

ARKANSAS JOINT PERFORMANCE REVIEW COMMITTEE

HEARING ON

ARKANSAS SECURITIES COMMISSION

Little Rock, Arkansas

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500 Woodlane Avenue, Room A
Little Rock, AR 72201

CRIS M. BRASUELL, CCR
BUSHMAN COURT REPORTING

P R O C E E D I N G S

1
2 CHAIRMAN ENGLISH: The meeting will come
3 to order. Mr. Abshure, appreciate you being
4 here today. Mr. Smith, Ms. McDougal, thank you
5 very much for being here. I'm sorry we had to
6 discontinue the last one. I think the weather
7 being what it was, particularly those folks who
8 live away were anxious to get home.

9 So sort of maybe pick back up a little bit
10 from where we left off this last time, Cochair
11 Rice, do you have any comments?

12 I think one of the things I'd kind of like
13 to look at today is some of the processes that
14 we have with the securities commission. And
15 I'm wondering if you would be able to summarize
16 the commission's procedures in conducting an
17 investigation. I think it's a little unclear
18 to all of us how you go about that. What are
19 violations, what kinds of things are you
20 looking at, how do you initially get started on
21 an investigation? Where does that come from?

22 MR. ABSHURE: Well, I think -- and, David,
23 jump in if I miss something. The complaint
24 itself or the genesis of an action can come
25 from, really, a number of places. It can be

1 initiated by a customer complaint, it can be
2 initiated by information that we receive from
3 another regulator, it can be initiated by
4 information we receive from another law
5 enforcement agency. It can be initiated by
6 what we would discover during a compliance
7 exam.

8 Typically in a compliance exam, we're not
9 out hunting for violations. Those are really
10 more like an audit. But in the event that you
11 find something that's extremely problematic in
12 that audit, it might lead to an enforcement
13 action. So those are, I think, generally where
14 complaints come from.

15 Usually, and as deputy securities
16 commissioner, we'll assign an examiner to begin
17 investigating that complaint. And then the
18 examiner does the initial analysis that
19 determines whether or not he or she thinks that
20 complaint is valid, discusses it with Ann, they
21 decide if they want to go forward. An attorney
22 is assigned to the case and the two, the
23 attorney and the examiner work the case up.

24 Now at that point, they have a number of
25 decisions they have to make. What are the

1 violations, what are the statutory violations.
2 And there are a number of statutory violations
3 that can be applicable to any one set of
4 conduct.

5 For example, you can have the same conduct
6 that constitutes a fraud violation, could also
7 constitute a violation of dishonest or
8 unethical conduct. We have a decision whether
9 we want to bring this case in circuit court or
10 if we want to proceed administrative leave.

11 Now, I think with broker dealers and
12 investment advisors are regulated entities,
13 it's fairly clear that we have to proceed
14 administratively first. But for non-regulated
15 entities like issuers, the companies actually
16 selling the securities, we have the discretion
17 that we could bring a case in circuit court.

18 Does this particular case involve
19 circumstances that we should employ an asset
20 freeze or seek an asset freeze or a temporary
21 injunction or a cease and desist order to stop
22 immediate conduct and then continue the
23 investigation going forward. Ultimately, those
24 are all decisions that the attorney and the
25 examiner working will make.

1 And if it turns out we think it's criminal
2 conduct, then we have the decision to make of
3 do we take this to the federal authorities or
4 do we try to find a county prosecutor who's
5 willing to take the case.

6 But assuming that the staff determines
7 that it's best to proceed administratively, if
8 there's on-going conduct that needs to stop
9 immediately, typically what the staff will do
10 is file a request for cease and desist order
11 with me and then I would issue the cease and
12 desist order.

13 If they think that there's underlying
14 violations there that still need to be remedied
15 as opposed to just stopping the conduct, a lot
16 of times they will request an order to continue
17 the investigation. In certain times, we'll
18 file a cease and desist order and it will be
19 the final remedy, if we have no other
20 authorized remedies in the statute. And
21 typically, that's going to be against issuers.

22 But I think that's -- I hope I've covered
23 it. Have I missed anything?

24 CHAIRMAN ENGLISH: I don't know. That's
25 what you do.

1 Can you go back to the administrative
2 versus how the decision is made for, to be
3 handled administratively versus sending it to
4 circuit court?

5 MR. ABSHURE: Usually, the circuit court
6 cases are going to be the ones in which we
7 don't have sufficient remedies authorized under
8 our statute.

9 It's only recently -- if you take a look
10 at what we can do or what the department can do
11 under the securities laws, in an administrative
12 hearing, if we bring an administrative hearing
13 against a broker dealer or investment advisor,
14 I'm limited to two things. I can either fine
15 them or I can take action against their
16 license, that's it.

17 Action against their license is a lot of
18 times not something that we want to do.
19 Because depending on what that action is, it
20 might trigger a disqualification inquiry by
21 FINRA.

22 Normally, we're going to go to circuit
23 court against issuers. Because even though we
24 have a limited fining authority, we don't have
25 the authority, for example, to order

1 restitution, disgorgement, or any of those
2 types of penalties or remedies or seek an
3 accounting or the appointment of a receiver.
4 All of those are in circuit court.

5 So the decision to go to circuit court
6 versus proceeding administratively is dependent
7 upon the identity of the particular respondent
8 and the most appropriate remedy in that
9 particular case.

10 Likewise with the decision to take
11 something to the criminal authorities.
12 Securities fraud exist just when a lie is made
13 in connection with the sale of securities, a
14 material lie. But a lot of those cases are
15 never going to make good criminal cases. A lot
16 of times, you actually have to prove -- in
17 order for it to be a good criminal case, you're
18 going to need to show that there was misuse of
19 the funds that were made.

20 I'll give you an example. If I'm raising
21 money to build a building and I tell a
22 particular investor that I've got ten contracts
23 out and based upon that he invests with me and
24 it turns out that was a lie, I don't have ten
25 contracts out but I still use the money for the

1 business. That's a bad criminal case.
2 However, if I use that money to go to Tunica,
3 that's a good criminal case. So it's analysis
4 like that in those types of cases.

5 CHAIRMAN ENGLISH: Are the rules and the
6 policies and the procedures that you all
7 utilize, is that public information? Is there
8 something out there that anybody who is in the
9 business can go to a website, to a book, to
10 something, and know exactly what the process
11 is, what the rules are? What the offenses
12 might be, what penalties might be?

13 MR. ABSHURE: Those are in the Securities
14 Act.

15 CHAIRMAN ENGLISH: All that is in the
16 Securities Act? I read through that but I
17 didn't see all of this.

18 MR. ABSHURE: Well, and that's because the
19 actual remedies that are authorized under the
20 Securities Act are quite limited.

21 There is a listing of remedies that we can
22 seek if we file an injunction action. And
23 what's listed are ancillary remedies to that
24 injunctive action in circuit court.

25 If we proceed to hearing as an

1 administrative action as I mentioned earlier,
2 the authority is limited to fines and action
3 against a license. All of the other remedies
4 that you commonly see in administrative
5 actions, disgorgement of profits, restitution,
6 heightened supervision, limits on products,
7 customers, things like that are brought within
8 the discretion that the parties have to create
9 a settlement. Those are under the consent
10 order provisions.

11 If you actually go to hearing, the
12 remedies are layed out.

13 CHAIRMAN ENGLISH: All right. What
14 typical securities law violations are the
15 subject? Can you give me a little more --

16 MR. ABSHURE: What are the most --

17 CHAIRMAN ENGLISH: -- investigations in
18 enforcement proceedings? What are the most
19 typical?

20 MR. ABSHURE: Many of them will be
21 failures to file what's called a Form D in
22 connection with a Rule 506 offering.

23 On the broker dealer side, unsuitable
24 sales recommendations with the broker dealers,
25 failure to supervise, failure to have practices

1 and procedures in place. IAs, investment
2 advisors, also typically unsuitable
3 recommendations. Issuers, if we bring an
4 enforcement action against an issuer, it's
5 usually for the sale of unregistered securities
6 and/or fraud in the offer of sale in those
7 securities.

8 CHAIRMAN ENGLISH: All right. So people
9 can go to the Securities Act and they know what
10 the remedy is going to be or the punishment
11 will be for any of these violations; is that --

12 MR. ABSHURE: If there's a hearing.

13 CHAIRMAN ENGLISH: The hearing is by the
14 administrative, on the administrative side or
15 the court?

16 MR. ABSHURE: Well, that can happen one of
17 two ways. If it's an administrative hearing,
18 the securities commissioner would typically sit
19 as the hearing officer unless, for whatever
20 reason, he or she was actively involved before
21 hand or felt some sort of bias and then you
22 would appoint a hearing officer.

23 CHAIRMAN ENGLISH: Let's go back just one
24 more time to that process then for the --
25 you've turned it over to a lawyer and then they

1 bring that forward that there is a case. Who
2 do they bring that to?

3 MR. ABSHURE: They would bring it to me in
4 the form of a request, a filed -- for example,
5 request for cease and desist order or request
6 for -- actually, it's either going to be a
7 request for a cease and desist order or a
8 complaint.

9 CHAIRMAN ENGLISH: Okay. So when they do
10 that with a complaint, then what happens? What
11 do you do with it?

12 MR. ABSHURE: The complaint is served on
13 the respondent.

14 CHAIRMAN ENGLISH: And then what?

15 MR. ABSHURE: The respondent answers.

16 CHAIRMAN ENGLISH: And then what?

17 MR. ABSHURE: Well, it depends. You can
18 either have negotiations and the parties
19 settled or it would go to a hearing.

20 CHAIRMAN ENGLISH: And that would be a
21 hearing by a court or a hearing by a group of
22 people?

23 MR. ABSHURE: If it's an administrative
24 hearing, it's going to be a hearing in front of
25 a hearing officer.

1 CHAIRMAN ENGLISH: And where does that
2 hearing officer come from? Right from your
3 staff?

4 MR. ABSHURE: No, it'd be me.

5 CHAIRMAN ENGLISH: Be you, okay. All
6 right.

7 MR. ABSHURE: Unless I was involved, and
8 then I would appoint a hearing officer.

9 CHAIRMAN ENGLISH: So I guess one of the
10 things that kind of concerns me is that it
11 seems to me that there maybe are not enough
12 people involved in the process or in the final
13 decision.

14 Sometimes whether it's right or it's
15 wrong, it looks almost like the prosecutor, the
16 judge, and the jury. And I'm not sure where I
17 see that there is a kind of, some outside or a
18 number of folks who are looking at it rather
19 than just a couple of three people.

20 And I'm still not quite clear on what
21 happens instead of you looking at it that a
22 circuit court would be able to look at it.

23 MR. ABSHURE: Well, as I mentioned before,
24 Madam Chair, I'm going to be the hearing
25 officer in cases where it would be appropriate

1 that I'm the hearing officer.

2 CHAIRMAN ENGLISH: What is appropriate?

3 MR. ABSHURE: That I'm not involved in the
4 negotiations or the investigation of the
5 underlying matter.

6 And when the staff brings their complaint
7 or their request for a cease and desist order,
8 it's in the form of a pleading that they file.
9 And I review that and make a -- well, the
10 complaint, obviously, I don't make any decision
11 there because that triggers the beginning of a
12 proceeding. And you have a chance for the
13 respondent to respond and then it will go to
14 hearing.

15 And a request for a cease and desist
16 order, which is ex parte in nature, I determine
17 if there's sufficient grounds to issue the
18 cease and desist order and the respondent still
19 gets a chance to respond.

20 So those are the cases in which I would
21 act as hearing officer, in cases which I'm
22 unbiased and not involved with the
23 investigation of the matter.

24 Now, in certain cases, I'm not going to be
25 the hearing officer. In fact, I've got one,

1 I've got a matter right now that is proceeding
2 to hearing and I'm going to have to appoint a
3 hearing officer because I was involved in the
4 underlying settlement negotiations.

5 CHAIRMAN ENGLISH: So how do you decide
6 then, from your standpoint, what kind of a fine
7 is going to be reached or you negotiate a
8 settlement? How do you make that decision?

9 MR. ABSHURE: Are you talking about in the
10 course, in the context of a case that has going
11 to hearing or are you talking about in the
12 context of a consent order?

13 CHAIRMAN ENGLISH: In a consent order.

14 MR. ABSHURE: In a consent order, you're
15 going to consider the entire body, the
16 underlying violations and the entire body of
17 remedies that have been negotiated and agreed
18 to by the parties. And the fine is going to
19 consider, one, if the fine exists, if you think
20 there should be a fine. Two, the amount is
21 going to depend on all of the remedies that are
22 there and the underlying violation.

23 CHAIRMAN ENGLISH: So is there some kind
24 of a settlement law or where you go back and
25 look at cases that have similar cases over a

1 period of time and look at what those fines or
2 settlements or whatever were and how those
3 decisions were reached and what the outcome
4 was?

5 MR. ABSHURE: Sure. You're going to look
6 at precedent in determining what an appropriate
7 remedy should be. But you also have to
8 consider the particulars of that case.

9 CHAIRMAN ENGLISH: And that makes me
10 nervous.

11 We've got a couple of questions here from
12 members.

13 MR. ABSHURE: Madam Chair, if I may ask,
14 why does that make you nervous?

15 CHAIRMAN ENGLISH: It just doesn't sound
16 like it's open enough. I mean, it's like a --
17 if you get a traffic ticket for DUI, you know
18 what that fine's going to be. Now, the judge
19 may, there may be some wiggle room in there,
20 whether it's go to jail for three years or
21 whatever the case, but it's pretty clear what
22 those sentences might be.

23 And it kind of bothers me when it's sort
24 of open ended and people really don't know when
25 they go into this what the possible outcomes

1 might be.

2 MR. ABSHURE: But in the context of a
3 consent order, I don't know that the DUI charge
4 is exactly applicable because our proceedings
5 are civil in nature.

6 You're talking about remedies that the two
7 parties come together and agree to in the
8 context of a negotiated consent order. And the
9 start point and the end point is never the same
10 and it's the product of negotiations.

11 CHAIRMAN ENGLISH: So what happens if the
12 two parties don't agree?

13 MR. ABSHURE: Well, then, if the two
14 parties don't agree, we'd proceed to a hearing.

15 Now, that flips it over to remedies that
16 are allowed under the Securities Act in the
17 context of a hearing. Now, if you're dealing
18 with a regulated entity, for example, a broker
19 dealer, you're under Section 308.

20 As I said before, it would be the action
21 against the license, which means you can either
22 deny, suspend, revoke, make conditional, the
23 license for the firm or you can fine up to
24 \$10,000 per violation or the amount of the
25 money received in the violation. And if the

1 victims were 65 years of age or older, you can
2 fine up to 20,000 per violation or two times
3 the amount received.

4 CHAIRMAN ENGLISH: Well, a few questions
5 here.

6 Representative Bell?

7 REPRESENTATIVE BELL: Thank you, Madam
8 Chair. Sorry about that, I was out of my seat
9 for a moment.

10 Mr. Abshire, you stated this morning that
11 many of your enforcement actions are dependent
12 on the identity of the defendant. You know,
13 your enforcement actions occur under color of
14 law just from the standpoint that you're
15 enforcing either rules or laws in the state of
16 Arkansas.

17 I guess, my concern here is our system of
18 government essentially depends on the fair
19 enforcement of law based on the facts and
20 evidence and not on the person that might
21 happen to be in front of you.

22 You made the statement that those
23 enforcement actions often depend on the
24 identity. I guess, I'd like to hear you
25 elaborate a little bit on what you mean by the

1 identity of the accused. Does that mean how
2 many political contributions they've made?
3 Does that mean what their skin color is? Does
4 that mean it depends on who their friends are?

5 MR. ABSHURE: It means their regulatory
6 background. The number of violations that have
7 existed in the past, their level of
8 cooperation, number of victims, size of the
9 violation.

10 You know, if I have a broker dealer or an
11 agent that's never had a violation before and
12 he comes before me for a certain violation,
13 well, he's going to get treated a certain way.
14 Now, if I have another broker dealer agent that
15 comes before me and we've busted him six times
16 in the last 15 years, FINRA has been after him,
17 the SCC's been after him, and he's got 25
18 customer complaints, he's going to be a little
19 bit different.

20 REPRESENTATIVE BELL: You mentioned -- you
21 just used the term "level of cooperation."

22 MR. ABSHURE: Uh-huh.

23 REPRESENTATIVE BELL: Does that mean if he
24 contributes a little more toward your
25 organization maybe his enforcement action is

1 going to go away? What does that mean? Define
2 a level of cooperation for me.

3 MR. ABSHURE: If we submit a request for
4 information, he comes in and talks with us, he
5 complies with subpoena requests, and things
6 like that versus if he doesn't comply with our
7 subpoena request, doesn't cooperate when we go
8 out and try to do an examination, doesn't show
9 up and his office locks the door, and then
10 forces us to go to a court to get a subpoena,
11 to enforce a subpoena.

12 A level of cooperation relates to a party
13 being on the other side of the investigation
14 and cooperating with the investigation.

15 REPRESENTATIVE BELL: Well, again, my
16 history certainly doesn't come from the civil
17 side of the law, it comes from the criminal
18 side of the law, and I understand there are
19 differences there. But when we look at
20 cooperation, personally, if I were being
21 accused, I would have a very difficult time
22 cooperating, using your definition of it, with
23 something that allows a subjective
24 determination of whether a complaint against me
25 should be pursued.

1 From the legislative oversight standpoint
2 as we sit here, I think my concern going
3 forward -- because that's why we have these
4 hearings, is to look at what the legislature
5 needs to do going forward. We need to tighten
6 up the subjectivity of these situations so that
7 we have objective application of law and not
8 subjective application of law.

9 And you know, one thing that's becoming
10 really clear to me sitting here -- and I'm
11 going to go back to my criminal parallel.
12 We're dealing with a situation where we've
13 essentially put a set of laws in place that
14 allows that police officer beside the road to
15 accept that contribution to his organization or
16 to his friend who had the DWI or was the victim
17 of the drunk driving accident.

18 We've put a system in place that
19 essentially allows him to become judge and
20 jury. And I think we need to be very cautious
21 of how we approach that.

22 Madam Chair, I appreciate your indulgence
23 on it. There really wasn't a question in the
24 last part of that, but thank you.

25 MR. ABSHURE: If I could respond, I really

1 don't think it's akin to a police officer.
2 It's more akin to a prosecuting attorney and
3 the defense attorney working out a settlement
4 that would consider community service rather
5 than jail time or pleading to a lesser offense.
6 I don't think it's a police officer saying that
7 I'm not, you know, I'm not going to continue
8 this investigation or I'm not going to try to
9 get this charge because you've contributed to
10 anything here.

11 REPRESENTATIVE BELL: With all respect,
12 sir, I would just say that the parallel, to me,
13 is more similar to the prosecutor and the judge
14 being the same person in that situation.

15 Thank you very much, Madam Chair.

16 CHAIRMAN ENGLISH: Thank you.

17 Representative Lowery?

18 REPRESENTATIVE LOWERY: Thank you, Madam
19 Chair.

20 First, I have an inquiry as to process. I
21 know when we had the hearing on the 8th, the
22 day before, we had the hearing with U of A and
23 all of those that came before us were sworn in.
24 What is the difference in this hearing as
25 opposed to the 7th?

1 CHAIRMAN ENGLISH: Because we had
2 conflicting testimony at that hearing.

3 REPRESENTATIVE LOWERY: Okay. So if I
4 feel like that Mr. Abshure was not entirely
5 forthcoming in the last hearing, I could
6 request that he be sworn in?

7 CHAIRMAN ENGLISH: You could.

8 REPRESENTATIVE LOWERY: Okay. I so
9 request.

10 CHAIRMAN ENGLISH: All right. Just one
11 moment.

12 Okay. If you all would please stand and
13 state your names and your employer.

14 MR. ABSHURE: Heath Abshure, Arkansas
15 Securities Commissioner.

16 MS. MCDUGAL: Ann McDougal, Deputy
17 Commissioner, Arkansas Securities Department.

18 MR. SMITH: David Smith, I'm chief counsel
19 at the Arkansas Securities Department.

20 CHAIRMAN ENGLISH: Thank you.

21 (WHEREUPON, Mr. Abshure, Ms. McDougal, and
22 Mr. Smith were sworn to tell the truth, the
23 whole truth, and nothing but the truth and gave
24 the following testimony, to-wit.)

25 REPRESENTATIVE LOWERY: Thank you, Madam

1 Chairman. And thank you for your indulgence on
2 being sworn in.

3 I want to go to the issue that I asked
4 about in the last hearing, about the appearance
5 of impropriety in terms of an agreed-upon
6 amount of a fine. And then once an offer or a
7 consent offer was made for them to make a
8 contribution to the organization, that it
9 actually ended up being more than the fine.
10 And you said in your testimony that that was
11 not the case, that the fine that was leveled was
12 not more than the offer made to them for the
13 contribution to NASAA.

14 And I refer to Page 2 of your statement
15 today that you provided to us --

16 MR. ABSHURE: Uh-huh.

17 REPRESENTATIVE LOWERY: -- where you quote
18 the e-mail from Ms. Kim Fowler to Scott Freydl
19 and you point out that she even had concerns
20 about the fact that there had been discussions.
21 And she said we told them the fine was expected
22 to be 15,000 to 20,000.

23 Now, you follow up in your statement to
24 say that proves that there was no expectation,
25 that there was a range. Is it not true that

1 the range that she is saying was offered is
2 less than the amount that they were asked to
3 give to NASAA?

4 MR. ABSHURE: No. In the negotiations, we
5 discussed whether or not Stephens -- Stephens
6 was offered the opportunity to make a
7 contribution prior to the amount of any fine or
8 contribution even being discussed and initially
9 indicated its preference that it didn't want to
10 pay a contribution. It would rather go with a
11 fine, so fine offer became \$30,000.

12 Stephens came back and argued that the
13 fine should be \$15,000 based upon the
14 similarity of the Morgan Keegan order. I said
15 I was willing to consider \$20,000 dependent on
16 the Morgan Keegan order actually being the same
17 and similar to facts. And after I considered
18 the particular language of the consent order
19 which had yet to be drafted, the parties still
20 had to negotiate.

21 The quoted e-mail tells you that there was
22 no deal. They're talking about expectations
23 regarding the range of a fine. They knew I
24 still had to look at the Morgan Keegan matter
25 and they knew that I still had to look at the

1 language of the consent order. There was no
2 deal as to the amount or they wouldn't have
3 said we expect a range of fine.

4 REPRESENTATIVE LOWERY: Well, if I
5 remember correctly, my question to you was not
6 whether there was a deal made but was there an
7 expectation that the contribution or later
8 finding out that the fine that was leveed was
9 higher than the contribution amount that was
10 recommended.

11 MR. ABSHURE: There was never a
12 contribution amount recommended because the
13 contribution was off the table before the
14 amount of any fine was even discussed.

15 REPRESENTATIVE LOWERY: Okay. Mr.
16 Abshure, I just have to say that I find you
17 less than forthcoming, especially this morning,
18 of forcing the Chair to have to ask you who the
19 hearing officer is.

20 You know, we expect and need transparency.
21 And I think the fact that we've had to pull out
22 of you sometimes answers in an almost
23 prosecutorial way does not lend itself to that
24 transparency. So let me -- and also, your
25 response to non-questions has also been fairly

1 confrontational.

2 Let me move on to the issue of conflict of
3 interest issue or what we believe is a conflict
4 of interest. I'm sure you've seen the
5 newspaper article this morning --

6 MR. ABSHURE: Yes.

7 REPRESENTATIVE LOWERY: -- asking you
8 about the trips that were made that were not
9 reporting on your SFI.

10 In terms of being forthcoming, when was --
11 am I correct in saying that an FOI request was
12 made, presented to you by Representative House
13 earlier in the month to provide us with
14 information on those trips?

15 MR. ABSHURE: Yes.

16 REPRESENTATIVE LOWERY: Okay. And your
17 understanding of how quickly you should turn
18 around those documents is what? According to
19 FOI law.

20 MR. ABSHURE: Three days.

21 REPRESENTATIVE LOWERY: Three days, okay.
22 Yet those documents have still not been
23 presented, correct?

24 MR. ABSHURE: That's right.

25 REPRESENTATIVE LOWERY: Okay. And they're

1 not anticipated until when?

2 MR. ABSHURE: Monday.

3 REPRESENTATIVE LOWERY: Monday. Was
4 Representative House not told that those would
5 be available on the 25th?

6 MR. ABSHURE: The 25th is Saturday.

7 REPRESENTATIVE LOWERY: Okay. All right.

8 MR. ABSHURE: And he said in his voice
9 message to me he's in Hawaii until the 24th, he
10 wants them on the 25th but that's Saturday, so
11 the next business day which is Monday.

12 REPRESENTATIVE LOWERY: Well, let me ask
13 you just in terms of transparency, if you knew
14 that you were coming for this committee today,
15 would it not be transparent -- would it not be
16 forthcoming to actually be able to provide us
17 some information today about the number of
18 trips, the scope of the reimbursements, or the
19 expenses that were paid rather than waiting
20 until the 27th?

21 I'm sure you don't want to have to have
22 another hearing after we get that information.

23 MR. ABSHURE: I wasn't asked to bring that
24 information to this meeting.

25 REPRESENTATIVE LOWERY: Do you think that

1 it is relevant though to discussing the issues
2 that we're talking about in terms of conflict
3 of interest?

4 MR. ABSHURE: Sure.

5 REPRESENTATIVE LOWERY: Okay. So would
6 you be willing to provide us with some
7 estimates in terms of the expenses that were
8 paid?

9 You reference in the article that you were
10 interviewed by the writer that in 2012, there
11 were probably 15 to 20 trips and more than that
12 in 2013.

13 MR. ABSHURE: Uh-huh.

14 REPRESENTATIVE LOWERY: How much more than
15 that in 2013?

16 MR. ABSHURE: I am pulling that data right
17 now. I couldn't -- I wouldn't even dare guess.

18 REPRESENTATIVE LOWERY: Okay. So we're
19 saying between 2012 and 2013, at least 40
20 trips? If you're saying more than 15 to 20 in
21 2013, we're talking --

22 MR. ABSHURE: I would think that that's
23 potentially true. Because 2013 would have been
24 the year that I was the spokesperson for the
25 entity.

1 REPRESENTATIVE LOWERY: Okay. A good
2 number of those destinations were Washington
3 D.C., what were some of the other destinations?

4 MR. ABSHURE: Pittsburgh -- that's all I
5 can think of right now. Maybe St. Louis, but
6 mostly D.C., I would think.

7 REPRESENTATIVE LOWERY: Okay. Did you
8 receive any state reimbursement for any of
9 those trips?

10 MR. ABSHURE: No. Those would have been
11 NASAA reimbursed trips.

12 REPRESENTATIVE LOWERY: Okay. So they
13 would have paid the total expenses including
14 hotel, meals?

15 MR. ABSHURE: Yes.

16 REPRESENTATIVE LOWERY: In any of those
17 cases, did your spouse accompany you and that
18 be paid for by NASAA?

19 MR. ABSHURE: She would have accompanied
20 me to perhaps like the annual conference or the
21 fall conference. But those, NASAA doesn't pay
22 for that.

23 REPRESENTATIVE LOWERY: Okay. You paid
24 for that separately?

25 MR. ABSHURE: Uh-huh.

1 REPRESENTATIVE LOWERY: Okay. In light of
2 this information that is probably going to
3 become even more clear by the reports that
4 we'll receive on the 27th, I want to go back to
5 the question of potential conflict of interest.
6 Or at least appearance of conflict of interest.

7 In light of all this, does your opinion
8 change, any of your feelings change any from
9 your testimony that you gave on the 8th that --
10 you argued that you don't believe that it would
11 be any better to suggest that those
12 contributions be made to an organization with
13 which you have no connection; is that correct?

14 MR. ABSHURE: I'm sorry.

15 REPRESENTATIVE LOWERY: Okay.

16 MR. ABSHURE: I'm not quite following your
17 question.

18 REPRESENTATIVE LOWERY: I suggested in the
19 January 8th meeting that it would probably be
20 more beneficial and probably much more
21 productive if contributions, if you were
22 suggesting contributions to a nonprofit
23 organization, that they be made to other
24 organizations that have investor protection
25 programs like AARP and are more boots on the

1 street and you have no connection. And you
2 said that you did not feel that that was in
3 order.

4 MR. ABSHURE: I wouldn't think it would be
5 more beneficial and productive. I would
6 disagree that AARP has more boots on the street
7 when it comes to investor protection and
8 training.

9 However, I do agree with, if I may suppose
10 your real sentiment is that it certainly
11 wouldn't have the appearance of contributions
12 to NASAA.

13 REPRESENTATIVE LOWERY: Okay. And in
14 terms of -- I mean, obviously, any time you're
15 talking about being a hearing officer or anyone
16 that is going to hand down judgments, your
17 integrity is crucial in that.

18 Is it not the better part of valor to just
19 go ahead and say that in terms of maintaining
20 the integrity of the process that would adjust,
21 your office would adjust its practices in terms
22 of making recommendations to an organization of
23 which you are connected?

24 MR. ABSHURE: I'm not sure that I
25 understood the -- adjust, the office adjust its

1 recommendations?

2 REPRESENTATIVE LOWERY: Because of the
3 appearance, this issue of appearance of
4 conflict of interest, would it not be in your
5 best interest, in the best interest of the
6 State of Arkansas, and the best interest of the
7 securities department that any future
8 suggestions of contributions be made to another
9 organization other than one that you would be
10 connected with?

11 MR. ABSHURE: As to appearance,
12 absolutely. But as to benefit to the State of
13 Arkansas or the Arkansas Securities Department,
14 I don't think that's the case at all. I think
15 that there are very few charitable
16 organizations that have at their heart investor
17 protection and the role of state securities
18 regulators.

19 So I don't think that NASAA standing alone
20 or considering NASAA and recognizing
21 contributions to NASAA is not in the state's
22 best interest.

23 Now, from an appearance standpoint, it
24 certainly wasn't in mine.

25 REPRESENTATIVE LOWERY: Okay. All right.

1 Thank you, Mr. Abshure.

2 And thank you, Madam Chairman.

3 CHAIRMAN ENGLISH: Representative Hammer?

4 MR. HAMMER: Thank you, Madam Chair.

5 I was just wondering, Mr. Abshure, two
6 quick questions. Do you feel that the way the
7 law is currently written is protective of what
8 you did as far as allowing you that leniency to
9 direct where that payment was to go or where
10 that payment eventually ended up?

11 MR. ABSHURE: I feel like the law is
12 sufficiently lenient to allow me to recognize a
13 charitable contribution in connection with a
14 consent order, yes, sir.

15 MR. HAMMER: Okay. The way it's currently
16 written?

17 MR. ABSHURE: Yes.

18 MR. HAMMER: Okay. And then the second
19 question is, as I was reading through your
20 statement -- and I'm not going to labor, I just
21 have one question toward it.

22 As far as the expectation that Stephens
23 and Mr. Knight had as to what the total of the
24 fine was going to be, would you just quickly
25 summarize again where it is that they would

1 have gotten that expectation that it would have
2 fallen between 15 and 20 and then it in reality
3 ended up being 25,000?

4 MR. ABSHURE: Well, the expectation would
5 have been from our conversations.

6 MR. HAMMER: Okay.

7 MR. ABSHURE: I mean, I'm not denying that
8 \$20,000 was not an amount we discussed, it
9 certainly was. But that amount was still in
10 dispute and it was dependent on a number of
11 factors that still had to occur.

12 MR. HAMMER: Okay.

13 MR. ABSHURE: So I absolutely do not
14 allege that Stephens or Mr. Knight picked
15 \$20,000 out of the air. That's not the case at
16 all.

17 MR. HAMMER: Okay.

18 Question to the Chair. Madam Chair, is
19 there an opportunity or would it be a violation
20 or conflict that we might get somebody, a
21 representative from Stephens or Mr. Knight to
22 come to the table so we can have the
23 opportunity to ask them about where they got
24 their expectation? We've heard one side, I'm
25 just curious if we'll be able to hear the other

1 side.

2 CHAIRMAN ENGLISH: They are in the
3 audience and we can do that. I kind of hoped
4 we'd let Mr. Abshure finish and --

5 MR. HAMMER: That's fine.

6 CHAIRMAN ENGLISH: -- we can do that if
7 you'd like.

8 MR. HAMMER: Thank you, Madam Chair.
9 That's all I have. Thank you.

10 CHAIRMAN ENGLISH: Okay.

11 Representative Rice, do you have some
12 questions?

13 REPRESENTATIVE RICE: Thank you, Madam
14 Chair.

15 Mr. Abshure, in your earlier comment today
16 I jotted down, you said I can fine them. And
17 going back to the statement that you made that
18 you are the hearing officer many times; is that
19 correct?

20 MR. ABSHURE: Yes, sir.

21 REPRESENTATIVE RICE: If you do appoint
22 another hearing officer because you may have
23 been a party in the investigation or whatever,
24 are those hearing officers directly under your
25 supervision?

1 MR. ABSHURE: No, sir.

2 REPRESENTATIVE RICE: Okay. Who would
3 they be?

4 MR. ABSHURE: Who would I appoint?

5 REPRESENTATIVE RICE: Yeah. Who would
6 these hearing officers be that you would,
7 that's not under your supervision?

8 MR. ABSHURE: Any appointed hearing
9 officer would not be under my supervision.

10 REPRESENTATIVE RICE: Do they work in your
11 department?

12 MR. ABSHURE: No.

13 REPRESENTATIVE RICE: Okay. Where do they
14 come from? That's what I'm trying to find out.

15 MR. ABSHURE: Well, at least ones I've
16 considered in the past -- and I should tell
17 you, I've never had to appoint a hearing
18 officer.

19 REPRESENTATIVE RICE: That's helpful. I
20 appreciate you being forthcoming with us.

21 MR. ABSHURE: I am appointing a hearing
22 officer in a current matter.

23 REPRESENTATIVE RICE: Okay.

24 MR. ABSHURE: And it is related to the
25 matter, matters that we've been discussing.

1 It's specifically in connection with the BAMCO
2 case. Which as you know, BAMCO was the
3 underlying issuer that was part of the Crews
4 settlement. We brought a cease and desist
5 action against BAMCO and the two individuals
6 that were involved in BAMCO.

7 They requested a hearing on that cease and
8 desist order and I've already told both counsel
9 for the respondents as well as the staff that
10 based upon my negotiations and talks with
11 representatives from Crews and being a part of
12 the settlement negotiations, it's going to be
13 very improper for me to be the hearing officer,
14 so I'm going to have to appoint one.

15 I had hoped that I could lean on, and I
16 haven't had a chance to talk with him about it
17 yet, Mack Dodson, but I understand that he's
18 retiring. So if I could lure him out of
19 retirement, that would be great. A law
20 professor would be great. Someone that has an
21 understanding of the law, but more importantly,
22 an understanding of the securities law. That
23 way you preserve the efficiencies that the
24 administrative processes are designed to take
25 advantage of.

1 REPRESENTATIVE RICE: Well, and I think
2 you've answered my part of that question
3 because you are the hearing officer up to date.

4 MR. ABSHURE: Yes.

5 REPRESENTATIVE RICE: You've been --
6 you're like me in my business. I like to be in
7 control and know what's going on. And
8 following that up, that's part of the problem
9 that I'm hearing and I think a lot of the
10 members are hearing and I think that's what the
11 general public sees, Mr. Abshure.

12 I don't question you with your statement,
13 and you said a group that at their heart is
14 investor protection. I believe you're on top
15 of that and that it's the fairness issue. It's
16 the fairness issue that I see that's the
17 question.

18 And while I don't question you that in
19 your mind and maybe some legal interpretation
20 that these question practices are legal or not
21 legal. I think you're a mindset that they are.
22 It goes back to that, it's been mentioned here
23 this morning is the appearance. Again, I
24 believe that's what I'm hearing and I think
25 that's what others are hearing.

1 What could you tell us today that will
2 change that? Because I just found out that
3 you're the sole person to rule.

4 MR. ABSHURE: I think what would change
5 and -- and I think there are a number of
6 things. One, you're going to have to change
7 the potential administrative process that
8 exists in a number of agencies. Whether it be
9 -- I'm not sure how the banking department has
10 theirs set up, I'm not sure how the insurance
11 department has theirs set up, but I think you
12 would change that.

13 You could appoint an administrative law
14 judge to hear cases that are brought before,
15 cases the department brings. Stephens makes
16 the possible legislative fix of requiring the
17 department to take all of its cases to circuit
18 court as opposed to bringing any of them in
19 administratively.

20 I don't think that's a good idea and I
21 think you should consider the effect on both
22 the industry and consumers if that happens. I
23 think most industry would rather have an
24 administrative order against them rather than a
25 finding of fact and conclusions of law coming

1 from a circuit court.

2 But if your concern is that I periodically
3 sit as hearing officer, you know, the way we
4 have it set up now is that I can't sit as
5 hearing officer in any case in which I can't be
6 impartial. And if you don't feel like that
7 goes far enough, if you feel like that there's
8 still an appearance of impropriety just because
9 of my dual role of ensuring that my staff does
10 its job would negatively influence my decision
11 in connection with any particular hearing, just
12 require that we appoint a separate A.L.J. for
13 every hearing. Be sure it's funded so we can
14 pay them.

15 REPRESENTATIVE RICE: Well, and again,
16 came to mind, I can't think of the old joke,
17 but you can have three set of people looking at
18 the same thing that happened and you'll get
19 three different stories. I think we see that
20 happen.

21 MR. ABSHURE: Sure.

22 REPRESENTATIVE RICE: And it's one set of
23 eyes. Educated as you are, you're on top of
24 your business, I'm not questioning that. But
25 it's the fact, again, of the appearance, of the

1 fairness that is foreseen from our side that we
2 -- personally, I always would like to think if
3 I'm sitting in front of somebody that's been a
4 part of my prosecutorial process, that I would
5 have another set of eyes looking at the
6 judgmental process.

7 So with that, I appreciate your answers
8 and I'll turn it back over to Madam Chair.

9 MR. ABSHURE: Representative Rice, if I
10 may add one thing. If I was part of the
11 prosecutorial process, I would never be the
12 hearing officer.

13 REPRESENTATIVE RICE: Thank you.

14 CHAIRMAN ENGLISH: Representative Eubanks?

15 MR. EUBANKS: Thank you, Madam Chair.

16 Mr. Abshure, I was wondering if you might
17 clarify something for me. My memory from the
18 last meeting, I thought that you had stated
19 that in lieu of a fine, that you may negotiate
20 another settlement and that it could be in the
21 form of a donation to one of these
22 organizations but that that negotiated amount
23 could actually be higher than what the fine
24 was. Is that what you stated in our last
25 meeting? And you thought that could be

1 appropriated because it would actually benefit
2 that particular individual rather than having a
3 fine and having potential problems with other
4 regulatory agencies?

5 MR. ABSHURE: If I misstated it and if it
6 wasn't clear, what I intended to state was that
7 you always consider all of the remedies
8 together and the entire package of remedies
9 that go into a consent order.

10 If I had a consent order that only had a
11 monetary payment for a fine, it was probably
12 going to be less than the amount that I would
13 have for a charitable contribution because that
14 fine carries with it a negative connotation.

15 It's more of a punishment, or at least it
16 is perceived as more of a punishment in the
17 eyes of, certainly the industry and the
18 regulators.

19 MR. EUBANKS: Well, I guess that
20 situation, to me, creates a situation where
21 there can be abuse. And I guess when you look
22 across what's taking place in this state and
23 across the nation, I think the public is losing
24 trust with the government and elected officials
25 because of unethical behavior, whether it's

1 real or perceived, abuse of power by state
2 officials or department, whether that be real
3 or perceived.

4 So I guess I have a particular problem
5 with how this has been taking place. Whether
6 anybody's benefited individually by it or not,
7 I do not know.

8 Thank you, Madam Chair.

9 MR. ABSHURE: Representative Eubanks, when
10 you say that you feel that this presents a
11 situation where there can be abuse, are you
12 talking about the hypothetical we just talked
13 about?

14 MR. EUBANKS: Well, it was a situation
15 where if the fine was actually going to be less
16 than what a negotiated donation amount could
17 be, do you not see where that could be a
18 potential abuse of a situation where you could
19 encourage a donation to an organization that
20 you are associated with and it's a larger
21 amount than what the fine would be even though
22 that may be a situation that's actually more
23 beneficial to the person that's before you?

24 MR. ABSHURE: But they would be more
25 inclined to take the fine as opposed to --

1 MR. EUBANKS: Not if there's other
2 repercussions because of the fine.

3 MR. ABSHURE: Which is exactly right,
4 which is why you have the breadth of
5 considerations there.

6 MR. EUBANKS: I guess we're going to agree
7 to disagree on that one. Okay.

8 MR. ABSHURE: Well, I'm sorry. Thank you,
9 Representative Eubanks.

10 CHAIRMAN ENGLISH: Are there any other
11 questions from the committee?

12 I think one of the things that I would
13 like to ask, ask you a little bit about is, you
14 talked a lot about NASAA the other day. And I
15 guess I'm unclear about what kind of an -- are
16 they like a trade association, like the
17 automobile dealers association? Do they do all
18 of the training for potential licensees? Are
19 they paid -- who pays for those folks?

20 If I wanted to go and get a securities
21 license, where do I go? Do I go to NASAA?
22 Where do I go?

23 MR. ABSHURE: NASAA's chief source of
24 revenue is a portion of the examination fees
25 that are paid in connection with state exams,

1 you know, there's a number of exams that you
2 have to take to be licensed. Series 7 --
3 they're called series exams --

4 CHAIRMAN ENGLISH: Uh-huh.

5 MR. ABSHURE: -- Series 7, 63, things like
6 that. And one of those, and I don't remember
7 which one it is, is a state law exam.

8 NASAA maintains that state law exam but
9 it's actually administered through FINRA and
10 its test-administering service. So we share a
11 bit of the revenue from that exam and that's
12 where NASAA gets its revenues.

13 CHAIRMAN ENGLISH: Why would they get part
14 of the revenue?

15 MR. ABSHURE: We develop the exam?

16 CHAIRMAN ENGLISH: They do?

17 MR. ABSHURE: Yeah. NASAA does, yeah.

18 CHAIRMAN ENGLISH: Develop the exam?

19 MR. ABSHURE: Uh-huh.

20 CHAIRMAN ENGLISH: So when I'm going to go
21 and get a license and go to school or whatever
22 to do this and take the exam, do I pay for that
23 or does somebody else pay for it?

24 MR. ABSHURE: The exam fees?

25 CHAIRMAN ENGLISH: Right.

1 MR. ABSHURE: Typically -- well, I can't
2 say typically. It's either going to be you or
3 the firm that's hired you. More often than
4 not, someone's only going to take an exam once
5 they have a pending employment offer from a
6 firm and a lot of times, the firm is going to
7 pay that exam fee.

8 CHAIRMAN ENGLISH: So does that go to the
9 state or does -- who does the training? Is
10 there an organization that does the --

11 MR. ABSHURE: The training?

12 CHAIRMAN ENGLISH: -- prepares people for
13 the exam? Is that NASAA?

14 MR. ABSHURE: There are services that
15 prepare, like test review services, but NASAA
16 doesn't provide any of those.

17 CHAIRMAN ENGLISH: So if they're such a
18 wonderful organization, what is it that they do
19 besides develop the exam?

20 I know you talked about they have some
21 committees and things like that, but. . .

22 MR. ABSHURE: I think I would refer you to
23 the Exhibit C I submitted which is the articles
24 of a corporation and the bylaws of NASAA.

25 You know, specifically, on Page 7 of that

1 exhibit, when you look at the membership, it's
2 all of the securities regulators. And when you
3 take a look at the -- also, I also submitted
4 the strategic plan of NASAA.

5 CHAIRMAN ENGLISH: I got all that. But
6 what I'm not understanding is, why would it be
7 important, what would be the advantage to the
8 State of Arkansas for a contribution of
9 \$150,000 or \$175,000? What would be the
10 advantage for us to be giving that kind of
11 contribution to that organization?

12 MR. ABSHURE: Because they provide all of
13 the training for the securities side through
14 their voucher program, which we get free
15 training.

16 They provide networking, they --

17 CHAIRMAN ENGLISH: But somebody's paying
18 for that. I mean, they don't just
19 automatically do that for everybody. For
20 everybody in every state in the United States
21 that belongs to NASAA they do the training for
22 free?

23 MR. ABSHURE: Yes.

24 CHAIRMAN ENGLISH: So all these other
25 states, do they put -- is it a part of what

1 they do is -- your organization, you repay them
2 for the training they give to the people?

3 MR. ABSHURE: Some do. I mean, it's not
4 uncommon to recognize charitable contributions
5 to NASAA.

6 But I mean, NASAA does much more than just
7 training. I mean, without NASAA, NASAA
8 facilitates the communication amongst all of
9 the states' securities regulators. NASAA
10 develops electronic review systems that we use
11 in connection with our compliance examinations.

12 NASAA is developing a filing system that
13 we'll be able to use in connection with what
14 are called Reg A plus filings and Form D
15 filings. NASAA develops the guidelines that we
16 use in reading and reviewing offering
17 documents. Without NASAA and NASAA's ability
18 to unify the states to speak with one voice, we
19 wouldn't have state securities regulation.

20 CHAIRMAN ENGLISH: So we pay a membership
21 fee like we do to NCSL and the National
22 Governors Association and all that.

23 MR. ABSHURE: The SVS, NAIC.

24 CHAIRMAN ENGLISH: And that then, the
25 training is done and paid for, they don't do it

1 for free, but we've paid a membership fee for
2 it. That includes the training, that includes
3 what we get for that membership fee.

4 MR. ABSHURE: Our membership fee is \$1,800
5 --

6 CHAIRMAN ENGLISH: All right.

7 MR. ABSHURE: -- a year. I think CSBS --
8 I can't, I don't know of the top of my head.
9 But our membership fees pale in comparison to
10 the other membership fees paid by state
11 agencies to participate in appropriate
12 organizations.

13 CHAIRMAN ENGLISH: I just haven't quite
14 heard a justification for a large, major
15 contribution to an organization like that when
16 it's not typically done across the United
17 States. I mean, there may be \$10,000 here or
18 whatever over years, but that's a fairly
19 significant amount of money to be giving to an
20 organization.

21 I mean, I would have a hard time defending
22 giving that kind of money to an organization I
23 belong to. I don't have (inaudible) --

24 MR. ABSHURE: I did offer an exhibit that
25 shows contributions made by Arkansas since

1 1999. And you'll see contributions made both
2 to NASAA and to IPT.

3 In connection with these three consent
4 orders, I'd point out that if you remove the
5 \$150,000 that was the Crews consent order,
6 we've contributed about \$22,000. That places
7 us seventh on the list. It is the Crews
8 consent order that has resulted in this amount.
9 And in my opinion, Crews earned the right to
10 have that amount treated as a contribution as
11 opposed to a fine.

12 CHAIRMAN ENGLISH: I guess I'm just having
13 a hard time with why would you decide \$150,000
14 from this particular thing to go to this
15 organization.

16 MR. ABSHURE: The \$150,000 was decided on
17 the basis of the underlying violations that we
18 alleged and the entire package of remedies.

19 The reason I agreed to allow it to be a
20 donation rather than a fine of some amount was
21 based upon the fact that the customers were
22 already paid, the customers had been repaid.

23 Crews had fully participated in our
24 investigation and they were professionals at
25 every turn. And so when they asked if there

1 was a way that they could not have a fine, I
2 said yes.

3 CHAIRMAN ENGLISH: Is this the largest
4 fine or non-fine settlement contribution that
5 you've overseen since you've been in the agency
6 or are there larger fines? Have there been
7 larger than \$150,000 fines?

8 MR. ABSHURE: In connection with the
9 global settlements, I know there were. In
10 terms of an action that was brought just by the
11 department, I'm not sure.

12 CHAIRMAN ENGLISH: So you don't -- so
13 basically, that \$150,000 is probably about the
14 largest fine that's turned into a contribution
15 since you've been in the agency? I mean, how
16 many other --

17 MR. ABSHURE: Sorry, Madam Chair. I'd
18 have to go back and look to see what the other
19 amounts were.

20 CHAIRMAN ENGLISH: Okay. You tell me one
21 other thing, too. That IBT, I know you've got
22 the \$150,000 that goes into, or that cap that
23 goes in that you can spend for investor. But
24 the other day, you talked about a group of
25 funds that were grants that were given out,

1 like to the \$45,000 to the University of
2 Arkansas and things like -- where is that
3 money? Is that in the state or is that a
4 national, some place that somebody had that
5 money that people could apply for grants?
6 Where is that?

7 MR. ABSHURE: The investor protection
8 trust.

9 CHAIRMAN ENGLISH: And who are they? And
10 where are they?

11 MR. ABSHURE: The investor protection
12 trust was a trust formed in connection with the
13 settlements, with the analyst conflict
14 settlements back in the late '90s, early 2000s.

15 And you can see that, or at least the
16 Arkansas portion of the contributions on one of
17 the exhibits and I will find it in just a sec.

18 CHAIRMAN ENGLISH: I saw that, but I did
19 not know where that money was coming from. And
20 you talked about, obviously it's a national
21 thing in that there were grants available and
22 that typically --

23 MR. ABSHURE: Exhibit Q.

24 CHAIRMAN ENGLISH: Exhibit Q, okay.

25 MR. ABSHURE: And then there's a

1 discussion of the investor protection trust and
2 its history at Exhibit R. And there are grants
3 available.

4 And I think that we also include a listing
5 of the grants that have come out of the IPT and
6 the recipients have been the University of
7 Arkansas three times, AARP twice, and the
8 securities department once.

9 CHAIRMAN ENGLISH: So how do people know
10 about that fund? I mean, how would Arkansas
11 State or a two-year college or some, or North
12 Little Rock High School, how would they know
13 about that fund to be able to apply?

14 MR. ABSHURE: We do our best to let them
15 know.

16 CHAIRMAN ENGLISH: So it's common
17 knowledge out there?

18 MR. ABSHURE: I don't know that it's
19 common knowledge. I do know that each
20 university I've ever dealt with certainly has a
21 department that is well aware of available
22 grants and they go after them.

23 And we have reached out to others to say
24 that we have this money, there's this money
25 there that's available for -- it's very limited

1 for what it can be used for.

2 CHAIRMAN ENGLISH: Uh-huh.

3 MR. ABSHURE: And it's strictly investor
4 education. But we do let people know it's
5 there and that we wish they would use it.

6 CHAIRMAN ENGLISH: Okay. Senator Sample?

7 SENATOR SAMPLE: Madam Chair, thank you
8 for allowing me not as a member to ask a
9 question and I'll try to be brief.

10 Mr. Abshure, I've looked over a lot of
11 this and some of it is very disturbing to me.
12 Having owned an operated a business for 37
13 years that had to deal with rules and
14 regulations and an agency that could shut my
15 business down at any particular time when I
16 didn't conform to their regulations, some of
17 this really bothers me.

18 There's an e-mail that I'm looking at from
19 Scott Freydl dated Wednesday, August the 22nd
20 of 2013, time, 1:59 p.m., sent to a Mr. Kim
21 Fowler. And just the topic is a consent order
22 for Stephens Incorporated. I'll give you time
23 to find that.

24 MR. ABSHURE: Okay. I have that, Senator.

25 SENATOR SAMPLE: All right. And it's

1 discussing the fine and the increase. And on
2 the third line, right at the end of it, it says
3 -- well, to start off that line, it says if
4 Stephens can not except the new amount of
5 \$25,000 which is the commissioner's new offer,
6 then the staff shall make arrangements for a
7 much larger exam of this issue. And then it
8 goes on to discuss other things.

9 Can you enlighten me a little bit about
10 what the intent of that letter was? The
11 perceived. . .

12 MR. ABSHURE: The intent of that letter
13 was to say this is our final offer and if you
14 don't want to agree to this settlement, we'll
15 pursue the next cause of action or we'll pursue
16 a legal proceeding.

17 The fact is with Stephens, what he had
18 offered them was to not continue to investigate
19 the breadth of the violation. We didn't even
20 name a single party. We recognized that they
21 failed to have a supervisory system and it
22 could have been very broad. We offered the
23 settlement and I think it's extremely common in
24 legal negotiations to say, look, this is our
25 final offer and if you don't want to take it,

1 we'll move to the next step. That's not a
2 threat to engage in a perfectly legal and
3 appropriate legal action.

4 SENATOR SAMPLE: Like I say, I've dealt
5 with regulatory agencies for actually 42 years
6 but 37 has been since owner. To me, this is a
7 threat.

8 If you were sitting on this side of the
9 table looking out and seeing this -- I hate to
10 characterize it this way, but would you not
11 feel like that there was a little bit of
12 extortion there?

13 MR. ABSHURE: Not at all. Not at all,
14 Senator.

15 SENATOR SAMPLE: Not when you say that if
16 you don't agree to this, we're fixing to come
17 back and spend a lot more time in your company?

18 MR. ABSHURE: We had not -- we had stopped
19 the investigation. We did not do a complete
20 investigation. We offered up a consent order
21 to stop the investigation at that point. And
22 that's when I get back to saying we offered a
23 whale of a deal.

24 And if you take a look at Exhibit FF that
25 I submitted that's likely on a disc, you'll see

1 that it was a whale of a deal. One, I would
2 say that threat is irrelevant in determining
3 the legality of the three consent orders. But
4 making a final offer of settlement, I mean, I
5 don't see how that's a threat. That happens
6 every day in legal negotiations.

7 And to say that, you know, we're willing
8 to settle on these terms but if you don't want
9 to settle, this is what would happen next, we
10 would proceed to a hearing and do a full blown
11 investigation.

12 And the remedies into that investigation
13 go back to what I talked about earlier. It's
14 going to be action against your license or a
15 fine of up to \$10,000 per violation.

16 Pointing out the alternatives to
17 settlement is not a threat. With all due
18 respect, Senator, I don't see it as a threat or
19 extortion at all. I see it as very common.

20 SENATOR SAMPLE: Madam Chair, just one
21 more and I'll make this brief.

22 CHAIRMAN ENGLISH: That's fine.

23 SENATOR SAMPLE: Does the commission not
24 have set fines for violations?

25 MR. ABSHURE: No. We have --

1 SENATOR SAMPLE: How so?

2 MR. ABSHURE: What's that?

3 SENATOR SAMPLE: Why?

4 MR. ABSHURE: I don't know the answer to
5 that, Senator --

6 SENATOR SAMPLE: You don't have a fine for
7 first violation, a second violation, a third?

8 MR. ABSHURE: No, sir.

9 SENATOR SAMPLE: You don't have --

10 MR. ABSHURE: I think that there are --
11 there might be things like that in the criminal
12 section. And to be honest with you, Senator
13 Sample, I will have to go back and look.

14 But the only fining limits I can think of
15 are the ones I mentioned earlier, which is
16 post-hearing, post-hearing, the fine of up to
17 \$10,000 per violation or the amount of money
18 received. And if the victim was a senior
19 citizen, it's up to \$20,000 per violation and
20 twice the money received.

21 So in the Stephens order, and what we're
22 telling them is, look, if ultimately you don't
23 want the settlement and we go to hearing, the
24 violation is \$10,000 per -- the fine is going
25 to be -- let's just say it was \$10,000 per

1 violation. Well, the violation occurred every
2 time one of these securities were sold by every
3 agent.

4 SENATOR SAMPLE: So you do have fines?

5 MR. ABSHURE: Yes.

6 SENATOR SAMPLE: Okay.

7 Madam Chair, thank you. I appreciate it.
8 Thank you.

9 CHAIRMAN ENGLISH: Representative
10 Westerman?

11 REPRESENTATIVE WESTERMAN: Thank you,
12 Madam Chair.

13 I've got a couple of questions to follow
14 up from the last hearing to make sure I
15 understood this correctly.

16 When you have a consent order agreement
17 hearing, this is an agreement between the
18 commission and the entity that's having
19 accusations made against on a settlement. And
20 if I understood it correctly last time, it's a
21 mutual agreement on the settlement that you
22 reach; is that correct?

23 MR. ABSHURE: Representative Westerman, I
24 apologize. Did you say when I have a consent
25 order hearing?

1 REPRESENTATIVE WESTERMAN: Or the hearing
2 where you come away with a consent order.

3 MR. ABSHURE: There wouldn't be a hearing
4 in a consent order.

5 REPRESENTATIVE WESTERMAN: Okay. So how
6 do you arrive at a consent order then?

7 MR. ABSHURE: Typically, the staff
8 negotiates with the particular party, they
9 agree to the terms of the consent order, and
10 then they bring it to me and I sign it.

11 REPRESENTATIVE WESTERMAN: So it's not a
12 hearing, it's a negotiation?

13 MR. ABSHURE: That's right.

14 REPRESENTATIVE WESTERMAN: So it's an
15 agreed-upon settlement between the two groups?

16 MR. ABSHURE: Yes.

17 REPRESENTATIVE WESTERMAN: Does the person
18 in the settlement have an option of where the
19 contributions are made to or are they told only
20 you can give a contribution to this
21 organization or this organization or is it just
22 one particular organization that they're always
23 told the contribution would go to?

24 MR. ABSHURE: Not only would I consider
25 any appropriate charitable organization, the

1 respondent could also say I don't want to make
2 a contribution.

3 REPRESENTATIVE WESTERMAN: So they could
4 suggest which organization they make the
5 contribution to?

6 MR. ABSHURE: Sure.

7 REPRESENTATIVE WESTERMAN: And it's not
8 dictated by the commission?

9 MR. ABSHURE: No. And if it fit, if it
10 fit and it was appropriate, that would be fine.
11 I mean, but it would still have to follow the
12 doctrine of Cy Pres, that that charitable
13 contribution would have to be made to a charity
14 that ultimately had its philanthropic focus on
15 the underlying violation.

16 REPRESENTATIVE WESTERMAN: So if we look
17 at whether it goes to NASAA or AARP, you're
18 saying those who pay the contribution have an
19 option of where those funds are directed to?

20 MR. ABSHURE: Sure.

21 REPRESENTATIVE WESTERMAN: Okay. All
22 right.

23 And my next question, I was looking in
24 this Exhibit D1, the NASAA articles of
25 incorporation bylaws and policies.

1 MR. ABSHURE: Uh-huh.

2 REPRESENTATIVE WESTERMAN: And somewhere,
3 it said it had an annual budget, on Page 4,
4 Exhibit 6 says an annual budget but it appears
5 this publication stops before that annual
6 budget was included.

7 MR. ABSHURE: Uh-huh.

8 REPRESENTATIVE WESTERMAN: So my question
9 is when a contribution is made to NASAA, is
10 there a particular fund that that contribution
11 goes into or does it just go into a general
12 fund?

13 MR. ABSHURE: In order to make a
14 contribution to NASAA, you have to have it
15 earmarked for a particular purpose.

16 In the case of Crews and Associates, that
17 contribution was specifically earmarked for
18 training and investor protection programs. In
19 the global settlements, the other two consent
20 orders, ProEquities and UVEST, that money was
21 specifically earmarked for reimbursement of
22 costs associated with a global settlement.

23 REPRESENTATIVE WESTERMAN: Okay.

24 And as I read through here, it gave
25 specific guidelines on reimbursement for travel

1 and conferences.

2 MR. ABSHURE: Uh-huh.

3 REPRESENTATIVE WESTERMAN: Do those funds
4 come out of a different account or do they come
5 out of --

6 MR. ABSHURE: Yes.

7 REPRESENTATIVE WESTERMAN: Okay.

8 MR. ABSHURE: A different account, I'm not
9 sure, but it's certainly a different budget
10 line, absolutely.

11 REPRESENTATIVE WESTERMAN: Okay.

12 Thank you, Madam Chair.

13 CHAIRMAN ENGLISH: Thank you.

14 Senator Lindsey?

15 SENATOR LINDSEY: Thank you, Madam Chair.

16 Mr. Abshure, maybe I'm confused, but in
17 looking at the statute, Title 23, Chapter 42,
18 all fines imposed and collected or monies
19 collected in lieu of a fine shall be deposited
20 as special revenue in the state treasury.

21 MR. ABSHURE: Uh-huh.

22 SENATOR LINDSEY: Where was the Crews
23 check for \$150 [sic] deposited?

24 MR. ABSHURE: At NASAA.

25 SENATOR LINDSEY: It wasn't deposited in

1 the state treasury?

2 MR. ABSHURE: No.

3 SENATOR LINDSEY: Okay. Do you proceed
4 that the securities department has violated
5 Arkansas statute?

6 MR. ABSHURE: No.

7 SENATOR LINDSEY: Please explain that for
8 me.

9 MR. ABSHURE: That statute is an
10 accounting statute dealing with our status as a
11 special revenue agency. And it specifically
12 says collected, both with fines and payments in
13 lieu of fines. I didn't collect that
14 contribution. I don't collect restitution.

15 For example, let's say that we have an
16 agreed-upon restitution and a consent order. I
17 have to order that paid by the respondent to
18 those people.

19 SENATOR LINDSEY: When do you deem a fine
20 collected?

21 MR. ABSHURE: When it's payable to the
22 state. One, it has to be deemed a fine, and
23 once it's a fine, it's payable to the state.

24 SENATOR LINDSEY: That makes absolutely no
25 sense to me. If you have a fine in the

1 securities department and you assess through a
2 consent order that fine and the company writes
3 a check, it should be made to the state
4 treasury.

5 MR. ABSHURE: If it's a fine, it is.

6 SENATOR LINDSEY: Or moneys collected in
7 lieu of a fine.

8 MR. ABSHURE: That's right. For example,
9 if I order a penalty, if I order repayment for
10 expert witness fees, if I order repayment of
11 hearing officer fees, that's money payable to
12 the state.

13 SENATOR LINDSEY: Okay. What would you
14 characterize the Crews \$150,000 check?

15 MR. ABSHURE: Contribution.

16 SENATOR LINDSEY: And where in Arkansas
17 statute are you allowed to take a contribution
18 or direct a contribution?

19 MR. ABSHURE: I can recognize a
20 contribution as part of my authority under,
21 that allows the parties to negotiate and agree
22 to a consent order.

23 SENATOR LINDSEY: It's part of your broad
24 latitude of --

25 MR. ABSHURE: That's right.

1 SENATOR LINDSEY: -- negotiation of a
2 consent order?

3 MR. ABSHURE: Uh-huh.

4 A fine only becomes a fine in the context
5 of a consent order, the parties agree that it's
6 a fine, or in the context of a hearing, someone
7 with legal authority makes it a fine.

8 It's never an obligation owed to the state
9 and it's never a fine unless someone with the
10 authority says this is a fine.

11 SENATOR LINDSEY: That's enlightening and
12 it certainly doesn't change my opinion. Thank
13 you, Mr. Abshure.

14 Thank you, Madam Chair.

15 CHAIRMAN ENGLISH: Thank you, Senator
16 Lindsey.

17 Representative Hobbs?

18 REPRESENTATIVE HOBBS: Thank you, Madam
19 Chair. This is very much an educational
20 process. So, Madam Chair, if I go over old
21 territory feel free to stop me and I'm sure you
22 will.

23 Mr. Abshure, is there an appeals process?

24 MR. ABSHURE: Yes.

25 REPRESENTATIVE HOBBS: Which is?

1 MR. ABSHURE: Appeals from hearings are
2 directly to circuit court.

3 REPRESENTATIVE HOBBS: Circuit court,
4 okay. And do you happen to know the cost
5 associated with that? In other words, would
6 someone probably be better off to settle with
7 whatever fine or contribution you determine
8 versus going to court as far as the costs are
9 concern?

10 MR. ABSHURE: I think that would depend on
11 the size of the fine or the contribution.

12 REPRESENTATIVE HOBBS: Well, that would
13 make sense. Okay.

14 Is any of the money -- I've read through
15 some of this. Is any of the money returned
16 back to the person who was wronged by their
17 action?

18 MR. ABSHURE: Yes. I mean, frequently,
19 that's what we will try to order. In fact,
20 that's usually your first remedy, is trying to
21 repay the wronged customer.

22 REPRESENTATIVE HOBBS: Okay.

23 MR. ABSHURE: In the Crews case, they had
24 already repaid all the customers.

25 REPRESENTATIVE HOBBS: Okay.

1 MR. ABSHURE: And there were -- I think
2 looking back at ProEquities and UVEST, it was a
3 fine, not a fine, but an amount based upon
4 wrong doing but not necessarily based upon
5 victim losses.

6 REPRESENTATIVE HOBBS: Okay. In the case
7 of the Stephens case, was that person
8 reimbursed any cost?

9 MR. ABSHURE: No. The underlying victims,
10 no. Stephens did not pay restitution to those.

11 REPRESENTATIVE HOBBS: Okay. And is that
12 something you can require in your position?

13 MR. ABSHURE: No.

14 REPRESENTATIVE HOBBS: You can not, okay.

15 MR. ABSHURE: The only place the statutes
16 authorize restitution are in connection with
17 ancillary relief and an injunctive action
18 before the court.

19 I can't order restitution. That has to be
20 in the consent order.

21 REPRESENTATIVE HOBBS: Okay. But if you
22 were to fine a person, do you have the
23 authority to reimburse the victim?

24 MR. ABSHURE: I would have to call it
25 something other than a fine because a fine

1 would have to be payable to the state.

2 REPRESENTATIVE HOBBS: Okay. So in other
3 words, you could have, instead of saying
4 contribute to NASAA, you could have said make a
5 contribution back to the victim?

6 MR. ABSHURE: I wouldn't have done it in
7 the Stephens case because of issues of the
8 statute of limitations.

9 REPRESENTATIVE HOBBS: Okay.

10 MR. ABSHURE: I have an issue with using
11 -- because we're not the attorneys for the
12 investors and there's often times disputes as
13 to whether an amount is owed, what the amount
14 should be, and things like that, I have an
15 issue with sending money back to the investors
16 that wouldn't be full payment of any disputed
17 amount.

18 Plus, it would be payment after that
19 investor had lost the ability to take private
20 action under the applicable statute of
21 limitations.

22 REPRESENTATIVE HOBBS: Okay. If you
23 thought -- and obviously, you thought Stephens
24 was in the wrong or you wouldn't have offered
25 them the deal. So if you thought wrong doing

1 had occurred, I don't understand, and maybe you
2 can help me understand, why you would not
3 investigate further.

4 I mean, to me, if there's a red flag and
5 if your job is to protect investors, why would
6 you not pursue that?

7 MR. ABSHURE: Because at the time of the
8 negotiations, Stephens had affectively remedied
9 the problem, it was on top of the problem, and
10 it was part of the overall settlement package.

11 Rather than engage and go further into an
12 investigation that would have taken months,
13 possibly go to a hearing, we made the decision
14 based upon our recourses that what we could
15 offer them was just to stop our investigation,
16 fine a failure to supervise generally not as to
17 any particular agents, not get into how many
18 different agents sold this, and just rely on
19 Stephens.

20 We also had an expert appointed to look at
21 it to make any recommendations, rely on those
22 to ensure that it wasn't going to happen again
23 going forward.

24 REPRESENTATIVE HOBBS: Okay. So
25 corrective action had been taken in essence?

1 MR. ABSHURE: Yes.

2 REPRESENTATIVE HOBBS: All right. So
3 then, can you maybe explain the discrepancy in
4 the fines?

5 MR. ABSHURE: The discrepancy in the
6 fines?

7 REPRESENTATIVE HOBBS: In between Morgan
8 Keegan and Stephens and even in the \$5,000
9 difference between the initial offer and the
10 final offer.

11 MR. ABSHURE: The Morgan Keegan case
12 involved a finding that that firm failed to
13 supervise one person. It also involved a
14 finding that Morgan Keegan had in fact provided
15 written guidance regarding ETFs, which is the
16 particular security at issue here.

17 Also, Morgan Keegan included an order of
18 restitution of \$44,000. So the fine in Morgan
19 Keegan, I believe, was 15, I think \$15,000.

20 In Stephens, Stephens -- our allegations
21 -- I certainly don't want to draw conclusions
22 here, because they have the opportunity to
23 either admit or deny. In Stephens, we alleged
24 that they had absolutely no written guidance at
25 all for any sales of the ETF. It wasn't

1 limited to just one individual, it would have
2 been the entire firm. Everyone that sold
3 during that period would have been a separate
4 violation.

5 Two, once Stephens did develop guidance
6 and had an electronic system to provide
7 surveillance, our allegations was, is that
8 system was ineffective and that Stephens knew
9 it and there was no order of restitution.

10 REPRESENTATIVE HOBBS: Okay. But Stephens
11 had implemented these policies in late 2009,
12 correct?

13 MR. ABSHURE: Yes. I believe that's the
14 language of the consent order.

15 REPRESENTATIVE HOBBS: Okay. And then,
16 was it just last fall that the whole hearing --

17 MR. ABSHURE: Yes.

18 REPRESENTATIVE HOBBS: Okay. So -- okay.
19 Thank you.

20 Thank you, Madam Chair.

21 CHAIRMAN ENGLISH: Thank you.

22 Representative McCrary? Oh, I think
23 you're off, we'll let you come back. There you
24 go.

25 UNIDENTIFIED SPEAKER: Thank you, Madam

1 Chair, and I'm sorry.

2 Okay. What about the discrepancy between
3 the initial offer of \$20,000 and then the final
4 25? I don't think you addressed that question.

5 MR. ABSHURE: Okay. And here's where, I
6 think, Stephens and I have a disagreement. But
7 I certainly think that this disagreement is
8 irrelevant in determining the legality of the
9 three previous consent orders.

10 But nonetheless, I started out at \$30,000,
11 Stephens countered with 15. We discussed 20,
12 but that \$20,000 was contingent upon two
13 things, the language of the Morgan Keegan offer
14 and the specifics of the Morgan Keegan
15 settlement being similar to the Stephens facts,
16 and also my review of the particular language
17 of the consent order.

18 When I read that consent order and I saw
19 the language in Morgan Keegan, I didn't feel it
20 justified to go to 20, much less go to 15. So
21 I dropped my original offer of 30 down to 25.

22 UNIDENTIFIED SPEAKER: Okay. And again,
23 even the corrective action had occurred four
24 years previously?

25 MR. ABSHURE: That's right.

1 UNIDENTIFIED SPEAKER: Thank you. Thank
2 you, Madam Chair.

3 CHAIRMAN ENGLISH: Thank you.
4 Representative McCrary?

5 REPRESENTATIVE MCCRARY: Thank you. Thank
6 you, Madam Chair.

7 My question, the security department fund,
8 now that is Arkansas Security Department fund,
9 what are those funds used for? Aren't part of
10 them used for education?

11 MR. ABSHURE: Yes.

12 REPRESENTATIVE MCCRARY: Okay. So you
13 know you had a choice of making a charitable
14 contribution to the Arkansas Security funds or
15 you had the choice of making it to an
16 organization that's out of state that you are
17 the chairman of. And you know, that looks like
18 a conflict of interest.

19 But what was the determining factor that
20 led you to put the money in your particular
21 charitable organization as we'll call it rather
22 than put it in the Arkansas Security fund?

23 MR. ABSHURE: Because it was already
24 funded.

25 REPRESENTATIVE MCCRARY: Because what?

1 MR. ABSHURE: The Arkansas Securities fund
2 was already funded.

3 If you take a look --

4 REPRESENTATIVE MCCRARY: Well, are you
5 telling me you can't give additional money to
6 it to be used?

7 MR. ABSHURE: No. Once the special
8 revenues are there, they flow over to general
9 revenues. Just because there's more money in
10 the securities fund doesn't give me more money
11 in the department. Our budget appropriation is
12 totally separate.

13 REPRESENTATIVE MCCRARY: Okay. And --

14 MR. ABSHURE: And it wouldn't have been a
15 contribution to this -- because if I bring it
16 in, it's not a contribution. If I bring money
17 in, it's going to the treasury.

18 REPRESENTATIVE MCCRARY: Okay.

19 MR. ABSHURE: I can't bring money in and
20 just deposit it to the fund and say I'm
21 earmarking this for anything within the use of
22 the agency.

23 Once money hits the door, it follows to, I
24 think it's 213, and it goes to the treasury.
25 At that -- you know, obviously it has an

1 analysis of what portion of it is going to be
2 special revenues what portion of it's going to
3 be general revenues.

4 The investor education fund was a way to
5 fund our outreach mainly to school kids as part
6 of investor education and the stock market
7 game. And what that says is the first \$150,000
8 of fines goes there and the rest of it is
9 treated as -- all of those are special
10 revenues?

11 MS. MCDUGAL: Yes.

12 MR. ABSHURE: All of those are special
13 revenues, all of the fines are.

14 But the fact is fines, if you take a look
15 at my written statement of the day, fines is a
16 percentage of total revenues in fiscal year
17 2012/2013 was 1.18 percent. So the amount of
18 fines was 195,000.

19 You know, in 2011/2012, fines as a
20 percentage of total revenue was 3.13 percent.
21 Fines, a lot of times for us, are just, I mean,
22 it's revenue we never see, we never use.
23 Because we're mainly funded, our allotment of
24 special revenues and certainly our budget is
25 funded from fees.

1 REPRESENTATIVE MCCRARY: Okay.

2 Thank you, Ms. Chair.

3 CHAIRMAN ENGLISH: Representative
4 Ballinger?

5 I will remind the committee, we have about
6 six people on the list to speak and we probably
7 would like to get out of here by noon, so. . .

8 REPRESENTATIVE BALLINGER: Thank you,
9 Madam Chair.

10 My question follows up on Representative
11 Hobbs. You made the statement when asked about
12 the comment in the e-mail in regards to
13 extending the investigation, you said that you
14 made the offer not to investigate that further.
15 And my question is -- and you'll have to
16 forgive me for my ignorance. This is not my
17 area of the law, I'm just a small-town
18 attorney.

19 But on a federal level, if you have a
20 federal investigation going on from the Federal
21 Trade Commission and they were to make an offer
22 to say that if you'll contribute money to this
23 organization, pay money somewhere, I will not
24 investigate this further, would that be a
25 criminal action? Would that be considered

1 extortion?

2 MR. ABSHURE: I don't know.

3 REPRESENTATIVE BALLINGER: Do you think
4 that that is a good practice? I mean, your
5 comment was -- and maybe you want to retract
6 that. But you said essentially in that e-mail,
7 and that's basically what the e-mail looks like
8 to me is you made the offer not to investigate
9 it further if they will do --

10 MR. ABSHURE: If we settled at that time.

11 REPRESENTATIVE BALLINGER: Yes. If
12 they'll pay the \$25,000 on the fine, that you
13 will not investigate it any further. I mean,
14 and I try to look up and kind of see what the
15 purpose of your commission is, but my guess is
16 the purpose of your commission would encompass
17 doing that investigation if it's due.

18 If it's not, if you're not supposed to
19 investigate it, then, you know, what are we
20 doing about this?

21 MR. ABSHURE: We make decisions to settle
22 on terms that are appropriate in light of the
23 allocation of department resources and also
24 what we think we can prove.

25 For example, if I think someone engaged in

1 fraud, I realize, you know, if I bust them for
2 fraud -- especially a broker dealer. If I find
3 a broker dealer engaged in fraud, NASAA or
4 FINRA is going to kick them completely out of
5 the business. So a lot of times, we'll find
6 that they violated something else, a different
7 section, it's called dishonest or unethical
8 conduct, maybe ramp up some of the penalty
9 amounts, maybe look for additional education,
10 looks for things like that.

11 So each consent order is a negotiate --
12 it's just like a settlement in circuit court.
13 You might be able to get them for breach of
14 contract for a million dollars but you're
15 willing to settle for a number of different
16 reasons for 400,000.

17 REPRESENTATIVE BALLINGER: The difference
18 in that, we've got two private individuals. In
19 this situation, did you feel like there was
20 more information that would come up from
21 investigation?

22 MR. ABSHURE: Yes.

23 REPRESENTATIVE BALLINGER: Then I guess my
24 question is, as a servant of the state, the
25 only function that you have -- my assumption is

1 as almost a consumer protection.

2 If you felt like there was more
3 information, then why didn't you investigate it
4 further?

5 MR. ABSHURE: Because we were offering to
6 settle at that time.

7 REPRESENTATIVE BALLINGER: Okay. I guess,
8 you know, I understand your answer, but I don't
9 know if that really answers my question.

10 Let's come back to fundamentally, your job
11 is to --

12 MR. ABSHURE: Are you asking me --

13 REPRESENTATIVE BALLINGER: Explain to me
14 what your job is. You know, like in general,
15 like two sentences, what is the function of
16 your agency?

17 MR. ABSHURE: I think the function of my
18 agency is to balance the interest of the
19 Arkansas investors with the interest of
20 industry in the most reasonable way possible to
21 ensure that economic development is
22 facilitated.

23 REPRESENTATIVE BALLINGER: Okay. So
24 consistent with that, which that really
25 surprised me that you wouldn't see that, your

1 function to be more of, you know, protecting
2 consumers, but that's fine. I mean, whatever
3 you want to call it.

4 But you don't think that it's inconsistent
5 to say, listen, if you'll pay this money,
6 putting aside the contribution you've asked to
7 be made other places, if you'll pay me this
8 money now, then I won't investigate this any
9 further. You don't think that is --

10 MR. ABSHURE: It wasn't just pay this
11 money now. It was agree to these remedies,
12 agree to the appointment of an expert to come
13 in and take a look at your practices and
14 procedures. It's also signing this consent
15 order.

16 I think that settling on terms that are
17 less than what you allege that you think you
18 can prove is fairly common. That's the nature
19 of the settlement.

20 REPRESENTATIVE BALLINGER: Absolutely.
21 But that's not what you said happened here.
22 You didn't say, listen, I think I may be able
23 to go in and prove that you committed fraud,
24 but what we'll do is we'll settle for something
25 less and we'll call it dishonest conduct.

1 What you said was, hey, I think that
2 there's more dirt that we can get and we'll
3 expand this investigation and we'll find that
4 dirt unless you're willing to settle with this.
5 I mean, that's what you said that you said and
6 that's what the e-mail appears that you said.

7 MR. ABSHURE: I guess I don't understand
8 the distinction you're making and I apologize.

9 REPRESENTATIVE BALLINGER: I mean, there's
10 no doubt you're an extremely sharp person. I
11 can't imagine that you don't understand the
12 distinction between that.

13 That here we are, you know, we're trying
14 to work a settlement, I think I can prove --
15 let's pull it out of the situation. I think
16 that I can prove that you committed murder but
17 I may not be able to. That's harder to prove
18 than manslaughter, so what I'll do is I'll let
19 you plea down and we'll accept a manslaughter
20 plea. Okay. That is, maybe I'll be able to --
21 maybe I'll prove more but I may not.

22 In this situation, what you're saying is
23 there may be more information out there. Not
24 only a potential fraud but maybe some other --

25 MR. ABSHURE: No, no, no, no. When I say

1 there was more information out there, we had
2 isolated and discovered ETF sales by one
3 broker. The more information would have been
4 how many more brokers sold them.

5 REPRESENTATIVE BALLINGER: Exactly. So
6 you're saying there very clearly is an incident
7 where some law or regulation was violated and I
8 think that there could be a lot more of them
9 out there, but I won't even look for them if
10 you'll settle.

11 MR. ABSHURE: Yeah. I mean, I offered
12 that as the settlement. Look -- and which gets
13 back to the conversations about threats.

14 The threat was, look, here's the
15 settlement, we're willing to stop. Understand
16 that this is a good deal, but if you don't want
17 the settlement, we're going to go forward with
18 a legal action and that could involve
19 additional violations, and additional
20 penalties.

21 REPRESENTATIVE BALLINGER: I guess my
22 question is, do you feel like that is a good
23 practice or procedure? That I will not
24 investigate further if you'll accept this
25 penalty.

1 MR. ABSHURE: Yes. Because --

2 REPRESENTATIVE BALLINGER: Okay.

3 MR. ABSHURE: -- otherwise, you don't have
4 the ability to settle at all. If you didn't
5 have that, you would have to take every action
6 to hearing.

7 REPRESENTATIVE BALLINGER: No. See,
8 that's the thing. I do settlements all the
9 time, I understand settlements.

10 You know, I know enough about criminal
11 law, I understand how those settlements work.
12 It's not a matter of we won't investigate any
13 further, that you may have committed 18 rapes,
14 we won't even look for those rapes if you're
15 willing to settle for this instance.

16 What we're talking about here -- I mean, a
17 settlement is, you know, very clearly it looks
18 like we may be able to prove fraud and I think
19 your example is great. We may be able to prove
20 fraud, but because you made these remedies and
21 all these other things, we may not be able to
22 prove fraud, you know, we'll go ahead and
23 settle, we'll do a consent order, and we'll
24 call it dishonest behavior or whatever you want
25 to call it.

1 So that makes sense, that's a settlement,
2 that's something I understand, that is not
3 extortion. And maybe the other thing is not
4 extortion. But you know, you look at the
5 definition of extortion and basically what
6 you're saying is if you'll pay this money to
7 this organization or do this or do that, I
8 won't investigate you any further. And to me,
9 that is profoundly a problem.

10 And the thing that disappoints me is that
11 you don't see it as a problem.

12 MR. ABSHURE: I understand the perception.
13 But I think I do see it in a different way.
14 That I was offering to settle, allowing them to
15 neither admit nor deny the allegations on the
16 basis of the fact or on the basis that they had
17 taken corrective action, they were going to
18 hire an expert to come in and take a look at
19 things, and they were going to pay a fine.

20 It wasn't -- I think it's improper to
21 characterize this as me saying if you're
22 willing to pay money to my favorite charity I
23 won't investigate you anymore.

24 REPRESENTATIVE BALLINGER: You know, that
25 seems like a problem to be characterized that

1 way but that's essentially what you explained
2 to us. That was your words, not mine.

3 MR. ABSHURE: I offered them the
4 opportunity to make a charitable contribution
5 and they didn't want to, so we went to a fine.

6 REPRESENTATIVE BALLINGER: Okay. I have
7 no further questions.

8 CHAIRMAN ENGLISH: Thank you.

9 Representative Lowery?

10 REPRESENTATIVE LOWERY: Yes. Thank you,
11 Madam Chair. I just had a couple of follow-up
12 questions.

13 Mr. Abshure, let's see if we can kind of
14 turn this around from a different perspective
15 on this issue of making an offer. As a hearing
16 officer or someone in a position of authority
17 to make rulings, do you have the legal
18 authority to maybe accuse someone of offering
19 you a bribe? If they came to you and asked if
20 you'd stop an investigation?

21 MR. ABSHURE: Sure.

22 REPRESENTATIVE LOWERY: Okay. So let's
23 just put this on the other foot. If a
24 representative from Stephens or Crews or any
25 other organization came before you and they're

1 talking about the offenses that you are
2 investigating them for and they say, listen, if
3 you'll look the other way we'll make a
4 contribution to your pet project, which I think
5 as former president of NASAA, you would say
6 that organization is a pet project, it's
7 something that you're very invested in. Why
8 would that not be construed as a bribe?

9 MR. ABSHURE: Because I would construe a
10 similar set of facts as we've gone as far as we
11 can go without making this a full-blown
12 investigation into determining how many people
13 sole ETFs and how broad this was.

14 REPRESENTATIVE LOWERY: But if they --

15 MR. ABSHURE: We're willing to settle at
16 this point.

17 REPRESENTATIVE LOWERY: If they came in
18 before any of those conversation's taken place
19 and they know that there's one of their
20 employees that's been investigated and that
21 there are others that possibly could be looked
22 into as this case and they say, listen, Heath,
23 you know, let's save each other a whole lot of,
24 you know, heartache and time and everything.
25 Listen, if you'll just sweep this under the

1 carpet, we'll go ahead and make a contribution.

2 MR. ABSHURE: Okay. And see, I would
3 disagree with calling it sweep this under the
4 carpet. Every --

5 REPRESENTATIVE LOWERY: But you've
6 indicated that a contribution is far superior
7 to fining them because you're saving them from
8 the scrutiny of FINRA --

9 MR. ABSHURE: I don't think that it saves
10 them from the scrutiny of FINRA.

11 REPRESENTATIVE LOWERY: That's what you
12 indicated in the last meeting when you were
13 trying to present yourself as doing them a
14 favor. That there are other repercussions that
15 can come from a fine, including FINRA looking
16 into their --

17 MR. ABSHURE: With all do respect,
18 Representative Lowery, if I implied that it
19 keeps them out of FINRA's oversight, that's
20 incorrect and that's not what I meant to say.

21 What I would say is that some entities are
22 going to view a charitable contribution as
23 looking more favorable than a fine. But we
24 actually reported the charitable contribution
25 to FINRA, so it doesn't escape FINRA's

1 scrutiny.

2 REPRESENTATIVE LOWERY: Okay. So there's
3 a legal consent order, the contribution is
4 reported to FINRA, how is that then a favor to
5 the organization when there are still the same
6 reporting guidelines, and actually, the
7 language says contribution in lieu of a fine.

8 MR. ABSHURE: Actually, it said in -- with
9 regard to Crews, what it said was, in
10 recognition of the repayment to all the
11 customers and its contribution, there wouldn't
12 be a fine. So it wasn't just the contribution,
13 it was the fact that the customers had been
14 repaid.

15 REPRESENTATIVE LOWERY: But all the
16 documentation, all the correspondence back and
17 forth with Stephens references it consistently
18 as contribution in lieu of a fine, correct?

19 MR. ABSHURE: I would have to go back and
20 look, Representative Lowery. I'm not sure.

21 REPRESENTATIVE LOWERY: All right. Thank
22 you. Thank you, Madam Chairman.

23 CHAIRMAN ENGLISH: Thank you.
24 Representative Harris?

25 REPRESENTATIVE HARRIS: Thank you, Madam

1 Chair.

2 First question I want to ask, you do work
3 for the state, right, Mr. Abshure?

4 MR. ABSHURE: Yes.

5 REPRESENTATIVE HARRIS: Okay. So you do
6 work for the people to protect them?

7 MR. ABSHURE: Yes.

8 REPRESENTATIVE HARRIS: Okay. Not
9 (inaudible) the two that you stated above.

10 So my question is -- I have two. One is
11 to Senator Lindsey's question about the code
12 and I think it was just answered that a
13 contribution is in lieu of a fine; is that
14 correct?

15 MR. ABSHURE: There's two different ways
16 to look at the language "in lieu of a fine."
17 One is going to reflect my discretion in
18 choosing appropriate remedies.

19 For example, I might offer someone the
20 ability to pay disgorgement rather than pay a
21 fine. Well, that would be a payment in lieu of
22 a fine. I might offer someone the ability to
23 do additional training, have heightened
24 supervision, that would be in lieu of a fine.
25 The payment --

1 REPRESENTATIVE HARRIS: Okay. But we're
2 -- I'm going to cut you off --

3 MR. ABSHURE: Okay.

4 REPRESENTATIVE HARRIS: -- because you've
5 given an answer that -- what you're saying
6 though -- I'm talking about money to go with
7 the code to go back into the state treasury,
8 treasure.

9 MR. ABSHURE: Uh-huh.

10 REPRESENTATIVE HARRIS: A contribution of
11 money is in lieu of a fine, correct?

12 MR. ABSHURE: To go back in the treasury,
13 it has to be collected. It would have to be
14 monies collected. It would either be a payment
15 of a fine collected or a payment in lieu of a
16 fine collected.

17 REPRESENTATIVE HARRIS: Okay. Boy, I wish
18 -- my business is heavy regulated and it's in
19 the newspaper quite a bit. And I'm not dirty
20 enough to pay someone off to not get that
21 anymore but this would be a nice thing if I
22 could have this and maybe I wouldn't have as
23 much heartache.

24 But what you're saying is, if you give a
25 contribution, I won't give you a fine?

1 MR. ABSHURE: No. Because there are
2 certain cases that involve both a contribution
3 and a fine.

4 REPRESENTATIVE HARRIS: I'm glad I'm not
5 an attorney, because I'm really trying to get
6 through this. Okay.

7 Then, I want to go back to --
8 Representative Westerman's question that he had
9 was, as far as they can suggest where they
10 would like their contribution to go to, and
11 then you stuck your but in it, they can, but
12 they have to do this, this, and this or it has
13 to be this, this, and this.

14 So my question for you is, in the Crews
15 and Associates situation of 150,000, did you
16 suggest to them or tell them where to send
17 their contribution?

18 MR. ABSHURE: Sure. Yes.

19 REPRESENTATIVE HARRIS: Okay. But it's
20 their choice?

21 MR. ABSHURE: If they had picked somewhere
22 else, that would have been fine as long as it
23 was an appropriate charitable organization.

24 REPRESENTATIVE HARRIS: But I guess it
25 goes back to his question that is they can

1 decide where they want to put it but you're
2 going to suggest, as the judge and jury, where
3 that should go.

4 MR. ABSHURE: I'm not the judge and jury
5 when I'm involved in a settlement. And yeah, I
6 would object.

7 For example, if in the Crews settlement,
8 we had gotten to an -- actually, the Crews
9 settlement happened the same way. We discussed
10 a contribution before we ever got to the
11 amount. If I'd said, you know, Mr. Miller, I
12 would like this to go to, you know, either
13 NASAA, Economics Arkansas, whatever, and he
14 said, well, you know, my favorite charity is
15 Ducks Unlimited. I would have said no, because
16 it has to relate to the underlying violation.
17 It has to relate back to the focus.

18 REPRESENTATIVE HARRIS: And --

19 MR. ABSHURE: But if he had said, Heath, I
20 feel more comfortable with it going to
21 Economics Arkansas, I'd have been fine with
22 that.

23 If he had said I feel more comfortable
24 with it going to AARP and be an earmarked --

25 REPRESENTATIVE HARRIS: Okay. In lieu of

1 time, we can stop there.

2 But if in any way -- and I'm going to ask
3 this pointed to you or Ms. McDougal because
4 she's under oath, too. Did they ever, Crews
5 and Associates ever ask you the question where
6 would you like my contribution to go?

7 MR. ABSHURE: No, they never asked that.

8 REPRESENTATIVE HARRIS: You just offered
9 up the suggestion of where it should go? How
10 did that come about?

11 MR. ABSHURE: Yes, I just offered it up.

12 REPRESENTATIVE HARRIS: And during that
13 paragraph or during that meeting, I mean, they
14 understood that there could be a fine or there
15 could be other things coming their way,
16 correct?

17 MR. ABSHURE: Yes.

18 REPRESENTATIVE HARRIS: And do you
19 understand why I would see that you sitting
20 there, especially me being a small business,
21 not a big business, wondering, maybe I should
22 put it to NASAA in order, in lieu of a fine, a
23 lesser fine?

24 MR. ABSHURE: Sure.

25 REPRESENTATIVE HARRIS: So that is a

1 problem and I see a fundamental problem with
2 that and with you in some of your answers and
3 giving that and I don't think that's how we
4 should run business, so thank you.

5 CHAIRMAN ENGLISH: Thank you,
6 Representative Harris.

7 And our next and last question is from
8 Representative Gillham.

9 REPRESENTATIVE GILLHAM: Thank you, Madam
10 Chair. Just a quick question.

11 Some of the conversations that we had at
12 the previous meeting, I'm just trying to kind
13 of clarify a few things and get my head wrapped
14 around something, make sure I have this memory
15 correct from the last meeting.

16 If you levee a fine, does FINRA
17 automatically have to investigate?

18 MR. ABSHURE: No. There are triggers that
19 are going to set off FINRA disqualification
20 analysis.

21 REPRESENTATIVE GILLHAM: Okay.

22 MR. ABSHURE: One is a finding of fraud.
23 Two is actual suspension of a license. So if I
24 was limited to just the sanctions that are
25 authorized under the act following a hearing,

1 which are fine and action against a license,
2 depending on what we determine, what we allege
3 is the underlying violation -- so if a finding
4 of fraud, FINRA's coming after you. And if
5 there's a suspension, the same thing as far as
6 the particulars.

7 But in terms of a fine, no.

8 REPRESENTATIVE GILLHAM: All right. So
9 one quick follow-up, Madam Chair.

10 So if you were just to cite them for
11 clerical errors or, you know, something that
12 might be considered as routine or even possibly
13 just accidental, then there would be no actual
14 automatic trigger that FINRA could then
15 investigate? It's only if you cite them for
16 specific reasons? Am I understanding that
17 right?

18 MR. ABSHURE: I wouldn't say that FINRA
19 wouldn't come in and investigate. To be
20 perfectly honest, they typically call and start
21 asking questions about every case we file --

22 REPRESENTATIVE GILLHAM: Okay.

23 MR. ABSHURE: -- or every consent order
24 that's entered.

25 What I would say is that the only time I

1 know that there is a trigger that's in an
2 existing rule is if there's a finding of fraud
3 or a suspension.

4 REPRESENTATIVE GILLHAM: Okay. All right.
5 Thank you.

6 Thank you, Madam Chair.

7 CHAIRMAN ENGLISH: Thank you very much,
8 Mr. Abshure, Mr. Smith, Ms. McDougal, we
9 appreciate you being here today.

10 MR. ABSHURE: Thank you.

11 CHAIRMAN ENGLISH: I think that everybody
12 on the committee and the goal of this committee
13 is oversight, and that's what the legislature
14 is here for. And I imagine that as time goes
15 on, there will be some more questions, some
16 more things that we may ask of you. But in the
17 meantime, I think beware that folks just aren't
18 quite sure and aren't very comfortable. And
19 sometimes it's the appearance more than it is
20 the act --

21 MR. ABSHURE: And Madam Chair, I do
22 understand that if you look just on its face,
23 the fact that there is a contribution to a
24 charity of which I was president, it does have
25 an appearance that creates questions.

1 And I can certainly sympathize with the
2 committee and I certainly understand why I'm
3 being asked the questions I've asked. However,
4 I think if you dig a little deeper and you look
5 at the function of the securities department,
6 the benefits provided to the people of the
7 state of Arkansas by NASAA and the nature of
8 the negotiations, that I did nothing wrong.

9 So if I seemed defensive and off-putting,
10 it's because my integrity has been called in to
11 question.

12 CHAIRMAN ENGLISH: Well, I appreciate
13 that. Thank you very much.

14 MR. ABSHURE: Thank you.

15 CHAIRMAN ENGLISH: We have some folks who
16 have signed up to speak. Mr. David Knight, Ms.
17 Karen Burns, Mr. Kim Fowler, if you all would
18 come forward, please. I also have Mike Miller
19 and Jim Jones. Did you all want to come at the
20 same time or did you want to come separately?

21 UNIDENTIFIED SPEAKER: (Inaudible.)

22 CHAIRMAN ENGLISH: Okay. Thank you.

23 If you all would stand up, please. And as
24 we asked the others to be under oath, we'll
25 have to do the same with you all. Would you

1 state your name, your position, and your
2 employer, please.

3 MR. KNIGHT: My name is David Knight and
4 I'm executive vice president and general
5 counsel of Stephens, Inc.

6 CHAIRMAN ENGLISH: Thank you.

7 MR. BURNS: I'm Kevin Burns, associate
8 general counsel and senior vice president of
9 Stephens, Inc.

10 MS. FOWLER: I'm Kim Fowler. I'm senior
11 vice president and association general counsel
12 and ethics officer for Stephens, Inc.

13 CHAIRMAN ENGLISH: Thank you.

14 (WHEREUPON, David Knight, Kevin Burns, and
15 Kim Fowler were sworn to tell the truth, the
16 whole truth, and nothing but the truth and gave
17 the following testimony, to-wit.)

18 CHAIRMAN ENGLISH: Thank you. Please be
19 seated. I understand that you all have some
20 statements you would like to make this morning,
21 or almost noon, in response to some of the
22 things you've been hearing.

23 Now, one of the things I will say out
24 loud, too, is that this is all part of an
25 ethics investigation. So we need to -- it's

1 not the job of this committee right here to
2 determine ethics violations, pro or con, so all
3 we're doing is accepting some information from
4 Stephens.

5 MR. KNIGHT: Thank you very much, Senator
6 English and other members of the committee, and
7 we appreciate this opportunity to address the
8 committee about the operations of the
9 securities department.

10 And as you can tell from the various
11 filings we've made with this committee, we
12 believe we've identified some serious problems
13 with those operations, including lack of due
14 process and conflict of interest.

15 One of my associates asked me the other
16 day what is it that you hope to accomplish.
17 And I think the short answer to that is we want
18 to feel comfortable that we will get a fair
19 hearing when we're dealing with the Arkansas
20 Securities Department. And to that end, we
21 have suggested a number of legislative changes
22 to the way the securities department operates.

23 And I would stress that we're not trying
24 to rewrite the Securities Act. These are very
25 narrow and very targeted and there are things

1 that came to our attention as a result of the
2 specific situation that we have been dealing
3 with and have dealt with in front of the
4 securities department.

5 I think, maybe the first thing is to help
6 put this in context, how this came up, because
7 it illustrates some of the conflicts of
8 interest. And when we were initially dealing
9 with the securities department, we were dealing
10 with their staff, Mr. Scott Freydl who was a
11 staff attorney. And he sent us a letter which
12 is in the record that said that they intended
13 to bring an enforcement action against us and
14 file a complaint against us and that that would
15 be filed in an administrative proceeding.
16 Administrative proceedings are tried in front
17 of the securities commissioner as judge and the
18 securities commissioner as finder of fact, also
19 as a jury.

20 So we were dealing just with the staff at
21 that point and we submitted a rather detailed
22 25-page response on why we felt like the
23 alleged violations were correct. And the next
24 thing that happens is we get an e-mail from Mr.
25 Freydl. And what the e-mail says is that the

1 securities commissioner wants to visit with us
2 and talk settlement. He inserted himself into
3 the process at that point.

4 And as he described just a few minutes
5 ago, when he inserted himself in that process,
6 he inserted himself as a prosecutor. So the
7 next thing we know, we're in a meeting, the
8 three of us with the securities commissioner
9 and we're talking settlement and we're laying
10 out our case. And the securities commissioner,
11 after hearing our case, essentially says, well,
12 I believe that you violated the law. It was a
13 different violation than was originally
14 suggested and we felt like a lesser violation
15 and we were interested in settlement.

16 Then, he put on the table, again as a
17 prosecutor, a \$30,000 settlement offer. He
18 came up with that number. We had researched
19 prior actions of the securities department
20 before we went over there and identified the
21 Morgan Keegan case that you had heard about and
22 we felt like \$30,000 was just too much. It was
23 twice what the Morgan Keegan fine was.

24 And the Morgan Keegan fine was for two
25 different -- it was one investor, yes, but it

1 was two different types of violations. And we
2 just felt like the fine was too much, which
3 was, you know, certainly our right to feel that
4 way.

5 Then the next thing that happens is,
6 again, initiated by the securities
7 commissioner. He puts a \$20,000 offer on the
8 table and he says in conjunction with putting
9 that \$20,000 offer on the table, that he would
10 allow us to, instead of having that in the form
11 of a fine, to make a contribution to NASAA.

12 Well, as a former SCC regulator myself,
13 that offended me because it was a conflict of
14 interest. And I knew that he was the president
15 of NASAA because I had previously invited him
16 to speak at one of our legal and compliance
17 seminars in his capacity as president of NASAA.
18 So I declined that.

19 And you hear a lot about all of the
20 advantages to a firm of making a contribution
21 in lieu of a fine and a law professor out there
22 in the newspaper saying that doesn't have to be
23 disclosed, well, that's just not true.

24 I mean, the FINRA regulations and the form
25 that you have to fill out on any kind of

1 significant regulatory action require you to
2 disclose all of the remedies, restitutions,
3 fines, penalties, suspensions, all of that sort
4 of thing, for the firm and the employees
5 involved. So you would have to disclose that
6 instead of paying a fine, you know, you made a
7 charitable contribution.

8 Well, any other regulator looking at that
9 is not going to give you any credit for that.
10 They know that contribution is, really from a
11 functional standpoint, no different from a fine
12 and the only reason -- I mean, we would not
13 agree to that and did not agree to that.

14 But the only reason that I can see for
15 someone agreeing to that is because the
16 securities commissioner suggested it and that
17 was obviously something that he was interested
18 in having you do. And if you did it, maybe
19 you'd get a better deal or at least get your
20 settlement done.

21 So that's really how all this came about.
22 And in response to Mr. Lowery's comments, there
23 was no deal, we never said there was a deal.
24 There was just -- at the end of the day when we
25 broke up, there was an offer on the table from

1 the securities commissioner for a \$20,000
2 settlement and an option for that to go to
3 NASAA and we were at 15. And the securities
4 commissioner basically turned to the group and
5 said, okay, why don't you all try and work that
6 out.

7 So, yes, we thought we were basically
8 there. We were happy with the way the consent
9 order would be worded and it was just a
10 question of was it going to be a \$15,000 fine
11 or a \$20,000 fine. And instead, what we get
12 within a very short period of time is a consent
13 order, which as we said, we were fine with in
14 the language, but the offer had gone up from 20
15 to 25.

16 And there was reference to the e-mail and
17 it lays all that out. And Commissioner Abshure
18 suggested that there was never a \$20,000 offer
19 in his testimony at the last hearing, but there
20 clearly was and the e-mails support that. So
21 we go back and say, well, how about the
22 original 20, and what do we get in response,
23 two more e-mails saying, no, we're firm on 25
24 and if you don't take the 25, we're going to
25 expand our investigation and we're pretty sure

1 that we're going to find some other things and
2 be able to ramp up an action against you where
3 it's going to cost you more than 25. Well, you
4 know, I know when I'm being retaliated against.

5 Particularly, within a short period of
6 time after that, we say, okay, let's not get
7 into this, we'll just go ahead and pay the
8 \$25,000, and we signed the consent order and
9 did that. And before the ink is even dry on
10 the consent order, the securities commissioner
11 sends us to the newspaper.

12 Well, a reasonable person looking at that,
13 yes, you would assume that you're being
14 retaliated against, so we don't believe that's
15 a fair process. And what I would like -- it's
16 been illuded to, but what I would like for you
17 to understand is that when you go into these
18 types of settlement discussions and you're
19 dealing with a prosecutor, that's one thing.
20 And I've been in this business for 35 years and
21 I've dealt with lots of regulators on behalf of
22 lots of clients and this is not the first time
23 I've been threatened and I'm not particularly
24 thin skinned.

25 The problem here is that your prosecutor

1 is also the judge and jury, so you're not just
2 dealing with a prosecutor.

3 And you heard Commissioner Abshure say,
4 well, you know, if I insert myself in the
5 negotiations, which he did here, well, I can
6 appoint a hearing officer. Well, enough of us
7 who have gone through a process of lawyers
8 where you try and get someone to recuse and
9 what you know, that's largely in the judges
10 discretion as to whether they recuse
11 themselves.

12 We had no indication whatsoever that he
13 would be willing to recuse himself and there
14 was no reason for us to go any further because
15 he would be sitting there as the judge and as
16 the jury. And he had already told us that he
17 felt like we had a violation and he had already
18 told us that he felt like we should be fined,
19 so what's the use of that.

20 Then you get into a question of, from a
21 due process standpoint, what are your rights of
22 appeal. Well, your rights of appeal are to
23 circuit court. The problem is that the
24 findings of fact in the circuit court
25 proceeding are deemed to be presumptively

1 correct. So you don't have a really good right
2 of appeal.

3 And if there is any kind of a dispute as
4 to the facts in the circuit court, they send it
5 back to the securities commissioner for new
6 findings of fact. So you're just not going
7 through that process. You're going to try and
8 settle this any way you possibly can that's
9 within reason. And that's what we ultimately
10 did and that's where we say that there's a lack
11 of due process.

12 And for our money, we would rather have
13 our day in court and have this tried before an
14 independent fact finder and get the same rights
15 that Commissioner Abshire has testified to the
16 benefit of other companies besides broker
17 dealer firms where he's obligated to go to
18 circuit court and try the case.

19 So that's one regulatory change we would
20 like. I would say that there are other models
21 out there. For example, with the SCC, they
22 have a separate office of administrative law
23 judges and those law judges are precluded from
24 having discussions with the staff attorneys who
25 are handling the prosecution about your case

1 just like you would normally have in a court.
2 And with that group, the group of
3 administrative law judges, they are fiercely
4 independent and have a reputation for that.
5 And a lot of people are comfortable with trying
6 a case under that situation. But you don't
7 have that here.

8 And then, if you appeal from an
9 administrative law judge ruling against you in
10 an SCC process, it goes in front of the entire
11 commission, which is like five people.

12 So what you have here is one person
13 wearing too many hats with too much discretion
14 and too much power and that is our problem.

15 The second point we suggested, as far as
16 legislative changes go, is we think Section 213
17 needs to be revised to where fines don't go
18 into the securities department operating
19 budget. It's another situation where it
20 creates a conflict of interest. I mean, people
21 should be fined because of the type of conduct
22 that they engaged in if there's wrongdoing
23 there and that money should just go to the
24 treasury. It should not go into the operating
25 budget of the department where the people that

1 are prosecuting the case are getting paid
2 salaries from fine money. So we would suggest
3 that as a change.

4 The third change that we would suggest in
5 the due process arena, and this is also common
6 at the federal level, and it is a provision in
7 the Uniform Securities Act, which I'm sure with
8 a lot of you are familiar with model acts.
9 They're promulgated by the commissioners on
10 uniform state laws, which is not exactly your
11 wild and crazy group of people.

12 And the way that statutory provision works
13 is if you believe that someone is going to,
14 that a securities department is going to be
15 investigating you for any, for harassment
16 purposes or acting in bad faith or really, any
17 improper motive other than doing their job,
18 that you would have an opportunity to go into
19 court and seek an injunction and block that
20 inappropriate investigation. Because if you
21 don't have that type of proceeding or that type
22 of provision in there, what happens to you is
23 you have to go through the entire
24 investigation, even though it's wrongly
25 motivated. You have to wait and see what the

1 final order is and you can only appeal from the
2 final order. And then, we're back into the
3 original problem that we discussed, which is
4 your hearing, rights of appeal are limited.

5 So those are the types of changes that
6 we've suggested, that we think would create a
7 level playing field. Not just for Stephens,
8 Inc., but for other companies in our industry
9 and maybe most importantly, the individuals
10 that work for our companies. Because the
11 securities commissioner has a lot of power.
12 And he talks about restricting licensure.
13 Well, what he's really talking about is he can
14 bar people from practicing and cut down their
15 practice and put them out of business if their
16 business is in the state of Arkansas. So he
17 has very substantial remedies available to him.

18 A \$10,000 penalty, that's per incident.
19 If you have someone that sold securities with
20 misrepresentations to 50 people, that's 50
21 times \$10,000.

22 So he has serious remedies available to
23 him, he has a tremendous amount of discretion
24 that we've seen, and we think that you need
25 these types of safeguards in place to level the

1 playing field.

2 On this whole notion of what the statute
3 says, we've introduced an opinion from an
4 outside law firm, we've consulted with another
5 outside law firm that helped us prepare our
6 ethics complaint. They came to the same
7 conclusion. The statute is just very clear
8 that money that is collected as fines or
9 payments in lieu of a fine are supposed to go
10 into the state treasury.

11 And you know, that is clear legislative
12 intent. The securities commissioner is not
13 supposed to be ceasing on one word in the
14 statute, collected, and saying, oh, well, gee,
15 I won't have this pass through my hands, and
16 that way, I can do something else with it which
17 is not contemplated by the statute because I
18 find that to be more convenient for me.

19 He's supposed to be construing a statute
20 in accordance with what the people that drafted
21 the statute were trying to accomplish, and that
22 is not happening here and he will not give up
23 on that issue that he has that authority.

24 We don't believe there need to be changes
25 to the statute because the language is clear.

1 But as long as he's taking that position, we
2 think the statute needs to be changed to insert
3 clarifying language that you can't do that and
4 that the money is supposed to go into the
5 treasury for the benefit of the general public.

6 So that is the heart of our presentation
7 and I think at this point, I would just like to
8 try and respond to any questions. If there are
9 questions about factual matters, I asked Ms.
10 Fowler and Mr. Burns to accompany me because
11 they were in meetings and were involved in
12 meetings with the staff and we'll do our best
13 to set the record straight for you.

14 CHAIRMAN ENGLISH: Thank you very much.
15 We'll take questions from the committee.

16 Representative Rice, you have a question?

17 REPRESENTATIVE RICE: Thank you, Madam
18 Chair.

19 We all know that the acronym is similar
20 with an extra letter, but I've been sitting
21 here this meeting and the meeting before
22 thinking about a quote that we've all heard a
23 long time ago and it was "NASA, we've got a
24 problem." And it's really not a NASAA problem
25 but if I was NASAA, it would be an image

1 problem, too.

2 I don't know how to fix this. You went
3 through a lot of the questions I had with
4 proposals and we know it's not a one-sided deal
5 but I appreciate you offering those.

6 MR. ABSHURE: Did I not see in maybe some
7 background information that Stephens may have
8 provided, or committee staff can correct me,
9 Mr. Abshure eluded to earlier this morning that
10 if you take away the \$150,000 fine, that the
11 22,000 or whatever it was, was kind of
12 insignificant.

13 But did I not see some information that
14 these other states that had fines and maybe
15 some heftier fines than the 22,000, are they
16 not more heavily into securities? Are there a
17 lot more firms -- do we have some information
18 on that?

19 MR. KNIGHT: Yes. We submitted an
20 analysis of that and that was actually an
21 analysis of information that NASAA provided and
22 that Commissioner Abshure presented to this
23 committee. So he essentially got to pick the
24 time period. And we felt like that was an
25 appropriate time period because that was when,

1 it encompassed the period when he was
2 securities commissioner and when he was
3 president of NASAA. So we analyzed that. And
4 what we determined, which we thought was very
5 interesting, was that out of a five-year period
6 for 50 states when there were literally,
7 probably thousands of administrative consent
8 orders out there, there were only 32 times in
9 context of a consent order where NASAA received
10 a contribution. So this was totally news to me
11 that anyone did this when I first ran across it
12 and I've been in practice here since 1981 and
13 he's the seventh securities commissioner that I
14 have dealt with about different things, both in
15 private practice and in representing Stephens
16 and it just, you know, I was not aware of it.

17 And I at least felt better that it's
18 certainly not a common practice and most of
19 these were very small. The \$150,000
20 contribution was the largest single
21 contribution, the next closes was 50,000.

22 There were only ten of the 50 states that
23 had done this at all. The states with the
24 largest financial services industry, New York,
25 California, New Jersey, some of the very

1 largest had not done anything at all.

2 As a matter of fact, if you look at, out
3 of the 32, then of those, roughly a third came
4 from Arkansas and Alabama. And the interesting
5 thing about that was the securities
6 commissioner of Alabama is also a past
7 president of NASAA. So 60 percent of these
8 contributions to NASAA came from two states
9 where the securities commissioner was a former
10 president of NASAA.

11 And we're not picking on Alabama, because
12 I don't know what their statutory system is and
13 whether these were done through appropriations
14 or whatever. And we're not picking on NASAA
15 because we don't dispute that NASAA provides
16 services to the state.

17 Our point is that that should go through
18 some sort of an appropriate committee, like an
19 appropriations committee to where you can look
20 and see if that amount is appropriate. Because
21 this is not an apparent conflict of interest.
22 This is an actual conflict of interest. I
23 mean, you have the securities commissioner on
24 the one hand in charge of the department in
25 dealing with public funds. And on the other

1 hand, he's the president of NASAA and he's
2 described that as a position that is equivalent
3 of chairman of the board.

4 I have been the chairman of a board of
5 four nonprofits in Arkansas. And I can tell
6 you that one of the main things all of them
7 wanted me to do was raise money for them.

8 So if I'm sitting there as the president
9 of that organization on the one hand and the
10 securities commissioner on the other hand, how
11 on earth am I in a position to decide when
12 money should be taken away from the state
13 treasury and go to the other organization where
14 I'm that closely affiliated with it. It's just
15 a blatant conflict of interest and we need to
16 shut that down.

17 REPRESENTATIVE RICE: Thank you for your
18 statements.

19 Thank you, Madam Chair.

20 CHAIRMAN ENGLISH: Representative
21 Westerman?

22 REPRESENTATIVE WESTERMAN: Thank you,
23 Madam Chair.

24 Mr. Knight, I think you said this twice in
25 your testimony but I just wanted to make sure

1 for the record. You stated Mr. Abshure was not
2 only involved in the negotiations but actively
3 involved in the negotiations?

4 MR. KNIGHT: He was there speaking on
5 behalf of the securities department and those
6 are the only negotiations we were having,
7 period.

8 REPRESENTATIVE WESTERMAN: Okay.

9 MR. KNIGHT: Basically, that one meeting.
10 Now, there were those e-mails that you saw and
11 that we referenced following that up.

12 But essentially, we were trying to get
13 back to the \$20,000 offering and we just get an
14 e-mail back and it said no dice.

15 REPRESENTATIVE WESTERMAN: In regard to
16 where the contribution would go, you said that
17 you thought it was bad that the contribution
18 would be directed to NASAA, did you ever raise
19 any question about that in the meeting?

20 MR. KNIGHT: The way that developed, and
21 this goes back to try to help you put it in
22 context because this was actually a very
23 low-key meeting, no one's voice was being
24 raised, Stephens was in there trying to settle
25 this matter.

1 So when he initially suggested that the
2 contribution be made to NASAA, I can't remember
3 the specific words I used, but it was something
4 just to indicate that we didn't want to do that
5 and I didn't give a reason.

6 REPRESENTATIVE WESTERMAN: Were you
7 offered an opportunity to suggest another
8 organization you could contribute to?

9 MR. KNIGHT: Yes. And then, when we
10 turned down the NASAA contribution,
11 Commissioner Abshure said, well, how about a
12 contribution to Economics Arkansas. And this
13 would have been \$20,000 also.

14 Well, I wasn't familiar with Economics
15 Arkansas and, you know, I'm sure it's a fine
16 agency and does great work. But having just
17 gone through a couple of minutes ago, the deal
18 with NASAA, my question to him was is there any
19 affiliation between the securities department
20 or you with Economics Arkansas. And he said,
21 yes, I'm on the board of directors. So it was
22 like, here we go again.

23 So at that point, I just said we want to
24 settle, but let's just deal with it in terms of
25 a fine. I did not want to get in a big

1 argument about affiliation at that point,
2 certainly. Because again, we were trying to
3 settle out our case.

4 REPRESENTATIVE WESTERMAN: So door number
5 one and door number two both had conflicts of
6 interest, you weren't offered door number
7 three?

8 MR. KNIGHT: We were not offered a door
9 number three, no.

10 REPRESENTATIVE WESTERMAN: Okay.

11 Thank you, Madam Chair.

12 CHAIRMAN ENGLISH: Thank you.

13 Representative Harris?

14 REPRESENTATIVE HARRIS: Thank you, Madam
15 Chair.

16 Representative Westerman asked the same
17 questions that I wanted to follow up with, my
18 question before to Mr. Abshure. Do you feel
19 like his testimony was truthful in the fact of
20 suggesting NASAA or telling you to contribute
21 to NASAA or to the next thing that he was
22 involved in?

23 MR. KNIGHT: Just so I make sure I
24 understand, his testimony today or his
25 testimony during the last hearing?

1 REPRESENTATIVE HARRIS: Well, they've been
2 different. But for today's hearing.

3 MR. KNIGHT: Being diplomatic, let me just
4 describe them as inconsistent.

5 REPRESENTATIVE HARRIS: Okay. So in that
6 meeting, was the commissioner the only one in
7 that meeting?

8 MR. KNIGHT: No. Mr. Freydl was there and
9 then there was Scott Fowler, who is another
10 employee who I believe was an investigator.
11 They didn't really say a lot during the
12 meeting.

13 REPRESENTATIVE HARRIS: To help me out, to
14 the best of your knowledge because you swore
15 under oath, how was it worded to you? I mean,
16 I know you said -- how was it worded to you
17 about giving your contribution in lieu of a
18 fine to NASAA? Did you feel like it was a
19 suggestion or. . .

20 MR. KNIGHT: It was an offer, is the way I
21 would describe it.

22 REPRESENTATIVE HARRIS: Okay.

23 MR. KNIGHT: It was an offer. And I took
24 it in the context of the meeting, that was
25 something that the securities commissioner

1 wanted us to do or he wouldn't have offered it.

2 And one thing that is absolutely clear to
3 me, and the three of us have discussed it, is
4 that if we had hit the bid of contributing
5 \$20,000 to NASAA, we were done and would have
6 been out of there and we didn't do that and
7 then things took the course that you've heard
8 about.

9 REPRESENTATIVE HARRIS: Okay. In my
10 opinion, it didn't sound like an offer, it
11 sounded like telling you what to do and maybe a
12 threat, so -- but you don't have to answer
13 that. All right. Thank you.

14 CHAIRMAN ENGLISH: Thank you.

15 Anybody else have anymore questions here?

16 Well, we appreciate your being here today.
17 I think that, as I've said before, the job of a
18 state legislature, for us, is to make sure that
19 state government is running appropriately and
20 that everything we do meets the smell test and
21 is also in the best interest of the citizens of
22 the state of Arkansas.

23 You have brought up some very good things
24 that we need to be looking at as possible
25 solutions for the next legislative session.

1 And I think that as we move forward, this will
2 probably not be our last discussion about the
3 securities commission and some of the
4 operations.

5 I think none of us are securities people
6 like you are and understand that law, but I
7 think most of us have gotten a pretty good
8 sense for what appears to be going on and has
9 gone on and it doesn't look like it's something
10 that we're all thrilled with.

11 So I appreciate you being here very much.
12 And would the folks from Crews and Associates,
13 would you want to come up and make a statement?

14 UNIDENTIFIED SPEAKER: Thank you. We
15 appreciate the opportunity to speak to you on
16 these matters.

17 CHAIRMAN ENGLISH: Thank you very much for
18 being here, all of you.

19 MR. MILLER: Madam Chairman, I'm Mike
20 Miller on behalf of Crews and Associates. We
21 don't have the need to make a statement. We
22 are simply with the legislative agenda. If you
23 have any questions, we're available.

24 CHAIRMAN ENGLISH: Okay. I think we're
25 fine. Does anybody have any questions they'd

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like to ask?

I think we're fine. We appreciate you
being here. Thank you very much.

The Committee is adjourned.

(WHEREUPON, the proceedings were concluded
in the matter.)

* * * * *

