

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM: PART 3

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3 In the Matter of the Inquiry of LETITIA
4 JAMES, Attorney General of the State of
New York,

5 Petitioner,

6 Pursuant to Article 23-A of the New York
7 General Business Law in regard to the
acts and practices of

8 iFINEX INC., BFXNA inc., BFXWW INC.,
9 TETHER HOLDINGS LIMITED, TETHER
10 OPERATIONS LIMITED, TETHER LIMITED,
TETHER INTERNATIONAL LIMITED,

11 Respondents,

12 *in promoting the issuance, distribution, exchange,*
13 *advertisement, negotiation, purchase, investment advice*
14 *or sale of securities or commodities in or from*
New York State.

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15 Index No. 450545/2019 (Preliminary Injunction)

16 May 16, 2019
17 60 Centre Street
18 New York, New York 10007

19 B E F O R E: HON. JOEL M. COHEN, Justice

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1 A P P E A R A N C E S:

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Proceedings

1 A F T E R N O O N S E S S I O N

2 THE COURT: Counsel, can you please state your
3 appearances.

4 MR. CASTIGLIONE: John Castiglione for the Office
5 of the Attorney General.

6 MR. WHITEHURST: Brian Whitehurst, Office of the
7 Attorney General.

8 MS. SKRZYPCZYK: Johanna Skrzypczyk, Office of
9 the Attorney General.

10 MR. MILLER: Good afternoon, your Honor.

11 David Miller from Morgan, Lewis & Bockius on
12 behalf of all respondents.

13 MR. MICHAEL: Good afternoon, your Honor.

14 Charles Michael from Steptoe & Johnson on behalf
15 of respondents.

16 MR. THANAWALA: Nina Thanawala, Steptoe & Johnson
17 on behalf the respondents.

18 MS. PHILLIPS: Zoe Phillips, Morgan, Lewis &
19 Bockius, on behalf of all respondents.

20 THE COURT: Good afternoon.

21 So I got the competing letters with respect to
22 the scope of the injunction, which were very helpful, and I
23 just wanted to go through a few things before I finalize
24 the order. Obviously I've been reading a lot of cases, a
25 lot of documents. It seems to me that the goal is to

Proceedings

1 calibrate the injunction so that it, more or less, matches
2 or at least correlates with the scope of the irreparable
3 harm that the petitioners allege and takes into account the
4 nature of the alleged violation.

5 The petitioner, Mr. Castiglione, very clearly and
6 correctly said that the Attorney General's Office is not a
7 regulator, so there is no general mandate in the Martin Act
8 to maintain the financial stability of any given companies
9 unless there is a statutory violation to pursue. That's
10 something that bank regulators do. If a company is
11 unstable and it causes risks to depositors, bank regulators
12 have the authority to step in and ensure that capital
13 ratios or other things are in order.

14 So the petitioner here, it seems to me, has to
15 show why in this particular case instability or failure to
16 have enough coverage in terms of dollars constitutes by
17 itself a violation. That's not to say they haven't done
18 that, but I think my point is that the injunction should
19 essentially match with what the alleged violation is.

20 So let me start on the petitioner's side. And as
21 I look through everything, it occurred to me that it wasn't
22 100 percent clear what the violation is. So a question
23 that the respondents raise is that this is basically a
24 disclosure problem, which, you know, they argue you don't
25 really need an injunction or the injunction can be limited

Proceedings

1 to disclosure. So the question is, is it a disclosure
2 problem or is there an independent Martin Act problem with
3 dissipating assets?

4 So, hypothetically, if the respondents issued
5 press releases and disseminated them broadly and said just
6 so that everybody is aware, we're free to enter into
7 transactions where we dissipate all of our dollar reserves,
8 I'm assuming that the petitioners would say, well, it's not
9 just about disclosure. But I want to understand, I guess,
10 a little better what beyond disclosure constitutes the
11 potential Martin Act violation.

12 MR. CASTIGLIONE: Certainly, your Honor.

13 So I think there's a couple of things and I'd
14 like to clear up a little bit of what was said in the
15 respondents' papers about what we're saying and I want to
16 be very clear. There are certain elements to what we
17 believed to have happened and we believe are in and of
18 themselves, so to speak, Martin Act violations, but that's
19 not to say that we don't believe the entire course of
20 conduct acted as a fraud upon traders on the venue, the
21 holders of tether and so forth.

22 But I think there are a couple of main points to
23 get to what you're saying and to get to why we sought the
24 injunctive relief that we did. The first, I think it's
25 first to say, the company failed to disclose that it had

Proceedings

1 lost \$851 million, we believe, of corporate and client
2 funds. So embedded in that, frankly, are a number of we'll
3 call them misstatements or omissions regarding what a user
4 of a venue or a holder of tether might have believed about
5 the status of the funds, that they were perhaps not
6 commingled, that they were actually being accounted for in
7 any sort of reasonable way.

8 The next -- I would say by at least mid to late
9 2018, the company knew that hundreds of millions of dollars
10 that it had placed with a payment processor were
11 effectively inaccessible to them. We cited some of the
12 communications that lead us to understand that the company
13 knew exactly the problem that it had and yet went out to
14 the market and told the market untrue things about their
15 ability to process withdrawal requests.

16 Then there's the next maybe key point here is
17 that in November of 2018, the respondents attempted to
18 cover up the loss by simply transferring 625, we believe,
19 potential \$675 million, out of the Tether reserves to
20 Bitfinex and that in and of itself constituted a violation
21 of, among other things, the Martin Act insofar as it made
22 the statements that the companies had been making about the
23 backing of tether untrue as of that very moment.

24 It also shows that the company did, and
25 potentially again, is willing to take the Tether cash

Proceedings

1 reserves, put it in Bitfinex and then alienate it in some
2 way that we don't understand, and that's partially I think
3 what your Honor was getting at. The injunctive relief, we
4 crafted it, we hope properly, to say to the company you may
5 not take further transfers out of the Tether cash reserves
6 over to Bitfinex.

7 Now, the companies, in our discussions both
8 before and after we appeared before your Honor, said, well,
9 hey, what your injunction seems to do is limit our ability
10 to pay out tether holders who want to redeem their tethers,
11 who come back with one tether and say give me my dollar
12 back for my one tether. That wasn't our intention. In the
13 order we essentially carved that out saying if there are
14 legitimate holders of tether, unaffiliated holders of
15 tether that say "I want my tether back just like you told
16 me I was able to do," then they should be able to do that.

17 To the extent there are affiliated entities or
18 perhaps Bitfinex itself that is holding this money that
19 says we're going to redeem these tethers and get money out
20 of the tether reserves, that's nothing more than a further
21 transfer of the cash reserves over to the company.

22 THE COURT: That's the part that I want to just
23 focus on. I think a couple of things you said are that
24 they failed to disclose what they were doing, what they
25 were all about, and that by, I think you said, by mid 2018,

Proceedings

1 that the companies knew the dollars were not there and they
2 had told the market different things in the past. So, just
3 in and of itself, that sounds like something that could be
4 cured in the same way that sometimes in an M&A transaction,
5 usually in Delaware courts, sometimes here, the argument
6 will be, well, you know, the shareholders are about to vote
7 and the disclosures are insufficient and often times the
8 relief there is more disclosure.

9 Now, the last thing you said is what kind of
10 where I thought you were going to be going is that you
11 can't cure something that already happened and so to the
12 extent that tethers are in circulation, if the idea is that
13 people made trades based on a certain understanding, future
14 disclosure doesn't help those people.

15 Is that the core of what you're getting at?

16 MR. CASTIGLIONE: That is one part of it, your
17 Honor, yes. And I want to be clear and I want to speak
18 carefully because I don't want to speculate about things
19 that have not been discussed in our papers nor that they
20 may develop during our investigation. But I think there's
21 a core issue here of these companies seemingly moving large
22 amounts of money back and forth between the companies as it
23 suits them, and I think independent of any given
24 misstatement to the market at any given time, there is a
25 real question about the fundamental nature of this

Proceedings

1 business. And, among other things, our investigation is
2 attempting to determine, for instance, among other things,
3 when and why were large blocks of tethers issued and
4 redeemed by the companies and what connection did that have
5 with, among other things, where some of this money was and
6 was sent over time.

7 I just want to be clear. I think what we
8 articulated in our papers are very clearly violations of
9 the Martin Act and other New York laws, but I don't want to
10 suggest that that is the core of what we're investigating
11 here because a not -- excuse me -- a core or the only core.

12 THE COURT: And, again, just to parry this point
13 one more time, is there anything inherently in the Martin
14 Act that would prevent a company from exchanging funds with
15 a related entity? I mean there are other statutes that
16 might be violated by that. It may be a common law problem.
17 But what about the Martin Act just standing in and of
18 itself? Let's assume there had been no disclosure issues,
19 right, just you had a company that was issuing something
20 like tether and then they were doing, you know, unhealthy
21 things, imprudent things that if you were a bank you would
22 go after as a regulator. Is there anything about the
23 Martin Act that would permit the Attorney General to say,
24 "Hey, wait a minute. You're an issuer. You can't do
25 imprudent things."

Proceedings

1 MR. CASTIGLIONE: In those terms, I don't believe
2 so, but the Martin Act, it doesn't just cover, it doesn't
3 say, for instance, material misrepresentations. It
4 prohibits any manipulative or fraudulent devices that may
5 act as a fraud or act to deceive investors. And so
6 standing here today, I don't know if I could cover every
7 situation where imprudent conduct might take place in a
8 company that would not render either something that they
9 had previously said untrue or would require them to
10 disclose something in order to, you know, same concept.
11 But, absolutely. I think there's every reason to believe
12 that a company could be doing all sorts of things behind
13 the scene that would be material to, for instance, a trader
14 on the venue or a holder of tether.

15 THE COURT: A couple other things and then I'll
16 give Mr. Miller a chance to respond.

17 There's a thread running through the papers, and
18 I take what you just said, that there's something about the
19 fact that the arrangement that you were concerned about
20 here went to a related entity and it confused me a little
21 because I would think that if dissipation of the assets
22 were a concern, why does it matter that it's going to a
23 related entity?

24 MR. CASTIGLIONE: I think a couple of -- what we
25 understand about some of these transfers is that there is

Proceedings

1 potentially no paper trail, no deal documents. The money
2 was simply taken out. That's not a situation that I think
3 typically happened in most unrelated transactions. Money
4 can go at anytime.

5 In some of the materials that we've submitted to
6 your Honor, there was a line of credit transaction that
7 was, you know, constructed with competent counsel and so
8 forth. That didn't happen with the \$625 million transfer
9 in November of 2018. The money was gone immediately.
10 We've asked and haven't received any information about what
11 happened to that now, I believe, 700 or \$750 million that
12 went over to Bitfinex. We understand it to be for
13 liquidity issues. I don't know what that means. I can
14 guess, but we don't know. The vast material we haven't
15 gotten, so I think that's the core point.

16 Look, I think independent of that, there very
17 much could be a situation where it would be material to an
18 investor that one company is pulling the strings of the
19 other, absolutely could be in and of itself, but I think
20 for purposes of this injunction the key point is that the
21 money just goes.

22 THE COURT: To follow along, I think, at least as
23 I understood it, that's what kind of makes this a scheme,
24 whereas just as a hypothetical, if Tether went out and said
25 I think buying another company would be a great use of our

Proceedings

1 capital, and totally at arm's length they bought a company
2 that, you know, you might say is imprudent, but it does
3 drain the company's assets, that by itself wouldn't be a
4 Martin Act violation, I assume, 'cause it's not a scheme;
5 it's with a third party.

6 MR. CASTIGLIONE: Certainly. In the typical
7 scenario where there are things like quarterly reports or
8 material events, things get disclosed, even if it's
9 technically after the time where a deal has happened,
10 that's when information gets absorbed by the market
11 immediately and there's a discussion as to whether it was
12 disclosed and how and so forth. Here there wasn't
13 disclosure of any of it at any time until --

14 THE COURT: Well, the injunction we're talking
15 about here is another hundred-something million dollars,
16 so, you know, if the injunction is about what's about to
17 happen if you don't get the injunction, wouldn't the same
18 market process occur?

19 MR. CASTIGLIONE: Perhaps. We don't know
20 anything about what happened to the \$750 million going over
21 to Bitfinex, nothing. We haven't received any documents
22 about that or any other topic --

23 THE COURT: That's not what the injunction
24 relates to. You have a claim that if what they did in the
25 past was fraudulent, you have various things that you can

Proceedings

1 visit upon them. The question in front of me now is how do
2 I structure an injunction that gets at what you're
3 concerned about that would also be a Martin Act issue. So
4 I'm not sort of --

5 MR. CASTIGLIONE: Your Honor, if there was a way
6 to understand or to know that Bitfinex accessed the cash
7 reserves of Tether in order to fulfill bona fide requests
8 by individuals who wanted tethers for dollars, as they are
9 entitled to, I don't see any inherent problem with that.

10 The issue is we have asked for information about
11 are there -- have there been in the past and are there
12 currently bona fide redemption requests, how many, are they
13 being filled. We understand from the papers that nothing
14 is amiss; everyone is getting filled. I don't know that to
15 be true, but we can take it for what it's worth. We don't
16 know that to be the case and I think, at the very least --
17 again and I think this is what your Honor was getting to
18 before -- we should have checkpoints in this process to say
19 does this injunction continue to make sense. But we don't
20 have any information that would allow us to even make, to
21 even really speculate, not that that's our job, to
22 understand what happened to the money that already went
23 over and what would happen to the next \$150 million.

24 THE COURT: So just in terms of charting the
25 injunction, I think this discussion explains to me why the

Proceedings

1 language of the injunction focuses on transactions with
2 Bitfinex and other related entities as opposed to a much
3 broader one that says, you know, you can't spend any
4 dollars for anything. So if it's arm's length that is not
5 with a related entity, I think that's the scope of the
6 injunction that everybody agrees on.

7 Last couple of things and then I'll turn to
8 Mr. Miller on your responses and then I have a few for you,
9 too.

10 In terms of how the injunction is structured,
11 again, as I said last time, I'm going to want to have some
12 temporal -- at least initial temporal limit around it and
13 your proposal is that the burden should be on the
14 respondents to come to the court at some point before the
15 expiration and explain why it should be essentially
16 terminated.

17 Now, that would be unusual because typically the
18 party seeking the enjoined conduct is the one that has to
19 persuade the court why that's necessary, and on top of
20 that, you're going to be in possession of information about
21 your investigation. I'm not sure how they would know what
22 the grounds would be to terminate the injunction at that
23 stage.

24 So why would you flip the burden essentially
25 upside down?

Proceedings

1 MR. CASTIGLIONE: I don't know if I would agree
2 that the burden is flipped upside down. What we intended
3 to do with the structure that we propose was to say our
4 checkpoint for whether the injunction continues to make
5 sense is whether we have the information necessary to
6 evaluate, among other things, when and how the money would
7 move, to whom it is going to, are there bona fide orders
8 that, among other things, would suggest that the flow of
9 tethers in and out are real.

10 So the only way to get to that point would be by
11 production of materials. They are in the best position to
12 know where they are. In terms of the materials they've
13 produced that they have versus what we've requested, we
14 don't know what they have. And so our intention was to say
15 at the expiration of the injunction, you can put in papers
16 that say we have completed the following and therefore it
17 doesn't make sense to continue it. We get to respond. I'm
18 not sure the burden really lies necessarily any heavier on
19 one side than the other to say at that point that they have
20 been compliant with the documents portion of the order and
21 therefore the injunction no longer needs to go forward.

22 THE COURT: I would agree with you in certain
23 circumstances. If you have an injunction out to a specific
24 end date so that the order of the court is essentially
25 indefinite, then the burden is on the enjoined party to

Proceedings

1 come in and explain why it should be terminated, whereas on
2 its terms there is no natural termination point.

3 Just in getting to what you said, I understand
4 the point about discovery, although, you know, by that
5 point you presumably would have some indication, you and
6 the Special Referee, as to whether the production was
7 complete. But, more importantly, I think you said at that
8 point you will know more about what the concerns are. It's
9 just a little unclear to see how the respondents would know
10 what your concerns are. So it still seems, you know, if
11 the injunction says this last X day unless somebody comes
12 here and explains why that should be different, it just
13 seems more natural for that to be the petitioner.

14 MR. CASTIGLIONE: Your Honor, part of our concern
15 was we haven't received any materials from respondents for
16 over a month now and with the process that they outlined, I
17 think they said 30 days or 45, we would make a submission
18 to the Court full stop and then what? I don't know if the
19 argument about burden, I don't necessarily think that just
20 because they put in their papers first we wouldn't have a
21 burden necessarily. But I think the point is what's going
22 to happen at the end of this process if we're going to put
23 in a piece of paper that talks about how they did or didn't
24 comply and then what? Does the order persist until they
25 put in papers when they do and your Honor rules when.

Proceedings

1 Clarity is what we're trying to go for and trying
2 to be realistic about our ability to say anything frankly
3 intelligent about what they've done in response to the 354
4 order, which right now is nothing.

5 THE COURT: Well, a couple of things there, I
6 guess. You had a procedure with a letter of 14 days and
7 then some sort of response. That process, which I think
8 does make sense, could work as easily with the petitioner
9 going first with a letter and I think at that time, if we
10 do it that way with petitioner going first, I think the
11 incomplete -- if the investigation is incomplete and there
12 is some reason why it is, that would seem to me to be a
13 potential argument why you can't stop it now because it
14 wouldn't make sense to do that because all the things that
15 led to the original injunction, none of it has been
16 resolved.

17 You sort of anticipated my other two questions
18 for you. First of all, why 90 days? Where did that come
19 from?

20 MR. CASTIGLIONE: Based on conversations that we
21 had with respondents about how long they believed it would
22 take to them to produce substantially all of the materials
23 in the 354 order. That seemed like a meaningful
24 checkpoint. I don't know if they'll do that, but it seemed
25 about right. I don't think this is an exact science. It

Proceedings

1 seemed about the right time. It's not too short to make it
2 unrealistic and therefore we're coming back to you saying
3 extend it, we need more time, nor is it so long that I
4 think it would cause concern that this investigation is not
5 proceeding, it is, and we want to demonstrate that.

6 THE COURT: Okay. And then the last question
7 before I turn it over to Mr. Miller or whoever on your
8 side. What is the status in front of the Special Referee
9 of the exchange of documents?

10 MR. CASTIGLIONE: Nothing, your Honor. So we go
11 back before him tomorrow. We have -- like I said a couple
12 of times, we haven't received anything from them for a
13 couple of weeks prior to even filing our order. We
14 understand there to have been a production in cue ready to
15 go out the door that didn't go out the door. We also
16 understand that it was their belief or maybe aspiration
17 that the items in our subpoenas could be responded to fully
18 by, I believe, tomorrow and so that's where we stand. We
19 have been asked to go back to the 354 order and identify
20 priorities. We've done that. They know generally what
21 they are. That's where we are.

22 THE COURT: Okay. That was a lot.

23 But, Mr. Miller, why don't you try to hit those
24 points and then I have a few for you.

25 MR. MILLER: Thank you, your Honor. I have a

Proceedings

1 number of points in response.

2 First, I think the reason why this has been
3 somewhat confusing in terms of what we just heard, your
4 Honor, is because of your Honor's initial question, which
5 goes to the heart of this, that the Martin Act is about
6 disclosure. And as we noted on page 16 of our opening
7 brief on April 30th, the Martin Act doesn't attempt to
8 regulate particular features of a business. It's a
9 disclosure approach, citing and quoted from *Kerusa v. W 10*
10 *Z/515 Real Estate Partnership*, 2009 Court of Appeals case,
11 your Honor. And the theory is that if the risk of the
12 investments are disclosed, then investors can engage in
13 self-protection.

14 I don't want to get back into the facts of what
15 was said and what we disclosed back in 2018 and what the
16 respondents believed with respect to the money because we
17 absolutely dispute everything that counsel for the Attorney
18 General's Office just said, completely, categorically.

19 So this is about disclosure and it's why, your
20 Honor, quite candidly, with all due respect, we still
21 intend to argue this, that there should not be an
22 injunction in the first place and we're reserving our
23 rights on it, because everything has been disclosed. The
24 Attorney General's Office cannot articulate an irreparable
25 harm here, other than to say two things: one, that this

Proceedings

1 doesn't smell right, that it smacks of a fraudulent scheme.
2 That doesn't mean they get an injunction, with all due
3 respect, your Honor, under the Martin Act. If we've shown
4 that this is disclosed and they haven't shown that it's
5 not, since the burden is on them, then they haven't made
6 the irreparable harm showing.

7 THE COURT: Isn't there -- I would say one of
8 their better arguments, if not the best, is, you know,
9 tether has been out there for a while, and taking their
10 allegations that it's in circulation based in part on an
11 understanding when your disclosure was, let's say, less
12 broad in terms of what the underpinning assets were, why
13 having made those disclosures, which have, let's say, been
14 improved, there's still a lot of people who bought and
15 trade and hold, perhaps, who bought and traded and held
16 based on the old disclosures.

17 So at that point aren't they correct that --
18 well, you have to minimize how much your conduct is
19 inconsistent with the past disclosures.

20 MR. MILLER: But, your Honor, again, since we're
21 talking about tether, which is a stablecoin and redeemable
22 for a dollar, which tether --

23 THE COURT: That's the whole point.

24 MR. MILLER: No, it's not, your Honor, because
25 what has happened since this order was disclosed, people

Proceedings

1 immediately -- there was a large redemption and people got
2 their money back. Everybody knows about this, your Honor.
3 It's been -- numerous articles have been written on the
4 Internet. There are a lot of people who have discussed it.
5 This is not some sort of confidential bit of information.
6 So tether holders now can redeem and get their dollar and
7 they choose not to.

8 So, again, since this is supposed to be about
9 disclosure, and since this is supposed to be about them
10 showing irreparable harm from nondisclosure, they are
11 having trouble articulating why they need this injunction
12 or why it should be of a length of time, other than to say
13 we don't like the movements of funds between affiliated
14 entities, which is why without waiving our objection
15 entirely to the injunction, we actually agreed, as you saw
16 in our letter, your Honor, that we agree to the language,
17 again reserving our rights, which I want to get back to in
18 a second, that the injunction can mention that there can't
19 be the affiliated transaction equivalent to the line of
20 credit. That's why we agreed to that, even though we think
21 there's nothing wrong with it, especially since it's been
22 disclosed.

23 The second point I was going to make with respect
24 to the purported irreparable harm that they seem to be
25 coming up here for their injunction is that they haven't

Proceedings

1 gotten documents. Putting a side the little factual, well,
2 they haven't gotten documents in the last month is because
3 of all this, your Honor, and we dispute jurisdiction, which
4 I'll get to in a moment, and I want to discuss something,
5 but I don't want to detract from my argument about what
6 we're going to say in front of the Special Referee
7 tomorrow. That's not a basis, your Honor, for an
8 injunction. They don't get to go ex-post. They don't get
9 to say, well, we have an injunction in place and we don't
10 want it lifted until we get our documents. The injunction
11 is supposed to be about irreparable harm without the
12 injunction. Irreparable harm doesn't equal them not
13 getting documents. It just doesn't. That's not what it is
14 under the law. And so that's the problem and why the
15 Attorney General's Office is having such troubling
16 articulating irreparable harm.

17 THE COURT: Well, just to pause there. So
18 putting aside for a second the standard which you'll see in
19 whatever order we issue hopefully soon, that the statute
20 does sort of tie the two together and say if you're going
21 to grant an information related relief to the Attorney
22 General, which the Court has limited discretion about, at a
23 bare minimum, the injunction is appertinent to that. So it
24 doesn't take a lot of imagination to think that the idea
25 was that they are linked, as they are obtaining information

Proceedings

1 they have some right to seek to maintain the status quo
2 until they can get a handle on things.

3 MR. MILLER: Your Honor, my response would be,
4 with all due respect, the discovery that they're seeking
5 here has no nexus to the preliminary injunction, which was
6 based on an allegedly conflicted transaction and the
7 nondisclosure of it. Again, if this is about, as it's
8 supposed to be, about nondisclosure of a conflicted
9 transaction, which now everybody knows about, why is a
10 preliminary injunction even necessary in the first place,
11 with all due respect, your Honor? And even if it is, what,
12 if anything, does it have to do with the documents that
13 have been requested in the document demand? It doesn't,
14 your Honor, 'cause it has nothing to do with the disclosure
15 of the conflicted transaction.

16 They can try to argue, your Honor, it's about us
17 trying to find out where the money is. That doesn't have
18 to do with the disclosure of the conflicted transaction,
19 which has occurred. And it's a nice way for them to wrap
20 it up so they can continue to get their injunction and hold
21 it over the companies so they can get the documents they
22 want, but that doesn't mean that they get to have the
23 injunction or keep it and it doesn't mean they proved
24 irreparable harm.

25 Another a few other things, your Honor, that I'd

Proceedings

1 like to get to. And I don't know if your Honor wants me to
2 address this now, but, obviously, in our letter we noted a
3 number of problems with respect to the Attorney General's
4 language, including even though -- and I think your Honor
5 brought up earlier today the fact that the Office of
6 Attorney General is not a regulator -- agree, except
7 they're trying to act that way here. Because they don't
8 like some of the investments, they don't know about what
9 some investments the companies may make, they all of a
10 sudden now want to have restricted language that restricts
11 it to cash or cash equivalents per their language, even
12 though, by the way, prior to the April 24th order, the
13 companies actually -- the tether actually did invest in
14 instruments beyond cash and cash equivalents, including
15 bitcoin, they bought bitcoin.

16 So the Attorney General's Office wants to
17 restrict it because they don't know or they haven't thought
18 about it, they don't understand what the companies could be
19 investing in, that is them acting as a regulator.

20 THE COURT: This may be a little beyond the
21 issue, but it's just curious to me. Tether sounded to me
22 like sort of the calm in the storm of cryptocurrency
23 trading. And so if tether is backed by bitcoin, how is
24 that consistent? If some of your assets are in a volatile
25 currency that tether is supposed to somehow modulate, that

Proceedings

1 seems like it's playing into what they're saying.

2 MR. MILLER: It's a small amount, by the way,
3 your Honor. But the disclosures indicate, especially the
4 disclosure of February 25th, demonstrate that tether is not
5 just taking it in cash or cash equivalents. It does make
6 other investments, including purchasing other assets.

7 THE COURT: Is bitcoin a cash equivalent?

8 MR. MILLER: No, your Honor. That's the other
9 assets.

10 But putting this aside, your Honor, the problem
11 again is the fact that in their proposal, in their proposal
12 with respect to the injunction, which we still dispute,
13 they do -- they are trying to act like a regulator in
14 restricting what these companies could do. The issue with
15 respect to the application for the 354 order, respectfully,
16 your Honor, was about a purported nondisclosure of a
17 conflicted transaction. That's what was the basis for them
18 to get the relief they received, and we dispute that, but
19 we further dispute them now trying to broaden the
20 injunction and the relief and peg the injunction based on
21 their views of how these transactions or any transactions
22 the company engages in should occur.

23 One other point, your Honor, because I alluded to
24 this, so I don't want to forget to mention it.

25 Mr. Castiglione has mentioned the non-production of

Proceedings

1 documents over the last month. I think our reliance on the
2 affirmation that we filed with our order to show cause
3 makes very clear that we were producing lots of documents,
4 that we were constantly making productions on a weekly
5 basis, that we were in frequent contact. I don't want to
6 belabor our views of why they did what they did on
7 April 24th, which I think we made pretty clear in our
8 paperwork. But putting that aside, the fact that there
9 have not been productions since they initiated this action
10 is because of the fact, as we made clear, we made clear in
11 our paperwork, we made clear to them, our productions were
12 voluntary before they initiated this action. We were
13 voluntarily cooperating, that's over, and if we have an
14 order, we comply with it or we appeal it, which leads me to
15 my next point, your Honor, and I wanted to make sure that
16 we mention this, your Honor, since we didn't want your
17 Honor to be blindsided that we're going to be raising it
18 with the Special Referee tomorrow.

19 We intend next week to move to dismiss under the
20 CPLR this entire special proceeding under the Martin Act
21 for lack of jurisdiction. And, respectfully, your Honor,
22 we're going to be requesting a stay, because otherwise if
23 we have to produce documents, that moots the relief that we
24 seek, and if your Honor, with all due respect, is unwilling
25 to grant our motion for the stay, we are going to the

Proceedings

1 Appellate Division. So we're going to make that point to
2 the Special Referee tomorrow because, again, the era of us
3 producing documents when there was voluntary cooperation is
4 over. We'll comply with the orders or we'll appeal them
5 and get a resolution.

6 THE COURT: I'm not insulted by any of that, so
7 you don't have to say "with all due respect." That's
8 obviously your right.

9 A couple of questions for you before I let you go
10 here. In the back and forth in the letters, at some point
11 you sort of criticize the references in the Attorney
12 General's proposed injunction to reserve funds,
13 specifically when they said that payroll and the like
14 should only come from non-reserve funds and there was a
15 line that money is fungible and there's really no such
16 thing. But your proposal also references dollar reserves
17 being held by Tether. Are those not the same thing?

18 MR. MILLER: So, your Honor, were all due
19 respect, our point on that issue is that Tether maintains
20 funds that it obviously has received from customers, funds
21 that it earns on its investments, and the point is that
22 they are -- they're not in separate accounts and since
23 money is fungible we can't say that this dollar came from
24 this customer versus this dollar being earned from an
25 investment. And this is not some sort of novel on its

Proceedings

1 face, fraudulent concept. This is true for many businesses
2 that have business accounts. And so ultimately, though,
3 the company does, of course, keep track of how much money
4 it owes customers versus how much it's earned from a
5 numbers standpoint, but our point was that they wanted in
6 their, I think, part two of the proposed injunction,
7 condition the payment of compensation and salaries based on
8 it coming from non-reserve funds.

9 Money is fungible, that's not going to be
10 possible, and that seems to also indicate, again going back
11 to "they're not a regulator but they're acting like one,"
12 where a business may have its own accounts where it knows
13 how much money it owes to people and how much it's
14 collecting or how much it's earning, and even if that's not
15 a profitable enterprise doesn't mean it can't pay its
16 employees.

17 THE COURT: Look, money is fungible, I get it,
18 but it's actually a fact question and you can also have an
19 account that you don't touch except for certain purposes.
20 I mean, some of this conversation sounded like the Social
21 Security lockbox. I'm not sure it exists or what happens
22 because it's all Treasury funds.

23 So is there an account of dollars that you --
24 that the company has to maintain, let's say, a certain
25 percentage of coverage for the amount of circulating

Proceedings

1 tether?

2 MR. MILLER: I don't think so, your Honor. I
3 think there is a business account and there are accounts
4 that back the tether and accounts that it earns from
5 investments backing the tether, but I don't think they're
6 segregated in any way.

7 THE COURT: Just to get to the government's
8 concern, I think you both mentioned this. If in, the
9 course of business, your expenses go up and your
10 investments go down, does that mean, whether it's a
11 separate account or not, your relative percentage of
12 dollars to tether will just drop and there's no sort of
13 floor on how much money can go out the door?

14 MR. MILLER: Well, at an instantaneous point in
15 time that could be correct, but, again, since this company
16 is operating like a fractional reserve concept the bank
17 might have, this is not something new or novel. Obviously,
18 to the extent that the company has an incentive, of course,
19 to keep the reserves up, not only for the money it owes to
20 the customers, but in order for it to be a profitable
21 enterprise. It's not doing this as a nonprofit.

22 THE COURT: I kind of agree with you that you
23 start to get into the regulatory at that point.

24 MR. MILLER: Absolutely.

25 THE COURT: And I think what Mr. Castiglione said

Proceedings

1 I think is sensible, is that they can stop you or I can
2 stop you from doing sort of related party transactions or
3 something else that they can, you know, arguably say is
4 improper use of funds. It would be a different thing to
5 say I'm going to just put a hold on all of your
6 expenditures. So I get the point. So I guess you have
7 answered the question. There is no reserve. That's not a
8 thing. You know, there's not some untouchable segment of
9 the company's funds that is kept separate and it's all cash
10 within the enterprise and can be used either to have tether
11 transactions be redeemed or for anything else.

12 MR. MILLER: With all due respect, your Honor, I
13 take issue with there not being a reserve. There is a
14 reserve from our perspective. It's not a lockbox, to use
15 Vice President Al Gore's terminology, for that particular
16 money, but, nevertheless, the point is that there are
17 reserves because there are cash, cash equivalents, other
18 assets and investments that back the tether.

19 THE COURT: But you said before if they're not in
20 a segregated account, why couldn't you use that for other
21 purposes?

22 MR. MILLER: Again, your Honor, to the extent
23 that there is profit, certainly the company can do
24 whatever, but even if there's not profit off this, the
25 company could still pay its employees and then earn money

Proceedings

1 to then put money back. And, again, the issue that we're
2 talking about here frankly relates to, you know, really
3 more of a hypothetical concern of what if literally tens of
4 thousands of tether holders decide on today, May 16, that
5 they want to redeem their tether at the same time, some of
6 them may be delayed. That's what this comes down to.

7 THE COURT: And that's a regulatory question of
8 whether New York State government has some ability to say
9 that tether isn't being run in the safest possible way. I
10 get you on that and maybe really the disclosure issue is,
11 is that investors know that that's, even if it's
12 hypothetical, that that's something that could happen,
13 that's your point, is that that's baked into the market.

14 MR. MILLER: And that's part of the issue here,
15 because, again, to go to my first point when I stood up,
16 your Honor asked a very good question: Isn't this supposed
17 to be about disclosure under the Martin Act? And if not,
18 what else is this about? And really what this has come
19 down to is the Attorney General's Office making some
20 arguments about it's a dirty enterprise that's being
21 engaged in here that has nothing to do with the disclosure
22 issue, which is where this is supposed to be about, but
23 they don't want that to be what it's about because it's
24 been disclosed; the conflicted transaction was disclosed.

25 And so, ultimately, again, this is why, your

Proceedings

1 Honor, I have to respectfully renew our request to vacate
2 the injunction. If your Honor is unwilling to do that, as
3 your Honor saw from our paperwork, they are really not only
4 trying to expand this injunction, but they're trying to act
5 as a regulator and that they cannot do.

6 THE COURT: I understand.

7 Last question, I guess, before I come back to the
8 other side of the table, why 45 days? Where did that come
9 from?

10 MR. MILLER: Fair question. So, your Honor,
11 obviously the companies have an interest. If there is an
12 injunction, it being that short a duration. We thought
13 that something like two weeks to even 30 days, although we
14 initially thought about 30 days and then reconsidered after
15 discussion with the Attorney General's Office was too
16 short.

17 Ninety days, whatever, holding this again, goes
18 back to us thinking about it's their burden to show
19 irreparable harm without this injunction. It makes no
20 sense for all the reasons I've articulated, respectfully,
21 your Honor, for such an injunction to be in place against
22 our businesses for 90 days. So in an effort to be somewhat
23 compromising, reserving all our rights, that's how we came
24 up with 45.

25 THE COURT: Yes. And I assume the narrower the

Proceedings

1 injunction, the less concern over how long its lasts and
2 the more onerous the injunction, the more concern over how
3 long it lasts, so both factors are at play there. And I
4 recognize it, if not arbitrary, there's no mathematical
5 formula for it.

6 I think another relevant point is that you also
7 don't want to be coming in here every few weeks to fight
8 about it. Then I become a regulator, which I am not
9 interested in either. So the idea is to set up a process
10 where the investigation goes forward. The injunction, I
11 will tell you, I think it should be as narrow as possible,
12 consistent with the claim for irreparable harm.

13 I think, as I said, the principle I'm going under
14 is it should be broad enough to do what the government has
15 argued to avoid irreparable harm, while at the same time
16 not being any broader than necessary to hamstring the
17 commercial activities of a company, and it should only last
18 for a reasonable -- some end point because injunctions
19 under Section 354 are kind of an odd beast in that most
20 preliminary injunctions have a natural end point, usually a
21 trial, and here you don't have that.

22 So anyway, the goal, from my perspective, is
23 to -- I understand you want there to be no injunction and
24 you reserve your rights on that, and just to be absolutely
25 clear, neither of you by submitting proposals are giving up

Proceedings

1 any rights either for a narrower or nonexistent injunction
2 on the respondents' part, or a broader one. So that's
3 where I'm headed is to try to make it broad enough to do
4 what the government needs, at least in my view, and not one
5 bit broader than that.

6 MR. MILLER: I appreciate that, your Honor, and
7 given, assuming for the moment that an injunction would be
8 appropriate, which respectfully obviously we disagree
9 with --

10 THE COURT: Continuing objection recognized.

11 MR. MILLER: Thank you, your Honor.

12 Again, I think our proposal does exactly what
13 you're trying to do, your Honor, namely to make such an
14 injunction as narrow as possible, which is why we limited
15 Injunction No. 1 or Clause 1, whatever you want to call it,
16 to the conflicted, the allegedly conflicted transaction
17 between the affiliates, including the line of credit,
18 because we understand your Honor's point from back on
19 May 6, that it can't just be an injunction that mentions
20 the line of credit. It has to be any kind of affiliated
21 loan transaction or a conflicted transaction, which is why
22 we proposed that language, but we couldn't agree with the
23 Office of the Attorney General because, again, they went
24 beyond that to be a regulator.

25 THE COURT: Okay.

Proceedings

1 MR. CASTIGLIONE: Your Honor, if I could.

2 THE COURT: Sure.

3 MR. CASTIGLIONE: To be clear, what we set forth
4 in our injunction that I think the dispute is about, the
5 carve-outs that were essentially requested by the other
6 side to allow them to continue business in what they call
7 the ordinary course.

8 THE COURT: I am aware that they left out a
9 reference to their terms and conditions, I think. One of
10 the points which, when I read your letter, I was wondering
11 if the injunction is -- if the breadth of it is determined
12 by whatever they determine the terms and conditions are,
13 that doesn't make a lot of sense, but I think the one that
14 they proposed doesn't include a reference to terms and
15 conditions, so that takes care of one of the things you
16 were concerned with.

17 MR. CASTIGLIONE: I think that's right and I
18 think there was some cross-drafting going on. But what we
19 attempted to capture in our injunction was those elements
20 of their business that they say needed to continue that
21 were the existing injunction language from the original 354
22 order were unclear and at one point they said, "Well, under
23 the terms of the original order, it's not clear that we can
24 allow tether holders to redeem," which we said, okay, to
25 the extent they're not affiliated entities that would

Proceedings

1 essentially evade the injunction, that seems appropriate.

2 On subparagraph 2 with respect to compensation of
3 individuals at the company out of the tether cash reserves,
4 they said, "Well, wait a minute. We have people on
5 payroll. Shouldn't people be allowed to get paid?" And so
6 we attempted to craft language that would suggest that to
7 the extent that there are regular and ordinary payments,
8 sure.

9 What we were concerned about in that instance was
10 we understand that the executives of the company get
11 irregular lump-sum payments from these unsegregated
12 accounts at non-periodic, put it that way, times and that
13 we had a concern that that would be an evasion of the
14 order. It doesn't have anything to do with what the Office
15 of the Attorney General thinks should or what would be good
16 to be done. It's what language can be crafted to ensure
17 there's not an easy evasion of the language and you can see
18 in both sub (1) and sub (2), there's an initial sentence in
19 each one of those that I believe are the same or
20 substantially the same in both proposed orders and so the
21 dispute, to the extent there's much, I'm not sure there is,
22 lies in the carve-outs essentially.

23 THE COURT: Let me ask you about paragraph two
24 because I have been taking a little bit from both sides
25 that I thought made sense. The first part of it prohibits

Proceedings

1 them from making any distribution or dividend to any
2 principal, executive, employee, agent, investor or
3 associate of Bitfinex and Tether -- maybe that should be
4 "or Tether" -- and Tether from funds that have been loaned,
5 extended, pledged or otherwise taken from the U.S. dollar
6 reserves held by Tether. And I just -- at the moment I
7 think even the carve-out doesn't -- I assume the carve-out
8 for avoidance of doubt in addition to things like payments
9 in the ordinary course, payroll, payments to vendors,
10 consultants or contractors, that list should also include
11 redemptions to -- well, redemptions generally, right?

12 MR. CASTIGLIONE: Do you mean to say redemptions
13 by the key -- for instance, the key executives of the
14 company that may hold tether?

15 THE COURT: Well, that's what I was kind of
16 puzzling about is how do you phrase that. Let's assume
17 somebody, some employee at one of the companies invests in
18 tether, is the idea that that person could not redeem their
19 tether?

20 MR. CASTIGLIONE: I don't know whether that to be
21 true, so I'm uncomfortable suggesting that that could be an
22 easy evasion. Again, we have asked are there significant
23 personal holdings and what are they by the key company
24 executives. We don't know.

25 So if someone has a hundred tethers and wants to

Proceedings

1 redeem them, that seems insignificant. If someone has 200
2 million tethers that they issued themselves and are
3 redeeming them as a way to get the money to themselves in
4 essentially abrogation of the order, yeah, I think that's a
5 big problem.

6 THE COURT: Again, let me just take your proposed
7 language and make sure I understand it. From your -- I
8 think this is your proposal, paragraph 2, as I have it,
9 says: "Making any distribution or dividend to any
10 principal, executive, employee, agent, investor or
11 associate of Bitfinex and Tether." So you see what I mean
12 by the "or," it would have to be somebody who, whatever
13 that is, of both entities. Maybe that's what you mean, I
14 guess, common ownership. I get you. That actually
15 makes -- scratch what I said before.

16 All right. Let's start again. "Making any
17 distribution or dividend to any principal, executive,
18 employee, agent, investor or associate of Bitfinex and
19 Tether." So the first part is common owners or common
20 employees, right? And to those entities you cannot make
21 any of those things from funds that have been loaned,
22 extended or otherwise taken from the U.S. dollar reserves
23 held by Tether.

24 So just start with that. The first sentence is
25 basically about sending dividends and the like, which

Proceedings

1 certainly sound like outside the ordinary course,
2 extraordinary, however you want to put it, transactions to
3 owners. And then the carve-out, which, I guess, you guys
4 spent some time on, yours said: "The foregoing shall not
5 preclude payments in the ordinary course of business. And
6 then you have a few examples and then you add "from
7 non-reserve funds," which obviously is a point of
8 contention.

9 I was just curious, though, about a couple of
10 things. The first part says, it includes "an investor of
11 Bitfinex and Tether." Now, as I understand it, your view
12 is that customers are investors, right? In other words, if
13 you're an innocent whatever and you happen to trade in
14 tether and you are on Bitfinex, aren't you an investor in
15 both?

16 MR. CASTIGLIONE: Because there's the difference
17 between the big T in Tether and the little T in tethers.
18 To the extent someone buys and sells tethers on the market,
19 little T, they are -- we've call them investors, like
20 someone who buys and sells Apple stock, I think is what
21 they used in the papers, they hold tethers, they trade them
22 in the market and goes back to the conversation we had
23 before. Those individuals will presumably from time to
24 time come to -- they're not employees of the company big T
25 Tether or they don't invest -- Tether has investors,

Proceedings

1 meaning part owners of the company.

2 THE COURT: Equity holders of the two companies.
3 I wonder -- there's some potential confusion if you say
4 "investor," even if it's an investor of the company -- I'm
5 trying to think of a better word for that. I guess "equity
6 investor."

7 MR. CASTIGLIONE: Holder of equity, that's what
8 we're trying to get at.

9 THE COURT: Okay. And for the avoidance of doubt
10 sentence, just harkening back to paragraph 1, you have a
11 sentence that says: "This injunction," which is the
12 arguably broader one, "does not restrain Tether's use of
13 its U.S. dollar reserves to fulfill bona fide redemption
14 requests by holders of tether," in your case that are
15 not -- in your draft, "that are not affiliated with
16 respondents."

17 So there, I guess, (a) what does "affiliated"
18 mean? And why isn't that carve-out also something that
19 should be in paragraph 2? In other words, in the list of
20 things like payrolls or investment, I'm just trying to make
21 sure.

22 MR. CASTIGLIONE: I understand what you're
23 saying. I think it goes back to the extent there are this
24 group of individuals, employees, executives that trade
25 tethers in the market, at a certain hypothetical level,

Proceedings

1 their ability to redeem tethers like anyone else would seem
2 perhaps unconcerning. To the extent they are major
3 holders, who decide who, when and in what amount to issue
4 blocks of several hundred million tethers at a time, to the
5 extent those individuals will redeem from themselves the
6 cash reserves of tether, that appears to be a way to evade
7 either two or frankly one, to evade the order.

8 THE COURT: Well, the first sentence said they
9 can't make a distribution or dividend to any of those
10 people, so the workaround that you're suggesting is if some
11 employee, if they wanted to give some employee 200 million
12 of tether, they can't do that under the first sentence.

13 MR. CASTIGLIONE: I think that's right. I mean,
14 one is attempting, I think it's fair to say, to stop a
15 repeat of what happened in November of 2018 and two is
16 attempting to stop and evasion of that and any dissipation
17 or looting of the company by its executives who -- there
18 doesn't appear to be anything to stop them from redeeming
19 these tethers for themselves in blocks of tens or hundreds
20 of millions of dollars. I think we were mostly in
21 agreement with the other side the other day. It was how to
22 phrase, actually, I think, at this point, talking about
23 non-reserve funds.

24 THE COURT: I think it was just the reference to
25 reserve fund. The other language is pretty well agreed. I

Proceedings

1 just want to make sure we were all on the same page that
2 whatever the reference is to ordinary course of business in
3 the second sentence of two, that that doesn't in any way
4 cut into the carve-out in the first part of the injunction,
5 which makes it clear that you can do redemptions.

6 MR. CASTIGLIONE: Your Honor, I don't think so,
7 but what we have been trying to get at this issue by
8 asking, among other things, who and when and under what
9 circumstances have people been redeeming tethers over the
10 relevant time period and we haven't gotten any information,
11 perhaps their prerogative if they say not to give us any
12 documents. They are subject to the court order. They
13 voluntarily accepted service of our subpoenas and are now
14 bound to produce under them and I don't think a motion
15 under the CPLR changes that. That will get briefed.

16 But one point I did want to hit that Mr. Miller
17 discussed with regards to -- I think it's all the same
18 general question -- about it's unlikely, for instance, that
19 tens of thousands of tethers could be redeemed at any
20 point. They made the point in their opening papers that
21 the largest tether redemption at any one time was
22 \$24.2 million. So there is every reason to believe,
23 because they've said it, that these redemptions happen fast
24 and in large blocks and the individuals that are subject to
25 this order are the only ones that determine whether or not

Proceedings

1 those redemption requests get filled.

2 The other issue -- and I hate to put too much on
3 your plate, your Honor -- in the last week or so, the
4 company has announced that it is going to redeem 1 billion
5 tethers, 1 billion tethers in exchange for a claim on the
6 company's ongoing gross profits, I believe.

7 MR. MILLER: Not accurate, your Honor.

8 THE COURT: All right.

9 MR. CASTIGLIONE: I'm reading from the initial
10 exchange offering of tokens by iFinex that they published
11 and it says: "We will redeem and have gotten commitments
12 for redemption of a billion tethers in ten days." And so
13 there's every reason to believe that the issuance and
14 redemptions of tethers has an immediate effect on the order
15 of hundreds of millions of dollars potentially in this
16 company and what we're trying to make sure is that the
17 order makes sense in light of the limited information we
18 have about what's going on in the company and where the
19 cash is going.

20 THE COURT: Okay. Just to tie up the language
21 thing on paragraph 2. From the government's perspective,
22 we changed the word investor to equity holder or equity
23 investor. Does anybody have a problem with that?

24 MR. CASTIGLIONE: No.

25 THE COURT: What would be your preference in

Proceedings

1 terms of how to describe an investor?

2 MR. MILLER: Equity holder is fine.

3 MR. CASTIGLIONE: Equity holder, your Honor.

4 THE COURT: All right. Anything further?

5 MR. MILLER: Yes, your Honor, if I may make just
6 a couple quick points.

7 As your Honor is crafting this injunction, we
8 just want to make one point. I heard discussions from
9 counsel on the other side about trying to coming up with a
10 carve-out. Just to make something clear from our position,
11 your Honor, this injunction is a carve-out. We don't have
12 to specify the activities that we want to engage in. They
13 have to specify what they need to enjoin. And, again, our
14 position, as we articulated in our letter on May 6, is that
15 what they are attempting to do is because they don't like
16 the business, they don't like the way money is flowing,
17 that they're trying to enjoin ordinary business activity.

18 And, again, we're going to do what we need to do
19 subject to your Honor's ruling, but based on what we have
20 demonstrated to the Court through our briefing and the
21 letters, it is clear that what the petitioners are trying
22 to do here is they are trying to enjoin the operation of a
23 business because they believe that there may be a
24 fraudulent scheme. Their belief doesn't mean they get an
25 injunction and it certainly doesn't warrant an injunction

Proceedings

1 when, again, they have brought this action under 354,
2 articulating in their application that this is about
3 allegedly the nondisclosure of a conflicted affiliated
4 transaction and I put "conflicted" in air quotes.

5 So ultimately, your Honor, again we renew our
6 application to vacate this injunction, but to the extent
7 your Honor is going to craft language on this injunction, I
8 think our letter of May 6 makes very clear what we view and
9 what we believe is the right way to craft such an
10 injunction to make sure that these companies can continue
11 to operate in their ordinary course of business.

12 And finally, with respect to the document issue,
13 your Honor, we will be mentioning this to the Special
14 Referee tomorrow. We will be filing an application next
15 week and this is why at this point there have not been
16 documents produced because, contrary to what
17 Mr. Castiglione says, there is no jurisdiction here and so
18 we will be making that application.

19 THE COURT: Thank you very much.

20 I'm going to issue my order promptly and I'll
21 obviously entertain whatever submissions you feel
22 appropriate. I assume you meant it was an application to
23 me rather than the Special Master.

24 MR. MILLER: Yes, your Honor. We're making a
25 motion to your Honor.

Proceedings

1 THE COURT: Thank you very much. I appreciate
2 it.

3 MR. CASTIGLIONE: Thank you, your Honor.

4 MR. MILLER: Thank you, your Honor.

5 (proceedings concluded.)

6 * * *

7 C E R T I F I C A T E

8 I, Debra Lynn Salzman, RMR, an Official
9 Court Reporter of the State of New York, do hereby
10 certify that the foregoing is a true and accurate
11 transcript of my stenographic notes.

12 *Debra Salzman, SCR*

13 _____
14 Debra Lynn Salzman, RMR
15 Official Court Reporter

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\$	absolutely [5] 10/11 11/19 19/17 29/24 33/24	among [7] 6/21 9/1 9/2 9/5 15/6 15/8 42/8
\$150 [1] 13/23	absorbed [1] 12/10	amount [3] 25/2 28/25 41/3
\$150 million [1] 13/23	accepted [1] 42/13	amounts [1] 8/22
\$24.2 [1] 42/22	accessed [1] 13/6	announced [1] 43/4
\$24.2 million [1] 42/22	account [6] 4/3 28/19 28/23 29/3 29/11 30/20	another [4] 11/25 12/15 23/25 33/6
\$625 [1] 11/8	accounted [1] 6/6	answered [1] 30/7
\$675 [1] 6/19	accounts [6] 27/22 28/2 28/12 29/3 29/4 36/12	anticipated [1] 17/17
\$675 million [1] 6/19	accurate [2] 43/7 46/10	any [35] 4/8 6/7 8/23 8/24 10/4 11/10 12/13 12/13 12/21 12/22 13/9 13/20 14/3 15/18 16/15 25/21 27/6 29/6 33/16 34/1 34/20 37/1 37/1 38/9 38/9 38/16 38/17 38/21 41/9 41/16 42/3 42/10 42/11 42/19 42/21
\$750 [2] 11/11 12/20	act [22] 4/7 5/2 5/11 5/18 6/21 9/9 9/14 9/17 9/23 10/2 10/5 10/5 12/4 13/3 19/5 19/7 20/3 24/7 25/13 26/20 31/17 32/4	anybody [1] 43/23
\$750 million [2] 11/11 12/20	acted [1] 5/20	anyone [1] 41/1
\$851 [1] 6/1	acting [2] 24/19 28/11	anything [11] 9/13 9/22 12/20 14/4 17/2 18/12 23/12 30/11 36/14 41/18 44/4
\$851 million [1] 6/1	action [3] 26/9 26/12 45/1	anytime [1] 11/4
'	activities [2] 33/17 44/12	anyway [1] 33/22
'cause [2] 12/4 23/14	activity [1] 44/17	appeal [2] 26/14 27/4
0	acts [1] 1/7	Appeals [1] 19/10
0060 [1] 2/9	actually [7] 6/6 21/15 24/13 24/13 28/18 38/14 41/22	appear [1] 41/18
1	add [1] 39/6	appearances [1] 3/3
1 billion [2] 43/4 43/5	addition [1] 37/8	appeared [1] 7/8
10 [1] 19/9	address [1] 24/2	appears [1] 41/6
100 percent [1] 4/22	advertisement [1] 1/12	Appellate [1] 27/1
10005 [1] 2/4	advice [1] 1/12	appertinent [1] 22/23
10007 [1] 1/17	affiliated [8] 7/17 21/13 21/19 34/20 35/25 40/15 40/17 45/3	Apple [1] 39/20
10036 [1] 2/13	affiliates [1] 34/17	application [6] 25/15 45/2 45/6 45/14 45/18 45/22
101 [1] 2/9	affirmation [1] 26/2	appreciate [2] 34/6 46/1
10178-0060 [1] 2/9	after [4] 7/8 9/22 12/9 32/14	approach [1] 19/9
1114 [1] 2/13	afternoon [3] 3/10 3/13 3/20	appropriate [3] 34/8 36/1 45/22
14 [1] 17/6	again [26] 6/25 9/12 13/17 14/11 20/20 21/8 21/17 23/7 25/11 27/2 28/10 29/15 30/22 31/1 31/15 31/25 32/17 34/12 34/23 37/22 38/6 38/16 44/13 44/18 45/1 45/5	April [3] 19/7 24/12 26/7
16 [3] 1/16 19/6 31/4	against [1] 32/21	April 24th [2] 24/12 26/7
2	agent [3] 37/2 38/10 38/18	April 30th [1] 19/7
200 [1] 38/1	agree [6] 15/1 15/22 21/16 24/6 29/22 34/22	arbitrary [1] 33/4
200 million [1] 41/11	agreed [3] 21/15 21/20 41/25	are [63]
2009 [1] 19/10	agreement [1] 41/21	aren't [2] 20/17 39/14
2018 [6] 6/9 6/17 7/25 11/9 19/15 41/15	agrees [1] 14/6	arguably [2] 30/3 40/12
2019 [2] 1/15 1/16	air [1] 45/4	argue [3] 4/24 19/21 23/16
23-A [1] 1/6	Al [1] 30/15	argued [1] 33/15
24th [2] 24/12 26/7	alienate [1] 7/1	argument [4] 8/5 16/19 17/13 22/5
25th [1] 25/4	all [28] 3/12 3/19 5/7 7/25 10/12 17/14 17/18 17/22 19/20 20/2 22/3 23/4 23/11 24/9 26/24 27/7 27/18 28/22 30/5 30/9 30/12 32/20 32/23 38/16 42/1 42/17 43/8 44/4	arguments [2] 20/8 31/20
28 [1] 2/3	allegations [1] 20/10	arm's [2] 12/1 14/4
3	allege [1] 4/3	around [1] 14/12
30 [3] 16/17 32/13 32/14	alleged [2] 4/4 4/19	arrangement [1] 10/19
30th [1] 19/7	allegedly [3] 23/6 34/16 45/3	Article [1] 1/6
354 [7] 17/3 17/23 18/19 25/15 33/19 35/21 45/1	allow [3] 13/20 35/6 35/24	articles [1] 21/3
4	allowed [1] 36/5	articulate [1] 19/24
45 [3] 16/17 32/8 32/24	alluded [1] 25/23	articulated [3] 9/8 32/20 44/14
450545/2019 [1] 1/15	along [1] 11/22	articulating [3] 21/11 22/16 45/2
5	already [2] 8/11 13/22	as [34] 4/20 5/20 6/21 6/23 8/22 9/22 10/5 11/22 11/24 12/11 13/8 14/2 14/11 16/6 17/8 19/6 21/15 22/25 23/7 24/19 26/10 29/21 32/2 32/5 33/11 33/11 33/13 34/14 34/14 38/3 38/8 39/11 44/7 44/14
515 [1] 19/10	also [9] 6/24 13/3 18/15 27/16 28/10 28/18 33/6 37/10 40/18	aside [3] 22/18 25/10 26/8
6	although [2] 16/4 32/13	ask [1] 36/23
60 [1] 1/16	am [2] 33/8 35/8	asked [5] 11/10 13/10 18/19 31/16 37/22
625 [1] 6/18	Americas [1] 2/13	asking [1] 42/8
7	amiss [1] 13/14	aspiration [1] 18/16
700 [1] 11/11		
9		
90 [2] 17/18 32/22		
A		
ability [5] 6/15 7/9 17/2 31/8 41/1		
able [2] 7/16 7/16		
about [68]		
abrogation [1] 38/4		

A	<p>assets [8] 5/3 10/21 12/3 20/12 24/24 25/6 25/9 30/18</p> <p>Assistant [1] 2/6</p> <p>associate [3] 37/3 38/11 38/18</p> <p>assume [6] 9/18 12/4 32/25 37/7 37/16 45/22</p> <p>assuming [2] 5/8 34/7</p> <p>attempt [1] 19/7</p> <p>attempted [3] 6/17 35/19 36/6</p> <p>attempting [4] 9/2 41/14 41/16 44/15</p> <p>Attorney [19] 1/3 2/3 3/5 3/7 3/9 4/6 9/23 19/17 19/24 22/15 22/21 24/3 24/6 24/16 27/11 31/19 32/15 34/23 36/15</p> <p>Attorneys [2] 2/6 2/8</p> <p>authority [1] 4/12</p> <p>Avenue [2] 2/9 2/13</p> <p>avoid [1] 33/15</p> <p>avoidance [2] 37/8 40/9</p> <p>aware [2] 5/6 35/8</p>	<p>between [4] 8/22 21/13 34/17 39/17</p> <p>beyond [4] 5/10 24/14 24/20 34/24</p> <p>BFXNA [1] 1/8</p> <p>BFXWW [1] 1/8</p> <p>big [3] 38/5 39/17 39/24</p> <p>billion [3] 43/4 43/5 43/12</p> <p>bit [4] 5/14 21/5 34/5 36/24</p> <p>bitcoin [4] 24/15 24/15 24/23 25/7</p> <p>Bitfinex [13] 6/20 7/1 7/6 7/18 11/12 12/21 13/6 14/2 37/3 38/11 38/18 39/11 39/14</p> <p>blindsided [1] 26/17</p> <p>blocks [4] 9/3 41/4 41/19 42/24</p> <p>BOCKIUS [3] 2/8 3/11 3/19</p> <p>bona [4] 13/7 13/12 15/7 40/13</p> <p>both [8] 7/7 29/8 33/3 36/18 36/20 36/24 38/13 39/15</p> <p>bought [4] 12/1 20/14 20/15 24/15</p> <p>bound [1] 42/14</p> <p>breadth [1] 35/11</p> <p>BRIAN [2] 2/5 3/6</p> <p>brief [1] 19/7</p> <p>briefed [1] 42/15</p> <p>briefing [1] 44/20</p> <p>broad [3] 20/12 33/14 34/3</p> <p>broaden [1] 25/19</p> <p>broader [5] 14/3 33/16 34/2 34/5 40/12</p> <p>broadly [1] 5/5</p> <p>brought [2] 24/5 45/1</p> <p>burden [9] 14/13 14/24 15/2 15/18 15/25 16/19 16/21 20/5 32/18</p> <p>business [15] 1/6 9/1 19/8 28/2 28/12 29/3 29/9 35/6 35/20 39/5 42/2 44/16 44/17 44/23 45/11</p> <p>businesses [2] 28/1 32/22</p> <p>buying [1] 11/25</p> <p>buys [2] 39/18 39/20</p>	<p>40/14</p> <p>cases [1] 3/24</p> <p>cash [17] 6/25 7/5 7/21 13/6 24/11 24/11 24/14 24/14 25/5 25/5 25/7 30/9 30/17 30/17 36/3 41/6 43/19</p> <p>CASTIGLIONE [7] 2/4 3/4 3/4 4/5 25/25 29/25 45/17</p> <p>categorically [1] 19/18</p> <p>cause [2] 18/4 26/2</p> <p>causes [1] 4/11</p> <p>Centre [1] 1/16</p> <p>certain [6] 5/16 8/13 15/22 28/19 28/24 40/25</p> <p>certainly [5] 5/12 12/6 30/23 39/1 44/25</p> <p>certify [1] 46/10</p> <p>chance [1] 10/16</p> <p>changed [1] 43/22</p> <p>changes [1] 42/15</p> <p>CHARLES [2] 2/14 3/14</p> <p>charting [1] 13/24</p> <p>checkpoint [2] 15/4 17/24</p> <p>checkpoints [1] 13/18</p> <p>choose [1] 21/7</p> <p>circulating [1] 28/25</p> <p>circulation [2] 8/12 20/10</p> <p>circumstances [2] 15/23 42/9</p> <p>cited [1] 6/11</p> <p>citing [1] 19/9</p> <p>CIVIL [1] 1/1</p> <p>claim [3] 12/24 33/12 43/5</p> <p>Clarity [1] 17/1</p> <p>Clause [1] 34/15</p> <p>clear [17] 4/22 5/14 5/16 8/17 9/7 26/3 26/7 26/10 26/10 26/11 33/25 35/3 35/23 42/5 44/10 44/21 45/8</p> <p>clearly [2] 4/5 9/8</p> <p>client [1] 6/1</p> <p>COHEN [1] 1/19</p> <p>collecting [1] 28/14</p> <p>come [9] 7/11 14/14 16/1 17/18 27/14 31/18 32/7 32/8 39/24</p> <p>comes [2] 16/11 31/6</p> <p>coming [5] 18/2 21/25 28/8 33/7 44/9</p> <p>commercial [1] 33/17</p> <p>commingled [1] 6/6</p> <p>commitments [1] 43/11</p> <p>commodities [1] 1/13</p> <p>common [4] 9/16 38/14 38/19 38/19</p> <p>communications [1] 6/12</p> <p>companies [16] 4/8 6/22 7/7 8/1 8/21 8/22 9/4 23/21 24/9 24/13 24/18 25/14 32/11 37/17 40/2 45/10</p> <p>company [33] 4/10 5/25 6/9 6/12 6/24 7/4 7/21 9/14 9/19 10/8 10/12 11/18 11/25 12/1 25/22 28/3 28/24 29/15 29/18 30/23 30/25 33/17 36/3 36/10 37/14 37/23 39/24 40/1 40/4 41/17 43/4 43/16 43/18</p> <p>company's [3] 12/3 30/9 43/6</p> <p>compensation [2] 28/7 36/2</p> <p>competent [1] 11/7</p> <p>competing [1] 3/21</p> <p>complete [1] 16/7</p> <p>completed [1] 15/16</p> <p>completely [1] 19/18</p> <p>compliant [1] 15/20</p>
B	<p>back [22] 7/11 7/12 7/15 8/22 18/2 18/11 18/19 19/14 19/15 21/2 21/17 27/10 28/10 29/4 30/18 31/1 32/7 32/18 34/18 39/22 40/10 40/23</p> <p>backed [1] 24/23</p> <p>backing [2] 6/23 29/5</p> <p>baked [1] 31/13</p> <p>bank [4] 4/10 4/11 9/21 29/16</p> <p>bare [1] 22/23</p> <p>based [8] 8/13 17/20 20/10 20/16 23/6 25/20 28/7 44/19</p> <p>basically [2] 4/23 38/25</p> <p>basis [3] 22/7 25/17 26/5</p> <p>be [87]</p> <p>beast [1] 33/19</p> <p>because [31] 8/18 9/11 10/21 14/17 16/20 17/13 17/14 19/4 19/16 19/23 20/24 22/2 24/7 24/17 25/23 26/10 26/22 27/2 28/22 30/17 31/15 31/23 33/18 34/18 34/23 36/24 39/16 42/23 44/15 44/23 45/16</p> <p>become [1] 33/8</p> <p>been [25] 3/24 6/22 8/19 9/18 13/11 15/20 17/15 18/14 18/19 19/2 19/23 20/9 20/13 21/3 21/3 21/21 23/13 26/9 31/24 36/24 37/4 38/21 42/7 42/9 45/15</p> <p>before [13] 3/23 7/8 7/8 13/18 14/14 18/7 18/11 26/12 27/9 30/19 32/7 38/15 39/23</p> <p>behalf [4] 3/12 3/14 3/17 3/19</p> <p>behind [1] 10/12</p> <p>being [9] 6/6 13/13 27/17 27/24 30/13 31/9 31/20 32/12 33/16</p> <p>belabor [1] 26/6</p> <p>belief [2] 18/16 44/24</p> <p>believe [14] 5/17 5/19 6/1 6/18 10/1 10/11 11/11 18/18 36/19 42/22 43/6 43/13 44/23 45/9</p> <p>believed [4] 5/17 6/4 17/21 19/16</p> <p>best [2] 15/11 20/8</p> <p>better [3] 5/10 20/8 40/5</p>	<p>bound [1] 42/14</p> <p>breadth [1] 35/11</p> <p>BRIAN [2] 2/5 3/6</p> <p>brief [1] 19/7</p> <p>briefed [1] 42/15</p> <p>briefing [1] 44/20</p> <p>broad [3] 20/12 33/14 34/3</p> <p>broaden [1] 25/19</p> <p>broader [5] 14/3 33/16 34/2 34/5 40/12</p> <p>broadly [1] 5/5</p> <p>brought [2] 24/5 45/1</p> <p>burden [9] 14/13 14/24 15/2 15/18 15/25 16/19 16/21 20/5 32/18</p> <p>business [15] 1/6 9/1 19/8 28/2 28/12 29/3 29/9 35/6 35/20 39/5 42/2 44/16 44/17 44/23 45/11</p> <p>businesses [2] 28/1 32/22</p> <p>buying [1] 11/25</p> <p>buys [2] 39/18 39/20</p>	<p>calibrate [1] 4/1</p> <p>call [4] 6/3 34/15 35/6 39/19</p> <p>calm [1] 24/22</p> <p>came [2] 27/23 32/23</p> <p>can [26] 3/2 4/25 11/4 11/13 12/25 13/15 15/15 19/12 21/6 21/18 23/2 23/16 23/20 23/21 28/18 29/13 30/1 30/1 30/3 30/10 30/23 35/23 36/16 36/17 42/5 45/10</p> <p>can't [10] 8/11 9/24 14/3 17/13 21/18 27/23 28/15 34/19 41/9 41/12</p> <p>candidly [1] 19/20</p> <p>cannot [3] 19/24 32/5 38/20</p> <p>capital [2] 4/12 12/1</p> <p>capture [1] 35/19</p> <p>care [1] 35/15</p> <p>carefully [1] 8/18</p> <p>carve [9] 35/5 36/22 37/7 37/7 39/3 40/18 42/4 44/10 44/11</p> <p>carve-out [7] 37/7 37/7 39/3 40/18 42/4 44/10 44/11</p> <p>carve-outs [2] 35/5 36/22</p> <p>carved [1] 7/13</p> <p>case [4] 4/15 13/16 19/10</p>
C			

C	34/20 criticize [1] 27/11 cross [1] 35/18 cross-drafting [1] 35/18 cryptocurrency [1] 24/22 cue [1] 18/14 cure [1] 8/11 cured [1] 8/4 curious [2] 24/21 39/9 currency [1] 24/25 currently [1] 13/12 customer [1] 27/24 customers [4] 27/20 28/4 29/20 39/12 cut [1] 42/4	38/9 38/17 41/9 dividend [4] 37/1 38/9 38/17 41/9 dividends [1] 38/25 Division [1] 27/1 do [33] 4/10 7/9 7/16 7/16 9/24 13/1 15/3 16/25 17/10 17/14 17/24 23/12 23/14 23/18 25/13 25/14 30/23 31/21 32/2 32/5 33/14 34/3 34/13 36/14 37/12 37/16 41/12 42/5 44/15 44/18 44/18 44/22 46/9 document [2] 23/13 45/12 documents [17] 3/25 11/1 12/21 15/20 18/9 22/1 22/2 22/10 22/13 23/12 23/21 26/1 26/3 26/23 27/3 42/12 45/16 does [14] 10/22 12/2 13/19 16/24 17/8 22/20 23/12 25/5 28/3 29/10 34/12 40/12 40/17 43/23 doesn't [23] 8/14 10/2 10/2 15/17 19/7 20/1 20/2 22/12 22/13 22/24 23/13 23/17 23/22 23/23 28/15 35/13 35/14 36/14 37/7 41/18 42/3 44/24 44/25 doing [5] 7/24 9/20 10/12 29/21 30/2 dollar [10] 5/7 7/11 20/22 21/6 27/16 27/23 27/24 37/5 38/22 40/13 dollars [10] 4/16 6/9 8/1 12/15 13/8 14/4 28/23 29/12 41/20 43/15 don't [50] done [4] 4/17 17/3 18/20 36/16 door [3] 18/15 18/15 29/13 doubt [2] 37/8 40/9 down [5] 14/25 15/2 29/10 31/6 31/19 draft [1] 40/15 drafting [1] 35/18 drain [1] 12/3 drop [1] 29/12 due [8] 19/20 20/2 23/4 23/11 26/24 27/7 27/18 30/12 duration [1] 32/12 during [1] 8/20
	D	
	date [1] 15/24 DAVID [2] 2/10 3/11 day [2] 16/11 41/21 days [9] 16/17 17/6 17/18 32/8 32/13 32/14 32/17 32/22 43/12 deal [2] 11/1 12/9 Debra [3] 46/8 46/12 46/14 deceive [1] 10/5 decide [2] 31/4 41/3 Delaware [1] 8/5 delayed [1] 31/6 demand [1] 23/13 demonstrate [2] 18/5 25/4 demonstrated [1] 44/20 depositors [1] 4/11 describe [1] 44/1 determine [3] 9/2 35/12 42/25 determined [1] 35/11 detract [1] 22/5 develop [1] 8/20 devices [1] 10/4 did [11] 5/24 6/24 9/4 12/24 16/23 17/18 24/13 26/6 26/6 32/8 42/16 didn't [4] 11/8 16/23 18/15 26/16 difference [1] 39/16 different [3] 8/2 16/12 30/4 dirty [1] 31/20 disagree [1] 34/8 disclose [3] 5/25 7/24 10/10 disclosed [10] 12/8 12/12 19/12 19/15 19/23 20/4 20/25 21/22 31/24 31/24 disclosure [20] 4/24 5/1 5/1 5/9 5/10 8/8 8/14 9/18 12/13 19/6 19/9 19/19 20/11 21/9 23/14 23/18 25/4 31/10 31/17 31/21 disclosures [5] 8/7 20/13 20/16 20/19 25/3 discovery [2] 16/4 23/4 discretion [1] 22/22 discuss [1] 22/4 discussed [3] 8/19 21/4 42/17 discussion [3] 12/11 13/25 32/15 discussions [2] 7/7 44/8 dismiss [1] 26/19 dispute [7] 19/17 22/3 25/12 25/18 25/19 35/4 36/21 disseminated [1] 5/5 dissipate [1] 5/7 dissipating [1] 5/3 dissipation [2] 10/21 41/16 distribution [5] 1/12 37/1	
		E
comply [3] 16/24 26/14 27/4 compromising [1] 32/23 concept [3] 10/10 28/1 29/16 concern [8] 10/22 16/14 18/4 29/8 31/3 33/1 33/2 36/13 concerned [4] 10/19 13/3 35/16 36/9 concerns [2] 16/8 16/10 concluded [1] 46/5 condition [1] 28/7 conditions [3] 35/9 35/12 35/15 conduct [4] 5/20 10/7 14/18 20/18 confidential [1] 21/5 conflicted [11] 23/6 23/8 23/15 23/18 25/17 31/24 34/16 34/16 34/21 45/3 45/4 confused [1] 10/20 confusing [1] 19/3 confusion [1] 40/3 connection [1] 9/4 consistent [2] 24/24 33/12 constantly [1] 26/4 constituted [1] 6/20 constitutes [2] 4/16 5/10 constructed [1] 11/7 consultants [1] 37/10 contact [1] 26/5 contention [1] 39/8 continue [6] 13/19 15/17 23/20 35/6 35/20 45/10 continues [1] 15/4 Continuing [1] 34/10 contractors [1] 37/10 contrary [1] 45/16 conversation [2] 28/20 39/22 conversations [1] 17/20 cooperating [1] 26/13 cooperation [1] 27/3 core [6] 8/15 8/21 9/10 9/11 9/11 11/15 corporate [1] 6/1 correct [2] 20/17 29/15 correctly [1] 4/6 correlates [1] 4/2 could [16] 8/3 10/6 10/12 11/17 11/19 17/8 18/17 24/18 25/14 29/15 30/25 31/12 35/1 37/18 37/21 42/19 couldn't [2] 30/20 34/22 counsel [4] 3/2 11/7 19/17 44/9 COUNTY [1] 1/1 couple [12] 5/13 5/22 7/23 10/15 10/24 14/7 17/5 18/11 18/13 27/9 39/9 44/6 course [10] 5/19 28/3 29/9 29/18 35/7 37/9 39/1 39/5 42/2 45/11 court [11] 1/1 14/14 14/19 15/24 16/18 19/10 22/22 42/12 44/20 46/9 46/14 courts [1] 8/5 cover [3] 6/18 10/2 10/6 coverage [2] 4/16 28/25 CPLR [2] 26/20 42/15 craft [3] 36/6 45/7 45/9 crafted [2] 7/4 36/16 crafting [1] 44/7 credit [4] 11/6 21/20 34/17		each [1] 36/19 earlier [1] 24/5 earn [1] 30/25 earned [2] 27/24 28/4 earning [1] 28/14 earns [2] 27/21 29/4 easily [1] 17/8 easy [2] 36/17 37/22 effect [1] 43/14 effectively [1] 6/11 effort [1] 32/22 either [5] 10/8 30/10 33/9 34/1 41/7 elements [2] 5/16 35/19 else [4] 30/3 30/11 31/18 41/1 embedded [1] 6/2 employee [6] 37/2 37/17 38/10 38/18 41/11 41/11 employees [5] 28/16 30/25 38/20 39/24 40/24 end [4] 15/24 16/22 33/18 33/20 engage [2] 19/12 44/12

E	30/22 35/25 36/7 36/21 39/18 40/23 41/2 41/5 45/6	G
engaged [1] 31/21	extraordinary [1] 39/2	general [14] 1/3 1/6 2/3 2/6 3/5 3/7 3/9 4/7 9/23 22/22 24/6 34/23 36/15 42/18
engages [1] 25/22	F	General's [9] 4/6 19/18 19/24 22/15 24/3 24/16 27/12 31/19 32/15
enjoin [3] 44/13 44/17 44/22	face [1] 28/1	generally [2] 18/20 37/11
enjoined [2] 14/18 15/25	fact [6] 10/19 24/5 25/11 26/8 26/10 28/18	get [36] 5/23 5/23 7/19 12/8 12/17 15/10 15/17 19/14 20/2 21/6 21/17 22/4 22/8 22/8 22/10 23/2 23/20 23/21 23/22 24/1 25/18 27/5 28/17 29/7 29/23 30/6 31/10 36/5 36/10 38/3 38/14 40/8 42/7 42/15 43/1 44/24
enough [3] 4/16 33/14 34/3	factors [1] 33/3	gets [2] 12/10 13/2
ensure [2] 4/12 36/16	facts [1] 19/14	getting [6] 7/3 8/15 13/14 13/17 16/3 22/13
enter [1] 5/6	factual [1] 22/1	give [4] 7/11 10/16 41/11 42/11
enterprise [4] 28/15 29/21 30/10 31/20	failed [2] 5/25 7/24	given [4] 4/8 8/23 8/24 34/7
entertain [1] 45/21	failure [1] 4/15	giving [1] 33/25
entire [2] 5/19 26/20	fair [2] 32/10 41/14	go [15] 3/23 9/22 11/4 15/21 17/1 18/10 18/15 18/15 18/19 22/8 27/9 29/9 29/10 29/13 31/15
entirely [1] 21/15	fast [1] 42/23	goal [2] 3/25 33/22
entities [6] 7/17 14/2 21/14 35/25 38/13 38/20	features [1] 19/8	goes [6] 11/21 19/5 32/17 33/10 39/22 40/23
entitled [1] 13/9	February [1] 25/4	going [30] 7/19 8/10 8/10 10/22 12/20 14/11 14/20 15/7 16/21 16/22 17/9 17/10 21/23 22/6 22/20 26/17 26/22 26/25 27/1 28/9 28/10 30/5 33/13 35/18 43/4 43/18 43/19 44/18 45/7 45/20
entity [4] 9/15 10/20 10/23 14/5	February 25th [1] 25/4	gone [1] 11/9
equal [1] 22/12	feel [1] 45/21	good [5] 3/10 3/13 3/20 31/16 36/15
equity [7] 40/2 40/5 40/7 43/22 43/22 44/2 44/3	few [6] 3/23 14/8 18/24 23/25 33/7 39/6	Gore's [1] 30/15
equivalent [2] 21/19 25/7	fide [4] 13/7 13/12 15/7 40/13	got [2] 3/21 21/1
equivalents [4] 24/11 24/14 25/5 30/17	fight [1] 33/7	gotten [5] 11/15 22/1 22/2 42/10 43/11
era [1] 27/2	filed [1] 26/2	government [3] 31/8 33/14 34/4
especially [2] 21/21 25/3	filing [2] 18/13 45/14	government's [2] 29/7 43/21
ESQ [7] 2/4 2/5 2/5 2/10 2/10 2/14 2/14	filled [3] 13/13 13/14 43/1	grant [2] 22/21 26/25
essentially [9] 4/19 7/13 14/15 14/24 15/24 35/5 36/1 36/22 38/4	finalize [1] 3/23	great [1] 11/25
Estate [1] 19/10	finally [1] 45/12	gross [1] 43/6
evade [3] 36/1 41/6 41/7	financial [1] 4/8	grounds [1] 14/22
evaluate [1] 15/6	find [1] 23/17	group [1] 40/24
evasion [4] 36/13 36/17 37/22 41/16	fine [1] 44/2	guess [9] 5/9 11/14 17/6 30/6 32/7 38/14 39/3 40/5 40/17
even [15] 12/8 13/20 13/21 18/13 21/20 23/10 23/11 24/4 24/11 28/14 30/24 31/11 32/13 37/7 40/4	first [17] 5/24 5/25 16/20 17/9 17/10 17/18 19/2 19/22 23/10 31/15 36/25 38/19 38/24 39/10 41/8 41/12 42/4	guys [1] 39/3
events [1] 12/8	flip [1] 14/24	H
every [5] 10/6 10/11 33/7 42/22 43/13	flipped [1] 15/2	had [12] 5/25 6/10 6/13 6/22 8/2 9/18 9/19 10/9 17/6 17/21 36/13 39/22
everybody [4] 5/6 14/6 21/2 23/9	floor [1] 29/13	hamstring [1] 33/16
everyone [1] 13/14	flow [1] 15/8	handle [1] 23/2
everything [3] 4/21 19/17 19/23	flowing [1] 44/16	happen [7] 11/8 12/17 13/23 16/22 31/12 39/13 42/23
ex [1] 22/8	focus [1] 7/23	happened [9] 5/17 8/11 11/3 11/11 12/9 12/20 13/22 20/25 41/15
ex-post [1] 22/8	focuses [1] 14/1	happens [1] 28/21
exact [1] 17/25	follow [1] 11/22	harkening [1] 40/10
exactly [2] 6/13 34/12	following [1] 15/16	harm [12] 4/3 19/25 20/6 21/10 21/24 22/11 22/12 22/16 23/24 32/19 33/12 33/15
examples [1] 39/6	foregoing [2] 39/4 46/10	has [26] 4/14 12/9 14/18 17/15
except [2] 24/6 28/19	forget [1] 25/24	
exchange [4] 1/12 18/9 43/5 43/10	formula [1] 33/5	
exchanging [1] 9/14	forth [6] 5/21 8/22 11/8 12/12 27/10 35/3	
excuse [1] 9/11	forward [2] 15/21 33/10	
executive [3] 37/2 38/10 38/17	fractional [1] 29/16	
executives [5] 36/10 37/13 37/24 40/24 41/17	frankly [4] 6/2 17/2 31/2 41/7	
existing [1] 35/21	fraud [2] 5/20 10/5	
exists [1] 28/21	fraudulent [5] 10/4 12/25 20/1 28/1 44/24	
expand [1] 32/4	free [1] 5/6	
expenditures [1] 30/6	frequent [1] 26/5	
expenses [1] 29/9	front [3] 13/1 18/8 22/6	
expiration [2] 14/15 15/15	fulfill [2] 13/7 40/13	
explain [2] 14/15 16/1	full [1] 16/18	
explains [2] 13/25 16/12	fully [1] 18/17	
extend [1] 18/3	fund [1] 41/25	
extended [2] 37/5 38/22	fundamental [1] 8/25	
extent [12] 7/17 8/12 29/18	funds [16] 6/2 6/5 9/14 21/13 27/12 27/14 27/20 27/20 28/8 28/22 30/4 30/9 37/4 38/21 39/7 41/23	

H

has... [22] 19/2 19/23 20/9
20/25 22/22 23/5 23/14 23/19
25/25 27/20 28/24 29/18 31/8
31/18 31/21 33/14 34/20 37/25
38/1 39/25 43/4 43/14

hate [1] 43/2

have [72]

haven't [12] 4/17 11/10 11/14
12/21 16/15 18/12 20/4 20/5
21/25 22/2 24/17 42/10

having [3] 20/13 21/11 22/15

headed [1] 34/3

heard [2] 19/3 44/8

heart [1] 19/5

heavier [1] 15/18

held [4] 20/15 27/17 37/6
38/23

help [1] 8/14

helpful [1] 3/22

here [22] 4/14 6/16 8/5 8/21
9/11 10/6 10/20 12/12 12/15
16/12 19/25 21/25 23/5 24/7
27/10 31/2 31/14 31/21 33/7
33/21 44/22 45/17

hereby [1] 46/9

hey [2] 7/9 9/24

him [1] 18/11

hit [2] 18/23 42/16

hold [5] 20/15 23/20 30/5
37/14 39/21

holder [6] 6/4 10/14 40/7
43/22 44/2 44/3

holders [10] 5/21 7/10 7/14
7/14 21/6 31/4 35/24 40/2
40/14 41/3

holding [2] 7/18 32/17

holdings [2] 1/9 37/23

HON [1] 1/19

Honor [68]

Honor's [3] 19/4 34/18 44/19

hope [1] 7/4

hopefully [1] 22/19

how [24] 12/12 13/1 13/12
14/10 14/21 15/6 16/9 16/23
17/21 20/18 24/23 25/21 28/3
28/4 28/13 28/13 28/14 29/13
32/23 33/1 33/2 37/16 41/21
44/1

however [1] 39/2

hundred [3] 12/15 37/25 41/4

hundred-something [1] 12/15

hundreds [3] 6/9 41/19 43/15

hypothetical [4] 11/24 31/3
31/12 40/25

hypothetically [1] 5/4

I

I'd [2] 5/13 23/25

I'll [4] 10/15 14/7 22/4 45/20

I'm [16] 5/8 13/4 14/11 14/21
15/17 27/6 28/21 30/5 33/13
34/3 36/21 37/21 40/4 40/20
43/9 45/20

I've [2] 3/24 32/20

idea [4] 8/12 22/24 33/9 37/18

identify [1] 18/19

iFinex [2] 1/8 43/10

imagination [1] 22/24

immediate [1] 43/14

immediately [3] 11/9 12/11
21/1

importantly [1] 16/7

improper [1] 30/4

improved [1] 20/14

imprudent [4] 9/21 9/25 10/7
12/2

inaccessible [1] 6/11

inc [3] 1/8 1/8 1/8

incentive [1] 29/18

include [2] 35/14 37/10

includes [1] 39/10

including [4] 24/4 24/14 25/6
34/17

incomplete [2] 17/11 17/11

inconsistent [1] 20/19

indefinite [1] 15/25

independent [3] 5/2 8/23 11/16

Index [1] 1/15

indicate [2] 25/3 28/10

indication [1] 16/5

individuals [6] 13/8 36/3
39/23 40/24 41/5 42/24

information [11] 11/10 12/10
13/10 13/20 14/20 15/5 21/5
22/21 22/25 42/10 43/17

inherent [1] 13/9

inherently [1] 9/13

initial [4] 14/12 19/4 36/18
43/9

initially [1] 32/14

initiated [2] 26/9 26/12

injunction [72]

injunctions [2] 33/18 33/20

injunctive [2] 5/24 7/3

innocent [1] 39/13

Inquiry [1] 1/3

insignificant [1] 38/1

insofar [1] 6/21

instability [1] 4/15

instance [6] 9/2 10/3 10/13
36/9 37/13 42/18

instantaneous [1] 29/14

instruments [1] 24/14

insufficient [1] 8/7

insulted [1] 27/6

intelligent [1] 17/3

intend [2] 19/21 26/19

intended [1] 15/2

intention [2] 7/12 15/14

interest [1] 32/11

interested [1] 33/9

INTERNATIONAL [1] 1/10

Internet [1] 21/4

invest [2] 24/13 39/25

investigating [1] 9/10

investigation [6] 8/20 9/1
14/21 17/11 18/4 33/10

investing [1] 24/19

investment [3] 1/12 27/25
40/20

investments [8] 19/12 24/8
24/9 25/6 27/21 29/5 29/10
30/18

investor [12] 11/18 37/2 38/10
38/18 39/10 39/14 40/4 40/4
40/6 43/22 43/23 44/1

investors [6] 10/5 19/12 31/11
39/12 39/19 39/25

invests [1] 37/17

irregular [1] 36/11

irreparable [12] 4/2 19/24
20/6 21/10 21/24 22/11 22/12
22/16 23/24 32/19 33/12 33/15

is [170]

isn't [4] 20/7 31/9 31/16
40/18

issuance [2] 1/12 43/13

issue [17] 8/21 13/3 13/10
22/19 24/21 25/14 27/19 30/13
31/1 31/10 31/14 31/22 41/3
42/7 43/2 45/12 45/20

issued [3] 5/4 9/3 38/2

issuer [1] 9/24

issues [2] 9/18 11/13

issuing [1] 9/19

it [127]

it's [43] 5/8 5/24 10/22 12/4
12/5 12/8 13/15 14/4 16/8 18/1
19/8 19/19 20/4 20/10 20/24
21/3 21/21 23/7 23/16 23/19
24/21 25/1 25/2 28/4 28/13
28/14 28/18 28/22 29/10 29/21
30/9 30/14 31/11 31/20 31/23
31/23 32/18 35/23 36/16 40/4
41/14 42/17 42/18

items [1] 18/17

its [9] 16/2 27/21 27/25 28/12
28/15 30/25 33/1 40/13 41/17

itself [7] 4/17 6/20 7/18 8/3
9/18 11/19 12/3

J

JAMES [2] 1/3 2/2

job [1] 13/21

JOEL [1] 1/19

JOHANNA [2] 2/5 3/8

JOHN [2] 2/4 3/4

JOHNSON [3] 2/12 3/14 3/16

junction [1] 17/15

jurisdiction [3] 22/3 26/21
45/17

just [42] 3/23 5/5 5/9 7/15
7/22 8/2 9/7 9/12 9/17 9/19
10/2 10/18 11/21 11/24 13/24
16/3 16/9 16/12 16/19 19/3
19/18 22/13 22/17 24/21 25/5
29/7 29/12 30/5 33/24 34/19
37/6 38/6 38/24 39/9 40/10
40/20 41/24 42/1 43/20 44/5
44/8 44/10

Justice [1] 1/19

K

keep [3] 23/23 28/3 29/19

kept [1] 30/9

Kerusa [1] 19/9

key [5] 6/16 11/20 37/13 37/13
37/23

kind [6] 8/9 11/23 29/22 33/19
34/20 37/15

knew [3] 6/9 6/13 8/1

know [36] 4/24 8/6 9/20 10/6
10/10 11/7 11/13 11/14 12/2
12/16 12/19 13/6 13/14 13/16
14/3 14/21 15/1 15/12 15/14
16/4 16/8 16/9 16/10 16/18
17/24 18/20 20/8 24/1 24/8
24/17 30/3 30/8 31/2 31/11
37/20 37/24

knows [3] 21/2 23/9 28/12

L

lack [1] 26/21

language [14] 14/1 21/16 24/4
24/10 24/11 34/22 35/21 36/6
36/16 36/17 38/7 41/25 43/20
45/7

L		
large [4] 8/21 9/3 21/1 42/24	maintain [3] 11/27/19	11/1 11/3 11/9 11/21 13/22
largest [1] 42/21	major [1] 41/2	15/6 19/16 21/2 23/17 27/15
last [10] 8/9 14/7 14/11 16/11	make [26] 13/19 13/20 15/4	27/23 28/3 28/9 28/13 28/17
18/6 22/2 26/1 32/7 33/17 43/3	15/17 16/17 17/8 17/14 18/1	29/13 29/19 30/16 30/25 31/1
lasts [2] 33/1 33/3	21/23 24/9 25/5 26/15 27/1	38/3 44/16
late [1] 6/8	34/3 34/13 35/13 38/7 38/20	month [3] 16/16 22/2 26/1
law [3] 1/6 9/16 22/14	40/20 41/9 42/1 43/16 44/5	moots [1] 26/23
laws [1] 9/9	44/8 44/10 45/10	more [11] 4/1 7/20 8/8 9/13
lead [1] 6/12	makes [7] 11/23 26/3 32/19	16/7 16/8 16/13 18/3 31/3 33/2
leads [1] 26/14	38/15 42/5 43/17 45/8	33/2
least [6] 4/2 6/8 11/22 13/16	making [8] 6/22 26/4 31/19	MORGAN [3] 2/8 3/11 3/18
14/12 34/4	37/1 38/9 38/16 45/18 45/24	most [2] 11/3 33/19
led [1] 17/15	mandate [1] 4/7	mostly [1] 41/20
left [1] 35/8	manipulative [1] 10/4	motion [3] 26/25 42/14 45/25
legitimate [1] 7/14	many [2] 13/12 28/1	move [2] 15/7 26/19
length [3] 12/1 14/4 21/12	market [10] 6/14 6/14 8/2 8/24	movements [1] 21/13
less [3] 4/1 20/11 33/1	12/10 12/18 31/13 39/18 39/22	moving [1] 8/21
let [4] 4/20 27/9 36/23 38/6	40/25	MR [3] 3/4 3/10 3/16
let's [6] 9/18 20/11 20/13	Martin [17] 4/7 5/2 5/11 5/18	Mr. [9] 4/5 10/16 14/8 18/7
28/24 37/16 38/16	6/21 9/9 9/13 9/17 9/23 10/2	18/23 25/25 29/25 42/16 45/17
LETTITIA [2] 1/3 2/2	12/4 13/3 19/5 19/7 20/3 26/20	Mr. Castiglione [4] 4/5 25/25
letter [7] 17/6 17/9 21/16	31/17	29/25 45/17
24/2 35/10 44/14 45/8	Master [1] 45/23	Mr. Miller [5] 10/16 14/8 18/7
letters [3] 3/21 27/10 44/21	match [1] 4/19	18/23 42/16
level [1] 40/25	matches [1] 4/1	MS [1] 3/18
LEWIS [3] 2/8 3/11 3/18	material [5] 10/3 10/13 11/14	much [13] 11/17 14/2 20/18
Liberty [1] 2/3	11/17 12/8	28/3 28/4 28/13 28/13 28/14
lies [2] 15/18 36/22	materials [5] 11/5 15/11 15/12	29/13 36/21 43/2 45/19 46/1
lifted [1] 22/10	16/15 17/22	my [13] 4/18 7/11 7/12 7/15
light [1] 43/17	mathematical [1] 33/4	17/17 22/5 23/3 26/15 31/15
like [26] 5/14 7/15 8/3 9/20	matter [2] 1/3 10/22	33/22 34/4 45/20 46/11
12/7 17/23 18/11 21/13 24/1	may [16] 1/16 7/4 8/20 9/16	N
24/8 24/22 25/1 25/13 27/13	10/4 24/9 24/20 28/12 31/4	namely [1] 34/13
28/11 28/20 29/16 32/13 37/8	31/6 34/19 37/14 44/5 44/14	narrow [2] 33/11 34/14
38/25 39/1 39/19 40/20 41/1	44/23 45/8	narrower [2] 32/25 34/1
44/15 44/16	May 16 [1] 31/4	natural [3] 16/2 16/13 33/20
limit [2] 7/9 14/12	May 6 [2] 34/19 45/8	nature [2] 4/4 8/25
limited [8] 1/9 1/9 1/9 1/10	maybe [5] 6/16 18/16 31/10	necessarily [3] 15/18 16/19
4/25 22/22 34/14 43/17	37/3 38/13	16/21
line [5] 11/6 21/19 27/15	me [18] 3/25 4/14 4/20 4/21	necessary [4] 14/19 15/5 23/10
34/17 34/20	7/11 7/16 9/11 10/20 13/1	33/16
linked [1] 22/25	13/25 17/12 24/1 24/21 24/21	need [5] 4/25 18/3 21/11 44/13
liquidity [1] 11/13	26/14 36/23 38/6 45/23	44/18
list [2] 37/10 40/19	mean [13] 9/15 20/2 23/22	needed [1] 35/20
literally [1] 31/3	23/23 28/15 28/20 29/10 37/12	needs [2] 15/21 34/4
little [9] 5/10 5/14 10/20	38/11 38/13 40/18 41/13 44/24	negotiation [1] 1/12
16/9 22/1 24/20 36/24 39/17	meaning [1] 40/1	neither [1] 33/25
39/19	meaningful [1] 17/23	nevertheless [1] 30/16
LLP [2] 2/8 2/12	means [1] 11/13	new [18] 1/1 1/1 1/4 1/6 1/13
loan [1] 34/21	meant [1] 45/22	1/17 1/17 2/3 2/4 2/4 2/9 2/9
loaned [2] 37/4 38/21	mention [3] 21/18 25/24 26/16	2/13 2/13 9/9 29/17 31/8 46/9
lockbox [2] 28/21 30/14	mentioned [2] 25/25 29/8	next [6] 6/8 6/16 13/23 26/15
long [4] 17/21 18/3 33/1 33/3	mentioning [1] 45/13	26/19 45/14
longer [1] 15/21	mentions [1] 34/19	nexus [1] 23/5
look [3] 4/21 11/16 28/17	MICHAEL [2] 2/14 3/14	nice [1] 23/19
looting [1] 41/17	mid [2] 6/8 7/25	NINA [2] 2/14 3/16
loss [1] 6/18	might [5] 6/4 9/16 10/7 12/2	Ninety [1] 32/17
lost [1] 6/1	29/17	no [19] 1/15 4/7 9/18 11/1
lot [7] 3/24 3/25 18/22 20/14	MILLER [8] 2/10 3/10 3/11	11/1 15/21 16/2 20/24 23/5
21/4 22/24 35/13	10/16 14/8 18/7 18/23 42/16	25/8 27/15 29/12 30/7 32/19
lots [1] 26/3	million [11] 6/1 6/19 11/8	33/4 33/23 34/15 43/24 45/17
lump [1] 36/11	11/11 12/15 12/20 13/23 38/2	non [6] 25/25 27/14 28/8 36/12
lump-sum [1] 36/11	41/4 41/11 42/22	39/7 41/23
Lynn [2] 46/8 46/14	millions [3] 6/9 41/20 43/15	non-periodic [1] 36/12
M	minimize [1] 20/18	non-production [1] 25/25
made [10] 6/21 8/13 20/5 20/13	minimum [1] 22/23	non-reserve [4] 27/14 28/8
26/7 26/10 26/10 26/11 36/25	minute [2] 9/24 36/4	39/7 41/23
42/20	misrepresentations [1] 10/3	nondisclosure [5] 21/10 23/7
main [1] 5/22	misstatement [1] 8/24	23/8 25/16 45/3
maintain [3] 4/8 23/1 28/24	misstatements [1] 6/3	none [1] 17/15
	modulate [1] 24/25	nonexistent [1] 34/1
	moment [4] 6/23 22/4 34/7 37/6	nonprofit [1] 29/21
	money [26] 7/18 7/19 8/22 9/5	

<p>N</p> <p>not [70]</p> <p>noted [2] 19/6 24/2</p> <p>notes [1] 46/11</p> <p>nothing [8] 7/20 12/21 13/13 17/4 18/10 21/21 23/14 31/21</p> <p>novel [2] 27/25 29/17</p> <p>November [3] 6/17 11/9 41/15</p> <p>now [15] 7/7 8/9 11/11 13/1 14/17 16/16 17/4 17/13 21/6 23/9 24/2 24/10 25/19 39/11 42/13</p> <p>number [3] 6/2 19/1 24/3</p> <p>numbers [1] 28/5</p> <p>numerous [1] 21/3</p>	<p>our [47]</p> <p>out [24] 6/13 6/19 7/5 7/10 7/13 7/19 11/2 11/24 15/9 15/23 18/15 18/15 20/9 23/17 29/13 35/8 36/3 37/7 37/7 39/3 40/18 42/4 44/10 44/11</p> <p>outlined [1] 16/16</p> <p>outs [2] 35/5 36/22</p> <p>outside [1] 39/1</p> <p>over [15] 7/6 7/21 9/6 11/12 12/20 13/23 16/16 18/7 23/21 26/1 26/13 27/4 33/1 33/2 42/9</p> <p>owes [3] 28/4 28/13 29/19</p> <p>own [1] 28/12</p> <p>owners [3] 38/19 39/3 40/1</p> <p>ownership [1] 38/14</p>	<p>plate [1] 43/3</p> <p>play [1] 33/3</p> <p>playing [1] 25/1</p> <p>please [1] 3/2</p> <p>pledged [1] 37/5</p> <p>point [41] 4/18 6/16 9/12 11/15 11/20 14/14 15/10 15/19 16/2 16/4 16/5 16/8 16/21 20/17 20/23 21/23 25/23 26/15 27/1 27/10 27/19 27/21 28/5 29/14 29/23 30/6 30/16 31/13 31/15 33/6 33/18 33/20 34/18 35/22 39/7 41/22 42/16 42/20 42/20 44/8 45/15</p> <p>points [5] 5/22 18/24 19/1 35/10 44/6</p> <p>portion [1] 15/20</p> <p>position [3] 15/11 44/10 44/14</p> <p>possession [1] 14/20</p> <p>possible [4] 28/10 31/9 33/11 34/14</p> <p>post [1] 22/8</p> <p>potential [4] 5/11 6/19 17/13 40/3</p> <p>potentially [3] 6/25 11/1 43/15</p> <p>practices [1] 1/7</p> <p>preclude [1] 39/5</p> <p>preference [1] 43/25</p> <p>preliminary [4] 1/15 23/5 23/10 33/20</p> <p>prerogative [1] 42/11</p> <p>President [1] 30/15</p> <p>press [1] 5/5</p> <p>presumably [2] 16/5 39/23</p> <p>pretty [2] 26/7 41/25</p> <p>prevent [1] 9/14</p> <p>previously [1] 10/9</p> <p>principal [3] 37/2 38/10 38/17</p> <p>principle [1] 33/13</p> <p>prior [2] 18/13 24/12</p> <p>priorities [1] 18/20</p> <p>problem [10] 4/24 5/2 5/2 6/13 9/16 13/9 22/14 25/10 38/5 43/23</p> <p>problems [1] 24/3</p> <p>procedure [1] 17/6</p> <p>proceeding [2] 18/5 26/20</p> <p>proceedings [1] 46/5</p> <p>process [7] 6/15 12/18 13/18 16/16 16/22 17/7 33/9</p> <p>processor [1] 6/10</p> <p>produce [3] 17/22 26/23 42/14</p> <p>produced [2] 15/13 45/16</p> <p>producing [2] 26/3 27/3</p> <p>production [4] 15/11 16/6 18/14 25/25</p> <p>productions [3] 26/4 26/9 26/11</p> <p>profit [2] 30/23 30/24</p> <p>profitable [2] 28/15 29/20</p> <p>profits [1] 43/6</p> <p>prohibits [2] 10/4 36/25</p> <p>promoting [1] 1/12</p> <p>promptly [1] 45/20</p> <p>properly [1] 7/4</p> <p>proposal [6] 14/13 25/11 25/11 27/16 34/12 38/8</p> <p>proposals [1] 33/25</p> <p>propose [1] 15/3</p> <p>proposed [6] 27/12 28/6 34/22 35/14 36/20 38/6</p> <p>protection [1] 19/13</p>
<p>O</p> <p>objection [2] 21/14 34/10</p> <p>obtaining [1] 22/25</p> <p>obviously [9] 3/24 24/2 27/8 27/20 29/17 32/11 34/8 39/7 45/21</p> <p>occur [2] 12/18 25/22</p> <p>occurred [2] 4/21 23/19</p> <p>odd [1] 33/19</p> <p>off [1] 30/24</p> <p>offering [1] 43/10</p> <p>OFFICE [14] 2/2 3/4 3/6 3/8 4/6 19/18 19/24 22/15 24/5 24/16 31/19 32/15 34/23 36/14</p> <p>Official [2] 46/8 46/14</p> <p>often [1] 8/7</p> <p>okay [6] 18/6 18/22 34/25 35/24 40/9 43/20</p> <p>old [1] 20/16</p> <p>omissions [1] 6/3</p> <p>one [26] 7/11 7/12 8/16 9/13 11/18 14/3 14/18 15/19 19/25 20/7 25/23 28/11 34/2 34/4 35/9 35/13 35/15 35/22 36/19 37/17 40/12 41/7 41/14 42/16 42/21 44/8</p> <p>onerous [1] 33/2</p> <p>ones [1] 42/25</p> <p>ongoing [1] 43/6</p> <p>only [7] 9/11 15/10 27/14 29/19 32/3 33/17 42/25</p> <p>opening [2] 19/6 42/20</p> <p>operate [1] 45/11</p> <p>operating [1] 29/16</p> <p>operation [1] 44/22</p> <p>OPERATIONS [1] 1/9</p> <p>opposed [1] 14/2</p> <p>order [29] 3/24 4/13 7/13 10/10 13/7 15/20 15/24 16/24 17/4 17/23 18/13 18/19 20/25 22/19 24/12 25/15 26/2 26/14 29/20 35/22 35/23 36/14 38/4 41/7 42/12 42/25 43/14 43/17 45/20</p> <p>orders [3] 15/7 27/4 36/20</p> <p>ordinary [8] 35/7 36/7 37/9 39/1 39/5 42/2 44/17 45/11</p> <p>original [3] 17/15 35/21 35/23</p> <p>other [34] 4/13 6/21 9/1 9/2 9/5 9/9 9/15 10/15 11/19 12/22 14/2 15/6 15/8 15/19 17/17 19/25 21/12 23/25 25/6 25/6 25/8 25/23 30/17 30/20 32/8 35/5 39/12 40/19 41/21 41/21 41/25 42/8 43/2 44/9</p> <p>otherwise [3] 26/22 37/5 38/22</p>	<p>P</p> <p>page [2] 19/6 42/1</p> <p>paid [1] 36/5</p> <p>paper [2] 11/1 16/23</p> <p>papers [10] 5/15 8/19 9/8 10/17 13/13 15/15 16/20 16/25 39/21 42/20</p> <p>paperwork [3] 26/8 26/11 32/3</p> <p>paragraph [5] 36/23 38/8 40/10 40/19 43/21</p> <p>Park [1] 2/9</p> <p>parry [1] 9/12</p> <p>part [13] 1/1 7/22 8/16 16/14 20/10 28/6 31/14 34/2 36/25 38/19 39/10 40/1 42/4</p> <p>partially [1] 7/2</p> <p>particular [3] 4/15 19/8 30/15</p> <p>Partnership [1] 19/10</p> <p>party [4] 12/5 14/18 15/25 30/2</p> <p>past [4] 8/2 12/25 13/11 20/19</p> <p>pause [1] 22/17</p> <p>pay [3] 7/10 28/15 30/25</p> <p>payment [2] 6/10 28/7</p> <p>payments [5] 36/7 36/11 37/8 37/9 39/5</p> <p>payroll [3] 27/13 36/5 37/9</p> <p>payrolls [1] 40/20</p> <p>peg [1] 25/20</p> <p>people [11] 8/13 8/14 20/14 20/25 21/1 21/4 28/13 36/4 36/5 41/10 42/9</p> <p>per [1] 24/11</p> <p>percent [1] 4/22</p> <p>percentage [2] 28/25 29/11</p> <p>perhaps [6] 6/5 7/18 12/19 20/15 41/2 42/11</p> <p>period [1] 42/10</p> <p>periodic [1] 36/12</p> <p>permit [1] 9/23</p> <p>persist [1] 16/24</p> <p>person [1] 37/18</p> <p>personal [1] 37/23</p> <p>perspective [3] 30/14 33/22 43/21</p> <p>persuade [1] 14/19</p> <p>petitioner [6] 1/5 4/5 4/14 16/13 17/8 17/10</p> <p>petitioner's [1] 4/20</p> <p>petitioners [3] 4/3 5/8 44/21</p> <p>PHILLIPS [3] 2/10 3/18 3/18</p> <p>phrase [2] 37/16 41/22</p> <p>piece [1] 16/23</p> <p>place [5] 10/7 19/22 22/9 23/10 32/21</p> <p>placed [1] 6/10</p>	<p>plate [1] 43/3</p> <p>play [1] 33/3</p> <p>playing [1] 25/1</p> <p>please [1] 3/2</p> <p>pledged [1] 37/5</p> <p>point [41] 4/18 6/16 9/12 11/15 11/20 14/14 15/10 15/19 16/2 16/4 16/5 16/8 16/21 20/17 20/23 21/23 25/23 26/15 27/1 27/10 27/19 27/21 28/5 29/14 29/23 30/6 30/16 31/13 31/15 33/6 33/18 33/20 34/18 35/22 39/7 41/22 42/16 42/20 42/20 44/8 45/15</p> <p>points [5] 5/22 18/24 19/1 35/10 44/6</p> <p>portion [1] 15/20</p> <p>position [3] 15/11 44/10 44/14</p> <p>possession [1] 14/20</p> <p>possible [4] 28/10 31/9 33/11 34/14</p> <p>post [1] 22/8</p> <p>potential [4] 5/11 6/19 17/13 40/3</p> <p>potentially [3] 6/25 11/1 43/15</p> <p>practices [1] 1/7</p> <p>preclude [1] 39/5</p> <p>preference [1] 43/25</p> <p>preliminary [4] 1/15 23/5 23/10 33/20</p> <p>prerogative [1] 42/11</p> <p>President [1] 30/15</p> <p>press [1] 5/5</p> <p>presumably [2] 16/5 39/23</p> <p>pretty [2] 26/7 41/25</p> <p>prevent [1] 9/14</p> <p>previously [1] 10/9</p> <p>principal [3] 37/2 38/10 38/17</p> <p>principle [1] 33/13</p> <p>prior [2] 18/13 24/12</p> <p>priorities [1] 18/20</p> <p>problem [10] 4/24 5/2 5/2 6/13 9/16 13/9 22/14 25/10 38/5 43/23</p> <p>problems [1] 24/3</p> <p>procedure [1] 17/6</p> <p>proceeding [2] 18/5 26/20</p> <p>proceedings [1] 46/5</p> <p>process [7] 6/15 12/18 13/18 16/16 16/22 17/7 33/9</p> <p>processor [1] 6/10</p> <p>produce [3] 17/22 26/23 42/14</p> <p>produced [2] 15/13 45/16</p> <p>producing [2] 26/3 27/3</p> <p>production [4] 15/11 16/6 18/14 25/25</p> <p>productions [3] 26/4 26/9 26/11</p> <p>profit [2] 30/23 30/24</p> <p>profitable [2] 28/15 29/20</p> <p>profits [1] 43/6</p> <p>prohibits [2] 10/4 36/25</p> <p>promoting [1] 1/12</p> <p>promptly [1] 45/20</p> <p>properly [1] 7/4</p> <p>proposal [6] 14/13 25/11 25/11 27/16 34/12 38/8</p> <p>proposals [1] 33/25</p> <p>propose [1] 15/3</p> <p>proposed [6] 27/12 28/6 34/22 35/14 36/20 38/6</p> <p>protection [1] 19/13</p>

P	34/24 regulators [2] 4/10 4/11 regulatory [2] 29/23 31/7 related [7] 9/15 10/20 10/23 14/2 14/5 22/21 30/2 relates [2] 12/24 31/2 relative [1] 29/11 releases [1] 5/5 relevant [2] 33/6 42/10 reliance [1] 26/1 relief [7] 5/24 7/3 8/8 22/21 25/18 25/20 26/23 render [1] 10/8 renew [2] 32/1 45/5 repeat [1] 41/15 Reporter [2] 46/9 46/14 reports [1] 12/7 request [1] 32/1 requested [3] 15/13 23/13 35/5 requesting [1] 26/22 requests [5] 6/15 13/7 13/12 40/14 43/1 require [1] 10/9 reserve [11] 27/12 27/14 28/8 29/16 30/7 30/13 30/14 33/24 39/7 41/23 41/25 reserves [15] 5/7 6/19 7/1 7/5 7/20 7/21 13/7 27/16 29/19 30/17 36/3 37/6 38/22 40/13 41/6 reserving [3] 19/22 21/17 32/23 resolution [1] 27/5 resolved [1] 17/16 respect [16] 3/21 19/16 19/20 20/3 21/23 23/4 23/11 24/3 25/12 25/15 26/24 27/7 27/19 30/12 36/2 45/12 respectfully [5] 25/15 26/21 32/1 32/20 34/8 respond [2] 10/16 15/17 responded [1] 18/17 respondents [15] 1/11 2/8 3/12 3/15 3/17 3/19 4/23 5/4 6/17 14/14 16/9 16/15 17/21 19/16 40/16 respondents' [2] 5/15 34/2 response [4] 17/3 17/7 19/1 23/3 responses [1] 14/8 restrain [1] 40/12 restrict [1] 24/17 restricted [1] 24/10 restricting [1] 25/14 restricts [1] 24/10 right [16] 9/19 17/4 17/25 18/1 20/1 23/1 27/8 35/17 37/11 38/16 38/20 39/12 41/13 43/8 44/4 45/9 rights [5] 19/23 21/17 32/23 33/24 34/1 risk [1] 19/11 risks [1] 4/11 RMR [2] 46/8 46/14 rules [1] 16/25 ruling [1] 44/19 run [1] 31/9 running [1] 10/17	14/11 16/3 16/7 16/17 18/11 19/15 19/18 27/13 29/25 30/19 33/13 35/22 35/24 36/4 38/15 39/4 41/8 42/23 salaries [1] 28/7 sale [1] 1/13 Salzman [3] 46/8 46/12 46/14 same [10] 8/4 10/10 12/17 27/17 31/5 33/15 36/19 36/20 42/1 42/17 saw [2] 21/15 32/3 say [36] 4/17 5/8 5/19 5/25 6/8 7/4 7/11 7/15 9/23 10/3 12/2 13/18 15/3 15/14 15/16 15/19 17/2 19/25 20/7 20/11 20/13 21/12 22/6 22/9 22/20 27/7 27/23 28/24 30/3 30/5 31/8 35/20 37/12 40/3 41/14 42/11 saying [6] 5/15 5/23 7/13 18/2 25/1 40/23 says [8] 7/19 14/3 16/11 38/9 39/10 40/11 43/11 45/17 scenario [1] 12/7 scene [1] 10/13 scheme [4] 11/23 12/4 20/1 44/24 science [1] 17/25 scope [3] 3/22 4/2 14/5 SCR [1] 46/12 scratch [1] 38/15 second [4] 21/18 21/23 22/18 42/3 Section [1] 33/19 securities [1] 1/13 Security [1] 28/21 see [5] 13/9 16/9 22/18 36/17 38/11 seek [2] 23/1 26/24 seeking [2] 14/18 23/4 seem [3] 17/12 21/24 41/1 seemed [3] 17/23 17/24 18/1 seemingly [1] 8/21 seems [9] 3/25 4/14 7/9 16/10 16/13 25/1 28/10 36/1 38/1 segment [1] 30/8 segregated [2] 29/6 30/20 self [1] 19/13 self-protection [1] 19/13 sells [2] 39/18 39/20 sending [1] 38/25 sense [9] 13/19 15/5 15/17 17/8 17/14 32/20 35/13 36/25 43/17 sensible [1] 30/1 sent [1] 9/6 sentence [7] 36/18 38/24 40/10 40/11 41/8 41/12 42/3 separate [3] 27/22 29/11 30/9 service [1] 42/13 set [2] 33/9 35/3 several [1] 41/4 shall [1] 39/4 shareholders [1] 8/6 short [3] 18/1 32/12 32/16 should [18] 4/18 7/16 13/18 14/13 14/15 16/1 16/12 19/21 21/12 25/22 27/14 33/11 33/14 33/17 36/15 37/3 37/10 40/19 Shouldn't [1] 36/5 show [3] 4/15 26/2 32/18 showing [2] 20/6 21/10 shown [2] 20/3 20/4
Q	quarterly [1] 12/7 question [13] 4/22 5/1 8/25 13/1 18/6 19/4 28/18 30/7 31/7 31/16 32/7 32/10 42/18 questions [2] 17/17 27/9 quick [1] 44/6 quite [1] 19/20 quo [1] 23/1 quoted [1] 19/9 quotes [1] 45/4	
R	raise [1] 4/23 raising [1] 26/17 rather [1] 45/23 ratios [1] 4/13 read [1] 35/10 reading [2] 3/24 43/9 ready [1] 18/14 real [3] 8/25 15/9 19/10 realistic [1] 17/2 really [8] 4/25 13/21 15/18 27/15 31/2 31/10 31/18 32/3 reason [5] 10/11 17/12 19/2 42/22 43/13 reasonable [2] 6/7 33/18 reasons [1] 32/20 received [6] 11/10 12/21 16/15 18/12 25/18 27/20 recognize [1] 33/4 recognized [1] 34/10 reconsidered [1] 32/14 redeem [11] 7/10 7/19 21/6 31/5 35/24 37/18 38/1 41/1 41/5 43/4 43/11 redeemable [1] 20/21 redeemed [3] 9/4 30/11 42/19 redeeming [3] 38/3 41/18 42/9 redemption [6] 13/12 21/1 40/13 42/21 43/1 43/12 redemptions [6] 37/11 37/11 37/12 42/5 42/23 43/14 Referee [6] 16/6 18/8 22/6 26/18 27/2 45/14 reference [4] 35/9 35/14 41/24 42/2 references [2] 27/11 27/16 regard [1] 1/6 regarding [1] 6/3 regards [1] 42/17 regular [1] 36/7 regulate [1] 19/8 regulator [9] 4/7 9/22 24/6 24/19 25/13 28/11 32/5 33/8	
S	safest [1] 31/9 said [28] 4/6 5/5 5/14 7/8 7/23 7/25 8/9 10/9 10/18 11/24	

S

shows [1] 6/24
 side [8] 4/20 15/19 18/8 22/1
 32/8 35/6 41/21 44/9
 sides [1] 36/24
 significant [1] 37/22
 simply [2] 6/18 11/2
 since [10] 20/5 20/20 20/25
 21/8 21/9 21/21 26/9 26/16
 27/22 29/15
 situation [3] 10/7 11/2 11/17
 SKRZYPCZYK [2] 2/5 3/8
 smacks [1] 20/1
 small [1] 25/2
 smell [1] 20/1
 so [75]
 Social [1] 28/20
 some [29] 6/11 7/1 9/5 10/25
 11/5 14/11 14/14 16/5 17/7
 17/12 21/5 23/1 24/8 24/9
 24/24 27/10 27/25 28/20 30/8
 31/5 31/8 31/19 33/18 35/18
 37/17 39/4 40/3 41/10 41/11
 somebody [3] 16/11 37/17 38/12
 somehow [1] 24/25
 someone [4] 37/25 38/1 39/18
 39/20
 something [15] 4/10 8/3 8/11
 9/19 10/8 10/10 10/18 12/15
 22/4 29/17 30/3 31/12 32/13
 40/18 44/10
 something new [1] 29/17
 sometimes [2] 8/4 8/5
 somewhat [2] 19/3 32/22
 soon [1] 22/19
 sort [11] 6/7 13/4 17/7 17/17
 21/5 22/20 24/22 27/11 27/25
 29/12 30/2
 sorts [1] 10/12
 sought [1] 5/23
 sound [1] 39/1
 sounded [2] 24/21 28/20
 sounds [1] 8/3
 speak [2] 5/18 8/17
 special [8] 16/6 18/8 22/6
 26/18 26/20 27/2 45/13 45/23
 specific [1] 15/23
 specifically [1] 27/13
 specify [2] 44/12 44/13
 speculate [2] 8/18 13/21
 spend [1] 14/3
 spent [1] 39/4
 stability [1] 4/8
 stablecoin [1] 20/21
 stage [1] 14/23
 stand [1] 18/18
 standard [1] 22/18
 standing [2] 9/17 10/6
 standpoint [1] 28/5
 start [4] 4/20 29/23 38/16
 38/24
 state [7] 1/1 1/3 1/13 2/3 3/2
 31/8 46/9
 statements [1] 6/22
 status [3] 6/5 18/8 23/1
 statute [1] 22/19
 statutes [1] 9/15
 statutory [1] 4/9
 stay [2] 26/22 26/25
 stenographic [1] 46/11
 step [1] 4/12
 STEPTOE [3] 2/12 3/14 3/16

still [5] 16/10 19/20 20/14
 25/12 30/25
 stock [1] 39/20
 stood [1] 31/15
 stop [7] 16/18 17/13 30/1 30/2
 41/14 41/16 41/18
 storm [1] 24/22
 Street [2] 1/16 2/3
 strings [1] 11/18
 structure [2] 13/2 15/3
 structured [1] 14/10
 sub [2] 36/18 36/18
 subject [3] 42/12 42/24 44/19
 submission [1] 16/17
 submissions [1] 45/21
 submitted [1] 11/5
 submitting [1] 33/25
 subparagraph [1] 36/2
 subpoenas [2] 18/17 42/13
 substantially [2] 17/22 36/20
 such [5] 22/15 27/15 32/21
 34/13 45/9
 sudden [1] 24/10
 suggest [3] 9/10 15/8 36/6
 suggesting [2] 37/21 41/10
 suits [1] 8/23
 sum [1] 36/11
 supposed [7] 21/8 21/9 22/11
 23/8 24/25 31/16 31/22
 SUPREME [1] 1/1
 sure [12] 14/21 15/18 26/15
 28/21 35/2 36/8 36/21 38/7
 40/21 42/1 43/16 45/10

T

table [1] 32/8
 take [9] 6/25 7/5 10/7 10/18
 13/15 17/22 22/24 30/13 38/6
 taken [3] 11/2 37/5 38/22
 takes [2] 4/3 35/15
 taking [3] 20/9 25/5 36/24
 talking [4] 12/14 20/21 31/2
 41/22
 talks [1] 16/23
 technically [1] 12/9
 tell [1] 33/11
 temporal [2] 14/12 14/12
 ten [1] 43/12
 tens [3] 31/3 41/19 42/19
 TERM [1] 1/1
 terminate [1] 14/22
 terminated [2] 14/16 16/1
 termination [1] 16/2
 terminology [1] 30/15
 terms [13] 4/16 10/1 13/24
 14/10 15/12 16/2 19/3 20/12
 35/9 35/12 35/14 35/23 44/1
 tether [62]
 Tether's [1] 40/12
 tethers [21] 7/10 7/19 8/12
 9/3 13/8 15/9 37/25 38/2 39/17
 39/18 39/21 40/25 41/1 41/4
 41/19 42/9 42/19 43/5 43/5
 43/12 43/14
 than [7] 7/20 15/19 19/25
 21/12 33/16 34/5 45/23
 THANAWALA [3] 2/14 3/16 3/16
 Thank [6] 18/25 34/11 45/19
 46/1 46/3 46/4
 that [321]
 that's [44] 4/9 4/17 5/18 7/2
 7/20 7/22 11/2 11/15 11/23
 12/10 12/23 13/21 14/5 14/19

18/18 18/21 20/23 21/20 22/7
 22/13 22/14 25/8 25/17 26/13
 27/7 28/9 28/14 30/7 31/6 31/7
 31/11 31/12 31/13 31/13 31/14
 31/20 32/23 34/2 35/17 37/15
 38/4 38/13 40/7 41/13
 their [26] 6/14 7/10 16/20
 18/16 20/8 20/9 21/2 21/6
 21/25 23/20 24/11 25/11 25/11
 25/21 28/6 31/5 32/18 35/9
 35/20 37/18 41/1 42/11 42/20
 44/24 45/2 45/11
 them [26] 5/5 6/3 6/11 8/23
 10/9 13/1 17/22 18/12 20/5
 21/9 22/12 23/19 24/19 25/17
 25/19 26/11 27/4 31/6 35/6
 37/1 38/1 38/3 39/19 39/21
 41/18 42/14
 themselves [5] 5/18 38/2 38/3
 41/5 41/19
 then [22] 6/16 7/1 7/16 9/20
 10/15 14/7 14/8 15/25 16/18
 16/24 17/7 18/6 18/24 19/12
 20/5 30/25 31/1 32/14 33/8
 39/3 39/6 39/6
 theory [1] 19/11
 there [61]
 there's [20] 5/13 6/16 8/20
 10/11 10/17 10/18 12/11 20/14
 21/21 27/15 29/12 30/8 30/24
 33/4 36/17 36/18 36/21 39/16
 40/3 43/13
 therefore [3] 15/16 15/21 18/2
 these [9] 7/19 8/21 10/25
 25/14 25/21 36/11 41/19 42/23
 45/10
 they [109]
 they'll [1] 17/24
 they're [12] 23/4 24/7 25/1
 27/22 28/11 28/11 29/5 30/19
 32/4 35/25 39/24 44/17
 they've [3] 15/12 17/3 42/23
 thing [6] 8/9 27/16 27/17 30/4
 30/8 43/21
 things [33] 3/23 4/13 5/13
 6/14 6/21 7/23 8/2 8/18 9/1
 9/2 9/5 9/21 9/21 9/25 10/12
 10/15 12/7 12/8 12/25 14/7
 15/6 15/8 17/5 17/14 19/25
 23/2 23/25 35/15 37/8 38/21
 39/10 40/20 42/8
 think [69]
 thinking [1] 32/18
 thinks [1] 36/15
 third [1] 12/5
 this [74]
 those [13] 8/14 10/1 18/23
 20/13 27/17 35/19 36/19 38/20
 38/21 39/23 41/5 41/9 43/1
 though [5] 21/20 24/4 24/12
 28/2 39/9
 thought [5] 8/10 24/17 32/12
 32/14 36/25
 thousands [2] 31/4 42/19
 thread [1] 10/17
 through [4] 3/23 4/21 10/17
 44/20
 tie [2] 22/20 43/20
 time [19] 8/24 9/6 9/13 12/9
 12/13 14/11 17/9 18/1 18/3
 21/12 29/15 31/5 33/15 39/4
 39/23 39/24 41/4 42/10 42/21
 time come [1] 39/24

T	unrelated [1] 11/3 unsegregated [1] 36/11 unstable [1] 4/11 until [4] 12/13 16/24 22/10 23/2 untouchable [1] 30/8 untrue [3] 6/14 6/23 10/9 unusual [1] 14/17 unwilling [2] 26/24 32/2 up [13] 5/14 6/18 21/25 23/20 24/5 29/9 29/19 31/15 32/24 33/9 33/25 43/20 44/9 upon [2] 5/20 13/1 upside [2] 14/25 15/2 us [6] 6/12 13/20 23/16 27/2 32/18 42/11 use [5] 11/25 30/4 30/14 30/20 40/12 used [2] 30/10 39/21 user [1] 6/3 usually [2] 8/5 33/20	we [125] we'll [3] 6/2 27/4 27/4 we're [19] 5/6 5/15 7/19 9/10 12/14 16/22 17/1 18/2 19/22 20/20 22/6 26/17 26/22 27/1 31/1 40/8 43/16 44/18 45/24 we've [6] 11/5 11/10 15/13 18/20 20/3 39/19 week [3] 26/19 43/3 45/15 weekly [1] 26/4 weeks [3] 18/13 32/13 33/7 well [16] 5/8 7/8 8/6 12/14 17/5 20/18 22/1 22/9 22/17 29/14 35/22 36/4 37/11 37/15 41/8 41/25 went [6] 6/13 10/20 11/12 11/24 13/22 34/23 were [27] 3/22 6/5 6/6 6/10 7/24 7/25 8/1 8/10 9/3 9/20 9/21 10/19 10/22 20/12 26/3 26/4 26/5 26/11 26/12 27/18 35/5 35/16 35/21 35/22 36/9 41/20 42/1
times [3] 8/7 18/12 36/12 today [3] 10/6 24/5 31/4 together [1] 22/20 tokens [1] 43/10 told [3] 6/14 7/15 8/2 tomorrow [6] 18/11 18/18 22/7 26/18 27/2 45/14 too [4] 14/9 18/1 32/15 43/2 top [1] 14/19 topic [1] 12/22 totally [1] 12/1 touch [1] 28/19 track [1] 28/3 trade [4] 20/15 39/13 39/21 40/24 traded [1] 20/15 trader [1] 10/13 traders [1] 5/20 trades [1] 8/13 trading [1] 24/23 trail [1] 11/1 transaction [13] 8/4 11/6 21/19 23/6 23/9 23/15 23/18 25/17 31/24 34/16 34/21 34/21 45/4 transactions [8] 5/7 11/3 14/1 25/21 25/21 30/2 30/11 39/2 transcript [1] 46/11 transfer [2] 7/21 11/8 transferring [1] 6/18 transfers [2] 7/5 10/25 Treasury [1] 28/22 trial [1] 33/21 trouble [1] 21/11 troubling [1] 22/15 true [4] 13/15 28/1 37/21 46/10 try [3] 18/23 23/16 34/3 trying [18] 17/1 17/1 23/17 24/7 25/13 25/19 32/4 32/4 34/13 40/5 40/8 40/20 42/7 43/16 44/9 44/17 44/21 44/22 turn [2] 14/7 18/7 two [10] 17/17 19/25 22/20 28/6 32/13 36/23 40/2 41/7 41/15 42/3 typical [1] 12/6 typically [2] 11/3 14/17	V vacate [2] 32/1 45/6 various [1] 12/25 vast [1] 11/14 vendors [1] 37/9 venue [3] 5/20 6/4 10/14 versus [3] 15/13 27/24 28/4 very [12] 3/22 4/5 5/16 6/23 9/8 11/16 13/16 26/3 31/16 45/8 45/19 46/1 Vice [1] 30/15 view [3] 34/4 39/11 45/8 views [2] 25/21 26/6 violated [1] 9/16 violation [8] 4/4 4/9 4/17 4/19 4/22 5/11 6/20 12/4 violations [2] 5/18 9/8 visit [1] 13/1 volatile [1] 24/24 voluntarily [2] 26/13 42/13 voluntary [2] 26/12 27/3 vote [1] 8/6	what [99] what's [3] 12/16 16/21 43/18 whatever [9] 22/19 30/24 32/17 34/15 35/12 38/12 39/13 42/2 45/21 when [13] 9/3 12/10 15/6 16/25 16/25 20/11 27/3 27/13 31/15 35/10 41/3 42/8 45/1 where [19] 5/7 8/10 9/5 10/7 11/17 12/7 12/9 15/12 17/18 18/18 18/21 23/17 28/12 28/12 31/22 32/8 33/10 34/3 43/18 whereas [2] 11/24 16/1 whether [8] 12/11 15/4 15/5 16/6 29/10 31/8 37/20 42/25 which [31] 3/22 4/24 17/4 17/7 19/4 20/13 20/21 20/22 21/14 21/17 22/3 22/18 22/22 23/5 23/9 23/19 25/12 26/7 26/14 31/22 33/8 34/8 34/14 34/21 35/10 35/24 38/25 39/3 39/7 40/11 42/5 while [2] 20/9 33/15 WHITEHURST [2] 2/5 3/6 who [12] 7/10 7/11 13/8 20/14 20/15 21/4 38/12 39/20 41/3 41/3 41/17 42/8 whoever [1] 18/7 whole [1] 20/23 whom [1] 15/7 why [31] 4/15 5/23 9/3 10/22 13/25 14/15 14/19 14/24 16/1 16/12 17/12 17/13 17/18 18/23 19/2 19/19 20/12 21/11 21/12 21/14 21/20 22/14 23/9 26/6 30/20 31/25 32/8 34/14 34/21 40/18 45/15 will [11] 8/6 16/8 29/12 33/11 39/23 41/5 42/15 43/11 45/13 45/14 45/18 willing [1] 6/25 withdrawal [1] 6/15 within [1] 30/10 without [3] 21/14 22/11 32/19 wonder [1] 40/3 wondering [1] 35/10 word [2] 40/5 43/22 words [2] 39/12 40/19 work [1] 17/8 workaround [1] 41/10
U	W wait [2] 9/24 36/4 waiving [1] 21/14 want [32] 5/9 5/15 7/10 7/15 7/22 8/17 8/17 8/18 9/7 9/9 14/11 18/5 19/14 21/17 22/4 22/5 22/10 23/22 24/10 25/24 26/5 26/16 31/5 31/23 33/7 33/23 34/15 39/2 42/1 42/16 44/8 44/12 wanted [5] 3/23 13/8 26/15 28/5 41/11 wants [3] 24/1 24/16 37/25 warrant [1] 44/25 was [44] 5/14 7/3 7/16 9/5 9/6 9/19 11/2 11/6 11/7 11/9 12/11 12/25 13/5 13/17 15/3 15/14 16/6 16/15 18/16 18/22 19/15 20/11 20/25 21/1 21/23 22/25 23/5 25/16 25/17 27/3 27/14 28/5 31/24 32/15 35/10 35/18 35/19 36/9 37/15 39/9 41/21 41/24 42/21 45/22 wasn't [3] 4/21 7/12 12/12 way [18] 6/7 7/2 8/4 13/5 15/10 17/10 23/19 24/7 24/12 25/2 29/6 31/9 36/12 38/3 41/6 42/3 44/16 45/9	U U.S [3] 37/5 38/22 40/13 ultimately [3] 28/2 31/25 45/5 unaffiliated [1] 7/14 unclear [2] 16/9 35/22 uncomfortable [1] 37/21 unconcerning [1] 41/2 under [13] 20/3 22/14 26/19 26/20 31/17 33/13 33/19 35/22 41/12 42/8 42/14 42/15 45/1 underpinning [1] 20/12 understand [19] 5/9 6/12 7/2 10/25 11/12 13/6 13/13 13/22 16/3 18/14 18/16 24/18 32/6 33/23 34/18 36/10 38/7 39/11 40/22 understanding [2] 8/13 20/11 understood [1] 11/23 unhealthy [1] 9/20 unless [2] 4/9 16/11 unlikely [1] 42/18 unrealistic [1] 18/2

W

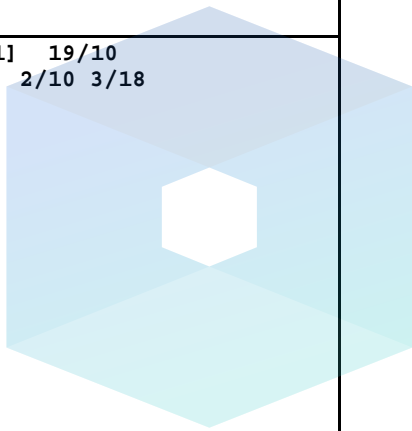
worth [1] 13/15
would [40] 5/8 6/8 9/14 9/21
9/23 10/8 10/9 10/13 10/21
11/17 11/25 13/3 13/20 13/23
14/17 14/21 14/22 14/24 15/1
15/6 15/8 15/10 15/22 16/5
16/9 16/17 17/12 17/21 18/4
20/7 23/3 30/4 34/7 35/25 36/6
36/13 36/15 38/12 41/1 43/25
wouldn't [4] 12/3 12/17 16/20
17/14
wrap [1] 23/19
written [1] 21/3
wrong [1] 21/21

Y

yeah [1] 38/4
yes [4] 8/17 32/25 44/5 45/24
yet [1] 6/13
YORK [17] 1/1 1/1 1/4 1/6 1/13
1/17 1/17 2/3 2/4 2/4 2/9 2/9
2/13 2/13 9/9 31/8 46/9
you [104]
you'll [1] 22/18
you're [10] 5/23 8/15 9/24
13/2 14/20 22/20 34/13 39/13
40/22 41/10
your [98]
yours [1] 39/4

Z

Z/515 [1] 19/10
ZOE [2] 2/10 3/18



THE
BLOCK