calling it?

9 A. Oh, yeah.

10 Q. Does that mean this original document was to  
11 go in the Radical Bunny file?

12 A. Yes.

13 Q. Can you think of any reason why the original  
14 document would no longer be in the Quarles & Brady  
15 files?

16 A. No, I can't. I don't know.

17 Q. Now, as far as you know, these handwritten  
18 notations that are on the back page of Exhibit 76 are  
19 the only written indication in any of Quarles &  
20 Brady's files that the Quarles & Brady draft  
21 documents were not to be used; is that fair to say?

22 A. As far as, well, I haven't looked at all the  
23 files. As far as what I have done, that's all I can  
24 remember.

25 Q. And like the script that you made for the May

1 2nd, 2007 call, in which you imparted all that  
2 important advice to your client, here we, again, have  
3 a separate script in your handwriting but no  
4 reference in your actual notes from the conversation  
5 indicating that you told Radical Bunny not to make  
6 any new sales or rollovers; correct?

7 MR. GOODING: jection to the form.

8 THE WITNESS: So I'm sorry. Say it again.

9 MR. FRIEDMAN: Would you read the question  
10 back, please.

11 (Question was read back as follows:

12 QUESTION: And like the script  
13 that you made for the May  
14 2nd, 2007 call in which you  
15 imparted all that important  
16 advice to your client, here  
17 we, again, have a separate  
18 script in your handwriting  
19 but no reference in your  
20 actual notes from the  
21 conversation indicating that  
22 you told Radical Bunny not  
23 to make any new sales or  
24 rollovers; correct?)

25 THE WITNESS: Just this, my script is not in

1 my handwritten notes of Exhibit 77.

2 Q. (BY MR. FRIEDMAN) Did you tell Gary Shullaw  
3 or Robert Bornhoft about your conversation, on June  
4 19th, 2007 and, specifically, the items on your  
5 handwritten script?

6 A. I can't recall if I did or not.

7 (Hoffmann Exhibit No. 78 marked for  
8 identification.)

9 Q. (BY MR. FRIEDMAN) Do you recognize  
10 Exhibit No. 78? And for the record it bears the  
11 production No. Q&B002297.

12 MR. GOODING: That's not the document you  
13 gave us.

14 MR. FRIEDMAN: I'm sorry. Maybe I gave you  
15 the wrong one.

16 I did. I'm sorry.

17 (Hoffmann Exhibit No. 79 marked for  
18 identification.)

19 MR. GARNER: Was the other one still 78?

20 MR. FRIEDMAN: I'll leave at 78. I'm going  
21 to hand you these.

22 Q. (BY MR. FRIEDMAN) Handing you Exhibit 79,  
23 this is a document which, for the record, I think,  
24 bears the production No. Q&B002297 and it ends at  
25 Q&B002302.

1 I will tell you, Mr. Hoffmann, this is a  
2 document that Radical Bunny, I mean, Quarles & Brady  
3 produced in this case.

4 First question, have you seen this document  
5 before?

6 A. Yes.

7 Q. And do you recall when it was that you first  
8 saw this document?

9 A. I saw it -- I don't recall. I have, I saw --  
10 I can't recall the first time. It was either in  
11 connection with, specifically, it was earlier this  
12 week or in connection with my S.E.C. testimony.

13 Q. So you did not see this document, at least,  
14 prior to the time you gave S.E.C. testimony?

15 A. That's correct.

16 Q. Do you know whether you were shown this  
17 document during your S.E.C. testimony?

18 A. I can't recall that.

19 Q. Do you know whether Quarles & Brady produced  
20 a copy of this document to the S.E.C.?

21 A. I can't recall that.

22 Q. Do you recognize the handwriting on this  
23 document on the page which ends in the numbers 2300?  
24 There is a handwritten notes that states, "evaluate  
25 in light of opt out provisions."

1 Does your copy have that, 300?

2 A. Page 4?

3 Q. Yes. And just so we have it and people can  
4 see it, it's this language here.

5 Do you recognize that handwriting?

6 A. No, I don't.

7 Q. So the very first time you saw this document,  
8 what did it occur to you had happened?

9 MR. GOODING: Objection to the form.

10 THE WITNESS: Nothing occurred to me.

11 Q. (BY MR. FRIEDMAN) When you say this document,  
12 did you recognize that portions of it include the  
13 language from the draft Loan Participation Disclosure  
14 Statement that you had prepared and circulated in May  
15 2007?

16 A. When I looked at it earlier this week, I  
17 didn't compare these documents so I can't answer  
18 that.

19 Q. Well, just looking at it now, and based upon  
20 your knowledge and your involvement with this client,  
21 does this appear, the language beginning on page  
22 2299, does it appear to be taken from the draft  
23 document that you had given to Radical Bunny?

24 MR. GOODING: Objection to form.

25 THE WITNESS: I can't tell unless I compare

1 the two documents.

2 Q. (BY MR. FRIEDMAN) If you had received a  
3 copy -- strike that.

4 This document indicates, on the front, it has  
5 the Radical Bunny logo on it; correct?

6 A. Correct.

7 Q. And then attached to the first couple of  
8 pages, which include information about the client,  
9 there is a series of pages that begin Loan  
10 Participation Disclosure Statement and  
11 Acknowledgements; correct?

12 A. Yes.

13 Q. If you had come across this document, back in  
14 2007, and compared the language and seen that Radical  
15 Bunny was using on its letterhead only a portion of  
16 the draft document that you had prepared, what would  
17 you have done if you can?

18 MR. GOODING: Objection to form.

19 Q. (BY MR. FRIEDMAN) If you know.

20 A. Well, it's speculative. I don't know.

21 Would you repeat the question?

22 Q. Sure. I'm just wondering, I mean, you  
23 testified that you told Radical Bunny that they  
24 weren't allowed to use any of the draft documents,  
25 and if you'd received a document like this indicating

1 that Radical Bunny had taken a portion of what you  
2 had prepared and were using it, do you know what you  
3 would have done?

4 MR. GOODING: Objection to the form.

5 THE WITNESS: Assuming this is some of our  
6 language, I certainly would have been concerned about  
7 it.

8 Q. (BY MR. FRIEDMAN) And what would you --

9 A. And tried to find out additional  
10 information. And I'm sorry. Your question, again,  
11 was?

12 MR. GOODING: You just answered it.

13 THE WITNESS: All right.

14 Q. (BY MR. FRIEDMAN) And I assume you would have  
15 called the Radical Bunny people; what would you have  
16 done to find out more information?

17 A. Right. I would have contacted the, I  
18 suppose, I would have contacted the client because it  
19 depends how we receive this. There are all sorts of  
20 things I'd need to find out.

21 (Hoffmann Exhibit No. 80 marked for  
22 identification.)

23 Q. (BY MR. FRIEDMAN) Handing you Exhibit No. 80,  
24 you've never seen this document before, have you?

25 A. Not as far as I can recall.

1 Q. And if you had discovered that Radical --  
2 strike that.

3 This document on its face, at least, is dated  
4 June 28th or 29th, 2007. Look at the second page.  
5 There is a signature with a date next to it.

6 A. Yes.

7 Q. And this would have been right around the  
8 time you were circulating those draft disclosure  
9 statements and participation agreements to Radical  
10 Bunny; right?

11 MR. GOODING: Well, objection to form.

12 THE WITNESS: I think I said in May and June  
13 we were distributing drafts, I don't know, going back  
14 and forth.

15 Q. (BY MR. FRIEDMAN) If you had learned that  
16 Radical Bunny was actually using portions of the  
17 Quarles & Brady draft documents, in this format that  
18 you see before you, to make sales to investors, in  
19 June of 2007, that would have been a serious concern  
20 for you, wouldn't it?

21 MR. GOODING: Objection to form.

22 THE WITNESS: Well, I don't -- how would I  
23 have received this document?

24 Q. (BY MR. FRIEDMAN) I'm not saying that you  
25 did. I'm just asking you a hypothetical question.

1           And I'm asking you whether, if this document  
2 is what it appears to be, which is, reflects that  
3 Radical Bunny was using a portion of the draft  
4 language that you prepared and using it in connection  
5 with sales to investors in June of 2007, whether that  
6 would have been a very serious concern to you had it  
7 come to your attention then.

8           A. I would have been concerned had it come to my  
9 attention.

10          Q. That would have meant that notwithstanding  
11 your advice, Radical Bunny was continuing to sell  
12 securities; right?

13          A. Yes.

14          Q. And it would mean that Radical Bunny was  
15 doing so in a fashion that violated the securities  
16 laws; correct?

17          A. Yes.

18          Q. And it would mean that Radical Bunny, because  
19 they had been told all of this, was, essentially, at  
20 this point, assuming they were using this with new  
21 investors, engaging in a scheme to defraud their  
22 investors?

23                 MR. GOODING: Objection to the form?

24                 THE WITNESS: They would have been  
25 disregarding our advice on multiple levels.

1 Q. (BY MR. FRIEDMAN) If that had occurred,  
2 would you have withdrawn from representation?

3 MR. GOODING: Objection to the form.

4 THE WITNESS: I'm not sure what I would have  
5 done at that point. Probably get more facts.

6 Q. (BY MR. FRIEDMAN) But assuming the facts are  
7 as I've told you. That they said, gee, Mr. Hoffmann,  
8 we have been using your -- we took some of the  
9 language from your documents, and we put it together  
10 in this form, and we have been using it to sell to  
11 new investors, and that's what we have been doing, do  
12 you know whether you would have withdrawn right then?

13 MR. GOODING: Objection to the form.

14 THE WITNESS: It's hard to say because I  
15 don't know what the results of my, if I had a  
16 conversation with them what the results of that  
17 conversation would have been.

18 Q. (BY MR. FRIEDMAN) Well, can you envision  
19 any circumstance where, if Radical Bunny was using  
20 documents that you had prepared and just a portion  
21 of those documents and making new sales in June of  
22 2008 -- 2007, rather, can you conceive of any  
23 circumstances where you would not have immediately  
24 withdrawn from representing Radical Bunny?

25 MR. GOODING: Objection to the form.

1 THE WITNESS: It depends what Radical Bunny  
2 would have said to me about this.

3 Q. (BY MR. FRIEDMAN) Can you think of anything  
4 they would have said to you if the facts were as I've  
5 disclosed to you and they told you those facts that  
6 would have led you to continue to represent them in  
7 the face of disregarding your advice and continuing  
8 to sell securities in violation of the securities  
9 laws?

10 MR. GOODING: Objection to the form.

11 THE WITNESS: If after examining the facts,  
12 and depends what they said, if they had we made a  
13 mistake, we didn't understand, we are going to listen  
14 to your advice, then, I would have had to consider  
15 that before we did anything with respect to  
16 representation.

17 Q. (BY MR. FRIEDMAN) How could you conclude, if  
18 this document landed on your desk showing they had  
19 actually been making sales in this fashion using your  
20 documents, how could you every believe them telling  
21 you it was a mistake?

22 MR. GOODING: Objection.

23 Q. (BY MR. FRIEDMAN) In light of the advice  
24 you'd given them; that's my point.

25 MR. GOODING: Objection to form.

1 THE WITNESS: It depends on the facts and  
2 circumstances. What they say, I can't -- I don't  
3 know what the facts would have been and what they  
4 would have said and how I would have gotten comfort.

5 Q. (BY MR. FRIEDMAN) Let's do it in a more  
6 general way.

7 As someone who's practiced securities law for  
8 some 37 years, under what circumstances do you  
9 believe Quarles & Brady is required to withdraw from  
10 representation of an existing client?

11 MR. GOODING: Objection to the form. It's  
12 been asked and answered.

13 Q. (BY MR. FRIEDMAN) You can go ahead.

14 A. I think I've answered already.

15 MR. GOODING: That was my objection.

16 Q. (BY MR. FRIEDMAN) It's the objection, but  
17 it's not instruction not to answer so you can answer  
18 over subject to Mr. Gooding's objection.

19 THE WITNESS: Can you say it again?

20 MR. FRIEDMAN: Would you read the question  
21 back, please.

22 (Question was read back as follows:

23 QUESTION: Let's do it in a  
24 more general way. As  
25 someone who's practiced

1                    *securities law for some*  
2                    *37 years, under what*  
3                    *circumstances do you*  
4                    *believe Quarles & Brady is*  
5                    *required to withdraw from*  
6                    *representation of an existing*  
7                    *client?)*

8                    THE WITNESS: I would have to have a more  
9 complete list of the circumstances, and I would also  
10 consult with my, the appropriate people in the firm  
11 before I made that decision on behalf of the firm.

12                  Q. (BY MR. FRIEDMAN) I'm not asking you to apply  
13 specific facts.

14                  I want to know your understanding of the  
15 rules that govern the practice of law and ethics  
16 rules that govern our practice of law, do you know  
17 what ethical rules apply in determining whether an  
18 attorney has a duty to withdraw from representation  
19 of an existing client?

20                  A. I would need to, if it was that weighty an  
21 issue, I would do some research to make sure I was on  
22 solid ground at that point.

23                  Q. But absent researching it, do you know?

24                  A. I wouldn't do it absent researching it.  
25 That's a pretty significant issue that you just

1 raised.

2 Q. I'm asking you now, just based upon your  
3 knowledge as a practitioner, what ethical rules apply  
4 in determining whether a attorney has a duty to  
5 withdraw from representing a client?

6 A. And I wouldn't do that without looking at the  
7 rules.

8 Q. Can you cite any of the rules now?

9 A. I wouldn't do it without looking at the  
10 rules.

11 Q. I didn't ask whether you would. I'm asking  
12 whether you are able to.

13 As an attorney, with 37 years experience, can  
14 you tell us which rules even apply with respect to a  
15 lawyer's duty to withdraw from representation?

16 A. Do you mean to withdraw from a client with  
17 the facts that we are talking about here or just in  
18 general?

19 Q. I mean in general. Do you know the standards  
20 that apply? You understand there is something called  
21 ethical rules; you are familiar with those rules,  
22 aren't you?

23 A. Yes.

24 Q. You're familiar with the Code of Professional  
25 Responsibility?

1 A. Yes.

2 Q. Do you know which ethical rules apply to  
3 determine whether and when a lawyer has an obligation  
4 to withdraw from representation?

5 A. So to answer your question, if we, as a firm,  
6 a practitioner cannot participate with the client in  
7 an act that would be illegal.

8 Q. Is that the extent of your knowledge?

9 A. In general. I mean, that's the general  
10 statement.

11 Q. Do you know which rules that can be found  
12 under?

13 A. To cite it, no.

14 Q. Can you cite any of the applicable ethical  
15 rules that govern the circumstances under which a  
16 lawyer or the standards under which a lawyer should  
17 decide to withdraw?

18 MR. GOODING: Sitting here now?

19 MR. FRIEDMAN: Yes.

20 THE WITNESS: Sitting here now, no.

21 Q. (BY MR. FRIEDMAN) And what you've shared with  
22 us, that's the standard as far as you know it?

23 A. Without going back and looking at the rules  
24 themselves which is what I would do.

25 Q. (BY MR. FRIEDMAN) I understand. I'm just