

21 exactly the SEC's investigation of Highbridge
22 entailed?

23 A. I do not believe it was an
24 investigation; I believe it was a routine
25 examination. My only reference point as to what
26 actually occurred was contained in a lawsuit from
27 Highbridge's former general counsel that was filed
28 in New York State court.

29 Q. That's the Carol Rubin file?

30 A. Yes. 01:49:50

31 Q. But you haven't seen the letter that

80

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2 Highbridge received from the SEC regarding its
3 subadvisory role with Zwiirn?

4 A. No, I never saw such a letter.

5 Q. By the way, one of the things that
6 Mr. Metz mentions -- and it's covered in the third
7 star from the bottom, right above a star that
8 says, What is JCK? Do you see that that star that 01:50:20
9 says, Can you explain the various liquidity
10 redemption options that investors have in
11 different funds, including key dates?

12 A. Okay.

13 Q. It says, What I want to focus on is how
14 much do you know about what people are going to do
15 on September 1st. Remind us again why September
16 1st matters so much.

17 Do you know what he's referring to?
18 MR. O'BRIEN: There's another sentence. 01:50:52

19 MR. SUSMAN: I don't want to ask about
20 that.

21 A. A majority of the investors were in a
22 redemption option called one year plus liquidity,
23 which was the same option that Travis Metz
24 personally was in as an investor in the onshore
25 fund. The notice requirement for redemption at
26 the end of the year was 120 days. Therefore
27 September 1st was an important date to know how
28 many people and dollar amounts were going to 01:51:24
29 redeem under that option.

30 MR. ARFFA: I hadn't realized until now
31 he was an investor. So again we'd ask for
32 confidential treatment of that.

33 (Exhibit 81, DESCRIPTION, marked for
34 identification.)

35 Q. I show you Exhibit 81. Did you
36 participate in the negotiation of this agreement
37 between DSAM and the D.B. Zwiirn entities?

38 A. Yes, I did. 01:52:04

39 Q. Why is it that Mr. Zwiirn -- I'm sorry,
40 Mr. Dubin and Mr. Swieca were being bought out of
41 the management company?

42 A. It was a demand being made in
43 conjunction with the payment of the incentive fee
44 that was owed by Highbridge to D.B. Zwiirn & Co.

24 Q. In other words, in order for Highbridge
 there was -- strike that.
 25 There was an incentive fee or
 management fee that was owed to the management company from the Highbridge managed account; is 01:52:44

81

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2 that right?

A. Yes.

3 Q. I understand you're saying Mr. Dubin
 said in order for you to get paid that fee from
 4 Highbridge you have to buy me out of the
 management company?

5 A. That's not how he phrased it. 01:53:01

Q. How did he phrase it?

6 A. Meeting in Glenn's conference room
 sometime in June of 2007, Glenn had a prepared
 7 script which he seemed to be reading or
 paraphrasing from where he said that he would
 8 agree to have Highbridge pay their incentive
 fees -- and I can't remember exactly what the
 9 conditions were for that -- and in addition you
 will buy me out of my interest in D.B. Zwirn for
 10 \$30 million. And if you don't agree to my
 conditions, I will sue you. 01:53:36

11 Q. Did he say what he would sue you for?

A. No.

12 Q. Well, was one of the conditions for
 payment of the fee from Highbridge that you let
 13 Highbridge's assets go, in effect?

MR. O'BRIEN: Objection to form.

14 A. I think the agreement is self-evident
 in terms of how the managed account would be
 15 managed. So we weren't letting them go; we were
 still managing the assets, but subject to their
 16 direction. 01:54:07

17 Q. You entered into -- at the same time
 you entered into Exhibit 81, right, you entered
 into Exhibit -- what I'll mark as Exhibit 82.

18 (Exhibit 82, DESCRIPTION, marked for
 identification.)

19 Q. You were involved in negotiating
 Exhibit 82?

20 A. Yes. 01:54:52

21 Q. And Exhibit 82 is the settlement
 agreement in effect between Highbridge -- the
 22 entity that owned the Highbridge managed account
 and D.B. Zwirn; right?

A. Correct.

23 MR. ARFFA: Objection to form.

24 Q. And that agreement calls for a
 liquidation of the Highbridge managed account and
 25 payment, and as well there's a provision that
 talks about Highbridge will in turn pay the
 management company the incentive fees and 01:55:15

82

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2 management fees that are owed.

3 A. Yes.

3 Q. Right?

4 It doesn't tie -- Exhibit 82 does not

4 tie payment of the management fees or incentive

4 fees to buying Mr. Dubin out of the management

5 company; correct? 01:55:36

5 A. Correct.

6 Q. But you're saying in a meeting

6 Mr. Dubin effectively tied the two together?

7 A. I believe he did.

8 Q. Did Mr. Dubin explain why he thought he

8 was entitled to be bought out of the management

8 company?

9 A. No.

10 Q. He just demanded it and said, If you 01:56:05

10 don't do it, I'm not going to -- or implied if you

10 don't do it you won't get paid your fees from

11 Highbridge?

11 MR. ARFFA: Objection to form.

12 A. My inference was yes.

13 Q. Well, did you have any discussion with

13 Mr. Dubin about why he felt entitled to be bought

13 out of the management company?

14 A. With Mr. Dubin? No.

15 Q. Did in fact the management company use 01:56:32

15 the management fees or incentive fees that

15 Highbridge paid it to fund the payments to

16 Mr. Dubin?

16 A. In part. Money's fungible.

17 Q. In fairness, who did the -- you

17 negotiated Exhibit 81; right? Strike that.

18 Was there any effort to conceal the

18 existence of Exhibit 81 from Highbridge, to your

19 knowledge? Exhibit 81 is the agreement with

19 Mr. Dubin.

20 A. To conceal? 01:57:04

20 Q. Yeah.

21 A. No.

22 Q. Highbridge knew that both agreements

22 were being entered into at the same time; correct?

23 A. Well, Bob Caruso was the CFO of

23 Highbridge. Bob Caruso was the counterparty from

23 the business side with whom I negotiated.

24 Q. Both agreements?

24 A. Yes.

25 Q. Did Mr. Caruso ever link the payment of 01:57:27

25 the Highbridge management fees to Mr. -- to the

83

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2 buyout of Mr. Dubin from the management company?
 A. Not explicitly.
 3 Q. Under Exhibit 81 Mr. Dubin -- not
 Mr. Dubin, Mr. Dubin Swieca asked that management
 4 is supposed to be paid \$30 million in a series of
 payments.
 5 A. Correct. 01:58:01
 Q. Were those payments all made?
 6 A. No.
 Q. How much of it was paid?
 7 A. Let me look at the payment schedule.
 Q. It's probably in paragraph 2(b), the
 8 first page, the very bottom.
 A. The 3.12 million was paid. The 17 --
 9 the 9.5 was paid. The 17.5 was not paid.
 Q. Was it ever paid? It wasn't paid on
 10 time, but was it paid at all? 01:58:42
 A. No.
 11 Q. Has there been any sort of resolution
 of that outstanding payment?
 12 A. Yes. It's my understanding that as of
 I believe May 1, 2009, DSAM relinquished all
 13 claims to any future payments with regard to this
 agreement.
 14 Q. Was there an agreement that
 memorialized that?
 15 A. There was a letter, I believe. 01:59:08
 Q. And what was the background that led to
 16 DSAM agreeing in May of 2009 to any of these
 future payments?
 17 MR. O'BRIEN: I just caution you not
 to --
 18 Q. Strike that. Sorry.
 Was the May 1, 2009, agreement
 19 connected to the acquisition or takeover by
 Fortress?
 20 MR. ARFFA: Objection to form. 01:59:32
 A. I don't know if it was connected, but
 21 it did occur coincidentally at the same time.
 Q. Is it your understanding it was
 22 designed to facilitate Fortress taking over
 management of the funds?
 23 A. Without their relinquishment, I don't
 believe the transactions could have occurred.
 24 Q. By the way, there is on Exhibit 81 the
 necked "whereas" clause. It says, whereas DSAM
 25 does not receive through its interest any fees 02:00:03
 accruing from DBZ L.P.'s management of HCN/Z

84

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 2 Special Opportunities LLC.
 Was that an accurate recitation?
 3 A. I believe so.
 Q. Well, except I think -- didn't you just
 4 tell me in some of the money from Highbridge deal
 was used to pay for the interests?

5 A. Once again, money is fungible. Their 02:00:35
capital accounts had a special allocation to
6 exclude amounts earned from the Highbridge managed
account.
7 Q. In Exhibit 81 there's provisions about
DSAM releasing all of its interests in any DBZ
8 entity. Did that include Mr. [REDACTED] personal
interest in the fund, do you know one way or the
9 other? Is that what the intent was?
A. No. His personal interest in the
10 onshore fund and I believe in the tax-exempt fund 02:01:15
were completely segregated from this agreement.
11 Q. Now, let's talk briefly about Exhibit
82, the Highbridge agreement.
12 A. Okay.
Q. I'll tell you what, to give you a
13 little background, let's just go through this real
fast.
14 (Exhibit 83, DESCRIPTION, marked for
identification.)
15 Q. I show you Exhibit 83. Exhibit 83 is 02:01:55
the letter that you referred to that you received
in late January '07 from Highbridge, or series of
16 letters?
17 A. Yes.
Q. So from this -- from the time after you
18 received this letter, was the relationship with
Highbridge adversarial?
19 A. In terms of actual day-to-day
interactions, they were quite cordial. But the
20 presumption was that we were adversaries. 02:02:29
(Exhibit 84, DESCRIPTION, marked for
21 identification.)
Q. Exhibit 84. Do you recall receiving or
22 seeing a copy of Exhibit 84 an April 11, 2007,
letter to Larry Cutler?
23 A. Yes.
Q. In the letter Highbridge specifically
24 accuses you of having promised to transfer the
shares of GAGFAH on February 15th and then
25 essentially renegeing on that promise; right. The 02:03:15
first paragraph, if you're confused, says, David

85

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2 Lee assured us at that meeting that the improper
activities were under investigation and that Zwirn
3 would immediately begin to transfer assets to us,
such as the GAGFAH shares, which were reason ply
4 liquid. Further, since February 15th meeting
David Lee has advised us that Zwirn would transfer
5 the GAGFAH shares to us provided we put the 02:03:44
request in writing. We cannot tolerate you taking
6 positions in writing that are in conflict with
reassurances made to us verbally.
7 Right?
A. I remember this very well.

8 Q. Their position was you told them that
9 you'd give them the shares if they put it in
10 writing. They did. The fund responded by saying
11 they're not going to do it. And they wrote this
12 letter to you. Right? 02:04:09

13 A. My recollection -- this is pretty
14 vivid -- is I felt it was bald-faced lying and I
15 had other witnesses in that meeting that
16 corroborated I never made such assurances.
17 (Exhibit 85, DESCRIPTION, marked for
18 identification.)

19 Q. Look at Exhibit -- I show you Exhibit
20 85. This was a letter that you were sent in
21 connection with the audit of Highbridge from
22 August 10th, 2007, and what it says is that the
23 NAV of the Highbridge managed account was \$580
24 million as of December 31, 2006. Do you see that? 02:04:48

25 A. Yes.

26 Q. This one -- did you send back anything
27 to confirm whether this was correct or not?

28 A. I believe we had discussions with
29 Highbridge and with PwC to help assist in the
30 completion of their audit. I don't recall us
31 sending a letter that addressed this letter
32 specifically but that it was more of a process. 02:05:44

33 Q. All right. So let's just -- I want to
34 walk through some of the numbers, Exhibit 85. It
35 says there's an NAV of 580 million. But then
36 there's a paragraph below it that says subsequent
37 to year end we received redemption proceeds of 146
38 million, roughly, which are not included in the
39 NAV as detailed below -- above.

40 A. Okay.

41 Q. Does that mean that the NAV of the
42 Highbridge managed account was roughly \$720
43 million as of December 31, '06? 02:06:14

86

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2 A. I don't know because the ownership in
3 CG Holdings was a liquid stock that had
4 significant volatility. So that value could have
5 been materially lower or materially higher.

6 Q. CG Holdings is what held the GAGFAH
7 shares?

8 A. The GAGFAH shares. 02:06:53

9 Q. Does the number of 700 million sound
10 about right as of December 31, '06?

11 A. I don't recall.

12 Q. You don't. Okay. Suffice it to say
13 sometime after December 31 Highbridge got \$146
14 million out of the managed account; right?

15 A. Yes.

16 Q. If we could, let's look at Exhibit 82.

17 A. Okay.

18 Q. Do you know as of the time you quit
19 working at DBZ whether there was still any money 02:07:33

11 in the Highbridge managed account or had it all
been distributed?

12 A. My recollection was that there were
13 still assets in the Highbridge managed account as
of May 31, 2010.

14 Q. How significant in size?

15 A. I don't know.

16 Q. Now, if you turn to page 2 --
MR. O'BRIEN: We're on Exhibit 82? 02:08:10

17 Q. -- of Exhibit 82, there's paragraph D,
18 additional payments.

19 A. Okay.

20 Q. It says essentially it calls for the
21 repayment of the loan from the onshore -- to the
22 onshore account; correct?

23 A. Yes.

24 Q. Did that loan get repaid?

25 A. There are essentially two loans. The
50 million loan from October of '06 that was 02:08:39
documented was repaid. This is referring to the
amount of intercompany or interfund payables to
the Highbridge account that we did not have a
definitive answer to because it was pending the
completion of the 2006 audits.

26 Q. So by the time of the agreement of
Exhibit 82, had the Highbridge -- the \$50 million
Highbridge loan been repaid in full?

27 A. The loan that was referred to and
documented in October '06 had been repaid. 02:09:21

28 Q. Okay. And then this -- the interfund

87

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2 balances that were not reconciled, I guess, as of
3 the time of this agreement, were they ultimately
reconciled and repaid to Highbridge by the end of
2007?

4 A. There was a reconciliation. I can't
remember when it was paid down.

5 Q. And do you know how much money, 02:09:52
roughly, was paid out to Highbridge from the
6 managed account from the time of Exhibit 82 until
you stopped working at DBZ & Co.?

7 A. I don't know offhand.

8 Q. Do you know if it was hundreds of
millions of dollars? Any idea?

9 MR. ARFFA: Objection to form.

10 A. I don't recall.

11 Q. Do you have any ballpark of what 02:10:26
percentage of the Highbridge account was actually
liquidated and paid out to Highbridge?

12 A. No.

13 MR. SUSMAN: Let's take a quick break.
THE VIDEOGRAPHER: We're off the
record. The time is 2:10.
(Recess taken from 2:10 to 2:19.)
THE VIDEOGRAPHER: We're back on the