
IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
FINANCIAL MARKETS TRIBUNAL

CASE: FMT21019 AND FMT21020

B E T W E E N

(1) DALMA CAPITAL MANAGEMENT LIMITED

(2) ZACHARY CEFARATTI

Applicants

- and -

THE DUBAI FINANCIAL SERVICES AUTHORITY (DFSA)

Respondent

- Before -

His Honour David Mackie KC

Mr. Patrick Storey

Mr. Ali Al Aidarous

Day 1 (Draft)

Monday, 12 September 2022

Mr Christopher Sallon KC (Doughty Street Chambers);
Mr Ahmed Bobat and Mr Paul Stothard (Norton Rose
Fulbright) appeared on behalf of the Applicants

Mr Adam Temple (3 Verulam Buildings);
Ms Fiona Paddon and Mr William Leung (Dubai
Financial Services Authority) appeared on behalf of
the Respondent

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P R O C E E D I N G S

(11.07 am)

Housekeeping

CHAIRMAN: Sorry we are a bit late, but never mind.

Welcome to this session of the Tribunal. As I understand it, all the parties are online and participating in this. There are also, as I understand it, some members of the public who will be listening in. Welcome to you all.

The Tribunal is most grateful for all the preparation that has been done and in particular for the very helpful opening submissions in writing, which we have from each side. As we understand it, the first step this morning will be some short opening submissions, if I am correct. Have you decided between you who should start? If not, conventionally, it would be the applicants.

Mr Temple, Mr Bobat?

MR TEMPLE: We have not discussed that, I'm afraid. I think it is Mr Sallon we have, rather than Mr Bobat.

CHAIRMAN: I am sorry, I haven't seen Mr Sallon on the screen.

MR SALLON: Can you see me on the screen?

CHAIRMAN: I can, I am sorry Mr Sallon. I misidentified

1 11.09 you as Mr Bobat. Sorry about that. It was simply
2 the sign on the screen. I apologise for that.

3 MR SALLON: Not at all.

4 CHAIRMAN: Would you like to kick off?

5 MR SALLON: I'm perfectly happy to kick off, although in
6 terms of witnesses and the order in which they are
7 called, the DFSA will be starting with their
8 witnesses, who I am going to be cross-examining, and
9 then we call ours. It might be, sir, it is entirely
10 a matter for the Tribunal, that we should keep to
11 the same order in the way that we open these
12 proceedings.

13 CHAIRMAN: That is absolutely fine. It is simply we
14 don't normally have oral openings at all. I think
15 it is the applicants we understand who asked for
16 one, and I wanted to give you the chance to decide
17 who goes off first.

18 So when you are ready Mr Sallon, we will start.
19 Thank you very much.

20 Opening submission by MR SALLON

21 MR SALLON: Well, then, first of all, I think may I just
22 formally introduce the parties. I, as you know,
23 appear on behalf of Mr Cefaratti and Dalma Capital
24 Management. Mr Temple appears on behalf of the
25 respondents. The opening notes were ordered,

1 11.11 effectively, to coincide at the same point and so
2 our opening note wasn't a response to the DFSA, or
3 vice versa. To that extent they are ships in the
4 night. I am wondering if I could just add a short
5 15-minute address in relation to matters that have
6 not really been canvassed before, or if they have,
7 not been canvassed in the way they have before.

8 CHAIRMAN: Yes of course.

9 MR SALLON: At the heart of this case we suggest that
10 there are two questions on which both parties are
11 agreed. Firstly, did Mr Dean perform live trades on
12 the DALMA Unified Return Fund, which I am going to
13 refer to throughout as DURF, or "the fund"; and
14 secondly, was Mr Cefaratti aware of such trading?

15 Despite their claim that the documentary
16 evidence unambiguously supports their case and
17 clearly proves those two propositions, the reality
18 is, as we submit, that the DFSA has sought to rely
19 on witness testimony to bolster their claims and,
20 moreover, to rely on witnesses whose truthfulness
21 and credibility have justifiably been called into
22 question.

23 We submit that on both questions, the DFSA has
24 failed to demonstrate that the interpretations of
25 the documents for which they contend has been proved

1 11.12 and they have ignored evidence which demonstrates
2 the veracity of the applicants' case.

3 A few words on credibility. One of the
4 critical issues between the parties is that the key
5 emails on which the DFSA rely are subject to
6 competing interpretations, and it must be agreed
7 that the DFSA have chosen to rely on Mr Dean and on
8 Mr Nicholas Allsop to interpret them. They say that
9 their interpretations are consistent with the words
10 on the documents, that their evidence in relation to
11 those matters is truthful and that their testimony
12 can be used in order to support the DFSA's
13 interpretation.

14 We submit that these documents have to be
15 examined, not only for the ambiguity of language
16 which we say is apparent, but also in the context of
17 unfolding events in late 2015 and the first half of
18 2016. It is within that context that the Tribunal
19 have to judge Mr Cefaratti's competing
20 interpretation, and judge what the sender and the
21 recipient meant to say or understood the other to be
22 saying.

23 The issue here, unlike the case of Gestmin, to
24 which fleeting reference has been made in the
25 opening, is not simply Mr Dean's recollection or

1 11.14 Mr Allsop's recollection as to what the opposed to
2 what the black letter of the documents tells us; it
3 is their honesty and truthfulness. If the Tribunal
4 finds that their evidence may be untruthful, then
5 the applicants submit that that will undermine what
6 they have to say about the documents in question and
7 what they mean.

8 We further suggest that they have, since
9 proceedings were initiated in this case, been
10 invited to give accounts on fundamental issues which
11 is not merely wrong, but dangerous, to use in order
12 for one to corroborate the other. The Tribunal will
13 be invited in the course of these proceedings to
14 apply a robust legal test which applies to all
15 accomplice evidence and requires the Tribunal to
16 disregard the evidence of both if you think the
17 reason for conflicts is because the witnesses are
18 tainted.

19 Mr Temple, at paragraph 13 of his opening,
20 appears to question the relevance of enquiring into
21 the credibility of these witnesses, who as recently
22 as this year have made witness statements
23 summarising or seeking to explain what they said in
24 their interview. The DFSA continue to rely on these
25 witnesses in order to support their interpretation

1 11.16 of the documents, yet citing the case of Gestmin
2 Mr Temple claims that even before the hearing of
3 oral evidence, the DFSA considers the
4 contemporaneous written evidence speaks for itself
5 and may be more reliable than the recollection of
6 the individuals some years after the event. This,
7 he says, explains why his opening largely focuses on
8 the documentary evidence.

9 The Tribunal will recall that in the case of
10 Gestmin, Leggatt J (as he then was) was tasked with
11 evaluating evidence of a number of witnesses in a
12 complex commercial case concerning events that took
13 place over many years. The case was about the
14 fallibility of human memory and counsel's judges,
15 when deciding such cases to attach less importance
16 to witness recollection than to factual findings and
17 inferences drawn from documentary evidence. This is
18 not a rule which applies in all cases and is an
19 approach which has been expressly disallowed by a
20 number of courts depending on the circumstances of
21 the case.

22 At root, Mr Temple's misunderstanding is that
23 the challenge that we make here is not merely to
24 recollection, it is to fundamental honesty. To
25 which Leggatt J's judgment in Gestmin was not

1 11.17 directed. Mr Temple, we hope, will not continue to
2 challenge the value and relevance of the questions
3 that we ask in relation to the credibility of the
4 witnesses and we hope that in raising this issue at
5 this stage, it is not an unintentional attempt to
6 influence the Tribunal to take a preliminary view
7 that detailed cross-examination on the issue of
8 credibility is irrelevant. We suggest that the
9 evidence and cross-examination on this matter will
10 be not only relevant, but extremely important and we
11 hope that we would be allowed to explore these
12 issues with these witnesses in full.

13 If it is to be suggested that the DFSA has all
14 along regarded Mr Allsop as a disgruntled employee
15 with an axe to grind, and that there is a
16 possibility that what he said may have been affected
17 as a result, and that they no longer rely to a huge
18 extent on what is said, then that stance now taken
19 by Mr Temple seems to be at variance with the DFSA's
20 position in general, and with the applicants'
21 repeated attempts to invite the DFSA to abandon
22 Mr Allsop as a witness. Instead, the DFSA not
23 merely rely on passages of his evidence, but as late
24 as this year have produced witness statements
25 doubling down on that evidence.

1 11.19 That is what I want to say about credibility
2 and its importance in this case.

3 Trading profits during the relevant period.
4 Mr Temple has raised this matter in paragraph 4 of
5 his opening. So far as trading profits on the Dalma
6 fund during the relevant period is concerned,
7 Mr Temple refers to alleged losses made by Mr Dean
8 while supposedly trading on the fund during the
9 relevant period. This assertion is plain wrong. As
10 an overarching submission, you will be aware that
11 the applicants deny that Mr Dean conducted live
12 trading on the fund during the relevant period at
13 all, or that if he did, that Mr Cefaratti knew about
14 it.

15 We submit that the profit and loss statements
16 of the fund, which you will find at B/0373, if that
17 could come up for a moment. Would it be more
18 helpful if I just give you the references, sir? I
19 am afraid I can't hear. We have lost the sound
20 connection.

21 CHAIRMAN: It was my error Mr Sallon, I had failed to
22 unmute myself. I apologise. You and I were not
23 brought up on this technology, so I apologise.

24 MR SALLON: That's one thing that we can agree!

25 CHAIRMAN: Generally, the documents come up pretty fast,

1 11.21 so should we see if we can get them? They normally
2 come up pretty fast.

3 MR SALLON: Shall I give the reference again?

4 CHAIRMAN: Give us the reference and maybe that will be
5 faster.

6 MR SALLON: The reference to which I referred relates to
7 the profit and loss statements for the fund for
8 April, which is 0373 and May, which is 0403, both in
9 bundle B.

10 The documents that are coming up now is for
11 April and then there is one, I think you will find,
12 for May. I am just, from now on I think, with your
13 leave, I am just going to give you the references so
14 that we don't lose time, because it is taking more
15 time than I anticipated.

16 CHAIRMAN: That is fine.

17 MR SALLON: So B/0373 and B/0403 clearly demonstrate that
18 between April and May 2016, the fund made an
19 aggregate trading profit of \$5,680.23 and not, as it
20 is claimed a loss. To that extend, the DFSA's
21 calculation is wrong.

22 We intend to reduce these oral submissions into
23 writing for the benefit of the Tribunal and in that
24 document we will provide a detailed calculation
25 demonstrating the actual profit made on the fund

1 11.24 during the relevant period, which is what we claim
2 it to be. Given that the point being made by
3 Mr Temple has been -- has not actually been raised
4 in this way before, we will be asking you in due
5 course to permit our witness, Mr Amir Anwar, in his
6 role of chief financial officer of Dalma, to explain
7 those documents and why we say that the fund was in
8 trading profit over the relevant period.

9 I am not going to invite you to analyse the
10 documents on the screen.

11 We say to the extent that Mr Dean was
12 conducting live trading on DURF during the relevant
13 period, if you find that he was, then the DFSA's
14 assertion that he was terminated in June 2016 for
15 poor performance is either wrong or misconceived.

16 The next topic on which I would like to address
17 you is the net asset value of the fund. This is
18 dealt with at paragraph 25 of Mr Temple's opening.
19 He states that the fund's net asset value decreased
20 from \$3.37 million at the end of March 2016 to \$2.97
21 million by the end of May 2016. The DFSA appears to
22 infer from a decrease in the net asset value that
23 there had been trading losses on the fund during the
24 relevant period; something that we will demonstrate
25 simply isn't true. What the DFSA has failed to do

1 11.26 is to consider any evidence contrary to that which
2 appears at first glance to be consistent with the
3 narrative events that it seeks to paint for the
4 benefit of this Tribunal.

5 The decrease in the net asset value on the fund
6 was due primarily as a result of partial
7 redemptions. That is to say, where an investor
8 withdrawing part of their investment during the
9 period in question makes such a withdrawal. Such
10 redemptions naturally lead to a decrease in the
11 fund's net asset value but doesn't in any way
12 demonstrate trading losses on the fund and we will
13 invite you to consider in due course evidence of
14 that, which is on the record; in particular B/0157,
15 which is an investor referred to "as accumulator A
16 series" and shows a withdrawal of \$31,703.33;
17 document B/0374, an investor referred to as
18 "accumulator A series", who makes a withdrawal of
19 \$288,435, and lastly, at B/0404, an investor
20 referred to as "accumulator A series" makes a
21 withdrawal of \$75,000. Accordingly, the net asset
22 values for the months to which the DFSA refers
23 demonstrate a decrease in DURF's net asset values of
24 \$395,138-odd. This is owing solely to partial
25 redemptions during the period in question. To

1 11.28 suggest that the decrease was related to trading
2 losses is both inaccurate and misleading.

3 In addition, Mr Temple, or those instructing
4 him, have failed to take into account fixed and
5 general expenses over which the trader has no
6 control. These too are deducted from the profit and
7 attribute to a reduction in the net asset value.

8 Lastly, may I just turn to what the DFSA say
9 about the DURF offering memorandum, which is
10 something that has never been emphasised in previous
11 correspondence or pleadings. At paragraphs 26 to 28
12 of the DFSA's opening, Mr Temple purports to provide
13 the Tribunal with information about the fund,
14 various elements of which are incorrect. The fund
15 is a sub fund of Dalma Capital SICAV plc, which is a
16 company incorporated under the laws of Malta as a
17 multifund investment company. To date, only the
18 supplement to the offering memorandum for the fund
19 has been exhibited in these proceedings. In order
20 to correct a number of the DFSA's incorrect
21 assertions in its openings, we would like to take
22 the Tribunal to the offering memorandum for the
23 fund, which is the core document which you have not
24 yet seen and which, as we will show in a moment, has
25 to be read in conjunction with the supplement which

1 11.30 you have. The supplement clearly states on its
2 front cover, and the reference for this is B/0324,
3 Important:

4 "This supplement may not be distributed unless
5 accompanied by and must be read in conjunction with
6 the offering memorandum in respect of shares in the
7 funds of Dalma Capital SICAV."

8 Then at B/0307 the supplement states:

9 "Unless otherwise specified herein, defined
10 terms used in this offering supplement shall have
11 the meanings ascribed to it in the offering
12 memorandum of Dalma Capital SICAV."

13 The offering memorandum, as opposed to the
14 implement, is where these definitions are found and
15 where important issues like risk and the discretion
16 of investment managers is defined. In the opening,
17 at paragraph 26.2, Mr Temple quotes part of a
18 section of the supplement which is headed
19 "Instruments and Securities", which sets out the
20 type of instruments that the fund would -- and I
21 emphasise the word "typically" invest in order to
22 supposedly demonstrate some limitations to the
23 investment activities of the fund. In fact, and
24 contrary to the DFSA's suggestion, this section of
25 the supplement does not set out any binding

1 11.32 investment restrictions or limitations. The
2 restrictions which are found in the investment
3 restrictions sections of the supplement at B/0086
4 simply do not contain the limitations claimed by the
5 DFSA.

6 Furthermore, the passage which the DFSA quotes
7 explains that the fund will not, as I have
8 emphasised, typically invest in foreign exchange or
9 commodity derivatives outside of the stated exposure
10 guidelines. It does not in any way restrict the
11 funds from exceeding such guidelines. So in
12 addition, we submit that it is clear from the
13 offering memorandum that the investment strategy can
14 be changed at any time by the investment manager.
15 There are no restrictions in that investment
16 strategy, only typical guidelines which are subject
17 to change. The fund had and has a broad discretion
18 to invest in commodities, as demonstrated by the
19 offering memorandum.

20 As to the suggestion that Dalma made no attempt
21 to minimise risk, we submit that minimising risk
22 can't be treated in isolation. It is a simple fact
23 that one must take some element of risk in order to
24 make any element of return. If the sole strategy of
25 the fund was to simply minimise risk by taking none,

1 11.33 then the fund would simply hold cash. The fund's
2 objective is to pursue consistent income and
3 generate positive returns while minimising risk. So
4 the offering memorandum, read in conjunction with
5 the supplement, clearly permitted the trading of
6 commodities and foreign exchange. We submit undue
7 risk was not taken and we submit that investors'
8 funds, contrary to Mr Allsop's claims to the
9 contrary, were traded in accordance with the
10 offering memorandum.

11 Once again, we submit that the DFSA has failed
12 to conduct a thorough analysis of the evidence on
13 record, but has instead sought to reach for those
14 outlying elements which may on their face purport to
15 support their narrative, but which unfortunately
16 have been taken out of context.

17 Could I just say that if, having considered the
18 documentation to which we have referred, the DFSA
19 continue to persist in claiming that the fund was
20 traded recklessly and contrary to its objectives,
21 then we will apply to allow Mr Cefaratti to give
22 limited evidence in chief to include that issue so
23 that it can be properly dealt with and is properly
24 on the record.

25 Sir, thank you very much indeed, that is all I

1 11.35 want to say by way of opening. As I say, these two
2 opening notes passed like ships in the night and so
3 I am afraid in the time that we had, we were unable
4 to prepare a written submission in response to
5 Mr Temple's written opening, but we will happily
6 submit what I have read to you so that you have it
7 in writing for your further consideration.

8 CHAIRMAN: Thank you so much. Absolutely nothing to
9 apologise for. Mr Temple, do you want to address
10 us?

11 Opening submission by MR TEMPLE

12 MR TEMPLE: Sir, yes there's a few points I was going to
13 address briefly and I will start with my learned
14 friend's submissions.

15 So on losses, you will see that that is set out
16 in issue 4. I think that is section G4 of my
17 written opening. We don't say that a reduction in
18 the NAV was a consequence -- or we don't seek to say
19 that the reduction in NAV is a reflection of the
20 losses by Mr Dean. What we say there is in section
21 G4. It is a fact that the NAV reduced and that's in
22 paragraph 25 of my written opening because that's
23 where I'm describing "the fund" and the size of the
24 fund.

25 As to the last point Mr Sallon touched on about

1 11.36 the description of the fund and the excerpts from
2 the supplement to the offering memorandum, slightly
3 surprised to hear it suggested that this is new
4 because the bits I quote in paragraph 26 of my
5 written opening are identical to the bits I quote in
6 paragraph 14 of the answer. To which we received no
7 push back or challenge, and the witnesses could have
8 addressed. In addition, the memorandum to which the
9 supplement is a supplement is in fact in the bundle
10 already. It is in B, tab 2, it's called The Private
11 Placement Memorandum of Aesthus Fund, which I
12 understand to be the former name of the Dalma fund.

13 So I will consider what my learned friend says
14 about restriction, but what we do say is if you have
15 an offering memorandum that is then supplemented,
16 then the supplement takes precedence and if it sets
17 out what your approach to investment will be, then
18 the investors are entitled to expect the supplement
19 to be binding, or at least give a very clear
20 direction as to what the fund will do.

21 Sir, the other two things I was intending to
22 do, one briefly take you to through the appendix to
23 my written opening which is the same as the appendix
24 to the answer. I do that because it is an attempt
25 to distil three separate documents and it may be

1 11.38 that merely looking at it, it is not transparent as
2 to where all that data has come from, or what it
3 means. So if the Tribunal tells me that it is
4 actually understood, I am happy to move on, but
5 otherwise I was going to briefly look at the
6 appendix.

7 I don't know whether Fatima can bring it up and
8 she has it easily available. This the document I am
9 referring to. It is a landscape document. You can
10 see in the first column there we have security with
11 a list of numbers. Just to be clear, they have been
12 added by me so that when we talk about securities,
13 we can refer to the numbers, rather than the various
14 descriptions.

15 Then there are three sets of columns followed
16 by a comment column. Those are a distillation of
17 three other documents to show how those documents
18 marry up and to the extent that they don't highlight
19 that fact. So I am going to take you briefly to
20 those three so you can see what I have done and in
21 doing so I intend to explain -- to use security
22 number 1 the RXA commodity as an example. You can
23 see it is described in the third column along as
24 "Euro Bund Future June 16".

25 So in terms of explaining this, the first

1 11.39 document to look at as you will see from the
2 reference is page 322 of bundle B. Incidentally
3 unless someone tells me otherwise, I will just use
4 page numbers and not tabs or bundle references. If
5 you are using the PDF the page number is probably
6 easiest. Fatima if you could take us to bundle B,
7 page 322, please. Actually, Fatima, if you could
8 scroll up one page to show page 321 to see the email
9 to which the document is attached. You will see
10 here we have an email from Mr Dean to Mr Allsop on
11 March 24, which is then forwarded by Mr Dean to
12 Mr Cefaratti on 5 April. There are some suggestions
13 from the applicants that the DFSA has changed our
14 case on what we are looking at here, but it has
15 always been clear to the DFSA when this document was
16 created. It was created before the trades that took
17 place, and it has not been suggested that this was
18 created by the various trading platforms that Dalma
19 used.

20 So if we then scroll on to the attachment, we
21 can see Mr Dean's trade document. This is what he
22 sent to Mr Cefaratti on 5 April. There you can see
23 two sets of securities listed, two sets of
24 investments and the way that Mr Dean described them
25 he uses the phrasing "RXA commodity" in the first

1 11.41 security at the top and that's a Bloomberg ticker.
2 So that's one kind of syntax that can be used. It
3 is what Bloomberg describe this as. Mr Dean
4 explains that "A" means I think the current month.
5 Then we have a name that he attaches to it, so it is
6 EUR-BUND Future. So that is how he described it.
7 The next document is to look at page 914 of the B
8 bundle. So it's 914 Fatima.

9 This is a big list of trades. It is a list
10 that was created from the Exante trading platform.
11 We are concerned here with trades that were executed
12 on 5 April, the same day that the document was sent
13 to Mr Cefaratti. So this is a big list of numbers,
14 I won't take you through it in a huge amount of
15 detail, but you can see that there is a date and a
16 time. The time is Greenwich Mean Time or Universal
17 Co-Ordinated Time, UTC, so you have to add 4 hours
18 to that to get the Dubai time. You can then see
19 that it was traded on the name of Mr Mahoney at
20 Dalma Capital. He is the former portfolio manager.
21 Then you see a series of columns showing particular
22 trades including the commission, the price and
23 whether it is buy or sell.

24 About two thirds of the way across the page you
25 can see "symbol ID". These are the financial

1 11.43 instruments that are actually traded and they are
2 not the same syntax as used by Mr Dean in his
3 trading table. So I said I would refer you to one
4 in particular, the EUR-BUND future. So it is worth
5 looking at that. I will explain to you where that
6 can be found on this page. It is five up from the
7 bottom, at 5 April 2016, at 6.17 am, so it was
8 traded at 10.17 Dubai time. I don't know whether
9 that is clear on your screens. You can see that
10 that has got a completely different descriptor here,
11 it is FGBL.EUREX.M2016. The question arises how can
12 I explain to you that is the same one? The way to
13 do that is to note the fact that it was a trade to
14 buy one unit at a price of 163.98. You will see
15 that in the row. I will show you that in a moment
16 on another spreadsheet which shows it is the same
17 trade in the same security.

18 Just before we move on, it is worth noting that
19 above the 5 April trades there is a series of 7
20 April trades and we say that that is evidence of
21 what Mr Dean describes as test trades, i.e. putting
22 on lots of small trades for a few days to check
23 everything works and then selling them for minimal
24 profit or loss and you can see in fact that there is
25 a profit and loss column showing. I think \$150 was

1 11.45 made on one and \$120 was lost on another.

2 So that is the Exante spreadsheet, Exante trade
3 record. As I said, I am going to track that through
4 now on to another document which is the Dalma fund
5 NAV report and that is at page 389 of the same
6 bundle. Here we have the monthly reports that Dalma
7 produced and you can see here the same trades are
8 split out by categories. You can see they are still
9 traded on Exante. If you look to the middle of the
10 page, there should be a series of ten trades and you
11 can see that they are 5 April trades and 7 April
12 trades, like I described before. The last of the 5
13 April trades is the June 16 EUREX EUR-BUND, with one
14 unit bought at a price of 163.98. So that's the
15 same thing that we saw before on the Exante
16 spreadsheet. This one is using another set of
17 syntax but it marries up with Mr Dean's syntax.

18 So that's the appendix and if there are any
19 queries about that please do let me know because it
20 is an attempt to put quite a lot of data into quite
21 a small amount of space.

22 Finally, I was going to make three brief points
23 about my learned friend's written opening. The
24 first point relates to the emphasis within that
25 written opening and the amount of emphasis that is

1 11.46 placed on the contract of employment and the
2 approach taken by the DFSA in considering the
3 evidence. As to the contract, we disagree with what
4 we say, but that is a relatively minor question and
5 you can see that certainly in terms of the sanction
6 that was finally placed on the firm, because that
7 was largely based upon misleading the DFSA, not
8 based upon this question of whether there was a
9 contract or not.

10 As to the DFSA's consideration of the evidence,
11 we again disagree, but obviously it is for the FMT
12 to form its own view. At the earlier stage we
13 concentrated obviously on the written documents and
14 we still say they are enough to show what happened,
15 but Mr Sallon -- I won't be saying that the
16 credibility of the witnesses is irrelevant, but you
17 have an opportunity that the DMC did not have to
18 hear them cross-examined live, so that will be a
19 matter for the panel to decide.

20 The second point that I would like to raise
21 with my learned friend's opening submission is the
22 repeated refrain that the DFSA is changing its case.
23 You can see that in Mr Cefaratti's witness statement
24 as well. It is suggested that the DFSA previously
25 alleged that Mr Dean had traded on interactive

1 11.48 brokers and the short point is that we have not
2 changed our case. Ever since at least the draft
3 preliminary notice we have relied upon the trading
4 period as defined, which is Exante trading and not
5 on Interactive Brokers. So if my learned friend
6 wants to repeat the allegation that we have changed
7 our case, and I will ask him to point to specific
8 documents that show the prior case that he says we
9 pushed. The same goes for other allegations that we
10 faced about changing our case. Broad allegations of
11 that type are not massively relevant, but if they
12 are relevant, then documents need to be pointed to.

13 The third point about my learned friend's
14 opening relates to paragraph 4.24, where my learned
15 friend's opening states that:

16 "On 26 April Mr Leedham sent an email to Ashley
17 confirming that Mr Dean and Mr Allsop had been at
18 Dalma's premises setting up a desk and trading all
19 week."

20 The reason I address this particular email is
21 it is quite a stark suggestion that there is some
22 email from Mr Leedham, who told us he was unaware of
23 the trading that there was in fact trading at that
24 point. So I followed through my learned friend's
25 footnote, which was to page B-369 to 371, and, well,

1 11.49 it is there for the Tribunal to read. We can't find
2 anything in there that says that Mr Dean and
3 Mr Allsop had been setting up a desk and trading all
4 week. It does say they have been training, so it
5 may be there is a mere typographical error there.
6 But if that email suggests that they were trading
7 all week, then that is again something that we would
8 ask for a bit more specificity on, because we can't
9 find the reference.

10 Those were the brief points I wanted to make on
11 my learned friend's oral opening. The rest of it, I
12 think are questions that can be perfectly adequately
13 dealt with in closing. We still need to have a few
14 housekeeping questions I suppose about closing and
15 sanction and whether the Tribunal would like to us
16 address sanction in closing. That can obviously be
17 discussed at a later point, but I just wanted to
18 raise it now so that it is there as a point to
19 discuss.

20 There may also be a suggestion in
21 Mr Cefaratti's witness evidence that he wants to
22 object to a fine on the basis he has limited
23 financial means and there is a question about
24 whether that is something that needs to be addressed
25 in cross-examination, which obviously can't wait

1 11.51 till after closing. So if that is a point that is
2 being raised, I would like to understand that
3 because it has not been pleaded and it is not part
4 of the list of issues. So that is something that I
5 would like clarity on, ideally by the end of today
6 so that I know what I am cross-examining on
7 tomorrow. Or whether the Tribunal wants to defer
8 all questions about things like mitigation,
9 financial means, to another day.

10 Those were my brief remarks, sir.

11 CHAIRMAN: Thank you for that. The position in relation
12 to sanction is this. That we would not normally
13 consider sanction at the same time as liability
14 because of the live possibilities, first that there
15 will be no liability and, therefore, no sanctions;
16 and, secondly, the degree of liability that we find
17 to be established is obviously relevant to the
18 sanction and we can't make a sensible attempt at
19 dealing with that unless there is clarity on what
20 the degree, if any, of contravention has been found
21 to be.

22 That then, this is all subject to any views
23 that Mr Sallon would like to express. However, we
24 don't want to trouble people to come to give
25 evidence twice, so if there is comparatively brief

1 11.52 evidence and cross-examination on those issues, it
2 is going to make more sense to do that now, rather
3 than trouble people to come back on a separate
4 occasion. But before dealing with that, I will hear
5 the views of Mr Sallon.

6 MR SALLON: I agree with the course that has been
7 suggested.

8 CHAIRMAN: In which case let's get on with the evidence.
9 I propose that we, as and when we call a witness, I
10 will invite them to affirm in the conventional way
11 and then we will just get on with that. But unless
12 anyone has got any objections to that. No? Okay,
13 on we go.

14 MR SALLON: May I just say this, in terms of timing? I
15 estimate, and I do so with diffidence obviously and
16 it very much depends on the witness himself or
17 herself, I estimate as far as Mr Dean's
18 cross-examination is concerned, that it will be in
19 the region of three and a half hours.

20 CHAIRMAN: Thank you for that. In terms of breaks, we
21 are not going to automatically go to this timetable
22 and since you will be doing the work today, as and
23 when -- we will break, within reason, when you think
24 it is convenient to do.

25 So let's have the first witness, please,

1 11.54 Mr Temple.

2 MR TEMPLE: Thank you. It is Mr Dean, who is now just
3 appearing.

4 LYLE BARRY DEAN called

5 CHAIRMAN: Good morning Mr Dean, welcome to the Tribunal,
6 thank you for coming to give evidence before us. I
7 am going to ask you to give an affirmation that the
8 evidence you give will be the truth. Is that fine
9 with you?

10 THE WITNESS: Good morning, yes that's fine with me.

11 CHAIRMAN: I would like you to repeat as follows. I do
12 solemnly and sincerely affirm.

13 THE WITNESS: I do solemnly and sincerely affirm.

14 CHAIRMAN: That the evidence I will give.

15 THE WITNESS: That the evidence I will give.

16 CHAIRMAN: Shall be the truth, the whole truth and
17 nothing but the truth?

18 THE WITNESS: Shall be the truth, the whole truth and
19 nothing but the truth.

20 CHAIRMAN: Thank you very much, you will now be asked a
21 few questions by Mr Temple and then rather more
22 questions by Mr Sallon.

23 Examination-in-chief by MR TEMPLE

24

25 Q. Good morning. Mr Dean, could you give the court

- 1 11.55 your full name please?
- 2 A. Lyle Barry Dean.
- 3 Q. I don't think you've got access to the bundle, but
- 4 hopefully you've got access to your witness
- 5 statements. It may be easier for Fatima to bring it
- 6 up on the screen. She already has it up. This is
- 7 the first witness statement dated 23 May 2022 and if
- 8 we turn to the final page of that, Fatima, which is
- 9 at page 161. There should be a signature. Is that
- 10 your signature Mr Dean?
- 11 A. Yes, that's my signature.
- 12 Q. And then there's a second witness statement, which
- 13 is dated 30 June 2022. That's at bundle C/20. Then
- 14 if we turn to the penultimate page of the bundle, so
- 15 that's 224, Fatima, we have got another signature.
- 16 Is that your signature Mr Dean?
- 17 A. Yes, that's my signature.
- 18 Q. So have you had an opportunity to read these witness
- 19 statements recently?
- 20 A. Yes.
- 21 Q. Is there anything you would like to correct in them?
- 22 A. No.
- 23 Q. The contents of those witness statements true to the
- 24 best of your knowledge and belief?
- 25 A. Yes, to the best of my knowledge.

1 11.56 MR TEMPLE: Then Mr Sallon will have some questions for
2 you.

3 Cross-examination by MR SALLON

4 Q. Mr Dean, can I just say for everybody's benefit that
5 I am going to put a narrative of events which is
6 based on documents. I am going to give a reference
7 to the documents but unless you have difficulty
8 recalling the event that I am describing, or you
9 want to look at the document and its contents, I am
10 not going to ask for that document to come up on the
11 screen because it is going to take too long. But I
12 don't want you to feel inhibited from asking to see
13 a document if you think you need it to refresh your
14 memory. Is that understood?

15 A. Yes, understood.

16 Q. Right. Your CV, if I may start with your
17 background, is at B/001 to 002. It covers your
18 experience between June 2014 and September 2016.
19 May we assume that what you said in it is accurate?

20 A. Yes. That's the CV I provided to Sulla Investments.

21 Q. Correct. From September 2009 until July 2012 you
22 were at Imperial College, you read biotechnology.
23 It is a pretty high ranging institution, Imperial
24 College, and you took a good degree; correct?

25 A. Yes.

1 11.58 Q. From May until September 2013, you had a trainee --
2 a period of training at Oak Futures, which is a prop
3 trading and electronic marketing making forum. Is
4 that right?

5 A. Yes, that was an unpaid internship.

6 Q. Yes, and then in 2014 you joined Elysium, which I am
7 going to refer to either as Elysium or EGDL?

8 A. Yes.

9 Q. We know that Sanjay Shah was the beneficial owner of
10 Elysium, right?

11 A. Yes.

12 Q. And while your work initially involved acting as
13 tutor to his children, you joined in order to
14 develop your career in financial services. Fair
15 enough?

16 A. Yes. I would say kind of, I guess, my
17 responsibilities were split between -- well, the
18 main responsibility was tutoring for the various
19 part at the beginning until I transferred into the
20 trading role with Nick.

21 Q. And so is it right that at the same time as tutoring
22 his children, you were also employed as a risk
23 analyst?

24 A. That was my job title according to the contract,
25 yes.

1 12.00 Q. And that's one of the jobs you performed?

2 A. Very briefly at the beginning, yes.

3 Q. And that made you responsible for building an
4 automated spreadsheet to reconcile proprietary
5 trading on behalf of Sanjay?

6 A. Yes, that's correct.

7 Q. You were given a small amount of Sanjay Shah's
8 personal money and a little later somebody by the
9 name of Mankash Jain was recruited to mentor you and
10 assist you in managing some of Mr Shah's personal
11 wealth, yes?

12 A. His role was to mentor me, but he wasn't recruited
13 because he was already part of the firm.

14 Q. All right, well, he was assigned to you in that
15 role, yes?

16 A. Yes.

17 Q. And that involved a form of prop trading FX exchange
18 of traded funds; correct?

19 A. Yes.

20 Q. Can we just -- do you mind if I just so that
21 everybody understands, we all understand each other
22 as far as terms are concerned, prop, or proprietary
23 trading refers to trading by a financial firm or a
24 commercial bank which invests for and chooses to
25 profit from direct market gain, as opposed to

- 1 12.01 commission from clients?
- 2 A. Yes, that's correct.
- 3 Q. And it involves the trading of stocks, bonds,
4 commodities and other instruments; yes?
- 5 A. Yes, that is correct.
- 6 Q. It can involve FX trading, that is to say trading
7 certainly financial derivative instruments in the
8 foreign exchange market. It can involve futures and
9 trading in US Treasury bills?
- 10 A. Yes, that's correct, yes.
- 11 Q. When prop trading, do you agree that each trader has
12 limited exposures which define the aggregate risk
13 that they are permitted to take?
- 14 A. Yes, that's correct. Could I just -- my headphones
15 are not plugged in. Could I quickly do that?
- 16 Q. Of course, do let us know.
- 17 A. Sorry, it was set up.
- 18 Q. Do you want me to repeat anything?
- 19 A. Just one second. Sorry about this. Yes, could you
20 repeat that?
- 21 Q. Of course. I was asking you when prop trading,
22 whether you can confirm that each trader has limit
23 exposures which define the aggregate risk that they
24 can take?
- 25 A. Yes, that is correct.

1 12.03 Q. Cash held from time to time with brokers allows the
2 trader to trade against those limits?

3 A. Yes, against margin, I guess the term would be.

4 Q. All right. Unlike prop trading that's carried out
5 on a fund, where assets under management enjoy
6 limited liability, prop trading exposes all assets
7 to risk, doesn't it?

8 A. Yes.

9 Q. You learned, and for the record it's B/0049, that in
10 early March 2015, Sanjay was looking to transfer
11 Elysium on to a regulatory platform correct?

12 A. Yes, he was looking to transfer -- or start a fund I
13 guess the word would be to start a fund, in a
14 different venue.

15 Q. All right, and it transpired that there was a
16 suggested link-up with Howard Leedham at Dalma, yes?

17 A. Yes.

18 Q. And document B/047, Sanjay was interested in having
19 his guise as employees at Dalma Capital?

20 A. Yes, that's correct.

21 Q. And Sanjay told you this, did he?

22 A. To the best of my knowledge, there were
23 conversations with Sanjay around this subject, but I
24 can't remember the specifics.

25 Q. You got on well with Sanjay?

1 12.05 A. Yes, until I guess the -- until my termination.

2 Q. Yes. I wasn't including the events of June 2016,
3 but we will come to that in due course. But
4 certainly in 2015, and the first few months of 2016,
5 would you describe your relationship with Sanjay as
6 good, yes?

7 A. Yes, I guess after Nick joined, like I didn't really
8 interact with Sanjay as much because there was kind
9 of more --

10 Q. All right, but did you continue to interact with him
11 from time to time?

12 A. Yes.

13 Q. You felt free to talk to him and explain if you were
14 having problems or anything like that? No?

15 A. Again, since Nick joined I guess there was limited
16 kind of exposure to Sanjay and so I would kind of --

17 Q. All right, but you had access to him if there were
18 problems, didn't you?

19 A. Yes.

20 Q. You could always go and see him, right?

21 A. Yes.

22 Q. You told the DFSA, I think, in your interview, that
23 in March 2015 Sanjay asked you and Mr Jain to find a
24 more structured way to carry out trading, such as
25 through a fund?

1 12.06 A. Yes.

2 Q. And that you were tasked to meet with fund managers
3 to discuss setting up a new fund. Is that correct?

4 A. Yes, I met with one fund manager. I can't remember
5 the exact fund manager but it was in the DIFC.

6 Q. Right. Well, there was a meeting which Mr Jain
7 didn't attend because he didn't want to be involved
8 in a fund but you did. Can you remember saying that
9 to the DFSA in the course of your witness statement?

10 A. I can't recall that exactly.

11 Q. Well, for reference, it is the first witness
12 statement, paragraph 21, and it can be found at
13 C/114. There was also a discussion, can you help me
14 and confirm, that you might be one of the guys to
15 transfer to Dalma to trade once the fund had
16 actually been set up; yes?

17 A. Yes.

18 Q. Do you agree that you wouldn't have been asked to
19 meet fund managers in March 2015 unless Mr Shah, at
20 least, considered you not only as somebody with
21 strong trading ideas, but as somebody who was
22 capable of trading on the fund, and also of trading
23 on it profitably? Would you agree?

24 A. On that one specifically, I would say I'm not -- was
25 privy to, I guess, Sanjay Shah's reasoning of why I

1 12.08 was on the fund. I would like to believe that it
2 was because I was a good trader or an experienced
3 trader at the time, but again, looking back, I
4 probably didn't have the experience to be in that
5 position, so I would say yes, but that was my
6 thinking at the time. But looking back, I
7 wouldn't -- I wouldn't think that decision was made
8 about moving me specifically. It was probably more
9 around the internals of being able to move money
10 into Dalma Capital via one of his funds, and I feel
11 like at that point I probably was an individual who
12 was being used as almost a lackey in a sense.

13 Q. Sorry, you were being presented at this meeting as
14 somebody with strong trading ideas, would that be
15 fair?

16 A. Yes I had strong trading ideas, but again as I said
17 before probably lacked the experience.

18 Q. And I am going to suggest that you were presented as
19 somebody who was capable --

20 CHAIRMAN: Mr Sallon, you may not have heard but the
21 witness had not completed his answer.

22 MR SALLON: I didn't hear that and I beg his pardon.
23 Sorry, Mr Dean, if you haven't completed what you
24 were saying, would you like to complete it.

25 A. Yes, I was saying I had strong trading ideas and as

1 12.10 you kind of say, I guess I could describe myself as
2 a smart intelligent person, but at that point I
3 imagine I lacked -- well looking back, I lacked the
4 experience of trading in terms of risk management to
5 be in that position to have those discussions. Even
6 though I had those discussions, I would say looking
7 back, I was inexperienced to have those discussions
8 at the time.

9 Q. But that's how you were being presented by Mr Shah?

10 A. Yes I was, yes.

11 Q. As somebody who was capable of trading on a fund?

12 A. Yes.

13 Q. Right, and of trading profitably on a fund?

14 A. Yes.

15 Q. And did you ever say to Mr Shah, "You know
16 Sanjay" -- I don't know if you called him Sanjay --
17 "I think your hopes for me are a little exaggerated
18 or unrealistic. I really don't think I would be
19 capable of trading on a fund." Did you ever say
20 that?

21 A. At that time I wasn't really aware -- or I wasn't
22 self-aware that that was unrealistic and obviously
23 so at the time I didn't say that.

24 Q. So in April 2015, and the reference here is B/051,
25 you were introduced to Mr Leedham as a possible

- 1 12.11 candidate?
- 2 A. Yes.
- 3 Q. And a meeting was set up, wasn't it?
- 4 A. Yes.
- 5 Q. On 28 April?
- 6 A. I can't recall the exact date, but there was a
- 7 meeting in the DIFC with myself and Howard Leedham.
- 8 Q. Thank you very much. On 28 April 2015 you went to
- 9 Dalma's offices, you met Howard Leedham, and you met
- 10 a couple of the traders, one of whom was Ryan
- 11 Mahoney. Do you remember that?
- 12 A. I remember Ryan and Elliot, but I can't remember
- 13 which person was which but I do remember meeting
- 14 them.
- 15 Q. Don't worry about that. But you hadn't yet met
- 16 Zach, I am going to call him Zach because it is
- 17 easier than repeating, Mr Cefaratti, but he wasn't
- 18 there at that time was he, you didn't meet him
- 19 till --
- 20 A. I can't recall if he was there or not or the exact
- 21 date I met Zachary or was introduced to Zachary.
- 22 Q. Did you communicate again with Mr Leedham again in
- 23 August to discuss being onboarded in a portfolio
- 24 manager role. And I am inviting anyone who wants to
- 25 look at it at B/098?

1 12.13 A. Could you show that on the screen, please?

2 Q. Yes, B/098:

3 "Hi Lyle, I just wanted to touch base with you
4 after the summer doldrums to see how you're going
5 and to check the possible timelines of onboarding
6 you. I will check in with Sanjay on this and some
7 other stuff."

8 A. Yes, and I obviously forwarded that to Sanjay.

9 Q. The fund which was actually under discussion was to
10 be known as the Dalma Futures Fund. Is that right?

11 A. Yes.

12 Q. And in May 2015 your business card reflects a change
13 in role because it describes you as an energy
14 analyst?

15 A. Yes, but that was -- I was never, I guess, an energy
16 analyst per se. I went to a conference on oil, and
17 I thought at the time it would be a good idea
18 because I didn't have the job title as a trader
19 because obviously I was assisting Mankash Jain. So
20 to kind of network, it made sense to have a job
21 title, like a business card energy analyst, but that
22 was not --

23 Q. You created, I mean was it at your instigation that
24 the card was created?

25 A. With discussion with Sanjay Shah, yes.

1 12.14 Q. And did you say to Sanjay, "I'm not really an energy
2 analyst but I think in order to network, I need a
3 card." Was that a fair way of putting it?

4 A. No, I think actually, on -- I did have, the trading
5 I was interested in was with oil and WTI and
6 obviously those stuff and it made, I guess,
7 discussion with him and it made sense just to have
8 that business card for that conference, and maybe
9 obviously that business card kind of lasted. But
10 there was -- I guess that's a kind of the thing
11 inside Elysium Global Dubai, my contract since I
12 joint was always risk analyst so you know, the
13 contract was never amended if that made sense, and
14 in a sense, the job titles became quite fluid with
15 Sanjay Shah because the nature of my role of kind of
16 helping out in different parts and also, you know,
17 tutoring as well. I didn't have a business card
18 that said "tutor", for example.

19 Q. By June 2015, Mr Jain had ceased to mentor you, I
20 think. Is that right?

21 A. I think it was around that time, yes.

22 Q. And in October 2015 Nick Allsop joined Elysium as a
23 senior trader. Is that right?

24 A. Yes.

25 Q. And you changed your business card to trader;

1 12.16 correct?

2 A. Yes.

3 Q. Was that your initiative, or did that accurately
4 describe what you did and what your experience was?

5 A. I think at that time it was -- I can't recall if it
6 was exactly my initiative, but it would have been
7 mine and Nick's, I imagine. I would say that
8 actually --

9 Q. Was it accurate, were you a trader?

10 A. When Nick joined, I guess yes, I was a trader when
11 Nick joined, because -- yes.

12 Q. And you wouldn't have knowingly collaborated in
13 creating a card which described you as a trader
14 unless you were capable of trading, would you?

15 A. I would have, because that was my role at the time
16 and I was involved in trading, that accurately
17 reflected, I guess, my role. I wasn't the one who
18 printed the business cards, it was obviously, you
19 know, up to Nick and Sanjay to assign what they
20 thought was the correct role.

21 Q. Nick I think became your line manager responsible
22 for supervising you?

23 A. Yes.

24 Q. And he remained your line manager until you left
25 Elysium?

1 12.17 A. Yes.

2 Q. In June of 16, yes?

3 A. Yes, yes.

4 Q. And you reported to him?

5 A. Yes.

6 Q. And he reported to Sanjay?

7 A. Yes.

8 Q. And you started to prop trade in earnest, didn't
9 you?

10 A. Yes, myself and Nick were given funds to trade I
11 think from November or December 2015.

12 Q. I just want you to help me with a concept of a
13 futures trade for a moment. A futures trade, I
14 think, is a trade based on a prediction about the
15 price of an asset some time in the future, and when
16 placing the trade, the trader is going to have
17 regard to a variety of factors. Would you agree
18 with that?

19 A. Yes.

20 Q. And some of factors which determine a trade of that
21 kind are trends, political situations. When trading
22 bonds, it's very important to know what's happening
23 in the world, isn't it?

24 A. Yes. No, I agree.

25 Q. And when trading oil and gas, it's important to make

1 12.18 predictions about -- broad predictions obviously,
2 about the weather and certain cycles which can add
3 or decrease the value of a particular trade. Would
4 you agree?

5 A. Yes.

6 Q. In other words, you've got to be pretty switched on
7 about what's going on around you and what can affect
8 price, because it's a background from which a trader
9 can make more reliable predictions about price
10 movement and so on?

11 A. I would agree, but I would say that that is only one
12 of the angles of trading. Obviously you've got to
13 know what's going on in the world and you've got to
14 be able to predict that, but the other part is risk
15 management and that's the core part, and I think
16 there's a famous quote by one of the -- I think Paul
17 Krugman said that traders have predicted recessions
18 9 out of 10 times, which is saying you can always
19 predict an event but obviously maybe it won't happen
20 and obviously from a trading perspective you have to
21 be able to have the experience to manage a risk.

22 Q. I don't think in the current circumstances
23 politically I am going to ask you whether we are
24 heading for a recession or not, so I am going to
25 relieve you of that responsibility. But could I

1 12.20 just ask you this. A calendar spread is no more
2 than a prediction about relative potential
3 differences in price at a future point. Do you
4 agree?

5 A. Yes.

6 Q. They are not capable of being interchanged without
7 actually changing the substance of the trade. In
8 other words, they are not exchangeable, correct?

9 A. I would say yes, but it depends on what you are
10 trying to trade. So if you are trading specific
11 months, so if you think something. So for example
12 WTI I will give you an example with, so it is mainly
13 based on pipelines and flow so if you are predicting
14 for example a refinery is going to be shut down in
15 October, then it makes sense. Whereas if you are
16 trading the curve and there's like a backwardation
17 curve or a future curve, then you can basically
18 trade any months given there's enough difference
19 between them, not specific months.

20 Q. Do you agree that the expiry month is a defining
21 feature of a futures trade?

22 A. Yes.

23 Q. And do you agree that there can be significant price
24 differences in single futures contracts between
25 expiry months, which means that one can't be freely

1 12.21 substituted for the other?

2 A. Yes, you would, I guess you would not like to
3 trade -- you would not trade an expiry month for
4 that particular reason.

5 Q. Would you also agree that the specific expiry month
6 selected is even more critical when it comes to
7 calendar spread? It means that one expiry month
8 can't be freely substituted for another?

9 A. Sorry, when you are talking about expiry month, are
10 you talking about the near expiry month or are you
11 talking about in the future?

12 Q. I am talking about the near expiry month?

13 A. So if you are talking about the expiry month, for
14 example September, then yes the difference between
15 September now and October now, there is a
16 significant difference, but if you are talking about
17 December now and January now, there's not -- you
18 know, there's less of a difference.

19 Q. Thank you very much for that, Mr Dean. I am going
20 to turn to your relationship with Nick Allsop.
21 Would you agree that you and Nick developed a close
22 working relationship?

23 A. While I was working at Elysium Global and Nick was
24 my line manager, I developed a rapport with him,
25 which I did not maintain after I left.

1 12.23 Q. I'm talking about -- we are interested at the moment
2 in the relevant period in particular. That is to
3 say, the end of March 2016 right the way through to
4 shortly before your departure in June?

5 A. Yes, I guess --

6 Q. You had a close working relationship, do you agree?

7 A. I would say yes, but I was in a kind of weird
8 position because obviously he was my line manager
9 and I guess I didn't fully trust Nick, in a sense.

10 Q. You didn't trust him? What was it about him that
11 you didn't trust?

12 A. Well I guess it's in my statement the fact that
13 obviously like he kind of took my gains and losses
14 and packaged them up, in a sense.

15 Q. What, pretended they were his, do you mean?

16 A. Yes, it wasn't fully transparent, I guess, around
17 the -- yes, the discussions and I guess that's when
18 it comes to my discussions with Sanjay Shah, he was
19 almost -- he was my line manager so once he joined
20 there was a kind of essentially a block to that kind
21 of free flowing conversation.

22 Q. Did he seek to take credit for trades that you
23 placed?

24 A. Yes.

25 Q. And did he seek to make profit from trades that you

1 12.24 placed?

2 A. When you define "make profit", what do you define it
3 as?

4 Q. Did he attempt to earn commission from trades which
5 you had placed.

6 A. Yes, when I would have losses he would describe them
7 as my losses. When I had wins, he would describe
8 them as the desk's profit for P&L.

9 Q. How long did that go on for during this period? We
10 are looking at towards the end of 2015 to June 2016,
11 in which Nick was manifesting this particular
12 character trait? How long did this go on for?

13 A. I think at first it started well. Obviously I was
14 looking to him as a mentor. He racked up some
15 losses and then I think by February, mid-February or
16 end of February 2016, he lost 500,000 of the --

17 Q. I am coming on to that now. Whereas, you had made a
18 gain. We will look at that in a moment. But would
19 you agree, so far as Sanjay was concerned and so far
20 as Elysium was concerned, you were regarded as
21 knowledgeable, yes?

22 A. Yes, I guess they thought I knew or I understood, in
23 a sense, yes -- I could make ideas about the market
24 and place those trades.

25 Q. A keen market observer?

1 12.26 A. Yes.

2 Q. Somebody who was bright?

3 A. Yes.

4 Q. And I suggest that while you were at Elysium, you
5 developed and enjoyed considerable success as a
6 trader in your own right, didn't you?

7 A. I had some bad days but yes, I overall, I guess at
8 Elysium it was positive.

9 Q. If it's any reassurance for you to know, we all have
10 bad days. Nick recognised your abilities, didn't
11 he, and encouraged you? As a line manager he was
12 pretty encouraging, wasn't he?

13 A. Yes, I guess when I was winning profits, making
14 profits.

15 Q. Right. He endorsed your trading decisions and
16 sometimes he adopted them himself?

17 A. Yes, though I guess around the losses, he never
18 really had any comments.

19 Q. If he gave you advice or directed you to do
20 something or not to do something, did you follow his
21 advice and direction?

22 A. Yes.

23 Q. Do you agree that whilst you were working for
24 Elysium, you were authorised by Nick actually to
25 trade independently?

1 12.27 A. Define "trade independently".

2 Q. Well, do you remember that in November or December
3 of 2015, you and Nick were each given EUR 1 million,
4 enabling you independently to carry out trading for
5 Sanjay Shah with a stop loss of EUR 500,000? That
6 is to say that if you lost 500,000, you had to stop
7 trading?

8 A. At the beginning it was 250 and then it went to I
9 think it was increased to 500 later on, but yes --
10 sorry, just yes, I was -- well, in a sense, I was
11 independently trading because I was given those
12 limits, but obviously I would be checking in with
13 Nick every day in terms of my profit and losses and
14 so obviously, for example, if I had lost, you know,
15 50 per cent of that in one day, I'm sure he would
16 have had a lot of questions around that. So in a
17 sense, yes, I was independent, but in a sense no as
18 well, if that's --

19 Q. As it transpires, Mr Dean, in November or December
20 you traded those funds and made between 360,000 and
21 400,000 Euros in profit; correct?

22 A. Yes.

23 Q. Whereas, Nick lost about EUR 500,000?

24 A. Yes.

25 Q. Which meant that Nick's stop loss had been reached

1 12.29 and the result was that both you and Nick were told
2 to stop trading?

3 A. Yes.

4 Q. What seems to have happened is that you had
5 outperformed Nick during this period by
6 approximately EUR 873000?

7 A. Yes.

8 Q. And would that have surprised you or did it surprise
9 you given Nick's previous experience and your
10 inexperience, as you claim it to be?

11 A. Yes, it did surprise me. I'll be honest, as soon as
12 I saw Nick put the last trade on, which was I think
13 he put all his last money on the euro to go below
14 parity -- this was obviously 2016 and the euro was
15 at 1.15 or 1.20. He bought some options around that
16 and obviously they never expired because it never
17 went near that level. And I myself I was, yes, I
18 was confused because obviously he was my senior line
19 manager who was there to mentor me and I guess guide
20 me in trading and he, yes, he wasn't able to, I
21 guess -- from what I would see at the time he wasn't
22 able to effectively trade himself.

23 Q. Whereas, you were?

24 A. I would say I was effectively trading, but then the
25 flipside of that was I had made those profits, but

1 12.31 there was a lot of risk and correlation in terms of
2 the market was going up and I think at that time
3 what I really needed was a mentor who could teach me
4 how to properly risk manage. I had the ideas, but
5 being able to understand, you know, you might be
6 making profits now and lots of profits, but
7 obviously if the assets were correlated and it goes
8 to the flipside, then it would have been great to
9 have a mentor who would have been able to guide me
10 on that essentially.

11 Q. I suppose all traders are exposed to that sort of
12 fluctuation and most traders wish they had a mentor
13 from time to time. Fair point?

14 A. Well, I guess you could say that with any -- with
15 any -- kind of anything you do, right? There's
16 always somebody who could help you, but I think
17 specific for this if you look back at those trades
18 they were all highly correlated, and looking back
19 now, in my opinion, I don't think that was an
20 effective risk management by myself and obviously
21 again, if ideally Nick would have been there as my
22 mentor and line manager to coach me --

23 Q. It must have helped you immensely with your
24 self-confidence though to have made a profit of that
25 kind, whereas your mentor had made a loss. It must

1 12.32 have boosted your confidence, would you not say?

2 A. Yes I guess it would have.

3 Q. By late December 2015 and March 2016, can you tell
4 us whether Elysium had accounts at any of the
5 following entities? ADS Securities.

6 A. Yes it had. I was trading at ADS Securities.

7 Q. Interactive Brokers?

8 A. To my recollection, I don't think so.

9 Q. Are you sure that you weren't live trading on
10 Interactive Brokers whilst at Elysium?

11 A. As in Elysium account owned by Elysium?

12 Q. Yes?

13 A. Or I traded at Interactive Brokers?

14 Q. Interactive Brokers at Elysium, in late December 15
15 to March 16.

16 A. Do you have a bundle for this?

17 Q. I'm just asking you the question for the moment?

18 A. I can't recall.

19 Q. Is there any chance that when you told the DFSA that
20 you conducted trades on Interactive Brokers whilst
21 you were at Dalma, as it were, that you were
22 confusing your experience there with your experience
23 of trading --

24 MR TEMPLE: I am sorry to interrupt, but if it was
25 suggested that something was said to the DFSA, I

1 12.34 think it should be brought up.

2 MR SALLON: I will come back with a reference to that.

3 Is it -- did you ever tell the DFSA that you were
4 live trading on Interactive Brokers.

5 A. Yes, in a statement, my first statement I said, and
6 I guess if you could bring it up, that I was live
7 trading in Interactive Brokers. I would like to add
8 that this was almost six years ago and obviously
9 that statement that I gave at the time I had a
10 better recollection of events, because that was two
11 years after the fact, versus now which has been six
12 years. So obviously in my second statement I cannot
13 recall exactly around what the -- I remember
14 interacting with Interactive Brokers in Elysium, I
15 remember placing some trades. I don't remember the
16 exact events because it's very hazy. But to the
17 best of my knowledge I do not think I traded with
18 Interactive Brokers for Elysium Global Dubai.

19 Q. I'm just wondering whether there is a possibility
20 that in telling or making a statement about trading
21 on Interactive Brokers originally, whilst at Dalma,
22 there's a possibility that you got confused with
23 potential trading on the same platform whilst you
24 were at Elysium, for Elysium?

25 A. I do not think that's possible.

1 12.35 Q. Anyway, you were to learn that Dalma was going to
2 lose one of its portfolio managers in December 2015.
3 Is that right?

4 A. Yes, he had already, I think at that point, yes, I
5 was going to learn or I had learnt at that time they
6 had lost a portfolio manager.

7 Q. And in January 2016, Mr Leedham suggested a meeting
8 between yourself and the outgoing portfolio manager
9 for Dalma Capital Management. That's Ryan Mahoney,
10 yes?

11 A. I can't recall the exact meeting but --

12 Q. You did meet him?

13 A. I imagine so.

14 Q. And he, at that meeting, tested your grasp of
15 trading strategies, which a fund like the Dalma
16 United Return Fund would typically use, do you
17 remember that?

18 A. I do not recall the specifics of that but I assume
19 what he said is, is in line, I guess, correct.

20 Q. Is correct? Okay. And if Mr Mahoney assessed you
21 as being highly knowledgeable about the financial
22 markets, with a strong understanding of
23 macroeconomic trends, and concluded that you had a
24 strong track record which made you suitable to trade
25 at Dalma, would that have surprised you?

1 12.37 A. I would ask what track record was he referencing at
2 that point because I would have not had a strong
3 track record because the track record was derived
4 from obviously the 367 or 383000 profit that I took
5 in a couple of months afterwards.

6 Q. Well, his impression, I'm going to suggest to you,
7 was based on what you told him. Do you agree?

8 A. I can't recall exactly what I told him.

9 Q. In your CV, to which I have already referred, you
10 asserted that whilst at Elysium you traded in a
11 variety of products on macro fundamental basis
12 through spot, future and option contracts, focusing
13 on G10 currencies in which you would enter positions
14 based on monetary and interest rate policy,
15 divergence, equity future, indices and WTI calendar
16 spreads?

17 A. Yes, that is correct.

18 Q. That's what you put in the CV. And you also claimed
19 that you had acquired expertise in quantitative
20 trading and computer programming, didn't you?

21 A. I definitely had acquired expertise in obviously
22 software engineering. I guess with quantitative,
23 yes, I had experience, but I probably, looking back,
24 I wouldn't say I was an expert at that time but at
25 the time obviously I thought that.

1 12.39 Q. Can I ask you now to -- I am going to ask for a
2 document to come up on the screen so you can see it.
3 It's a document headed "FX Trading Limits Lyle Dean"
4 and it's at B/137. Do you recall this document?

5 A. So the limit is 250, yes, so I would have signed one
6 of these at the beginning of trading with Nick
7 because he obviously created this as a contract
8 between us. Again it was the first time obviously I
9 had never seen one of these at that time because I
10 had never had the experience of I guess trading at
11 like this kind of money I guess at any other place.
12 And then I guess after a while, when I made some of
13 the profits, so there was another one that --

14 Q. First of all, can I just ask you if the signature
15 that appears at the bottom of the document, if we go
16 to the bottom of the document, is your signature?

17 A. Yes.

18 Q. Thank you. I want to understand what the document
19 means and if we can go back up to the top, to where
20 it says "FX Trading Limits".

21 A. Yes.

22 Q. This document was an agreement between you and Nick
23 which he authorised you within certain financial
24 limits to carry out significant trade, do you agree?

25 A. Yes, so this the first one of two. So there's

1 12.41 another one where the notional limits which you see
2 EUR 10 million here would go to EUR 20 million.

3 Q. So this was the first and the second document
4 exceeded the limit and went up by another 10
5 million. Is that right?

6 A. Yes, to the best of my knowledge that's correct.

7 Q. For our purposes let's just look at this document
8 and try and understand it. The document permitted
9 you to trade off premises in and out of normal
10 office hours, save during periods of leave. So it
11 meant that he, Nick, entrusted you to trade
12 independently and without his direct supervision.
13 Yes?

14 A. I don't think the document states that, the document
15 states the limits I guess.

16 Q. If you would like to go down the page, please.
17 Sorry if we can scroll --

18 A. Sorry.

19 Q. I'm not sure if we should be scrolling up or down.
20 You were authorised to trade off limits and on or
21 off normal office hours in all the above products
22 except during period of leave?

23 A. Yes, if the document says that and I signed it, then
24 that is correct.

25 Q. The subsequent one that you signed, where the limits

1 12.42 were increased, you also in the same way were
2 permitted to trade, as it were, independently and
3 off premises?

4 A. I imagine it was just again the same paper with
5 different limits, so yes.

6 Q. I would like your help, please, to understand
7 precisely what you were permitted to do under the
8 terms of this agreement. Look first of all at, if
9 we can just go down -- or up I'm not quite sure
10 which way we go -- to the heading "Spot FX". That's
11 it. So we understand, FX trading is a form of prop
12 trading, yes?

13 A. Yes.

14 Q. So there's no mystery about it. It's simply an
15 agreement to purchase or sell one currency with or
16 for another currency; for example, EUR rose to US
17 dollars or something of that sort?

18 A. Yes.

19 Q. And spot trading, as I think we have already
20 established, just means a sale or purchase at the
21 current price, as opposed to future trading, or
22 forward trading, where one agrees to buy or sell
23 currency at a future price?

24 A. Yes.

25 Q. And you were authorised, in this agreement, to prop

1 12.43 trade 10 foreign exchange currencies against the US
2 dollar or any cross currency pair with a limit of
3 EUR 10 million equivalent?

4 A. Yes.

5 Q. The words of the agreement, as I read it and I would
6 like your help about it, are somewhat ambiguous
7 here, because one interpretation suggests a limit of
8 EUR 10 million applied to your trade on all of the
9 listed currencies or an individual limit on each of
10 the listed currencies. If the latter, then it would
11 give you EUR 100 million of notional exposure. Can
12 you help me as to what the limit was precisely?

13 A. To the best of my recollection, I would assume that,
14 obviously again because we are trading on margin
15 here, that it would have been the -- well I'm not
16 actually, I'm not fully sure, to be honest.

17 Q. So are you saying that it could have actually
18 entitled you to trading which would have exposed you
19 notionally to EUR 100 million?

20 A. I think, again, the main limit was the margin and to
21 look at this, I would have to do the calculations
22 of, like, how much margin -- like from the top of my
23 head I would have to do how much margin is required
24 for each trade to say, because essentially, you
25 know, that limits -- but yes, I can't exactly recall

1 12.45 it, again, because it's been six years and I'm not
2 involved in the financial industry any more.

3 Q. Fair enough. An FX option or a FOREX, that's the
4 next thing I want to deal with, is a derivative or
5 contract that gives the buyer the right, but not the
6 obligation, to buy certain currency at a specified
7 exchange rate. That's known as a strike price, I
8 think. Is that right?

9 A. Yes, that's correct.

10 Q. And it's an exchange rate on or before a specific
11 date. That's to say before the option actually
12 expires; yes?

13 A. Yes.

14 Q. And for this right a premium is paid to the seller?

15 A. Yes.

16 Q. And you were being authorised, as I read it, to
17 trade on FX currencies that were listed above (we
18 can see the abbreviated currencies), with an annual
19 premium paid limit of EUR 250,000; yes?

20 A. Yes.

21 Q. And the option contract sizes are described as
22 "plain vanilla long only"?

23 A. Yes.

24 Q. And "plain vanilla" meant basic standard options, as
25 opposed to those with more complex features?

1 12.47 A. Yes.

2 Q. And your agreement entitled you to buy plain vanilla
3 options and restricted you to trade long only
4 options. That is to say, options in which you had
5 purchased the right to buy the currency in the
6 future at the strike price, yes?

7 A. Yes.

8 Q. If the price wasn't realised, then the option
9 expired and your loss is limited to the price that
10 was paid for the option?

11 A. Yes.

12 Q. And "long only" means that loss is limited simply to
13 the premium paid for the option?

14 A. Yes.

15 Q. And your premiums, that is to say the cost of the
16 options, were limited to EUR 250,000 a year?

17 A. I guess the maximum -- I'm not really sure how to
18 interpret that premium paid year limit. It could
19 mean that the limit I have in total at the moment or
20 that kind of makes more sense rather than limit for
21 the whole year if that makes sense.

22 Q. Very well. Fair enough. But I suppose what I am
23 really asking you is this. Would you agree that FX
24 options are quite complex, sophisticated
25 derivatives?

1 12.48 A. I think once you have done the -- yes I guess in a
2 sense they are not, they are --

3 Q. Not, once you are familiar with them?

4 A. Yes.

5 Q. And familiar with trading them, they become less
6 difficult a concept, but to the uninitiated, they
7 are complex, sophisticated derivatives, are they
8 not?

9 A. Yes.

10 Q. And so trading them successfully requires not just
11 speculation, but it requires degree of skill and in
12 depth knowledge, yes?

13 A. Yes.

14 Q. CFD S&P 500 3,000 loss is next entry I want to ask
15 you about. CFD stands for contract for difference,
16 am I right?

17 A. Yes.

18 Q. And it's an agreement between an investor and a CFD
19 broker to exchange the difference in the value of a
20 financial product, asset or security, between the
21 time the contract opens or closes; yes?

22 A. Yes.

23 Q. And it stipulates that the buyer must pay the seller
24 the difference between the current value of the
25 asset and its value at the time of the contract?

1 12.49 A. Yes.

2 Q. And S&P 500 is a reference to the Standard & Poor's
3 USA 500 index?

4 A. Yes.

5 Q. We can go into that but again, successful trading in
6 that particular trade requires a degree of
7 experience as to whether or not the price of an
8 asset or a security will rise and fall. It's not
9 merely speculative, is it?

10 A. Yes.

11 Q. This agreement that we are looking at now restricted
12 you to contracts of a maximum position size of 3000
13 lots. That's to say 3000 units of contract for
14 difference?

15 A. Yes.

16 Q. And in a CFD transaction one's notional position
17 size is determined by the size of one's lots. In
18 other words, they are decided by the lot size, yes?

19 A. I guess for this specific one, like I think CFD is
20 slightly different because obviously you can -- the
21 notional size I guess yes, I can't recall the exact
22 notional size for S&P 500 contract but one lot would
23 equate to a unit of it.

24 Q. Is it fair to say that the position size is
25 determined by the lot size and the number of the

1 12.51 lots that you buy and sell?

2 A. Yes, so the lot size can differentiate between I
3 guess different providers or obviously if you go to
4 a future market then there's a kind of
5 standardisation in there. CFDs, I can't recall
6 exactly what the lot size was for this but yes,
7 there was a lot size and that would --

8 Q. I'm going to make a suggestion that the lot size in
9 February, March and April 2016 (that's to say the
10 S&P 500 lot size) was \$2,000?

11 A. I don't think, is that the lot size --

12 Q. Which amounted to USD 6 million?

13 A. Again without looking at, I guess brokers can
14 differentiate and, but again around CFDs, because
15 it's a CFD and that's run by a specific broker, it's
16 not on a futures market, I can't -- I won't be able
17 to say exactly or confirm that number without going
18 into and looking at it at the actual time.

19 Q. I am putting that to you. If you are not able to
20 confirm it, we may be able to do it by another
21 means. But if I am right about that that the lot
22 size was \$2,000, then 3000 lots amounted to 6
23 million dollars; correct?

24 A. If that's correct, then yes, but that doesn't
25 seem -- it doesn't seem plausible, I guess in a

1 12.53 sense, because -- yes, maybe it is. Maybe I guess I
2 have been out of this for quite long, I can remember
3 most of the stuff around the other assets, I can't
4 really remember much around the S&P 500.

5 Q. All right, can you confirm that the average USD/EUR
6 exchange rate, back then in February and March, was
7 about \$1.12 to the euro?

8 A. That sounds about right. Obviously you can confirm
9 that but that sounds about right.

10 Q. Can we just go to stop loss limits, which is the
11 entry at the bottom of the page, and scroll up a
12 bit. Thank you very much. A stop loss limit is
13 designed to limit the amount of loss that a trader
14 is prepared to take and in this context it refers to
15 the amount of losses that were allowed in a period
16 before you stopped trading. Yes?

17 A. Yes.

18 Q. Your agreement imposed a monthly stop loss limit of
19 Euros 250,000 and a yearly stop loss limit of EUR
20 500,000?

21 A. Yes.

22 Q. Which meant that if you lost EUR 250,000 within a
23 month, you had to halt trading until the next month
24 and if you lost 500,000 within a year, you had to
25 halt trading until the next year?

1 12.54 A. Yes.

2 Q. Now I just want to turn to the significance of the
3 entire agreement. The DFSA have shown you I think a
4 number of witness statements, is that right?

5 A. Yes.

6 Q. Which have been produced on our side. They are not
7 DFSA witnesses. They are witnesses from the
8 applicants. But I don't think the list of
9 statements that you saw included the first statement
10 of somebody by the name of Vladimir Maslyakov which
11 is dated 4 June and is to be found at C/063?

12 CHAIRMAN: Are you leaving this document now?

13 MR SALLON: I am just about to summarise what
14 Mr Maslyakov has to say and ask the witness if he
15 agrees with it.

16 CHAIRMAN: Okay, we will have a five-minute break after
17 that.

18 MR SALLON: Certainly, sir, of course. You won't know
19 this. Well, first of all, did you see his statement
20 at all?

21 A. I can't recall that name.

22 Q. Just to help you, he was the cofounder of the
23 digital broker, Exante. Does that ring a bell?

24 A. Oh yes, does that -- I think I did see the
25 cofounder, CTO, right?

1 12.56 Q. Who showed that to you?

2 A. I think it was DFSA.

3 Q. Who at the DFSA showed it to you?

4 A. I think it was part of the witness statements that I
5 replied to.

6 Q. But who showed it to you?

7 A. I can't --

8 Q. Was it Fiona?

9 A. Christopher, Fiona and, yes.

10 Q. Bill, or William?

11 A. I don't think anyone specifically showed it to me,
12 they e-mailed it to me.

13 Q. They emailed it to you?

14 A. Yes.

15 Q. Mr Maslyakov comments on the fact that you have spot
16 FX trading limits of EUR 10 million, exposure of up
17 to 3000 lots on S&P 500 CFD (contracts for
18 differences), and I have already suggested to you
19 that that could have equalled over \$6 million of
20 notional exposure; yes? He also points out that FX
21 options exposure based on premiums of 250,000 easily
22 have bought EUR 25 million exposure or more. I am
23 looking at C/072.

24 A. I guess with the option it depends -- a lot of the
25 options are priced on the time. So if you buy an

1 12.57 option in like five years it's very expensive. If
2 you buy it in a week, it's very cheap because it's
3 close to expiry. So obviously there's lots of
4 dependent factors on options, and you can't
5 specifically say an option equates to this much
6 because it fundamentally depends on the expiry time
7 of the option.

8 Q. Theoretically, based on an average USD/EUR exchange
9 rate which I have suggested is 1.12 to 1 Euro. The
10 aggregate notional theoretical exposure defined in
11 the limits within your agreement could easily have
12 amounted to as much as \$30 million if fully
13 utilised -- EUR 30 million I should say, if fully
14 utilised?

15 A. I guess --

16 Q. It wouldn't --

17 A. Theoretically I guess a legal person didn't put this
18 together and it's not very clear, as you said, from
19 this, like looking back --

20 Q. Looking at it now and putting what I have just put
21 to you, do you agree it is a theoretical
22 possibility?

23 A. I guess it is, yes. It is a theoretical
24 possibility.

25 Q. And Mr Maslyakov concluded that if one adds together

1 12.59 all the sub limits which apply to these instruments,
2 the proprietary trading limits could actually give
3 you, as I said, \$30 million of exposure. Now,
4 pausing there, that is what this document was
5 actually all about, as you helpfully explained to
6 us. I am going to leave that document now and I am
7 going to turn, after the break, to Sanjay Shah
8 again.

9 A. Can I add one more comment on this document? I
10 would say the main thing about this document is the
11 stop loss limits. So theoretically, you know, you
12 say it could be interpreted that I could trade 30
13 million on this. Would I have been allowed to do
14 that? No. As soon as I hit those stop loss limits,
15 that's the key thing and I guess as well it all
16 depends on amount of margin, because if there's not
17 margin in the accounts, then there would be no
18 ability to trade that kind of money.

19 MR SALLON: Thank you very much. Sir, would that be a
20 convenient moment?

21 CHAIRMAN: Yes, thank you very much. We will break for
22 five minutes and come back.

23 (1.00 pm)

24 (Break)

25 (1.08 pm)

1 13.08 CHAIRMAN: Are we ready to resume?

2 MR SALLON: We are. Can you hear me all right, sir?

3 CHAIRMAN: I see you fine.

4 MR SALLON: I see the witness. He has moved on the
5 screen. Hello Mr Dean.

6 A. Hello.

7 Q. I just want to ask you very quickly about this. I
8 think, as well as his interest in Elysium, Sanjay
9 Shah controlled a hedge fund company called Sulla
10 Capital; is that right?

11 A. Yes, that's correct.

12 Q. And I think during your time there, you traded on
13 the CFD account at his Sulla Capital Partners. I
14 can give you some email references if you want them?

15 A. Yes, that's correct.

16 Q. And do you have any reason to think that Sanjay
17 didn't regard you as competent and fully capable of
18 trading many instruments across various markets
19 within prescribed trading limits?

20 A. Obviously, until my termination, no.

21 Q. I will come on to the merits of your termination,
22 and the reasons given and so on, a bit later on.
23 But can we just have a look at some WhatsApp
24 messages between you and Nick between 3 February and
25 29 February 2016. They start at B/113, right the

- 1 13.09 way through to 118.
- 2 A. Could you show that?
- 3 Q. Yes. Can you see them all right? First of all, you
- 4 were in regular WhatsApp communication with Nick; is
- 5 that correct?
- 6 A. Yes.
- 7 Q. Did Nick also have your mobile telephone number?
- 8 A. Yes.
- 9 Q. Has your mobile phone number changed since you left
- 10 Elysium's employ in June 2016?
- 11 A. Yes. I think that I got a new mobile number around
- 12 September.
- 13 Q. You changed your mobile number when?
- 14 A. Around that period, around the end of that year. I
- 15 can't remember exactly when, but yes, I use a
- 16 different mobile number.
- 17 Q. Do you have -- or did you have at that time a
- 18 personal email address?
- 19 A. Yes.
- 20 Q. Unrelated to your work, a private email address?
- 21 A. Yes.
- 22 Q. And has that changed since you left Elysium?
- 23 A. I use the same email, but I also have another email
- 24 which I use more now.
- 25 Q. You have added to it but you haven't eliminated the

1 13.11 old one?

2 A. Yes.

3 Q. Would you agree that these WhatsApps between 3
4 February and 29 February demonstrate that you are
5 expressing informed views about the market?

6 A. Yes.

7 Q. That you are trading confidently?

8 A. Yes.

9 Q. That Nick was praising your performance?

10 A. Yes.

11 Q. Encouraging you to trade?

12 A. Yes.

13 Q. And treating you as an equal and also as a mate?

14 A. I would never say I felt like an equal but he was --

15 Q. Well he was certainly treating you like one, wasn't
16 he?

17 A. I think this was more of a, you know -- you know,
18 very bluntly, if you have a manager and that manager
19 is in charge of you, then obviously you like to make
20 sure, I guess, this relationship is kind of, I know
21 he is my superior, but yes, he is treating me
22 encouragingly, yes.

23 Q. He wasn't stand off-ish or officious, he was
24 friendly. He was someone you actually went drinking
25 with, wasn't he?

1 13.12 A. On occasion, but I would say a handful of times. It
2 wasn't often, and mostly with work events.

3 Q. Did you go to his house though and meet his wife and
4 his kids?

5 A. I went to his house once to get -- to essentially do
6 some paperwork. I can't remember what it was. I
7 went to his house was once and that was the only
8 time, it was essentially for work. It was a
9 friendly visit but again, like it wasn't a visit
10 where you --

11 Q. He had not only your work email, but he also had
12 your personal email address, didn't he?

13 A. I don't think he had my personal email. I can't
14 recall any messages from him on my personal email,
15 but I can't confirm that he doesn't have that.

16 Q. That he doesn't have what?

17 A. That he doesn't have -- sorry I can't confirm that
18 he doesn't have any email.

19 Q. You can't confirm that he does but you can't confirm
20 that he doesn't, is that right?

21 A. I don't know if he has my email. I have looked back
22 at my messages and I have never seen a message from
23 Nick on my personal email. I --

24 Q. Could you -- sorry I interrupted you, my fault.

25 A. I was I saying unless there's documentary evidence

1 13.13 of that, I can't recall receiving a personal email
2 from him.

3 Q. Could we go to B/114 on that document, please. It
4 is an entry at 14:27:47 on 12 February 2016. Do you
5 see that?

6 A. Which one, sorry, 14?

7 Q. 14:57:47.

8 A. Yes.

9 Q. It's the one that reads, from Nick Allsop:

10 "In which case we will need to fund IB right
11 away, correct?"

12 A. Yes.

13 Q. To which you replied "Our only option." Have you
14 got that?

15 A. Yes.

16 Q. That's a time when you were clearly working at
17 Elysium on the Elysium platforms. Is that right?

18 A. Yes.

19 Q. And that shows that you were trading on Interactive
20 Brokers, or capable of trading on Interactive
21 Brokers, whilst you were in the employ of Elysium?

22 A. Not to the best of my knowledge. I think this is --
23 if you read this, this is referencing essentially we
24 wanted to, I guess, move away from ADS and go to a
25 kind of bigger platform and essentially with. I

1 13.15 can't remember what the exact firm name was, but
2 they did a KYC on Sanjay Shah and they rejected the
3 application?

4 Q. Who did?

5 A. So I'm assuming that this is referencing that
6 application and I can't -- to the best of my
7 knowledge, I don't remember trading with Interactive
8 Brokers for Elysium Global or having an account with
9 Elysium Global.

10 Q. But in order to fund Interactive Brokers you would
11 need to have a professional relationship with them.
12 You couldn't just fund Interactive Brokers unless
13 you had a link with them, could you?

14 A. Yes, and again, like to the best of my knowledge, I
15 can't remember trading with Interactive Brokers at
16 Elysium Global. This says --

17 Q. If Nick said, "In which case we need to fund IB
18 right away, correct?" It means that he at least
19 understood that there was some sort of connection
20 enabling you to trade with Interactive Brokers.
21 That's what it means, isn't it?

22 A. Again to the best of my knowledge I'm not sure on
23 this one. I can't recall, but probably Nick --

24 Q. Just listen to the question. In order to fund IB
25 right away, you had to have -- I say "you", I meant

1 13.16 the company -- had to have some kind of link with
2 IB?

3 A. On this specific point, I'm not sure. Again I can't
4 recollect. I'm not sure if he is referencing to
5 fund IBA or he is referencing to fund IBA or he is
6 referencing to fund IBA in a sense we need to go on
7 and do a KYC credit account or maybe we only had
8 one --

9 Q. Creating a KYC credit account is completely
10 different from saying we need to fund IB. It means
11 we need to put IB in funds, doesn't it?

12 A. I guess yes, that's the interpretation you could
13 take.

14 Q. It is the only interpretation, I suggest.

15 A. I, again, because I can't exactly recall trading
16 with Interactive Brokers, I'm saying that on this
17 specific point, again because it's, I guess, a very
18 sporadic messaging there's a chance he is
19 referencing funding and with that sense he means
20 create an account with IB, but again I can't recall
21 exactly trading with Interactive Brokers so I'm
22 unsure and can't recall these messages so

23 Q. B/124, please. Same document, 124. You not only
24 were socialising and drinking together, but you were
25 even gambling together, weren't you? Do you

- 1 13.18 remember?
- 2 A. Which message?
- 3 Q. If you look at a WhatsApp message for 30 March?
- 4 A. Which specific message?
- 5 Q. It's the one that reads --
- 6 A. Oh, "Add the winnings from Saturday as well."
- 7 Q. Yes.
- 8 A. That was a reference to --
- 9 Q. "I expect you want you gratuity cash ASAP." You
- 10 write, "Haha of course, add the winnings from
- 11 Saturday as well." This is to your boss, Nick, "Add
- 12 the winnings from Saturday as well", and Nick says,
- 13 "Oh yes you had dhs 100 on California Chrome didn't
- 14 you", yes.
- 15 A. So he referenced it, yes. At this point we had a
- 16 work event where we went and watched the racehorses
- 17 at the Dubai race horsing stadium, I can't remember
- 18 the name. And I guess all of us in the box we did a
- 19 kind of like, you know, bet on horses and somebody
- 20 bets on them and somebody collects the money and I
- 21 put 100 on Chrome and won it. I think Nick was the
- 22 person who arranged the whole race horsing.
- 23 Q. He was effectively your bookie for this particular
- 24 race?
- 25 A. Will, yes, he was everyone's bookie, but kind of

1 13.19 socialising work event, like kind- -- he wasn't
2 William Hill, for example, he was just at an event.

3 Q. I'm not suggesting he was William Hill but he placed
4 your winning bet, it would appear, so he claimed, in
5 dirhams and not as you had expected him to do and
6 instructed him to do which was to place it in
7 pounds, right?

8 A. Yes, I can't, again can't recall this.

9 Q. Just have a look at it. If it was true he only paid
10 a fraction of your legitimate winnings. If he was
11 claiming that you told him to put on dirhams, when
12 you told him to put on pounds, then your winnings
13 would have been much smaller, wouldn't they?

14 A. It sounds like obviously I assume at that point we
15 probably had a few drinks and misinterpretation.

16 Q. He says this. Was he joking do you think, or was he
17 drunk? Or do you think this was another example of
18 him trying to muscle in on your profits?

19 A. I don't -- I can't --

20 Q. And rip you off?

21 A. -- say. I can't, obviously I can't attest to his
22 motivations at this point, but if I said that I put
23 it in pounds, I assumed that I put it in pounds. I
24 probably was a little bit confused when he disagreed
25 with that.

1 13.21 Q. Was Nick something of a gambler?

2 A. Yes.

3 Q. He loved the horses, didn't he?

4 A. Yes.

5 Q. And did he bet in the office from time to time?

6 A. Yes.

7 Q. He asked you for your gratuity, we can see there,
8 that entry at 12:52:08. Would this have been an end
9 of service benefit paid by the company you were
10 leaving, that is to say Elysium, on your departure
11 from the company?

12 A. I'm not sure what he references it, but he doesn't
13 reference a gratuity that I would have received from
14 leaving Elysium.

15 Q. What was this in respect of, "I expect you will want
16 your gratuity cash ASAP."

17 A. I'm not sure what he is referencing here. I think
18 it's more of a playful thing than a kind of gratuity
19 around leaving Elysium Global, which obviously I
20 never received because my contract. When I left I
21 was still at Elysium Global. If he would have
22 communicated that, I would expect something of that
23 nature to be over email.

24 Q. I want you to help me with a bank called the
25 Varengold bank. The Varengold bank was interested

1 13.22 in investing in a new fund which was going to be
2 managed by Dalma. That was the futures fund to
3 which we have already referred, yes?

4 A. Yes.

5 Q. And it was intended that you and Nick would manage
6 the Varengold fund, yes?

7 A. Yes.

8 Q. I say the Varengold fund, the Varengold assets
9 within which that was transferred?

10 A. The management account, yes.

11 Q. In March 2016 you, Nick and Sanjay all met with
12 directors of the Varengold bank with a view to the
13 bank investing in this fund?

14 A. Yes, we met them.

15 Q. And it's B/0146, if there's any question about it.
16 The fund was going to be based on a strategy, or
17 trade on a strategy that you and Nick were going to
18 create?

19 A. So yes, we did have that meeting and we obviously
20 met Varengold. At that meeting we prepared I think
21 a two-page document around the fund and effectively,
22 at the meeting, the Varengold directors essentially
23 laughed at how short the prospectus was. But
24 obviously, because Sanjay Shah, I think, was a
25 beneficial owner of Varengold, that went forward.

1 13.24 Q. Well, the discussion was that as much as \$150
2 million would be invested from the Varengold fund?

3 A. I can recall I --

4 Q. But in the event, you probably don't know this, it
5 doesn't matter, nothing like that actually was
6 invested.

7 A. It was my understanding, yes, it was my
8 understanding it would start off at 5 million. I
9 was never aware of 150 million unless there's
10 documentary evidence, I can't recall that.

11 Q. You can't recall if there was talk about investing
12 150 million, is that what you are saying?

13 A. Yes, I remember there being discussions around like
14 numbers around 5 million to begin with. But yes, I
15 can't recall.

16 Q. Do you agree that Elysium again would hardly have
17 introduced you the directors of the bank, which I
18 suggest was holding assets of the Shah family, if
19 they hadn't regarded you as somebody who was going
20 to transfer and be a competent trader on the fund
21 that you had helped to design?

22 A. No, I don't fully agree with that. I think -- I
23 think there were probably other -- I don't think the
24 full reason I myself and Nick were introduced to
25 Varengold. Obviously one of the reasons were around

1 13.25 trading but I don't think that was the full reason,
2 and there were other reasons I think around being
3 able to access, I assume, Varengold's money through
4 a managed account and leverage, I guess.

5 Q. The purpose of the meeting was to give investors or
6 to give the individuals who you were meeting, the
7 directors of the bank, confidence that a transfer to
8 a fund that you had created with Nick was a good
9 proposition?

10 A. Again I don't really feel I felt full confidence
11 with them when they laughed at how small the
12 prospectus was. Looking back in hindsight, it feels
13 like that meeting was just a formality and that
14 decision was already made.

15 Q. Did you rewrite the prospectus? Did you rewrite it?

16 A. No, I don't think we did that I recall.

17 Q. So the Dalma fund is classified or was classified as
18 a multifund investment company generating income by
19 investing in diversified portfolio of global indices
20 and that's 060 the implement to the offering, B-060,
21 it's the supplement to offering memorandum. That's
22 what I suggest it was doing, that's what its objects
23 were.

24 A. So you are suggesting that --

25 Q. It was a multifund investment company generating

1 13.27 income by investing in diversified portfolio global
2 indices. It's actually page 5 of the document
3 itself.

4 A. Can you repeat what you are suggesting?

5 Q. That it was classified as a multifund investment
6 company which generated income by investing in a
7 diversified portfolio of global indices, and other
8 things?

9 A. So are you referencing, sorry, are you referencing
10 the fund that we discussed with Varengold, or are
11 you referencing Dalma here?

12 Q. I am now talking about the DURF fund.

13 A. Okay, yes.

14 Q. Right. And in reality, the strategy that you had
15 created for the futures fund wasn't really very much
16 different to the sort of prop trading that you were
17 doing on DURF, if indeed you were doing prop trading
18 on DURF. Do you agree?

19 A. I guess if you could read this, it's based on
20 quantitative analysis and the trading we were doing
21 was based more on, I guess, macroeconomic and
22 fundamental analysis. I think essentially, yes,
23 sorry, essentially the instruments are the same. I
24 think, you know, obviously, you can interpret the
25 quantitative analysis differently. You know, as an

1 13.29 example, you know, my previous role, the role I took
2 after with Sulla Investments, they were a
3 quantitative analysis firm and they only moved their
4 positions in the market based on clear quantitative
5 signals. Obviously, with the proprietary strategy
6 we had, it was more kind of intuition and feel of
7 what the trader was feeling, or perception of the
8 market is. I guess that is the kind of thing there
9 you could probably argue, which may be slightly
10 different.

11 Q. Would you agree with me about this? That you had
12 had experience prop trading by March 2016, had you
13 not?

14 A. I had, yes, I had some experience with prop trading.

15 Q. And would you agree that, if anything, trading on
16 behalf of a fund in which prop trading is carried
17 out is not much different, is it?

18 A. No, I would wholly disagree on that one. I would
19 say, again, you know, given the experience I then
20 gained at Sulla Investments and understanding of
21 fund, obviously there's clear -- like for example I
22 had that written contract with Nick and there was a
23 clear kind of, there was a clear I guess boundaries,
24 whereas a fund is essentially a regulated entity and
25 there is I guess much more stringent rules and

1 13.30 compliance you need to adhere to that I wasn't kind
2 of fully aware at the time of.

3 Q. Did you ask about them? You are an intelligent and
4 I'm going to suggest competent trader. Did you ever
5 ask about them?

6 A. I'm sure I asked Nick and again, Nick was my line
7 manager, so I took, I guess I assumed with Nick
8 and --

9 Q. Did Nick reassure you that you were trading in
10 accordance with what the fund was supposed to be
11 doing?

12 A. Yes, when I was trading he didn't have, I guess,
13 raise any concerns and so I -- and encouraged me, as
14 you said before so --

15 Q. But you were seeking his permission and his
16 reassurance that you were doing was correct. Is
17 that right?

18 A. Well, he was my line manager and I was looking at a
19 mentor to him because obviously the guidance.

20 Q. So what's the answer to the question?

21 A. I was -- he was my line manager. So I would seek
22 his opinion and gather his thoughts on some of the
23 decisions I made and make sure that they were
24 correct and in line with what I should be doing.

25 Q. And that's while you were trading on DURF?

1 13.32 A. Yes.

2 Q. Fine so you were consulting him and he was giving
3 you the benefit of his advice. Is that right?

4 A. No. He was my line manager and I was --

5 Q. What were you consulting about, if you didn't want
6 the benefit of his advice?

7 A. I wanted the benefit of his advice because again
8 like he was my mentor and I looked to him.

9 Q. Did you get the benefit of his advice?

10 A. See, in hindsight, at the time I obviously you only
11 know what you have had again, experience, as my
12 first proper mentor. Obviously I had Mankash Jain
13 before, but he was more focused and there for me, as
14 I say, with compared to Nick and with hindsight I
15 don't think I got the full benefits of what I should
16 have had in my role.

17 Q. Mr Dean, I am not asking you how beneficial the
18 advice you got was. I am asking you whether you
19 asked for advice and got it. A very simple
20 question. While trading at DURF, did you ask Nick
21 for advice and he helped you by giving his advice in
22 so far as what he had to say was helpful?

23 A. Yes.

24 Q. Is that a fair way of putting it?

25 A. Yes.

1 13.33 Q. Let me just suggest this to you. The trades that
2 you carried out on the DURF fund, if indeed you did,
3 came against a background of experience as a prop
4 trader at Elysium, and I suggest it made you well
5 suited to trade on the Dalma fund in 2016, if that's
6 what you were doing.

7 A. I disagree with -- sorry, I would, in your opinion I
8 might have been experienced at that point.

9 Q. But --

10 A. Sorry, can I continue? But I would also say in
11 terms of after I left Elysium Global and was
12 terminated, I couldn't find a job in the same role
13 as a trader because again the market didn't think I
14 was qualified to be in that position, and obviously
15 I went to Sulla Investments and was a quantitative
16 investment manager but not trading risk. And I
17 would also say in that regard, for me the main thing
18 is again, like if you are experienced and people
19 think that you should be performing that role, they
20 will obviously pay you for that right, and
21 effectively my salary transitioning away from that
22 role into my next role more than halved. So I think
23 again, like given that question, I don't think,
24 looking back, I was experienced enough to be put in
25 that role?

1 13.35 Q. In retrospect. But did you ever at the time, ever,
2 go to Nick or to Sanjay and say to them, "Listen,
3 I'm out of my depth."

4 A. No.

5 Q. Why not?

6 A. I didn't feel at the time that -- I did feel that at
7 that time, sometimes. Obviously, when you are
8 trading big numbers and you are not really sure but
9 then I guess it's also being inexperienced, I wasn't
10 really aware about how to have those conversations
11 with my line manager.

12 Q. Are you really telling us and this Tribunal that you
13 simply weren't experienced enough to know that if
14 you felt that you were drowning and out of your
15 depth, you wouldn't expressly consult your line
16 manager or, if necessary, Sanjay, who you understood
17 was going to be putting Varengold money, in which he
18 had an interest, into the fund you were trading?
19 That you didn't know to go and speak to somebody.
20 Is that what you are telling us?

21 A. I think at the time, I am telling you at the time --

22 Q. Hmm?

23 A. I had some of those thoughts, but I kind of was
24 confident I guess, and probably overconfident.

25 Q. So is the reality that you, in your confidence and

1 13.37 in the way that you were conducting your trading at
2 DURF, it didn't appear to you to be necessary to
3 have conversations with either your line manager or
4 with Sanjay to complain that you were hopelessly out
5 of your depth? Is that what you are saying?

6 A. No, that's not what I'm saying.

7 Q. Well you tell us what you are saying, then.

8 A. I am saying that, I guess, at that time, again like
9 I had conversations with Nick, but they wouldn't get
10 too serious because Nick wasn't an approachable --
11 well he was approachable and we had friendly
12 conversations, but when the conversation got serious
13 and you see the example there for example around the
14 100 dirhams, he wasn't a person you could go and --
15 you know you consult him for good news. For bad
16 news it's less of a friendly environment and the
17 same with like Sanjay. There was conversations and
18 I had conversations with Nick around -- I can't
19 recall there were conversations, but again like it
20 didn't really feel like an environment where you
21 could openly share like your fears, I assume.

22 Q. Mr Dean, I'm sorry to have to suggest to you that
23 that is a lie, isn't it? And that if you felt that
24 you couldn't manage to do what you were tasked to
25 do, the first thing you would have done is to have

1 13.38 gone to Nick, and if Nick wasn't sympathetic to your
2 predicament, then you would have gone to Sanjay?
3 Because ultimately you were exposed to risk, you are
4 telling us. Wouldn't you?

5 A. I'm not --

6 CHAIRMAN: Please let the witness speak, give him a
7 chance, please.

8 MR SALLON: Of course, sir.

9 A. No I'm not lying. I think firstly again, like I
10 said, it wasn't the most friendly environment where
11 I worked and, you know, I kind of had that I guess,
12 fear around if I had doubts, do you like how do you
13 kind of have those conversations with your line
14 manager. And, you know, as a trader I was winning
15 and encouraged, so I guess I was expected to perform
16 and I guess there was a good example where I made
17 those profits initially in Dalma, I actually kind of
18 I wanted to take a break, I wanted to say, "Okay I
19 have already made 10 per cent let's leave it at that
20 and take a few weeks off", but it was hard to just
21 do that and there was, you know, multiple reasons
22 for that. There was obviously I think looking back,
23 my lack of experience in being able to handle that
24 and being emotionally mature to have those
25 conversations with my line manager. I think the

1 13.39 other part is around the kind of general environment
2 of working with Nick and Sanjay, which made it
3 harder and, yeah.

4 Q. I'm going to suggest to you that the WhatsApp
5 exchanges between you portray a relationship that
6 you have now described in a wholly different
7 light -- in a wholly different light. It shows that
8 Nick is sympathetic to you, that he is encouraging
9 you, that you are very confident, that you are
10 assertive, and that at no time is there ever any
11 expression that you were unsuited for the tasks that
12 you were performing, so you say, between late March
13 and June of 2016?

14 A. So we discussed earlier around, I guess, the trust
15 around Nick essentially taking credit for my trades,
16 and portraying them as the, you know, the desk P&L.
17 I think when you fundamentally have a mentor who is
18 like that and obviously, you know, I would outwardly
19 be, you know, happy with him and we would have great
20 conversations, but you know, lack of -- if there's a
21 significant lack of trust in a relationship, then it
22 means that you probably -- or I felt at the time
23 that I probably couldn't go to Nick and, you know,
24 have those conversations.

25 Q. I suggest that you have deliberately tried to

1 13.41 minimise your suitability and willingness to trade
2 on DURF by portraying yourself, both to the DFSA and
3 now to this Tribunal, as someone of limited
4 experience, largely unsupervised, forced to trade
5 and encouraged to take more and more risk. That is
6 a completely bogus portrayal.

7 CHAIRMAN: Is that a question, Mr Sallon?

8 MR SALLON: That's what I'm putting to him.

9 A. Again, like at the time, obviously I was younger and
10 I probably was a little bit less self-aware than I
11 am now and looking back some of those comments that
12 I have made are in hindsight as well. I would say
13 with experience, obviously, you have tried to
14 portray that I've had extensive experience in the
15 markets and obviously, from my perspective, if you
16 look at it, it's only, I guess, six months of real
17 kind of real pure proper trading where I made that
18 or five or four months, that about 372,000 or
19 382,000. Apart from that again, as I said, the main
20 thing around trading is not just being knowledgeable
21 and being smart. I love solving problems and that's
22 why I got drawn to trading originally because you
23 can kind of read about stuff and go back to the news
24 and you can make all these connections. But I think
25 there's a fundamental thing there around risk

1 13.43 management and understanding how a fund works and
2 what a fund is and having appropriate training which
3 is different, right? So I had experience and I knew
4 how to trade, but was I experienced enough to be in
5 that position? Looking back, I don't think so and
6 again, as I said, when I left the company and I
7 looked to take on a similar role I couldn't find a
8 similar job because the market didn't think -- and I
9 looked for six months afterwards. The market didn't
10 think that I was qualified to be in that role and
11 when I did take on a role at Sulla Investment, which
12 was different from my role at Elysium Global, my
13 salary more than halved, so again yes.

14 Q. Were you discussing contracts for joining Dalma with
15 Nick and with Howard?

16 A. I was discussing with Nick, and Nick wouldn't -- I
17 wasn't allowed to, well I was not involved in the
18 process and Nick just say he saw a get-out. I
19 wasn't involved in discussion with Howard and Nick
20 was handling that. The discussions I had with Nick
21 were just don't -- just, "It'll be fine, you don't
22 need to ask any questions."

23 Q. Could we look at B/118, please. I think it's an
24 entry for 12:44:01 on 1 March. Thank you very much
25 indeed. This is you:

1 13.44 "Nick Allsop: I suggest we also send him our
2 CVs - as this will show our professional history. I
3 I'll email mine to you. Then you forward both mine
4 and yours to him."

5 Who are you forwarding you e-mails to?

6 A. I think Frank from Varengold.

7 Q. And then if we go to B/119, please, same day at
8 13:24?

9 A. Yes.

10 Q. You are saying to him, "I will let you know how it
11 goes today." What were you talking about there?

12 A. I can't recall exactly who Frank is, I assume Frank
13 is from Varengold. I can't recall having this
14 meeting. Obviously it looks like I have taken that
15 meeting for Nick, but yeah.

16 Q. If we go to 2 March, please, on 119, and look at an
17 entry for 10:41:52, we have got this exchange:

18 "Nick Allsop: Morning. I see you cut your
19 positions? All square now? Howard has sent us an
20 email plus attachment. Have a look at it and then
21 we can discuss amongst ourselves on Friday (when I
22 think I'm likely to be back in the office) ahead of
23 meeting Howard sometime next week."

24 What are you discussing there?

25 A. I'm not sure what email he refers to, unless there

1 13.47 is another reference.

2 Q. If we go, please, to B/138. It's a WhatsApp entry
3 on 8 March at 19:46:25. By 8 March I am going to
4 suggest Nick was negotiating contracts for himself
5 and for you using the Elysium template, subject to a
6 few changes, and there's a discussion about that at
7 19:46:25 to 19:51 -- sorry I have given you the
8 wrong reference. It's at B/120. 8 March, please.
9 Lyle Dean, if we look towards the bottom of 120:

10 "No email from Zach or Howard about set up. I
11 will follow up tomorrow? Nick Allsop don't worry.
12 Lyle Dean okay."

13 What are you taking the initiative on here?
14 Because you are plainly taking an initiative, aren't
15 you?

16 A. Yes, I guess here I'm following up on discussions, I
17 guess, or whatever we were discussing at that time,
18 which I can't remember exactly.

19 Q. And what was that?

20 A. I can't recall exactly what we were discussing at
21 that time.

22 Q. Was that being taken on at Dalma?

23 A. I assume so.

24 Q. And if we go to B/138, please. This is an email
25 from Howard to Nick, in which Nick was negotiating

- 1 13.49 contracts for himself and for you using the Elysian
2 template subject to a few changes; yes?
- 3 A. Yes.
- 4 Q. And then if we go to 13 March, 121 to 122, at
5 12:06:30, you are discussing temporary email
6 addresses at Dalma; yes?
- 7 A. I can't see that reference, sorry I can't see --
- 8 Q. Have I given you the wrong reference? I think it's
9 13 March at 12:06, 14 March, 18:47. If you look at
10 all that exchange, I suggest that what's being
11 discussed there is proposed email addresses on a
12 temporary basis for the two of you at Dalma.
- 13 A. Yes, that sounds correct.
- 14 Q. And you say at 12:06:
15 "Spoke to Howard. He's going to set up a
16 temporary email for us." What were you speaking to
17 Howard about, if not your impending employment?
- 18 A. I can't recall exactly what that conversation was
19 about. I assume, given the messages, it was about
20 an email.
- 21 Q. And then we have got --
- 22 A. It was an email --
- 23 Q. Then we have got Howard, we have got Nick saying
24 "Excellent" and "Rearrange emails Lucas at
25 Varengold" et cetera, et cetera, conference calls.

- 1 13.51 "I will do that. Did you get Howard's email?" Yes,
2 and so on and so forth. "Okay if these are our
3 permanent emails" -- you say -- "better to just be
4 dalmacapital.com." So here you are suggesting to
5 Nick what your emails should look like if they are
6 to be permanent, yes?
- 7 A. Yes, yes.
- 8 Q. On 13 March if we go to B/140 to 141, Howard emails
9 you and Nick about email addresses and informs you
10 that Dalma is regulated and needs to lock into the
11 employment exchange agreements so that you are
12 onboarded as Dalma employees. Salaries were
13 proposed and your current employee templates were to
14 be attached and there's an addendum to the template.
15 Yes, does that look right?
- 16 A. Yes. Yes that looks right.
- 17 Q. Are you included in that correspondence?
- 18 A. I can't see.
- 19 Q. If you go up a little bit, to the top of the
20 document. If we can just show the top of the
21 document?
- 22 A. No.
- 23 Q. It's addressed to you?
- 24 A. What does it say?
- 25 Q. I'm sorry, have we got the wrong document? Can you

1 13.53 scroll down a bit, scroll down. Down more. That's
2 the one I'm talking about.

3 A. So the email addresses?

4 Q. So we have got, "Hi Nick and Lyle"?

5 A. Yes, yes.

6 Q. "We are regulated, we really do need to lock down on
7 the employment exchange agreement so that you are
8 on-board."

9 A. Yes.

10 Q. You are being included in correspondence about your
11 contracts or the agreement?

12 A. I'm being included -- I'm being included with an
13 email about my email addresses, and mentioning,
14 obviously, the employment contracts but I, to my
15 recollection, I never saw any contract between
16 myself --

17 Q. Can you scroll down a bit further:

18 "I did mention it to Greg on Thursday, but I
19 think it would help if you gave him a nudge. It
20 shouldn't be a complicated document. The basics
21 are" -- this is written to you and to Nick -- "all
22 your costs mated at AED 151k per month. Elysium
23 will deposit AED 450k in cash and Dalma will pay you
24 and monthly invoice cost + 10% for all salaries,
25 expenses and associated costs, et cetera."

1 13.54 Then:

2 "I'm happy for Dalma to accept your current
3 employee agreements as an addendum to our template.
4 Once the transfer agreement and employment
5 agreements are signed we can then go ahead and
6 transfer the visas."

7 "The concurrent aspect", et cetera is about
8 Varengold. So here you are being included in
9 conversations about the terms of your contract as at
10 March 2016. Is that correct?

11 A. Yes, I think I was initially included in, forwarded
12 in this email and as you can see, afterwards from
13 the emails, Nick basically took those conversations
14 and I was left out --

15 Q. So your evidence is not that you were not consulted,
16 it is evidence that you were consulted at the
17 beginning but not later. Is that it?

18 A. To my recollection I was -- I guess, in a sense, I
19 was like I was just kind of not like I saw this
20 email, obviously, and saw these numbers, but apart
21 from that, like I wasn't involved in the
22 conversations, any more conversations that I know
23 of, any more conversations about this.

24 Q. I'm going to suggest that by 14 March Greg Nixon,
25 who was general counsel at Elysium, was indicating

1 13.56 to everybody that he was ready to crack on with the
2 contracts in relation to the terms that had been set
3 out in that email of 13 March. Do you agree, at any
4 rate, that you, as at 14 March, believed that
5 contract signing was imminent?

6 A. Yes, I think around that time, obviously these
7 conversations were going on and it seems like
8 obviously it's moving forward, so yes.

9 Q. And then on the 14th, an email at 122, please,
10 B/122. Howard emails -- sorry, on 14 March there's
11 a contract signing and Howard indicates that he had
12 spoken to somebody called Min and told him he
13 wouldn't be signing anything due to unforeseen
14 circumstances, and he asked you to stall him. Do
15 you see that entry at 18:41:52?

16 A. Yes.

17 Q. What was all that about?

18 A. I think that was in relation -- listening to the
19 evidence now it seems like that was in regard to the
20 medical insurance or the discussions between Nick
21 and --

22 Q. It was in relation to signing of the contract,
23 wasn't it?

24 A. In what sense?

25 Q. Well, he was -- Howard was telling you to stall Min.

- 1 13.58 Who is Min?
- 2 A. So you mean Nick, sorry, Nick was telling me to
- 3 stall?
- 4 Q. Yes.
- 5 A. I don't know. I can't recall who Min was.
- 6 Q. Or maybe he was telling you to stall somebody else.
- 7 Who was --
- 8 A. Maybe it was -- well maybe it was like an auto
- 9 correct. I'm not sure. I can't recall anyone
- 10 called Min.
- 11 Q. This is Nick saying, "We won't be signing -- I told
- 12 him we won't be signing any agreement at this time
- 13 due to unforeseen contracts." He signed that no
- 14 issues. You think the unforeseen circumstances
- 15 centred on appropriate medical insurance. Is that
- 16 right?
- 17 A. I assume it was negotiations with Nick -- or sorry,
- 18 I can't recall but looking back --
- 19 Q. All this was around medical insurance?
- 20 A. I know there were points around medical insurance
- 21 and --
- 22 Q. And you were being included or kept up to date with
- 23 how things were going, as far as Nick was concerned?
- 24 A. No, I only, as I said, I only now know of like the
- 25 issues with the medical insurance. Again, with this

1 13.59 message it's not very clear what's happening, it's
2 just there's unforeseen circumstances so we are just
3 halting and yes, it wasn't very explanatory of I
4 guess Nick's position and why he decided not to go
5 forward.

6 Q. Does this jog your memory? The issue about signing,
7 which I suggest was imminent, really was connected
8 with visa transfer, health insurance arrangements
9 and the structure of commission payments that's what
10 the discussions revolved around?

11 A. Yes, and again I can't recall exactly but from this
12 message, again, it kind of from Mick he's not being
13 kind of very explanatory around, you know, why it
14 stalled.

15 Q. If we look at 28 March, you were about to go to Abu
16 Dhabi and if we look at 123, I can't give you a
17 precise reference, but I think there was a
18 discussion you were having on what your view was of
19 the performance of the Chair of the US Fed and
20 telling Nick that long US bonds looked like a good
21 strategy.

22 A. Yes.

23 Q. Got that? Did you know that Howard was getting in
24 touch with an individual to try and get health
25 insurance for your and Nick's employment at Dalma?

1 14.00 A. I can't recall being aware of like, again, the
2 negotiations at the time. I remember going to that
3 conference and going away, I guess, for a day or two
4 in Abu Dhabi.

5 Q. At the conference I'm going to suggest that the
6 WhatsApp, and I'm not going to take you to each and
7 every individual entry, but you attend the
8 conference, that you exchange knowledgeable trade
9 information with Nick and that you meet Howard
10 Leedham at the conference. Do you remember that?

11 A. Was it the -- was this conference run by Dalma
12 Capital?

13 Q. It was?

14 A. Yes, I would have met Howard and Nick -- sorry
15 Howard and Zach.

16 Q. And you WhatsApp Nick and you said, "He wants to get
17 the contract signed as soon as possible."

18 A. Yes.

19 Q. Yes but you spoke --

20 A. I would have --

21 Q. You spoke to Howard about the contracts. Is that
22 right?

23 A. Well, he would have -- I assume, I would assume I do
24 actually recall speaking to him. I can't recall
25 actually what we said but it --

1 14.02 Q. It must have been in part about the contracts
2 because you relay the message, "He wants to get the
3 contracts signed as soon as possible."

4 A. Yes, I imagine he would have pressured me to mention
5 to Nick about the contracts. I can't recall what we
6 discussed around --

7 Q. Pressured you? Are you suggesting Howard pressured
8 you to tell Nick that he wanted to get the contracts
9 as soon as possible?

10 A. Well, I would have -- again, at that, meeting Howard
11 and seeing Howard, I would assume that when he saw
12 me, he would have wanted to get the contracts signed
13 and we would have had a discussion, maybe "pressure"
14 is not the right word. I think I would have felt a
15 sense of urgency to contact Nick and relay that
16 message essentially.

17 Q. It was urgent that the contracts were signed, that
18 was the urgency, because there was an imminence
19 about it and Nick replies, "Understood I will be
20 meeting him on Monday." Do you see that?

21 A. Yes.

22 Q. Right. So he is going to meet Howard on Monday,
23 yes?

24 A. Yes.

25 Q. To which you respond:

1 14.03 "As will I with Sanjay when I'm back from
2 Dubai." Have you got that?
3 A. Where is that sorry?
4 Q. We will highlight it for you. Do you see? It's at
5 12:51:22?
6 A. That's Nick sorry, Nick says "Understood".
7 Q. That's Nick, is it?
8 A. Yes it's the same message.
9 Q. "Understood I'll be meeting him on Monday." I see,
10 so it's not you meeting Sanjay, it's him?
11 A. No, no, that's the same message because there's
12 lines --
13 Q. Fair enough. Would you agree from --
14 CHAIRMAN: Mr Sallon, is that going to be a convenient
15 moment? By UK times we have got rather eccentric
16 lunch hours and things, but is this a reasonable
17 moment or would you rather go on for a couple of
18 minutes?
19 MR SALLON: May I finish this little tranche and then
20 break for lunch?
21 CHAIRMAN: Yes, you carry on and tell us when you are
22 finished.
23 MR SALLON: Thank you very much indeed. On 30 March I'm
24 not going to show you because you are not a party to
25 the email, but we have got an email from Howard to

1 14.04 Greg saying, "We have got to move forward on Lyle
2 and Nick's transition to Dalma", and asking if a
3 simple agreement could be drafted, "whereby Elysium
4 agrees to cover all their employment costs and
5 benefits based on their current contracts." For
6 your reference, sir, it's at 148, and saying that
7 Elysium will deposit a three-month float with Dalma
8 and so on and so forth, and agreeing a 10 per cent
9 administration fee:

10 "The actual cost will eventually be covered by
11 Nick and Lyle's profits if they will flow back to
12 them, for which they retain a percentage less their
13 salary."

14 Were you aware that that was basically the
15 agreement that was being brokered at that time?

16 A. Yes, I think --

17 Q. Along those lines?

18 A. Yes, something along those lines I was aware of.

19 Q. And was there an implicit agreement between
20 yourselves and Mr Leedham that you would start work
21 for Dalma on a temporary basis whilst the contracts
22 were being finalised?

23 A. There was, yes, I guess there was this agreement in
24 terms of -- yes I wasn't, to be honest, looking
25 back, again as I said before in my statement,

1 14.06 obviously I was paid by Elysium Global and had
2 medical insurance from Elysium Global until my
3 termination and also looking back this was in a
4 sense like it felt like a second --

5 Q. From what you knew and from what you were being told
6 and what you generally understood, did you think
7 that you were working for Dalma on an interim or
8 temporary basis while the contracts were about to be
9 signed, is that fair?

10 A. Yes, to my understanding -- yes.

11 Q. And Howard Leedham told you that, did he?

12 A. I can't recall exactly that conversation, but
13 obviously it's, like you said it's implicit, like I
14 wouldn't have been at Dalma Capital.

15 Q. And Nick Allsop told you that, did he?

16 A. I can't recall exactly what Nick Allsop told me, but
17 again he would have instructed me to start trading
18 for the DURF fund.

19 Q. Did you consider yourself an employee of Dalma when
20 you were told to go and work at Dalma?

21 A. I consider myself -- I guess it's, I consider myself
22 to be in the process of transferring to Dalma.

23 Q. If you look at your -- I think, I hope I am giving
24 you the right reference, but it's at D/303, when you
25 were asked if you considered that you had become an

1 14.08 employee of Dalma, you said yes?

2 A. Yes, I guess at that point yes, like I said before,
3 in 2017 -- when I had this interview, I had a better
4 recollection.

5 Q. I am almost finished, just two more points. By late
6 March 2016, I am going to suggest that Zach had
7 every good reason to regard you as somebody who was
8 effectively employed and that you were Nick Allsop's
9 junior partner and right-hand man?

10 A. Yes. As I stated here, I was not full aware of the
11 arrangement, but yes, I considered myself.

12 Q. And as the WhatsApp messages show, you were at that
13 time a ready source of trading ideas which you
14 exchanged freely with Nick?

15 A. Yes.

16 Q. And as your employment contract was never actually
17 confirmed to Nick, Nick, I am going to suggest,
18 never actually finalised your access to live
19 trading, although he was busy preparing to set you
20 up as at the date that the contract -- sorry, Zach.

21 Let me put that again to you. I am going to
22 suggest to you that as your contract was not
23 confirmed to Zach, he never in fact finalised your
24 access to live trading. That's correct, isn't it?

25 A. That's not correct.

1 14.10 MR SALLON: Thank you very much, sir. I will leave it
2 there.

3 CHAIRMAN: We will break now and start again in an hour,
4 which will be 10 past 12 UK time.

5 MR SALLON: Thank you very much.

6 CHAIRMAN: My two colleagues and I will meet in our room
7 now. Thank you.

8 (2.20 pm)

9 (Break for lunch)

10 (3.10 pm)

11 CHAIRMAN: Welcome back. When Mr Sallon and Mr Dean are
12 ready, we will continue.

13 MR SALLON: Thank you very much, sir. Mr Dean, were you
14 emailed Nick Allsop's interview?

15 A. No.

16 Q. Have you seen it?

17 A. No, I don't think I have.

18 Q. Have you ever discussed it with anybody?

19 A. No.

20 Q. Who have your discussions with the DFSA been with
21 primarily, about your becoming a witness in this
22 case?

23 A. I mentioned to John Boylan the other day when he
24 contacted me, but I have not mentioned to anyone
25 that I'm a witness.

1 15.11 MR TEMPLE: Maybe I misunderstood the question, was that
2 a question about who at the DFSA has contacted him?

3 MR SALLON: I will ask it again because --

4 MR TEMPLE: Excuse me.

5 MR SALLON: Sorry, sir. May I through you, sir, say that
6 if this question is a matter of law, then it should
7 be done in the absence of the witness. Otherwise
8 the witness has answered the question I put to him.

9 CHAIRMAN: Not being privy to what it's going to be,
10 prudence would suggest that it should be in the
11 absence of the witness, but before we do that, is
12 there going to be, Mr Temple, could you in general
13 terms say what you are going to do?

14 MR TEMPLE: It strikes me that these are questions of
15 privileged communications between the DFSA and the
16 witness in the context of live proceedings.

17 MR SALLON: I am not asking what he said to legal
18 representatives or what they said to him.
19 Conversations between investigators are not covered
20 by legal professional privilege, they are covered
21 between lawyers and clients, or other individuals.
22 Unless Mr Temple is seeking to argue that
23 conversations between investigators and individual
24 witnesses are covered by privilege.

25 MR TEMPLE: Well, I would submit that in the context of

1 15.13 live proceedings litigation privilege applies,
2 irrespective of the precise status of an individual.
3 I have to say, I need to take instructions before
4 waiving that privilege.

5 MR SALLON: I am not asking --

6 CHAIRMAN: First of all, please, can I just intervene, I
7 am sorry but first of all it is impossible for us to
8 make sense of your submissions when you are both
9 speaking at once.

10 MR SALLON: That's fine.

11 CHAIRMAN: I know it is the tech and I am sorry to sound
12 like someone addressing people at their first
13 appearance in the Crown Court. I didn't mean to do
14 that. It's just you can't speak at the same time.

15 Secondly, legal professional privilege is one
16 thing but I think we would need some persuading
17 before accepting that the questions being asked,
18 which are setting the context of the circumstances
19 in which Mr Dean came to help us, I really can't see
20 what is wrong with that. If there was something
21 privileged in the last question, I missed it, but I
22 would suggest that Mr Sallon ask his question and we
23 will see where we go.

24 MR SALLON: Can you pause before answering, Mr Dean? I
25 am going to put the question, to give Mr Temple an

- 1 15.14 opportunity to object to it on legal grounds, all
2 right.
- 3 A. Okay.
- 4 Q. First question. Have you had any communications at
5 all with anybody from the DFSA prior to coming here
6 today?
- 7 A. Yes, obviously, to facilitate this meeting, as in
8 e-mailing and
- 9 Q. Have you had any verbal conversations with anybody?
- 10 A. I had a verbal conversation earlier, a brief one
11 with Fiona, obviously to ring me to tell me to
12 obviously I am ready to come to the court. I have
13 obviously had conversations with the DFSA in regards
14 to the follow-up, in terms of being a witness today,
15 and video chats.
- 16 Q. What does that mean? That you had chats with
17 somebody in relation to follow-up and witness chats?
- 18 A. I had been contacted by DFSA to be a witness today,
19 so they spoke to me to tell me what the proceedings
20 will be and what my role is and arrange that.
- 21 Q. Who spoke to you?
- 22 A. It was Christopher, Fiona and William Leung.
- 23 Q. William Saheli would that be?
- 24 A. William Saheli? I can't -- obviously I spoke to
25 the --

1 15.16 Q. Somebody called William?

2 A. William the counsel today, is it William? Sorry
3 maybe I have got the name wrong.

4 Q. Mr Temple, do you? The barrister who is --

5 A. Sorry yes I spoke to him. There is also someone
6 called William Leung who has been cc'ed and I think
7 I spoke to him with Mr Temple the other day in terms
8 of --

9 Q. When you spoke to Fiona. Sorry to interrupt. When
10 you spoke to Fiona, did you speak to her alone?

11 A. No. Obviously I just had a phone call from her
12 earlier where she rang me to tell me to come to
13 court, but that's the only time I spoke to Fiona by
14 herself.

15 Q. Well, pause for a moment so that if any objections
16 that are going to be raised can be raised. Have you
17 ever had a conversation with Fiona and someone else
18 about follow-up WhatsApp messages or anything of
19 that sort?

20 A. Yes. So they contacted -- they followed up with, I
21 can't remember exact details, but they followed up
22 with Nick's WhatsApp messages at some point.

23 Q. Well, again pause, please, for any objection to be
24 taken. Did Fiona -- was Fiona one of those who was
25 speaking to you about the WhatsApp messages?

1 15.17 A. In regards to that, I'm just trying to rejog my
2 memory. So I received an email with Fiona included
3 on those WhatsApp messages. I'm not sure if we had
4 a discussion after that. I don't think we had a
5 discussion after that, but maybe, yes, maybe we did
6 in terms of like follow-up in terms of the, yeah --

7 Q. Just pause for a moment. When was that discussion,
8 that you think you had -- you may have had?

9 A. That was around June/July time.

10 Q. Of this year?

11 A. Yes.

12 Q. Right. So may we take it your memory is
13 sufficiently recent to be able to confirm whether
14 you had a discussion involving Fiona Paddon about
15 the WhatsApp messages?

16 A. Could you define, like conversation about the
17 WhatsApp messages, like specifically --

18 Q. No I'm not going to define it at the moment. I'm
19 going to say you talked about having a conversation
20 or conversations with people about the WhatsApp and
21 follow-up. The question is very simple. Did you
22 have a conversation which involved Fiona Paddon this
23 year about WhatsApp messages?

24 A. Yes.

25 Q. Sorry?

1 15.19 A. Yes.

2 Q. And that was when, exactly, in the summer?

3 A. Yes, before the second statement was given in, so it
4 would have been June, I imagine.

5 Q. June, so we are just talking about a couple of
6 months ago, right?

7 A. Yes.

8 Q. And who was the other person, if Fiona wasn't
9 talking to you alone, who was the other person that
10 you were with?

11 A. Christopher.

12 Q. Christopher?

13 A. Yes, Christopher D'Cotta, I can't remember.

14 Q. D'Cotta?

15 A. Yes.

16 Q. Pause for a moment. What was being discussed? Just
17 pause so that any objection that is being raised by
18 Mr Temple, if he is raising one, can be taken now.

19 MR TEMPLE: I think up to this point it has been about
20 the existence of communications but once one gets
21 into the context of communications, then I certainly
22 need to take instructions before waiving what I
23 would submit is, at least prima facie, litigation
24 privilege.

25 MR SALLON: That is an issue between us, sir. I don't

1 15.20 want to waste valuable time, but I am happy to
2 explain to the Tribunal in the absence of the
3 witness for a moment the purpose of this question.

4 CHAIRMAN: I think you need to because to me, at the
5 moment, and I haven't heard what you are going to
6 say, we are getting into discussions which happen
7 and have to happen if cases can continue and happen,
8 between solicitors and witnesses about what their
9 next witness statement is going to contain, and
10 including testing those witnesses with documents and
11 that sort of thing. So at the moment, it sounds as
12 though we are going too far, but obviously you want
13 an opportunity to do this without the witness, which
14 of course we will afford you -- can I just say to Mr
15 Dean. Mr Dean, I am sorry about this but it is
16 absolutely no, so far as I can tell no one is
17 criticising you at all and, indeed, at the moment no
18 one is criticising anyone, but I appreciate to you
19 it all seems a bit mysterious. Please do not think
20 that in cutting you off for a few minutes, we are in
21 any sense criticising you, bearing in mind that you
22 are kindly assisting us all with the benefit of your
23 evidence.

24 So if you could -- I think I will ask, if
25 Muhammad is still around, what I will do is ask

1 15.22 whoever is running the tech just to cut you off for
2 a few minutes. Please don't go away because we will
3 be back to you very soon. Thank you very much.

4 OPERATOR: Is it okay sir if can I put you in --

5 CHAIRMAN: Yes, if you kindly disconnect Mr Dean and then
6 we will reconnect him shortly. Thank you, Muhammad.

7 OPERATOR: Noted, sir.

8 CHAIRMAN: Mr Sallon, over to you.

9 MR SALLON: My instructions are such that I feel
10 compelled to enquire of this witness whether he has
11 had prompting or coaching from any of the
12 investigators as to the sort of questions that he is
13 likely to be asked in cross-examination about his
14 conversations with Nick Allsop, and in particular
15 how it might be suggested that what he says to
16 Allsop, and vice versa, undermines the appearance
17 that he has striven to give to the Tribunal of an
18 inexperienced individual who distrusted his superior
19 and was completely unable to cope with the sort of
20 trading he was being asked to do.

21 As I say, the point is going to be made that
22 the account he has given is in complete variance and
23 in stark contrast to the impression created in the
24 WhatsApp communications. If there was such
25 discussion, which alerted him to the possibility of

1 15.24 the sort of questions that he was to be asked, I
2 submit that that is not covered by any form of
3 privilege, legal or executive. It is a legitimate
4 question and it is information which is important
5 for the Tribunal to know in reaching a decision as
6 to the credibility of this witness.

7 That is my submission.

8 MR TEMPLE: Sir, you are muted.

9 CHAIRMAN: Sorry. Before Mr Temple comes back, as I
10 understand it you are seeking to ask questions to
11 elicit the extent to which, if any, there was sort
12 of coaching of the witness and encouragement by the
13 solicitor, or whoever it was at the DFSA, to the
14 witness to tell untruths. I just wonder --

15 MR SALLON: Well, I am not going that far. I am saying
16 that --

17 CHAIRMAN: How far are you going?

18 MR SALLON: If it appears that he had sent to him the
19 WhatsApp extracts provided by Nick Allsop and he
20 had, as he put it, a conversation about whatever
21 this means, follow-up, I submit that I am entitled
22 to ask him was he -- was there any discussion about
23 the contents of the document and his reaction to it.

24 CHAIRMAN: That's very close to what a solicitor would be
25 expected to do anyway.

1 15.26 MR SALLON: But we are not dealing, sir, with a
2 solicitor.

3 CHAIRMAN: With Ms Paddon I think we are.

4 MR SALLON: Is she a solicitor? I know that one of
5 certainly her main hat in this enquiry is that she
6 is an investigator --

7 CHAIRMAN: You are right, I beg your pardon. She is now
8 in the legal department I think and is at this point
9 an investigator. So we are both wrong. I
10 understand that, thank you.

11 I will let Mr Temple say a word now if I may.

12 MR SALLON: I am prepared to be more wrong than you.

13 MR TEMPLE: Well, sir if the preposition is that the line
14 of questioning that was likely to come from
15 Mr Sallon was suggested to Mr Dean, which I think
16 was the ultimate suggestion, then perhaps the
17 easiest way is for that question on its own to be
18 asked because, I have to say, we are not hugely
19 concerned about that question.

20 I should add, though that Ms Paddon is both an
21 investigator and a solicitor so she is on the Roll
22 in England, as I understand it. So she is both --
23 she moved, I think from the role of investigator
24 into the role of the legal director and, therefore,
25 continued with this case.

1 15.27 I should say Mr D'Cotta is also a solicitor but
2 is acting as investigator on this case.

3 CHAIRMAN: Mr Sallon, anything more?

4 MR SALLON: This brings an interesting legal argument
5 about dual roles and whether they are covered by
6 executive legal privilege. But I am content to ask
7 the question that Mr Temple has agreed that I can
8 ask, if the Tribunal is content that I do that, and
9 see where it goes. I won't stray into territory
10 that you have expressed concern about.

11 CHAIRMAN: Okay. Well could we please then get the
12 witness back on the screen? (Mr Dean returned to
13 the call).

14 My main concern is simply to keep the show on
15 the road and not go off on too many tangents if we
16 can avoid it. We are back. Thank you Mr Dean.
17 Sorry to muck you about, but we are going to carry
18 on now.

19 MR SALLON: I think you have agreed that there was in
20 June a conversation concerning the WhatsApp extract
21 that you received by email. Is that right?

22 A. Yes.

23 Q. And that conversation included Ms Paddon; is that
24 correct?

25 A. Yes.

1 15.29 Q. And somebody called Christopher?

2 A. Yes.

3 Q. Was the contents -- I want you to confirm this and,
4 again, please indicate if there is objection -- was
5 the contents discussed with you?

6 A. Yes. Via email.

7 Q. Again, I don't want to stray further than I should.
8 Were you -- was a view communicated to you by
9 anybody about the significance or otherwise of the
10 extract that you were being shown, or that you had
11 received?

12 A. Can you repeat that question please?

13 Q. Did anybody indicate to you what the significance or
14 importance of the document that you were looking at
15 was?

16 A. Yes.

17 Q. Who indicated that to you?

18 A. From an email, there was a confirmation that the
19 export lined up, I guess with my recollection, or
20 sorry my statement.

21 Q. And the email indicated that what was in the
22 document was consistent with what you had said in
23 the statement. Is that what you are saying, or have
24 I misunderstood?

25 A. Yes.

1 15.31 Q. I haven't misunderstood, that's correct, is it?

2 A. From my recollection, yes.

3 Q. Your recollection can't be that bad because it was
4 only a couple of months ago. So if that's what the
5 email said, again pause before any objection is
6 taken, what was the conversation about the substance
7 of the document about?

8 MR TEMPLE: Yes, sorry, I thought the kind of line that
9 had been discussed during the short break was
10 confined to a particular issue and that issue hasn't
11 been put.

12 MR SALLON: I am going to put it, but I am preceding it
13 by asking a question. If objection is taken, then
14 objection is taken. Is objection taken, sir? I
15 don't want to speak to Mr Temple -- I think it is
16 rather discourteous if we have a conversation in
17 front of you. You are on mute, sir.

18 CHAIRMAN: Yes, I know. I no longer am. I am no longer
19 mute. What I am concerned about, with all
20 witnesses, is that they are not inadvertently
21 unfairly treated. The witness has been asked about
22 an email he received two months ago and it suggested
23 that he ought to remember what's in that email. I
24 imagine that Mr Dean has had various things going on
25 in his life over the course of two months and if

1 15.32 it's going to be based on the fact that he -- if
2 your question is based on the fact that he can't
3 remember what was in an email that was probably not
4 very exciting which he received two months ago, I
5 don't think it is a useful expense of time.

6 MR SALLON: The question is was the conversation that you
7 had following the email about your case and whether
8 or not the email was consistent, the extract that
9 you were being shown, was consistent with your case;
10 is that what the conversation was about?

11 A. To clarify that question, you are saying the
12 conversation following the email --

13 Q. I am asking you whether the conversation that
14 followed the email concerning the extract of
15 WhatsApp conversations was a conversation about how
16 your evidence and the contents of the document
17 tallied. Whether it was consistent or inconsistent.

18 A. From my recollection?

19 Q. Yes.

20 A. As I said, it is -- I know two months doesn't seem
21 like a long time ago, or three months, but there has
22 been a lot going on in my life. From my
23 recollection, what I can remember, there was an
24 email conversation where it was, I guess, confirmed
25 that their export of the WhatsApp chats, I guess,

1 15.34 tallied, as you say, with my recollection in my
2 statement, but after that I can't really recollect
3 where the conversation went, or if we had further
4 conversation.

5 Q. Let me ask you bluntly. Were you ever asked what
6 you might say if you were asked certain questions
7 about the WhatsApp extract?

8 A. No, I was not. I was not asked questions around
9 what I might say and was specifically instructed,
10 obviously, that, you know, we can't -- it's not the
11 DFSA's role to put words in my mouth. I am here to
12 represent, obviously, my statement and represent my
13 views and obviously, with that evidence, that
14 obviously again tallies up with after my statement.
15 But no, to answer your question.

16 MR SALLON: I wonder if I could just go to mute for a
17 moment to have a word with those instructing me?
18 (After a pause).

19 I am going to suggest to you, and I shall be
20 corrected if I am wrong, that in neither of your
21 witness statements, including the second and most
22 recent one, do you ever say anything about the
23 WhatsApp conversations between you and Nick Allsop.

24 A. No I do not say anything about the WhatsApp. From
25 my recollection, I didn't, obviously, see those

1 15.37 WhatsApp conversations until after, obviously, my
2 second statement and that conversation.

3 Q. The second statement is on 4 July. When does the
4 WhatsApp correspondence, or the WhatsApp exchange,
5 come to your attention?

6 A. During the conversations around my second statement.

7 Q. But why is there no mention of these matters in your
8 second statement? You don't refer to the WhatsApp
9 exchanges that you had with Nick Allsop at all in
10 your second statement?

11 A. Again, my recollection of events, I can't remember
12 exactly when the WhatsApp chat was shown to me.
13 Maybe it was after -- we would have to look back to
14 see exactly when it was shown to me because if it
15 was shown after my second statement, then that would
16 make sense why I didn't reference those because I
17 would have no --

18 Q. How would you do that, how would you look back?
19 What would you be looking at?

20 A. I would go back to the emails I had from --

21 Q. Forgive me you just told me, I thought, and I may
22 have misunderstood you that the conversation about
23 the WhatsApp followed the second statement and was
24 in July.

25 A. Again, I can't remember exact dates. It's all -- at

1 15.39 that period of time I was actually in a hotel room
2 with COVID when I gave my second statement and I had
3 been in Japan self-isolating for seven or eight
4 days. So I gave my second statement and that
5 specific period was a bit blurry for that specific
6 reason. I did a second statement. I was shown the
7 WhatsApp chats with the email that you referenced
8 with the conversation with Fiona and, I guess,
9 specifically around dates and, yes, I can't recall,
10 even though it was three months ago.

11 Q. Less than three months ago, two months ago, two and
12 a half months ago. Look, I am going to leave this
13 topic, certainly for the moment, but if you received
14 an email about what these WhatsApp exchanges between
15 yourself and Nick Allsop which informed you that the
16 contents were consistent with what you had said to
17 the DFSA, were you not being coached by somebody in
18 the sense that --

19 CHAIRMAN: I am sorry I am going to stop this Mr Sallon.
20 We do not know what these exchanges are. There
21 would be nothing whatsoever improper in -- and we
22 can only speculate, but there are at least two
23 possibilities. One, the witness was written to and
24 sent the WhatsApp messages and it could be suggested
25 to him that the WhatsApp messages were not

1 15.41 consistent with his statement, would he like to
2 clarify in his next statement. There could be
3 nothing wrong with that and the solicitor, or
4 whoever it was, would be doing their duty.

5 Alternatively, it might say, "It appears to be
6 consistent with what you have told us so far", but
7 we don't know what was said and we are not going to
8 find out. So I simply don't understand how a
9 criticism is being made of a witness who is not
10 familiar with the process and we are taking an awful
11 lot of time with this.

12 MR SALLON: I agree. I am going to leave it. I am going
13 to withhold any criticism. I am going to invite,
14 through the Tribunal, Mr Temple to look at the email
15 correspondence between the witness and the DFSA and
16 pursuant to his duty as counsel, to indicate to me
17 on a counsel-to-counsel basis, if there is any
18 material which necessarily ought to be disclosed. I
19 am going to leave it at that.

20 All right. So you are unaware of certain
21 things that Nick Allsop said about you in his
22 interview and witness statements. Is that right?
23 You have no idea what he had to say about you?

24 A. Yes, apart from the WhatsApp chats, obviously the
25 one that was shown me. I haven't seen his interview

1 15.42 or his statements.

2 Q. Let me ask you this. Is it true that he advised you
3 not to trade at Dalma unless and until you were
4 employed by them?

5 A. No, that's not true.

6 Q. Is it true that you took a different view?

7 A. A different view of?

8 Q. Of his advice and decided to trade there despite his
9 advice?

10 A. No, that's not true.

11 Q. Is it true that he told you that he thought that
12 what you were being asked to do was wrong and that
13 you were being used, or did he instruct you to
14 trade?

15 A. He did not tell me it was wrong or improper. He,
16 again, was my line manager, so everything I did went
17 through him and he, in his role, I can't remember
18 specifics around these conversations, but he was the
19 person who was essentially managing me and was in
20 charge on what I could and couldn't do.

21 Q. Did he probably inform you that by doing what you
22 were doing, you would be in breach of DFSA rules?

23 A. No, he did not.

24 Q. Did you know or were you aware that Sanjay Shah and
25 Greg Nixon (general counsel to Elysium) knew that

1 15.44 you were managing the assets of DURF?

2 A. Yes, they knew that I was managing the assets, or I
3 was trading on the DURF fund.

4 Q. Is it true that at no time did Nick Allsop trade on
5 the fund, or is it true that he occasionally did
6 trade on the fund over the relevant period?

7 A. From my recollection, I don't think he traded on the
8 fund over that period.

9 Q. You told, and I will give you chapter and verse if
10 you want it, but you told the DFSA on a number of
11 occasions in the course of your interview that you
12 thought he probably traded, that he traded small
13 amounts and then later you said he did place trades.
14 Now, do you dispute that? I can take you to the
15 extracts if I need to but I am --

16 A. To be honest, honestly, I -- Nick trading in my mind
17 is a very fuzzy event and like it's -- I'm not, like
18 it's hard to recollect. I think he, at this moment,
19 it's unlikely that he traded. He was fully aware,
20 but maybe, obviously, again, whenever that interview
21 was, 2018, I had more of a recollection then.

22 Q. To save time, can we take it that your evidence is
23 that if you told the DFSA in your interview in 2018
24 that Nick probably traded, or traded in small
25 amounts, test trading, or did actually trade from

1 15.47 time to time, that that's more likely to be true
2 because your memory was better at the time?

3 A. I think yes.

4 Q. Is that a fair way of putting it?

5 A. I would say most likely, again, because the
6 recollection, like I know he didn't trade big
7 amounts, he wasn't trading the amount I was trading.
8 But if there was a possibility he traded, it would
9 have been small or test trades.

10 Q. Did he have access to the fund?

11 A. Not that I can recall.

12 Q. I would like you look at an extract from your
13 interview, please. If you look at 336, please, at
14 bundle D, line 21. Can you see it:

15 "Okay in terms of when you started trading on
16 DURF, was anyone else trading?"

17 Answer:

18 "Nick had access but he didn't want to trade."

19 A. Yes so --

20 Q. So did Nick have access to the fund?

21 A. Again, my recollection of events right now is hazy
22 because it's been six/seven years, but if I said
23 that during the time, then I imagine at that time
24 that was correct.

25 Q. So can we assume, then, may we take it, that in 2018

- 1 15.49 you were telling the truth when you told the DFSA
2 that Nick had access to DURF, but that he didn't
3 want to trade?
- 4 A. I can assume that, yes.
- 5 Q. Can you remember why Nick didn't want to trade?
- 6 A. I assume he didn't want to trade because of his, I
7 guess --
- 8 Q. No, not "I guess". I need to know with certainty,
9 please.
- 10 A. I can speculate, but I guess that's a question for
11 Nick.
- 12 Q. Did he tell you why he didn't want to trade?
- 13 A. No, he didn't tell me why he didn't want to trade.
14 I can speculate but he didn't tell me specifically
15 why he didn't want to trade.
- 16 Q. Did it occur to you that he didn't want to appear to
17 trade because he knew it was a regulatory offence to
18 do so?
- 19 A. No, it didn't occur to me.
- 20 Q. If he had access, as you claim he did in your
21 interview, did he have, or must he not have had the
22 details to the login codes which you claim you were
23 provided with?
- 24 A. I assume if he had access, yes.
- 25 Q. So if he had access, he had been provided with the

- 1 15.50 name of Ryan Mahoney in order to facilitate access
2 to the fund; correct?
- 3 A. From my recollection of events, but I imagine if he
4 had access, he would have had to have those details.
- 5 Q. So if he had access, and what you say about possible
6 trading in your interview is correct, it means that
7 your evidence, or your understanding I should say,
8 and memory in 2018 is that Nick was actually, or may
9 well have been actually placing trades, small or
10 whether small or not. Is that correct?
- 11 A. Again, I can't recall specifics because it's been
12 six years since this --
- 13 Q. If that's what you said in your interview, that
14 would be correct, isn't it?
- 15 A. Yes, but then, again, I can't recall that right now
16 so that, yes, at the time I was interviewed to the
17 best of my recollection, then that would have been
18 true.
- 19 Q. Right, thank you very much. I am going to ask you
20 this, unless there's any objection. Were quite a
21 number of the trades that you placed while you were
22 aware from Dalma, and not in the Dalma office?
- 23 A. I think there's two periods where, I think initially
24 when we wasn't in the Dalma offices, the trades were
25 outside of the Dalma office, via the laptop that I

1 15.53 had access, and then I think at some point, as in my
2 statement, we had access to Dalma and then started
3 trading outside of Dalma, but as well as in Dalma.
4 But mainly, I guess, at the beginning of it was
5 mainly -- at the beginning it was in the Elysium
6 Global Dubai offices.

7 Q. Is it true that one day, in around March 2016, you
8 came into the Elysium office and unilaterally
9 announced to Nick Allsop that you were now managing
10 the Dalma funds?

11 A. No, that's not true.

12 Q. Did you give the access details to him?

13 A. I can't recall.

14 Q. You can't recall?

15 A. I don't remember giving --

16 Q. So how is it that you recall Zach giving them to
17 you, if you can't recall you giving them to Nick?

18 A. I remember Zach giving -- it's very, again, it's
19 almost six years ago and again from my first
20 statement, I had a better recollection of events
21 than I do now. I guess --

22 Q. Is it possible, as I suggest, that Zach didn't give
23 you access details, but that Nick did, in order that
24 you could carry out his instructions to trade?

25 A. I guess that is a possibility, but given the

1 15.54 documentary evidence, you can see there's a clear
2 kind of -- I am discussing with Zachary, especially
3 in that email around margin and those limits and the
4 Exante broker, so there were broad discussions with
5 Zachary at that moment in time around, yeah, but
6 again, like my recollection of events now is less
7 than it was, or when the interview was, 2018.

8 Q. I am going to make this suggestion, then we are
9 going to move on now. I am going to suggest that
10 there is no email, in this huge trove of emails, in
11 which you unambiguously state that you have placed
12 funds successfully on behalf of Dalma, explaining
13 that to me --

14 A. Can you repeat that?

15 Q. Yes, I am going to suggest that there is no email
16 correspondence between you and Zach which confirms
17 unambiguously that you had placed trades through or
18 on the Dalma fund?

19 A. I disagree with that and I disagree with that
20 because there's clear evidence, I guess, from when I
21 asked Zachary for margin to place the trades and the
22 email, I can't remember the exact reference, but
23 there is an email where I confirm we have live
24 trading, or we are trading live.

25 Q. I want to turn please to the technical structure on

- 1 15.56 the trading on DURF, and I want to take this please
2 as quickly as I possibly can. Most of DURF's assets
3 were with Exante?
- 4 A. Yes.
- 5 Q. It's no more than a brokerage service offering a
6 wide range of financial instruments?
- 7 A. Yes.
- 8 Q. They had a live trading platform and a sandbox
9 platform?
- 10 A. Yes.
- 11 Q. Once a trader logs into the live trading platform,
12 they can add new instruments directly using what is
13 known as the help desk function?
- 14 A. I wasn't aware of that, but I guess if that's part
15 of the -- if that says what it can do, then I assume
16 that's what it can do.
- 17 Q. You had a very good working knowledge of computers
18 and computer technology, would you not agree?
- 19 A. Yes, I am a software engineer so I know how to write
20 programme languages.
- 21 Q. Are you really saying to this Tribunal that you
22 didn't know that Exante had a help desk function?
- 23 A. As you can see from the evidence that I have talked
24 with Zachary, maybe I was aware there was a help
25 desk function but I didn't use it. And I guess

- 1 15.58 also, you know, just because I have a -- at the time
2 now I have a background but at that time I was still
3 learning software engineering. That doesn't mean I
4 am an expert with every technology there is.
- 5 Q. I am suggesting this doesn't require any particular
6 expertise, it's self-evident when you get on to the
7 site, but put that to one side. The live trading
8 platform, I am going to suggest to you, allows users
9 to generate reports in PDF and Excel, including
10 gross and net profit and loss on the account. Do
11 you agree?
- 12 A. Yes.
- 13 Q. It allows the user to obtain balance sheets;
14 correct?
- 15 A. Yes.
- 16 Q. It provides the types and values and directions of
17 positions that are traded; correct?
- 18 A. Yes.
- 19 Q. And it advises you of positions that have been open
20 I think at any particular time?
- 21 A. Yes.
- 22 Q. And any user with any basic computer skill would be
23 able to generate such a report without any special
24 training?
- 25 A. No I disagree with that because I think, as I said

1 15.59 before, there's a difference between computer --
2 like literature, which I have in terms of software
3 engineering, and there's literature around user
4 interfaces. Obviously, there is an email that I
5 emailed Zachary to, I guess, confirm or help myself
6 or generate reports. It may have been
7 straightforward, like maybe I didn't spend enough
8 time to go off and look at it, but at that time I
9 guess I looked towards Zachary because, yeah

10 Q. I am going to suggest at that time, and today,
11 Exante's live trading platform is user friendly,
12 intuitive and easy to use.

13 A. I disagree with that again. I think like at the
14 time I used it, it was not intuitive enough for me
15 to be able to generate reports and I asked Zachary
16 to generate a report. I don't understand why I
17 would have asked him to generate a report if it was
18 intuitive. I think again --

19 Q. Since you asked that question, I am going to put
20 this to you. Because you didn't have access to
21 Exante's live trading platform at the time you asked
22 Zach for his assistance. That's why?

23 A. No, I disagree with that. I did have access to
24 Exante's live trading platform.

25 Q. If, on the other hand, you are using Exante in

1 16.01 sandbox mode, the information of the kind I have
2 suggested to you, whereby you could access reports
3 and the like, is not apparent on that sandbox or
4 training platform, is it?

5 A. I can't recall using a sandbox environment or
6 interacting with it. Maybe I did, but I can't
7 recall that.

8 Q. You can't recall using a training programme even to
9 trade an Exante, at any time?

10 A. No, I cannot recall. Again, maybe I did use that
11 sandbox environment, but this is --

12 Q. Can I ask you this. I know these events were a long
13 time ago, but do you generally have problems with
14 your memory?

15 A. No. I don't normally have problems with my memory.
16 I do have a somewhat busy -- sorry I have
17 remembering specifics, if it's six years ago, but
18 the details or the, I recall the events. I recall,
19 you know, I recall the -- sorry.

20 Q. Do you specifically do you recall Zach giving you
21 access to Exante but you can't remember whether you
22 used the sandbox; is that your evidence? You
23 remember some things, but not others.

24 A. No, I guess with Zachary I can -- it's hard to
25 recall now and again, during my first statement it

1 16.03 would have been easier to say the specific exact
2 date -- not exact date, but the exact, you know,
3 again, it's, yeah, it's six years ago. Like, I am
4 trying to the best of my knowledge to help in
5 regards to this investigation and clarify where I
6 can clarify.

7 Q. You actually told the DFSA in the course of your
8 interviews that you couldn't recall exactly what you
9 knew about the DURF fund in early April 2016 and
10 couldn't remember whether you were carrying out
11 trades specifically on behalf of DURF. I suggest
12 that the reason that you couldn't remember is you
13 were in fact carrying out sandbox trades in relation
14 to products which would have appeared in Dalma's
15 real world profit and loss statements?

16 A. No I disagree because --

17 Q. You remember that that can't be the case, is that
18 it?

19 A. Yes, I remember that can't be the case because I was
20 specifically trading on the live environment, which
21 was obviously, again, the email to Zach or to Howard
22 and the others about the profits that I made. Like,
23 you wouldn't obviously get that kind of praise and
24 encouragement if you are trading on a sandbox
25 environment. And secondly, obviously, when I was

1 16.04 terminated, the reason I was terminated was because
2 of the bad trading period I had, which caused losses
3 on the Unified Return Fund, which was again cut from
4 the NAV and again referenced in that email from
5 Howard to myself and Nick around the 4 per cent drop
6 in the fund that month.

7 Q. Let's see if we can take this next section quite
8 quickly:

9 "Exante's sandbox trading platform provided a
10 test environment for demo or dummy trading."

11 Is that right?

12 A. Yes.

13 Q. And it used, or it operated in a way whereby clients
14 could test their strategies on test accounts using
15 test money, up to a notional million Euros?

16 A. Yes.

17 Q. And these portfolios were never directed to the real
18 world; correct?

19 A. Yes, yes.

20 Q. But it simulates, as far as possible, live trading
21 and utilises the same or similar products as might
22 appear in real world live profit and loss statement.

23 Do you agree with that?

24 A. Yes.

25 Q. Unlike the live trading platform I am going to

1 16.06 suggest, and I am going to suggest you knew this to
2 be the case, the sandbox platform doesn't have a
3 help desk function?

4 A. No, again, I did not use the help desk function
5 while I was using Exante and I did use the real
6 account and not a sandbox environment.

7 Q. I am going to deal quickly with Interactive Brokers.
8 I think you now accept that you didn't trade at all
9 on a live Interactive Brokers platform?

10 A. Again, that is a fuzzy -- sorry to be fuzzy in
11 recall, but that is another fuzzy part. I think
12 that was because it was if we would have traded on
13 that it would have been very small, but as you see,
14 we considered Interactive Brokers but then we moved
15 to Exante.

16 Q. I don't want to go through it. I can go through
17 what was happening with Interactive Brokers in some
18 detail. I want to avoid that if I can, but I think
19 that for the purpose of this hearing and these
20 proceedings, unless Mr Temple corrects me, that it
21 is accepted now by the DFSA that you didn't actually
22 carry out live trading on the Interactive Brokers
23 platform. Do you accept that? If you need a page
24 reference, at 148 of bundle C, paragraph 44 of your
25 first statement, you said this:

1 16.08 "Ultimately, I was unable to place trades for
2 Dalma via Interactive Brokers."

3 Now if that's what you said in your first
4 statement; is that correct?

5 A. I would assume to my knowledge, yes.

6 Q. Right. So I'm not going to go into the details of
7 Interactive Brokers with you at any length at all.
8 EzeCastle or Eze, how do you pronounce it?

9 A. Eze.

10 Q. Is an investment management software solutions group
11 which provides software trading systems which allow
12 Dalma to have their own records of all actual live
13 and test trades done by each trader, without having
14 to rely on a broker to produce the records. Is that
15 right?

16 A. Yes.

17 Q. And that EzeCastle can only be used for test trades
18 unless it is connected to a specific broker?

19 A. I have seen that --

20 Q. It has got to be connected --

21 A. I can't remember specifics around EzeCastle. I
22 remember it being very complex and hard to use.

23 Q. I am just asking you as a general question, it can't
24 be used to trade unless it's connected to a broker,
25 can it?

1 16.09 A. Yes, I assume.

2 Q. Right Eze Castle was used by Dalma as a sandbox
3 trading platform and was never connected to Dalma's
4 brokers for live trading. Do you accept that?

5 A. To the best of my knowledge, yes.

6 Q. Do you remember somebody called Gaurav, Gaurav
7 Manhas, has in the office of Dalma?

8 A. I have seen his statement, I think it was --

9 Q. You can't recall?

10 A. I saw him around but again, as I said, I mainly
11 interacted with Panagiotis(?) -- I can't recall his
12 name but the other IT. He was basically the one who
13 set everything me for myself up during that time.
14 Maybe he was working with. Sorry, I forgot his
15 name, who it is.

16 Q. The question was do you remember somebody called
17 Gaurav Manhas?

18 A. Yes, I saw him briefly around the office at Dalma.

19 Q. That was just the question, right. And Dalma
20 employed Gaurav Manhas as its IT administrator?

21 A. Yes.

22 Q. And he provided you with access to EzeCastle and
23 helped you to install it on your virtual desktop,
24 didn't he?

25 A. From my recollection, again, the person I interacted

1 16.11 with IT support requests was a different person who
2 was called Panagiotis and I can't recall having
3 software installed by that person.

4 Q. You can't, did you say, recall having software
5 installed or you can?

6 A. I can't specifically recall him installing EzeCastle
7 on the Dalma computer I was using.

8 Q. But you are not disputing it, are you?

9 A. No, as I say, there's a possibility, yes.

10 Q. I want to know whether you can answer questions
11 about software syntax and its significance, what it
12 means. Can you? Is that something you can help us
13 about or not? Because if the answer is no I wont
14 ask you?

15 A. Yes, you can ask me syntax.

16 Q. Your computer skills are sufficient and knowledge to
17 be able to ask questions about software syntax, are
18 they?

19 A. Yes.

20 Q. Right. Would you agree that software syntax relates
21 to a set of rules which defines the choice of words
22 and identifies the appearance of words and symbols
23 used by a computer?

24 A. Sorry, when you define "software syntax", do you
25 mean entering like a ticker into Bloomberg, that

1 16.12 syntax? The syntax that you use, the language you
2 use inside a software system.

3 Q. You tell me. Software syntax, in the question,
4 relates to a set of rules which defines the choice
5 of words and identifies the appearance of words and
6 symbols used by a computer?

7 A. Yes, I guess that sounds correct.

8 Q. The application of these rules by any particular
9 entity results in a uniquely different set of words,
10 symbols and punctuation so that Exante, for example,
11 if that's what you are trading on, has its own
12 syntax. Would you agree?

13 A. Yes, and I guess for example Bloomberg has its own
14 syntax.

15 Q. You are very keen to mention Bloomberg. Is there
16 any particular reason why that springs so readily to
17 mind?

18 A. Yes. When you mentioned syntax as a trader, or
19 somebody operating in that period, you would use, I
20 guess the Bloomberg -- Bloomberg's your, the
21 terminal everyone uses, right? So I guess all the
22 syntax essentially derived from Bloomberg and then
23 translated to a different provider. So when you use
24 Eze or Eze or Exante syntax, it could be very
25 specific to the broker and you would always try and

1 16.14 translate that from Bloomberg. That's why I
2 mentioned that, right.

3 Q. So Exante's choice of language has specific lingual
4 characteristics, doesn't it?

5 A. Yes.

6 Q. And you can examine records of a trade to see
7 whether it was made on Exante or not, as opposed to
8 Bloomberg?

9 A. Well, trades won't be conducted on Bloomberg,
10 Bloomberg --

11 Q. You can identify the record of the trade in order to
12 determine whether it is made on a specific trading
13 platform. That's all.

14 A. Yes.

15 Q. It's like a fingerprint, really, isn't it?

16 A. Yes.

17 Q. While you were at Dalma you were part of a three-man
18 team, I suggest. Nick Allsop led the team?

19 A. Yes, as two man. Who was the third person?

20 Q. Zach supported the team?

21 A. Yes.

22 Q. And you were responsible for providing trading
23 advice to Nick and to Zach?

24 A. And conducting trading, yes.

25 Q. They, so far as Zach was aware, were responsible for

1 16.16 placing and executing trades.

2 A. No, that was not correct. They were aware that I
3 was trading.

4 Q. Many of the trades, many, many of the trades, during
5 this period were made while you were at Elysium,
6 sitting next to Nick Allsop --

7 A. Yes.

8 Q. The vast majority of trades was made in the presence
9 of Nick Allsop and in the absence of Zach?

10 A. Yes.

11 Q. I am going to suggest to you that Zach was never
12 physically present when you -- if you, if you did,
13 when you traded live, on any platform. Is that
14 possible?

15 A. I think it's unlikely but it is possible.

16 Q. Can I come to your trading whilst you were away and
17 out of Dubai, but if I were to put to you that
18 90 per cent or more of your trading is done at
19 Elysium sitting next to Nick, you wouldn't disagree,
20 would you?

21 A. No I wouldn't disagree.

22 Q. It remained, throughout this period, Nick's
23 responsibility to oversee and supervise you?

24 A. Yes.

25 Q. I am going to suggest that you have not got any

1 16.18 specific recollection that you ever traded sitting
2 next to Zach?

3 A. I cannot recall any specific event.

4 Q. Had you been able to recall, you would have said so
5 in your interview or your witness statements,
6 wouldn't you?

7 A. Yes.

8 Q. That you sat together trading, live time on Exante?

9 A. I definitely -- I do recall being in the office and
10 discussing the Eze system, for example, and there is
11 a -- I say it's highly likely we discussed Exante
12 but I cannot recall.

13 Q. I don't dispute that you discussed Eze, certainly,
14 that's my case, and I certainly don't dispute that
15 you discussed Exante. But it was in connection with
16 your imminent trading once your contract had been
17 signed, in relation to Exante and current trading, I
18 suggest that all that was done on the Exante
19 sandbox?

20 A. No, that is not correct, that was not a sandbox
21 environment and, as I said before, there are emails
22 where I have confirmed with Zachary that I was
23 trading on the Exante live platform.

24 Q. So when you were trading busily, 90 per cent of the
25 time, at Elysium's offices, sitting next to Nick

1 16.19 Allsop, what was he doing?

2 A. He was, I guess, being made aware of my positions
3 and he would kind of, I guess, when I was performing
4 well, he would just keep encouraging me and, yes, I
5 guess the other times he would just be doing his own
6 thing, which might involve --

7 Q. So who was keeping him aware of your positions?

8 A. I was.

9 Q. Why?

10 A. Because he was my manager and --

11 Q. And he was saying, "Fine, go for it, good,
12 excellent, well done", is that --

13 A. Yes. As you can see from that email where Nick
14 praises the money that I made, the 120,000
15 profits --

16 Q. I will come to that, on 2 May. But may I understand
17 the position. You were being supervised by Nick
18 during these trades for 90 per cent of the time
19 because he was indicating his approval. Is that
20 right?

21 A. Yes, he was aware of what I was trading.

22 Q. So can we eliminate from our minds completely the
23 idea that you were being left alone somehow to carry
24 out trades without reassurance and supervision from
25 your line manager?

1 16.21 A. Again, Nick was aware of my trades and I made sure
2 that he had a daily profit and loss and knew where I
3 stood in regards to the positions.

4 Q. So what's the answer to my question?

5 A. Can you repeat the question?

6 Q. Yes. Can we eliminate from our minds completely the
7 idea that you were somehow left to trade and left to
8 your own devices unsupervised, unmanaged and out of
9 your depth, because you were, as you have now told
10 us, sitting with Nick in the Elysium office for
11 90 per cent of these trades over the relevant
12 period, telling him what you were going to do,
13 getting his approval to do it and receiving his
14 congratulations and encouragement? Which is it?

15 A. Again, I think during the period when I made money
16 Nick was almost kind of a person I would give ideas
17 off to and he would agree and kind of I would place
18 those trades. I think when -- sorry just let me
19 finish. Once I started losing money he was aware
20 that I was losing money, but he wasn't, I guess --
21 maybe, yes, in my perspective, given his role, he
22 should have been able to, I guess, help and mentor
23 me and guide me to kind of get, protect I guess,
24 that risk that I was losing and I think at that
25 point he kind of took a very hands-off approach.

1 16.23 Q. So he only took a hands-off approach in May, did he,
2 but in April, when you were making money, and we
3 will come to how much you made, he was encouraging
4 and generally was being informed by you as to what
5 was going on?

6 A. I guess he was always within the risk limits so
7 there was, I guess, there was no micromanaging,
8 essentially from his side.

9 Q. And when you started to lose money, did you tell him
10 that you were losing money, sitting next to him as
11 you were?

12 A. Yes, well, when he was in the office, yes.

13 Q. And what did he say to you when you told him you
14 were losing money?

15 A. Again because it was within the risk limits and
16 again because I had made money before, I can't
17 recall exactly what he said, but it was along the
18 lines of obviously, just, yeah, continue and get
19 back to the performances you said you had before
20 which I was --

21 Q. So despite the losses he was saying to you -- these
22 are my words, not his -- "Don't panic, you are doing
23 very nicely, everything you are doing is perfectly
24 sound. Carry on regardless." Is that what he was
25 saying to you?

- 1 16.24 A. I can't recall the specifics. Again, like I would
2 have informed him of my daily P&Ls and I'm not
3 really, like he wasn't a micromanager so he would
4 have instructed me -- again, we had agreed limits in
5 terms of risk, so as long as I kept within those
6 agreed risk limits, then he would have, I guess,
7 left me to myself and if they had hit stop loss --
- 8 Q. Leaving you to yourself creates the impression that
9 you were far away from one another and not
10 conversing but that's not the case, is it? You were
11 physically in close proximity and you were
12 exchanging information with him and there was
13 discourse about what you were doing?
- 14 A. He was always aware what I was doing, yes. Was he
15 always in the office? Like he wasn't in the office.
- 16 Q. Not everybody is always in the office but as you
17 have agreed, 90 per cent of the time you were
18 trading in the office sitting next to Nick, correct?
- 19 A. Yes. Yes.
- 20 Q. Now let's start to look at the email chain. Let's
21 start, please, with 29 March to 31 March, which is
22 B/150 to B/154.
- 23 A. Can you put it on the screen, please?
- 24 Q. We can certainly put that on the screen for you,
25 yes, absolutely. There should be an email at

1 16.26 9.23 am from you to Zach on the 29th which reads:
2 "Please let me know if we are able to trade
3 through Interactive Brokers. If so we can arrange
4 to get those orders filled today."
5 Yes?
6 A. Yes.
7 Q. Who is "we"?
8 A. We is --
9 Q. Given that you are sitting next to, in all
10 probability, next to Mr Allsop in the office at
11 Elysium, who is "we"?
12 A. "We" refers to Zachary, myself and Nick here.
13 Q. The team, as I put it to you?
14 A. Yes.
15 Q. Right:
16 "Please let me know if we are able to trade."
17 So which one of you was going to place the
18 trade?
19 A. Sorry, can you show that on the screen?
20 Q. It is there:
21 "Please let me know if we are able to trade now
22 through Interactive Brokers."
23 You have told us that "we" refers to the three
24 of you, you and Nick and Zach. So I'm asking you
25 who was going to place the trade?

1 16.28 A. So I would have assumed it would have been me, but
2 obviously --

3 Q. We know that you didn't place any trades through
4 Interactive Brokers, you have already conceded that?

5 A. Well, my recollection of events I have conceded that
6 I can't recall exactly, like it's very fuzzy around
7 that time. So obviously, that would leave Nick or
8 Zachary.

9 Q. Exactly. So if trades were conducted live on the
10 Interactive platform, they would have had to have
11 been placed either by Nick or by Zach, correct?

12 A. Yes.

13 Q. And since Zach, I suggest, was the only one with the
14 codes to get into the Interactive Brokers platform,
15 it must have been Zach who you are referring to when
16 you write:

17 "Please let me know if we are able to trade.

18 If so, we can arrange to get those orders filled
19 today."

20 A. Again, I can't recall exactly around this time.

21 Q. That's you, I suggest, giving advice and showing
22 your worth as an adviser to an individual, or
23 individuals, who were actually physically able to
24 place trades that you were not able to place?

25 A. Again, regards to Interactive Brokers, as we have

1 16.29 discussed, I can't recall trading exactly on
2 Interactive Brokers.

3 Q. You didn't trade on Interactive Brokers and I can
4 take you into a myriad documents as to why. But it
5 concerns an application for you to be able to do
6 that. It didn't materialise. But I don't want to
7 go down that route. It's sufficient for my purposes
8 that you told the DFSA in your first witness
9 statement that you didn't actually place trades on
10 the interactive platform. So that means when you
11 say, "Please let me know if we are able to trade
12 through Interactive Brokers, so we can arrange to
13 get those orders filled today", you must have known
14 that you couldn't place the trades and that the only
15 person who could place them was Zach. That's what
16 you meant by "we". That's got to be right, hasn't
17 it?

18 A. Yes, again, there's a very strong -- yes, I guess
19 from the narrative you have created or said, sorry.

20 Q. Thank you. B/153, we go backwards I'm afraid in
21 order to go forwards.

22 CHAIRMAN: We will take our five minute break after that
23 point if that's all right.

24 MR SALLON: Yes, certainly, sir.

25 (4.31 pm)

1 16.31 (Break)

2 (4.38 pm)

3 CHAIRMAN: Thank you everybody, we will resume.

4 Mr Sallon, when you are ready?

5 MR SALLON: Thank you very much very much, sir. I am
6 going to deal with a few emails, but I want to try
7 and limit the time that I spend cross-examining you
8 on all these different emails, so I just want to
9 understand from you the following, please. Do you
10 accept that you never send an email confirming that
11 you personally have placed a trade to Zach?

12 A. No.

13 Q. In all this email exchange between you there isn't a
14 single email from you to him saying, "I have just
15 placed a trade", or words to that effect. Do you
16 agree?

17 A. There is email -- there is an email saying, "We have
18 live trading."

19 Q. Yes, precisely. That's my second point. As at 29
20 March you used the word "we" to describe the team.
21 We have already been through that, yes, do you
22 agree?

23 A. I could also have been using that "we" to describe
24 the fund.

25 Q. How does "we" refer to the fund?

1 16.39 A. As in like "we have trading", the company, the fund.
2 I don't know, like it's -- maybe that's a different
3 interpretation.

4 Q. The fund doesn't have trading. "We" refers to the
5 people placing trades on the fund. You are not in
6 partnership with the fund. You are in partnership
7 with the people placing the trades?

8 A. I guess it's different interpretation. You are
9 saying your interpretation of "we" here is -- I'm
10 just saying like from my knowledge, the "we" is
11 referring, "We have live trading", for example, in
12 that email means that I have just placed a trade and
13 then emailed saying, "We have live trading now."
14 I've not really thought about --

15 Q. We will come to it, if you want me to deal with it,
16 but it is not what it says, is it? "We have live
17 trading" isn't the same as saying, "I have just
18 placed trades on."

19 A. From a very -- yes, from specifically a language
20 piece, yes, they are different.

21 Q. Well, the language is all, you see, in a case like
22 this. And the interpretation is so important. So
23 may we take that it when you used the expression
24 "we" in terms of trading, we cannot reasonably
25 exclude the possibility that you at the time were

1 16.41 referring to the team and not to yourself as having
2 placed trades, or about to place trades. Do you
3 agree?

4 A. So can you repeat that, sorry?

5 Q. Yes. Do you agree that the word "we" in the emails
6 that you send to Zachary over the relevant period
7 does not necessarily indicate you, Lyle Dean,
8 placing trades or about to place trades, but is
9 quite possibly an indication that you are referring
10 to one of the team doing that, just as it is in the
11 29 March email that we've been looking at for such a
12 long time?

13 A. Yes, I guess from that interpretation, you could
14 reasonably, I guess, suggest that I'm referring to
15 the team there, but obviously, given my statement
16 and knowledge, that is not the case.

17 Q. I'm sorry, I don't understand that. It is the case
18 on 29 March that "we" refers to the team because you
19 couldn't have placed the trades. Is that right?

20 A. Yes, from the previous email.

21 Q. So we can exclude the possibility that you placed
22 the trades or were about to place the trades on
23 Interactive Brokers. I don't want to keep repeating
24 this, but I want to understand what you mean when
25 you say "we" in these chains of emails.

1 16.43 A. So can you refer to this second email you are
2 talking about now, please? I think also the "we",
3 usage of "we" --

4 Q. I would just like a final answer on this, please.
5 When you use the word "we" in various emails
6 indicating trades that are about to take place, or
7 trades that have taken place, "we" in the way that
8 you use it, looking back at it now, could indicate
9 that trades were being placed by another or others
10 than you. Does that make sense now?

11 A. From your interpretation of "we", obviously the
12 context of the email obviously is very important as
13 well, not just the use of the word "we." You could
14 infer that, but as I said, I think the second email
15 you are referring to with the usage of "we" it would
16 be good to have that specific email to explain the
17 context of the email and rather than ... yeah.

18 Q. I will take you to the next email. Could you go,
19 please, to --

20 CHAIRMAN: Excuse me, are you taking the witness to a
21 different email or to the email which he asked to
22 see?

23 MR SALLON: I am taking him to a different email. We
24 will come to the email he asked to see in a moment
25 if you go to 153, please. This is an email from you

1 16.45 to Zach:

2 "I guess we could trade spot FX positions while
3 we wait for compliance to get the NFA filing."

4 Yes?

5 A. Can you go back up, I can't see that?

6 Q. I guess, it is on the screen --

7 A. It is not on the screen.

8 Q. Is it not?

9 A. Thank you.

10 Q. "I guess" -- you were right -- "we could trade the
11 spot FX positions while we wait for compliance to
12 get the NFA filing acknowledged."

13 Yes?

14 A. Yes.

15 Q. You copy in Nick, as you always do, and then "we",
16 who is the "we":

17 "We could trade spot FX positions while we wait
18 for compliance to get the NFA filing acknowledged."

19 A. I guess in that sense I'm referring to myself and
20 Nick. I'm not sure if I'm referring to Zachary
21 here. Maybe --

22 Q. When you say that you are not sure that you are
23 referring to Zach, are you ruling that out as a
24 possibility, or are you accepting that it is
25 possible that you were referring to Zachary?

1 16.46 A. I think just to be bluntly about it, I think my use
2 of grammar and emailing sometimes is not very clear,
3 which has probably led to this kind of
4 misrepresentation. And reading that I guess there
5 is a possibility you could infer that I am referring
6 to myself, Nick and Zachary at this point.

7 Q. If there is a possibility, are you -- I'm not asking
8 you to approve of my ability to parse a document.
9 I'm asking you what the truth is. Is it possible,
10 when you wrote that email, you were indicating that
11 you or Zach, and I'm going to suggest or Nick, could
12 trade spot FX positions while we wait for compliance
13 to get the NFA filing acknowledged?

14 A. Yes.

15 Q. Thank you. And just for the sake of completeness,
16 the NFA filing related to Interactive Brokers, but
17 we won't go into that in any more detail. Then
18 this. An email at 10:54, it's at 153, I think if
19 that could come up. "Do you want to come by" --
20 Zach writes to you -- "... so I can log you in on
21 your laptop." Yes?

22 A. Yes.

23 Q. Let's just make sure I can see what's happening on
24 the screen. Is this the 10:54 email that reads:

25 "We transferred some more funds into the

- 1 16.49 account so there are now \$2 million and we're
2 sending another \$1 in the next few days."
- 3 A. Yes.
- 4 Q. "Do you want to come by?"
- 5 A. Yes.
- 6 Q. That's the one? Right. This email was written to
7 you, I suggest, when the expectation was that you
8 and Nick were just about to be hired potentially the
9 next day. Do you agree that that's entirely
10 possible?
- 11 A. That's a possibility, yes.
- 12 Q. And do you agree that Zach was simply making an
13 arrangement to set you up on Dalma's live system
14 pending your formal hire? Do you accept that's a
15 possibility?
- 16 A. Well that would be a possibility if the before was
17 correct, but obviously I was never employed
18 specifically by Dalma Capital?
- 19 Q. No I appreciate that, but as this wasn't finalised,
20 I suggest the arrangement wasn't actually
21 progressed. And I further suggest, so that you can
22 consider it in one total suggestion, that the only
23 trading that actually occurred over the next few
24 days took place on Interactive Brokers, which
25 completely ruled you out as the person placing the

1 16.51 trade.

2 A. If there is evidence --

3 Q. Would you like --

4 A. If there's evidence that there wasn't trades on
5 Exante over that period, then yes that's a
6 possibility.

7 Q. And in subsequent emails on that day, at 10:54,
8 10:55, 10:59, right the way up until 11:13 in the
9 morning, I am going to suggest are email
10 conversations, if you like, in which Zach was simply
11 making arrangements to set you up to trade on IB,
12 but this never occurred and he never actually did
13 so.

14 A. Can you complete the question, or suggestion?

15 Q. All the other emails on this day in this chain
16 relate to setting you up for possible trade on IB,
17 subject to the completion of contracts, but it never
18 occurred. You weren't signed up and any trading
19 which was done on the next few days wasn't done by
20 you. So that that's perfectly clear, do you
21 understand?

22 A. Again, as I just mentioned before, if there's
23 evidence we didn't use Interactive Brokers -- sorry,
24 Exante over the next few days, I guess that --

25 Q. Similarly -- sorry?

1 16.52 A. Sorry, continue.

2 Q. I didn't mean to interrupt you, but on 31 March, B
3 150 here, you are stating:

4 "If you could chase up IB tonight so we can put
5 on those trades tomorrow that would be great."

6 That is you acting in your advisory capacity
7 because you didn't have access to Interactive
8 Brokers. It's a clear example of "we" being used to
9 mean "we" the team, but not you?

10 A. In that specific example, yes. Again, yes, it's --
11 yes.

12 Q. On 4 April, if we look at 125, B/125, there's an
13 email -- sorry it's a WhatsApp message, we are
14 looking at, my error. There's a WhatsApp message to
15 suggest that Zach has been trying to push compliance
16 through and that you are at Dalma's offices. If we
17 look at that. There was to be a meeting with Zach
18 on 5 April, which you agreed to handle and to keep
19 Mr Allsop informed. Do you have that entry?

20 A. I can see it on here.

21 Q. Right.

22 A. So --

23 Q. Nick Allsop says to you a few lines down from the
24 passages that we highlighted, I don't know if you
25 can see it -- do you see he says this? He says:

1 16.55 "Good man" -- if you scroll up a bit actually
2 it would help. It's page 24 internally. It starts
3 at 3 April 2016, at 17:48 -- "We will try tomorrow,
4 Zach still trying to push compliance."

5 A. I can read it, I see it.

6 Q. "Understood.

7 Lyle, what time is our meeting tomorrow with
8 Zachary?"

9 Then you write:

10 "Lyle Dean: Hi Nick. It's 930 am.

11 Nick Allsop: At his office?

12 Lyle Dean: Yep will let you know how it goes.

13 Nick Allsop: Can you handle all of it for me?

14 Lyle Dean: Yep have it covered. No problem.

15 Nick Allsop: Good man. I'm impressed by you
16 on this Lyle, as I am elsewhere. Sanjay will be
17 made aware of my views too."

18 Yes?

19 A. Yes.

20 Q. So what exactly had you been agreeing with Nick that
21 you would handle?

22 A. I don't recall.

23 Q. You had said that Nick was doing everything and you
24 were just under orders?

25 A. I would assume if you look the dates of those

1 16.57 trades, I'm assuming it would have been setting up
2 or maybe discussions around EzeCastle. Again like I
3 said, I wasn't involved in any discussions around
4 employment contracts as far as asked in that email
5 you showed earlier in terms of the beginning of
6 those discussions. I can't remember exactly what
7 this discussion was about, but I would imagine it
8 would have been around the trading and the Eze
9 system and the Exante system.

10 Q. I want to take you next to 5 April and to the trades
11 document. B/321, 5:55. Have you got that?

12 A. I can't see it on screen.

13 Q. It's an email headed "Trades". Have you got it?

14 A. Yes, I can see it.

15 Q. Right, it attaches a document which we can see at
16 our B/322. It is actually a document we have heard
17 that you originally created on 24 March, which you
18 sent to Nick Allsop, is that correct?

19 A. Yes.

20 Q. I am going to ask, sir, that we access a new
21 document which we have entered on to the system
22 which is now B/322. It's a table which -- you
23 haven't seen. You have seen the document, but it's
24 colour coded document which we hope makes life a
25 little bit easier to explain. As far as 24 March is

1 16.59 concerned, do you recall telling the DFSA that you
2 and Nick sat together in EGLD's offices putting this
3 document together? It was a strategy document. Do
4 you recall saying that?

5 A. Yes I --

6 Q. And it reflected your trading -- respective trading
7 backgrounds, and you told the DFSA that this
8 represented a list of test trades which you and Nick
9 came up with probably as a result of compliance
10 issues to get permission to trade those instruments.
11 Yes?

12 A. Yes.

13 Q. Or it could be used to execute those trades. You
14 weren't sure.

15 A. Can you refer to the --

16 Q. Yes it's, I hope I am giving you the right
17 reference, it's D/373. No, you have the wrong
18 reference. I thought it was 0373. I think maybe I
19 am right. Do you see that now?

20 A. Yes.

21 Q. So do you confirm that that's what you told the
22 DFSA?

23 A. Yes.

24 Q. And when you were asked by the DFSA about this email
25 and whether you had undertaken any trading, you

- 1 17.01 said:
- 2 "I don't think I did" -- this is at D/354 --
- 3 "They might have got me to do a test position."
- 4 Have you got that?
- 5 A. Yes.
- 6 Q. Right. "They", I emphasise, may have actually like
- 7 executed a trade or just trades. Have I got that
- 8 right? "They" may have actually executed a trade or
- 9 just a trade -- or just a test?
- 10 A. So I guess from that, I struggled recalling that at
- 11 that period of time and further recalling it now,
- 12 but if that's way said at that interview, yes.
- 13 Q. So who is "they"? We have dealt with "we". Now I
- 14 want to know who "they" is?
- 15 A. "They" means Dalma, Zachary, Nick.
- 16 Q. So it means Nick? So it could mean Nick as well as
- 17 Zach?
- 18 A. Yes.
- 19 Q. Who were going to place trades?
- 20 A. As in --
- 21 Q. As in trades?
- 22 A. As --
- 23 Q. As in trading.
- 24 A. Yes, I guess on this one, I'm probably referring to
- 25 Dalma Capital in this and Zachary.

1 17.03 Q. Thank you. Now let me ask you to look at our new
2 document. It's not a new document, but it's an old
3 document which has just been covered. We have
4 adopted Mr Temple's helpful numbering but we have
5 added some colour. This is an Excel spreadsheet
6 prepared by you in which you listed your and Nick's
7 trading ideas; correct?

8 A. Yes.

9 Q. And it lists 22 instruments.

10 A. Yes.

11 Q. I am going to suggest to you that based on brokerage
12 statements and audited financial statements prepared
13 by Apex, who are Dalma's administrators who maintain
14 accurate records of all trades occurring at Dalma
15 over this period, and records which have been seen
16 and examined by the DFSA, do you accept that the
17 following nine listed instruments were never traded?
18 I will give you the numbers: 7, 8, 9, 10, 14, 20,
19 21, 22 and 23.

20 A. Those exact instruments? From the statements I have
21 seen, they weren't traded, but there is a
22 possibility that those instruments were replaced
23 because those months, or the contracts because they
24 are futures, were different and so there were
25 different contracts used, or different syntax used

- 1 17.05 around the call options. I can't recall trading --
- 2 Q. Has somebody discussed that with you, by any chance?
- 3 A. In what sense?
- 4 Q. I'm just wondering if anybody has discussed that
- 5 with you recently, that particular interpretation
- 6 that you have put forward as a possibility?
- 7 A. No. No one's discussed that.
- 8 Q. Well, if I were to suggest to you that these trades
- 9 don't appear on any audited financial statements or
- 10 brokerage reports, that is to say the trades that I
- 11 have read out to you, do you dispute that?
- 12 A. If they don't appear, then I do not dispute that.
- 13 Those specific trades and those specific syntaxes, I
- 14 do not dispute that, if they don't appear.
- 15 Q. Let me put the next suggestion to you. Based on the
- 16 same records, five trades, numbers 15 to 19
- 17 inclusive, were trades done with Interactive Brokers
- 18 between 24 March and 4 April and were traded on the
- 19 DURF account. Would you be prepared to accept that?
- 20 A. If there's documentary evidence for that, yes.
- 21 Q. If, as you said, you don't or didn't trade on
- 22 Interactive Brokers, who placed those trades, if you
- 23 didn't?
- 24 A. If I didn't place those trades, then it would have
- 25 been Zachary.

1 17.07 Q. Thank you very much. So do you accept that if I'm
2 right about what the records show, this document in
3 relation to these trades demonstrate that over the
4 period in question, Zach was trading on the DURF
5 account?

6 A. If he did trade on the Interactive Brokers, then
7 yes.

8 Q. Either he did or Nick did, but you didn't. That's
9 the point?

10 A. As I said, I'm saying like there's a -- it's very
11 fuzzy around that time and I remember specific parts
12 of interacting with Interactive Brokers but I can't
13 recall and I can't say for certain that I traded on
14 those -- that, those. So if you take that
15 interpretation, then yes, the next people who
16 would --

17 Q. I don't want to be critical of somebody who is
18 having difficulty with memory, but you do appreciate
19 the seriousness of these proceedings, do you not?

20 A. Yes, I fully appreciate the seriousness of these
21 proceedings.

22 Q. And the seriousness to all involved in these
23 proceedings?

24 A. Yes, I appreciate the seriousness.

25 Q. What you are telling his Honour Judge Mackie and the

1 17.08 Tribunal is that your recollection of these events,
2 based on the documents, still remains very fuzzy.

3 A. No. I'm saying specifically around the specifics of
4 certain trades, yes, there is -- it was six years
5 ago and, yeah, I'm not -- the interview I gave in
6 2018, I had a better recollection than I do today.

7 Q. What you said in your interview about the trades
8 that we have just been asking about is that you
9 couldn't actually remember who executed the test
10 trades, but only that they were based on your
11 trading ideas. And when you were specifically
12 asked, you said, "My memory's kind of joggy", do you
13 remember using that expression?

14 A. I don't remember using that expression but obviously
15 I'm referring to, yeah --

16 Q. If we need the reference we can go to it, but it's
17 D/3368 and I won't take you to that.

18 A. Yes, yes.

19 Q. Do you also accept that this document, that we have
20 got up in front of us, doesn't prove, let alone
21 state that you executed all or indeed any of these
22 trades; does it? It's just your recollection that
23 we are dealing with.

24 A. Yes.

25 Q. I suggest that the remaining eight instruments

1 17.10 referred to at numbers 1 to 6 and 12 to 13 inclusive
2 were traded, but according to Mr Maslyakov, who
3 designed and supervised various versions and
4 iterations of the Exante website, they could not
5 have been traded as this document describes, on the
6 Exante platform, because of unique differences in
7 syntax?

8 A. So you are saying that -- sorry, repeat, so to
9 repeat what you are saying, you are saying that the
10 Exante platform had a different syntax and to that
11 syntax was traded but the exact syntax on this
12 spreadsheet wasn't traded?

13 Q. No. I'm saying that those trades that I have
14 numerated were not traded on the Exante platform?

15 A. From my recollection of events, those were traded on
16 the Exante platform.

17 Q. How does your recollection of events enable you to
18 remember those specific trades, but is yet so fuzzy,
19 as you have described it, or "joggy" in other areas
20 of your testimony. Can you help me with that?
21 Anything special about those that really sticks out
22 in the memory to distinguish it from all the things
23 that you couldn't remember?

24 A. No, there's nothing special about those.

25 Q. What I am going to suggest to you is that the trades

1 17.12 that we have just been dealing with entered on the
2 table are entirely consistent with the size of
3 entries carried out on DURF over the preceding years
4 and were not unusually small. Now, I'm going to, if
5 you don't want to add anything to that, I would just
6 like a moment, sir, if I may, to see if I can
7 whittle down my cross-examination of the emails to
8 just two or three more so that we can conclude this
9 cross-examination.

10 CHAIRMAN: Of course, take your time.

11 MR SALLON: Would you just give me a moment if I went off
12 air?

13 CHAIRMAN: Yes that's fine.

14 (After a pause)

15 MR SALLON: Thank you very much indeed, sir. I am sorry
16 to have kept the Tribunal waiting.

17 CHAIRMAN: That's okay. On we go.

18 MR SALLON: Can I just say I have whittled this down.
19 There are about five or six emails I am going to
20 deal with, but I hope Mr Temple will appreciate and
21 the Tribunal will appreciate that if I don't
22 condescend to detail on every single email, it's not
23 because I don't have instructions or want to miss
24 things out. It's just an economy of time and scale.
25 So bearing that in mind, could we go, please,

1 17.18 to B/342, an email at 9:59 on 5 April. But before
2 we deal with it, I want to just establish this with
3 you. Part of prop trading can include trading in
4 futures contracts, do you agree?

5 A. Yes.

6 Q. And over the course of time you became very familiar
7 with different types of futures and FX products and
8 the exchanges on which they traded. Would you
9 agree?

10 A. Yes, I built up experience, yes.

11 Q. It's -- somebody with your experience would not
12 easily confuse Euros with pounds sterling, would
13 they?

14 A. I'm not -- I don't think that is true. I think,
15 again, when I had my -- when I moved to Sulla
16 Investments I was involved in helping them
17 essentially currency hedge and I found that
18 difficult. Obviously I had knowledge, I had
19 knowledge of the instruments but I wasn't an expert,
20 but generally yes to that question.

21 Q. So you may have been confused but you may not have
22 been confused, is that the position?

23 A. No I'm saying as in anything, any kind of trade you
24 do or instrument, you do the calculations and
25 possibly you want to double check and validate those

1 17.20 calculations, but they are complicated calculations,
2 right? And the more you do them, the more easy they
3 are.

4 Q. You were quite capable of doing them at this time,
5 weren't you? You were quite capable of doing them
6 at this time, weren't you?

7 A. Again, with regard to calculations and doing
8 specific calculations on different instruments or
9 instruments per se, I was capable of doing the
10 calculations, but I still think at that period I was
11 still learning around some of --

12 Q. May I say Mr Dean, we are all still learning but
13 what I need from you is confirmation that you were
14 capable of doing these various calculations.
15 Similarly, would you confuse ICE with EUREX?

16 A. Yes I probably would at that -- or like I wouldn't,
17 I know different futures or futuring places, but
18 yes, like I guess in that sense, like I probably
19 wouldn't have confused it at the time, I probably
20 would have looked it up and Googled it. If I wasn't
21 sure I would have asked Nick or somebody.

22 Q. So at that time you wouldn't have confused ICE with
23 EUREX because you would have Googled it and made
24 sure any confusion was dispelled; correct?

25 A. I guess if I could, yes, but again there are

1 17.22 intricacies to the different parts of the market.

2 Like I said before, it's complicated and --

3 Q. Would you easily confuse UK sovereign debt with
4 Italian sovereign debt?

5 A. Are you talking about EUR-SCHATZ and Eur-Bobl here,
6 right?

7 Q. We are coming to that?

8 A. I would say in terms of at that time I had good
9 knowledge of treasuries and gilts. I wasn't fully
10 aware of different bond -- like I was aware of the
11 bond markets in Europe and the differences of those,
12 but realistically there would be a chance I could
13 confuse between an instrument called EUR-SCHATZ and
14 Eur-Bobl.

15 Q. So there's a chance you could, but equally there's a
16 chance that you weren't confused. Is that fair?

17 A. Again, I didn't have much experience trading in
18 European debt, I only kind of knew of gilts and
19 treasuries. Obviously on the European debt I didn't
20 know the specifics of the Italian bond market, but I
21 imagine at that time I would have asked Nick, for
22 example, because he's a bond trader.

23 Q. Were you familiar with gilts and gilt futures?

24 A. Pardon.

25 Q. Were you familiar with gilts and gilt futures?

1 17.23 A. Yes.

2 Q. Would you agree that gilt futures related to UK
3 gilts, which is sovereign debt of the UK? And that
4 gilts are denominated in pounds sterling?

5 A. Yes.

6 Q. It follows, therefore that futures contracts for
7 gilts must be denominated in pounds sterling?

8 A. Yes.

9 Q. And would you agree that those futures trade on ICE
10 exchange in the United Kingdom?

11 A. Again, I don't know specifics of which they trade on
12 and if they trade on ICE, then yes I assume that's
13 where they trade on, but again like I don't, I
14 don't -- yeah.

15 Q. Were you familiar with futures contracts related to
16 Euro countries' sovereign debts, including Germany
17 and Italy, such EURO-SCHATZ and Eur-Bobl, which were
18 German, and Euro BCPs, which were Italian?

19 A. I wouldn't, like obviously I would be aware of them
20 but I guess with the bond market, I remember at that
21 time I found it a little bit confusing and yeah, but
22 again, I would have spoken to Nick or got some
23 advice if I wanted to trade.

24 Q. Fine, thank you very much. And he would have told
25 you, he would have sorted you out, would he?

- 1 17.25 A. Yes, I assume so, if I had asked the question.
- 2 Q. Would you agree that those Euro country debts are
- 3 denominated in Euros?
- 4 A. Yes, I assume they are denominated in Euros.
- 5 Q. Would you agree that futures contracts related to
- 6 those must be denominated in Euros?
- 7 A. I assume so, yes.
- 8 Q. And would you agree that those futures trade on
- 9 EUREX exchange in Europe?
- 10 A. Yes, assume so.
- 11 Q. Against that background, have a look at this test
- 12 trades emails, by B/342. This email at 9:59 in the
- 13 morning is from you to Zach, isn't it?
- 14 A. Yes.
- 15 Q. And it reads; first of all it is headed "Test
- 16 Trades"; correct?
- 17 A. Yes.
- 18 Q. "Hi Zachary, I cannot find the following product on
- 19 Exante. Could you please enquire?"
- 20 Then you list the three products, yes?
- 21 A. Yes.
- 22 Q. Now, it's been suggested that this email is a
- 23 request by you to Zach to add securities which you
- 24 are unable to locate and which you wanted to trade
- 25 on Exante.

1 17.26 A. Yes.

2 Q. That's the suggestion, yes? I suggest that that
3 particular suggestion is wrong for a number of
4 reasons and let me put them to you. First of all
5 this is the first email that we have seen in this
6 whole series or chain of emails that refers to test
7 trades; yes?

8 A. Yes.

9 Q. Would you agree?

10 A. Yes.

11 Q. And it appears to refer, or I am going to suggest
12 could be understood to refer, to sandbox trading,
13 which is a form of testing the trading before you
14 actually place real trades?

15 A. I don't think that's the case but --

16 Q. Sorry I interrupted. Carry on?

17 A. I don't think that's the case.

18 Q. The expression "test trades" has been used by you to
19 indicate live trades in very small amounts, but I
20 suggest others, including Zachary and Mr Maslyakov,
21 use the words "test trade", to indicate dummy
22 trading or sandbox trading and I'm just going to ask
23 you to be as fair as you can. Do you accept that
24 the expression "test trade" is capable of being
25 confused with "dummy trades" and can be used by some

1 17.28 people interchangeably?

2 A. In this case the use of test trades was used to
3 apply small lots of trades on to the system to test,
4 essentially, you know, can we actually trade what we
5 want. I guess in terms of, you know, can you call a
6 sandbox trade a test trade? Then possibly yes. But
7 you can also --

8 Q. Sorry. So you accept that that dual interpretation
9 is a possibility, one person can use it meaning a
10 real but small trade and another person can use it
11 meaning a dummy trade?

12 A. When I said it was real, I referred to real trades.

13 Q. I know you do, but it could be understood to refer
14 to dummy trades?

15 A. Yes.

16 Q. Thank you. This is an example I suggest to you of
17 you enquiring about instruments which you couldn't
18 see in the Exante sandbox demo account with which at
19 this time you had been provided?

20 A. No, as I said before, these were test trades done on
21 the real account. I think I couldn't find these. I
22 think most likely it's because as I said before I
23 don't have a great grasp of the bond markets. As I
24 think you said before, that gilt futures were on ICE
25 and I put EUREX here. I guess when I was trading

1 17.30 this time, I remembered bonds being quite a hard
2 asset for myself to get my head around and there was
3 probably a translation on the Exante syntax that I
4 had difficulty finding because I wasn't able to
5 translate the Bloomberg syntax, which is used here,
6 to the Exante syntax.

7 Q. Let me make it quite clear. Had you logged into a
8 live account, you would have been able to have seen
9 that the instruments yourself that you were using,
10 the correct syntax, you were using, as I put to it
11 you already, the live platform's easily accessible
12 help desk function. The correct syntax can be
13 readily found from publicly available sources
14 including Google and the EUREX website. If on the
15 other hand you were dummy trading. As I suggest you
16 were, these then instruments would have been needed
17 to have been added by requesting Zach to add them to
18 your dummy account?

19 A. As I said before, these weren't dummy trades.

20 Q. I'm going to suggest that the syntax used in the
21 DUM6 COMDTY commodity does not match either Exante or
22 Interactive Brokers, but does match the syntax of
23 the Eze sandbox and Bloomberg. Do you disagree?

24 A. Again as I said before, Bloomberg is a central
25 source of all market live -- live trading and

1 17.32 information. So it would make sense that I would
2 use that as, you know, the kind of source to
3 translate that to the other syntaxes, and also,
4 yeah.

5 Q. What about the long gilt trade; what do you say
6 about that?

7 A. What's the question.

8 Q. You say you traded that, do you?

9 A. Again, from my recollection on that trade, I can't
10 specifically recall if we translated that to --

11 Q. So you don't know whether you traded it or not, is
12 that it? Or you think you did trade it? I just
13 want to get your evidence on this.

14 A. I think we did trade it, but again because that was
15 the gilts were I guess the key thing that Nick
16 wanted to trade because he was I guess a bond person
17 and he had that background so --

18 Q. So Nick wanted you to trade that did he --

19 A. Well, yes, we --

20 Q. This is Nick suggesting to you that that particular
21 instrument was traded?

22 A. The combination of test trades that we saw earlier
23 was myself and Nick.

24 Q. Yes. But if I suggest to you, as I do, that no long
25 gilt live trade ever took place on DURF and that the

1 17.34 only place it appears based on Eze records, which
2 have been submitted to the DFSA, is the Eze sandbox
3 account. I have a reference, but I'm not going to
4 turn to it, it's B/1244.

5 A. Again as I said before in my statement, the sandbox
6 account was used to essentially practice and get
7 some experience using Eze, which was a very
8 complicated system which we didn't end up using for
9 live trading and yes it's essentially, gilts is like
10 a common instrument so it made sense that we traded
11 that on a sandbox account to play around.

12 Q. Forgive me, it may be the time of night it is here,
13 but I thought you told us that you didn't do any Eze
14 sandbox trading?

15 A. So we definitely did, like as I said before, we had
16 training with the Eze system. So in terms of I
17 didn't do any sandbox trading on Exante, but when we
18 were trading with the Eze system, then there would
19 have been, I guess, getting familiar with the system
20 on the EzeCastle system.

21 Q. Let me complete my suggestions. If the entries on
22 this document or chart represent small live trades,
23 I suggest that they were in amounts which in the
24 context of DURF were entirely consistent with
25 typical trade size. Do you agree?

1 17.36 A. I guess they are rather small if you are doing one
2 lot or two lots --

3 Q. They may be rather small but the point is I am
4 suggesting to you that that is not unusual in the
5 context of DURF trading?

6 A. Yes.

7 MR TEMPLE: Sorry, if Mr Sallon is asking to compare two
8 sets of trades, can he point Mr Dean to the
9 comparator, as it were?

10 MR SALLON: Let me complete my suggestions if I may. I
11 am going to suggest that the trades about which you
12 are speaking were carried out by Zach. Is that a
13 possibility, given your evidence thus far? Can you
14 rule it out completely? Again, specifically around
15 specific trades, I can't specifically rule that out,
16 but as I said, the trading was done by me at this
17 point in time on the Exante system and especially
18 around the test trades that I have discussed.

19 Q. I suggest that the reason that you couldn't add
20 instruments yourself had nothing to do with the fact
21 that you hadn't been officially taken on by Dalma.
22 You could have added those instruments with Ryan
23 Mahoney's login details if you in fact had them.
24 It's because you were using a sandbox account and
25 didn't have his login details?

1 17.37 A. No, that's not correct, and as I said before, with
2 -- I know you are placing your assertion around the
3 help button, being able to use Exante and speak to
4 the help and support, which I never contacted them,
5 so I guess I wasn't, even though Yes, I wasn't
6 fully aware that could be done through that way and
7 I essentially spoke to Zachary to get these
8 instruments onboarded on to the live Exante
9 platform.

10 Q. Four more emails very quickly before we come on to
11 the email of 2 May. B/0345. It's an email, again,
12 on 5 April at 4:38 from Zach to you:

13 "When adding instruments to Exante, it is
14 actually best that you email me for know and I will
15 be sure they are added in a timely manner. When
16 possible, please let me know any instruments that
17 you would like to trade in the future (my emphasis)
18 that are not available so I can be sure they are
19 added in at advance."

20 Have you got that?

21 A. Yes.

22 Q. I suggest to you first of all that Zach is asking
23 you to email him about instruments that you may
24 trade in the future; yes?

25 A. No, he's referring here to any instruments that I

1 17.39 might trade in the future that are not available, so
2 any instruments that are not currently on the
3 platform I can't access in Exante.

4 Q. "When adding instruments to EXANTE, it's best if you
5 email me for now and I will make sure they are added
6 in a timely manner."

7 I am suggesting that he is asking you to email
8 him about instruments you may trade in the future.
9 Do you dispute that?

10 A. No, I am -- he is referring here to instruments that
11 are not currently on Exante and from what I can
12 read, that I might trade in the future, that I
13 should email him and instruct him that we should add
14 those instruments.

15 Q. What he is doing is simply establishing a protocol
16 where you can email him, so that he can use the help
17 desk to add the instrument. And if you had had
18 access to a live Exante account, you would have been
19 able to have done it for yourself. That's the
20 position, isn't it?

21 A. As I said before, I wasn't aware of a help button on
22 the Exante system and here we are talking about live
23 trading and adding live instruments to Exante in the
24 future.

25 Q. 344, Zach is advising you that two instruments have

1 17.40 been added, but one already exists. He goes on to
2 state:

3 "Until you're added with us I have to act as
4 go-between with you and them. I hope you
5 understand."

6 So I am going to ask you, do you agree that by
7 adding these instruments to Exante's live trading
8 platform, that must have utilized the help desk
9 function?

10 A. I'm not fully aware of how he contacted or arranged
11 with Exante. Yes, if there was a help function he
12 could have used that or he could have emailed them.
13 Again I'm not privy to that communication.

14 Q. There is an example of Zach acting as your
15 intermediary until you were formally onboarded. Do
16 you agree?

17 A. Yes acting as intermediary between me and Exante in
18 terms of --

19 Q. Before you were contracted?

20 A. Yes. In terms of adding margin or adding
21 instruments to the live account.

22 Q. And in common, I am going to suggest, with all the
23 emails to Zach over this period, it doesn't state
24 that you actually conducted live trades, does it?

25 A. Again, I --

1 17.42 Q. Well it doesn't, does it?

2 A. Can you repeat the question, sorry?

3 Q. It wouldn't show that you were placing live trades?

4 A. No I disagree with that. As you can see, as with
5 the emails that I've had over that period, I am
6 clearly referring to different times around trading
7 profits and again the email from Nick is referring
8 to trades and profits on the live Exante account.

9 Q. Could we go to B/348, please. It's an email at
10 5:42 am which you sent to Zach. It is the one you
11 were asking to see:

12 "What reporting the offered by Exante and
13 Interactive Brokers, now we have open positions it
14 would be great to generate a (daily) report with the
15 following: Positions traded?

16 Open positions.

17 Net PnL".

18 Have you got that?

19 A. Yes.

20 Q. Let me make my suggestions briefly. You were
21 putting forward here ideas and suggestions for Nick
22 and Zach to place trades and including them when
23 using the word "we", as in, "Now we have open
24 positions."

25 A. Yes, I do refer with the "we "as the live trading

1 17.44 account with myself, Zachary and Nick, whilst
2 generating reports for the Exante account because
3 obviously, as I said before, conducting live
4 trading.

5 Q. You hear my suggestion. If you had access to the
6 Exante or Interactive Brokers live account, you
7 could have generated a report with the positions
8 traded, open positions, and the net P&L at the click
9 of a button and you have already accepted that you
10 knew how to do that. You knew that it was available
11 to you?

12 A. I said that it was available, but I only mentioned
13 that every platform is different and there are
14 always quirks with the user interface which makes it
15 less straightforward if you are not interacted with.
16 I guess it's the same with Zoom today trying to
17 connect my headphones or the first day it look me a
18 couple of minutes to figure out what the button was
19 to get my headphones in. It is like that with any
20 piece of software. So we specifically --

21 Q. Let me finish just putting my suggestions. If you
22 only had access, or you had access only to the dummy
23 accounts and sandbox, you would have had to ask
24 Zachary to generate those reports. Otherwise you
25 could have done it yourself, you see?

1 17.45 A. No, I don't think that's the case. Again as I said,
2 I guess at this point looking from this email to
3 Zach and Nick to say one, confirm we had live
4 positions and two, get their, I guess, opinion,
5 because I could go off, I guess, and figure out in
6 that time to generate a P&L or positions and I'm not
7 sure exactly why I assume I didn't do that, and I
8 would say at that time it's most likely that I was
9 looking towards Zachary and Nick for I guess some
10 advice or a pointer essentially into what would be
11 the best way to present them the information they
12 need to know the position of the different trades.

13 Q. 351, please. You email Zach at 2:14 on 6 April?

14 A. Yes.

15 Q. And provide him with an overview of the strategy on
16 the long/short equity fund and you say this:

17 "When we start trading.

18 I thought I would give you more of an overview
19 of a strategy that we might employ on a long-term
20 [sic] equity fund when we start trading. If your
21 clients have any questions, here's a trade example I
22 came up with recently."

23 Yes?

24 A. Yes, and in this reference to "we start trading" I
25 guess I refer to the sense when we had bigger

- 1 17.47 positions. As you can see it's 6 April we didn't --
- 2 Q. It isn't a question of when we have bigger positions
- 3 it's a question of when we start live trading?
- 4 A. No when I emailed this that wasn't the context I was
- 5 giving. The way I read this from my own knowledge
- 6 is I am referring and again forgive me usage of
- 7 English because looking back it's a bit hard
- 8 to interpret. Well I'm using "we" probably a little
- 9 bit too much here, but when I'm using it here and
- 10 what I'm saying is that, "We start trading" means we
- 11 start having bigger positions than we did from a
- 12 test trade before because we put those test trades
- 13 on the day before.
- 14 Q. A quick case of the document just speaking for
- 15 itself?
- 16 A. No, I --
- 17 Q. It was badly written and ambiguous and if you had
- 18 had an opportunity to redraft it to read what you
- 19 actually meant, you would redraft it. Is that what
- 20 you're saying?
- 21 A. I'm just saying I'm giving the context here from the
- 22 "We start trading." It is probably badly
- 23 worded/drafted, but as I said, my interpretation of
- 24 what I said here is -- or my interpretation from
- 25 what I'm trying to convey here is "We start trading"

1 17.49 is when we start trading bigger positions on the
2 Dalma DURF fund.

3 Q. B/453, please and B/520. Those are the documents.
4 They are the last emails that I'm going to ask you
5 about.

6 A. Yes.

7 Q. On 2 May you email Nick Allsop to report that the
8 P&L for April was £97,959. That's 453, yes --

9 A. Yes.

10 Q. Dollars I mean, sorry if I said pounds. And Nick
11 mentions, sends a mention in dispatches email to
12 Sanjay and Howard claiming that you made over
13 100,000 gross profit on very small positions in just
14 two weeks. A 3 per cent return in a month is a very
15 impressive showing. Yes?

16 A. Yes.

17 Q. And you confirm that Zach Cefaratti is not copied
18 in?

19 A. Yes, I can confirm that.

20 Q. When you were asked why he -- that is to say,
21 Nick -- had sent this email, you told the DFSA in
22 your interview, and I'm not going to ask you to turn
23 to it, but it's at D/413, that he wanted more
24 returns. He asked who "he" was and you said Nick,
25 Zachary, Sanjay, Howard. Now, I suggest that

- 1 17.51 Zachary never encouraged you or pressured you to
2 live trade.
- 3 A. No I disagree on that, sorry.
- 4 Q. This came from the bloke you were sitting next to
5 who had instructed you to live trade, didn't it?
- 6 A. No I disagree with that. I think obviously, Nick
7 was encouraging and obviously I was making profits
8 so he was encouraging me. But I do --
- 9 Q. He was instructing you?
- 10 A. Sorry? I do recall a conversation with Zachary, who
11 saw my P&L for that month or where it was, and
12 specifically said, "Can you teach me how to do the
13 magic", or something along those lines, and
14 praising, essentially, the live trading I was doing.
- 15 Q. Sorry is there any email or written document that
16 confirms this conversation that you discuss --
- 17 A. This is in the Dalma Capital offices.
- 18 Q. But you remember this, do you, this is one of the
19 events that you remember?
- 20 A. Yes.
- 21 Q. Is it?
- 22 A. Yes, it is.
- 23 Q. What's exceptional about it?
- 24 A. Well, I guess it's one of those things that when
25 somebody's praising you and giving you encouragement

1 17.52 like that it kind of -- you remember it, right? It
2 was at the moment when he said that, it was a nice
3 complement for myself at the time.

4 Q. I suggest that Nick never said anything like that
5 and I suggest --

6 A. No, sorry, Zachary said that.

7 Q. Zachary never said anything like that, but I also
8 suggest, so far as your explanation for why Nick
9 said this, I ask you to comment on this. Did you
10 ever request Nick to bring your trading performance
11 to the attention of Sanjay and others. Did you ask
12 him?

13 A. Before, yes, when I was having profits in Elysium
14 Global, I was making some profits this month. So I
15 was like "It's pretty great" and we had a
16 conversation and he was like, "Yeah yeah I will
17 forward the email to Sanjay", for example. Around
18 this specific event I don't recall having a
19 conversation around this, maybe I forwarded to it
20 Nick on the expectation he would forward to it
21 Sanjay.

22 Q. Did you say to him, "I want you to forward this" or
23 did Nick say he would forward it?

24 A. I don't recall having a conversation telling Nick to
25 forward this or mention it, no. I remember, I think

1 17.54 he told me afterwards.

2 Q. Nothing to stop you from going to Sanjay and telling
3 him yourself, was there?

4 A. Well, yes, because again, like as I said before,
5 after I started working with Nick, I had less
6 interaction with Sanjay and it kind of felt -- you
7 know, I felt almost if I talk to Sanjay at that
8 point, it was kind of overstepping, I guess, the
9 chain of command, as you say, since Nick was my line
10 manager.

11 Q. You were in the same office as him. You had a good
12 relationship with him. There was nothing to stop
13 you from saying, "By the way Sanjay I thought you
14 would be very pleased to hear I have been doing some
15 very good trading." There was nothing to stop you
16 doing that?

17 A. Yes possibly, if he was walking past in the office
18 but he was a very busy person during that period.

19 Q. You can always knock on his door, no.

20 A. Like I said

21 Q. Okay. Now, so far as the other email on 4 May is
22 concerned, it's at 520 and here is Nick emailing
23 Howard, again Zachary not included:

24 "Profits made since we started taking positions
25 for the fund now equals [sic] approximately \$340,000

1 17.55 ... and wipes out the losses made earlier that
2 year."

3 I think you explained in your interview that
4 there had been a very good return of 240,000 and a
5 further 100,000 in what you described as a very good
6 couple of days?

7 A. Yes.

8 Q. So profit is being generated by your trading?

9 A. Yes.

10 Q. In that case, who is Nick referring to when he said,
11 "We have a pretty good couple of days", who was
12 "we"?

13 A. He was referring to the desk, which is myself and
14 Nick.

15 Q. So he is taking credit at placing trades?

16 A. Yes.

17 Q. You say you placed?

18 A. Yes.

19 Q. Is that right?

20 A. Yes.

21 Q. It's not pure chance, is it, or is it more your
22 strategy? You see, I suggest nobody was forcing you
23 to trade. You claimed to the DFSA that this was the
24 first and not the last time that you had generated a
25 sharp turn in profits, yes?

1 17.57 A. Yes.

2 Q. And all the rest of it. Can I just ask you this
3 before we leave that. Is Nick's email, as you
4 understand it, a marker to Howard for a future bonus
5 to be paid for him on profits that you had both
6 generated over this period?

7 A. I assume so. Again, like I didn't know what the
8 bonus or whatever those details were but obviously
9 he said in that email.

10 Q. It appears to have been a misunderstanding between
11 Nick Allsop and Howard Leedham that he would be
12 entitled to a bonus in, or pursuant to the terms of
13 his contract?

14 A. Yes.

15 Q. You left Elysium. Did Nick Allsop sack you?

16 A. So that day I walked into the office. Nick called
17 me outside, told me to close all my positions that I
18 had on, which I went in and closed. Obviously we
19 had a kind of, not a little bit of an argument at
20 first, because I was a little bit surprised what was
21 going on and eventually I realised and I went okay,
22 went into the office, closed all the positions as he
23 told me, and then walk into the office with Howard
24 and Nick and Howard basically explained to me why I
25 was -- why I was being made redundant, which was due

1 17.58 to essentially the losses from that month, and
2 having to, I guess, make some changes to get the
3 Varengold investment. So then I said okay and
4 obviously just left the building. Nick was part of
5 that, but I guess at that point the person who I
6 guess fired me was, or explained to me why I was
7 being let go, was Howard.

8 Q. Did you think that the loss that you had incurred on
9 the trading you say you carried out, which was a
10 4 per cent loss, was so grave that it justified your
11 being made redundant or sacked, depending on which
12 version of events we are being asked to accept from
13 Elysium?

14 A. No, I didn't think, given the returns and the
15 portfolio I had it was in line with the expected
16 standard deviation of the P&Ls. Essentially, I
17 think the month before, I can't remember the exact
18 month but the fund was up 3 per cent or 3.5 per cent
19 the month before so going down 4 per cent --

20 Q. It wasn't an unusual or particularly egregious loss?

21 A. No it wasn't. I understood their reasoning from a
22 perspective of the way they explained it and the way
23 they had to acquire I guess the Varengold, I almost
24 felt at that point --

25 Q. The explanation was that you were a scapegoat and

- 1 18.00 were simply being let go to ensure that a poor
2 month's trading didn't jeopardize the future
3 Varengold investment?
- 4 A. Yes that was the --
- 5 Q. Not that the trading was so terrible that you were
6 sacked?
- 7 A. They were unhappy, Howard was unhappy with the
8 trading but the reason I was given, when I left and
9 spoke to Howard and Nick was that exact reason,
10 which was that essentially I was being let go to not
11 jeopardize the Varengold investment.
- 12 Q. Can you look at 356, please. Sorry, it's my fault,
13 671, it's my fault I have given you the wrong page
14 number. 671. Howard seems to be writing to Ashley
15 Richardson at Elysium, yes?
- 16 A. Yes.
- 17 Q. You know Ashley?
- 18 A. Yes.
- 19 Q. "Hi Ashley, he's only got our assets to trade with
20 at the moment and he's took off Lyle's positions,
21 which did prevent loss. Realistically, he won't
22 make significant profit until AUM increases."
- 23 Who is "he"?
- 24 A. Nick.
- 25 Q. Go down to the next email please:

1 18.02 "In terms of possible desk profits to draw this
2 down from, has there been any trading activity since
3 Lyle left? Has Nick made any profit yet?"

4 Do you see that?

5 A. Yes.

6 Q. So who took off Lyle's positions?

7 A. Again, from recollection of events, I remember
8 taking off positions, maybe I didn't take them all
9 off and Nick followed up, but I do remember taking
10 off some positions, but again, you know, I have just
11 been into a very kind of --

12 Q. Do you think that document may contradict what you
13 have just told us about who took off your positions?

14 A. I think there, again, like I said, I went to the
15 office that morning, Nick took me out, Nick told me
16 to basically take off my positions so I took them
17 off. Maybe I didn't take off all the positions
18 maybe I left a few on without realising. It was a
19 very rushed moment because I was about to get fired
20 or sacked or made redundant. And again it's a very
21 I guess emotional time for myself because of being
22 let go and obviously because of the reasons they
23 gave. So in so far as that contradicts what I said,
24 I wouldn't say it contradicts it, it just says that
25 maybe there were positions that I left on that Nick

1 18.03 took off.

2 Q. Were you resentful about Dalma?

3 A. No, actually, I was --

4 Q. -- effectively terminating your employment with
5 Elysium, because that's what happened, wasn't it?

6 A. To be honest, I'm the opposite, very bluntly.
7 Obviously you saw, you probably know I guess with
8 Elysium and I, you know, once I left, like I guess
9 before that and the trading I enjoyed my time at
10 Dalma I kind of understood their reasoning, the
11 reasoning they gave and it made sense and it was
12 easy to go off. I didn't resent them and you know
13 just kind of moved forward with my life and moved
14 into a different career.

15 Q. Did you feel able to ask Nick for a reference?

16 A. I asked Nick for a reference at first Sulla
17 Investments but he never replied.

18 Q. But your relationship with Nick was good enough for
19 you to feel that you could ask him for a reference,
20 did you?

21 A. I messaged Nick. I think the last time I spoke to
22 Nick was around I guess sorting out me leaving and
23 giving back, you know, stuff and getting everything,
24 contracts sorted, the termination et cetera. And
25 then I think I messaged him once I joined that

1 18.05 company because I was looking for a reference, when
2 I joined Sulla Investments and he didn't reply, so I
3 haven't spoken to him since then to be honest. As
4 we have discussed before, given I guess Nick's
5 interactions and the way he kind of portrayed his
6 trading towards other, like you know, Sanjay and
7 Howard and Nick and taking credit for some of my
8 trades, then obviously there was a bit of -- there
9 was mistrust there that I wouldn't want to continue
10 that relationship with Nick outside the professional
11 environment.

12 MR SALLON: I have concluded my cross-examination, sir.

13 Save to say that I hope the case for the applicants
14 has been made clear and to thank you for allowing me
15 to carry on, having missed the deadline that I set
16 myself earlier today. I am very grateful to you.

17 THE WITNESS: Thank you very much.

18 CHAIRMAN: That's all right, we have not wasted any time.

19 Mr Temple, how long are you going to be, do you
20 think?

21 MR TEMPLE: I would hope no more than ten minutes or so
22 and obviously for Mr Dean's peace of mind if at all
23 possible, I think we would like to complete that
24 today if at all possible.

25 CHAIRMAN: Mr Dean, I imagine you would rather finish

1 18.06 today? So we will go on for ten minutes and see
2 where we are then.

3 THE WITNESS: Yes, perfect, thank you very much.

4 Re-examination by MR TEMPLE

5 Q. Can I just cover some ground that Mr Sallon covered
6 with you and add in some documents that you weren't
7 referred to. If we start with B, page 125. I think
8 that's right. It's the message at 4 April at 21:41.
9 Mr Allsop asked, "Can you handle all of it for me",
10 and you may recall that Mr Sallon asked you about
11 that and what that referred to. I think you said
12 that you couldn't quite recall, so I just wanted to
13 put it in context and see whether it assisted you at
14 all, by looking at page 203. Sorry, I should have
15 said, yes, the WhatsApp we looked at moment ago was
16 at 21:41 and here we have some emails that they were
17 around that time, with different time zones it gets
18 confusing. But it's on the same day and this is an
19 email from Mr Cefaratti to you, originally at
20 1:45 pm saying:

21 "It looks like it will be another day or two
22 before I get futures trading enabled on the IB
23 account. In the meantime we still have about
24 200,000 in an account with Exante which can be used
25 to trade futures as needed ... I will work with you

1 18.08 to set up Exante tomorrow and you can begin trading
2 there."

3 So I will repeat Mr Sallon's question to you
4 about that WhatsApp message and handling it. Can
5 you recall, what do you think you were being asked
6 to handle on 4 April 2016?

7 A. Yes, given the WhatsApp message and given this
8 email, again, given that it was six years ago, this
9 essentially is probably the time where I'm
10 introduced, or set up with Exante to start trading
11 on the live Exante account with Ryan Mahoney's
12 account details.

13 Q. And another, this isn't something you were
14 specifically asked about but it relates to one of
15 your answers, page 136, please, Fatima. This the
16 end of the WhatsApp conversation and you referred
17 just a moment ago in fact to asking Mr Allsop for a
18 reference and we can see a request for a reference
19 on 3 February 2017 at the top of the page there.
20 Would that have been -- what job would that have
21 been a request for a reference for?

22 A. I think that's 2017, so I think that would be with
23 Solo Investments. I think at that point, or it
24 might have been because I didn't -- I don't remember
25 exactly when I did the FCA application, it might

1 18.10 have been in relevance to that as well. Obviously
2 with Elysium Global there wasn't anyone to contact,
3 so I've been using essentially since I left Elysium
4 Global I have been using my termination letter to
5 prove that I worked there essentially and I guess my
6 last attempt at trying to get some sort of
7 reference, but it's most likely this is for the FCA
8 application that I did.

9 Q. Have you contacted Mr Allsop since this WhatsApp
10 message?

11 A. No.

12 Q. If we can move to bundle D, please, Fatima, page
13 327. If we move down to lines about 6 to 14 or
14 something like that. Perfect thank you. Mr Sallon
15 asked if Mr Cefaratti ever saw you trade. I think
16 you said you couldn't precisely recall. In your
17 interview you can see you said to the DFSA:

18 "Zachary was sat next to me ... you know, and
19 pushing me to trade."

20 So what were you doing when you were sitting
21 next to Zachary, as referred to in this extract?

22 A. Yes, I think this is obviously quite ambiguous in
23 terms of like the text. I can't recall what I was
24 specifically referring to here, but I imagine when I
25 wrote that, or when I had this conversation, it was

1 18.11 around the fact of being in Dalma Capital's offices
2 and when I referenced pushing these trades, maybe
3 pushing is the wrong reference here, it's probably
4 more encouraging and facilitating trading.

5 Q. I see and were you actually trading in the Dalma
6 offices when you attended?

7 A. Yes, to my recollection. I guess at the beginning
8 of trading it was initially in Elysium Global's
9 offices when I would go over to Dalma to set things
10 up or set up the Exante account from a previous
11 email, and as we progressed, essentially myself and
12 Nick were sat in the offices of Dalma.

13 Q. And what were you doing when you were sitting in the
14 offices?

15 A. We would have been trading.

16 MR TEMPLE: Those were the questions I had. Unless the
17 Tribunal has any.

18 Questions by the TRIBUNAL

19 CHAIRMAN: I am just going to ask my colleagues whether
20 they have questions. Mr Al Aidarous, have you got
21 any questions?

22 MR AL AIDAROUS: I have a small question, if possible. I
23 want to know whether Varengold bank finally
24 ultimately has zero but participated in the Dalma
25 fund or not, if you know?

1 18.13 A. Was that a question for me? Sorry. Yes, so from my
2 understanding, and again obviously I was let go
3 before obviously these kind of contracts went
4 through, my understanding is that it never -- and
5 it's actually also my understanding from reading the
6 evidence like all the statements afterwards, that
7 this never actually formalised with Varengold in
8 terms of having a merged account but obviously I
9 could be corrected on that.

10 MR AL AIDAROUS: So it never participated?

11 A. Yes, so I don't think they formally had, yeah.

12 MR AL AIDAROUS: It was planned that they were going to
13 participate and this participation of the Varengold
14 like in this capital fund, it would be significant,
15 you know, activity, would bring significant activity
16 for Dalma Capital Management company?

17 A. Yes, so again, from my recollection, there were
18 conversations at the time and I think the set-up was
19 that essentially we can -- the thing was, we worked
20 for Elysium Global and there is obviously the issues
21 with Elysium Global and Sanjay Shah and the dividend
22 trading and Denmark and the KYC, which meant that we
23 couldn't get essentially, I guess, we couldn't trade
24 proprietarily because we couldn't get access to a
25 broker or we couldn't do the KYCs which was

1 18.15 discussed. So I guess the plan was to move to Dalma
2 Capital to then essentially so Varengold could
3 invest that money to Dalma Capital so we could trade
4 that account.

5 MR AL AIDAROUS: Just a small question, thank you,
6 Mr Dean. In your view, the future forthcoming
7 participation of Varengold bank in this Dalma fund
8 was the main motivation for potential hiring you by
9 Dalma Capital Management.

10 A. Yes, I think the main motivation was essentially
11 being injected funds, I guess, from Varengold at
12 some point for me, myself and Nick, which would make
13 sense I guess for them to take us on board because
14 there was a clear, I guess, view to increase in AUM.

15 MR AL AIDAROUS: Thank you, sir, I have no further
16 questions. Thank you Mr Chair.

17 CHAIRMAN: Mr Storey, do you have any questions?

18 MR STOREY: No, thank you that was very clear. I have no
19 questions.

20 CHAIRMAN: I have no questions either. Thank you very
21 much Mr Dean for sparing us so much time. I know
22 you have now moved to a different and equally
23 complex profession and we wish you all good with it.
24 Thank you very much. You can switch off now if you
25 like.

1 18.16 So tomorrow brings us the prospect of more
2 evidence. Mr Temple?

3 MR TEMPLE: Yes, Mr Allsop will give in evidence the
4 morning and Ms Paddon will be available for
5 questions later on in the day.

6 In terms of closing I have been corrected when
7 I said the prospectus was in the bundle. A prior
8 prospectus was in the bundle, but we can provide the
9 updated prospectus for the Dalma fund. It was more
10 up to date than that one and we can add to it the X
11 bundle and you can add that to the supplement and
12 see the entire prospectus.

13 CHAIRMAN: Thank you very much, in which case we will
14 stop now and start again tomorrow at 8 o'clock UK
15 time and 11 am in Dubai. Thank you all very much
16 for your help.

17 (6.17 pm)

18 (Adjourned till 11 o'clock tomorrow morning)

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