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Transcript of recorded telephone conversations - Osnato declaration exhibit 29

United States: Securities and Exchange Commission (SEC)

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

TRANSCRIPT OF RECORDED TELEPHONE CONVERSATIONS

FILE NAME: OSNATO Decl Ex 29 Ledford9-15-08808am-1
BRUCE SENIOR: -- started to say something --

I'm sorry.

MR. LEDFORD: Who? Rose?

BRUCE SENIOR: Rose, I'm sorry. What did you --

what did you start to say? You said it was significant? I mean, --

MS. DiMARTINO: Well, the --

BRUCE SENIOR: -- 660 -- yeah, $600 million --

$600 million is significant, but relative to the whole balance sheet, it's nothing.

MS. DiMARTINO: Well, they filed the petition in bankruptcy today, which I happen to have access to. And, they have, you know, a hundred and -- I mean, they have -- it's far more than that. I mean, it's -- it's in the --

MR. McKEE: I sent that to you, Patrick.

MR. LEDFORD: Yeah, that's about --

BRUCE SENIOR: Okay, well --

MR. LEDFORD: -- well, total -- total liabilities, or total borrowing -- excuse me, total borrowings were, like, 128 billion -- 128 billion.

BRUCE SENIOR: Okay. And total assets?

MR. LEDFORD: I'm not sure what their -- it was, like, six hundred and --

MS. DiMARTINO: Total assets are 639 billion.

MR. LEDFORD: -- billion --
MS. DiMARTINO: And total debts are 613 billion.

BRUCE SENIOR: Okay. And that -- that gives zero valuation as -- as far as an ongoing business, which might be a fair value, with the exception of Neuberger Berman, which obviously is worth something.

MS. DiMARTINO: Yeah.

BRUCE SENIOR: Okay. So then -- so, and what they have is -- all right, fine. So, we got a spread there, plus the value of the business spread. All right.

So, let's find out, and we will --

MR. MONTGORIS: What time does the CP market open?

MR. LEDFORD: What's that?

MR. MONTGORIS: What time does the CP market open?

BRUCE SENIOR: It should be open now. Isn't it, Patrick?

MR. LEDFORD: Yes, it is, but we haven't seen any paper trade.

MR. MONTGORIS: You haven't seen -- well --

BRUCE SENIOR: Yeah, of -- of anybody.

MR. LEDFORD: Yes, yeah, exactly. Yeah, there's -- there's very, very little trading here this morning.

MR. MONTGORIS: Um hmm.

MR. LEDFORD: As soon as -- we've got several
calls out to dealers, to see where they -- where they're pricing the CP. As soon as I -- we get some indications, I will -- I will let everyone know.

MR. MONTGORIS: Sean, do we have any -- do we have any disclosure requirement if we -- if we approve going to fair value for the Lehman position?

MR. McKEE: No, it's -- it's for reporting period. I guess your next reporting period would be whatever your --

MR. LEDFORD: November.

MR. McKEE: Okay. And, you have NQs along the way with the scheduled investments. What will happen is, to the extent that you fair value anything, then that will be disclosed on the scheduled investments, to the extent --

MR. MONTGORIS: Okay, so we -- so, if I understand correctly, then we have -- we have -- we have two issues, and actually two completely separate groups that have to deal with it. We've got the audit committee issue of -- of --

MR. LEDFORD: Fair value.

MR. MONTGORIS: -- of approving for management fair valuing the commercial paper of Lehman Brothers.

MS. DiMARTINO: Um hmm.

MR. MONTGORIS: And then, we've got a board issue of the management coming back to the board and -- and
giving us their recommendation on how they think we should be disposing, or handling, or whatever the -- the position that we have in the Lehman paper, so that we can make the proper disclosure to the SEC. Is that --

BRUCE SENIOR:  Right.

MS. DiMARTINO:  Um hmm.

MR. MONTGORIS:  Okay, Santa, are you on the phone yet?

MS. ALBICOCO:  Yeah, I'm sorry. I never got an e-mail about this.

MR. MONTGORIS:  Yeah, I know. We had a problem with that, I think.

MR. LEDFORD:  Sorry.

MR. MONTGORIS:  So, did you just hear all of that?

MS. ALBICOCO:  Yes.

MR. MONTGORIS:  Okay. So, unless -- unless there's anybody else on the audit committee wants to discuss anything else with respect to the fair valuing, I would recommend -- make a recommendation that -- or a motion that the audit committee give management the authority to fair value --

MS. CROWLEY:  No, no, the --

MS. DiMARTINO:  No, they -- they have to make a -- make a presentation to you, Bill, as to what the fair
value of the security is.

MR. MONTGORIS: Yeah, but don't we have to give them the -- the approval --

MS. DiMARTINO: No, no, --

MR. MONTGORIS: -- to go to fair value accounting?

MS. DiMARTINO: -- no, they're going to -- no. What they're going to do is, you know, they're going to come up with a recommendation that says "This paper should be priced at 80, 85," whatever -- whatever the number is. They're going to tell you the rationale for it. And you, the audit committee, are going to -- to approve that.

MR. ARTINIAN: You know, I -- I thought what Bill thought, too. I thought, in the beginning -- and I want to make sure we clarify it -- I thought in the beginning you were saying that we had to give the firm -- meaning the advisor -- the authority to do that.

BRUCE SENIOR: The authority [break in recording] --

MR. ARTINIAN: To -- to go to fair accounting --

MR. McKEE: Well, they can't -- they can't fair value it without your approval is what Rose is saying. That's --

MR. ARTINIAN: Well, that's not what it sounded like.
MS. DiMARTINO: No, no, you can't give them the
authority to just come up with a number --

MR. MONTGORIS: No, no, no, no, wait a second,
Rose. Hold on [inaudible] --

MS. DiMARTINO: Sorry, Bill.

MR. MONTGORIS: That's okay. Our accounting
principle is not to fair value any of the assets in the
fund. Is -- is that not correct?

MS. DiMARTINO: Yes. They're based on amortized
costs.

MR. MONTGORIS: Okay. So [unintelligible] this
is -- this is a two-step process, I believe. The first
step is for the audit committee, unless I'm totally off
base, which I could be. But, I thought that the first
process was for us to tell them -- tell the management team
that, yes, we agree that you can fair value this asset.
You will come back and give us the fair value
estimation of what the price is, and then we'll take
whatever action has to be taken after that.

But, without the audit committee telling them
that they have the authority to fair value, which -- which
is, in effect, a change of our accounting principles, they
-- they -- that's a meaningless exercise.

MR. McKEE: Yeah, but Bill, you haven't -- but
until they actually come back to you with the price and you

1 approve, you haven't changed your accounting policy.
2 MR. MONTGORIS: Okay.
3 MR. McKEE: So, you don't have to -- to
4 pre-approve them. They just have to --
5 MR. MONTGORIS: Okay.
6 MR. McKEE: -- go and do what they're going to
7 do. And then what you're going to do is analyze the
8 information. Because, it could be -- you know, if it was
9 trading at [unintelligible] par, you could come back --
10 this is immaterial. We're not moving our accounting
11 policy, --
12 MR. MONTGORIS: Okay.
13 MR. McKEE: -- and you may have other
14 recommendations. So, --
15 MR. MONTGORIS: Got it.
16 MR. McKEE: Yep.
17 MR. ARTINIAN: Okay. So, it sounds like Patrick
18 goes back, and he looks at what would be fair value
19 pricing, and he looks at whether or not we -- we can sell
20 it, and what would be the consequence of us selling it, and
21 then --
22 BRUCE SENIOR: And, we made decide to sell it or
23 hold it.
24 MR. ARTINIAN: Right. And then, we re-convene
the board, and the board decides if they want us to sell it or hold it.

MS. DiMARTINO: Yeah, and -- but also, you might decide that the prices that are being out there don't represent a -- an active market, because --

BRUCE SENIOR: Thank you.

MS. DiMARTINO: -- of the absence of trading today. So, even though bids may be -- let's say they're at 70 -- you don't consider that to represent fair value, and that's the presentation you can say to the board, that "Notwithstanding that those are the prices, we don't think it's in the best interests of the fund to sell. And -- and, in terms of valuing it, we think that the more appropriate value is 80, and" --

BRUCE SENIOR: Okay.

MS. DiMARTINO: -- "the reasons we think that are this, even though they diverge from the prices that you could get today in the market."

MR. LEDFORD: Okay.

MR. MONTGORIS: So then if we say after the [unintelligible] -- if we just go by that scenario that you just gave, --

MS. DiMARTINO: Um hmm.

MR. MONTGORIS: -- then -- then the whatever,
600 or $800 million of CP get valued 80 for N.A.V. purposes, and any redemptions today would reflect that pricing?

MS. DiMARTINO: That's correct.

MR. MONTGORIS: And then, but they have to do that --

BRUCE SENIOR: No, wait, whoa, whoa, whoa, whoa.

MR. LEDFORD: Well, I -- we --

BRUCE SENIOR: Oh, oh, okay. Yeah, we reflect that pricing, but that pricing does not break the half penny, so we're -- we're fine.

MR. MONTGORIS: Can we let Patrick go and start working on this?

BRUCE SENIOR: Yeah, go [unintelligible] go ahead, Patrick.

MR. LEDFORD: All right.

BRUCE SENIOR: But wait a minute. The only problem is I'm -- I've got Patrick, so I'm -- I'm still on the phone with Patrick.

MR. LEDFORD: All right. I'm just going to you on hold then, all right?

MR. ARTINIAN: Can I ask a quick question? I'm sorry. Slightly off the point. But, just from the mechanics standpoint, now that Lehman has filed, which you tell me they officially have, so let's say they had
MR. ARTINIAN: What is their responsibility, under the Chapter, to honor that obligation? How does that work? Do they pay that down? What happens?

BRUCE SENIOR: Everything is on hold.

MS. DiMARTINO: Yeah, that's my understanding, as well. They -- they can't disburse any monies out of the company without the consent of the Bankruptcy Court.

MS. CROWLEY: Right.

MS. DiMARTINO: So, they file a petition today, to allow them to continue operations and make payments in the ordinary course. So, like, for example, pay their employees, so people don't quit.

But, other -- other payments are not going to be made. They're suspended.

MR. ARTINIAN: So, without pinning you down as to when, but -- but generally, what would your -- be your guess as to what the timing would be for the Bankruptcy Court to rule on something such as the payment of, for instance, commercial paper?

MS. DiMARTINO: I --

UNIDENTIFIED: It hasn't happened before,
MR. McKEE:  Yeah, at -- there's one --

MR. ARTINIAN:  I'm just -- yeah, okay, I'm --

and I'm not trying to pin you down.  I'm just curious as to

the methodology.  I don't --

BRUCE SENIOR:  Well, it -- it has happened, in

the Lombard-Wall, when Lombard-Wall went, which was about

20 years ago.  The courts, under an amicus brief from the

Fed, allowed the repo to be released from the bankruptcy.

MR. ARTINIAN:  Okay, yes.  So, there is a

possibility, Bruce, is what you're saying, that the

Bankruptcy Court --

BRUCE SENIOR:  No, no, that's repo.  That's

repo.  We don't have repo.

MR. McKEE:  That's not commercial paper.  I --

Ronnie, I think you're asking a question that is -- is

almost an impossible one to answer.

MR. ARTINIAN:  Okay.  I'm sorry.

BRUCE SENIOR:  Yeah, right.  Somebody just got

on the phone.  Who beeped?

MR. STRAUSS:  Yeah, hi, this is Stuart Strauss.

I'm sorry I'm late.

BRUCE II:  Okay.  Can I just interrupt for a

second?  Sean, you said that you know that other funds are

holding Lehman commercial paper.  Are you at liberty to

tell us who those [unintelligible] names are?
23             MR. McKEE:   No, I can't.
24             BRUCE II:   Okay. Is it more than one other?
25             MR. McKEE:   One other that I personally know of.

1             BRUCE II:   Okay. Have you heard from anybody
2             else that -- of -- of others, other than the one that you
3             know of?
4             MR. McKEE:   Not yet. You have -- we have others
5             that have the counterparty exposure, obviously. And -- and
6             -- but none that have called this morning about commercial
7             paper issues yet.
8             BRUCE II:   Okay. Just to let everybody know
9             what we're trying -- you know, what we're trying to do is,
10            obviously, number one, we're going to see what the -- come
11            up with whatever our recommendation is on fair valuation or
12            -- or selling the piece, and you guys will make that
13            decision.
14            That's -- we'll also -- that -- we need that
15            information to tell our clients, because right now they are
16            calling in redemptions.
17            MS. CROWLEY:   Oh, --
18            BRUCE II:   Okay? So, we want that -- we want
19            that information as quickly as possible, so we can tell our
20            clients how we view this thing, and if we hope for the
21            best, maybe it's soothes, it calms them a little bit.
Because, if we have a run on the fund, we have --
we still have a -- you know, then we have another problem.

MS. Di MARTINO: Yes.

MR. MONTGORIS: Well, wait, when -- when they
call in, are they just -- just calling in and saying "I
want -- I want my money out"? Or are they -- are they
calling and saying "Do you have exposure to Lehman
Brothers?" And, when we say yes, they say "I want my money
out"?

BRUCE II: Well, basically, both. The bottom
line is, right now, we have redemptions queued up for
$5.2 billion out of Primary -- Primary Fund. And, --

BRUCE SENIOR: And, the double-whammy on that
is, obviously, as the assets of the fund go down, the more
significant the Lehman holdings become, relative to the
total assets of the fund.

MR. MONTGORIS: Right.

MS. CROWLEY: Yeah, correct.

BRUCE II: And Primary is at [unintelligible]
check here.

(silence)

MR. MONTGORIS: I -- you know, I --

BRUCE II: It's about 80 billion.

MR. MONTGORIS: You know that -- you know that
BRUCE SENIOR: Wait a minute. Bruce -- Bruce,

you said 80 billion? No.

BRUCE II: [inaudible] No, Primary is about

64 billion, yeah.

BRUCE SENIOR: That's 64 billion before the
redeemptions.

BRUCE II: That's correct.

BRUCE SENIOR: Okay.

MR. MONTGORIS: But you know that in situations
like this, people become very emotional. But the -- the
reality is, I mean, how -- what -- where are you going to
put your money if you -- if you can't leave it in a -- in a
money fund?

MS. CROWLEY: They're going to put it into an
all-government money fund.

MR. MONTGORIS: Oh, I see, okay.

BRUCE II: Rose, just -- you know, and I don't
want to sound extreme, but I think it's good that we know
everything. What are our options on staving off or
delaying redemptions if we think that the problem is really
just people panicking for no good reason?

MS. DiMARTINO: The fund is permitted -- you
have to price the redemption every day. So, you have to --
you have to give people today's price of a dollar. But,
you're permitted to withhold the payment of the redemption proceeds for up to seven days. That's, you know, obviously considered best in the money fund business.

BRUCE SENIOR: Okay. How about redemptions in kind?

MS. DiMARTINO: The fund can do redemptions in kind to any party that's not an affiliate. So, any five -- less than five percent holder, you can give them, you know, any securities that you pick. For an affiliate, so any greater than five percent holder, you're required, under a no-action letter, to give them a slice of all the liquid securities in the portfolio.

BRUCE SENIOR: We don't have anybody at five percent.

MS. DiMARTINO: Okay. So, you can -- you can do distributions in kind.

MR. MONTGORIS: I -- I -- for whatever it's worth, and it's -- it's -- you know, I'm just a trustee and it's not my business, but --

BRUCE SENIOR: If you think we're going to do that, you're crazy.

MR. MONTGORIS: Yeah, I had --

MS. DiMARTINO: Exactly.

BRUCE II: Wait, no, I just want to hear --

MR. MONTGORIS: I wouldn't really tell anybody
that they're getting anything other than what they want.
Because, if you want to see that 5 billion turn into
30 billion, --

MR. McKEE:   Right.

MS. CROWLEY:   Right.

MR. MONTGORIS:   -- that's all you've got to do
is say, "Oh, we're going to send you a used Mercedes and"
--

BRUCE II:   Right.

MR. MONTGORIS:   -- "and Bruce's Jeep."

BRUCE II:   Right, okay. Here's another one for
you, Rose. And, --

MS. DiMARTINO:   Sure.

BRUCE II:   -- you know, listen, I'm just asking
questions.

MS. DiMARTINO:   Um hmm, absolutely.

BRUCE II:   If we come back and -- and the board
decides that the fair valuation is at par, can we then,
under 17(a)(7), sell the Lehman paper from the Primary Fund
to our International Liquidity Fund?

MS. DiMARTINO:   You can only do it if there is a
ready -- a readily-available market price.

So, under -- under normal circumstances, there
wouldn't be any issue, whatsoever. Under these
circumstances, I'm not sure you're going to be able to satisfy that there's a readily-available market price.

So, the -- with the board determining a fair value is not readily-available market price. It's got to be -- it's got to be determined by an independent -- it's got to be determined by the market forces.

BRUCE II: Well, if -- but, if it's -- I mean, it doesn't get any better than par, right? So, if Primary sells it at par, --

MS. DiMARTINO: It's not that it doesn't get any better. It's -- you know, I mean, our fund is -- is being advantaged, you know, to a certain extent, because that other fund is going to give us cash. But --

BRUCE II: The other fund is --

MS. DiMARTINO: -- but you're a fiduciary with respect to that other fund. And so, you know, our fund's not harmed. But arguably, they're getting a security that's not necessarily worth, you know, worth -- worth par.

And --

BRUCE SENIOR: I don't know what your thought process is, Bruce, but even though it's not a registered fund, we'd have liability if we did something like that.

MR. McKEE: Right, because you're -- you're -- the advisor is a '40 Act advisor under both.

BRUCE II: Right.
20       BRUCE SENIOR:   Well, forget the '40 Act advisor.
21   We're just the advisors.
22             [Speaking simultaneously.]
23       BRUCE II:   Yes, but the --
24       MS. DiMARTINO:   But you're a fiduciary. You're
25       a fiduciary.

19

1       BRUCE II:   Okay.
2       MR. MONTGORIS:   I think anything, Bruce, that
3       looks too cute by half is not going to be a good thing --
4       BRUCE II:   Um hmm.
5       MR. MONTGORIS:   -- in the long term for the
6       [inaudible]
7       BRUCE II:   All right, okay.
8       MR. MONTGORIS:   So, I think we've just sort of
9       take our lumps, if we have to and then, you know, --
10      BRUCE II:   Okay.
11      MR. MONTGORIS:   -- and I think people that --
12      people that, you know, pull out in a panic will be back,
13      you know, in a week or two weeks, after things settle down,
14      and everybody knows where everything is --
15      BRUCE II:   Yeah.
17      BRUCE II:   Okay.
18      MR. MONTGORIS:   I have a mechanical question for
Rose, I guess, --

MS. DiMARTINO: Um hmm.

MR. MONTGORIS: -- or -- or Sean, or I'm not sure who. So, let's say it -- let's say that, over the course of the next, say, hour, they come back and -- and say we have -- you know, we're going to -- we think it -- we think this stuff, on a fair value basis, is worth 90,
et cetera, et cetera, and if they think it's changed to 89, even, they're supposed to come back and, you know, have another valuation call.

MR. MONTGORIS: Well, they're [inaudible] --

MS. DiMARTINO: But, by not -- by not coming back, they're representing to you that they continue to believe it's worth 90.

MR. STRAUSS: Bill, this is Stuart. Under these circumstances, it would be my strong recommendation to you that you do daily briefings.

MR. MONTGORIS: Okay.

MS. DiMARTINO: Okay.

MR. MONTGORIS: -- piece of paper that day, that, you know, they were marking from -- from 100 to 95, they wouldn't call the board.

MR. STRAUSS: No, but these are -- you know, I don't need to tell you, not normal circumstances.

MR. MONTGORIS: Yeah, no, I -- I understand.

Okay, so --

MS. DiMARTINO: Particularly since we will have informed the SEC staff, they're going to want to continue to be informed about how things are going.
[Speaking simultaneously.]

MS. DiMARTINO: And, they will not --

BRUCE SENIOR: And, that is important

[inaudible] --

MS. DiMARTINO: No, they will know what we

priced it at, and they will know what everybody else is

pricing it at. And, to the extent there's some divergence

there, you know, we will be getting calls from them to us,

saying, "Gee, everybody else is pricing it at 'X,' and

you're -- you're pricing it at, you know, 'Y.'"

BRUCE SENIOR: Does that mean that -- that once

we price it, assuming, let's say, 90, and then a week

later, the pricing -- or a day later the pricing is at 80

and a half, not only do we convene a call, which -- but

then, do we have to report that -- that day to the SEC?

MS. DiMARTINO: No, we don't.

BRUCE II: Patrick, are you still on?

MR. LEDFORD: Yes, I am.

BRUCE II: Are you working on this --

MR. LEDFORD: Yes, yes, yes, we are.

BRUCE II: Okay, because we've got to get this

thing out.

MR. LEDFORD: Yeah, but the market is, as

everyone can imagine, is very, very illiquid. We haven't

seen anything trade. But, we've got phone calls out to
BRUCE II: Okay, we don't need to [unintelligible] let's not speculate on what may or may not happen. We're just -- this is still a -- a meeting of the board of trustees. So, if -- you know, what do you want -- what do you guys want to do? Do you want to continue this conversation, or do you want to pick up again in a half-hour, or something like that, for another [inaudible] --

MR. MONTGORIS: Yeah, why don't we -- I think -- I think we -- why don't we set a time for everybody to call back? And this way, we don't have to deal with the e-mail situation and -- and then, you know, how much time do you think you need? How much -- what's appropriate? Is 10:00 o'clock too early? Do you want to do it at 11:00 o'clock?

BRUCE II: I'm thinking 9:30.

MR. MONTGORIS: Oh, you think you're -- you
think you're going to have enough information by then?

BRUCE II: Patrick, do you think you're going to have enough information?

MR. LEDFORD: We should have some indications.

BRUCE II: I mean, you know, the dealers usually respond in about two seconds. So, if they're not responding in two seconds [unintelligible] information right there.

MR. MONTGORIS: Okay. 9:30 is fine with me, if it's okay with everybody else.

MS. ALBICOCCO: Absolutely.

BRUCE II: Fine, okay.

MR. MONTGORIS: So, we'll all call back in on the same number?

BRUCE II: Yes.

MR. MONTGORIS: Okay.

MS. ALBICOCCO: Do we have the same password, too?

BRUCE II: Yes, everything is the same.

MS. ALBICOCCO: Okay.

[END OF RECORDING]
CERTIFICATE

I, June Accornero, hereby certify that the foregoing transcript consisting of 24 pages is a complete, true and accurate transcript of the recorded conversations contained in the recording labeled "OSNATO Decl Ex 29 Ledford9-15-08808am-1."

The foregoing transcript has been typed and proofread by me.

____________________________          __________________
Typist/Proofreader                      Date