

Case: Mutual Fund vs. Peter Gallina
Summary of the Deposition of: Thomas Gilchrist
Date of Deposition: December 20, 2010

PAGES/LINE	TOPIC	SUMMARY
1:10-1:11	Location	233 Broadway, Atlanta, Georgia
2:3-2:20	Appearances	Debra Seidler, Securities and Exchange Commission Brian Nash, Securities and Exchange Commission Morgan Crenshaw, Crenshaw & Looter, LLP- Attorney for defendant
4:6-7:20	Witness' name	<u>Examination by Ms. Seidler</u> Witness is Thomas Gilchrist. Witness has reviewed Exhibit 1 and Exhibit 2 prior to this hearing. He testified before a grand jury for two days in 1999.
7:21-9:17	Admonitions	Admonitions were reviewed.
9:18-13:19	Witness' preparation	Witness told two of his co-workers that he would be out of the office to give testimony today. Witness did not discuss the content of his expected testimony with either of them. He also told Diane Moore that he was going to testify. He did not discuss the content of his testimony with Moore. Prior to today, witness reviewed exhibits related to mutual fund block letters. He reviewed documents related to mutual fund trades for particular clients. He reviewed his firm's compliance manuals.
13:20-16:13	Professional background	Witness has a BA in Business Administration from Georgia University. He graduated in 1984. He worked with Mutual Fund from 12/1984 to 2/1990. He started in the registration licensing department. He subsequently worked handling customer complaints and sales practice matters, responding to various SROs, and handling arbitration matters. He then worked at Jones McAdams from 3/1990 to 6/1995. He left there due to downsizing. He started in 8/1995 at French Bank, where he currently works as a Compliance Analyst. Witness has the following licenses: Series 7, Series 65, Series 63, Series 24, and Series 8. He has had these licenses since 4/2000 and is not a member of any professional organization.
16:14-17	Exhibit 1	<u>Exhibit 1</u> Exhibit 1, Delegation Memos, was marked for identification.
16:18-20:1	Exhibit 1	This memo is dated 6/1/2002. Witness believes there was an earlier delegation memo. The prior memo was very similar; this memo might

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		<p>have one or two items of added supervisory responsibility. The way he does his job on a day to day basis is fully covered in Exhibit 1. Witness initialed Exhibit 1. Mandler's, Brown's and Obert's initials are also on the exhibit.</p>
20:2-25:19	Handling of a block letter	<p>Witness is responsible for reviewing incoming correspondence that comes to the 500 Elm Drive branch. After reviewing the correspondence, he initials it, has copies made and forwards it to the proper person. The originals are kept in the company records. He receives mutual fund block letters. He initials those letters and talks to the broker about them. In most cases, he would advise Mandler that they received a block letter. Depending on how busy he was, he would note on the block letter that he talked to the broker and advise the client of the letter. The lack of a notation on the block letter does not mean that he did not notify the broker and the client. He would advise the client that they were not permitted to trade in that particular fund.</p> <p><u>Examination by Mr. Nash</u></p> <p>When he talked to the broker, he would advise the broker to advise his client that the client is being blocked. He understood that the fund itself would block the client from entering orders. He advised the brokers of that. He understood that the brokers would then stop submitting orders for the blocked fund.</p>
25:21-31:22	Blocking an account	<p>Witness does not understand how a fund would block a trade by a client. French Bank does not have a policy in place to track mutual fund blocks for clients. Referring to Exhibits 2 & 3: witness' handwriting is on exhibits 2 & 3. The letters "CMPL" on Exhibit 3 signifies that a copy of the letter would possibly be in the compliance file. French Bank's policy is to keep a broker compliance file for each broker. Mandler reviewed Exhibit 3 and directed witness to place it in the compliance file. Witness DNR the specific conversation with Mandler on the matter. The BIN numbers on Exhibits 2 & 3 are account numbers. The X on Exhibit 3 represents the 500 Elm Drive branch of French Bank. Witness understands that the mutual fund company would block a client based on both the account number on the block letter and the name of the client in the letter. No one at a mutual fund company told him that they knew the names of clients.</p>
31:23-35:3	Phone call to broker re: block letter	<p>Referring to Exhibit 2: witness did not specifically tell Vierro that he was to comply with the second paragraph of the exhibit. Witness forwarded a copy of the letter to Vierro. French Bank did not have a procedure to ensure that mutual fund companies would not be timed by IRS at the 500 branch. Referring to Exhibit 3: witness DNR verbatim the conversation with Vierro regarding his client being advised by National US Funds that he was blocked from trading. Witness did not discuss with Vierro that he</p>

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		had previously received a block letter from National US Funds on 12/1/2003. Witness deals with each day's correspondence that day. He does not keep records of prior correspondence. Witness' call to the broker is a fail-safe mechanism to back up sending the actual block letter.
35:4-38:14	Mail handling	All mail that comes to the office comes to witness' desk from the mail room. He DNR receiving Exhibit 2, but his initials on the document indicate he received it. He then would have routinely forwarded the document to Vierro. Witness would typically put such mail in an envelope, mark it with the broker's name and give it to the mail runner. The mail runner in 12/2003 was Cameron Ochoa or Eric William. Witness has not heard of any problems where anyone has complained of mail not being delivered properly.
38:15-40:23	Mail review by witness	<p><u>Examination by Ms. Seidler</u></p> <p>Witness reviews all incoming mail to prevent problems arising with clients or clients' accounts. He also is responsible for noting material facts such as address changes in the correspondence. Some items require followup, such as a client alleging misuse of an account and complaints on the account. Mutual fund block letters do not require follow-up. The block letters are communications from the fund to the broker advising the client of the change in status.</p>
40:24-46:20	Review of account activity	<p><u>Examination by Mr. Nash</u></p> <p>Referring to the first sentence of Exhibit 2: The reference to excessive exchange activity in the listed accounts did not alert witness to any potential churning problem because the trades were initiated by the client. Exhibit 2 does not identify the client by name. There was nothing in Exhibit 2 that would have caused witness to review the accounts. Upon reviewing Exhibit 2, he would have spoken to a broker to determine what the client's objectives were. He would have advised Mandler of the conversation. His practice then might have included looking up the name of the client. Witness' director reviews the account activity monthly. It was not witness' general practice to review the account activity prior to talking about the block letter to the broker or to Mandler.</p>
46:21-50:10	Exhibit 2	<p><u>Examination by Ms. Seidler</u></p> <p>Referring to Exhibit 2: witness cannot match the account numbers with the names of clients from memory. At some point he recalls looking at Naturon. He DNR when he came to the understanding that the activity in the account was consistent with the client's stated objectives. He probably came to the understanding prior to 7/2003. Referring to Exhibit 2, first paragraph: Tyra Rivera, the author of Exhibit 2, spoke to Vierro's</p>

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		assistant. French Bank does not have a policy that precludes a broker from speaking with the mutual fund company.
50:11-53:19	Inter-office mail	<p>Inter-office mail, from other branches, would only come to witness' office from Seattle, which is their hub. Witness opens inter-office mail and reviews what is to his attention and forwards other inter-office mail to Mandler. Inter-office mail only comes to those two persons. Witness DNR reviewing inter-office block letters.</p> <p><u>Examination by Mr. Nash</u></p> <p>Witness reviews all inter-office mail that comes to his branch. He DNR any letters from Cushing to 500 Elm Drive that concerned block letters.</p>
53:20-59:8	Compliance Department	<p><u>Examination by Ms. Seidler</u></p> <p>The Seattle office has Compliance, Legal and Operations. Christine Erickson Christine Erickson is the contact person in the Seattle Compliance office. The Compliance office exists to ensure that the branch is in compliance with the rules and policies of French Bank and to ensure compliance with the Exchange and the various SROs.</p> <p><u>Examination by Mr. Crenshaw</u></p> <p>Witness has not worked in the Compliance office. The Compliance Department does an annual audit of 500 Elm Drive. If they find a deficiency, it must be rectified.</p> <p><u>Examination by Ms. Seidler</u></p> <p>Witness has communications with the Compliance Department besides the audits. He might call them for guidance. He always follows their advice.</p>
59:9-63:12	Specific mutual fund block	<p>Witness DNR an IR getting involved in mutual fund block letters. He recalls the 500 Elm Drive branch being blocked by a specific mutual fund. He DNR the fund. That block was communicated to him by the Seattle office. He DNR who he spoke to; it was sometime in 2003. It was blocked with regard to market timing. The conversation was in regard to a potential problem. Witness alerted Mandler to the problem. He DNR any other conversations about that issue.</p> <p><u>Examination by Mr. Nash</u></p> <p>Witness DNK what Mandler did with the information that witness gave him about the block. Mandler told witness that he would follow up on the information. Witness DNR if he ever knew who the client was who was</p>

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		the subject of that block letter.
63:13-70:15	French Bank policies and procedures re: block letters	<p><u>Examination by Ms. Seidler</u></p> <p>Mutual funds send out block letters because market timing and in and out exchanges are not practices that they want to promote. French Bank had no policies in place that precluded clients from doing market timing. French Bank did not have a policy in place to stop a client who had been blocked in one account from trading the same fund in another account. When he received a block letter he would speak to the client advisor and ask him to inform his client of the block.</p> <p><u>Examination by Mr. Nash</u></p> <p>Advising the client advisor has been the practice of witness since starting with French Bank. Mandler did not disapprove of the practice. The purpose of the contact with the client advisor is to inform him that the fund disapproves of a practice his client is engaged in, and the fund will block that activity in the future. Witness DNK of any procedure in place to ensure that the broker will inform the client of the block letter and future action of the fund with respect to trades. Witness DNK of any follow up to the notification of the broker of the block letter.</p>
70:16-74:25	Block letters received at French Bank	<p><u>Examination by Ms. Seidler</u></p> <p>Witness DNR any specific conversations with Vierro regarding block letters directed to him. He DNR any specific conversations regarding mutual fund block letters received for Chase Werner. Witness DNR any specific conversation with Henry Bryce regarding block letters. He recalls having a specific conversation with Debra Silverman. He DNR any specific conversations with regard to block letters with Brown or Mandler. Referring to Exhibit 6: On the days when witness was in the office at 500 Elm Drive he would have reviewed the block letters that are part of Exhibit 6 as they came in. The volume of letters that came in over this 13-month period did not concern witness.</p>
75:1-80:7	Mutual fund trades	<p>Witness is not aware that Harbinger and Vierro were keeping track of mutual fund blocks in accounts managed by Alexis Winter. He is not aware that Harbinger and Vierro were keeping track of mutual fund blocks in accounts managed by John Quan. Witness was aware that Quan's accounts were market timing mutual funds along the lines of Naturon.</p> <p><u>Examination by Mr. Nash</u></p> <p>Prior to the inquiry by the state attorney general, witness knew that there was some relationship between Quan and Naturon. A wire in 8/2003 led</p>

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		witness to conclude that Quan and Naturon were linked.
80:8-83:6	4 p.m. cutoff time	<p>Prior to 9/2003, witness was not aware that Vierro and/or Harbinger were entering trades for Winter after 4 p.m. Prior to 9/2003, witness was aware that Vierro and Harbinger had access to the Cushing mainframe order entry system. LPTP is distinct from Net X Pro. Net X orders go to the fund and are executed.</p> <p><u>Examination by Ms. Seidler</u></p> <p>Prior to 9/2003, Vierro and Harbinger had access to LPTP. Witness DNR who authorized their access to LPTP. Net X Pro and LPTP both shut down at 4 p.m.</p> <p><u>Examination by Mr. Nash</u></p> <p>The manager's approval station locked out new orders at 4 p.m. Orders must meet specific criteria and a manager's approval with respect to Net X Pro. There was no management review of orders placed on LPTP.</p>
83:7-89:9	Loran's access to LPTP	<p><u>Examination by Ms. Seidler</u></p> <p>Witness DNR how he learned that Vierro and Harbinger had access to the LPTP system. He had a discussion with Loran, where she expressed her frustration with the Net X Pro system. Loran said she was going to talk to management about this. This conversation was shortly after the Cushing conversion. When he later overheard Loran's comment about the LPTP system, he knew that the problem was solved.</p>
89:10-94:21	Management review of accounts	<p>All email communications from sales assistants or brokers are reviewed by management. Some of the e-mails are kept on file as mandated by the SROs and New York Stock Exchange. Mandler does the reviews. Only a percentage of the e-mails are reviewed. All members of the management team are empowered to sign off on new account forms. In the case of multiple accounts, they would ask the broker about the reason for multiple accounts. Witness looks for a legitimate business purpose for multiple accounts. In foreign accounts the procedures are more rigorous for opening multiple new accounts. The Compliance Department reviews new foreign accounts.</p>
94:22-95:20	Trading by employees	<p>Witness DNR if Quan's accounts were discretionary accounts. He can identify a discretionary account of a non-employee by looking at the number. Quan's accounts needed approval by management prior to execution of trades in equities and options, because he is an employee. Mutual funds are not included in that restriction. There is a system in place to review transaction after the fact.</p>

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95:21-97:4	French Bank's market timing policy	<p><u>Examination by Ms. Seidler</u></p> <p>French Bank's market timing policy prior to 9/2003 was that any client engaging in at least four round trips with regard to mutual funds would be classified as a market timing. French Bank would communicate to the client that the client was responsible for any fees or charges arising from a fund not accepting orders under this condition. Mandler met with Derler Capital regarding market timing. After that meeting Derler Capital was brought on board as a client. There was no policy in place at French Bank to track market timing other than the daily activity report and the mutual fund order log.</p>