Acceleration Mercury Fund 4X, LP
A Delaware Limited Partnership

The date of this Confidential Private Offering Memorandum (the “Memorandum”) is January 15, 2005.

This Confidential Private Offering Memorandum comprises Part I to a Pool Disclosure Document of Acceleration Mercury Fund 4X, LP which is required pursuant to CFTC Regulation 4.21(a) (the “Disclosure Document”). The Disclosure Document is a two-part document comprised of the Confidential Private Offering Memorandum of Acceleration Mercury Fund 4X, LP (Part I) and the Statement of Additional Information (Part II), each dated January 15, 2005. The Disclosure Document must be read in its entirety by prospective investors. If not attached to this Memorandum, the Statement of Additional Information is available free of charge from Acceleration Mercury Fund 4X, LP upon request in writing or by calling (818) 998-2435. This Disclosure Document is not to be distributed under any circumstances after September 14, 2005 and will be superseded after that date by a Disclosure Document containing then current information about this program.

Acceleration Capital, LLC
General Partner

Private and Confidential

This Offering Memorandum constitutes an offering of these securities only in those jurisdictions where there may be lawfully offered for sale and therein only by persons permitted to sell such securities and to those persons to whom they may be lawfully offered for sale. No securities commission or similar regulatory authority has reviewed this Offering Memorandum or has in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offense. No prospectus has been filed with any such authority in connection with the securities offered hereunder. This Offering Memorandum is confidential and is provided to specific prospective investors for assisting them and their professional Advisers in evaluating the securities offered hereby and are not to be construed as a prospectus or advertisement or a public offering of these securities. This fund will be continuously offered.

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

THE INTERESTS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.
YOU SHOULD CAREFULLY CONSIDER WHETHER YOU’RE FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT FUTURES AND OPTIONS TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON WITHDRAWALS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

FURTHER, COMMODITY POOLS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, AND ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE TO BE CHARGED TO THIS POOL ON PAGE 8 AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT, ON PAGES 15 – 16.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER FACTORS NECESSARY TO EVALUATE YOUR PARTICIPATION IN THIS COMMODITY POOL. THEREFORE, BEFORE YOU DECIDE TO PARTICIPATE IN THIS COMMODITY POOL, YOU SHOULD CAREFULLY STUDY THIS DISCLOSURE DOCUMENT, INCLUDING A DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, ON PAGES 20-27.

YOU SHOULD ALSO BE AWARE THAT THE COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.
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IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE INTERESTS HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT, AND ANY APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

NO PERSON IS AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS NOT CONTAINED HEREIN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED. THE DELIVERY OF THIS MEMORANDUM AT ANY TIME DOES NOT IMPLY THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE OF ITS ISSUE.

THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, A SECURITY IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH AN OFFER OR SOLICITATION IN SUCH JURISDICTION.

INVESTMENT IN THE INTERESTS INVOLVES A HIGH DEGREE OF RISK AND IS SUITABLE ONLY FOR A SOPHISTICATED INVESTOR FOR WHICH SUCH INVESTMENT DOES NOT CONSTITUTE A COMPLETE INVESTMENT PROGRAM AND WHICH FULLY UNDERSTANDS AND IS WILLING TO ASSUME THE RISKS INVOLVED. ONLY A PERSON OR ENTITY WHICH QUALIFIES FOR PURPOSES OF THE ACT MAY INVEST IN THE INTERESTS. NO PERSON WHICH IS NOT CAPABLE INDEPENDENTLY OF EVALUATING ANY INFORMATION CONTAINED IN THIS MEMORANDUM AND THE RISKS INVOLVED IN THE PURCHASE OF THE INTERESTS SHOULD CONSIDER DOING SO.

A PROSPECTIVE PURCHASER OF INTERESTS SHOULD NOT CONSTRU THE CONTENTS OF THIS MEMORANDUM AS TAX OR LEGAL ADVICE. THIS MEMORANDUM SHOULD BE REVIEWED BY THE PROSPECTIVE PURCHASER AND ITS INVESTMENT, TAX, LEGAL OR OTHER ADVISERS.

EXECUTIVE OFFICERS AND REPRESENTATIVES OF THE GENERAL PARTNER ARE AVAILABLE TO EACH PROSPECTIVE INVESTOR AND/OR ITS REPRESENTATIVES TO ANSWER QUESTIONS CONCERNING THE TERMS AND CONDITIONS OF THIS OFFERING OF INTERESTS AND TO FURNISH ANY ADDITIONAL INFORMATION, TO THE EXTENT THAT THEY POSSESS OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE, NECESSARY TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH HEREIN OR TO ENABLE IT TO EVALUATE THE MERITS AND RISKS RELATING TO THE PURCHASE OF INTERESTS.

BY ACCEPTING RECEIPT OF THIS MEMORANDUM, EACH PROSPECTIVE INVESTOR AGREES NOT TO DUPLICATE OR TO FURNISH COPIES OF THIS MEMORANDUM TO PERSONS OTHER THAN SUCH OFFEEEE'S INVESTMENT, TAX, ACCOUNTING OR LEGAL ADVISERS AND AGREES TO RETURN THIS MEMORANDUM TO THE GENERAL PARTNER.
PROMPTLY AFTER SUCH TIME AS SUCH OFFEREE IS NO LONGER CONSIDERING AN INVESTMENT IN THE INTERESTS.

THIS MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE HEREIN, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS OF DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN.
The following summary briefly describes the offering of Interests in Acceleration Mercury Fund 4X, LP and is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum.

The Partnership: Acceleration Mercury Fund 4X, LP is a Delaware limited partnership organized in July 2003. The Partnership’s principal office is at 8619 Reseda Blvd., Suite 102, Northridge, California 91324; its telephone number is (818) 998-2435; facsimile (818) 998-7441.

General Partner: Acceleration Capital, LLC is a Delaware limited liability company, commodity pool operator and the general partner of the Partnership. The Partnership’s principal office is at 8619 Reseda Blvd., Suite 102, Northridge, California 91324; its telephone number is (818) 998-2435; facsimile (818) 998-7441.

General Partner’s Investment: The General Partner may maintain a cash investment in the Partnership equal to or less than 1% of the total contributions of all Partners to the Partnership.

Investment Objective: The Partnership’s investment objective is to seek substantial capital appreciation through investing in and trading commodities, futures, forwards, options and other instruments. Leverage may be used in an attempt to increase the overall return on the Partnership’s capital, but such leverage also may increase the volatility of the Partnership’s returns and the risk of loss. There can be no assurance that the Partnership’s investment objective will be achieved. See “RISK FACTORS.”

Offering: Interests are being privately offered and sold by the Partnership pursuant to an exemption from the registration provisions of the Act provided for in Regulation D and Rule 506. The minimum Interest which may be purchased is $25,000, unless waived by the General Partner. Interests may be purchased as of the close of business on the last business day of each calendar month, subject to certain restrictions. There is no maximum amount of Interests that may be accepted by the Partnership pursuant to this offering.

Break-Even Point: Assuming an investment of $100,000, the break-even point per Interest of initial investment that the Fund must realize during the first year of a participant’s investment to equal all fees and expenses such that the participant will recoup its initial investment at the end of the first year is $5,500.00, or 5.5%. See page 15 for a break-even analysis of the Partnership.

Interest Income: In general, all of the assets of the Partnership are used to engage in commodities, futures, forwards, options or other instrument trading. All of the proceeds from the sale of Interests will be segregated and deposited and maintained either in segregated accounts with the clearing brokers or in other interest-bearing segregated accounts selected by the General Partner and will be used for trading. Funds held at the Broker, in addition to those used for margin purposes, earn interests based on U.S. Treasury Bill rates (or may also be invested directly in U.S. Treasury Bills) and the Partnership receives 100% of the interest income earned on such obligations. See “USE OF PROCEEDS.”

Term: Unless earlier dissolved, the Partnership shall cease doing business on September 31, 2053, and shall thereupon be dissolved.

Additional Capital Contributions: Limited Partners (as hereinafter defined), with the consent of the General Partner, may make additional capital contributions on the last business day of each calendar month.

Allocation of Profits and Losses: Each Limited Partner in the Partnership and the General Partner will have a Book Capital Account (as hereinafter defined) and a Tax Capital Account (as hereinafter defined), the initial balance of each of which will be the amount contributed to the Partnership by such partner. Any increase or decrease in the Net Asset Value of the Partnership will be allocated among the partners on a
monthly basis and will be added to or subtracted from the Book Capital Accounts of the partners in the ratio that each partner’s Book Capital Account bears to all partners’ Book Capital Accounts.

Net Asset Value: The Net Asset Value of the Partnership is the Partnership’s total assets including all cash, cash equivalents and other securities (each valued at fair market value), less total liabilities, determined in accordance with generally accepted accounting principles, consistently applied under the accrual method of accounting. Net Asset Value shall reflect all gains and losses (whether realized or unrealized), income and expenses (including the compensation of the General Partner).

Incentive Allocation: At the end of each calendar quarter, the General Partner will be paid an Incentive Allocation equal to 20% of the Net New Appreciation, if any, achieved with respect to the Book Capital Account of each Limited Partner.

Fees and Expenses: Management Fee. The General Partner will be paid by the Partnership a monthly management fee equal to the greater of 1/12th of 2.5% (approximately 2.5% annually) of the Net Asset Value of each Limited Partner’s Book Capital Account, or $100.

Expenses. The Partnership is obligated to pay transaction expenses and other trading and investment related expenses. The General Partner will pay for any legal, accounting, administration, auditing, filing, administrative and other regular operating expenses and extraordinary expenses which may occur in the operation of the Partnership’s business.

Offering and Organizational Expenses. The General Partner incurred some organizational and initial offering expenses. The General Partner will not seek reimbursement of these costs and expenses from the Partnership.

Withdrawals: Upon the close of business on the last business day of a calendar month, all or a portion of such Interest may be redeemed on 30 days’ prior written notice to the General Partner, subject to certain restrictions. Withdrawals made prior to six calendar months from the day in which an interest is purchased will be subject to an early withdrawal penalty of 2% of the amount withdrawn.

Distributions: As is typical of most futures funds, no distributions are anticipated by the Partnership, its capital being conserved for reinvestment in the futures markets.

Reports and Pricing: At the end of each month, the General Partner will prepare and send to each partner an unaudited monthly statement that will report the Net Asset Value of the Partnership and any changes therein. For purposes of preparing such statements, the General Partner will price the Partnership’s portfolio based upon the last reported sale prices on the valuation date or if no sales are reported the median between the bid and ask. In addition, following the end of each fiscal year, an audited annual report of the Partnership, certified by the Partnership’s independent auditors, shall be prepared and mailed to each partner.

Risk Factors: The investment program of the Partnership involves significant risks. The Partnership is a recently formed entity in a high-risk field, and there is no operating history upon which to evaluate its likely performance. There is no present expectation that a secondary market in the Interests will develop, and there are restrictions on transfers of Interests. Substantial risks are involved in investing in and trading commodities and futures. In addition, investments in options may be subject to greater fluctuation than investments in the underlying instruments. The low margin deposits normally required in futures trading permit an extremely high degree of leverage. Accordingly, a relatively small price movement in a commodity futures contract may result in immediate and substantial profits or losses. The General Partner may use leverage in investing the Partnership’s assets. While this use of leverage may increase the Partnership’s overall rate of return, it also may increase losses incurred by the Partnership and the volatility of the Partnership’s returns. See “RISK FACTORS.”
Conflicts of Interests: Certain inherent and potential conflicts of interests exist in the nature and operations of the Partnership. See "CONFLICTS OF INTEREST."

Additional Information: Prospective investors desiring further information concerning the terms and conditions of this offering of Interests should contact the General Partner at 8619 Reseda Blvd., Suite 102, Northridge, California 91324. Telephone inquiries may be directed to Yuri Plyam at (818) 998-2435; facsimile (818) 998-7441.

The Partnership

Acceleration Mercury Fund 4X, L.P. is a Delaware limited partnership organized in July 2003 under the Delaware Revised Uniform Limited Partnership Act, as amended ("Partnership Act"). Acceleration Capital, LLC, a Delaware limited liability company, acts as the general partner of the Partnership. The General Partner will manage the affairs of the Partnership pursuant to the provisions of the Partnership’s Limited Partnership Agreement (attached hereto as Exhibit A). See "THE GENERAL PARTNER" and "CONFLICTS OF INTERESTS." The business offices of the Partnership and the General Partner are located at 8619 Reseda Blvd., Suite 102, Northridge, California 91324; its telephone number is (818) 998-2435; facsimile (818) 998-7441. The Partnership was formed to provide investors with an opportunity to participate in the General Partner’s investment program that seeks substantial capital appreciation by investing in and trading commodities, futures, forwards, options and other instruments. The General Partner may use leverage in an attempt to increase the overall return on the Partnership’s capital. The investment style utilized by the General Partner can be characterized as aggressive. There can be no assurance that the Partnership’s investment objective will be achieved. See "INVESTMENT METHODOLOGY" and "RISK FACTORS."

The proceeds of this offering will be applied to the investment objectives of the Partnership. See "SUMMARY OF THE LIMITED PARTNERSHIP AGREEMENT."

Subscribers whose subscriptions are accepted will become limited partners of the Partnership ("Limited Partners"). A limited partnership was chosen as the investment vehicle because it affords the investors the protection of limited liability.

Interests may be purchased as of the close of business on the last Business Day of each calendar month. All capital contributions received from investors will be placed in a separate account at Wells Fargo Bank located at 10225 Balboa, Northridge, California 91325. The amount of each investor’s subscription will be contributed to the Partnership upon the acceptance of the subscription by the General Partner. If a subscription for an Interest is rejected in whole or in part (which is in the sole discretion of the General Partner), the rejected subscription funds or the rejected portion thereof will be returned to the subscriber, within 30 days of the General Partner’s receipt of the subscription. The General Partner will determine whether to accept or reject a subscription as promptly as possible following its receipt.

Suitability Requirements

The Partnership is only offering Interests for sale to “accredited investors,” and the General Partner may reject any subscription for an Interest, in whole or in part, for any reason. There is no maximum amount of capital contributions that may be accepted by the Partnership pursuant to this offering of Interests. Participation in the Partnership pursuant to this offering of Interests is limited to Qualified Investors who are defined as, either alone or in conjunction with their respective purchaser representative(s) (as defined in Rule 501 of Regulation D), those who are qualified to invest in the Partnership by (a) their knowledge and acceptance of the risks associated with highly leveraged trading in volatile markets and (b)}
their financial ability to accept such risks. Interests which are offered hereby should only be purchased by those persons who can afford the possible loss of their entire investment and may only be purchased by those investors who represent and warrant that they are purchasing the Interests for their own account for investment purposes without any present intention to resell, distribute or otherwise transfer or dispose of the Interests.

An organization or entity subscribing for Interests qualifies as an “accredited investor” if it is (A) a bank as defined in Section 3(a)(2) of the Act, (B) a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Act, (C) a broker or dealer registered pursuant to Section 15 of the Securities and Exchange Act of 1934, as amended (the “1934 Act”), (D) an insurance company as defined in Section 2(13) of the Act, (E) an investment company registered under the Investment Company Act of 1940, as amended (the “1940 Act”), (F) a business development company as defined in Section 2(a)(48) of the IC Act, (G) a small business investment company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended, (H) a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000, (I) an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company or registered investment adviser (“Plan Fiduciary”) or an employee benefit plan that has total assets in excess of $5,000,000 or, if the plan is self-directed, with investment decisions made solely by persons who are accredited investors, (J) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended (the “1940 Act”), (K) an organization described in Section 501(c)(3) of the Code, a corporation, a Massachusetts or similar business trust or a partnership, not formed for the specific purpose of acquiring Interests, with total assets in excess of $5,000,000, (L) a trust with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring an Interest, whose purchase is directed by a sophisticated person as described in Rule 502(b)(2)(ii) of Regulation D or (M) an entity of which all of the equity owners are accredited investors.

Generally, to be an “accredited investor,” an investor who is a natural person must (A) have a current net worth, individually or jointly with one’s spouse, in excess of $1,000,000 or (B) have had an individual income in excess of $200,000, or joint income with one’s spouse in excess of $300,000, in each of the two most recent taxable years and reasonably expect to earn the same level of income in the current taxable year.

The General Partner has the discretion to accept subscriptions from up to 35 unaccredited sophisticated investors (a sophisticated investor is one who has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment).

Transferability

Prospective investors should note that Interests are not freely transferable. A registration statement covering the Interests has not been filed with the Securities and Exchange Commission under the Act, and no such registration of the Interests by the Partnership is contemplated as of the date of this Memorandum. The Act would prohibit transfer or sale of the Interests in the absence of such registration unless an exemption to the Act’s registration requirements were applicable to such transfer or sale. In addition, the prior consent of the General Partner is required for the transfer of any Interests.

Capital Contribution

Capital Contributions must be made in cash.
Purchase Procedure

In order to subscribe for an interest, an investor must complete, execute and date a Subscription Agreement/Power of Attorney and deliver or mail such document to Acceleration Capital, LLC, 8619 Reseda Blvd., Suite 102, Northridge, California 91324. Contributions should be made by check or electronic wire transfer to the designated custodian for credit to Acceleration Mercury Fund 4X, L.P.

Investors who designate one or more purchase representatives to assist them in evaluating the merits and risks of an investment in the Partnership also must complete and deliver to the General Partner certain purchase representative documentation which may be obtained from the General Partner.

All of the proceeds from the sale of Interests will be segregated and deposited and maintained either in segregated accounts with the clearing brokers or in other interest-bearing segregated accounts selected by the General Partner and will be used for trading. Funds held at the Broker, in addition to those used for margin purposes, may also be invested directly in U.S. Treasury Bills and the Partnership receives 100% of the interest income earned on such obligations. Funds received for the purpose of trading U.S. regulated commodities will be segregated pursuant to the NFA and CFTC regulations. Funds held for the purpose of trading non-U.S. regulated commodity interests will also be held by the clearing brokers in conformance with their ordinary procedures. It is estimated that the percentage of the Partnership’s Net Assets normally committed as margin for commodity futures contracts will average approximately 10% to 25%, but under certain circumstances may be substantially higher. It is estimated that no more than 5% of the trading will be in options on futures, the remainder may be traded in futures, forwards or held in T-Bills. Assets of the Partnership will not be commingled with assets of any other entity.

All investment decisions will be made exclusively by the General Partner, in its sole and absolute discretion. The Managing Member will be free to pursue such investment strategies, as it deems fit or appropriate at any given time. The following discussion of investment strategy is intended only to provide an overview of potential strategies which may be used by the Company but which are subject to change as market conditions may warrant.

Trading Strategies

The General Partner has developed and offers to clients an investment vehicle which seeks substantial capital appreciation by investing in and trading commodities, futures, forwards, options and other instruments. As of the date of this Memorandum, the General Partner concentrates its trading in markets which offer high liquidity and low transaction costs.

The General Partner employs quantitative methods used to create its trading systems and risk control systems. The General Partner intends to vary its risk control based on market conditions, volatility and the client’s portfolio. The General Partner may use stop-loss orders against both losing and winning positions based on technical levels and money market management principles. The utilization of margin shall be closely monitored by the General Partner.

Investment Program

The investment program has been designed to deliver high returns. These returns come with higher risk and higher monthly volatility relative to other investment programs offered by the General Partner and its principals.
Although the Investment Program tends to concentrate its trading activities on the futures markets, the General Partner places no limitations on the exchanges or markets on which it trades pursuant to the Investment Program.

The General Partner believes that the use of diverse strategies may enhance return and reduce risk. Therefore, the Investment Program allocates its trading to several different models each of which is a separate trading system made up of different types of rules. Each model may trade using a different strategy, time horizon, type of investment, and risk/reward ratio. Performance of each model in the multi-model system is tracked in real time. By acting as an “asset allocator” to these computer models the Investment Program attempts to enhance its risk management and profitability. The General Partner, in its sole discretion, may add or remove, or increase or decrease the allocations to, trading systems employed in trading pursuant to the Investment Program. The Investment Program is an actively traded program. Consequently, the trading activities of clients' accounts may be quite active and the turnover rate of clients' portfolios substantial.

Short term Trading Systems

The Partnership intends to utilize short-term trading strategies in the Investment Program. These systems will typically hold positions anywhere from one to five days and are designed to capture short term price movements in the market. These short-term systems trade both in the direction of the long-term market trend and against the direction of the long-term market trend. The systems all use price relationships and patterns to identify market conditions when significant short-term price movements are more likely than normal.

Long and Medium-Term Trend Following Systems

The Partnership intends to use medium and long-term trend-following or momentum strategies that are designed to capture medium and long-term large price movements or trends. Each of these strategies uses a slightly different mechanism for determining the start of a potential trend, the optimal entry point, and the exit for each trade. Some of these systems utilize a dynamic risk attenuation mechanism that is designed to reduce the risk of a large loss following large trends.

Counter-Trend or Mean-Reversion Systems

The Partnership intends to use counter-trend or mean-reversion strategies that are designed to capture consolidating price movements in choppy markets. These systems identify price levels where the market has reversed its short-term price movement and is likely to return to recent price levels.

General System Characteristics and Allocations

All the trading systems which the Partnership intends to use are based on a set of rules derived from an extensive, rigorous and quantitative study of a large database of historical prices; other economic and fundamental data; as well as the General Partner’s own trading experience. These systems have been computer back tested with consistent results and low drawdowns over a wide range of market conditions. All the systems are completely mechanical.

The allocation of the assets to the various component trading strategies is done on a continuous monthly basis using computer models which determine the optimal mix of the various trading strategies based on market performance. These algorithms determine the allocation to each of the component trading strategies which is most likely to deliver a consistent return. The algorithms are tailored specifically to the high return goals of the Acceleration Mercury Fund 4X, LP fund.

All the General Partner's trading systems perform best when markets exhibit either significant volatility or directional movement.
Markets to be traded

The specific market interests to be traded will be selected from time to time by Acceleration Granite Fund 1X, LP. The fund presently monitors but is not limited to the following world commodity markets: Wheat; Kansas City Wheat; Corn; Soybeans; Soybean Oil; Soybean Meal; Canola; British Pound; Canadian Dollar; Swiss Franc; Euro; Japanese Yen; Euro/Japanese Yen Cross Rate; Australian Dollar; Euro/British Pound Cross Rate; Silver; Platinum; Copper; Gold; Aluminum; Zinc; Nickel; U.S. Treasury Notes; U.S. Treasury Bonds; Australian Bonds; Japanese Bonds; German Bunds; British Gilts; Canadian Bonds; Eurodollars; Euro Yen; Euribor; Crude Oil; Brent Crude; Heating Oil; London Gas Oil; Harbor Unleaded Gas; Natural Gas; Cotton; Sugar; London Sugar; Coffee; London Robusta Coffee; Cocoa; London Cocoa; Orange Juice; Live Cattle; Feeder Cattle; Lean Hogs and Pork Bellies.

The markets traded have been chosen for their historical performance, and for their customary liquidity. From time to time Acceleration Granite Fund 1X, LP may trade in less liquid markets. There can never be assurance of liquidity. Execution of a futures contract always anticipates making or accepting delivery. In certain cases Acceleration Capital may determine to accept or to make delivery or market conditions may be as such that an open position cannot be liquidated to avoid delivery.

Non-U.S. Exchanges and Markets - The Trading Advisor may engage in trading on non-U.S. exchanges and markets. Trading on such exchanges and markets involves certain risks not applicable to trading on United States exchanges and is frequently less regulated. For example, certain of such exchanges may not provide the same assurances of the integrity (financial or otherwise) of the marketplace and its participants as do United States exchanges. Some non-U.S. exchanges, in contrast to domestic exchanges, are “principals’ markets” in which performance is the responsibility only of the individual member with whom the trader has dealt and is not the responsibility of an exchange or clearing association. Furthermore, trading on certain non-U.S. exchanges may be conducted in such a manner that all participants are not afforded an equal opportunity to execute certain trades and may also be subject to a variety of political influences and the possibility of direct government intervention. Certain markets and exchanges in non-U.S. countries have different clearance and settlement procedures than United States Markets for trades and transactions and in certain markets, there have been times when settlement procedures have been unable to keep pace with the volume of transactions, thereby making it difficult to conduct such transactions. Any difficulty with clearance or settlement procedures may expose the client to losses. Futures traded on non-U.S. markets would also be subject to the risk of fluctuations in the exchange rate between the local currency and the United States dollar and to the possibility of exchange controls. Finally, futures contracts traded on non-U.S. exchanges (other than non-U.S. currency contracts) might not be considered to be “regulated futures contracts” for Federal income tax purposes.

General

The General Partner reserves the right to change trading methods and strategies utilized in any of its trading programs (including technical and fundamental trading factors or analyzes, instruments traded, and/or money management principles utilized) at any time without prior notice to or approval by its clients. There can be no assurance that the General Partner’s approach to trading will yield the same results as it has in the past.

These separate and distinct methods of trading will attempt to diversify the Partnership’s portfolio and create a more balanced equity curve due to the distinct nature of the methods, however, the General Partner reserves the right to add specialized portfolios pursuant to its managed account program which trade specific markets or sectors.

The exact details of the General Partner’s trading strategies and trading programs are proprietary and confidential. Therefore, the description of the General Partner’s trading strategies and trading programs in this Disclosure Document is general in nature and not intended to be exhaustive.
The Partnership, Acceleration Mercury Fund 4X, LP, is a Delaware limited partnership formed in July 2003. Acceleration Capital, LLC has been registered with the Commodity Futures Trading Commission ("CFTC") as a Commodity Trading Advisor ("CTA") and Commodity Pool Operator ("CPO") since 09/08/03. Acceleration Capital, LLC has also been registered with the National Futures Association ("NFA") since 09/08/03. Curtis Faith and Yuri Plyam are both listed principals and registered Associated Persons of Acceleration Capital, LLC since 09/08/03 and associate members of the NFA. Both the Partnership and the General Partner have been formed solely for the purposes stated in this Memorandum and, consequently, have not yet been capitalized beyond certain minimum, immaterial levels.

The General Partner of the Partnership, Acceleration Capital, LLC, will make all the investment decisions for the Partnership. The General Partner will administer the affairs of the Partnership, coordinating and administrating all financial activities, including preparation of tax returns, financial statements, and, to the extent deemed advisable or appropriate by the General Partner, special financial reports and monthly statements to Limited Partners. The General Partner has unlimited authority to administer the financial activities of the Partnership.

A major factor in an Investor’s decision to invest in the Partnership is the Investor’s opinion of the managing members (“Managing Members”) of the General Partner. The Managing Members of the partnership are Curtis Michael Faith (Mr. Faith), and Yuri Plyam (Mr. Plyam). They will supervise all the Partnership’s investment and administrative functions. Currently, the managing members have not invested in the pool, but reserve the right to do so in the future.

Principals of the General Partner

Curtis M. Faith is a managing member of Acceleration Capital, LLC, an investment management company and the General Partner of the Partnership. Mr. Faith is also a partner in Galt Capital, LLP, a U.S. Virgin Islands based investment management partnership, and a managing member of Turtle Trading Software, a software company. Mr. Faith began investing for commodity interests for clients in 1984 when he was selected by Richard J. Dennis, Jr., a speculative trader of futures and options, to invest for his personal accounts, and for personal accounts of Mr. Dennis’ family members using an investment program developed by Mr. Dennis. As his employee, Mr. Faith received extensive training from Mr. Dennis, who personally supervised his investment activities. In 1984 Mr. Faith became self-employed and continued to invest for Mr. Dennis and family members of Mr. Dennis. In May of 1988 Mr. Dennis elected to discontinue his trading program and Mr. Faith stopped his trading of commodity interests at that time.

From May 1988 to the present, Mr. Faith did not invest nor advise others in the investment of commodity interests. From May 1988 to September 2000, he founded and/or worked on the startup team for several enterprise software and technology companies including Borealis Technology Corp as Chairman and CEO, Sierra Software Innovations as President and CEO, Efficient Field Service as a director, One Card, Inc. as Vice President of Marketing, and Scout Fire, Inc. Vice President of Marketing. From June 1999 to April 2001 was a Senior Consultant to Engineering at Icarian, Inc. In January 2002, Mr. Faith became a principal in Galt Capital, LLP, an investment management company. Mr. Faith remains a principal in Galt Capital. See “CONFLICTS OF INTEREST”.

Prior to working for Mr. Dennis, Mr. Faith worked for Harvard Investment Service, Inc. where he tested computerized investment strategies while attending Worcester Polytechnic Institute.

Yuri M. Plyam has been a managing member of CHP Asset Management, LLC, an investment management company and a General Partner of the Partnership, since July 2002. His responsibilities include system research and development. His duties also include trade execution and pool compliance issues. Mr. Plyam has been the President of Castle Trading, Inc., since January 2000. Mr. Plyam consults many financial research companies on systematic trading system development and implementation.
techniques. Mr. Plyam earned a Juris Doctorate Degree from the University of La Verne, from June 1991 through June 1999. He has received several American Juris Prudence awards for his studies in law. Mr. Plyam was a financial analyst for Prudential Realty Group from June 1989 until June 1991. His duties at Prudential Realty Group included research on the stock market and commodities markets. Mr. Plyam worked as a futures broker for Cannon Trading, Inc. from July 1999 to December 1999. His duties at Cannon Trading included trade execution and client solicitation. From December 1999 to August 2000, he worked for Brookstreet Securities, as a futures broker. His duties at Brookstreet Securities included trade execution and client solicitation. In July 2003, Mr. Plyam formed Acceleration Capital, LLC, where he serves as a managing member; his duties include system research and development as well as trade execution and pool compliance issues. See “CONFLICTS OF INTEREST”.

Please see the performance of the Gauss Fund, LP listed on pages 16-17 of this document.

Litigation:

With the exceptions noted below, there have been no administrative, civil or criminal litigation against Mercury 4X Fund, LP, Acceleration Capital, Inc., Castle Trading, Inc. (“CASTLE”), or its principals in the last five years, and there are none pending, concluded or on appeal.

On March 1, 2004, NFA’s Business Conduct Committee (“BCC”) issued a Complaint (#04BCC00001) to CHP Asset Management LLC (“CHP”). The Complaint alleged that CHP Asset Management failed to provide required information to pool participants, failed to maintain required pool records, failed to file a disclosure document with NFA, used misleading promotional material and Mr. Plyam failed to supervise, in violation of NFA Compliance Rules.

On March 3, 2004, NFA’s BCC issued a Complaint (#04BCC00003) to Castle Trading, Inc. The Complaint alleged that Castle used deceptive and misleading promotional material, failed to submit promotional material to NFA as required, failed to maintain promotional material records and failed to include the required disclaimer for hypothetical performance. The Complaint also alleged that Castle failed to provide required information regarding security futures products to potential customers, failed to submit such promotional material to NFA prior to use, and failed to establish written Security Future Products procedures, in violation of NFA Compliance Rules. The Complaint further alleged that Castle failed to list a principal with the NFA, failed to properly create and maintain order tickets, accepted checks in Castle’s name, failed to meet anti-money laundering requirements and that Castle and Mr. Plyam failed to supervise.

On May 5, 2004, NFA’s BCC issued a Decision, in both of the above actions, to Castle and CHP accepting their settlement offer in which they neither admitted nor denied the allegations of the Complaint. The BCC ordered that Castle and CHP Asset Management are jointly and severally liable each for a $10,000 fine. The Decision also ordered that Castle and CHP not use any promotional material unless and until the promotional material has been expressly approved for use by the NFA. Finally, the Decision ordered that Castle and CHP engage the services of a competent and independent third party to conduct four audits of the firm's compliance with all NFA Requirements and prepare reports of those audits within ten days after the close of each such audit. A copy of each audit report must be provided to the NFA promptly after its creation. Castle and CHP is obligated to have the required audits conducted approximately four months, eight months, twelve months, and eighteen months following the issuance of the Decision. This Decision became effective May 20, 2004.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling Price per Unit</td>
<td>$1,000</td>
</tr>
<tr>
<td>Operating Expenses (1)</td>
<td>$0</td>
</tr>
<tr>
<td>Management Fee (2)</td>
<td>$25</td>
</tr>
</tbody>
</table>

PLYAM00097
Brokerage Commissions and Trading Fees (3) $50
Less Interest Income (4) $15
Amount of trading income required for a participant's Net Asset Value at the end of one year to equal the initial selling price per unit (5) $60
Percentage of actual selling price per unit (6) 6.00%

Explanatory Notes

(1) The General Partner pays for all accounting, legal, and miscellaneous operating expenses incurred.

(2) The CPO will receive a monthly management fee equal to 1/12th of 2.5% of Net Asset Value.

(3) Estimated at five percent (5%) of Net Asset Value.

(4) The Pool will earn interest on margin deposits with the commodity broker and from the investment of pool assets. Based on approximate current interest rates and rate of investment, interest income is estimated at one and one-half percent (1.5%) of Net Asset Value.

(5) "Net Asset Value" shall mean the Partnership's total assets including all cash, cash equivalents and other securities (each valued at fair market value), less total liabilities, determined in accordance with generally accepted accounting principles, consistently applied under the accrual method of accounting. Net Asset Value shall reflect all gains and losses (whether realized or unrealized), income and expenses (including the compensation of the General Partner).

(6) Note: As stated earlier a 2% withdrawal penalty will apply for all withdrawals made prior to six calendar months from the day in which an interest is purchased.

Under CFTC regulations, a CPO must disclose the performance record for all commodity trading accounts of pools directed by the CPO and by any of its principals for at least the previous five years.

PROSPECTIVE INVESTORS ARE CAUTIONED THAT THE RESULTS SET FORTH IN THE FOLLOWING TABLES ARE NOT INDICATIVE OF THE RESULTS WITH ACCELERATION CAPITAL, LLC MAY ACHIEVE IN THE FUTURE. PAST PERFORMANCE ARE NOT NECESSARILY INDICATIVE OF FUTURES RESULTS. NO REPRESENTATION IS MADE THAT ACCELERATION CAPITAL, LLC WILL OR IS LIKELY TO ACHIEVE FOR LIMITED PARTNERS PROFITS OR INCUR LOSSES COMPARABLE TO THOSE SHOWN.
Name of Pool: Acceleration Mercury 4X Fund, LP
Type of Pool: Privately Offered
Inception of Trading: April 21, 2004
Aggregate Subscriptions: $ 785,160.06
Current Net Asset Value: $ 651,978.52
Worst Monthly Percentage Draw-down: June 2004 / (3.82%)
Worst Peak-to-Valley Draw-down: May 2004 - July 2004 / 6.08%

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS

<table>
<thead>
<tr>
<th>MONTH</th>
<th>Rate of Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td></td>
</tr>
<tr>
<td>JANUARY</td>
<td></td>
</tr>
<tr>
<td>FEBRUARY</td>
<td></td>
</tr>
<tr>
<td>MARCH</td>
<td></td>
</tr>
<tr>
<td>APRIL</td>
<td>0.08%</td>
</tr>
<tr>
<td>MAY</td>
<td>0.50%</td>
</tr>
<tr>
<td>JUNE</td>
<td>(3.82%)</td>
</tr>
<tr>
<td>JULY</td>
<td>(2.64%)</td>
</tr>
<tr>
<td>AUGUST</td>
<td>1.45%</td>
</tr>
<tr>
<td>SEPTEMBER</td>
<td>0.34%</td>
</tr>
<tr>
<td>OCTOBER</td>
<td>1.30%</td>
</tr>
<tr>
<td>NOVEMBER</td>
<td>5.75%</td>
</tr>
<tr>
<td>DECEMBER</td>
<td>(.81%)</td>
</tr>
<tr>
<td>YEAR TO DATE TOTAL</td>
<td>1.88%</td>
</tr>
<tr>
<td>COMMENCEMENT OF TRADING</td>
<td>1.88%</td>
</tr>
</tbody>
</table>

"Draw-down": Losses experienced by a pool or account over a specified period.

One of the General Partner’s principals, Yuri Plyam, is also a principal of CHP Asset Management, LLC that is a Commodity Pool Operator and the general partner of the Gauss Fund LP a Delaware limited partnership organized in June 2002. The performance of the Gauss Fund LP which has had a limited operating history and began trading on January 27, 2003 is included below. The Gauss Fund LP has not followed the trading methods and strategies described under "INVESTMENT METHODOLOGY."

Name of Pool: Gauss Fund, LP
Type of Pool: Privately Offered
Inception of Trading: January 27, 2003
Aggregate Subscriptions: $ 657,357.04
Current Net Asset Value: $ 511,239.59
Worst Monthly Percentage Draw-down: June 2003 / 10.71%
Worst Peak-to-Valley Draw-down: January 2003 - September 2003 / 31.33%

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS

<table>
<thead>
<tr>
<th>MONTH</th>
<th>Rate of Return</th>
<th>Rate of Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>2004</td>
<td></td>
</tr>
<tr>
<td>JANUARY</td>
<td>1.29%</td>
<td>(0.30%)</td>
</tr>
<tr>
<td>FEBRUARY</td>
<td>(4.39%)</td>
<td>13.49%</td>
</tr>
<tr>
<td>MARCH</td>
<td>(6.05%)</td>
<td>4.55%</td>
</tr>
<tr>
<td>APRIL</td>
<td>1.88%</td>
<td>(7.67%)</td>
</tr>
<tr>
<td>MAY</td>
<td>3.16%</td>
<td>1.31%</td>
</tr>
<tr>
<td>JUNE</td>
<td>(10.71%)</td>
<td>(1.12%)</td>
</tr>
<tr>
<td>JULY</td>
<td>(6.00%)</td>
<td>(1.59%)</td>
</tr>
<tr>
<td>AUGUST</td>
<td>(6.85%)</td>
<td>(0.88%)</td>
</tr>
<tr>
<td>SEPTEMBER</td>
<td>(15.14%)</td>
<td>2.53%</td>
</tr>
<tr>
<td>OCTOBER</td>
<td>4.48%</td>
<td>5.24%</td>
</tr>
<tr>
<td>NOVEMBER</td>
<td>(3.95%)</td>
<td>7.49%</td>
</tr>
<tr>
<td>DECEMBER</td>
<td>3.32%</td>
<td>(0.87%)</td>
</tr>
<tr>
<td>YEAR TO DATE TOTAL</td>
<td>-27.64%</td>
<td>22.18%</td>
</tr>
<tr>
<td>COMMENCEMENT OF TRADING</td>
<td></td>
<td>-11.22%</td>
</tr>
</tbody>
</table>

"Draw-down": Losses experienced by a pool or account over a specified period.
At the end of each calendar quarter, the General Partner shall be allotted an Incentive Allocation equal to 20% of the Net New Appreciation of each Limited Partner's Book Capital Account during each calendar quarter.

If a Limited Partner experiences net losses following the allocation of an incentive to the General Partner, the General Partner will retain all incentives previously allocated, but no further Incentive Allocations will be charged to the Limited Partner until additional Net New Appreciation is achieved.

Net New Appreciation, for the purpose of calculating the Incentive Allocation shall mean the increase, if any, in a Limited Partner's Book Capital Account over the Limited Partner's highest prior Book Capital Account from which a profit share was allocated to the General Partner, adjusted for contributions and withdrawals. For purposes of calculating Net New Appreciation, extraordinary expenses and taxes shall be excluded. Once an Incentive Allocation is assessed, it is not refundable even if the Limited Partner incurs losses thereafter.

Prospective investors should note that even though Incentive Allocations are computed and allocable as of the end of each calendar quarter, such Incentive Allocations will accrue monthly. Limited Partners who redeem all or a portion of their Interest as of any date other than the end of a calendar quarter will be charged an Incentive Allocation, if earned, on the amount of the withdrawal. Incentive Allocations will be charged even though the General Partner may not be entitled to an Incentive Allocation had the Interest been held through the end of the calendar quarter on account of losses incurred subsequent to the withdrawal. Incentive Allocations charged on withdrawals or withdrawals prior to the end of the first Calculation Period will be retained by the Partnership and thereafter be allocated to the General Partner. See “CONFLICTS OF INTEREST.”

### Management Fee

The General Partner will be paid a monthly management fee equal to 1/12th of 2.5% (approximately 2.5% annually) of the Net Asset Value (The “Net Asset Value” of the Partnership shall mean the Partnership’s total assets including all cash, cash equivalents, unrealized gains or losses and other securities (each valued at fair market value), less total liabilities, determined in accordance with generally accepted accounting principles, consistently applied under accrual method of accounting) of each Limited Partner’s Book Capital Account (as hereinafter defined as the beginning of the month equity plus all additions, less all withdrawals, plus earned (or loss if negative) equity on realized and unrealized trades, less commissions and any NFA and Exchange fees and adjusted into US dollars). For the purpose of calculating the management fee, the Net Asset Value of a Limited Partner’s Book Capital Account is determined before reduction for management fees and IncentiveAllocations, if any, accrued or payable as of such date.

### Transaction Fees

The Partnership will generally be charged a round turn brokerage commission of $6.50 to $10 per contract. See “CONFLICTS OF INTEREST.”

### Expenses

The General Partner will be obligated to pay the annual operating expenses on an ongoing basis, including periodic legal, accounting, auditing, filing, administrative and other regular operating expenses and extraordinary expenses, if any, as well as continuing offering expenses. The approximate cost for these annual expenses is approximately $10,000. The General Partner will provide the Partnership with office space, if necessary, and certain support services at no cost to the Partnership. The Partnership, however,
will be obligated to pay its other direct and indirect trading related expenses. See “SUMMARY OF THE LIMITED PARTNERSHIP AGREEMENT” and “CONFLICTS OF INTEREST.”

Organizational Expenses

The General Partner paid for all costs and expenses incurred in the organization of the Partnership and the initial offering of Interests for sale including, without limitation, fees and expenses of the organizers, accountants, printing costs and promotional expenses. The General Partner will not seek reimbursement from the Partnership for these costs and expenses. These expenses included but are not limited to: Legal costs, programming costs, filing fees, accounting costs and administrative costs. The approximate cost for these expenses was approximately $10,000.

The contractual and other arrangements among the Partnership, the General Partner, and their affiliates are subject to various conflicts of interest in their relations with the Partnership. The contractual and other arrangements among the Partnership, the General Partner and their Affiliates have been established by the General Partner and are not the result of arms-length negotiations. Accordingly, prospective investors should carefully consider the following conflicts of interest before purchasing any Interests. The following conflicts of interest do not purport to be a complete or exhaustive explanation of the conflicts involved in this offering. Prospective investors should read the entire investment summary and the exhibits hereto and should ask such questions of and obtain such additional information from the General Partner as they shall, deem necessary before deciding to invest in the Partnership.

In evaluating these conflicts of interests, potential investors should be aware that the General Partner has a responsibility to the Limited Partners to exercise good faith and fairness in all dealings affecting the Partnership. In the event that a Limited Partner believes that the General Partner has violated its duty to the Limited Partners, it may seek legal relief for itself or on behalf of the Partnership under applicable laws and regulations to recover damages from or require an accounting by the General Partner. Limited Partners should be aware that the performance by the General Partner of its responsibilities to the Partnership will be measured by the terms of the Limited Partnership Agreement and applicable law. Limited Partners should be aware that it may be difficult to establish that the Partnership’s trading has been excessive due to the broad trading discretion given to the General Partner under the Limited Partnership Agreement, the authority given to the General Partner to enter into the Limited Partnership Agreement under the Subscription Agreement/Powers of Attorney, the exculpatory provisions in the Limited Partnership Agreement and the absence of judicial or administrative standards defining excessive trading.

Introducing Broker/Futures Commission Merchant

The General Partner intends to utilize Rosenthal Collins Group, Inc. ("RCG") as the Partnership’s Futures Commission Merchant ("FCM") and Castle Trading, Inc. as the Partnership’s Introducing Broker ("IB"), a Guaranteed Broker where Mr. Plyam is an Associated Person. While the commission rates charged to the Partnership are intended to reflect the costs to Castle Trading for the execution, Mr. Plyam will not receive direct benefit in the form of commissions in excess of costs as a result of the introduction and maintenance of an account through the IB. Additionally, the compensation from transaction fees charged by RCG may be greater than the total fees and other benefits provided by other broker/dealer’s for similar services. In addition, other FCM’s may offer other benefits superior to RCG. The General Partner has chosen RCG because they believe the combination of fees and services offered by RCG are superior to other providers, however, the General Partner reserves the right to chose a different FCM in the future if they so choose.
Non-Arms-Length Agreements

All agreements and arrangements, including those relating to compensation, expense reimbursements and indemnification between the Partnership and among the General Partner and their affiliates, are not the result of arms-length negotiations. The General Partner will determine whether the various Affiliates of the General Partner and the Partnership are, in accordance with the terms of the Partnership Agreement, entitled to exculpation and indemnification.

Incentive Allocation and Fees

The structure of the Incentive Allocation may involve a conflict of interest, because it may create an incentive for the General Partner to cause the Partnership to make riskier or more speculative investments than it otherwise would. In some cases, the Incentive Allocation together with the fees charged by the General Partner may be greater than the total fees and other benefits provided by other investment advisers for similar services; in other cases the benefits to the General Partner may be lower.

Competition with the Partnership from Managed Accounts for Securities Transactions

The General Partner is free to manage accounts for investors, investment vehicles, itself, its employees, its principals, and their respective families, and is free to trade on the basis of methods similar or identical to those employed by the General Partner in the performance of services for the Partnership, or methods which are entirely independent of such methods. Limited Partners will not be permitted to inspect the records of accounts or any written policies relating to such General Partner or its affiliates, except in the discretion of the General Partner.

It is possible that orders for the account of the General Partner or its principals may be entered in advance of the Partnership for legitimate and explainable reasons such as a neutral order allocation system, a different trading program, or a higher risk level of trading. However, any such proprietary trading is subject to the duty of the General Partner to exercise good faith and fairness in all matters effecting Limited Partners and client accounts, respectively.

Competition with the Partnership from Affiliates of the General Partner for the Time and Services of the Managing Members

Mr. Plyam and Mr. Faith, the Managing Members of the General Partner, are involved in other activities in addition to the management of the Partnership. Without limiting the generality of the foregoing, Mr. Plyam and Mr. Faith may become involved in other activities other than the Partnership from time to time. Accordingly, conflicts of interest may arise in the allocation of time to the management of the Partnership. Mr. Plyam and Mr. Faith will devote such time to the affairs of the Partnership as they, within their sole discretion, determine to be necessary for the benefit of the Partnership in accordance with their fiduciary duties.

Conflicts as to Investment Opportunities

The General Partner is obligated to use its best efforts to provide the Partnership with continuing and suitable investment opportunities consistent with its investment objectives, policies and strategies; however, the General Partner is not required to present to the Partnership any investment opportunity which has come to its attention, even if such opportunity is consistent with the investment objectives, policies and strategies of the Partnership. Accordingly, the Partnership may not be given the opportunity to participate in certain investments made by the General Partner and its Affiliates. In addition, if the Partnership rejects an investment opportunity for any reason, the General Partner and its Affiliates may accept it. The General Partner will endeavor to resolve conflicts of interest with respect to investment opportunities in a manner deemed equitable to all to the extent possible under the prevailing facts and circumstances and consistent with the General Partner’s fiduciary duties.
Prospective investors should carefully consider the risks involved in an investment in the Partnership, including but not limited to those discussed below. Many of those risks are discussed more fully elsewhere in this Memorandum. Prospective investors should consult their own legal, tax, and financial advisers as to all these risks and an investment in the Partnership generally.

GENERAL

The transactions in which the Partnership will generally engage involve significant trading risks. No assurance can be given that Limited Partners will realize a profit on their investment. Moreover, each Limited Partner may lose some or all of its investment. Because of the nature of the Partnership’s investment activities, the results of the Partnership’s operations may fluctuate from month to month and from period to period. Accordingly, investors should understand that the results of a particular period will not necessarily be indicative of results in future periods.

Limited Operating History

Although Mr. Plyam has had experience directing discretionary accounts at his Castle Trading, Inc., and through CHP Asset Management, LLC, where he is a principal; and Mr. Faith has had experience directing discretionary accounts for Richard Dennis and his family; the General Partner is a newly formed organization with no operating history. The Partnership is also a newly formed entity with no history of operating performance. See “MANAGEMENT OF THE PARTNERSHIP.”

Reliance on the General Partner

The success of the Partnership will depend on the ability of the Managing Members of the General Partner to develop and implement investment strategies to achieve the Partnership’s investment objectives. The Partnership’s investment performance could be materially adversely affected if any of the Managing Members of the General Partner were to die, become ill or disabled, or otherwise cease to be involved in the active management of the Partnership’s portfolio. Except under specified circumstances, if the General Partner withdraws, is dissolved, or becomes insolvent, the Partnership will be dissolved.

Limited Partners Will Not Participate In Management

Purchasers of the Interests will become Limited Partners in the Partnership and, as such, will not be entitled to participate in the management of the Partnership. The Limited Partnership Agreement and the Partnership Act, however, provide Limited Partners with certain voting and other rights.

Operating Deficits

The expenses of operating the Partnership (including Management Fees payable to the General Partner and operating costs and expenses) could exceed its income, requiring that the difference be paid out of the Partnership’s capital, reducing the Partnership’s investments and potential for profitability. See “SUMMARY OF FEES AND EXPENSES” and “INCENTIVE ALLOCATION.”

INVESTMENT RISKS

All securities investing and trading activities risk the loss of capital. While the General Partner will attempt to moderate these risks, there can be no assurance that the Partnership’s investment and trading activities will be successful or that Limited Partners will not suffer losses. The following discussion sets forth some of the more significant risks associated with the Partnership’s proposed activities.
Investments May Be Speculative

Substantial risks are involved in investing in and trading commodities, futures, forwards, options and other instruments. For this reason, a potential investor in the Partnership should note that the prices of the Partnership’s investments may be highly volatile. Market movements are difficult to predict and are influenced by, among other factors, corporate and industry developments, interest rates, general economic conditions, governmental actions, domestic and international political news, governmental trade and fiscal policies, patterns of trade and other factors. In addition, because the Partnership may invest a significant portion of its assets from time to time on a leveraged basis in either a bullish or bearish position as an outright position speculating on the direction of a market, such speculation may increase the volatility of the Partnership’s returns and increases its risk of loss.

Brokerage Commissions/Transaction Costs

The Partnership’s activities involve a high level of trading, and the turnover of its portfolio is expected to generate substantial transaction costs. These costs will be borne by the Partnership regardless of its profitability.

Principal Risk Factors with Forward Contracts

A portion of the account’s assets may be traded in forward contracts. Such forward contracts are not traded on exchanges and are executed directly through forward contract dealers. There is no limitation on the daily price moves of forward contracts, and a dealer is not required to continue to make markets in such contracts. There have been periods during which forward contract dealers have refused to quote prices for forward contracts or have quoted prices with an unusually wide spread between the bid and asked price. Arrangements to trade forward contracts may therefore experience liquidity problems. The fund, in trading forward contracts, will be subject to the risk of credit failure or the inability or refusal of forward contract dealers to perform with respect to its forward contracts.

Risks of Options Trading

In seeking to enhance performance or hedge assets, the Partnership may purchase and sell call and put options. Both the purchasing and selling of call and put options entail risks. Although an option buyer’s risk is limited to the amount of the purchase price of the option, an investment in an option may be subject to greater fluctuation than an investment in the underlying security. In theory, an uncovered call writer’s loss is potentially unlimited, but in practice the loss is limited by the term of existence of the call. The risk for a writer of a put option is that the price of the underlying security may fall below the exercise price. Successful use of options will depend upon the ability of the General Partner to correctly predict movements in the direction of the underlying security generally.

Short Selling

Short sales can, in some circumstances, substantially increase the impact of adverse price movements on the Partnership’s portfolio. A short sale creates the risk of a theoretically unlimited loss, in that the price of the underlying security could theoretically increase without limit, thus increasing the cost to the Partnership of buying securities to cover the short position.

Use of Leverage

The Partnership Agreement authorizes the General Partner, in the General Partner’s sole discretion, to leverage the Partnership’s investment positions. Such leverage, if employed, would increase both the possibilities for profit and the risk of loss. Under certain circumstances, a FCM may demand an increase in the collateral that secures the borrower’s obligations, and if the borrower were unable to provide
additional collateral, the lender could liquidate assets held in the account to satisfy the borrower’s obligation. If the Partnership were to become subject to liquidation in that manner it could suffer extremely adverse consequences.

Concentration of Investments

The Partnership Agreement does not limit the amount of the Partnership's capital that may be committed to any single investment. Moreover, the Partnership Agreement imposes no limits on the concentration of the Partnership's investments and at times the Partnership may hold a relatively small number of positions, each representing a relatively large portion of the Partnership's capital. Losses incurred in such positions could have a materially adverse effect on the Partnership's overall financial condition.

General Economic and Market Conditions

The success of the Partnership's activities may be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, and national and international political circumstances. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership's investments. Unexpected volatility or illiquidity could impair the Partnership's profitability or result in losses.

Changes in Investment Strategies

The Limited Partnership Agreement gives the General Partner broad discretion to expand, revise or contract the Partnership's business without the consent of the Limited Partners. Thus, the investment strategies of the General Partner may be altered without prior approval by, or notice to, the Limited Partners if the General Partner determines that such change is in the best interests of the Partnership. Any such decision to engage in a new activity could result in the exposure of the Partnership's capital to additional risks that may be substantial. See “SUMMARY OF LIMITED PARTNERSHIP AGREEMENT.”

Limited Liquidity of Some Investments

Some of the investments in which the Partnership invests may be relatively illiquid, either because they are thinly traded, or because they are subject to transfer restrictions. The Partnership may not be able promptly to liquidate those investments if the need should arise, and its ability to realize gains or to avoid losses in periods of rapid market activity may therefore be affected. In addition, the value assigned to such securities for purposes of determining Limited Partners' partnership percentages and determining Net Profits and Net Losses may differ from the value the Partnership is ultimately able to realize.

Most United States commodity exchanges limit fluctuations in certain commodity interest prices during a single day by imposing what are known as “daily price fluctuation limits” or “daily limits.” The existence of “daily price limits” or “daily limits” may reduce liquidity or effectively curtail trading in particular markets. Once the price of a particular contract has increased by the daily limit, it's likely no new long positions may be added or existing short positions liquidated. Conversely, once the price of a particular contract has decreased by the daily limit, it's likely no new short positions may be added or existing longs liquidated. Contract prices in various commodities have occasionally moved the daily limit for several consecutive days with little or no trading. Similar occurrences could prevent the General Partner from promptly liquidating unfavorable positions and subject clients to substantial losses which could exceed the margin initially committed to such trades. Daily limits may reduce liquidity, but they do not limit ultimate losses, as such limits apply only on a day-to-day basis. In addition, even if contract prices have not moved the daily limit, the General Partner may not be able to execute trades at favorable prices if there is only light trading in the contracts involved.
As part of his emergency powers, an exchange or the CFTC can suspend limit trading in a particular contract, order immediate liquidation and settlement of a particular contract, or order that trading in a particular contract be conducted for liquidation only.

The possibility also exists that governments may intervene to stabilize or fix exchange rates, restricting or substantially eliminating trading in the affected currencies.

Speculative Position Limits

Insofar as speculative position limits are applicable, all commodity accounts owned, held, managed and controlled by the General Partner, its principal and affiliates (including the account of principal) are aggregated for position limit purposes. The General Partner may manage additional client accounts in the future. The General Partner believes that established position limits will not adversely affect the General Partner’s contemplated trading. However, it is possible that from time to time the trading decisions of the General Partner may have to be modified and positions held or controlled by the General Partner, its principal and affiliates may have to be liquidated in order to avoid exceeding applicable position limits.

Trading on Non-United States Exchanges Presents Certain Risks

The General Partner may trade interests on exchanges located outside the United States, where the protections provided by CFTC regulations do not apply. Some foreign commodity exchanges, in contrast to domestic exchanges, are "principals' markets" in which performance with respect to a commodity interest contract is the responsibility only of the individual member with whom the trader has entered into the contract and not of the exchange or his clearing house, if any. In the case of trading by the General Partner on foreign exchanges, the General Partner’s clients may be subject to the risk of the inability of or refusal by his counter parties to perform with respect to his contracts with the General Partner. The General Partner also may not have the same access to certain trades as do various other participants in foreign markets.

As the General Partner determines its Net Assets in United States dollars, with respect to trading on foreign markets, it will be subject to the risk of fluctuation in the exchange rate between the local currency and dollars and to the possibility of exchange controls.

Insolvency of the FCM's and Others

As is required of futures commission merchants ("FCM's") such as the Commodity Broker, the Commodity Broker segregates all Partnership funds in compliance with CFTC regulations. If the assets of the Partnership were not so segregated, the Partnership would be subject to the risk of the failure of the Commodity Broker. Even given proper segregation, in the event of the insolvency of a Commodity Broker, the Partnership may be subject to a risk of loss of its funds and would be able to recover only a pro rata share (together with all other commodity customers of such Commodity Broker) of assets, such as United States Treasury bills, specifically traceable to the Partnership’s account. In commodity broker insolvencies customers have, in fact, been unable to recover from the broker's estate the full amount of their "customer" funds. In addition, under certain circumstances, such as the inability of another client of the FCM or the FCM itself to satisfy substantial deficiencies in such other client's account, a client may be subject to a risk of loss of his funds on deposit with his FCM, even if such funds are properly segregated. In the case of any such bankruptcy or client loss, a client might recover, even in respect of property specifically traceable to the client, only a pro rata share of all property available for distribution to all of the FCM's clients.

The financial failure of the parties with which the Partnership trades in the forward markets could also result in substantial losses for the Partnership, as the Partnership deals with such persons as principals, and, furthermore, there is no requirement that such parties segregate Partnership funds held by them in respect of such trading.
PARTNERSHIP RISKS

Tax Liability without Distributions

Partners will be liable to pay taxes on their allocable shares of Partnership taxable income. However, the General Partner does not intend to make significant distributions to the Limited Partners corresponding to profits, but instead intends to re-invest substantially all of the Partnership’s income and gains for the foreseeable future. Taxable income can be expected to differ from Net Profit, primarily because generally only realized gains and losses are considered for income tax purposes, but Net Profit and Net Loss will include unrealized gains and losses. It is possible that sales of appreciated securities in a particular period could cause some Partners to have taxable gain for that period at the same time that unrealized losses result in an overall Net Loss. It will generally be necessary for Partners to pay such tax liabilities out of separate funds or withdrawals from the Partnership. There are limitations on a Partner’s right to withdraw funds from the Partnership. See “OFFERING OF INTERESTS” and “TAX CONSIDERATIONS.”

Limited Liquidity

An investment in the Partnership is relatively illiquid and is not suitable for an investor who needs liquidity. There is no public market for Interests and the Partnership Agreement imposes significant limitations on Limited Partners’ abilities to transfer Interests. In addition, rights to withdraw funds from the Partnership are subject to several limitations. A Limited Partner may withdraw funds upon the close of business on the last business day of each calendar month and then only after giving 30 days’ notice and subject to certain limitations and expenses unless the General Partner consents (which it may decline to do, in its sole and absolute discretion) to a deviation from one or more of such procedures or limitations. The General Partner has the discretion to deliver amounts withdrawn in securities other than cash. Further, as to all or a portion of a withdrawn amount, the General Partner may establish a segregated portfolio of some of the Partnership’s securities and liquidate those securities for the withdrawing Limited Partner’s account. In either such case, the securities so delivered or segregated may be relatively illiquid and the Limited Partner would bear the risk of a decline in their value after the effective time of his or her withdrawal. These facts, taken together, will significantly affect the liquidity of a Limited Partner’s investment in the Partnership. See “OFFERING OF INTERESTS” and “SUMMARY OF THE LIMITED PARTNERSHIP AGREEMENT.”

Effect of Substantial Withdrawals

Substantial withdrawals by Limited Partners within a short period of time could require the Partnership to liquidate securities positions more rapidly than would otherwise be desirable, possibly reducing the value of the Partnership’s assets and/or disrupting the General Partner’s investment strategy. Reduction in the size of the Partnership could make it more difficult to generate a positive return or to recoup losses due to, among other things, reductions in the Partnership’s ability to take advantage of particular investment opportunities or decreases in the ratio of its income to its expenses.

Potential Mandatory Withdrawal

The General Partner may, in its sole discretion at any month-end on 10 days notice, require a Limited Partner to withdraw all or a portion of his or her capital account balance. Such mandatory withdrawal could result in adverse tax and/or economic consequences to such Limited Partner. See “SUMMARY OF THE LIMITED PARTNERSHIP AGREEMENT.”
OTHER RISKS

Tax Considerations

For a more detailed discussion of the income tax considerations associated with an investment in the Partnership, see the discussion.

Limitations on Deductions

Tax laws in certain cases may limit a Partner’s ability to deduct certain losses and expenditures allocable to such Partner.

Foreign Investors

The Partnership may be subject to certain reporting and withholding obligations as to foreign investors. Foreign investors should consult with their own advisors regarding the federal, state and foreign income tax consequences of an investment in the Partnership.

Allocations

The Partnership intends to allocate all items of taxable income, gain, loss, deduction and credit among the Partners in a manner that is generally consistent with the economic sharing arrangements. It is currently expected that the Partnership will use a method of allocation that complies with one of the “safe harbors” provided in applicable Treasury Regulations. However, the General Partner retains discretion to allocate items in a manner that deviates from such safe harbor, and there can be no assurance that the Internal Revenue Service will respect such allocations.

Possibility of Taxation as a Corporation

It is the General Partner’s belief that under current Federal income tax law, the Partnership will be taxed as a partnership and not as a corporation. This status has not been confirmed by a ruling from, and such opinion is not binding upon, the IRS. No such ruling has been or will be requested. The facts and authorities relied upon by counsel in their opinion may change in the future, including with respect to regulations which may be promulgated under recent amendments to Federal tax statutes. If the Partnership were treated as a corporation for Federal income tax purposes, the income and deductions of the Partnership would be reflected only on its own tax return rather than being passed through to the partners, and income would be taxed to the Partnership at corporate rates. No losses of the Partnership would be allowable as deductions of the partners. In addition, all or a portion of any distributions made by the Partnership to the partners, other than liquidating distributions, would constitute dividends to the extent of the Partnership’s current or accumulated earnings and profits, and the amount of such distributions would not be deductible by the Partnership in computing its taxable income.

Possibility of Tax Audits

Under the terms of the allocation provisions in the Limited Partnership Agreement, partners experiencing depreciation in their Book Capital Accounts during the fiscal year may be allocated capital loss for Federal income tax purposes even though the Partnership realized a net capital gain for the year. Conversely, partners experiencing appreciation in their Book Capital Accounts during the fiscal year may be allocated capital gain for Federal income tax purposes even though the Partnership realized a net capital loss for the year. As a result, the Partnership’s method of allocating gain and loss to the partners may enhance the possibility that the Partnership’s tax return and individual partners’ returns might be audited by the IRS.
If the Partnership’s tax return were to be audited by the IRS, there can be no assurance that adjustments would not be made to the return as a result of such an audit. The Partnership audit procedures have been simplified and adjustments may be made at the Partnership level that will bind all the partners. A general partner of a partnership is to be designated as the “tax matters partner,” who is to be the Partnership’s primary representative with respect to the IRS and will possess the power to extend the statute of limitations for assessment and collection with respect to such audits for all partners. By executing the Limited Partnership Agreement, the Limited Partners appoint the General Partner to act as the “tax matters partner” of the Partnership. If an audit of the Partnership returns results in an adjustment, the Limited Partners’ returns may be audited. Any expenses incurred in an audit of their individual returns must be borne by the Limited Partners. Furthermore, interest charged by the IRS on tax deficiencies is substantial and is compounded daily.

Other Possible Tax Law Changes

No assurance can be given that legislative, administrative or judicial changes will not occur which will alter either prospectively or retroactively, the tax considerations or risk factors discussed in this Memorandum. Existing and prospective Limited Partners should seek, and must rely on, the advice of their own tax advisers with respect to the possible impact on their investment of any future proposed tax legislation or administrative or judicial action.

Regulatory Matters

Investment Company Regulation

The Partnership intends to rely on the provisions of Section 3(c) (1) of the Federal Investment Company Act of 1940 (the “ICA”) to avoid requirements that it register as an “investment company” under and comply with the substantive provisions of the ICA. If the Partnership were registered as an investment company, the ICA would require, among other things, that the Partnership have a board of directors some of whom were unrelated to the General Partner, compel certain custodial arrangements, and regulate the relationship and transactions between the Partnership and the General Partner. Compliance with some of those provisions could possibly reduce certain risks of loss by the Partnership or Limited Partners, although such compliance could significantly increase the Partnership’s operating expenses and limit the Partnership’s investment and trading activities. Interpretations of Section 3(c) (1) are complex and uncertain in several respects and, as a result, there can be no assurance that the Partnership will remain entitled to rely on that Section. If the Partnership were found not to have been entitled to such reliance, it and the General Partner could be subject to legal actions by the SEC and others and the Partnership could be forced to terminate its business under adverse circumstances.

Private Offering Exemption

The Partnership intends to offer Interests on a continuing basis without registration under any securities laws in reliance on an exemption for “transactions by an issuer not involving any public offering.” While the General Partner believes reliance on such exemptions is justified, there can be no assurance that factors such as the manner in which offers and sales are made, concurrent offerings by other partnerships, the scope of disclosure provided, failures to make notices, filings, or changes in applicable laws, regulations, or interpretations will not cause the Partnership to fail to qualify for such exemptions under Federal or one or more states’ laws. Failure to so qualify could result in the rescission of sales of Interests at prices higher than the current value of those Interests, potentially affecting materially the Partnership’s performance and business. Further, even no meritorious claims that offers and sales of Interests were not made in compliance with applicable securities laws could materially and adversely affect the General Partner’s ability to conduct the Partnership’s business.
The Partnership and the General Partner will be subject to various other regulations, securities laws and others rules, laws or regulations that could limit some aspects of the Partnership’s operations or subject the Partnership or the General Partner to the risk of sanctions for noncompliance.

Litigation

The Partnership might be named as a defendant in a lawsuit or regulatory action stemming from the activities of the General Partner. In the event that such litigation did occur, the Partnership would bear the additional costs of defending against it, be at further risk if the case were to be lost and may be forced to suspend withdrawals of Interests due to the resulting illiquidity of the Partnership’s investments.

Possible Indemnification Obligations

The Partnership is generally obligated to indemnify the General Partner under the Limited Partnership Agreement against any liability they or their respective affiliates may incur in connection with their relationship with the Partnership.

No Minimum Size of Partnership

The Partnership may begin operations without attaining any particular level of capitalization. At low asset levels, the Partnership may be unable to diversify its investments as fully as would otherwise be desirable or to take advantage of potential economies of scale, including the ability to obtain the most timely and valuable research and trading information. It is possible that even if the Partnership operates for a period with substantial capital, Limited Partners’ withdrawals could diminish the Partnership’s assets to a level that does not permit the most efficient and effective implementation of the Partnership’s investment program.

THIS FOREGOING LIST OF CONFLICTS OF INTEREST AND RISK FACTORS DOES NOT PURPORT TO BE A COMPLETE EXPLANATION OF THE RISKS INVOLVED IN THIS OFFERING. POTENTIAL INVESTORS SHOULD READ THE ENTIRE MEMORANDUM BEFORE DETERMINING TO INVEST IN THE PARTNERSHIP.

General Selection Criteria

In the course of its investment activities the Partnership will incur transaction expenses. The General Partner will have complete discretion in deciding what Futures Commission Merchant (“FCM”) to use and in negotiating rates of compensation. In choosing a FCM, the General Partner will not be required to consider any particular criteria. For the most part, the General Partner will seek the best combination of expenses and execution quality but, as discussed below, the General Partner is not required to select the FCM that charges the lowest transaction cost, even if that FCM provides execution quality comparable to other FCM’s. In evaluating “execution quality” historical net prices on other transactions will be a principal factor, but other factors will also be relevant.

Futures Commission Merchant

The General Partner intends to utilize Rosenthal Collins Group, LLC. (“RCG”) as the Partnership’s Futures Commission Merchant (“FCM”). The Partnership may engage additional FCM’s in the future. Rosenthal Collins Group, L.L.C. is an Illinois Limited Liability Company organized in October of 1998 with its principal office at 216 West Jackson Boulevard, Chicago, Illinois 60606. It is a registered Futures Commission Merchant and a member of the National Futures Association.
Rosenthal Collins Group, L.P., an Illinois limited partnership, was the culmination of the 1988 unification between Rosenthal & Company, a commodities brokerage firm established in 1970, and Collins Commodities, a commodities brokerage firm established in 1923. In January 1999, Rosenthal Collins Group, L.L.C. assumed all of the assets and liabilities of the limited partnership.

As is the case with similar securities and commodities organizations, Rosenthal Collins Group, L.L.C. (RCG), a commodity brokerage firm having several branch offices, introducing brokers and customers, and its principals, are from time to time engaged in various lawsuits and administrative proceedings with customers and regulatory authorities incidental to conducting business as a commodities broker. Some matters are settled, a material number are resolved in favor of the Company and some customer complaints are resolved in favor of customers and regulatory authorities. In the opinion of management of the Company, the amounts in controversy relative to the capital of the Company are not material. Moreover, as a matter of policy, the Company vigorously defends all proceedings against it and its principals, and in the proceedings currently pending, the Company believes it has meritorious defenses.

Rosenthal Collins Group, L.L.C., its principals and its predecessor companies have not been a party to any criminal action during the past ten years or at any other time. Moreover, there have been no material administrative or civil actions taken or concluded against any principal of the Company or the Company or its predecessor within the ten years preceding the date of this disclosure document, and there are none pending or on appeal.

Acceleration Capital, L.L.C intends to use Castle Trading, Inc. as the clients Introducing Broker ("IB"), an Independent Broker where Mr. Plyam is the President and an Associated Person. Mr. Plyam will not receive direct benefit as a result of the introduction and maintenance of an account through Castle Trading, Inc. Mr. Plyam will not charge more than RCG's price per contract traded. The compensation from transaction fees charged by RCG may be greater than the total fees and other benefits provided by other broker/dealer's for similar services.

The rights and duties of the General Partner and the Limited Partners are governed by provisions of the Partnership Act and by the Limited Partnership Agreement. Certain features of the Limited Partnership Agreement are outlined below, but reference is made to the Limited Partnership Agreement for complete details of its terms and conditions.

Management Responsibilities of the General Partner

Under the terms of the Limited Partnership Agreement, the General Partner is vested with exclusive responsibility for managing the business and the affairs of the Partnership. Limited Partners will not participate in management decisions affecting the Partnership and they will have no voice in the operations of the Partnership. The responsibilities of the General Partner include, without limitation, making all investment decisions for the Partnership, selecting FCM’s to execute transactions for the Partnership, determining whether the Partnership will make distributions, administering withdrawals and the admission of Limited Partners, preparing and distributing quarterly and annual reports to the partners, filing reports required by governmental agencies, and administering other matters relevant to the business of the Partnership.

The General Partner also has the power on behalf of the Partnership (a) to purchase, hold, sell, sell short and trade securities, futures, commodities, options and other instruments (b) to open, maintain and close bank accounts, (c) to appoint other investment managers and/or investment vehicles for the investment of the Partnership’s assets, and (d) generally to act for the Partnership in all matters incidental to the foregoing including the preparation and filing of all Partnership tax returns and the making of such tax elections and determinations as appear to it appropriate.
Exercise of Rights by Limited Partners

The Limited Partnership Agreement provides that meetings of the Limited Partners may be called by the General Partner for any matters for which the Limited Partners may vote as set forth in the Limited Partnership Agreement. The General Partner may not withdraw from the Partnership without 90 days' prior written notice thereof to the Limited Partners.

Sharing of Profits and Losses

Under the terms of the Limited Partnership Agreement, the General Partner has sole discretion as to the distribution of profits, if any, to the Limited Partners. The General Partner does not intend to make a distribution if, in its opinion, the reduction in the amount of assets under management after giving effect to the distribution would not be in the best interests of the Partnership or the Limited Partners. Any distributions made by the Partnership to the partners shall be made in cash or in securities, at the sole discretion of the General Partner, on a pro rata basis based upon the relative balance in each partner’s Book Capital Account as of the last day of the period to which the distribution relates. See “RISK FACTORS” and “CONFLICTS OF INTERESTS.”

Each Limited Partner in the Partnership and the General Partner (individually, a “partner” and collectively, the “partners”) will have a book capital account (“Book Capital Account”) and a tax capital account (“Tax Capital Account”), the initial balance of each of which will be the amount contributed to the Partnership by such partner. Any increase or decrease in the Net Asset Value of the Partnership will be allocated among the partners on a monthly basis and will be added to or subtracted from the Book Capital Accounts of the partners in the ratio that each partner’s Book Capital Account bears to all partners’ Book Capital Accounts.

In general, for Federal income tax purposes, all items of ordinary income and deduction are allocated among the partners in proportion to their relative Book Capital Account balances during the period when such income is earned or such expense is incurred. Capital gain [including gain attributable to Section 1256 contracts (“Section 1256 contracts”) under the Internal Revenue Code of 1986, as amended (the “Code”)] shall generally be allocated among the partners experiencing appreciation in their Book Capital Accounts during the year in proportion to the relative appreciation experienced. Capital loss (including loss attributable to Section 1256 contracts) shall generally be allocated among the partners experiencing depreciation in their Book Capital Accounts during the year in the same manner. See “TAX CONSIDERATIONS.”

Withdrawals

All or a portion of an investor’s Interest may be redeemed upon the close of business on the last business day of each calendar month (“Withdrawal Date”). Withdrawals made prior to six calendar months from the day in which an interest is purchased will be subject to an early withdrawal penalty of 2% of the amount withdrawn. Withdrawals may be subject to certain restrictions and to the establishment of reserves in respect of undetermined and contingent liabilities. The General Partner must receive 30 days’ prior written notice (including by facsimile) of a request for withdrawal. Distribution of the amount of withdrawal shall be made as soon as practicable following said Withdrawal Date; and final settlement of the full amount of such distribution shall be made as promptly as possible after completion of final reconciliation of valuations for the Withdrawal Date (generally not to exceed 120 days after withdrawal).

The General Partner may, in its sole discretion (a) postpone the distribution of any Partnership assets which cannot be properly valued on the withdrawal date until such time when the assets can be properly valued; (b) establish a reserve against any undetermined or contingent liability in an amount deemed reasonable by the General Partner; and (c) amend, modify, liberalize or restrict the terms and conditions of the Limited Partners’ withdrawal privileges to the extent deemed necessary or advisable in connection with any further offerings (public or private) of Interests for sale.
A Limited Partner will be deemed to have withdrawn from the Partnership upon its giving notice of withdrawal of its entire interest in the Partnership. The withdrawal of a Limited Partner will not terminate the Partnership. It will terminate the interest of the withdrawn partner in the Partnership except that such partner shall have access to the books and records of the Partnership and to such data as may be necessary to give full information with respect to its distributive interest.

The General Partner, in its sole and absolute discretion, may cause the Partnership to purchase and redeem all of the Partnership Interests of any Limited Partner effective any month-end upon ten (10) days prior written notice. The purchase and withdrawal price payable to the Limited Partner after the giving of such notice shall be the value of the Limited Partner’s Book Capital Account on the effective date. A Limited Partner who withdraws all of his Capital Account will be deemed to have withdrawn from the Partnership as a Limited Partner.

Accounts, Records and Reports and Pricing

The books of accounts and records of the Partnership will be maintained using generally accepted accounting principles, and will be open for inspection at the Partnership’s office by any partner at reasonable times and reasonable intervals.

As of the end of each calendar month, the General Partner will prepare and send to each partner an unaudited monthly statement. The General Partner may, but is not required to, disclose to the Limited Partners the investments that the Partnership has made. The monthly statement will report performance of the fund, the value of a Partner’s Capital Account and other information. For purposes of preparing such quarterly statements, the General Partner will price the Partnership’s portfolio of securities based upon the last reported sales prices for such securities or if no sales are reported, the median between the bid and the offer. In addition, as of the end of each fiscal year, an audited annual report of the Partnership shall be prepared and mailed to each partner. This report will contain a Statement of Financial Condition for the fiscal year, information necessary for the preparation of Federal income tax returns and other information. The General Partner may elect to have the first audit period be inception through December 31, 2003.

Liabilities

A Limited Partner’s capital contribution is subject to the risks of the Partnership’s business. However, under the provisions of the Partnership Act, a Limited Partner will not be personally liable for any debts or losses of the Partnership beyond the amount of its capital contribution and profits attributable thereto (if any), plus interest thereon. Each Interest, when issued, will be fully paid and non-assessable. Losses in excess of the Partnership’s assets will be the obligation of the General Partner. It should be noted that a Limited Partner would not be able to exercise any management functions with respect to the Partnership’s operations. See “RISK FACTORS.”

The Limited Partnership Agreement provides that the General Partner and its affiliates shall not be liable to the Partnership or to any of the partners for any act or failure to act taken or omitted by them in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Partnership if such act or failure to act did not involve negligence, misconduct or a breach of fiduciary obligations.

Indemnification

The Limited Partnership Agreement provides that in any threatened, pending or completed action, suit or proceeding to which the General Partner was or is a party or is threatened to be made a party by reason of the fact that it is or was the General Partner of the Partnership, the Partnership shall indemnify, defend, and hold harmless the General Partner and its “affiliates” (as defined below) from and against any loss, liability, damage, cost, expense (including, without limitation, attorneys’ and accountants’ fees and expenses incurred in defense of any demands, claims or lawsuits), judgments and amounts paid in
settlement (collectively, "Losses"), incurred by them if the General Partner acted in good faith and in a manner it reasonably believed to be in or not opposed to, the best interests of the Partnership and, provided that the omission, act or conduct that was the basis for such Losses was not the result of misconduct or negligence and was taken or omitted in good faith and in the reasonable belief that it was taken or omitted in, or not opposed to the best interests of the Partnership. Any indemnification under the Limited Partnership Agreement, unless ordered by a court, shall be made by the Partnership only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the General Partner is proper under the circumstances. To the extent that the General Partner has been successful on the merits or otherwise in defense of any action, claim, suit or proceeding, or issue or matter presented therein, the opinion of independent legal counsel shall not be required and the Partnership shall indemnify them against any Losses incurred by them in connection therewith.

The Partnership may advance funds to the General Partner and its affiliates for legal expenses and other costs incurred as a result of a legal action if the General Partner or its affiliates, as applicable, undertake to repay the advanced funds to the Partnership in cases in which they would not be entitled to indemnification under the Limited Partnership Agreement.

For purposes of indemnification as used in the Limited Partnership Agreement, the term "affiliate" of the General Partner shall mean: (a) any natural person, partnership, corporation, association or other legal entity directly or indirectly owning, controlling or holding with power to vote 10% or more of the outstanding voting securities of the General Partner; (b) any partnership, corporation, association or other legal entity 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the General Partner; (c) any natural person, partnership, corporation, association or other legal entity directly or indirectly controlling, controlled by, or under common control with, the General Partner; or (d) any person who is a Managing Member of the General Partner.

In the event the Partnership or the General Partner or any of its affiliates is made a party to any claim, dispute or litigation or otherwise incurs any Losses as a result of or in connection with (a) any Partner's (or its assignee's) activities, obligations or liabilities unrelated to the Partnership's business, or (b) any failure or alleged failure on the part of the Partnership or the General Partner to withhold from income allocated or deemed to be allocated to any Partner or its assignees (whether or not distributed) any amounts with respect to which Federal income tax withholding was required or alleged to have been required, such Partner (or its assignees cumulatively) shall indemnify and reimburse the Partnership and the General Partner for all Losses incurred by the Partnership and the General Partner in connection therewith.

Termination

Unless earlier dissolved, the Partnership shall cease doing business on September 31, 2053 and shall thereupon be dissolved. The Partnership also shall cease doing business and shall be dissolved upon the occurrence of certain other events, including the following:

(a) The insolvency or bankruptcy of the Partnership;

(b) The dissolution or other cessation to exist as a legal entity of the General Partner, at the election of the General Partner or upon the retirement, adjudication of bankruptcy or insolvency of the General Partner, unless a successor general partner has been elected by the Limited Partners or admitted by the General Partner prior to the date of any such event and such successor general partner elects to continue the business of the Partnership.

The Limited Partnership Agreement provides that in the event of the dissolution of or liquidation of the Partnership, its affairs shall be wound up and all assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof and the proceeds therefore shall be applied and distributed in the following order: (a) to the expenses of liquidation and termination and to creditors, in the order of priority.
as provided by law; and (b) to the partners in accordance with their respective Book Capital Account balances.

Fiscal Year

The Partnership's fiscal year will end on December 31 of each year.

Arbitration

Any controversy between the General Partner and a Limited Partner arising out of or related to Limited Partner's Account, or to the Advisory Agreement between the General Partner and the Limited Partner or the breach thereof, shall be settled only by arbitration in accordance with 180.1 - 180.5 of the Commodity Futures Trading Commission regulations. The General Partner agrees to pay any incremental fees that may be assessed in the arbitration proceedings for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that Limited Partner has acted in bad faith in initiating or conducting such proceeding. Any proceeding must be commenced within two years after the transaction or occurrence complained of and the hearing is to be conducted in English and held in California. In such proceeding both Limited Partner and the General Partner waive any right to punitive damages, and if the Limited Partner does not prevail, the Limited Partner shall pay the General Partner's costs and attorney's fees. Judgment upon the arbitration award shall be, final and may be entered in any court having jurisdiction thereof.

THESE FORUMS EXIST FOR THE RESOLUTIONS OF COMMODITY DISPUTES: CIVIL COURT LITIGATION, REPARATIONS AT THE COMMODITY FUTURES TRADING COMMISSION (CFTC) AND ARBITRATION CONDUCTED BY SELF-REGULATORY OR OTHER PRIVATE ORGANIZATIONS.

THE CFTC RECOGNIZES THAT THE OPPORTUNITY TO SETTLE DISPUTES BY ARBITRATION MAY IN SOME CASES PROVIDE MANY BENEFITS TO CUSTOMERS, INCLUDING THE ABILITY TO OBTAIN AN EXPEDITIOUS AND FINAL RESOLUTION OF DISPUTES WITHOUT INCURRING SUBSTANTIAL COSTS. THE CFTC REQUIRES, HOWEVER, THAT EACH CUSTOMER INDIVIDUALLY EXAMINE THE RELATIVE MERITS OF ARBITRATION AND THAT YOUR CONSENT TO THE ARBITRATION AGREEMENT BE VOLUNTARY.

BY SIGNING THIS AGREEMENT, YOU: (1) MAY BE WAIVING YOUR RIGHT TO SUE IN A COURT OF LAW; AND (2) ARE AGREING TO BE BOUND BY ARBITRATION OF ANY CLAIMS OR COUNTERCLAIM WHICH YOU OR CI MAY SUBMIT TO ARBITRATION UNDER THIS PETITION THE CFTC TO INSTITUTE REPARATIONS PROCEEDINGS UNDER SECTION 14 OF THE COMMODITY EXCHANGE ACT WITH RESPECT TO ANY DISPUTE WHICH MAY BE ARBITRATED PURSUANT TO THIS AGREEMENT. IN THE EVENT A DISPUTE ARISES, YOU WILL BE NOTIFIED IF CI INTENDS TO SUBMIT THE DISPUTE TO ARBITRATION. IF YOU BELIEVE A VIOLATION OF THE COMMODITY EXCHANGE ACT "REPARATIONS" PROCEEDING BEFORE THE CFTC, YOU WILL HAVE 45 DAYS FROM THE DATE OF SUCH NOTICE IN WHICH TO MAKE THAT ELECTION.

SEE 17 CFR 180.1 - 180.5

Miscellaneous Provisions

The Partnership may do business with any person, firm, or corporation notwithstanding that such person, firm, or corporation is a partner or an affiliate of any partners or of the Partnership.
The General Partner is not required to devote its full business time to the Partnership and will continue to have other business interests, including acting in the same or similar capacity for other partnerships or entities.
January 20, 2005

Sent via Electronic Mail
yuri@castletrading.com

Mr. Yuri Plyam  
Acceleration Capital LLC  
8619 Reseda #102  
Northridge, CA 91324

Re: NFA ID #333884 – Acceleration Capital, LLC  
Pool ID #P13946 - Acceleration Mercury Fund 4x, LP

Dear Mr. Plyam:

NFA has reviewed the January 15, 2005 Disclosure Document and has no comments at this time. As such, effective immediately, the document may be used to solicit participants. During the course of our review, NFA has not undertaken to verify any of the statements contained in the document and thus this notice may not preclude NFA or the CFTC from raising compliance issues concerning this document at some future time. If you have any questions concerning this matter, please contact me 312-658-6528.

NFA is always looking for ways to provide better regulatory services to our Members. You can help by identifying issues that are important to your firm or to the CPO or CTA community as a whole, and by sharing your thoughts with us. Please contact me at the above number or via e-mail at gschrader@nfa.futures.org with your comments. I look forward to hearing from you.

Sincerely,

Greg Schrader  
Compliance Department

cc: Kevin Walek  
Commodity Futures Trading Commission
AGREEMENT OF LIMITED PARTNERSHIP OF ACCELERATION MERCURY FUND 4X, LP
AGREEMENT OF LIMITED PARTNERSHIP OF ACCELERATION MERCURY FUND 4X, LP

This Limited Partnership Agreement of Acceleration Mercury Fund 4X, LP made as of October 1, 2003 by and among Acceleration Capital, LLC (the "General Partner"), and such other persons who shall execute this Agreement, or on whose behalf this Agreement is hereafter executed, whether in counterpart, by separate instrument, pursuant to power of attorney or otherwise.

WHEREAS, the General Partner and the Initial Limited Partner have previously formed Acceleration Mercury Fund 4X, LP (the "Partnership") as a limited partnership under the Revised Uniform Limited Partnership Act of the State of Delaware (the "Partnership Act"); and

WHEREAS, the General Partner desires to admit Limited Partners to the Partnership and the parties hereto desire to enter into this Agreement as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1 General Provisions

1.1 Formation. The General Partner and the Initial Limited Partner have previously formed a partnership under the provisions of the Partnership Act, and the rights and liabilities of the Partners shall be as provided in the Partnership Act except as herein otherwise expressly provided.

1.2 Name. The name of the Partnership shall be Acceleration Mercury Fund 4X, LP. However, the business of the Partnership may be conducted, upon compliance with applicable laws, under any other name designated in writing by the General Partner to the Limited Partners.

1.3 Purposes. The Partnership is organized for the following purposes:

a) to achieve appreciation of its Partners' capital through investment and trading in Securities and other similar investments which the General Partner determines, in its sole judgment, are in the best interests of the Partnership by purchasing Securities long and selling short, on margin and otherwise, except that that the Partnership will not invest in any instrument, future, option, commitment or other contract, investment or commodity interest that would, if the Partnership were to invest, trade or deal in it, cause the General Partner to be considered a commodity pool operator;

b) to lend funds or properties of the Partnership, either with or without security; and

c) to execute, deliver and perform all contracts and other undertakings, and engage in all activities and transactions that the General Partner determines are necessary or advisable in carrying out the purposes in this Section 1.3.
1.4 **Offices.** The initial principal office of the Partnership shall be at 8949 Reseda Blvd., Suite 224, Northridge, California 91325, or at such other locations as may from time to time be determined by the General Partner.

1.5 **Term.** The Partnership came into existence on July, 2003, the date that the Certificate of Limited Partnership was filed as provided in the Partnership Act, and shall terminate on September 31, 2053, unless earlier terminated as hereinafter provided or by operation of law.

1.6 **Trading Decisions.** Initially, the General Partner will make all trading decisions.

### Section 2 Certain Definitions

2.1 "Agreement" shall mean this Agreement of Limited Partnership of Acceleration Mercury Fund 4X, L.P., as originally executed and as amended, modified, supplemented, or restated from time to time, as the context requires.

2.2 "Capital Account" shall have the meaning set forth in Section 3.5.

2.3 "Capital Contribution" shall mean the amount of money or value of the assets (determined in accordance with Section 3.8 hereof) contributed to the Partnership by each Partner, from time to time, in accordance with the terms hereof.

2.4 "Code" shall mean the Internal Revenue Code of 1986, as amended.

2.5 "Fiscal Quarter" shall mean each three-month period beginning on the first day of January, April, July, and October of each Fiscal Year.

2.6 "Fiscal Year" of the Partnership shall mean 12 month period beginning on the first day of January and ending on the last day of the following December.

2.7 "Incentive Allocation" shall have the meaning set forth in Sections 3.5.5.

2.8 "Interest" or "Partnership Interest" shall mean the entire ownership interest of a Partner (General or Limited) in the Partnership at any particular time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement. Reference to a specified percentage in Interest of the Limited Partners shall mean Limited Partners whose aggregate Book Capital Accounts represent at least such specified percentage of the aggregate Book Capital Accounts of all Limited Partners. When used herein without qualification, the term "Interest" shall include both Limited Partnership Interests and the General Partnership Interests. Each Limited Partner (other than the Initial Limited Partner) shall be required to contribute a minimum initial capital contribution to the Partnership in an amount equal to at least twenty five thousand dollars ($25,000), unless the General Partner, in its discretion, waives such minimum subscription. The Interests may, but need not, be evidenced by certificates.
2.9 "Limited Partner" shall mean any person (other than the General Partner) admitted to the Partnership, and any other person who becomes a Limited Partner by substitution after receiving an assignment from a Limited Partner and the consent of the General Partner as set forth hereinafter.

2.10 "Net Asset Value" shall mean the Partnership's total assets including all cash, cash equivalents and other securities (each valued at fair market value), less total liabilities, determined in accordance with generally accepted accounting principles, consistently applied under the accrual method of accounting. Net Asset Value shall reflect all gains and losses (whether realized or unrealized), income and expenses (including the compensation of the General Partner).

2.11 "Partnership Liabilities" shall mean liabilities determined in accordance with generally accepted accounting principles applied on a consistent basis, and shall include estimates of accrued expenses, and, as the General Partner may deem advisable, reserves for contingencies.

2.12 "Partnership Percentages" shall mean the percentage determined for each Partner for each Fiscal Quarter or Fiscal Year, as the case may be, of the Partnership by dividing the amount of each Partner's Opening Book Capital Account by the sum of the Opening Book Capital Accounts of all the Partners for such Fiscal Quarter or Fiscal Year, as the case may be. The Partnership Percentages shall be set forth in a schedule filed with the records of the Partnership within 30 days after the commencement of each Fiscal Quarter of the Partnership or at such time as the General Partner shall deem necessary to take into account the admittance or withdrawal of a Partner (including the withdrawal of all or part of such Partner's Capital Account) or an additional Capital Contribution of a Partner.

2.13 "Security" and "Securities" shall mean all types of domestic and foreign corporate and governmental securities, publicly or privately traded, including preferred stocks, common stocks, subscriptions, warrants, bonds, notes, debentures and other debt instruments (whether or not subordinated, convertible or otherwise and whether or not such instruments, such as loans, would be deemed "securities" within the meaning of the Federal securities laws), investment company securities, limited partnership interests, puts, calls, straddles, indices, options, currencies, any certificates, receipts, forward or spot contracts, repurchase agreements or other instruments representing rights to receive, purchase subscribe for or sell any of the foregoing, or representing any other rights or interests therein or in any property or assets created or issued by any foreign or domestic persons, firms, associations, corporations, or governments, agencies or subdivisions thereof, and futures contracts and options of all types, financial and currency options and other securities of whatever kind or nature, publicly or privately traded, of any domestic or foreign corporation, partnership, government or entity whatsoever.

Section 3 Partners, Capital Contributions, Capital Accounts, Allocations, Withdrawal Rights, Distributions and Valuation

3.1 General Partner and Limited Partners. The names, residence addresses and Capital Contributions of the General Partner and Limited Partners shall be maintained by the General Partner with the records of the Partnership.

3.2 Additional Capital Contributions. The Limited Partners may, with the consent of the General Partner make additional capital contributions to the Partnership on the first business day of each Fiscal Quarter or at such other times as the General Partner in its sole discretion shall determine.
3.3 **Capital Contributions.** Each Limited Partner shall make a Capital Contribution to the Partnership by way of cash or, with the consent of the General Partner which it may exercise in its sole discretion, assets (valued in accordance with Section 4.5 herein) equal to the amount set forth opposite such Limited Partner's name on the signature page hereto. The minimum capital contribution by a Limited Partner is $25,000. The General Partner shall have the right to refuse any initial or additional capital contribution in whole or in part for any reason and may, in its sole discretion, waive the amount of such minimum capital contribution from time to time.

3.4 **No Additional Contributions Required.** No Partner shall be required to make any contributions to the capital of the Partnership beyond the Capital Contributions referred to in Section 3.3.

3.5 **Capital Accounts and Allocations.**

3.5.1 **Capital Accounts.** The Partnership shall establish for each Partner a capital account for income tax purposes ("Tax Capital Account") and a capital account for financial accounting purposes ("Book Capital Account"). The initial balance of the Tax Capital Account and the Book Capital Account for each Partner shall be the initial capital contribution made to the Partnership by such Partner and shall be adjusted as provided in this Article. There shall be established for each Partner on the books of the Partnership as of the first day of the first Fiscal Year of the Partnership and as of the first day of each Fiscal Quarter thereafter an Opening Capital Account ("Opening Tax Capital Account" or "Opening Book Capital Account", as the case may be), which for the first Fiscal Quarter during which such Partner was admitted to the Partnership shall be an amount equal to his initial Capital Contribution.

3.5.2 **Adjustments to Tax Capital Accounts.** At the close of each Fiscal Quarter, there shall be determined, for each Partner, his Closing Tax Capital Account (the "Closing Tax Capital Account") which shall be equal to his Opening Tax Capital Account for such Fiscal Quarter, adjusted as follows:

(a) increased by (i) any cash and the fair market value of other property contributed to the Partnership by such Partner during such Fiscal Quarter in addition to such Partner's original capital contribution, (ii) the distributive share of Partnership taxable income allocated to such Partner for such Fiscal Quarter in accordance with Section 3.6, and (iii) the distributive share of Partnership income of such Partner exempt from Federal income taxation allocated to such Partner for such Fiscal Quarter in accordance with Section 3.6, and

(b) decreased by (i) the amount of cash and the adjusted basis of other property distributed to such Partner during such Fiscal Quarter, (ii) the distributive share of Partnership taxable losses of such Partner (including capital losses) for such Fiscal Quarter, (iii) the distributive share of Partnership expenditures of such Partner for such Fiscal Quarter including expenditures of the Partnership that are neither deductible in computing its taxable income nor properly chargeable to the Capital Account; and any decrease in the Partner's share of the Partnership’s nonrecourse liabilities.

3.5.3 **Adjustments to Book Capital Accounts.** At the close of each Fiscal Quarter, there shall be determined, for each Partner, his Closing Book Capital Account (the "Closing Book Capital
Account") which shall be equal to his Opening Book Capital Account for such Fiscal Quarter, adjusted as follows:

(a) increased by (i) any cash and the fair market value of other property contributed to the Partnership by such Partner during such Fiscal Quarter in addition to such Partner’s original capital contribution, and (ii) positive adjustments made to such Partner’s Book Capital Account with respect to such Fiscal Quarter in accordance with Section 3.5.4 below; and

(b) decreased by (i) the amount of cash and the fair market value of other property distributed to such Partner during such Fiscal Quarter (net of liabilities recorded on such property that such Partner is considered under Section 752 of the Code to assume or take subject to), and (ii) negative adjustments made to such Partner’s Book Capital Account with respect to such Fiscal Quarter in accordance with Section 3.5.4, below.

3.5.4 Additional Adjustments to Book Capital Account. At the end of each Fiscal Quarter, the Closing Book Capital Account of each Partner shall be further adjusted as follows:

(a) the Net Asset Value of the Partnership’s assets shall be determined as of the end of the Fiscal Quarter in question, without reduction for any accrued Incentive Allocations, and each Partner’s Closing Book Capital Account shall be increased or decreased by such Partner’s “Pro Rata Share” of any increase or decrease in the Net Asset Value of the Partnership for the Fiscal Quarter. For purposes of this Agreement, a Partner’s “Pro Rata Share” shall be that percentage equal to the ratio that such Partner’s Opening Book Capital Account for the Fiscal Quarter in question bears to the Opening Book Capital Accounts for all Partners and, except as otherwise set forth herein, any calculation on a “Pro Rata Basis” shall mean a calculation determined by applying such formula; and

(b) the Closing Book Capital Account of each Limited Partner shall be reduced by any Incentive Allocations allotted to the General Partner from such Limited Partner’s Book Capital Account with respect to the Fiscal Quarter in question in accordance with Section 3.5.5.

3.5.5 Incentive Allocation to the General Partner. (a) Except as modified by paragraph (e) below, at the end of each Fiscal Quarter the General Partner will be allotted an Incentive Allocation equal to twenty percent (20%) of the “Net New Appreciation”, if any, achieved with respect to the Book Capital Account of each Limited Partner (the “Incentive Allocation”).

“Net New Appreciation” is hereby defined as the increase in a Limited Partner’s Book Capital Account over the Limited Partner’s highest prior Book Capital Account (“Maximum Capital Account”) from which a share of Net New Appreciation was allocated to the General Partner, except that (1) for purposes of calculating Net New Appreciation, taxes and extraordinary expenses shall be ignored, and
and appropriate, shall be established to satisfy such contingent debt, obligation or liability, which reserve shall be distributed as provided in this Section 10.3(a) only upon the termination of such contingency;

(iii) apply and distribute the remaining proceeds of such liquidation to all Partners in proportion to the positive balances in their respective Book Accounts; provided, however, that if the General Partner has a debit balance in its Capital Account, the General Partner will repay such debit balance either by payment in cash to the Partnership in an amount equal to the debit balance and/or the retention by the Partnership of such Partner’s distributive share of Partnership assets which sums will be paid to Partners with positive Capital Accounts to the extent of such positive amounts, then to the Partners as provided in this Section 10.2(a); and

(iv) Net Profits, Net Losses, income, gains and losses arising from sales upon liquidation shall be allocated as provided in Article 3.

(b) Notwithstanding the provisions of Section 10.3(a) above, if, on dissolution of the Partnership, the General Partner or the liquidating trustee shall determine that an immediate sale of part or all of the Partnership’s assets would cause undue loss to the Partnership, the General Partner or the liquidating trustee may, in order to avoid such losses, either:

(i) defer the liquidation of, and withhold from distribution for a reasonable time, any assets of the Partnership except those necessary to satisfy debts and liabilities of the Partnership;

(ii) distribute to the Partners, in lieu of cash, as tenants in common and in accordance with the provisions of Section 10.3(a) above, undivided interests in any Partnership assets and liquidate only such assets as are necessary in order to pay the debts and liabilities of the Partnership; and

(iii) distribute to the Partners, in lieu of cash and in accordance with the provisions of Section 10.3(a) above, Partnership Assets and liquidate only such assets as are necessary in order to pay the debts and liabilities of the Partnership (for this purpose a distribution of property other than cash shall be treated as a distribution in cash of an amount equal to the fair market value of the property (net of any liability subject to which the property is distributed) as of the date of distribution).

(c) When the General Partner or liquidating trustee has complied with the foregoing, the Partners shall execute, acknowledge and cause to be filed an instrument evidencing the cancellation of the Certificate of Limited Partnership of the Partnership.

Section 11 Amendments

11.1 Permitted Amendments. The General Partner and a “majority in interest” of the Limited Partners (hereby defined as those Limited partners owning Book Capital Accounts which at the close of the last Fiscal Quarter represented a majority of the Net Asset Value of all Book Capital Accounts of the Limited Partners) shall have the right to amend this Agreement, provided that no amendment may:
convert a Limited Partner’s Interest into the General Partner’s Interest, or modify the limited liability of a Limited Partner, in each case, without the consent of each such affected Partner;

(ii) amend any provision hereof which requires the consent, action or approval of a specified percentage of Interest of the Limited Partners without the consent of such specified percentage in interest of the Limited Partners; or

(iii) amend this Section 12.1 without the consent of all the Limited Partners.

11.2 Certain Amendments. In addition to amendments otherwise authorized hereby, this Agreement may be amended by the General Partner without the consent of any of the Limited Partners (i) in a manner which does not adversely affect any Limited Partner; (ii) to add to the duties or obligations of the General Partner or surrender any right or power of the General Partner hereunder; (iii) to cure any ambiguity or to correct or supplement any provision hereof which may be inconsistent with any other provision hereof, or to correct any printing, typographical or clerical error or omission; and (iv) except as otherwise provided in this Agreement.

Section 12 Power of Attorney

12.1 Appointment. Each Limited Partner, by his execution hereof, hereby makes, constitutes and appoints the General Partner as his true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in his name, place and stead, to admit additional limited partners and general partners to the Partnership, to file, prosecute, defend, settle or compromise any and all actions at law or suits in equity for or on behalf of the Partnership with respect to any claim, demand or liability asserted or threatened by or against the Partnership, and to make, execute, sign, acknowledge, deliver, swear to, record and file (i) this Agreement and any amendment to this Agreement to the extent permitted herein; (ii) the original Certificate of Limited Partnership of the Partnership and all amendments thereto required or permitted by law or the provisions of this Agreement; (iii) all certificates and other instruments deemed advisable by the General Partner to carry out the provisions of this Agreement and applicable law or to permit the Partnership to become or to continue as a limited partnership or partnership wherein the Limited Partners have limited liability in a jurisdiction where the Partnership may be doing business; (iv) all instruments that the General Partner deems appropriate to reflect a change or modification of this Agreement or the Partnership in accordance with this Agreement, including without limitation the substitution of assignees as Limited Partners pursuant to Section 10.2 and amendments to this Agreement; (v) all conveyances and other instruments or papers deemed advisable by the General Partner to effect the dissolution and termination of the Partnership; (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Partnership; (vii) any brokerage, administrative, selling, custodian, advisory, subscription and other agreements which the General Partner deems necessary or desirable in connection with the Partnership’s business and (viii) all other instruments or papers which may be required or permitted by law to be filed on behalf of the Partnership.

12.2 Coupled with Interest Etc. The foregoing power of attorney:

(i) is coupled with an interest and shall be irrevocable and survive the death, incompetency or bankruptcy of the Limited Partner granting the same;
(ii) may be exercised by the General Partner either by signing separately as attorney-in-fact for each Limited Partner or, after listing all of the Limited Partners executing an instrument, by a single signature of the General Partner acting as attorney-in-fact for all of them; and

(iii) shall survive the delivery of an assignment by a Limited Partner of the whole or any fraction of his Interest; except that, where the assignee of the whole of such Limited Partner’s Interest has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, the power of attorney of the assignor shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such substitution.

12.3 Further Assurances. Each Limited Partner shall execute and deliver to the General Partner within five days after receipt of the General Partner’s request therefore such further designations, powers-of-attorney and other instruments as the General Partner deems necessary or appropriate to carry out the terms of this Agreement. Each Limited Partner hereby agrees to be bound by any representation made by the General Partner and by any successor thereto acting in good faith pursuant to such Power of Attorney, and each Limited Partner hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the General Partner and any successor thereto taken in good faith under such Power of Attorney. In the event of any conflict between this Agreement and any instruments filed by such attorney pursuant to the Power of Attorney granted in this Section 13.3, this Agreement shall control.

Section 13 Representations of Limited Partners

13.1 Representations. Each Limited Partner hereby represents and warrants to and agrees with the Partnership and the General Partner as follows:

(a) The Interests are being purchased for its own account for investment only and without any view of the distribution thereof or resale to others;

(b) The Limited Partner has evaluated the risks of purchasing the Interests and has determined that the Interests are a suitable investment, that the Limited Partner has adequate financial resources for an investment of such character, and that at this time it could bear a complete loss of this investment;

(e) The Limited Partner understands that all documents, instruments, records and books pertaining to the General Partner, the Partnership and this investment have been made available to the Limited Partner or his attorney, accountant and tax or investment advisor, and that such books and records will be available upon reasonable notice for inspection by the Limited Partner or his representatives during business hours at the principal place of business of the Partnership;

(d) The Limited Partner has been advised and is aware that (i) the Interests are not freely transferable, (ii) it may be impossible to immediately liquidate this investment, and (iii) the interests have not been registered under the Securities Act of 1933, as amended (the “Act”);
(e) The Limited Partner or his or her representative has received, read and understood this Agreement and any amendments thereto, and has had the opportunity to ask questions of, and receive answers from, the General Partner concerning the Partnership and its business, and has had the opportunity to obtain additional information in order to permit him to evaluate the merits and risks of investing in the Partnership;

(f) The Limited Partner is authorized to make the investment contemplated herein, and the person signing this Agreement on behalf of such entity has been duly authorized by such entity to do so;

(g) No representations or warranties have been made to the Limited Partner by the General Partner or an agent thereof, other than as set forth in this Agreement;

(h) The Limited Partner understands that the Partnership and its business has not been reviewed by the Securities and Exchange Commission nor by agencies or officials of any state, including the state in which the Limited Partner is a resident, since the Partnership is intended to be a non-public offering;

(i) The Limited Partner or his or her representative alone has such knowledge and experience in investment, securities, financial and business matters that he or she is capable of evaluating the merits and risks of the investment contemplated herein; and

(i) The representations contained herein can be relied upon by the Partnership and the General Partner.

13.2 Securities Act of 1933. Each Partner recognizes that the Interests have not been registered under the Act and have been offered and sold to the Partners in reliance upon an exemption from the registration requirements of the Act. Each Partner agrees that he will not sell, offer for sale, transfer, pledge or hypothecate his Partnership Interest in the absence of an effective registration statement under the Act covering such Interest or the opinion of counsel to the Partnership that such registration is not required.

Section 14 Miscellaneous

14.1 Notice. Notice to any Limited Partner shall be sent to such Limited Partner at his address as set forth on the signature page hereto or to such other address as such Limited Partner shall designate in writing to the General Partner. Any notice to the Partnership or the General Partner shall be sent to the address of the General Partner as set forth on the signature page hereto or to such other address as the General Partner shall designate in writing to the Limited Partners. Each consent, notice, order and other communication required or permitted to be given under this Agreement shall be in writing, shall be effective upon receipt and shall be delivered personally, by registered or certified mail, return receipt requested, or by telex or facsimile transmission.

14.2 Governing Law. It is the intention of the parties that the internal laws of the State of Delaware and, as the same may be amended from time to time, shall govern the validity of this Agreement, the construction of its terms and interpretation of the rights and duties of the parties.
14.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or understanding, oral and written, relating to the Partnership.

14.4 Headings. The headings in this Agreement are inserted for convenience of reference only and shall not be considered part of or affect the Agreement’s interpretation.

14.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

14.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

14.7 Successors in Interest.

(a) Each of the Partners covenants for it, its heirs, executors, administrators, successors, assigns and legal representatives that it will, at any time on demand after its withdrawal from the Partnership, contribute to any of its former Partners its proportionate share of any liability, judgment or cost of any kind (including the reasonable cost of the defense of any suit or action and any sums which may be paid in settlement thereof) that may be incurred by any former Partner on account of any matters or transactions occurring during the time it was a Partner. The amount of such contribution shall not, in the case of a former Limited Partner, exceed the then balance of its Book Capital Account at the time it ceased to be a Limited Partner plus the amount of distributions theretofore made to it, if any, plus interest thereon. Such proportionate share of liability, judgment or cost of any kind shall be determined from this Agreement as it existed at the time such matter or transaction occurred.

(b) Each of the Partners covenants that neither it nor its heirs, executors, administrators, successors, assigns, or legal representatives, nor any person or persons claiming through or under it, will file a bill for a Partnership accounting or otherwise proceed adversely in any way whatsoever against the other Partners or the Partnership, except in an action for fraud.

(c) This Agreement and all of its terms and provisions shall be binding upon and shall inure to the benefit of the Partners and their respective legal representatives, heirs and successors and assigns. Any person subsequently admitted to the Partnership as a General Partner or Limited Partner shall be subject to all of the provisions of this Agreement as if an original signatory hereto.

14.8 Governance. Each of the parties hereto agrees that if any action shall be taken pursuant to this Agreement by the required percentage in interest of the Partners, it will execute any such writing or instrument as may be necessary to carry out and perfect such action notwithstanding that said party may not have assented thereto or may have objected thereto. Partnership action covered within the scope of this clause includes, but is not limited to, the adoption of any Certificate of Limited Partnership or any amendment thereto, any instrument effecting or evidencing the withdrawal of a Partner and any amendment or supplement to this Agreement.
IN WITNESS WHEREOF, the parties have executed this Agreement on this ______ day of ______ (date) 2003.

Acceleration Mercury Fund 4X, LP
By: Acceleration Capital, LLC, General Partner

By: ____________________________
Curtis Faith, Managing Member

By: ____________________________
Yuri Plyam, Managing Member

Name, Address and Signature of Limited Partner

Dollar Amount
Limited Partnership Interests Acquired

$ __________________

Print Name

Print Address

Signature

Social Security or Tax Identification Number
ACCELERATION MERCURY FUND 4X

Subscription Documents
EXHIBIT B

ACCELERATION MERCURY FUND 4X, LP
TERMS AND CONDITIONS OF SUBSCRIPTION AGREEMENT

The following provisions, together with the Limited Partnership Agreement (the “Partnership Agreement”) of Acceleration Mercury Fund 4X, LP (the “Partnership”), are the terms and conditions on which investors in the Partnership subscribe for Limited Partnership interests and apply to become Limited Partners in the Partnership. Each prospective investor in the Partnership accepts these terms and conditions by signing the signature page to such investor’s Confidential Investor Questionnaire (“Questionnaire”). These terms and conditions are sometimes referred to, collectively with the Questionnaire, as the “Agreement” or the “Subscription Agreement.”

1. Agreement to Subscribe for Interests. The undersigned (“Subscriber”) hereby offers to purchase a limited partnership interest (the “Interest”) in Acceleration Mercury Fund 4X, LP, a Delaware limited partnership (the “Partnership”), in the amount set forth on the signature page to the Subscriber’s Questionnaire. Subscriber agrees that (a) the Partnership’s general partner, Acceleration Capital, LLC (the “General Partner”) may reject Subscriber’s offer to purchase an Interest for any reason; (b) as of the date designated by the General Partner when (if at all) the General Partner accepts this Subscription Agreement and Subscriber’s subscription funds on behalf of the Partnership, Subscriber shall be obligated under the terms and conditions of this document and of the Partnership Agreement as a Limited Partner; and (c) by executing the signature page of the Questionnaire, Subscriber agrees to be bound by those terms and conditions.

2. Representations and Warranties. Subscriber hereby represents and warrants as follows, with the understanding that the Partnership will rely on the accuracy of these representations to establish the eligibility of this offering for certain registration exemptions under federal and state securities laws, and to enable the Partnership to comply with certain other laws and regulations:

(a) Interests Not Registered. Subscriber understands that the Partnership’s offer and its sale to Subscriber of an Interest have not been registered under the Securities Act of 1933, as amended (the “1933 Act”), or registered or qualified under state securities laws, on the ground, among others, that Interests are being offered and sold in a transaction that does not involve any public offering within the meaning of Section 4(2) of the 1933 Act and Rule 506 of Regulation D thereunder. Subscriber understands that no federal or state agency has passed on the merits or fairness of this investment.

(b) Interest Acquired for Investment. Subscriber is acquiring the Interest with Subscriber’s own funds and for Subscriber’s own account (or for a designated custodial or trust account, if Subscriber is a custodian or trustee) for investment and not with a view to the distribution of any interest therein. No other person will own any part of Subscriber’s Interest or have any right to acquire such a part.

(c) Review of Offering Materials and Independent Advice. Subscriber has carefully reviewed the Confidential Offering Memorandum (the “Offering Memorandum”) relating to the Partnership’s Agreement of Limited Partnership (the “Partnership Agreement”) and its exhibits (including the Partnership Agreement) and has discussed with Partnership representatives any questions Subscriber may have had as to such materials or the Partnership or the business, operations or financial condition of the Partnership or the General Partner. Subscriber understands the risks of this investment, as described in the “Certain Risk Factors” section and other portions of the Offering Memorandum, and the conflicts of interest to which the General Partner will be subject. Subscriber has consulted with Subscriber’s own legal, accounting, tax, investment and
other advisers in connection with this investment, to the extent that Subscriber has deemed necessary.

(d) Offer Made Privately. The Partnership's offer of Interests was privately communicated to Subscriber. At no time has Subscriber received information concerning this offering or the Partnership or the General Partner from any newspaper, magazine, television or radio broadcast, leaflet or other advertisement, public promotional meeting or any other form of general advertising or general solicitation.

(e) Subscriber Able to Bear Risks and Protect Own Interests. Subscriber is able to bear the economic risks associated with this investment, including the likelihood that this investment will not generate current income or distributions even if the Partnership is successful, and the possibility that some or all of the amount invested will be lost if the Partnership is not successful.

(f) Representations of Entity Subscribers. If Subscriber is an entity, then:

(1) Subscriber has or will have substantial business activities or investments other than its investment in the Partnership and was not specifically formed for the purpose of purchasing Interests;

(2) less than 40% of Subscriber's assets will be invested in the Partnership;

(3) under Subscriber's governing documents and in practice, Subscriber's investment decisions are based on the investment objectives of Subscriber and its owners generally, not on the particular investment objectives of any one or more of its owners; and

(4) under Subscriber's governing documents and in practice, the participation of each owner of Subscriber in each investment made by Subscriber is based on the owners' ownership percentages or on some other allocation provision that (a) does not result in varying levels of participation among owners based on the nature, amount or other characteristics of a particular investment; and (b) cannot be varied for particular investments made by Subscriber as a result of any election or other decision by any such owner in connection with a particular investment, any exercise of judgment or discretion made by Subscriber or Subscriber's investment decision-maker(s) in connection with a particular investment, or any other reason.

(g) Authority. Subscriber is duly authorized to enter into this Subscription Agreement (including the power of attorney granted herein), and the person signing this Subscription Agreement on behalf of Subscriber is authorized to do so, under all applicable governing documents (e.g., partnership agreement, trust instrument, pension plan, certificate of incorporation, bylaws, operating agreement). Each individual who may participate in Subscriber's investment decision is over twenty-one years of age (or the age of majority in such individual's state of residence). This Subscription Agreement constitutes a legal, valid and binding agreement of Subscriber enforceable against Subscriber in accordance with its terms.

(h) Self-Direction. The individual whose signature appears on the signature page certifies that the shareholders, partners, benefit plan participants or other holders of equity or beneficial interests in the undersigned corporation, partnership, trust, benefit plan or other entity are not permitted and have not been provided the opportunity to decide individually whether or how much to contribute to or to participate in the undersigned's investment in the Partnership.
(i) **Taxpayer Identification Number; No Backup Withholding; Not a Foreign Entity.**
Under penalty of perjury, Subscriber certifies that the taxpayer identification number being supplied herewith by Subscriber is Subscriber's correct taxpayer identification number and that Subscriber is not subject to backup withholding under Section 3406(a)(1)(c) of the Internal Revenue Code. If Subscriber is an entity, then (1) Subscriber is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and Regulations thereunder; and (2) if Subscriber hereafter becomes such a foreign entity, Subscriber shall notify the General Partner within 60 days thereafter.

3. **Transfer Restrictions.** Subscriber understands that, except to the extent withdrawals are permitted under the Partnership Agreement, Subscriber must hold the Interests indefinitely, that no market is ever likely to develop for the Interests, and that transfers of Interests are subject to further restrictions under the Partnership Agreement, although withdrawals of capital are permitted on certain conditions described in the Partnership Agreement. Subscriber agrees that (1) Subscriber will not attempt to transfer the Interest in violation of these transfer restrictions; (2) the Partnership may note these transfer restrictions in its records and refuse to recognize any transfer which violates these transfer restrictions, or any proposed transfer for which the Partnership has not received an acceptable opinion of counsel stating that the proposed transfer will not violate these transfer restrictions; and (3) if the Partnership ever issues a certificate evidencing the Interest, one or more legends required under federal and/or applicable state securities laws and regulations may be imprinted thereon. One of such legends shall read substantially as follows:

"THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT OR AN OPINION OR OTHER EVIDENCE SATISFACTORY TO THE GENERAL PARTNER THAT SUCH REGISTRATION IS NOT REQUIRED."

4. **Indemnification.** Subscriber agrees to indemnify and hold harmless the Partnership and the General Partner, and each of their employees, agents, and attorneys, from and against any and all loss, liability, claims, damage, and expense (including any expense reasonably incurred in investigating, preparing or defending against any litigation commenced or threatened or any claim whatsoever) related to any false representation or warranty or any breach of agreement by Subscriber contained herein or in any other document furnished by the Subscriber to the Partnership in connection with this transaction.

5. **Power of Attorney.** Subscriber hereby irrevocably constitutes and appoints the General Partner, Subscriber's true and lawful attorney-in-fact, with full power and authority in Subscriber's name, place and stead to execute, deliver, certify, acknowledge, swear to, file, record and publish all documents and other instruments described in the section of the Partnership Agreement entitled "Appointment of the General Partner as Attorney-in-Fact," which is hereby incorporated in this paragraph by this reference.

6. **Agreement Binding on Subscriber’s Successors.** The representations, warranties and agreements in this Subscription Agreement shall be binding on Subscriber's successors, assigns, heirs and legal representatives and shall inure to the benefit of the respective successors and assigns of the Partnership and the General Partner.

7. **Arbitration.** Any controversy between Subscriber and the Partnership or the General Partner involving the Partnership, this Agreement, or the Partnership Agreement will be submitted to arbitration on the request of any party to any such controversy in the county and state in which the General Partner maintains its principal office at the time such request is made. The arbitration will comply with and be governed by the provisions of the commercial arbitration rules of the
American Arbitration Association and no party to any such controversy shall be entitled to any punitive damages. Judgment may be entered upon any award granted in any such arbitration in any court of competent jurisdiction in the county and state in which the General Partner maintains its principal office at the time the award is rendered. By signing this Agreement, Subscriber agrees to waive his or her or its right to seek remedies in court, including any right to a jury trial, provided, however, that nothing in this paragraph will constitute a waiver of any right any party to this Agreement may have to choose a judicial forum to the extent such a waiver would violate applicable law.

Governing Law. This Agreement shall be governed by the laws of the State of Delaware.
LIMITED LIABILITY COMPANY AGREEMENT
OF
ACCELERATION CAPITAL, LLC
A DELAWARE LIMITED LIABILITY COMPANY
EFFECTIVE AS OF July 31, 2003

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. THE MEMBERSHIP INTERESTS MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS SO REGISTERED OR QUALIFIED OR UNLESS AN EXEMPTION EXISTS, THE AVAILABILITY OF WHICH IS TO BE ESTABLISHED BY AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY.
This Limited Liability Company Agreement is made and entered into this 31st day of July, 2003, by and among the Members whose signatures appear on the signature page hereof and the Company, by its Manager, Yuri Plyam.

COVENANTS

In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Article 1 – DEFINITIONS

The following capitalized terms used in this Limited Liability Company Agreement shall have the following meanings:

1.1 “Act” shall mean the Delaware Limited Liability Company Act as the same exists on the date hereof and as may be amended from time to time.

1.2 “Adjusted Capital Contributions” shall mean an amount equal to such Equity Owner’s Capital Contributions, if any, pursuant to Article 8, less any Distributions made to such Equity Owner.

1.3 “Affiliate” shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person, (ii) any Person owning or controlling ten percent or more of the outstanding Voting Interests of such Person, (iii) any officer, director, manager, trustee, or general partner of such Person, (iv) any Person who is an officer, director, manager, trustee, general partner, or holder of ten percent or more of the Voting Interests of any Person described in clauses (i) through (iii) of this sentence, (v) a member of the Family of such Person, or (vi) any Person directly or indirectly controlled by or under common control with a member of the Family of such Person. For purposes of this definition, the term “controls,” “is controlled by,” or “is under common control with” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.4 “Capital Account” as of any given date shall mean the Capital Contribution to the Company by an Equity Owner as adjusted up to the date in question pursuant to Article 8.

1.5 “Capital Contribution” shall mean any contribution to the capital of the Company in cash or property by an Equity Owner whenever made. “Initial Capital Contribution” shall mean the initial Capital Contribution of an Equity Owner to the capital of the Company pursuant to this Limited Liability Company Agreement.

1.6 “Certificate of Formation” shall mean the Certificate of Formation of the
Company as filed with the Delaware Secretary of State on July 22, 2003, as the same may be amended from time to time.

1.7 "Code" shall mean the Internal Revenue Code of 1986. Any reference to a specific section of the Code shall be to such section in effect as of the date of this Limited Liability Company Agreement, or, if such referenced section is subsequently amended or superseded, to the corresponding section of the Code that so amends or supersedes the referenced section of the Code.

1.8 "Company" shall mean Acceleration Capital, LLC.

1.9 "Deadlock" shall mean a situation in which (a) either (i) a vote of the Managers or Members is evenly split, and a majority vote of the Managers or a vote of Members holding a Majority Interest, respectively, is required thereon or (ii) a sufficient number of Managers refuse to vote on two consecutive matters and (b) irreparable injury to the Company is threatened or the business and affairs of the Company can no longer be conducted to the advantage of the Members generally as a result thereof.

1.10 "Default Rate" shall mean a floating interest rate equal to five percentage points higher than the Prime Rate on the applicable date.

1.11 "Deficit Capital Account" shall mean with respect to any Equity Owner, the deficit balance, if any, in such Equity Owner’s Capital Account as of the end of the taxable year, after giving effect to the adjustments set forth in Section 8.5(e). This definition of Deficit Capital Account is intended to comply with the provisions of Sections 1.704-1(b)(2)(ii)(d) and 1.704-2 of the Treasury Regulations, and will be interpreted consistently with those provisions.

1.12 "Depreciation" shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable under the Code or the Treasury Regulations with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managers.

1.13 "Distributable Cash" shall mean all cash and cash equivalents received by the Company, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company’s business; (iii) those amounts to be paid to the Managers as Management Fee Performance.
Bonuses or Total Return under Section 5.13(a); and (iv) such Reserves as the Managers reasonably deem necessary for the proper operation of the Company’s business.

1.14 **Distribution** shall mean any transfer of Company money or other property including, without limitation, the capital of the Company, to an Equity Owner on account of an Economic Interest, regardless of whether the transfer occurs during the operation of the Company, on Liquidation of the Company, in exchange for the Member’s interest, or otherwise. For purposes of this Limited Liability Company Agreement, there shall be only two types of Distributions, “Mandatory Distributions” (which term includes only those Distributions described in Section 9.4) and “Permissive Distributions” (as described in Section 9.5).

1.15 **Economic Interest** shall mean an Equity Owner’s share of one or more of the Company’s Net Profits, Net Losses and Distributions pursuant to this Limited Liability Company Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Managers.

1.16 **Economic Interest Owner** shall mean the owner of an Economic Interest who is not a Member.

1.17 **Enforceable Obligation** shall mean an obligation designated as an Enforceable Obligation in Section 8.1 or 8.2.

1.18 **Entity** shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, foundation, business trust, cooperative or association or any foreign trust or foreign business organization.

1.19 **Equity Owner** shall mean an Economic Interest Owner or a Member.

1.20 **Family** of a Person shall mean such Person’s spouse, parent or children.

1.21 **Fiscal Year** shall mean the Company’s fiscal year, which shall be the calendar year, unless otherwise required by the Code or the Treasury Regulations or pursuant to election made thereunder.

1.22 **Gift** shall mean to make a gift, to bequeath or to otherwise transfer for no consideration, whether or not by operation of law. For purposes of this Limited Liability Company Agreement, a Transfer of an asset to a bankruptcy trustee or a bankruptcy estate shall not be considered a Gift.

1.23 **Gross Asset Value** shall mean, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, subject to the following:
(a) The initial Gross Asset Value of property contributed shall be as set forth in Section 8.4;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective fair market values, as reasonably determined by the Managers, as of the following times: (i) the acquisition of an additional interest by any new or existing Equity Owner in exchange for more than a de minimis contribution of property (including money); (ii) the Distribution by the Company to an Equity Owner of more than a de minimis amount of property as consideration for an Ownership Interest; and (iii) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Managers reasonably determine that such adjustments are necessary or appropriate to reflect the relative interests of the Equity Owners in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Equity Owner shall be adjusted to equal the fair market value of such asset on the date of Distribution as reasonably determined by the distributee and the Managers, provided that, if the distributee is a Manager, the determination of the fair market value of the distributed asset shall require the consent of the other Members owning a Majority Interest (determined without regard to the Voting Interest of the distributee Member); and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) of the Code or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations, Section 8.5 of this Limited Liability Company Agreement and subparagraph (d) under the definition of Net Profits and Net Losses. However, the Gross Asset Values of Company assets shall not be adjusted pursuant to the foregoing sentence, to the extent the Managers reasonably determine that an adjustment pursuant to subparagraph (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to the foregoing sentence.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (a), (b) or (d) of this definition, then such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

1.24 “Hedge Fund” shall mean an investment fund that is not required to be registered with the U.S. Securities and Exchange Commission pursuant to the Investment Company Act of 1940.

1.25 “Limited Liability Company Agreement” shall mean this Limited Liability Company Agreement as originally executed and as amended from time to time.
1.26 "Liquidation" shall mean the termination of the Company under Section 708(b)(1) of the Code or the cessation of the Company as a going concern, including the dissolution of the Company pursuant to Section 12.1 hereof (even though the Company may continue in existence for the purpose of winding up its affairs, paying its debts, and distributing any remaining funds or property to the Equity Owners).

1.27 "Majority Interest" with respect to a matter shall mean one or more Voting Interests of Members which taken together exceed 50% of the aggregate of all Voting Interests entitled to vote on that matter.

1.28 "Managers" shall mean the managers designated or appointed in accordance with Section 5.2.

1.29 "Member" shall mean each of the Persons who executes a counterpart of this Limited Liability Company Agreement as a Member and each of the Persons who may hereafter become a Member.

1.30 "Membership Interest" shall mean a Member’s entire interest in the Company including such Member’s Economic Interest and Voting Interest.

1.31 "Net Profits" and "Net Losses" shall mean for each taxable year of the Company an amount equal to the Company’s net taxable income or loss for such year as determined for federal income tax purposes (including separately stated items) in accordance with the accounting method and rules used by the Company and in accordance with Section 703 of the Code with the following adjustments:

(a) Any items of income, gain, loss and deduction allocated to Equity Owners pursuant to Sections 9.2, 9.3 or 9.15 shall not be taken into account in computing Net Profits or Net Losses;

(b) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be added to such taxable income or loss;

(c) Any expenditure of the Company described in Section 705(a)(2)(B) of the Code and not otherwise taken into account in computing Net Profits and Net Losses (pursuant to this definition) shall be subtracted from such taxable income or loss;

(d) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as income or loss from the disposition of such asset for purposes of computing Net Profits and Net Losses;

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(e) Gain or loss resulting from any disposition of any Company asset with respect to which income or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(f) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations to be taken into account in determining Capital Accounts as a result of a Distribution other than in liquidation of a Ownership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses.

1.32 "Ownership Interest" shall mean:

(a) in the case of a Member, the Member’s Membership Interest; and

(b) in the case of an Economic Interest Owner, the Economic Interest Owner’s Economic Interest.

1.33 "Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

1.34 "Prime Rate" shall mean a floating interest rate equal to the prime rate published in The Wall Street Journal on the applicable date.

1.35 "Proxy" shall mean a freely revocable Gift of a Voting Interest by a Member to a natural Person over the age of 21 years, for a term of not more than 11 months.

1.36 "Reserves" shall mean funds set aside or amounts allocated to reserves which shall be maintained in the amounts set forth in the annual budget for the forthcoming year as determined reasonable by the Managers.

1.37 "Sell" shall mean to sell, assign, transfer, exchange, or otherwise transfer for consideration.

1.38 "Sharing Ratio" shall mean the measure of an Equity Owner’s Economic Interest,
as set forth in Section 4.2.

1.39 **Transfer** shall mean, as a noun, any voluntary or involuntary transfer, assignment, sale, gift, bequest, devise or other disposition and, as a verb, to voluntarily or involuntarily transfer, assign, Sell, Gift, bequest, devise or otherwise dispose of. For purposes of this Limited Liability Company Agreement: (1) a grant of a Proxy shall not be deemed to be a Transfer; but (2) a change in the trustee of a trust described in Section 10.2(e) shall be deemed to be a Transfer.

1.40 **Transferring Equity Owner** shall mean any Equity Owner who Transfers all or any portion of his Membership Interest or Economic Interest.

1.41 **Treasury Regulations** shall include proposed, temporary and final regulations promulgated under the Code. Any reference to a specific section of the Treasury Regulations shall be to such section, in effect as of the date of this Limited Liability Company Agreement, or, if such referenced section is subsequently amended or superseded, to the corresponding section of the Treasury Regulations that so amends or supersedes the referenced section of the Treasury Regulations.

1.42 **Unrecovered Losses** shall have the meaning set forth in Section 9.1.

1.43 **Voting Interest** shall mean a Member’s right to participate in the management or affairs of the Company, including the right to vote on, consent to or otherwise participate in any decision of the Members or Managers. The Voting Interest of each Member shall be as set forth in Section 4.3.

Article 2 – THE COMPANY

2.1 **Formation.** On July 22, 2003, Acceleration Capital, LLC was organized as a Delaware limited liability company by executing and delivering a certificate of formation to the Delaware Secretary of State in accordance with and pursuant to the Act.

2.2 **Name.** The name of the Company is Acceleration Capital, LLC.

2.3 **Places of Business.** The Company may locate its places of business, including its principal place of business, at any place or places as the Managers may from time to time deem advisable.

2.4 **Registered Agent and Office.** The Company’s initial registered agent and the business address thereof shall be as set forth in the Certificate of Formation.

2.5 **Term.** The Company shall continue in existence until its termination in accordance with the provisions of this Limited Liability Company Agreement, the Certificate of
Formation or the Act.

2.6 Limitation of Liability. Except as required by any non-waivable provisions of the Act or by this Limited Liability Company Agreement, no Equity Owner shall be liable for an obligation of the Company solely by reason of being or acting as an Equity Owner.

Article 3 – BUSINESS OF COMPANY

3.1 Permitted Businesses. The purpose of the Company shall be:

(a) To carry on any lawful business, purpose or activity whatsoever, whether or not for profit, or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its assets;

(b) To exercise all powers necessary to or reasonably connected with the Company’s business which may be legally exercised by limited liability companies under the Act; and

(c) To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

Article 4 – NAMES, ADDRESSES, FACSIMILE NUMBERS, INITIAL CAPITAL CONTRIBUTIONS, SHARING RATIOS AND VOTING INTERESTS OF EQUITY OWNERS

4.1 Members. The name, tax id numbers and initial capital contribution of the Members are as follows:

<table>
<thead>
<tr>
<th>NAME</th>
<th>TAX ID NUMBER</th>
<th>INITIAL CAPITAL CONTRIBUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plyam, Yuri</td>
<td>568-55-8243</td>
<td>$2000.00</td>
</tr>
<tr>
<td>Faith, Curtis M.</td>
<td>033-58-2778</td>
<td>$2000.00</td>
</tr>
</tbody>
</table>

4.2 Sharing Ratios. Unless and until adjusted pursuant to the terms of this Limited Liability Company Agreement, the Sharing Ratios of the Equity Owners, shall be as follows:

<table>
<thead>
<tr>
<th>NAME</th>
<th>SHARING RATIO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plyam, Yuri</td>
<td>33.33%</td>
</tr>
<tr>
<td>Faith, Curtis M.</td>
<td>66.67%</td>
</tr>
</tbody>
</table>

4.3 Voting Interest. Unless and until adjusted pursuant to the terms of this Limited Liability Company Agreement, the Voting Interests of the Members shall be as follows:
NAME                                      VOTING INTEREST
Plyam, Yuri                                33.33%
Faith, Curtis M.                            66.67%

Article 5 – RIGHTS AND DUTIES OF MANAGERS

5.1 Management. The business and affairs of the Company shall be managed by the Managers. Unless authorized to do so by the Managers or as expressly set forth in this Limited Liability Company Agreement, no Member, Equity Owner, attorney-in-fact, employee or other agent or Affiliate of the Company shall have any power or authority to direct the affairs of the Company, bind the Company in any way, pledge its credit or to render it liable pecuniarily for any purpose. Except for situations in which the approval of the Members is expressly required by this Limited Liability Company Agreement or by non-waivable provisions of applicable law, the Managers shall have full and complete authority, power and discretion to manage and control the business, affairs an properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company’s business. Without limiting the generality of the foregoing, except as limited by Section 5.5, the Managers shall have power and authority without further action of the Members, on behalf of the Company:

(a) To acquire real and/or personal property from any Person, on such terms as the Managers may deem appropriate;

(b) To borrow money for the Company or incur indebtedness for the Company’s business from banks or other lending institutions, on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

(c) To obligate the Company to indemnify any Manager or Member who shall guarantee any debt of the Company or who shall pledge or hypothecate such Manager or Member’s property to secure the debts of the Company;

(d) To purchase liability and other insurance to protect the Company’s property and business;

(e) To hold and own any Company real and/or personal properties in the name of the Company;

(f) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;
(g) To Sell or otherwise dispose of the Company’s real or personal property, in whole or in part, on such terms as the Managers shall deem appropriate;

(h) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; employment agreements; distribution and sales agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company’s property; assignments; bills of sale; leases; brokerage agreements; partnership agreements, operating agreements or limited liability company agreement of other limited liability companies; and any other instruments or documents necessary, in the reasonable opinion of the Managers, to the ordinary conduct of the business of the Company;

(i) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(j) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Managers may approve;

(k) To do and perform all other acts as may be necessary or appropriate to the ordinary conduct of the Company’s business;

(l) To make Distributions which are authorized pursuant to Sections 9.4 or 9.5; and

(m) To delegate to one or more Managers the powers, rights and authority of the Managers with respect to the Company’s powers and the management of the business and affairs of the Company, whether in general or confined to specific instances, provided that such delegation shall be revocable, upon notice to the one or more Managers to whom the delegated powers, rights and authority are granted, and that such delegation does not alone constitute compliance with applicable standards of conduct by each of the Managers.

5.2 Number, Tenure and Qualifications. The Company shall initially have one Manager. The initial Manager shall be Yuri Plyam. The number of Managers of the Company shall be fixed from time to time by the affirmative vote of Members holding a Majority Interest, but in no instance shall there be less than one Manager. Each Manager shall hold office until he resigns pursuant to Section 5.10, is removed pursuant to Section 5.11, or dissolves. Managers may, but need not be, Members of the Company.

5.3 Manner of Acting. At any time when there is more than one manager, any action permitted to be taken by the Managers shall require an affirmative vote of a majority of the Managers, unless the approval of a greater or smaller number of the Managers is expressly required or permitted by this Limited Liability Company Agreement.
5.4 **Budget.** The Managers shall use their best efforts to manage the business of the Company as set forth in the budget which shall be determined by the Managers.

5.5 **Deadlock.** Upon a Deadlock of the Managers, the Managers shall hold a meeting of the Managers at which meeting the Managers shall consider and vote upon the matters to which the Deadlock relates. If, at such meeting, the Managers are unsuccessful in resolving the Deadlock of the Managers, the matter in question shall be submitted to a vote of the Members at a meeting of the Members held for such purpose, which matter shall be deemed passed upon an affirmative vote of the Members holding at least a Majority Interest. If the vote of the Members results in a Deadlock of the Members, a second vote of the Members shall be taken on the matter, at the same meeting of the Members. If such second vote of the Members is unsuccessful in resolving the Deadlock of the Members, the Company shall be dissolved pursuant to Article 12.

5.6 **Reliance on Reports and Information by Managers.** In performing their duties, the Managers shall be entitled to rely in good faith upon such information, opinions, reports, or statements, including financial statements and other financial data, in each case presented to the Company by any of its managers members, officers, employees or committees of the Company, or by any other person, as to matters the member the Managers reasonably believes are within such other person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the Company by Persons and groups reasonably believed to have, provided that they shall not be considered to be acting in good faith if they have knowledge concerning the matter in question that would cause such reliance to be unwarranted.

5.7 **Managers and Members Have No Exclusive Duty to Company.**

(a) The Managers shall not be required to manage the Company as their sole and exclusive occupation. The Managers and any Equity Owner may have other business interests and may engage in other investments, occupations and activities in addition to those relating to the Company, including those investments, occupations and activities which may be in competition with the activities and interests of the Company.

(b) Except as set forth in the foregoing paragraph, neither the Company nor any Equity Owner shall have any right, by virtue of this Limited Liability Company Agreement, to share or participate in such other investments or activities of any Manager or any Equity Owner or to the income or proceeds derived therefrom. Although a business opportunity of the sort engaged in by the Company may come to the attention of one or more of the Managers or Equity Owners, the Managers and the Equity Owners shall not be under a duty, express or implied, to first offer such opportunity to the Company or to the other Equity Owners before such Managers or Equity Owner may, personally or on behalf of another Entity with which the Manager or Equity Owner is affiliated, take advantage of such opportunity, and the Equity Owners personally and the Company as an Entity, hereby discharge and release the Managers and other Equity Owners of and from any duty to the contrary which may be owed by Managers or
Equity Owners, directly or indirectly, from the doctrine generally referred to as the "corporate opportunity doctrine" or any like principle of law applicable to limited liability companies. No Manager or Equity Owner shall incur any liability to the Company or to any of its Equity Owners as a result of engaging in any other business venture.

(c) The Managers may pay from the funds of the Company such persons as the Managers deem appropriate, including employees, agents and affiliates of a Manager, sales commissions or referral fees with regard to any Hedge Fund managed by the Company.

5.8 Indemnity of the Managers, Employees and Other Agents. The Company shall indemnify the Managers for and hold them harmless from any liability, whether civil or criminal, and any loss, damage, or expense, including reasonable attorneys' fees, incurred in connection with the ordinary and proper conduct of the Company's business and the preservation of its business and property, or by reason of the fact that such Person is or was a Manager; provided the Manager to be indemnified acted in good faith and in a manner such Manager believed to be consistent with the provisions of this Limited Liability Company Agreement; and provided further that with respect to any criminal action or proceeding, the Manager to be indemnified had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that indemnification is not available hereunder. The obligation of the Company to indemnify any Manager hereunder shall be satisfied out of Company assets only, and if the assets of the Company are insufficient to satisfy its obligation to indemnify any Manager, such Manager shall not be entitled to contribution from any Member. The Company may indemnify its employees and other agents who are not Managers to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by Members owning a Majority Interest.

5.9 Resignation. Any Manager may resign at any time by giving written notice to any other Manager or, if no other Managers exist, to the Members. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also an Equity Owner shall not affect the Manager's rights as an Equity Owner.

5.10 Removal. Members holding a Majority Interest may remove a Manager at any time, with or without cause. The removal of a Manager who is also an Equity Owner shall not affect the Manager's rights as an Equity Owner and shall not constitute a withdrawal of an Equity Owner.

5.11 Vacancies. Any vacancy occurring for any reason in the number of Managers of the Company shall be filled by the affirmative vote of Members holding at least a Majority Interest. Any Manager's position to be filled by reason of an increase in the number of Managers shall be filled by the affirmative vote of Members holding at least a Majority Interest.
5.12 Reimbursement, Organization Expenses.

(a) Upon the submission of appropriate documentation each Manager shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred by such Manager on behalf of the Company or at the Company’s request.

(b) The Company shall reimburse the Managers for the expenses reasonably incurred by it in connection with the formation, organization and capitalization of the Company, including the legal fees incurred in connection with negotiating and drafting this Limited Liability Company Agreement and any other documentation necessary for the formation and operation of any Hedge Fund managed or to be managed by the Company.

(c) The Company shall make an appropriate election to treat the expenses incurred by the Company in connection with the formation and organization of the Company to be amortized under the 60-month period beginning with the month in which the Company begins business to the extent that such expenses constitute “organizational expenses” of the Company within the meaning of Code Section 709(b)(2).

5.13 Right to Rely on the Managers. Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by any Manager as to:

(a) The identity of any Manager or Equity Owner;

(b) The existence or nonexistence of any fact or facts which constitute a condition precedent to acts on behalf of the Company by any Manager or which are in any other manner germane to the affairs of the Company;

(c) The Persons who are authorized to execute and deliver any instrument or document of the Company; or

(d) Any act or failure to act by the Company or any other matter whatsoever involving the Company or any Equity Owner.

Article 6 – RECORDS AND INSPECTION RIGHTS

6.1 Inspection Rights. Upon reasonable demand for any purpose reasonably related to the Member’s interest as a Member, which demand shall be in writing and shall state the purpose thereof, a member may review and obtain from the Company, at the Member’s expense, the following about information and records of the company:

(a) True and full information regarding the status of the business and financial condition of the Company;
(b) Promptly after becoming available, a copy of the Company’s federal, state
and local income tax returns for each year;

(c) A current list of the name and last known business, residence or mailing
address of each Member and Manager;

(d) A copy of any written limited liability company agreement and certificate
of formation and all amendments thereto, together with executed copies of any written powers of
attorney pursuant to which such limited liability company agreements and any certificate of
formation and all amendments thereto have been executed; and

(e) True and full information regarding the amount of cash and a description
and statement of the agreed value of any other property or services contributed by each Member
and which each Member had agreed to contribute in the future, and the date on which each
became a Member.

6.2 Confidentiality. The Managers shall have the right to keep confidential from the
Members, for such period of time as the Managers deem reasonable, any information which the
managers reasonably believe to be in the nature of trade secrets or other information the
disclosure of which the managers in good faith believe is not in the best interest of the Company
or could damage the Company or its business or which the Company is required by law or by
agreement with a third party to keep confidential.

Article 7 – MEETINGS OF MEMBERS

7.1 No Required Meetings. The Members may but shall not be required to hold any
annual, periodic or other formal meetings. Meetings of the Members may be called by any
Manager or by any Member or Members holding at least a Majority Interest.

7.2 Place of Meetings. The Managers or Member(s) calling the meeting may
designate the place of meeting for any meeting of the Members. If no designation is made, the
place of meeting shall be the principal place of business of the Company.

7.3 Notice of Meetings. Except as provided in Section 7.4, written notice stating the
place, day and hour of the meeting and the purpose or purposes for which the meeting is called
shall be delivered not less than ten nor more than fifty days before the date of the meeting, either
personally or by mail, by or at the direction of the Manager or Member(s) calling the meeting, to
each Member entitled to vote at such meeting.

7.4 Meeting of all Members. If all of the Members shall meet at any time and place
and consent to the holding of a meeting at such time and place, such meeting shall be valid
without call or notice, and at such meeting lawful action may be taken.
7.5 Record Date. For the purpose of determining Members: (a) entitled to notice of or to vote at any meeting of Members or any adjournment thereof; (b) Members entitled to receive payment of any Distribution; or (c) Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such Distribution is adopted, or the date on which determination of Members is made for any other purpose, respectively, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 7.5, such determination shall apply to any adjournment thereof.

7.6 Quorum. Members holding a Majority Interest, represented in person or by Proxy, shall constitute a quorum with respect to a matter to be voted upon at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Voting Interests so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Voting Interests whose absence would cause less than a quorum.

7.7 Manner of Acting.

(a) If a quorum is present with respect to a matter, the affirmative vote on such matter of Members holding a Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act or this Limited Liability Company Agreement.

(b) Unless otherwise expressly provided herein or required under applicable law, Members who have an interest (economic, as a Manager or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Voting Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

(c) If a Person voting, consenting, waiving, appointing a Proxy, or revoking a Proxy appointment is not a Member, the Managers, if acting in good faith, may accept such vote, consent, waiver, Proxy appointment or Proxy appointment revocation and to give it effect as the act of the Member for whom such Person purports to be acting, if: (i) subject to the provisions of Section 10.3(a), (A) the Person so acting purports to be that of an administrator, personal representative, executor, trustee (other than a trustee in bankruptcy), guardian, or conservator representing the Member and, if the Managers request, evidence of fiduciary status acceptable to
the Managers has been presented with respect to the vote, consent, waiver, Proxy appointment or Proxy appointment revocation; (B) the Person so acting purports to be a receiver or trustee in bankruptcy of the Member and, if the Managers request, evidence of this status acceptable to the Managers has been presented with respect to the vote, consent, waiver, Proxy appointment or Proxy appointment revocation; or (C) the Person so acting purports to be a pledgee, beneficial owner or attorney-in-fact of the Member and, if the Managers request, evidence acceptable to the Managers of the Person’s authority to so act for the Member has been presented with respect to the vote, consent, waiver, Proxy appointment or Proxy appointment revocation; (ii) the Member is an Entity and the Person so acting purports to be that of an officer or agent of the Entity; (iii) two or more Persons are the Member as co-tenants or fiduciaries and the Person so acting purports to be at least one of the co-tenants or fiduciaries, and appears to be acting on behalf of all the co-tenants or fiduciaries; or (iv) the acceptance of the vote, consent, waiver, Proxy appointment or Proxy appointment revocation is otherwise proper under rules established by the Managers that are not inconsistent with this Limited Liability Company Agreement.

The Managers may reject a vote, consent, waiver, Proxy appointment or Proxy appointment revocation of a Person if (a) they are acting in good faith, and (b) either (i) the Managers have reasonable basis for doubt about the validity of the authority of the Person so acting to act for the Member, or (ii) the requirements of Section 10.3(a) have not been met.

None of the Company, its Managers, or any agent who accepts or rejects a vote, consent waiver, Proxy appointment or Proxy appointment revocation in good faith and in accordance with the standards of Section 7.7(c) is liable in damages for the consequences of the acceptance or rejection.

7.8 Proxies. At all meetings of Members, a Member may vote in person or by Proxy executed in writing by the Member. Such Proxy shall be filed with the Managers of the Company before or at the time of the meeting.

7.9 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents or approvals describing the action taken and signed by Members holding sufficient Voting Interests to approve such action had such action been properly voted on at a duly called meeting of the Members. Action taken under this Section 7.9 is effective when Members with the requisite Voting Interests have signed the consent or approval, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

7.10 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

7.11 Meetings by Telecommunication. Any or all of the Members may participate in a
meeting of Members by, or the meeting may be conducted through the use of, any means of
communication by which all persons participating in the meeting may hear each other during the
meeting. A Member participating in a meeting by this means is deemed to be present in person
at the meeting.

Article 8 – CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

8.1 Initial Capital Contributions. Each Member shall contribute to the capital of the
Company cash or property in such amount as is set forth in the column entitled Initial Capital
Contribution in Section 4.1. The obligation of a Member to contribute its Initial Capital
Contribution under the foregoing sentence shall be an Enforceable Obligation of such Member.
Except for the foregoing, and as set forth in Section 8.2, no Equity Owner shall be required to
make any Capital Contributions.

8.2 Permitted Additional Capital Contributions. To the extent approved by the
Managers, from time to time, the Members may be permitted to make additional Capital
Contributions (the “Permitted Additional Capital Contributions”), provided that all of the
Members shall have the opportunity (but not the obligation) to participate in such Permitted
Additional Capital Contribution proportionate to their Sharing Ratios. The Managers shall
provide to each of the Members a statement of the terms on which the Permitted Additional
Capital Contributions may be made, including the effect of the Permitted Additional Capital
Contributions on the Equity Owners’ Sharing Ratios and Voting Interests (the “Permitted
Additional Capital Contribution Notice”). All Permitted Additional Capital Contributions shall
be made in cash or cash equivalent only. Any Member electing to participate in a Permitted
Additional Capital Contribution shall deliver written and executed notice of such election (the
“Member Election Notice”) to the Company on or before the date set forth in Permitted
Additional Capital Contribution Notice. Upon the delivery by a Member of the Member’s
written election to participate in a Permitted Additional Capital Contribution, the amount of such
contribution shall be an Enforceable Obligation against such Member.

8.4 Valuation of Contributed Property.

(a) The fair market value and the initial Gross Asset Value of property
contributed by a Member as its Initial Capital Contribution shall be the amount set forth in the
column entitled “Initial Capital Contribution” in Section 4.1.

(b) Other than as described in Section 8.4(a), the fair market value and initial
Gross Asset Value of any property other than cash shall be determined as follows:

(i) The value of the property other than cash contributed shall be the
fair market value thereof, taking into consideration any liabilities to which the property is subject,
as determined by the Managers in good faith. Upon such a determination by the Managers, the
Managers shall give notice thereof to the Members, which determination shall be final,
conclusive and binding, unless, within 20 days after the giving of such notice a Member makes demand upon the Company objecting to such determination.

(ii) In the case of an objection to the Managers’ determination made pursuant to Section 8.4(b)(i), the value of the property other than cash contributed shall be the fair market value of such item, taking into consideration any liabilities to which the property is subject, as determined by the Company’s independent certified public accountants or such other certified public accountants that are acceptable to the Managers and the objecting Member, which determination shall be final, conclusive and binding or, if there be no such certified public accountants or if they refuse or are unable to make such a determination, then the determination of fair market value, taking into consideration any liabilities to which the property is subject, shall be submitted to and settled by binding arbitration under and pursuant to the Minnesota Uniform Arbitration Act and the Rules and Regulations of the American Arbitration Association, the decision or award from which shall be final, conclusive and binding and a final judgment may be entered thereon by any court of competent jurisdiction. The cost of such determination by certified public accountants or arbitration shall be borne and paid by the objecting Member, unless the determination of fair market value thereby is 20% less than the fair market value determined by the Managers under Section 8.4(b)(i), in which case such cost shall be borne by the Company.

8.5 Capital Accounts.

(a) A separate Capital Account will be maintained for each Equity Owner. Each Equity Owner’s Capital Account will be increased by (1) the amount of money contributed by such Equity Owner to the Company; (2) the fair market value of property contributed by such Equity Owner to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (3) allocations to such Equity Owner of Net Profits; (4) any items in the nature of income and gain which are specially allocated to the Equity Owner pursuant to Sections 9.2 or 9.3 and (5) allocations to such Equity Owner of income described in Section 705(a)(1)(B) of the Code. Each Equity Owner’s Capital Account will be decreased by (1) the amount of money distributed to such Equity Owner by the Company; (2) the fair market value of property distributed to such Equity Owner by the Company (net of liabilities secured by such distributed property that such Equity Owner is considered to assume or take subject to under Section 752 of the Code); (3) allocations to such Equity Owner of expenditures described in Section 705(a)(2)(B) of the Code; (4) any items in the nature of deduction and loss that are specially allocated to the Equity Owner pursuant to Sections 9.2 or 9.3 and (5) allocations to such Equity Owner of Net Losses.

(b) In the event of a permitted sale or exchange of an Ownership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Ownership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.
(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.5 is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company’s accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.5 should be modified in order to comply with Section 704(b) of the Code and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.5, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Equity Owners.

(d) Upon Liquidation of the Company, liquidating distributions will in all cases be made in accordance with the positive Capital Account balances of the Equity Owners, as determined after taking into account all Capital Account adjustments for the Company’s taxable year during which the Liquidation occurs by the end of such taxable year (or, if later, within 90 days after the date of Liquidation). The Company may offset damages for breach of this Limited Liability Company Agreement by an Equity Owner whose interest is liquidated (either upon the withdrawal of the Equity Owner or the Liquidation of the Company) against the amount otherwise distributable to such Equity Owner. Except as otherwise required in the Act (and subject to Sections 8.1 and 8.2), no Equity Owner shall have any liability to restore all or any portion of a deficit balance in such Equity Owner’s Capital Account.

(e) For purposes of this Section 8.5, each Equity Owner’s Deficit Capital Account, if any, shall be adjusted as follows:

(i) credit to such Deficit Capital Account any amount which such Equity Owner is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Treasury Regulations); and

(ii) debit to such Deficit Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

8.6 Remedies for Non-Payment of Enforceable Obligations. Upon a failure of any Equity Owner (the “Defaulting Equity Owner”), to make full and timely payment to the Company of an Enforceable Obligation, the Managers shall promptly give notice (the “Default Notice”) to all Equity Owners of: (a) the failure and (b) a meeting to determine the appropriate course of action (the “Non-Defaulting Equity Owners Meeting”). The Equity Owners who have timely satisfied their Enforceable Obligations to make the required Capital Contributions (the
"Non-Defaulting Equity Owners") may, upon the affirmative vote of Non-Defaulting Equity Owners which are Members holding a majority of the Voting Interests owned by all Non-Defaulting Equity Owners, pursue any of the following remedies:

(a) The Company may foreclose upon the security interest in the Defaulting Equity Owner’s Ownership Interest in favor of the Company provided for in Section 13.1 and bring an action to recover any deficiency in such Enforceable Obligation of the Defaulting Equity Owner.

(b) The Company may bring an action against the Defaulting Equity Owner for the Enforceable Obligation or any deficiency thereof, or any consequence arising as a result from the failure to make full and timely payment to the Company of the Enforceable Obligation.

(c) All or any of the Non-Defaulting Equity Owners, shall have an option, but no obligation, to loan the amount which the Defaulting Equity Owners have failed to contribute to the Company (proportionate to the ratio of the Sharing Ratio held by each respective Equity Owner electing to loan funds, divided by the aggregate Sharing Ratios held by all Non-Defaulting Equity Owners electing to advance funds). The amount that is loaned by any Non-Defaulting Equity Owner shall, at the election of each such Non-Defaulting Equity Owner (exercised by written notice to the Defaulting Equity Owner and the Company at the time the loan is made), be treated in either of the following manners:

(i) The loan may be treated as an unsecured loan to the Company, bearing interest per annum at the Default Rate, payable out of any funds paid by the Company to, or withheld by the Company from, the Defaulting Equity Owner to cure the breach, or at such other time as the Company and the lending Non-Defaulting Equity Owner(s) may agree. Payments shall be credited first to accrued interest. The promissory note or other loan documentation evidencing the loan to the Company shall contain such other terms and conditions as mutually agreed by the Company and the lending Non-Defaulting Equity Owner(s). Payments to Non-Defaulting Equity Owners of loans by them pursuant to this Section 8.6(c)(i) shall be made pari passu.

(ii) The loan may be treated as a secured loan to the Defaulting Equity Owner, followed by a contribution of the borrowed funds to the Company by the Defaulting Equity Owner, curing the breach in whole or in part. Such a loan shall be payable on demand and bear interest per annum at the Default Rate provided above. The payment of such loan to the Defaulting Equity Owner shall be secured by a security interest in the Defaulting Equity Owner’s Ownership Interest. The Non-Defaulting Equity Owner from whom the loan was made shall have all the rights of a secured party under Article 9 of the Minnesota Uniform Commercial Code, and the Company shall agree to subordinate its security interest in the Defaulting Equity Owner’s Ownership Interest granted under Section 13.1. Until the Defaulting Equity Owner’s debt resulting from this Section 8.6(c)(ii) to any Non-Defaulting Equity Owner(s), together with interest thereon, is paid in full, any funds or property which would otherwise be distributed to the
Defaulting Equity Owner from time to time hereunder shall be paid to such Non-Defaulting Equity Owner(s). Any such payments shall be deemed to be Distributions to the Defaulting Equity Owner by the Company followed by appropriate payments by the Defaulting Equity Owner to the respective Non-Defaulting Equity Owner(s). Payments shall be credited first to accrued interest. Payments to Non-Defaulting Equity Owners of loans by them pursuant to this 8.6(c)(ii) shall be made pari passu.

(d) The Non-Defaulting Equity Owners shall have the option (but not the obligation) to purchase all, but not less than all, of the Defaulting Equity Owner’s Ownership Interest (the “Available Ownership Interest”) as provided in this Section 8.6(d). The option granted in this Section 8.6(d) (the “Default Purchase Option”) shall be exercisable in the following manner and in accordance with the following terms:

(i) A Non-Defaulting Equity Owner wishing to exercise the Default Purchase Option shall so notify the Defaulting Equity Owner and the Company at the Non-Defaulting Equity Owners Meeting;

(ii) Each Non-Defaulting Equity Owner electing to exercise the Default Purchase Option (each an “E lecting Equity Owner” and collectively the “E lecting Equity Owners”) shall be entitled to purchase a portion of the Available Ownership Interest equal to the Available Ownership Interest multiplied by the ratio of the Electing Equity Owner’s Sharing Ratio as of the date of the Non-Defaulting Equity Owners Meeting over the aggregate Sharing Ratios of all of the Electing Equity Owners as of the date of the Non-Defaulting Equity Owners Meeting;

(iii) The closing for the purchase and sale of the Available Ownership Interest pursuant to this Section 8.6(d) shall take place within ten days after the date of the Non-Defaulting Equity Owners Meeting. The specific time and place of such closing shall be as agreed by the Electing Equity Owners and the Defaulting Member, provided that, in the absence of agreement, the closing shall take place at the Company’s principal office.

(iv) The price for the Available Ownership Interest (the “Default Buyout Price”) shall be equal to [50%] of the Defaulting Equity Owner’s Capital Account balance as of the last day of the month preceding the month in which the Non-Defaulting Equity Owners Meeting is given. For purposes of this Section 8.6(d), the Company’s independent certified public accountant shall determine the balance in the Defaulting Equity Owner’s Capital Account (without regard to any optional adjustments which may, but are not required, to be made for any purpose, including any optional adjustments that may be made in order to reflect the fair market value of the Company’s property), and such determination shall be final for purposes of this Limited Liability Company Agreement.

(v) Upon any purchase of a Defaulting Equity Owner’s Ownership Interest pursuant to this Section 8.6(d), the Default Buyout Price may be paid at closing in
immediately available funds, or, in the sole discretion of each Electing Equity Owner, by delivering at closing a note issued by the Electing Equity Owner(s) as payment for the portion of the Default Buyout Price attributable to the portion of the Available Ownership Interest to be purchased by the Electing Equity Owner. The note(s), if any, issued as payment for the Default Buyout Price shall be negotiable promissory note(s) of each of the Electing Equity Owners, bearing simple interest per annum at the Prime Rate. Any such note(s) shall provide for payments of principal and interest in equal consecutive monthly installments over a period of not more than five years from the date of issuance of such note, commencing from the date of issuance of such note. Any such note(s) shall be prepayable without penalty, in whole or in part, with prepayments applied to the last installment or installments coming due. Such note(s) shall provide that if any installment of principal or interest is not paid when due or if suit is brought thereon, the maker will pay all costs of collection, including reasonable attorneys’ fees.

(vi) Upon the closing for the purchase and sale of the Available Ownership Interest pursuant to this 8.6(d), the Sharing Ratio and Voting Interest, if any, of each Electing Equity Owner shall be increased by an amount equal to the Electing Equity Owner’s pro rata portion of the Available Ownership Interest.

(vii) Upon purchasing the Available Ownership Interest, each Electing Equity Owner shall make an additional Capital Contribution to the Company in an amount equal to the product of the Capital Contribution that the Defaulting Equity Owner has failed to pay multiplied by the ratio of the Available Ownership Interest purchased by the Electing Equity Owner over the total Available Ownership Interest.

(e) The Non-Defaulting Equity Owners shall have the option (but not the obligation) to advance to the Company, pro rata according to the Sharing Ratios of the Non-Defaulting Equity Owners that have elected to so advance, unless the Non-Defaulting Equity Owners determine otherwise, the amount of the Capital Contribution that the Defaulting Equity Owner has failed to pay and, by written notice to the Defaulting Equity Owner, invoke the provisions of this Section 8.6(e) (said amount being hereinafter referred to as a “Delinquency Advance”). Effective as of the date of the Company’s receipt of the Delinquency Advance, the Defaulting Equity Owner’s Sharing Ratio and Voting Interest, if any, shall be decreased, and the Non-Defaulting Equity Owner’s Sharing Ratios and Voting Interests, if any, shall be increased pro rata according to the amounts advanced by each, if more than one, by an amount equal to the “Percentage Interest Adjustment” computed, pursuant to the following formula:

\[ A \times \left( \frac{B}{C} \right) = \text{“Percentage Interest Adjustment”} \]

(A) The multiplier for the formula (“A”) shall be the Sharing Ratio or Voting Interest of the Defaulting Equity Owner prior to the Defaulting Equity Owner’s failure;

(B) The numerator for the formula (“B”) shall be the amount of
required Capital Contribution which the Defaulting Equity Owner has failed to make;

(C) The denominator for the formula ("C") shall be the amount of required Capital Contribution which the Defaulting Equity Owner has failed to make, plus the sum of all previous Capital Contributions made by the Defaulting Equity Owner to the date of the failure.

For example, if an Equity Owner with a 25% Sharing Ratio has made an Initial Capital Contribution of $100,000.00 and fails to make its 25% share ($150,000.00) of a Mandatory Additional Capital Contribution totaling $600,000.00, the Defaulting Equity Owner would have such Equity Owner’s Sharing Ratio decreased from 25% to 10%.

(f) The Non-Defaulting Equity Owners shall have the option (but not the obligation) to advance to the Company, pro rata, according to the Sharing Ratios of the Non-Defaulting Equity Owners that have elected to so advance, unless the Non-Defaulting Equity Owners agree otherwise, the amount of the Capital Contribution that the Defaulting Equity Owner has failed to pay, and by written notice to the Defaulting Equity Owner, invoke the provisions of this Section 8.6(f) (said amount being hereinafter referred to as a “Penalty Delinquency Advance”). Effective as of the date of the Company’s receipt of the Penalty Delinquency Advance, the Defaulting Equity Owner’s Sharing Ratio and Voting Interests, if any, shall be decreased and the Non-Defaulting Equity Owner’s Sharing Ratio and Voting Interests, if any, shall be increased pro rata in accordance with the amounts advanced by each, if more than one, by an amount equal to the “Penalty Percentage Interest Adjustment” computed pursuant to the following formula:

\[ A \times \left( \frac{B}{C} \right) \times [1.2] = \text{"Penalty Percentage Interest Adjustment"}; \]

(A) The multiplier for the formula ("A") shall be the Sharing Ratio or Voting Interest of the Defaulting Equity Owner prior to the Defaulting Equity Owner’s failure;

(B) The numerator for the formula ("B") shall be the amount of required Capital Contribution which the Defaulting Equity Owner has failed to make;

(C) The denominator for the formula ("C") shall be the amount of required Capital Contribution which the Defaulting Equity Owner has failed to make, plus the sum of all previous Capital Contributions made by the Defaulting Equity Owner to the date of the failure.

For example, if an Equity Owner with a 25% Sharing Ratio has made an Initial Capital Contribution of $100,000.00 and fails to make its 25% share ($150,000.00) of a Mandatory Additional Capital Contribution totaling $600,000.00, the Defaulting Equity Owner would have such Equity Owner’s Sharing Ratio decreased from 25% to 7%.
Article 9 — ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

9.1 Allocations of Profits and Losses from Operations. The Net Profits and Net Losses of the Company for each Fiscal Year will be allocated as follows:

(a) Except as provided in Section 9.2, Net Losses shall be allocated as follows:

(i) First, to each Equity Owner whose Adjusted Capital Contribution is greater than zero until the total amount of Net Losses allocated to each such Equity Owner pursuant to this Section 9.1(a)(i) is equal to the total amount of each such Equity Owner’s Adjusted Capital Contribution. Net Losses allocated pursuant to this Section 9.1(a)(i) shall be allocated to the Equity Owners in proportion to their respective Adjusted Capital Contributions;

(ii) Second, to the Equity Owners in proportion to their relative Sharing Ratios.

(b) Except as provided in Section 9.2, Net Profits shall be allocated to the Equity Owners as follows:

(i) First, to each Equity Owner which previously has been allocated Net Losses pursuant to Section 9.1(a) which have not been fully offset by allocations of Net Profits pursuant to this Section 9.1(b)(i) (“Unrecovered Losses”) until the total amount of Net Profits allocated to each such Equity Owner pursuant to this Section 9.1(b)(i) is equal to the total amount of Net Losses which have been allocated to such Equity Owner pursuant to Section 9.1(a). Net Profits allocated pursuant to this Section 9.1(b)(i) shall be allocated to the Equity Owners in proportion to their respective Unrecovered Losses;

(ii) Second, to each Equity Owner an amount equal to the total amount distributed to such Equity Owner pursuant to Section 9.6(a) proportionate with the total amount distributed to the Equity Owners pursuant to Section 9.6(a).

(iii) Third, to the Equity Owners in proportion to their Sharing Ratios.

9.2 Special Allocations to Capital Accounts. The allocations of Net Profits and Net Losses of the Company made pursuant to Section 9.1 shall be subject to the following special allocations:

(a) In the event any Equity Owner unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of such Equity Owner,
then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated to such Equity Owner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 9.2(a) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(b) In the event any Equity Owner would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that such Equity Owner is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations and such Equity Owner’s share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations), the Capital Account of such Equity Owner shall be specially credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

(c) Notwithstanding any other provision of this Section 9.2, if there is a net decrease in the Company’s minimum gain as defined in Section 1.704-2(b) of the Treasury Regulations during a taxable year of the Company, then, the Capital Accounts of each EquityOwner shall be allocated items of income (including gross income) and gain for such year (and if necessary for subsequent years) equal to that Equity Owner’s share of the net decrease in Company minimum gain. This Section 9.2(c) is intended to comply with the minimum gain chargeback requirement of Section 1.704-2 of the Treasury Regulations and shall be interpreted consistently therewith. If in any taxable year that the Company has a net decrease in the Company’s minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Equity Owners and it is not expected that the Company will have sufficient other income to correct that distortion, the Managers may in their discretion (and shall, if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Section 1.704-2(f)(4) of the Treasury Regulations.

(d) Notwithstanding any other provision of this Section 9.2, except Section 9.2(c), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain, as defined in Section 1.704-2(i)(2) of the Treasury Regulations, attributable to a Partner Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt (determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations) as of the beginning of the year shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) equal to such Member’s share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt. A Member’s share of the net decrease in Partner Nonrecourse Debt Minimum Gain shall be determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations; provided that a Member shall not be subject to
this provision to the extent that an exception is provided by Section 1.704-2(i)(4) of the Treasury Regulations and any Revenue Rulings issued with respect thereto. Any Partner Nonrecourse Debt Minimum Gain allocated pursuant to this provision shall consist of first, gains recognized from the disposition of Company property subject to the Partner Nonrecourse Debt, and, second, if necessary, a pro rata portion of the Company’s other items of income or gain for that year. This Section 9.2(d) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

(e) Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) of the Code which are attributable to any nonrecourse debt of the Company and are characterized as partner nonrecourse deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Equity Owners’ Capital Accounts in accordance with said Section 1.704-2(i) of the Treasury Regulations.

(f) Beginning in the first taxable year in which there are allocations of “nonrecourse deductions” (as described in Section 1.704-2(b) of the Treasury Regulations), such deductions shall be allocated to the Equity Owners in the same manner as Net Losses are allocated for such period.

9.3 Application of Credits and Charges. Any credit or charge to the Capital Accounts of the Equity Owners pursuant to Section 9.2 hereof shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to Section 9.1, so that the net amount of any items charged or credited to Capital Accounts pursuant to Sections 9.1 and 9.2 hereof shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Equity Owner pursuant to the provisions of this Article 9 if the special allocations required by Section 9.2 hereof had not occurred.

9.4 Mandatory Distributions. Except as set forth in this Section 9.4, no Distributions shall be required to be made. The following Mandatory Distributions shall be made:

(a) Distributions resulting from a Liquidation of the Company, to which the provisions of Section 8.5(d) shall apply.

(b) Any Distribution required by the Members upon an affirmative vote of Members holding a Majority Interest.

9.5 Permissive Distributions. The following Distributions shall be permitted:

(a) Distributions of Distributable Cash, if approved by the Managers.

(b) Distributions of property other than Distributable Cash, if approved by the affirmative vote of Members holding a Majority Interest.
9.6 **Method of Distribution.** All Distributions described in Sections 9.4 or 9.5, except Distributions resulting from Liquidation, shall be made to the Equity Owners in proportion to their Sharing Ratios.

9.7 **Limitation Upon Distributions.** An Equity Owner may not receive a Distribution to the extent that, after giving effect to the Distribution, all liabilities of the Company, other than liabilities to Members on account of their Membership Interest, would exceed the fair market value of the Company. Other than Mandatory Distributions described in Section 9.4 and Permissive Distributions described in Section 9.5, no Distributions may be made.

9.8 **Distributions In Kind.** The Managers may not compel any Equity Owner, except in the case of a Distribution to the Equity Owners in proportion to their Sharing Ratios, to accept a Distribution in property other than cash, except upon Liquidation.

9.9 **Accounting Principles.** The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis using the accrual method of accounting. It is intended that the Company will elect those accounting methods which provide the Company with the greatest tax benefits.

9.10 **Interest On and Return of Capital Contributions.** No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

9.11 **Loans to Company.** Nothing in this Limited Liability Company Agreement shall prevent any Equity Owner from making secured or unsecured loans to the Company by agreement with the Company nor require that any Equity Owner make secured or unsecured loans to the Company.

9.12 **Accounting Period.** The Company’s accounting period shall be the Fiscal Year.

9.13 **Priority and Return of Capital.** Except as expressly provided in this Article 9, no Equity Owner shall have priority over any other Equity Owner, either as to the return of Capital Contributions or as to Net Profits, Net Losses or Distributions; provided that this Section 9.13 shall not apply to loans (as distinguished from Capital Contributions) which an Equity Owner has made to the Company.

9.14 **Returns and other Elections.** The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Equity Owners within a reasonable time after the end of the Company’s Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion, provided that the Manager shall make any tax election requested by
Members owning a Majority Interest.

9.15 **Tax Matters Partner.** Yuri Plyam, so long as he is a Member, is hereby designated the Tax Matters Partner ("TMP") as defined in Section 6231(a)(7) of the Code. The TMP and the other Members shall use their best efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including any Treasury Regulations promulgated thereunder), and in doing so shall incur no liability to any other Member.

9.16 **Certain Allocations for Income Tax (But Not Book Capital Account) Purposes.**

(a) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-3 of the Treasury Regulations, if a Member contributes property with a initial Gross Asset Value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes (and not for Capital Account purposes), be allocated among the Equity Owners so as to take account of any variation between the adjusted basis of such property to the Company and its Gross Asset Value at the time of contribution pursuant to the traditional method under Section 1.704-3(b) of the Treasury Regulations, the traditional method with curative allocations under Section 1.704-3(c) of the Treasury Regulations, the remedial allocation method under Section 1.704-3(d) of the Treasury Regulations, or such other method determined by the Managers on a property-by-property basis to be reasonable in appropriate circumstances.

(b) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company other than to the Equity Owner who had contributed such property within seven years of the contribution, then, except as provided in Section 704(c)(2) of the Code, the contributing Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Equity Owner under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the Distribution.

(c) In the case of any Distribution by the Company to an Equity Owner, such Equity Owner shall, solely for federal income tax purposes (and not for Capital Account purposes), be treated as recognizing gain in an amount equal to the lesser of:

1. the excess (if any) of (A) the fair market value of the property (other than money) received in the Distribution over (B) the adjusted basis of such Equity Owner’s Ownership Interest immediately before the Distribution reduced (but not below zero) by the amount of money received in the Distribution, or

2. the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Equity Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Equity Owner under Section 704(c)(1)(B) of the Code.
Code if all property which (1) had been contributed to the Company within seven years of the Distribution, and (2) is held by the Company immediately before the Distribution, had been distributed by the Company to another Equity Owner. If any portion of the property distributed consists of property which had been contributed by the distributee Equity Owner to the Company, then such property shall not be taken into account under this Section 9.13(c) and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

(d) All recapture of income tax deductions resulting from sale or disposition of Company property shall be allocated to the Equity Owners to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Equity Owner is allocated any gain from the sale or other disposition of such property.

Article 10 – TRANSFERABILITY

10.1 Restriction on Transfers. Except as otherwise permitted by this Article 10, no Equity Owner shall Transfer all or any portion of his Ownership Interest.

10.2 Permitted Transfers. Subject to the conditions and restrictions set forth in Section 10.3, an Equity Owner may at any time Transfer its Ownership Interest as follows:

(a) any Economic Interest Owner may Transfer its Economic Interest to any Equity Owner;

(b) any Member may Transfer its Membership Interest to any Member;

(c) any Equity Owner may Transfer its Ownership Interest to an administrator, personal representative, executor, receiver, trustee involuntarily by operation of law, Family member, or trustee of a trust in which the Equity Owner or any one or more members of its Family retains the entire beneficial interest; provided however, that (i) any such administrator, personal representative, executor, trustee or Family member shall not be entitled to any Voting Interest by reason of such Transfer, except if the Managers, in their sole and absolute discretion, accept a vote of such Voting Interest pursuant to Section 7.7(c), and (ii) any Transfer by such administrator, personal representative, executor, receiver, trustee or Family member shall be subject to all of the limitations upon Transfers of Ownership Interests arising or provided under Sections 10.3, and 10.6;

(d) any Equity Owner may Transfer its interest as collateral to a secured party under a grant of a security interest in an Ownership Interest, provided that the transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the
Company to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Limited Liability Company Agreement, including without limitation: (i) acknowledgment and agreement by the transferee that it shall have no Voting Interest, except if the Managers, in their sole and absolute discretion accept a vote of such Voting Interest pursuant to Section 7.7(c); and (ii) acknowledgment and agreement by the transferee that the provisions of Article 10.3 shall apply to any subsequent Transfer, including a Transfer under the rights of sale accorded to the transferee as secured party;

(e) any Equity Owner may Gift all or any portion of its Ownership Interest to any trust, so long as the Equity Owner is the sole trustee of such trust; or

(f) any Equity Owner may Transfer its Ownership Interest in accordance with and subject to the conditions set forth in Section 10.4.

(Each of the Transfers described in this Section 10.2 shall be referred to in this Limited Liability Company Agreement as a "Permitted Transfer").

10.3 Conditions to and Restrictions on Permitted Transfers.

(a) Each of the Permitted Transfers set forth in Section 10.2 shall be subject to the following conditions:

(i) The Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance satisfactory to the Managers.

(ii) The transferor and transferee shall execute such certificates or other documents and perform such other acts as may be reasonably requested by the Managers from time to time in connection with a Permitted Transfer.

(iii) The transferee shall attorn to and ratify this Limited Liability Company Agreement;

(iv) Unless waived by the Managers, the transferor or the transferee shall provide an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the Managers, to the effect that such Transfer is exempt from all applicable securities registration requirements and that such Permitted Transfer will not violate any applicable laws regulating the Transfer of securities.

(v) No Transfer of an Ownership Interest that causes the Company to terminate under Section 708(b)(1)(B) of the Code shall be permitted, unless such Transfer is approved by the affirmative vote of the Members holding a Majority Interest determined without regard to any Voting Interest held by the transferor, if any.
(vi) Unless waived by the Managers, the transferor and transferee shall furnish to the Company an opinion of counsel, which counsel and opinion shall be reasonably satisfactory to the Managers, that the Transfer will not cause the Company to terminate for federal income tax purposes and that such Transfer will not cause the application of the rules of Code Sections 168(g)(1)(B) and 168(h) (generally referred to as the "tax exempt entity leasing rules") or similar rules to apply to the Company, property of the Company, or the Equity Owners.

(b) Each of the Permitted Transfers set forth in Section 10.2 shall be subject to the following restrictions:

(i) The transferor and transferee shall reimburse and indemnify the Company and the remaining Equity Owners against any and all loss, damage, or expense arising directly or indirectly as a result of or in connection with any such Permitted Transfer.

(ii) The transferor or transferee shall furnish the Company with the transferee's taxpayer identification number and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns.

(iii) No Transfer of any Ownership Interest in the Company shall be effective unless and until written notice (including the name and address of the proposed transferee or donee and the date of such Transfer) has been provided to the Company and the non-transferring Members.

(iv) Notwithstanding anything contained herein to the contrary (including, without limitation, Sections 10.2, 10.3 and 10.4, hereof), if the Members holding at least a Majority Interest, without regard to the Voting Interest of the Transferring Equity Owner, if any, do not approve a proposed Transfer of a transferring Member's Membership Interest to a transferee that is not a Member immediately prior to the Transfer, then the transferee shall have no right to participate in the management of the business and affairs of the Company or to become a Member.

10.4 Right of First Refusal. Pursuant to Section 10.2(f), an Equity Owner may Transfer its Ownership Interest under and subject to the following right of first refusal:

The Transferring Equity Owner shall first offer to Sell the Ownership Interest (the "Offered Interest") to the other Equity Owners, pursuant to the following terms and conditions:

(a) The Transferring Equity Owner shall, in the case of a sale, obtain from the third party purchaser a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefor, or, in the case of a Gift to a Person other than a member of its Family, provide a written statement of its intention to so make a Gift, which written offer or statement the Transferring Equity Owner shall
deliver to the remaining Equity Owners, by certified mail or personal delivery.

(b) The remaining Equity Owners, and each of them on a basis pro rata to their Sharing Ratios or, if not all remaining Equity Owners exercise their right of first refusal hereunder, on a basis pro rata to the Sharing Ratios of those remaining Equity Owners exercising their right of first refusal, have the right to exercise a right of first refusal to purchase all (but not less than all) of the Offered Interest upon the same terms and conditions as stated in the aforesaid written offer to purchase, provided that, if such written offer is to purchase the Offered Interest for property other than cash or cash equivalent or is a Gift, the remaining Equity Owners shall not be required to purchase the Offered Interest for identical property, but rather may purchase the Offered Interest for an amount of cash or cash equivalent equal to the fair market value of such property, or, in the case of a Gift, for an amount of cash or cash equivalent equal to the fair market value of the Offered Interest, determined in the manner set forth in Section 8.4(b). The remaining Equity Owners shall exercise their right of first refusal by giving written notification to the Transferring Equity Owner, by certified mail or personal delivery, of their intention to do so within ten days after receiving the written notice from the Transferring Equity Owner. The failure of the remaining Equity Owners to so notify the Transferring Equity Owner of their desire to exercise this right of first refusal within said ten-day period shall result in the termination of the right of first refusal and the Transferring Equity Owner shall be entitled to consummate the Transfer of its Ownership Interest in the Company, subject to the conditions, restrictions and limitations set forth in Section 10.3.

(c) In the event the remaining Equity Owners (or any one or more of the remaining Equity Owners) give written notice to the Transferring Equity Owner of their desire to exercise the right of first refusal and to purchase the Offered Interest, such remaining Equity Owners shall have the right to designate the time, date and place of closing, provided that the date of closing shall be not later than the latter of (i) 45 days after receipt of written notification from the Transferring Equity Owner of the third party offer to purchase or (ii) the date specified for closing in the bona fide offer from the third party. Upon such closing, the Sharing Ratios and Voting Interests of the remaining Equity Owners shall increase proportionately according to the portion of the Offered Interest purchased by each Equity Owner, if any. No Equity Owner who is not also a Member shall receive any Voting Interest by acquisition of an Ownership Interest of a Member.

10.5 Effective Date. Any Transfer of an Ownership Interest in compliance with this Article 10 shall be deemed effective as of the later of (a) the date agreed upon by the transferor and transferee or (b) the date on which the transferor and transferee comply with all of the conditions set forth in Sections 10.3 and, if applicable, 10.4.

10.6 Effect of Transfers Not In Compliance with Agreement.

(a) In the event of a Transfer not in compliance with this Limited Liability Company Agreement, the transferee shall be merely an Economic Interest Owner.
(b) The Transferring Equity Owner shall indemnify the Company and the remaining Equity Owners against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any Transfer or purported Transfer in violation of this Article 10.

(c) The Company shall not be required to make any Distribution otherwise provided for in this Limited Liability Company Agreement with respect to any transferred Ownership Interest until the requirements of this Article 10 are met. The Company shall have the right to withhold payment of any Distribution otherwise payable on account of the interest conveyed until the amount, if any, of any damages, costs, or losses (including without limitation attorneys’ fees) incurred by the Company or its Equity Owners as a result of or in connection with the Transfer has been determined by the Company and paid by the transferee and may apply such amount withheld toward any debt, liability or obligation owed to the Company or the other Members.

Article 11 – ADDITIONAL MEMBERS

11.1 Admission of Additional Members. Additional Members may be admitted to the Company, provided that they execute a copy of this Limited Liability Company Agreement, as follows:

(a) upon a Permitted Transfer of a Membership Interest, so long as it is approved pursuant to Section 10.3(b)(iv); or

(b) upon the consent of Members holding at least a Majority Interest.

11.2 Effect of Admission of a New Member. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. In accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated thereunder, the Managers may, at their option, at the time a Member is admitted, close the Company books (as though the Company’s tax year had ended) or make pro rata allocations of loss, income and expense deductions to a new Equity Owner for that portion of the Company’s tax year during which such Equity Owner was an Equity Owner.

Article 12 – DISSOLUTION AND TERMINATION

12.1 Dissolution. The Company shall be dissolved only upon the occurrence of any of the following events:

(a) by the agreement of Members holding at least a Majority Interest;

(b) upon the death, retirement, resignation, expulsion, bankruptcy or
dissolution of the final Member of the Company, unless the remaining Economic Interest Owners holding a Two-Thirds Interest affirmatively vote to continue the Company's business. For purposes of the foregoing sentence, each Economic Interest Owner shall have a Voting Interest equal to its Sharing Ratio multiplied by 100. If the Economic Interest Owners holding a Two-Thirds Interest so vote to continue the Company's business, each Economic Interest Owner may elect to become a Member by delivering written notice thereof to the other Economic Interest Owners, in which case, the Voting Interest of each electing Economic Interest Owner shall be its Sharing Ratio multiplied by 100; provided, however, that if no Economic Interest Owners elect to become Members, the Company shall be dissolved;

(c) upon an unresolved Deadlock under Section 5.6; or

(d) upon the specified effective date of dissolution of the Company set forth in the Certificate of Formation.

The Company shall not be dissolved upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of an Equity Owner, except as set forth above.

12.2 Effect of Dissolution. Upon the occurrence of any of the events specified in Section 12.1 effecting the dissolution of a Company and until the filing of a certificate of cancellation with the Delaware Secretary of State, the persons winding up the Company's affairs may, in the name of and for and on behalf of, the Company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the Company's business, dispose of and convey the Company's property, discharge or make reasonable provision for the Company's liabilities, and distribute to the Members any remaining assets of the Company, all without affecting the liability of Members and Managers and without imposing liability on a liquidating trustee.

12.3 Winding Up and Distribution of Assets.

(a) Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall immediately proceed to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Managers shall:

(i) Sell or otherwise reduce to cash all of the Company's assets as promptly as practicable (except to the extent the Managers may determine to distribute any assets to the Equity Owners in kind),

(ii) Allocate any Net Profit or Net Loss resulting from such sales to the
Equity Owners’ Capital Accounts in accordance with Article 9 hereof,

(iii) Discharge all liabilities of the Company, including liabilities to Equity Owners and Managers who are also creditors, to the extent otherwise permitted by law, other than liabilities to Equity Owners for Distributions and the return of capital, and establish such reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Equity Owners, the amounts of such reserves shall be deemed to be an expense of the Company),

(iv) Distribute the remaining assets in the following manner:

(A) First, if any assets of the Company are to be distributed in kind, the fair market value of such assets as of the date of dissolution shall be determined in the same manner set forth in Section 8.4(b). Such assets shall, for all purposes, including the determination of Company income and gain, be deemed to have been sold as of the date of dissolution for their fair market value. The Capital Accounts of the Equity Owners shall be adjusted pursuant to the provisions of Section 8.5 and Article 9 to reflect such deemed sale.

(B) Second, to the Equity Owners in accordance with the positive balance (if any) of each Equity Owner’s Capital Account (as determined after taking into account all Capital Account adjustments for the Company’s taxable year during which the Liquidation occurs) shall be distributed to the Equity Owners, either in cash or in kind, as determined by the Managers, with any assets distributed in kind being valued for this purpose at their fair market value as determined in Section 12.3(b)(iv)(A). Any such Distributions to the Equity Owners in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

(c) Notwithstanding anything to the contrary in this Limited Liability Company Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Equity Owner has a Deficit Capital Account (after giving effect to all contributions, Distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Equity Owner shall have no obligation to make any Capital Contribution, and the negative balance of such Member’s Capital Account shall not be considered a debt owed by such Equity Owner to the Company or to any other Person for any purpose whatsoever.

(d) Subject to the provisions of this Article 12, the Managers shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.4 Certificate of Cancellation. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Equity Owners, a certificate of cancellation
setting forth the information required by the Act shall be executed and delivered to the Delaware Secretary of State.

Article 13 – MISCELLANEOUS PROVISIONS

13.1 Offset and Security Interest. The Company may offset any amount owing by an Equity Owner to the Company (including damages for breach of this Limited Liability Company Agreement), against any amount otherwise distributable to or on account of such Equity Owner, including, without limitation, Distributions on account of Liquidation or upon liquidation of the interest of an Equity Owner. As security for performance by the Equity Owners of all Enforceable Obligations of each Equity Owner and all other debts, liabilities and obligations of each Equity Owner to the Company, each Equity Owner hereby grants to the Company a security interest in the Equity Owner’s Ownership Interest, and the Company shall have all the rights of a secured party under Article 9 of the Minnesota Uniform Commercial Code. Contemporaneously with the execution of this Limited Liability Company Agreement, or at such other time or times as requested by the Managers, each Equity Owner shall execute a UCC-1 Financing Statement evidencing such security interest.

13.2 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Limited Liability Company Agreement shall be deemed to have been sufficiently given or served and effective (a) immediately for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or (b) upon transmission by facsimile transmission on a machine capable of verifying receipt, if receipt is so verified, or (c) effective two business days after it is deposited in a regularly maintained depository of the United States Postal Service, if sent by registered or certified mail, return receipt requested, postage and charges prepaid, or (d) on the next business day if sent by overnight delivery courier service (including but not limited to, Federal Express), if addressed or sent to the Equity Owner’s and/or Company’s address and/or facsimile number, as appropriate, which is set forth in this Limited Liability Company Agreement, or to such other address or facsimile number of an Equity Owner of which notice has been given to the other Equity Owners and the Company in the manner set forth above.

13.3 Application of Delaware Law. This Limited Liability Company Agreement, and the application of interpretation hereof, shall be governed exclusively by the internal laws of the Delaware, without respect to principles of conflicts of law, and specifically, the Act.

13.4 Arbitration. Any and all disputes arising out of this Limited Liability Company Agreement will be determined by submission to binding arbitration, which arbitration shall be conducted in Minnesota, pursuant to the Rules of Arbitration of the American Arbitration Association, the jurisdiction to which all parties hereto, as well as their successors, assigns and transferees, hereby consent.

13.5 Waiver of Action for Partition. Each Equity Owner irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect
to the property of the Company.

13.6 Amendments. Amendments may be made to this Limited Liability Company Agreement from time to time by the Managers as they shall determine necessary for purposes of continuing to qualify the Company as a limited liability company under the laws of the State of Minnesota, to qualify the Company as a partnership, as opposed to an association taxable as a corporation, for purposes of federal, state and local income tax law, and to effectuate the admission of additional Members pursuant to Section 11.1. In all other respects, amendments to this Limited Liability Company Agreement shall be made upon the affirmative vote of Members holding at least a Majority Interest.

13.7 Execution of Additional Instruments. Each Equity Owner and transferee of an Ownership Interest hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney, amendments to this Limited Liability Company Agreement permitted pursuant to the first sentence of Section 13.6 and other instruments necessary to comply with any laws, rules or regulations and the terms of this Limited Liability Company Agreement, provided that, if the Equity Owner or transferee fails or refuses to so execute, the Equity Owner or transferee hereby grants to the Managers an irrevocable power-of-attorney for the purposes of so executing, which power-of-attorney may be exercised upon the failure of refusal to so execute.

13.8 Construction. Whenever the singular number is used in this Limited Liability Company Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

13.9 Effect of Inconsistencies with the Act. The Members and the Company hereby agree that the duties and obligations imposed on the Members of the Company as such shall be those set forth in this Limited Liability Company Agreement, which is intended to govern the relationship among the Company and the Equity Owners, notwithstanding any provision of the law to the contrary. In the event the Act is subsequently amended or interpreted in such a way to make valid any provision of this Limited Liability Company Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. If any provision of this Limited Liability Company Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Limited Liability Company Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Without limiting the generality of the foregoing sentence, to the extent any provision of this Limited Liability Company Agreement is prohibited or ineffective under the Act or common law, this Limited Liability Company Agreement shall be considered amended to the smallest degree possible in order to make the Limited Liability Company Agreement effective under the Act or common law.
13.10 **Headings.** The headings in this Limited Liability Company Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Limited Liability Company Agreement or any provision hereof.

13.11 **Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Limited Liability Company Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

13.12 **Rights and Remedies Cumulative.** The rights and remedies provided by this Limited Liability Company Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

13.13 **Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and shall be binding upon and, to the extent permitted by this Limited Liability Company Agreement, inure to the benefit of their respective heirs, legal representatives, successors and assigns.

13.14 **Creditors.** None of the provisions of this Limited Liability Company Agreement shall be for the benefit of or enforceable by any creditors of the Company, except as provided in Section 5.14 or the Act.

13.15 **Counterparts.** This Limited Liability Company Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

13.16 **Rule Against Perpetuities.** The parties hereto intend that the Rule Against Perpetuities (and any similar rule of law) not be applicable to any provisions of this Limited Liability Company Agreement. However, notwithstanding anything to the contrary in this Limited Liability Company Agreement, if any provision in this Limited Liability Company Agreement would be invalid or unenforceable because of the Rule Against Perpetuities or any similar rule of law but for this Section 13.16, the parties hereto hereby agree that any future interest which is created pursuant to said provision shall cease if it is not vested within twenty-one years after the death of the survivor of the group composed of the natural persons who are currently Members and their issue who are living on the date of this Limited Liability Company Agreement and their issue, if any, who are living on the effective date of this Limited Liability Company Agreement.

13.17 **Investment Representations.** The undersigned Members, if any, understand (1) that the Ownership Interests evidenced by this Limited Liability Company Agreement have not
been registered under the Securities Act of 1933, the Delaware Securities Act or any other state securities laws (the “Securities Acts”) because the Company is issuing these Ownership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the Ownership Interests are to be held by each Equity Owner for investment, and (3) that exemption from registrations under the Securities Acts would not be available if the Ownership Interests were acquired by a Member with a view to distribution.

Accordingly, each Member hereby confirms to the Company that such Member is acquiring the Ownership Interests for such own Member’s account, for investment and not with a view to the resale or distribution thereof. Each Member agrees not to transfer, Sell or offer for sale any of portion of the Ownership Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Ownership Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale.

Each Member understands that the Company is under no obligation to register the Ownership Interests or to assist such Member in complying with any exemption from registration under the Securities Acts if such Member should at a later date, wish to dispose of the Ownership Interest. Furthermore, each Member realizes that the Ownership Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an “affiliate” of the Company and the Ownership Interest has been beneficially owned and fully paid for by such Member for at least two years.

Each Member, prior to acquiring an Ownership Interest, has made an investigation of the Company and its business, and the Company has made available to each such Member all information with respect thereto which such Member needed to make an informed decision to acquire the Ownership Interest. Each Member considers himself, herself or itself to be a Person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member’s investment in the Ownership Interest.
CERTIFICATE

The undersigned hereby agree, acknowledge and certify that the foregoing Limited Liability Company Agreement, constitutes the Limited Liability Company Agreement of Acceleration Capital, LLC adopted by the Members of the Company and by the Company as of July 31, 2003.

MEMBERS:

Yuri Plyam, as individual Member

Curtis Faith, Member

THE COMPANY:

Yuri Plyam, Manager
System Trading Brokerage Agreement

This System Trading Brokerage Agreement is made and entered into this 31st day of July, 2003, by and among Castle Trading, Inc. and Acceleration Capital, LLC.

Whereas Acceleration Capital, LLC (hereinafter Fund Manager) is a commodity pool operator and commodity Trading Advisor duly registered with the National Futures Association that manages money for various commodity pools and private accounts using investment methodologies known as mechanical trading systems, and Castle Trading, Inc. (hereinafter Broker) is a commodity broker which manages the trading and execution of mechanical trading systems for others, and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Broker agrees to provide brokerage service, handle daily order generation, and trade management for the mechanical trading systems defined and outlined by Fund Manager using software, tools and other operational systems that are mutually acceptable.

Broker also agrees to provide monthly account management and reporting to the clients of Fund Manager.

Fund Manager agrees to pay a brokerage commission equal to the costs paid by Broker to third-party Futures Commission Merchants, commodity exchanges, governmental agencies or companies that are charged on a per contract basis.

In consideration for receiving this cost-based pricing, Fund Manager agrees to pay Broker a fee of 1/24th of 1% per month of the value of the total assets held in each account managed by Broker for Fund Manager as of the last day of the month each calendar month.

The undersigned hereby agree, acknowledge and certify the foregoing as of July 31, 2003.

For Acceleration Capital, LLC:

Yury Plyam, Managing Member

Curtis Faith, Member

For Castle Trading, Inc.:

Yury Plyam, President
UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

IN THE MATTER OF:

TOBY WAYNE DENNISTON, YURI PLYAM
and ACCELERATION CAPITAL, LLC.

Examination under oath of
YURI PLYAM, taken pursuant to subpoena and the rules of the
U.S. Commodity Futures Trading Commission, reported by
Susan Soble, a Certified Shorthand Reporter and Notary
Public within and for the County of Cook and State of
Illinois, at 525 West Monroe Street, Suite 1100, Chicago,
Illinois, on Monday, March 13, 2005, commencing at the hour
of 12:13 o'clock a.m.

SUSAN SOBLE ASSOCIATES, P.C.
Certified Shorthand Reporters
1460 North Clark Street - 2611
Chicago, Illinois 60610
(312) 989-5668

PRESENT:

MR. THEODORE J. DOWD, II, Trial Attorney,
MR. MICHAEL SOLINSKY (By video conference), and
MR. JOSEPH VARGyas (By video conference)
U.S. Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5407

appeared on behalf of the U.S. Commodity Futures
Trading Commission.

HENDERSON & LYMAN,
by:
MR. JEFFRY M. HENDERSON
175 West Jackson Boulevard - 240
Chicago, Illinois 60604
(312) 996-6600

appeared on behalf of the Witness.

(CFTC Deposition Exhibit No. 1 was
marked for identification.)

MR. DOWD: We will go on the record at
approximately 10:20 a.m. on March 13, 2006 in connection
with the commission's investigation in the matter of Toby
Wayne Denniston, Yuri Plyam and Acceleration Capital, LLC.

If the court reporter would please swear in
the witness.

(Witness sworn.)

YURI PLYAM,

having been first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. DOWD:

Q. Mr. Plyam, would you please state and spell your
full name for us?

A. Yuri Plyam. Y-u-r-i, last name P-l-y-a-m.

Q. Mr. Plyam, are you represented by counsel today?

A. Yes, I am.

MR. DOWD: And will counsel please identify
himself for the record?

MR. HENDERSON: Yes. Jeff Henderson on behalf of
Yuri Plyam.

MR. DOWD: This is an investigation by the
subpoena to page number seven. The subpoena issued to you
required the production of certain documents.
Did you conduct a search for responsive
documents?
    A We did, yes.
    Q When you say "we" who do you mean?
    A Myself and my wife, Natalia, N-a-t-a-l-i-a.
Q Did anyone else assist you in that search?
    A No.
Q Okay. And can you describe what that search
entailed?
    A We looked into our records, books and records, our
flo cabinets and gathered all the information that was
relevant to Acceleration Mercury Fund.
Q Okay. And did you search for documents on behalf
of any other entity?
    A Yes. Castle Trading. One of the documents was,
one of the sheets, one of the documents was related to
both, so Castle Trading.
Q Any other entity?
    A No.
Q Where were those documents located? Were they in
an office or at your home?
    A They were in our office.

Q And is that a true and correct copy of the
subpoena that you received from the CFTC?
A I believe it is, yes.
Q Does it appear to be so?
A Yes, it does.
Q If I could direct you to the middle of the
subpoena, specifically a document attached thereto that's
entitled Statement To Persons Directed To Provide
Information Pursuant To A Commission Subpoena.
A Yes.
Q One more page, I think.
A Yes.
Q And did you receive a copy of that document with
your subpoena?
A Yes, I did.
Q And have you had a chance to review that document?
A Yes, I did.
Q Okay. And have you had a chance to review that
document with your counsel?
A Yes, we did.
Q And do you have any questions about that document
at this point in time?
A No, I do not.
Q I'd like to direct you back a few pages in the
to get as clean of a transcript as possible and in order
for that to happen, you and I need to attempt to not speak
over one another. So if you could allow me the courtesy of
finishing my question before you begin your answer, I'd
certainly appreciate it and it will make for a clean
transcript. So even if you think you know what the
question is, just let me shoot it out and I will attempt to
do my best to give you the same courtesy, allow you to
finish your answer before I begin on my next question.

In that regard it's also important that you
answer questions audibly. The court reporter can't
acknowledge a nod or a shake of the head, so I need you to
say yes or no rather than shaking of the head if a question
calls for that.

If at any point you want to stop and
take a break during the questioning I'll be more than
happy to accommodate you. If there's a question pending, I
may ask you to answer the question before we go off the
record. In that regard it's important to note that only
the CFTC controls the record today so only myself,
Mr. Solinsky or Mr. Vargyas can instruct the court reporter
to go off the record.

You should also be aware that any discussions
that we might have while off the record may be summarized

when we go back on the record.

Do you understand all of the instructions
I've just given you?

A Yes, sir.

Q Is there any reason that you know of while sitting
here today that you cannot give full and complete
testimony?

A No.

Q Are you taking any medication that may prevent you
from giving full and complete testimony?

A No.

Q Other than your attorney, who have you spoken with
regarding the CFTC subpoena to you?

A Just my wife, Natalie Plyam.

Q What did you say to Natalie.

MR. HENDERSON: Objection that that's privileged.

Those conversations are privileged by the spousal
privilege.

MR. DOWD: She's an employee.

MR. HENDERSON: Off the record for a second.

MR. DOWD: Sure.

(Off-the-record discussion.)

MR. DOWD: Let's go back on the record.

subpoena, and we looked at it and we didn't really, we've
never seen anything like this before so we read everything
and I believe we made a phone call.

Q I believe I spoke to you. I'm not sure if I
spoke to you. I spoke to someone at CFTC. Was it...

Q For the record, you and I did speak. I don't know
if you spoke to anyone else, but --

A No, no, I only spoke to one person. I just
assumed that was you. And I asked a few question --

MR. HENDERSON: He's asking about conversations
that you had with Natia.

THE WITNESS: Basically the conversations we had
was if we had enough time to that was our main concern
because we have two little children, if we had enough time
to make it out here because it was short notice. So we
just wanted to know if there was anyway we can have more
time or if this was compulsory, just wanted to find out
more information about it, so we discussed those matters.

BY MR. DOWD:

Q Did you discuss anything of substance?

A No.

Q And by substance I mean any of the subject matter
within the subpoena --

A No.
Q.  Other than timing issues?
A. No.

Q. Okay. And subsequent to that conversation did you have any conversation with Natalia regarding the CFTC subpoena?
A. Yes, a few times, but it was all in, it was all in
-- yes, we did actually. Before we left she was assisting me in gathering documents and we were talking about whether we had all the documents, you know, we wanted to comply with everything. We wanted to make sure all the documents were here. So that was the scope of the conversation.

Q. Did you ever discuss what you anticipated your testimony to be?
A. No.

Q. Did she ever provide you any instruction on how you should testify?
A. No.

Q. Other than your wife and Mr. Henderson, have you spoken with anyone regarding your appearance here today?
A. No. Oh wait. Yes, I did. One of Jeff's employees.

Q. Is he a lawyer?
A. Yes.

Q. To the extent you have any conversations with your attorney, if you could just -- it's fine if you identify that you had a conversation, but in terms of the substance of that conversation, the actual discussion, I don't need to know that.
A. Yeah, just -- that was it.

Q. Who was that attorney?
A. That was Scott... MR. HENDERSON: Sylkas, S-i-y-k-a-s.

BY MR. DOWID: 
Q. And when did that conversation take place?
A. About an hour ago.

Q. Have you spoken with anyone else regarding the CFTC subpoena?
A. No.

Q. And have you informed anyone what you anticipate your testimony to be here today?
A. No.

Q. Has anyone given you any instructions on how to testify today?
A. No.

Q. Do you know anyone else who has been subpoenaed or has testified in this investigation?
A. Yes.

Q. Who's that?
A. Toby Denniston.

Q. Let me clarify. By this investigation, excuse me. By this investigation I'm referring to the CFTC's investigation.
A. Yes.

Q. As opposed to any other governmental agency.
A. Yes.

Q. Okay. How do you know Mr. Denniston has testified?
A. I don't know that he testified. I know that he was subpoenaed to testify.

Q. Okay. How do you know that?
A. "Cause he left a message on my wife's voice mail machine a few days ago.

Q. Do you recall the precise date?
A. No, but she still has it on her phone. We were listening to it just about an hour ago for the first time actually. She listened to it many times. Me, Jeff and Scott listened to it for the first time about an hour ago.

Q. What did Mr. Denniston say?
A. Mr. Denniston said that -- I'm going to paraphrase what he said. I don't, I can't quote him.

A. He said to the effect that he got a letter or something to where he's going to be testifying and if there's anything he, he sounded like he wanted to help in some way. So he said, if there's anything I could do or anything I could say, please let me know. And that was pretty much the gist of it all. We never called him back or anything of that nature.

Q. Do you still have a copy of that recording?
A. Sure.

Q. Okay.
A. On her machine. I'd be more than happy to share it with you.

Q. I'm going to ask at this point that you produce that when you can.
A. Sure.

Q. And did you call Mr. Denniston back?
A. No.

Q. Do you know if Natalia called Mr. Denniston back?
A. I do know. She did not.

Q. How do you know she did not?
A. I asked her.

Q. What did she say?
A. She said, I did not call him back.
Q Other than Mr. Denniston do you know anyone else who has been subpoenaed in this investigation?
A No.
Q Do you know anyone else that's testified in this investigation?
A No.
Q Did you do anything to prepare for your testimony here today?
A I looked over the documents and some dates just to make sure I have good recollection of events and so forth.
Q What documents did you look over?
A I looked at when Toby was hired, his record, the dates when these things occurred just so I have a, because some of the, you know, these things go back some time. I wanted to make sure I have the course of events correct in my mind.
Q Did you review any documents that haven't been produced to the CFTC?
A No.
Q Did you discuss these documents with anyone other than your attorney?
A No.
Q What's your date and place of birth?
A 10-29-70, Ukraine, USSR.

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Q Are you a United States citizen?
A Yes.
Q And your current home address?
A It's 5913 Abbe Avenue, Northridge, California 91325.
Q What's your home telephone number?
A (818) 968-7223.
Q And what's your business address?
A 8519 Reseda Boulevard, suite 102, Northridge, California 91324.
Q Do you have any other business address other than that one?
A Yes. I have an address upstairs. I have a --
Q Upstairs meaning in your home?
A No, no, no. From our office we have another business upstairs.
Q Okay.
A Suite 101 is commodities and suite 202 upstairs and it has nothing to do with commodities in any way.
Q Okay. Identify for me all businesses that you're affiliated with that you use the suite 101 address.
Q: Have you ever filled an application to sit for a bar exam?
A: No. No, no, I did not.
Q: Have you ever testified in a legal or administrative proceeding before?
A: Yes, I did.
Q: How many times?
A: Once.
Q: When was that?
A: Very recently. I don't know if it would be called a, it was this type of a, it was a, I don't know the name of it. It was a fact-finding investigation for a lawsuit that I may be having with my neighbors about an easement that has absolutely nothing to do with commodities whatsoever.

But that wasn't an actual -- we haven't gone to trial so it was just an.
Q: Was it a deposition?
A: Exactly. That was the extent of it. I've never been sued before.
Q: And other than possibly that deposition and today, have you ever been subpoenaed before?
A: No, I have not.

Q: Have you ever been a witness or a defendant in any civil litigation?
A: No, I have not.
Q: Have you ever been -- go ahead.
MR. HENDERSON: Just, there's one NFA action. I'm not sure, when you said civil litigation I'm assuming that means civil litigation.
MR. DOWID: I believe an NFA action would be an administrative action.
THE WITNESS: Oh.
MR. HENDERSON: It's a customer claim.
MR. DOWID: Okay.
BY MR. DOWID.
Q: Tell me about the NFA customer claim.
A: It is a claim against me that stemmed from an action from a client who is trying to recover damages two years, he filed a claim against me with the NFA a year-and-a-half or two years after what he perceived as damages occurred. He believes he wasn't informed. He was a client for two years and --
Q: What is his name?
A: Alex Argiroff. L&A Investments. That's the name of the account. Argiroff.
Q: Okay. And is that pronounced, how do you pronounce it?
A: Alex Argiroff.
Q: Okay. And was he a client of CHP, Acceleration Capital, Castle Trading?
A: Castle Trading.
Q: Any other entity?
A: No.
Q: And what service or services did you provide to him?
A: I was giving him very limited advice on his position. He kept the same position for two years and he kept rolling it over. It was a combination option spread and I was there to get him bid and offers from the floor to facilitate the position for him. It was a self-directed account. It was a business account that he had with his boss.
Q: Do you know who his boss is?
A: You know, I don't remember that information. I've never dealt with his boss. It was just a name on the account. But I always dealt with Argiroff. He was the authorized trader and L&A was the name of the account.
Q: And specifically what does he allege against you and/or Castle Trading?
A: He, well, he specifically alleges that he wasn't informed when he started trading that you cannot use increase in option premium as leverage for futures.
Q: And do you know the current status of that matter?
A: Yes. Jeff has filed a two motions. One motion was to...
Q: Jeff meaning your lawyer, Mr. Henderson?
A: Jeff Henderson who's sitting in this room. He filed one cause of action for lapse time for filing a cause of action and one for not having a cause of action, for not having a claim to file, that basically there's no claim.
Q: Have you ever been questioned by an SRO?
A: I'm sorry.
Q: Self-regulatory organization such as the NFA or NASD?
A: Yes, NFA.
Q: Yes how many times have you been questioned by the NFA?
MR. HENDERSON: Informally or formally?
BY MR. DOWID:
Q: Both.
A: Well, I've had -- would a dialogue with them count?
Q: Let's start with formal questioning.
Okay. Twice.

Identify those two occasions for me.

The first time was they came in and did an audit for Castle Trading and CHP Asset Management.

When was that?

Oh wow. That was a while back. I don't recall the exact date. I really don't. I don't even think it was several years ago. I don't want to give you a date, but it was maybe about three years ago, two-and-a-half years ago.

Was it roughly March 2004?

You know, I don't want to — if that's when, I mean I believe so. But I don't remember the exact date.

Has the NFA's business conduct committee ever taken an action against you?

Yes, they have.

Was that action related to the formal discussion you had with the NFA that we just discussed?

Yes.

And what was the outcome of that action?

It was a settlement where I had to pay a fine on behalf of Castle and CHP.

How much was that fine?

It was, I believe that it was nine, nine and nine.

I think it was about 27,000 total, somewhere in that ballpark.

Between 20- and 30,000, somewhere in that ballpark.

Okay. And that was for which entities?

That was for both CHP and for Castle Trading.

And do you recall the basis of the NFA's allegations?

Yes. It was basically several, it was mostly related to advertising, to having material on my website that was not approved and in their opinion it was misleading. And all of that was taken off. Most of it was system trader vendors' names. It was really not one big thing. It was a bunch of little things.

Okay. Anything beyond advertising?

Let's see. Let me think. It was mostly record keeping, advertising. It was nothing related to anything to do with clients' monies or funds of any kind.

Okay. And beyond the fine or the settlement that CHP and Castle Trading entered into, did you enter into a settlement of that action with the NFA personally?

Yes.

Okay. And did you pay a fine?

Yes.

How much did you pay?

That's, for each entity — for Castle it was 9000, for CHP was 9000 and for Yuri it was 9000. That's where the 27,000 came in.

Do you recall roughly when that settlement was entered?

Once again, it sounds around March of '04, somewhere around that time.

May 2004, does that ring a bell?

Possibly. I don't have any reason — I just don't remember the exact time. But that does sound reasonable because one of the — yes, yes, it does because of one of the outcomes of it.

What do you mean one of the outcomes?

One of the things we had to do, one of the settlement deals we did was we had somebody come and supervise our office four times, Dennis Starr, and he came quarterly and he did his last audit right before this event was discovered by the NFA.

So when you say — it was about a year from the time of the settlement, so when you said May.

Superimposed that to a year from that point on and it was right around the time he came last time, so yes, that sounds about right.

When you say this event, what are you referring to?

Of the NFA discovering Toby Denniston doing these acts, what we're here for right now.

Mr. Denniston's theft of pool funds?

Yes, right.

And who is Dennis Starr?

Dennis Starr is a — he's not affiliated — he's a private party that I got his name from...can I ask him for a name of...

Sure.

(The witness and Mr. Henderson confer sotto voce.)

MR. HENDERSON: Phil Raleigh.

THE WITNESS: Phil O'Riley. Phil O'Riley — thank you — was the gentleman I was negotiating this with and he said one of the things he would like to do is we want to make sure your office is running appropriately. He said, I realize you just need some guidance, and he recommended Dennis Starr. He said he's known him for many, many years, he can't recommend him, but he's one of the people in the industry that does these type of things and suggested that I give him a call, which is what I did.

BY MR. DOWD:

Okay. Is Mr. O'Riley an NFA employee?

Yes, he is.

MR. HENDERSON: You said Phil Riley. Raleigh, I
think, it's Phil Raleigh.

THE WITNESS: Phil Raleigh, yes.

BY MR. DOWD:

Q. So as part of your settlement with the NFA from
this March-May 2004 action, in addition to paying a fine,
were you required to obtain an auditor?

A. Which is what -- yes, which is what Dennis Starr
was.

Q. And was Mr. Starr affiliated with any firm or
organization?

A. He has his own company out of San Diego. I think
it's called Commodities Supervisor -- I don't want to lie
to you. I just don't remember the name.

Q. To the best of your recollection.

A. Commodity Supervisors, something to that effect.
Once again, I'm just reaching. I don't remember. But he
has a company out of San Diego. He has a website.
The reason we chose him is because the person
who Refco hired while we were not independent, we didn't
feel he was doing a good job because he didn't spot all
these things and tell me to take them off the site.

Q. Okay. And did Mr. Starr ever conduct an audit of
CHP and/or Castle Trading?

A. Yes, he did.

Q. Okay. How often did he conduct those audits?

A. I'm sorry for interrupting you; I apologize. He
conducted it quarterly.

Q. For each entity?

A. Yes. He -- yes.

Q. From roughly spring 2004 forward?

A. Mm-hm.

Q. Does he still conduct quarterly audits?

A. No.

Q. When was the last time he conducted a quarterly
audit?

A. About three weeks before the NFA was at my office
last time so it must have been around June-July of this
year -- of last year, sorry.

Q. June or July of 2005?

A. Yes.

Q. And dating back to September of '04, can you
identify for me approximately each audit that Mr. Starr
conducted from that point through the last one in June-July
2005?

A. When you say identify you mean the dates?

Q. The dates.

A. I have no recollection of that.

Q. Ballpark.

1 A. I just don't remember. I know that from the time
of the settlement it was every quarter and it was right
around that time because they gave you a deadline and we
had to fill it. And this was pretty meticulously done
because it had to be forwarded to the NFA.

Q. So prior to June or July of 2005, the last audit,
would it be safe to say that there was an audit conducted
approximately four months before that one?

A. Yes. Yes.

Q. And another one four months before that one?

A. Yes.

Q. So every four months.

A. Every four months there was an audit and the last
one was approximately three weeks to a month before the NFA
was in my office last time.

Q. Okay. And each of those audits was of Castle
Trading and CHP?

A. Yes.

Q. Did he ever audit Acceleration Mercury Fund?

A. No, he did not.

Q. Why?

A. One of the reasons why he did not do so was
because Acceleration was not part of the firm and it was
not part of the NFA settlement where it had to be
Q. Okay. And do you recall your NFA registration number?
A. No, I cannot.
Q. Does 0296607 sound right?
A. I wouldn't even know where to begin. I apologize.
Q. Have you ever been registered with the NASD?
A. No, I have not.
Q. Have you ever held any professional license?
A. No, I have not.
Q. Have you ever applied for registration with the NASD?
A. No, I have not.
Q. Are you a member of any professional organization?
A. No, I'm not.
Q. Can you identify for us all formal training you've received as it relates to futures trading?
A. Formal experience. Formal. Traded from -- when you say -- experience or education?
Q. Training. So education, classes you might have taken in college, seminars, anything of that ilk.
A. I'm completely self-taught.
Q. How did you teach yourself?
A. I started trading stocks and commodities on my own back in the mid '90s while I was in law school. I would take classes at night and I would trade for myself during the day. I did that between '96 and '99, I believe.
Q. What commodities did you trade?
A. The S&P 500, NASDAQ 500.
Q. Mini or the larger contract?
A. Both. Dabbled in interest rates as well.
Q. And what period of time was that?
A. This was from January of '95 to somewhere around '98, '99, I believe.
MR. HENDERSON: '96 I think is what you meant.
BY MR. DOWD:
Q. I'm sorry. I missed the end of that. January of '96 till when?
Q. Where was your account located?
A. It was located with Man and I believe Lindal.
Q. The two accounts or was the account transferred at some point in time?
A. It was transferred. It was transferred.
Q. What name was the account under?
A. It was under my name and my dad's name.
Q. What's your dad's name?
A. Mikail Plyam. M-i-k-a-i-l, Plyam.
Q. Is that account still currently open?
A. No. We closed it years and years and years ago.
Q. Were you successful?
A. Yes.
Q. Did you make money?
A. Yes, I was, yes.
Q. Over the life of the account, how much money did you make roughly?
A. I don't believe. I believe it was between 30- and $50,000. It wasn't something I was doing on a full-time basis. It was just something I did to kill time while I was in law school.
Q. And did your father execute any trades in that account?
A. No, he did not.
Q. So all the trades executed in that account are attributable to you.
A. Yes, they are.
Q. And did you work while you were going to law school?
A. No, I did not.
Q. So what period of time did you go to law school?
A. From '94 or '94-'95 to '98.
Q: What year did you graduate college?
A: '81, I believe. '82.
Q: What did you do during that period of '81-'82 when you graduated college until the time when you enrolled in law school?
A: I actually started studying law on my own.
Q: What does that mean? Were you working for --
A: No, I bought all the material for first year and just started learning how to brief and learning how to outline and learning how to write essays, just, you know, all the things you'd need, the Socratic method and so forth.
Q: And when you graduated from law school, what did you do?
A: When I graduated from law school, boy...
Q: Where did you work if you worked?
A: Let me think. No, I did not work after law school.
Q: Where I'm going with this is I just want a chronology of your employment history.
A: Basically after law school, I took some time off and I started working for Cannon Trading as an associate person.
Q: Okay. And when did you start working for Cannon Trading?

Trading?
A: I believe it was 2000. It was in the summer of 2000.
Q: And how long did you work for Cannon Trading?
A: Approximately six months.
A: 'Til Christmas.
Q: Why did you leave?
A: I wanted to do something on my own.
Q: Okay. And what did you do for Cannon Trading?
A: I was an associate person. I called leads, placed orders, did everything that associate people do.
Q: What do associated people do other than call leads and place orders?
A: Give trading recommendations to clients.
Q: And that was in the futures field?
A: Futures, yes.
Q: Did you ever work for Brookstreet Securities?
A: Brookstreet, yes.
Q: Brooke with an "r"?
A: Yes.
Q: When did you work for Brookstreet?
A: Upon termination, upon me terminating my position at Cannon, I transferred to Brookstreet.
Q: When did you start work at Brookstreet?
A: Around Christmas of '01.
Q: Okay. And earlier I believe you testified you left Cannon Trading 'cause you wanted to do something on your own.
Q: Is that accurate?
A: Yes, it is.
Q: Elaborate on that for me.
A: I wanted to start my own business. I was involved in this industry for many years prior to Cannon. I went in there and I kind of realized that everything they were doing I was very familiar with and I didn't want to give 60 percent of my profit to somebody else. Which is why I wanted to Brookstreet, which is a profit sharing situation, not a 50/50 type of situation.
Q: When you say you were involved in the business, are you referring to your trading with your E.F. Man LInd Waldoc account?
A: Yes, plus I've read almost every book at that time on the futures industry. I met people in the industry that have been trading for 20, 30 years, people affiliated with the Turtle group, fund managers, so I felt very comfortable doing what I was doing. It wasn't something, like I really didn't have to learn everything while I was there. It was very boring very quickly.
Q: What did you do for Brookstreet?
A: I did the same -- Brookstreet is a different type of organization. You don't really work for them; you work for yourself. They provide people -- Brookstreet is an organization where they take a very small share of your profit where you basically work for yourself.
Q: You don't work in their office. They have an office and they have hundreds of people who work for them in their own, from their own home or their own office.
A: They do mostly stocks and they do a little bit of futures.
Q: Okay. And what were you doing while you were employed by Brookstreet?
A: I was doing --
Q: How were you making a living? How were you paid?
A: I was making commission from clients. I was doing the same thing I was doing for Cannon Trading. I was doing nothing different except I was doing it all for myself versus splitting my commissions with my boss.
Q: So you were recommending trades to members of the public?
A: Yes.
Q: And you were soliciting members of the public to open accounts with Brookstreet Securities?
Calamaris.

Q Okay. Who is Mr. Hasset?
A Mr. Hasset is one of the top economists in Washington. He works for the American Enterprise Institute where he is in charge of dealing with top economic issues.

He deals with Alan Greenspan and the Pentagon on a daily basis, giving them advice on economics.

Q How do you know him?
A I met him through Charles Calamaris.

Q Okay. Who is Charles Calamaris?
A He's a professor of finance at Columbia University.

Q How do you know Mr. Calamaris?
A He was one of my clients at Castle Trading.

Q Did you make money for him?
A No. I wasn't trading for him. It was a self directed account. I don't think he needed - he's the head professor of finance. He knows a lot about futures. He really didn't ask me for my help that much.

Q Okay. And CHP Asset Management. Is that located at the Roseda address?
A Yes, it is.

Q Suite 101?
A Yes, it is. Yes.
there's no problems versus just an individual account. But the whole goal of that fund was not to get outside investors. It was just so we have a fund with a track record over years.

Q Where are the trading accounts located for that fund?

A They are with formerly Relco, now Man Financial.

Q Okay. Under what name?

A Under Gauss Fund, LP.

Q What are your duties with respect to CHP?

A I supervise the trading. I put the trades in to, run the daily statistic sheet for the trades. I took over the account statements for the trades, withdraw funds for the trades. Everything in respect to running the fund.

Q And are you a general partner of CHP?

A Yes, I am.

Q What about Mr. Calamaris. Is he a general partner?

A Yes, he is.

Q Okay. And what are his duties and responsibilities with CHP?

A He doesn't -- he's just a silent partner. He helped me develop, he assisted me in developing the system that we use for trading very slightly. Came out twice just to assist me over the last several years and that was it.

Q So the day-to-day operations, he doesn't take any part of those.

A No, he does not.

Q And Mr. Haslet, is he a general partner of CHP?

A Yes, he is.

Q Okay. And what are his duties and responsibilities with respect to CHP?

A He's a silent partner. He basically just calls and checks the account to see if it filled with the accountant, if a K-1 is coming, things like that. But he's fairly passive just like Calamaris is.

Q So you're the main guy; you run the place.

A Yes.

Q Do you have the authority to hire employees?

A Yes, I do.

Q Do you have the authority to fire employees?

A Yes, I do.

Q Would you say you exercise managerial control over CHP?

A Yes, I do.

Q Does CHA currently have any employees that are not members?

A No.

Q Has it ever?

A Well, yes. Toby Denniston.

Q And how was Mr. Denniston employed with CHP?

A CHP, Castle and Acceleration are all in the same office. I'm getting to your question.

Q But my question is the legal entity CHP, was Mr. Denniston ever an employee of that legal entity?

A In fact, not in law. I never said, Toby, you're working for CHP Asset Management. It was yes, impliedly.

Q Yes, he was. Not expressly, impliedly.

A He updated the disclosure documents. He --

Q What work did he do on behalf of CHP?

A Disclosure documents for the Gauss Fund?

Q Yes. Because the NFA needs to review them every so often, so he would update the disclosure documents for the Gauss Fund. He would calculate the monthly values, make the statements, present the statements to me, send them out to our clients and partners.

Q Okay. Who supervised Mr. Denniston?

A I supervised Mr. Denniston and my wife supervised him as well.

Q Okay. Is your wife -- and your wife you're referring to Natalia Plyam?

A Yes.

Q And is she an employee of CHP?

A No, she is not.

Q Explain to me or elaborate for me how she supervised Mr. Denniston.

A That's kind of what — our office is about the size of two of these rooms. There's, as far as other than two brokers that were there, there is Mr. Denniston, myself, my wife and a computer tech guy. We don't have a 200-person office. We all sit as we are sitting right now in this type of a situation.

Q So it wasn't, Toby did everything that we did in our — helped us out with everything we did in our office. Whether it was CHP, whether it was Acceleration, whether it was Castle Trading, he helped us with all of those things. But when he was hired originally he was hired as a clerk for, as an order taker and answering the phones for Castle Trading.

Q As he progressed in his job, he was there for two-and-a-half years, I believe. The first year, year-and-a-half, all he did was Castle Trading and then it progressed onto other things which was his, he was, what we thought at that time was he was trying to be a good employee, he was taking responsibilities. But we never sat
Q. Was Mr. Dennison ever paid by CHP?
A. No, he was not.

Q. Was he ever a legal employee of CHP?
A. No, he was not.

Q. Your wife, was she ever paid by CHP?
A. No, she was not.

Q. Was the size of this room or twice the size of this room. Now, when you and I go back and read the transcript or anyone who wasn’t here, they are not going to know how big it was.

A. It was a 400 to 600 square feet office and Toby Dennison sat across from me for two-and-a-half years as you and I are sitting across from -- one table, that's how we sat.

Q. And how many people were in that office at any given point in time?
A. I can’t answer that question.

Q. I should say how many people worked in that office?
A. Anywhere from five to seven at any given time.

Q. How was CHP funded?
A. I don’t understand the question.

Q. Did general partners make any capital contribution to CHP aside from money that’s in the Gauss Fund?
A. Oh, yes, the three -- now I understand your question. The three of us split the cost of registration and maintenance and accounting and all of those things.

Q. Okay. How much money did you contribute?
A. Oh, maybe overall between 5- and 10,000. Maybe 15,000 over the last couple years.

Q. Okay. And would Mr. Calamaris and Mr. Hassett have made similar contributions?
A. Identical contributions. Everything was split three ways.

Q. Does CHP have any relationship with Acceleration Mercury Fund?
A. No, it does not.

Q. Has it ever?
A. No, it does not. As a matter of fact, I don’t even believe Calamaris and Hassett knew -- if you asked them what Acceleration was, they wouldn’t even know.

Q. But Acceleration Mercury Fund is located in the same physical office, suite 101, of the Reseda office.
A. Yes, yes. Both partners are in Washington and New York so we’re not in the same city. We don’t, it’s not -- yes.

Q. When was Acceleration Mercury Fund formed?
A. Acceleration was formed around March of ’04, I believe.

Q. Okay. And who formed the pool?
A. It was me and Curtis Faith, like Faith, yes.

Q. Who is Mr. Faith?
A. Mr. Faith is one of the original Richard Dennis Turtles, a group of traders that is featured in many books and legends about traders. They are considered the biggest money making group of traders of all time in the late ’70s, early ’80s.

Q. And how did you know Mr. Faith?
A. He contacted me one day. He contacted me – I don’t remember the details, but I remember him contacting me one day.

He was looking for, he invented a software device that would be able to backtrack commodity fund information. In other words, he would be able to put historic data into the system, put your own, your own...
was looking to get back into the system, but he wasn't
interested in doing any of the paperwork, the legal work,
the bookkeeping work. So when he found out that I was
already dealing with Gauss, he thought it would be a
natural fit for us to get together and start something
because I already had experience dealing with a fund and he
had extensive trading experience. So he thought it would
be a good match and that's how we met.
Q Okay. And from that point forward, the two of you
formed Acceleration Mercury Fund?
A He flew out here to help me do some work, we
formed it, and he came out one more time and that was it.
Q And Acceleration Mercury Fund is a commodity pool?
A Yes.
Q And when did the pool commence trading?
A I would say within a month of, or two of us
forming it, so I would say roughly the spring of '04.
Maybe early summer of '04. We needed to have a certain
amount of money in order to start trading so we needed to
-- that's why we don't start right away.
Q How much money did you need?
A I believe it was, you know, I don't remember. It
was either half a million or 400,000. It was a large
number that we needed because the kind of system we had

Q Who developed the system?
A It was my system surprisingly. If you want, I
could expand on this if you're interested. What we were
supposed to do was --
MR. HENDERSON: Why don't you let Ted ask the
questions.
THE WITNESS: I'm sorry.
MR. HENDERSON: Why don't you let Ted ask the
questions. I don't think there was a question pending.
BY MR. DOWID:
Q Were you going to just say something?
A Yeah, I just wanted to finish.
Q What were you going to say? You were going to
finish with respect to information you wanted to provide me
about the trading system.
A Yes.
Q What information is that?
A Basically Curtis was a computer programmer and a
trader. What he was going to do was create a short term
trading system that would work with a good long term system
that I already had that's been around for 50 years. He
never came through with that system, so we ended up just
trading the long term system that we had that's been around
for 30, God knows how many years.
Q Okay. And who developed that system?
A It was triple moving averages. I don't know --
probably Donchian. His name is Donchian, Richard Donchian,
D-o-n-c-h-i-a-n. It was a system he developed, I believe,
in the '40s or the '50s. It was based on triple moving
average.
Q Okay. And that was a system that you used to
trade Acceleration Mercury pool?
A Yes.
Q And how did you and/or Mr. Faith acquire that
system?
A This system is so common knowledge for traders,
it's a very, very well known system. It's provided in
almost every technical analysis program. It has three
rules.
Q It's widely available?
A Very widely available.
Q You didn't have to pay to get it?
A No, not at all.
Q Will you mark that, please.
THE WITNESS: It's been working for 40 years. It
still works. Nothing changed. The thing with the system
is you can't trade it with 20- or 30,000. You need over a
hundred thousand to trade it correctly because it trades
20, 30, 40 markets at one time. That's the catch.
(CFTC Exhibit No. 2 was marked for
identification.)
BY MR. DOWID:
Q Mr. Plyam, do you recognize the exhibit marked
number 2?
A Yes.
Q And what do you recognize that document to be?
A It's an account statement.
Q An account statement for what?
A For Active Futures. Sorry, For Acceleration
Mercury Fund.
Q So this is the account statement for the pool
Acceleration Mercury Fund?
A Yes.
Q Okay. And where is this account located?
A Active Futures? Castle Trading is also known as
Active Futures. It's the same entity.
Q And Castle Trading is a registered IB?
A Yes. Yeah, Active Futures is also -- if you were
to go on the NFA website, it's under one entity.
Q Who does Castle Trading clear through?
A We clear through RCG.
Q. Rosenthal Collins Group.
A. Yes, Cadent Financial, Refco, now Man.
MR. SOLINSKY: Can we have the Bates number of the exhibit, please?
MR. DOWD: The Bates number of exhibit 2 is Plyam00177.
Q. Mr. Plyam, did Acceleration Mercury Fund maintain any account at any point in time other than that that's contained in exhibit number 2?
A. Yes, it had an account with Wells Fargo.
Q. And I should say by account I'm referring to a commodity futures trading account.
A. No, it did not.
Q. So the only commodity futures trading account is that which is reflected by exhibit number 2?
A. Yes, correct.
Q. Were these statements mailed to your office?
A. They were mailed to -- I don't remember if they were mailed. I believe we just we just download these statements.
Q. How often were the statements available?
A. Daily. Almost in real time. Let me correct something. Yes, they were mailed and, but they were mailed, but we chose to look then up on line on a daily basis.
Q. And when they were mailed, were they mailed to your attention?
A. Yes, they were.
Q. And you had access to the accounts via your computer via on-line as well?
A. Yes, I did.
Q. Who else had access to the accounts on line?
A. Toby Denniston and Natalia Plyam.
Q. And is Acceleration Capital, LLC the CPO for Acceleration Mercury Fund?
A. Yes, it is.
MR. HENDERSON: I'm sorry. Can you recall the question back?
(The record was read.)
BY MR. DOWD.
Q. Who founded Acceleration Capital?
A. It was me.
Q. Anyone else?
A. And Curtis Faith.
Q. Okay. And identify for us all the capacities in which Acceleration Capital is registered with the NFA.
Q. It's registered with the NFA as a commodity pool operator and I believe also as a CTA, but that is not being used. It was never used in any way.
Q. And by CTA you mean commodity trading advisor?
A. Sorry. Yes, commodity trading advisor.
Q. And is Acceleration Capital registered with any other entity?
A. No, it is not.
Q. Has it ever been?
A. No, it has not.
Q. Mark this as 3, please.
(CFTC Exhibit No. 3 was marked for identification.)
BY MR. DOWD:
Q. Mr. Plyam, you recognize the document that's been marked exhibit number 3?
A. Yes, I do.
Q. And for the record, exhibit number 3 is Bates numbered Plyam00135.
Mr. Plyam, what do you recognize exhibit number 3 to be?
A. It's an operating agreement.
Q. An operating agreement for what?
A. For Acceleration Capital, LLC.
Q. Okay. And was Acceleration Capital in existence in existence prior to the execution of this document?
A. Can you repeat the question?
Q. Was Acceleration Capital formed, in business, in existence prior to the execution of this document?
A. Maybe for the purposes of, you know, Delaware, with the state for that matter within a few days but nothing, there was no business conducted. It was just for the purpose of securing this and a bank account and so forth.
Q. If I could direct you to the last page which is Bates numbered Plyam00175.
A. Yes.
Q. Do you see your signature on that page?
A. Yes, I do.
Q. Where is your signature?
A. It's in the upper left-hand and, under Members and under The Company.
Q. And what date did you sign this?
Q. So is that consistent with your recollection as to the time that Acceleration Capital was formed, at or about July 31, 2003?
A. Right, right, right, right, right, yes. I might
have said earlier the summer of 2004. I don't recall. But
it was obviously summer of 2003.
Q Has Mr. Faith always been a member of Acceleration
Capital?
A Well, yes, technically yes. Not -- after we
formed the company, within a few months we lost complete
contact with each other. He completely withdrew from any
kind of activity at all.
Q When was the last time you spoke with Mr. Faith?
A Probably eight months ago, eight months ago to a
year ago. A very long time ago. And I don't believe we
spoke. It was via e-mail.
Q Can you summarize that e-mail for us? What was
the subject matter?
A It was to contact me to -- basically I sent him an
e-mail. He was missing in action for months on end. I
sent him a letter saying, you know, hey, contact me, I
needed to talk to you about something. There was something
I needed to ask him and I sent him an e-mail, he didn't
respond, so it was basically an e-mail saying, hey, you
know, what happened to you? Where have you disappeared to?
Q What did Mr. Faith do for Acceleration Capital
subsequent to formation?
A Nothing.

Dennison
Q. And then below that the sharing ratio, Mr. Faith, seems to have a double share of yours?
A. Yes.
Q. Why is that?
A. Because initially him being a – he had a reputation in the industry for being, for being part of a very, very valuable enterprise from previous. So he believed his name carried a lot of weight with raising capital, which is the reason why I wanted to become partners with him because he had the name that would potentially raise a lot of money. So we thought it would be fair to split it this way.
However, he did not, none of that occurred.
His name was not as well perceived as we thought and he did not, basically did not make any contributions that would entail this.
Q. Has this agreement ever been adjusted?
A. No. We -- there hasn’t been anyone to contact to adjust anything. He lives on — he travels — he’s not the kind of guy you just pick up a phone and call. He travels on boats. He lives a very different kind of life style than I do.
Q. So in terms of distribution of money received by Acceleration Capital, do you receive a hundred percent of it?
A. I receive a hundred percent of it, but I, everything that -- I sent him his share up to the last distribution.
Q. And by his share, did you send him 66.67 percent?
A. Minus the -- yes, minus the amount of money for expenditures and so forth. Well, wait, I’m sorry. I have to make a correction. No, that’s not the case because this is for profit, sharing profit. We didn’t have a profit so we didn’t, that’s not the money we split. We were never in a situation where we had a profit so this would never come up.
The amount of money that I’m talking about is management fee money and that was to be split 50/50, not 33/66 because I was obviously, you know, involved in the management and he had nothing to do with it.
Q. Okay. And have you received management fees? Has Acceleration Capital received management fees?
A. Yes.
Q. Are those management fees divided 50/50 with Mr. Faith?
A. Yes, they are.
Q. For the entire duration of Acceleration Capital’s existence?
Galt Capital, Curtis Faith and his partner, Bruce.

Q. Do you remember Bruce's last name?
A. No, I don't. I apologize. I don't remember.

Q. And Galt Capital was on the securities side of the business?
A. Yeah. They were, they had a website. It was a very, very short website without any details.

Q. Do you know what they did on the security side of the business? Was it a brokerage?
A. No, no, no, no, no. They were starting five or six different funds to trade stocks. I don't remember his last name. It'll come to me.

Q. Was there any trading at Galt Capital, to your knowledge?
A. Not that I'm aware of.

Q. Do you know if Mr. Faith ever traded a futures account independent of Acceleration Mercury Fund?
A. I know for a fund that he did.

Q. Okay. Which accounts do you know that he traded?
A. For Richard Dennis in the early '80s.

Q. What about the time period of January 2000 forward. Did Mr. --
A. Not that I'm aware of. Sorry.

Q. That's okay. From the period January 2000 forward, did Mr. Faith, to your knowledge, ever trade any commodity futures accounts?
A. No. But there's an answer to a question that you asked me previously that I remembered, how we contacted each other. They had a website --

Q. Who is 'they'? A. Galt Capital had a website. They, Bruce and Curtis were trying to solicit people for two-week trips to Virgin Islands for $25,000 to give lessons on how to trade futures. I never took those lessons, but that's how I found, that's how we contacted each other. That's how we found out about each other.

Q. Who made the initial contact? Did you contact him or did he contact you?
A. I believe I contacted him, but it had nothing to do with starting a business together. It was just finding information about trading possibly, meeting him, talking to him.

Q. Based on those discussions, the two of you decided to form Acceleration Capital at some point in time.
A. That's exactly correct. Yes.

Q. Let's go off the record. Take five minutes.
A. (A short recess was taken.)

MR. DOWD: Mike, you guys ready?
1. Acceleration Capital regardless of whether or not she was
2. an employee of that entity?
3. A. Yes, she did.
4. Q. Okay. And did you supervise that work?
5. A. Yes, I did.
6. Q. And to the extent she did that work, did she
7. report to you?
8. A. Yes, she did.
9. Q. What about Mr. Denniston, did he ever do any work
10. on behalf of Acceleration Capital regardless of whether or
11. not he was an employee of the company?
12. A. Oh yes, he did.
13. Q. And did he report to you?
14. A. Yes, he did.
15. Q. And did you supervise his work?
16. A. Yes, I did.
17. Q. What did Ms. Plyam, your wife, do on behalf of
18. Acceleration Capital?
19. A. She wrote checks for expenses. For example, if
20. the corporation had, the filing fee had to be paid, she
21. would make a check for that. Basic secretarial duties in
22. relation to making sure that all the, everything was paid
23. on time. That was pretty much it.
24. Q. Okay. What about Mr. Denniston. What did he do

1. on behalf of Acceleration Capital?
2. A. Mr. Denniston would deposit the checks.
3. Q. What checks?
4. A. The checks that the, client monies that the
5. clients would... He would do the basic monthly
6. bookkeeping that would then go to the CPA to do the
7. certified public statements.
8. Q. Who is that CPA?
10. Q. Is he with any particular firm?
11. A. I believe it’s his own company, Bradley Kaye.
12. Q. Okay. What else did Mr. Denniston do?
13. A. He would update the disclosure document monthly
14. with the performance table. He would create the
15. performance table. He would calculate the amount of money
16. in the fund in order to put it into the table and he would
17. make the statements, monthly statements for the clients and
18. I would sign them and send them out. He would receive
19. mail, send mail. He was, he was a clerk.
20. Q. Who secured the lease for Acceleration Capital’s
21. offices?
22. A. My wife and I did. I did.
23. Q. So you or your wife or both?
24. A. Both of us.
Q: Do you have authority to enter into contracts on behalf of Acceleration Capital?
A: No.
Q: Has anyone else ever had that authority at Acceleration Capital?
A: No.
Q: Who's ultimately responsible for the management of Acceleration Capital?
A: Me.
(CFTC Exhibit No. 4 was marked for identification.)
BY MR. DOWID:
Q: Mr. Plyam, do you recognize the document marked as exhibit 4?
A: Yes, I do.
Q: What do you recognize that document to be?
A: It is an offering memorandum for Acceleration Mercury 4X, LP.
Q: For the record, exhibit number 4 is Bates numbered Plyam000083.
A: I'm sorry. I missed the question.

Q: It wasn't a question. It was a statement for the benefit of our friends in Washington.
A: Okay, sorry.
Q: Mr. Plyam, who drafted the document that's marked as exhibit 4?
A: It was myself.
Q: Did you have any assistance?
A: Yes, I did.
Q: Who assisted you?
A: That's actually one of the reasons why Curtis came. He was helping me draft this and we used the information, we used information from the previous fund that I had, which was the Gauss Fund, in order to draft this document. So we used sort of a, the documents from a fund that was in existence to draft this document.
Q: Did anyone other than Mr. Faith assist you in drafting exhibit number 4?
A: No.
Q: And with respect to the drafting of exhibit number 4 and your role and that of Mr. Faith, are you able to differentiate for us what you did as opposed to what Mr. Faith did, what were your responsibilities as opposed to his?
A: I would not have a clue at this time. We basically needed to draft and make changes from one document to the other. He was doing it a couple hours; I was doing it a couple hours. There was no: You do this part -- I wouldn't be able to recall that. But it was a joint effort. That's actually -- when he came here the first time for a week, that's what we spent our time doing.
Q: Were there any sections of the document that you were solely responsible for?
A: If I did, I wouldn't be able to tell you which ones.
Q: What about Mr. Faith. Were there any portions or sections of the document that he was solely responsible for?
A: Yes. His background history. And I was solely responsible for my background history.
Q: Okay. Any other portion?
A: Not that I can recall, no.
Q: Is this the first disclosure document used by Acceleration Mercury Fund?
A: We used the same disclosure document. There was only one disclosure document used. It was just updated to keep the table and to keep things current, but it was one and the only disclosure document.
Q: So there are other iterations of the document marked as exhibit 4?
A: Yes.
Q: All right. How many?
A: I do not recall. The reason is because sometimes we were requested to make a change by the NFA. They would call us up and say, Hey, you need to make this changes to your document or sometimes it was just updating the table. So...
Q: And by updating the table you're referring to what?
A: To the --
Q: If you want to go to a specific page in here, that would be fine.
Q: The trading table.
Q: Performance --
A: Yes, page 17.
Q. And that's Bates numbered Plya00099?
A. Yes. And Toby -- I'm sorry, go ahead.
Q. Okay. So these performance tables on page 0099 were updated periodically?
A. Yes, they were.
Q. Okay. Did the prior iterations of this document do anything other than update the tables that are on page 17 or 0099?
A. Possibly very minor, a misspelling or something, a line here or there per the NFA, but nothing substantial or major.
Q. And back on the first page of this document in the first full paragraph, I'm looking at the fourth line which references a Statement of Additional Information, Part II. Do you see that?
A. No.
Q. The full sentence is: The Disclosure Document is a two-part document.
A. Yes.
Q. ... comprised of the Confidential Private Offering Memorandum of Acceleration Mercury Fund 4X, LP (Part I) and the Statement of Additional Information (Part II).
Q. Okay. Is exhibit number 4 Part II?
A. Yes, it is.
Q. What is Part II?
A. It is a statement of additional information which, it's another section that's required by the NFA in order to submit this and that was never changed.
Q. What information is in Part II, the statement of additional information?
A. It's more, it's more disclosures, more information for our clients.
Q. What type of disclosures?
A. About risks, about just different, different risks, different information about the fund.
Q. Have you produced a copy of that to the CFTC?
A. I don't recall. I believe I did.
MR. HENDERSON: I'll have to check. I'm not sure.
MR. DOWD: Let's go off the record.
(Q Off-the-record discussion.)
MR. DOWD: Let's go back on the record.
MR. SOLINSKY: Ted, before you get back on the record --
MR. DOWD: Off the record.
2. UCC. There's more. Family law. Criminal law. I believe that's it.
3. Q Did you graduate number one?
4. A Two.
5. Q Have you received any other jurisprudence awards other than the highest grade in the classes you just identified?
6. A No. No.
7. Q And were those awards issued by your school?
8. A Yes.
9. Q If I could move you to the bottom of that paragraph and the last sentence which reads:
10. In July 2003, Mr. Plyam formed Acceleration Capital, LLC, where he served as a managing member; his duties include system research and development as well as trade execution and pool compliance issues. You see that sentence?
11. A Yes.
12. Q Specifically what is meant by pool compliance issues?
13. A Dealing with the NFA. Making sure all the requirements for the NFA and the CFTC were met.
14. Q And were you ultimately responsible for that on behalf of Acceleration Capital?
15. A Yes.
16. Q The buck stopped with you?
17. A It did.
18. Q If I could back you up to page 11, which is Bates numbered Plyam00093, and specifically under Investment Program. A Min-hm.
19. Q The first sentence which says: The investment program has been designed to deliver high returns.
20. A Yes.
21. Q Okay. Describe for me how the investment program is designed to deliver high returns.
22. A By using high leverage. Q Okay. And that can also result in substantial losses.
23. A Absolutely. Q That's the other side of high returns.
24. A Of course. Q And the trading system, did Acceleration Capital employ a trading system?
Yuri Plyam 3/13/2005 10:13:00 AM

1. Q. Okay. How did you know Mr. Sutton?
2. A. He was a very good friend of mine. He was also a client of Castle Trading.
3. Q. Was he a friend before he was a client of Castle Trading?
4. A. Yes.
5. Q. How do you know him?
6. A. From Albany, from another person who was a client of mine for years before that. Just, we met. And we're still very good friends.
7. Q. Did you say Albany?
8. A. Albany, yes.
9. Q. Are you referring to a person or the city, Albany?
11. Q. Did you ever live in Albany?
12. A. No.
13. Q. And Mr. Sutton is from Albany?
14. A. Yes. Well, now he lives — used to live in New York. Now he lives in Albany and Saratoga Springs. He has a dual address.
15. Q. Okay. Anyone else?
16. A. Yes. This is Tsigonis.
17. Q. How do you know Mr. Tsigonis?

1. Q. How did you know Mr. Lewis?
2. A. I believe he was also a client of mine.
3. Q. From Castle Trading?
4. A. Yes.
5. Q. Okay. And Mr. Homan. Did you know him before you started your Acceleration Mercury Fund pool?
6. A. Yes, but I'm not sure if he was a client or prospective client, but I did know him prior to.
7. Q. There was a pre-existing relationship of some sort?
8. A. Yes, yes.
9. Q. Anyone else?
10. A. Yes. Marc Rocker.
11. Q. Is that on page three?
12. A. The last page.
13. Q. How did you know Mr. Rocker?
14. A. We'd been corresponding for about a year prior to.
15. Q. He was interested in trading systems through me for his own account.
16. A. Yes, he was.
17. Q. Anyone else?
18. A. Yes, several. Michael Sutton, the next person after Marc Rocker.

Dennison
They knew I had a fund from prior conversations, the Gauss Fund, but we weren't interested, as I told you previously, that fund was to be used as a track record for many years. It was not to raise capital. That was never the intent of Gauss Fund.

So when Curtis and I started talking about this, I said, Hey, I may be doing something in the future. If you're interested, let me know and I'll keep you posted, and they were very, very interested. As a matter of fact --

Q Who is they?
A The clients that I mentioned to you.
Q Okay. Those that you had a pre-existing relationship with?
A Correct. Correct.
Q So at some point in time you contacted them and informed them that you were beginning a pool.
A Yes.
Q That being the Acceleration Mercury Fund.
A Correct.
Q Okay. What about the individuals that you didn't have a pre-existing relationship with? How did you solicit those participants for the pool?
A I did not. Curtis contacted — those were Curtis.

And that's what I wanted to mention, which ones came from Curtis.
Q Which ones came from Curtis?
A Jean-Francois Brouillet. He had a working relationship — he's the second from the top. He had a working relationship with Curtis in some capacity. I don't remember or know. He just mentioned it to me once. So he knew Curtis from a while back.
Q So Mr. Faith introduced Jean-Francois Brouillet to the pool?
A Right.
Q Who else did Curtis introduce to the pool?
A And I believe Davis Legal Associates, Keenan Davis. I think he might have been one of the people who flew out there to take a course from Curtis a while back or something to that effect. I don't know for sure, but he contacted me — it was Curtis's client or Curtis's contact. And one more. Paul Maggio.
Q Okay.
A Didn't even talk to him. He just sent us a check.
Q Did you know how Mr. Faith knew Mr. Maggio?
A Mr. Maggio works in the futures industry. He worked for Rand, I believe. He worked for a firm and he knew him prior because they had some type of business dealings in the commodities or he knew him from the industry. Paul is in the industry.
Q Do you know if Paul Maggio was provided with a disclosure document prior to participation?
A They all were because when I received the funds I had a copy of his disclosure. There was a statement of additional information, there was an agreement that they had to sign, so we have it for all of these clients.
Q And presumably he was also provided with a subscription agreement?
A Correct.
Q Do you know who provided him, that is, Mr. Maggio, with the disclosure document and subscription agreement?
A What we did was it was either Curtis or he sent us an e-mail and said, Can you e-mail us a copy of your disclosure document.
Q Okay. Is there anyone else reflected on exhibit number 5 that Curtis introduced to the fund?
A You know, I don't remember any — I don't remember. Possibly, but I don't remember.
Q Did Acceleration Capital ever run any print advertisements on behalf of Acceleration Mercury Fund?
Acceleration Capital. And there was no, there
was no, it was just a link. It said Acceleration Capital
and it had a disclosure that you have here on the first
page of the CFTC disclosure document. It says, if you
accept, click here, and then it just has a copy of the
disclosure document.

And when he came to my office he said to me,
you know, I don’t know, he said, This is not an NFA
violation, but you may want to take it off or ask the CFTC
because I don’t know if it’s correct to have a disclosure
document in public view, even though you had to click a
button to get to it. So we said, You know what? It
doesn’t even matter, so my tech guy changed it right away.

So if you ever have to go to
Acceleration Capital now, it’ll take you to Capital Trading,
so we just took that off. That was something I didn’t know
that could be deemed as an advertisement of some kind.

Q And does the Capital Trading website promote or
advertise for the Acceleration Mercury Fund in any way?

A No, it does not.

Q What about for Acceleration Capital?

A No, it does not. There’s no mention of it in any
way whatsoever.

Q Okay. And at any point in time did the

Acceleration Capital website advertise for Acceleration
Mercury Fund other than posting the disclosure document to
the Internet?

A No.

(CFTC Exhibit No. 6 was marked for
identification.)

BY MR. DOWD:

Q Mr. Plyam, do you recognize the document that’s
been marked exhibit number 6?

A Yes, I do.

Q What is that document?

A It’s a report from the NFA to us with their
findings of what occurred during their audit.

Q For the record, exhibit number 6 is Bates numbered
Plyam00305.

Plyam00305. is a December 20, 2005 letter from the
NFA to you, Mr. Plyam.

A Yes, it is.

Q And if I could direct your attention to page
two, which is Bates numbered Plyam00307.

A Okay.

Q And specifically paragraph 9 which reads: (As
read)

NFA reviewed postings to the chat room.

A Not with my knowledge, with my – not under my
knowledge. But I did have two people that worked for me,
for Capital Trading as brokers that were dismissed that I
found two years earlier through one of those forums.

Q And who are those people?

A Morgan Moore and, I, I apologize. It’s been a
while. What is the other gentleman’s name? I don’t recall
his name. He was an associate person who worked at the
same time Morgan did. He worked for maybe six months. I
don’t recall his name. This was a couple years back.

Q Okay. And what were Morgan Moore and the other
individual whose name you can’t remember posting on, was it
the Trader’s Roundtable website?

A Yes.

Q Is it a website?

A Turtle Trader software.

Q What were they posting on that website?

A I’ve never been to the round table. That was the
first time I ever heard of it. I’ve been to the Turtle
Trading software.

Q What were they doing that you fired them?

A They weren’t doing anything in relationship to
this that I fired them. They were just not doing a good
job as brokers. That’s why they were fired.
1 Q. How are they related to, if at all, to the
2 Trader's Roundtable website or the information that's in
3 paragraph 9 of the NFA letter?
4 A. I posted an ad for commodity brokers under there.
5 They responded to that table.
6 Q. Okay. And other than posting that ad, have you
7 ever posted anything under the Trader's Roundtable website?
8 A. I registered for it and I believe I corresponded
9 with one person about commodity data one time before
10 any of these things occurred, 2001, something to that
11 effect, and it was nothing relating to pools.
12 Q. Was it related to Acceleration Capital?
13 A. No.
14 Q. Was it related to Acceleration Mercury Fund?
15 A. No. No.
16 Q. Have you ever posted anything -- go ahead.
17 A. It was actually -- that's how I met one of the
18 persons on this sheet. His name is Marc Rooker, as a
19 matter of fact. The last sheet on exhibit, under the
20 client list.
21 Q. That's for the record that's exhibit 5.
22 A. Okay.
23 Q. And it's your testimony that you met Marc Rooker
24 via the Internet?
25 A. Yes.
26 Q. And specifically you posted something related to
27 futures trading on the Trader's Roundtable website?
28 A. I can tell you specifically what it was about.
29 There was a program --
30 Q. Let's start here. Was it the Trader's Roundtable
31 website?
32 A. It was Turtle Trading software.
33 Q. Is Turtle Trading software the same as the Traders
34 Roundtable?
35 A. From what I understand, a few years after this
36 started, they changed the name but they kept the posts so,
37 yes.
38 Q. So it started as Turtle Trading software.
39 A. Right.
40 Q. Do you recall the web address?
41 A. No.
42 Q. And at some point in time the name of the website
43 changed to Traders Roundtable?
44 A. Yes, and I found that out when --
45 Q. The posts that were made under the Turtle Trading
46 name were maintained when the website changed names?
47 A. From what I understand, yes.
48 Q. Okay. And so you posted on that website?
Q: Who created this document?
A: I did.

Q: And when did you create this document?
A: Between August 20 and 29 while the NFA was in my office under direction of David Groom.

Q: Of 2005?
A: Yes.

Q: And what do you mean under the direction of Mr. Groom?
A: He assisted me in creating this document. We spent a lot of time on it actually.

Q: Okay. Did you consult anyone prior to creating this document?
A: No.

Q: Did you seek Mr. Faith's approval prior to implementing this policy?
A: No.

Q: Did you seek anyone's approval on behalf of CHP Asset Management, Acceleration Capital and Castle Trading prior to implementing this policy?
A: No.

Q: Did you have the power to unilaterally implement this policy?
A: Yes. Well, there was two. There was Acceleration

Q: Was there a policy in place before this one?
A: Yes, but it wasn't this detailed.

Q: Who created this policy -- or who created the prior policies?
A: I did.

Q: And how many policies are we talking?
A: Just one policy.

Q: What was the date of creation?
A: I don't recall. Can I expand?

Q: Go ahead.
A: Well, it was, basically when I made a change to the NFA I basically would take it and I would put it in a folder and David Groom wanted the progression of things there so he helped me create this method where it was more A-B-C-D and that's what I adopted. And it makes sense and it works great.

Q: But there was a policy pre-existing this one?
A: Yes.

Q: And you created that policy?
A: Yes.

Q: Okay. Is that policy reduced to writing?
A: I don't recall. No, I don't think it was because we were look for it and we didn't have it so we made this one up. Basically I was under the impression that I had to keep a record of it, but this kind of broke it down more into detail so it worked out fine.

Q: Where were the proceeds from the sale of Acceleration Mercury Fund pool subscriptions deposited?
A: In Wells Fargo.

Q: That was a banking account at Wells Fargo?
A: Yes, it was.

(CFTC Exhibit No. 9 was marked for identification.)

BY MR. DOWD:

Q: Mr. Plyam, do you recognize the document marked exhibit number 9?
A: Yes.

Q: Okay. And for the record, exhibit 9 is Bates numbered Plyam00247.

Mr. Plyam, what do you recognize this document to be?
A: It's an Acceleration Mercury Fund account, business checking account statement.

Q: Okay. And is this the Wells Fargo statement that you just referenced, the Wells Fargo bank account that you just referenced?
A: Yes.

Q: Okay. Is the account that's reflected in exhibit number 9 the account where pool subscriptions were deposited?
A: Yes.

Q: Do you recall I asked you where the proceeds of Acceleration Mercury Fund's pool subscriptions were deposited?
A: Yes. Sorry.

Q: Okay. And was it your answer that there was a bank account at Wells Fargo?
A: Yes.

Q: Okay. Is the account that's reflected in exhibit number 9 the account where pool subscriptions were deposited?
A: Yes.

Q: So this is the bank account for Mercury Fund?
A: Correct.

Q: Did Mercury Fund ever have any other bank account?
A: No.

Q: Were account statements from this account, the Wells Fargo bank account, mailed to your office?
A: No.

Q: Where were they mailed?
A: They weren't mailed.

Q: How did you receive statements from Wells Fargo for this particular bank account that's reflected in exhibit number 9?

Capital and Acceleration Mercury Fund.
A They would come on line and Toby Denninston would print them out and show them to me.

Q What's the account number for the Mercury Fund Wells Fargo bank account?

A You want me to read this number? I don't know it off the top of my head.

Q Is it consistent with your recollection of the account number is 535-7180347?

A I really don't have any recollection, but it looks to be the right account. Yes. I don't memorize account numbers, but yes, it does.

Q But to your knowledge --

A Yes, this looks like the right information.

Q This was the only bank account that Mercury Fund maintained with Wells Fargo.

A That's correct.

Q Okay. Did Mercury Fund maintain any other bank accounts with any other bank at any point in time?

A No.

Q At any point in time did Wells Fargo mail account statements for this bank account to either you or your office?

A No.

Q Okay. Describe for us how you got the account statements.

A We — Toby Denninston would download them from the Internet and he would show them to me.

Q Did you have access to the account statements via the Internet?

A Yes, I did.

Q Did you have access to the account via the Internet? In other words, could you go in on any day and look at the balance?

A Yes, I could.

Q Who else had Internet access to this bank account that's reflected in exhibit number 9?

A My wife, Natalya Plyam.

Q Anyone else?

A No.

Q And you had the ability to check the balance on the Internet?

A I did.

Q And could you check account transactions via the Internet?

A I could.

Q Did Acceleration Mercury Fund use an introducing broker?

A Yes, Castle Trading.

Q Is Castle Trading a corporation?

A Yes.

Q Where is it incorporated?

A In Delaware, I believe.

Q And is Castle Trading registered with the NFA?

A Yes it is.

Q In what capacity?

A It's an independent broker, futures broker.

Q Is it registered as an introducing broker?

A Introducing broker, yes. Independent introducing broker.

Q Is it registered in any other capacity?

A No.

Q When was Castle Trading formed?

A Castle Trading was formed around Christmas of 2000, around that time, sometime around there. February maybe of 2001 or Christmas of 2000.

Q And who formed Castle Trading?

A Myself.

Q Anyone else?

A No.

Q Where is Castle Trading physically located?

A At 8619 Reseda Boulevard.

Q The suite 101 office?

A Comct.

Q Identify for us all Castle Trading business operations. Does it do anything other than act as an introducing broker?

A No.

Q What is Active Futures?

A It's just another name that Castle goes by. It's a website where clients want to do very, very quick intraday trades on the mini S&P and they want to pay 3 or $4 a round turn. That's where they go to.

Q And Castle Trading is more broker assisted type of trading. They are one and the same entity.

Q There's no difference between them.

Q Castle Trading is not a separate entity?

A No, it's not a separate entity. And actually, the reason we cleared through — everybody who was looking for just a deep, deep discount rate we put with Active Futures because Active Futures clears with Rosenthal Collins and that's who we use for very quick, short-term trading because their rates are lower and they have a program called J-Trader where — so Active Futures clears at Rosenthal Collins.

Q My rates were a bit lower there so I decided to put Acceleration with them because my rates were a
Q. My wife. She is vice president.
A. Q. Anyone else?
A. 4. Q. Gregory Zane Parker?
B. A. Gregory Zane Parker. But, he's a registered principal, but he doesn't own any partnership interest in the company.
A. Q. He's a registered principal with the NFA?
B. A. Yes.
A. Q. For Castle Trading, Incorporated?
B. A. Yes. Yes.
A. Q. How do you know Mr. Parker?
B. A. He was a, he was an associate person for a little over a year now. He -- basically what we did was after the NFA audit, we wanted to clean up and just have a much smaller company.
A. Q. Which NFA audit are you referring to?
B. A. The last one.
A. Q. August '95.
B. A. Yes. And he's a young guy, he's a good guy so we wanted --
A. Q. Was he hired subsequent to that audit?
B. A. No, prior to. He's been a client, excuse me, he's been with us for over a year.

Q. Little lower and I was trying to save money because obviously commissions eat -- not in this case but commissions can eat into the profits. So that's why they were put with Rosenthal Collins.
B. Q. And Castle Trading clears through what FCM?
A. Through Cadent -- 95 percent RefcoMan, 5 percent Cadent and RCG a couple of accounts.
A. Q. Okay. And Active Futures goes strictly through Rosenthal Collins Group?
B. A. Correct, because they have the platform we need and Active Futures is for three to five round turn e-mini S&P trades.
A. Q. What is Castle FX?
B. A. Castle FX is, it's just Castle Trading. We wanted to give it a different website in order to do 4X so we created a website. That's also part of Castle Trading.
A. Q. It's not a separate entity?
B. A. No.
A. Q. Okay. And who does Castle FX clear through?
B. A. Doesn't clear through anybody right now. When

Q. Refco, when the events with Refco occurred their FX business went belly up.
B. Q. Has Castle FX ever cleared through an FCM?
A. A. It cleared through Refco for, 'til what occurred with Refco occurred.
B. Q. Has it ever cleared through any other entity other than Refco?
A. A. No, no.
B. Q. What is Castle Trading Company?
A. A. Before we incorporated, it was just Castle Trading Company and then when we incorporated it was Castle Trading, Inc. We didn't incorporate right away when we started.
B. Q. When did you start?
A. A. Beginning of --
B. Q. Christmas of 2000?
A. A. Around that time.
B. Q. And when did you incorporate?
A. A. About a year later, I believe. Maybe a year-and-a-half.
B. Q. What's your position with Castle Trading Corporation? Do you have a title?
A. A. I'm the president.
B. Q. Are there any other officers?
1. A. Yes, I did.
2. Q. Did anyone else have that authority at Castle Trading, Incorporated?
3. A. No.
4. Q. Did you supervise her?
5. A. Yes.
6. Q. And what's your ownership interest in Castle Trading, Incorporated?
7. A. One hundred percent.
8. Q. How is your compensation from Castle Trading, Incorporated structured?
9. A. Can you be more specific?
10. Q. How do you get paid?
11. A. I get paid through commissions from clients.
12. Q. So Castle Trading is an entity that generates a certain level of revenue.
13. A. Yes.
14. Q. And you get a percentage of that revenue?
15. A. Yes.
16. Q. What percentage of that revenue do you get?
17. A. I get the entire, everything, 100 percent of the
revenue.
2 Q Do you use that revenue to pay your employees?
3 A Yes.
4 Q And do you use that revenue to pay expenses?
5 A Yes.
6 Q Okay, And how much of that revenue goes into your pocket as opposed to paying salaries and expenses?
7 A I...
8 Q Is there a set number?
9 A No, no, there's no set number because every month
10 the amount I receive is totally different than the month
11 before. There's no cut-and-dried numbers.
12 Q Do you have a salary?
13 A No. No.
14 Q So the revenue is used to pay salaries and other
15 expenses and whatever's left goes into your pocket, is that
16 fair?
17 A Exactly. Yes, yes.
18 Q Who's responsible for registering Castle Trading
19 with the NFA?
20 A My wife is. Natalia Plyam.
21 Q Who initially did it?
22 A I did.
23 Q And for what period of time did you handle NFA
24 registrations on behalf of Castle Trading, Incorporated?
25 A Oh, between 2000 and 2003 I would believe. First
couple years.
26 Q MR. HENDERSON. So we're clear for the record, I'm
27 only aware of one registration. Unless you're talking
28 updates.
29 Q BY MR. DOWD:.
30 Q Yes, my question is updates to your IB
31 registration.
32 A Sure.
33 Q Okay. So you handled NFA registration issues,
34 that being the original registration and updates,
35 thereafter from roughly 2000 to 2003?
36 A Thoroughly, yes.
37 Q And then your wife assumed those duties?
38 A Yes.
39 Q And did you supervise her with respect to those
40 duties and responsibilities?
41 A Yes.
42 Q Who's responsible for securing funding for Castle
43 Trading?
44 Q When you say securing funding... was there an initial capital contribution for
45 Castle Trading?
Yuri Plyam 3/13/2005 10:13:00 AM

1 A I don’t recall.
2 Q And specifically how did he help you?
3 A I remember he found the policy that we both liked
4 from another, nothing relating to commodities, another
5 business, and he found it on the Internet or provided –
6 somehow he came up with it and I looked at it, it looked
7 really good and we decided to adopt it into our policy.
8 Q Ultimately whose responsibility was it to choose
9 to adopt the policy recommended by Mr. Denniston?
10 A Mine.
11 Q Or I should say found by Mr. Denniston.
12 A Mine.
13 Q Was anyone other than Mr. Denniston involved in
14 the drafting of the document marked as exhibit 10?
15 A I do not believe so.
16 (CFTC Exhibit No. 11 was marked for
17 identification.)
18 BY MR. DOWD:
19 Q Mr. Plyam, do you recognize the document marked
20 exhibit number 11?
21 A Yes.
22 Q What do you recognize that document to be?
23 A It’s a sexual harassment policy.
24 Q For the record, exhibit 11 is Bates numbered

1 Plyam00067.
2 Mr. Plyam, who created this document?
3 A My wife, Natalia Plyam, and Toby Denniston and I
4 did supervise this and I did know about it, all the other
5 stuff.
6 Q Did you as president of Castle Trading,
7 Incorporated, did you approve this policy?
8 A Yes, I did.
9 Q And did anyone else have the authority to approve
10 this policy on behalf of Castle Trading, Incorporated?
11 A No. This just jogged my memory. I just wanted to
12 go back and say something very quickly, if I may, related
13 to this.
14 One of the reasons why Jeff Anthony was fired
15 was he — when you come into our office his monitor would
16 be facing the doorway, so the first thing you saw when you
17 would enter the room was his computer. About 150 times I
18 told him not to look at porn on the Internet and he
19 consistently kept doing it.
20 This jogged — and my wife really did not
21 appreciate it and other women who walked upstairs who would
22 come in and out and I told him about a million times about
23 it. So that was just another wrinkle. So anyway, that’s
24 that.

1 Q Do you recognize the document marked as 12?
2 (CFTC Exhibit No. 12 was marked for
3 identification.)
4 THE WITNESS: Yes, yes, I do.
5 BY MR. DOWD:
6 Q For the record, 12 is Bates numbered Plyam00068.
7 What do you recognize exhibit number 12 to
8 be, Mr. Plyam.
9 A It’s an anti-money laundering procedures manual.
10 Q Who created this document?
11 A This was created by Toby Denniston under my
12 supervision.
13 Q And were you ultimately responsible for adopting
14 this policy?
15 A Yes.
16 Q And adopting it on behalf of Castle Trading,
17 Incorporated?
18 A Correct.
19 Q If I could direct you to the first page, the
20 second paragraph, second sentence which reads:
21 Natalie Plyam serves as firm’s Compliance
22 Officer.
23 A Yes.
24 Q What is meant by that sentence?

1 A She checks to make sure, to the best of her
2 abilities, that nobody is violating any money laundering
3 rules. She’s in charge of opening new accounts, which is
4 when the money transfer takes place into our account or
5 not, so she’s the one dealing with it, notifying the FCM,
6 doing due diligence, taking driver’s license photographs,
7 social security, fingerprints, all those things dealing
8 with — sorry, for going so fast — anti-money laundering
9 issues. She deals with it because she’s in charge dealing
10 with new accounts and that kind of goes hand-in-hand.
11 Q She’s the compliance officer with respect to
12 Castle Trading, Incorporated’s anti-money laundering
13 program.
14 A Yes.
15 Q Is she the compliance officer beyond that with
16 respect to any other operations of Castle Trading,
17 Incorporated?
18 A Margin calls. Margin issues, margin calls. Which
19 also goes hand-in-hand with this because money comes in and
20 out when you have margin calls.
21 Q And with respect to her duties as compliance
22 officer for the anti-money laundering program, does she
23 report to you?
24 A Yes, she does. Yes, she does.
Q: What about with respect to her compliance duties as they pertain to margin calls.
A: Yes. Unfortunately.
Q: So ultimately you're responsible for the anti-money laundering program?
A: Yes.
Q: And you're responsible for the margin calls?
A: Yes.
Q: I should say the supervision of margin calls.
A: Correct.
Q: When did Natalia assume the role of compliance officer for the anti-money laundering program?
A: Approximately two years ago, two-and-a-half years ago she got more involved into the business.
Q: And did Castle Trading have an anti-money laundering program prior to Natalia's involvement, or did she suggest that we comply.
A: I don't believe she did because I believe this all happened around 9/11 and I believe that's when we were asked by the FCMs to make these type of arrangements that.
Q: And we were, this was brought to our attention during our first audit, not the one that occurred.

Q: Yes, we have a notebook that has all the different things, but I don't think it's just one Castle Trading policy manual. I think it contains all the requirements such as a copy of this, of this anti-money laundering policy and other things.
Q: Does it contain anything other than the documents we've discussed today?
A: I cannot recall. I'm not 100 percent sure. I believe it does. I believe we have more information than what we've seen, than we're seeing here, yes.
Q: I'm going to request that a copy of that be produced.
A: Sure.
Q: Can you recall or do you know with any level of specificity what information is in that compliance manual other than what we've discussed today?
A: It would be procedures for margin calls, other things required by the NFA, registration certificates, incorporation records, single stock futures procedures, I believe, which we don't have any clients doing that.
Q: It would have the office policies, general office policies. It would have handling client fund policies. It would have advertising policies and a copy of all the advertising files, all the advertising material that we've forwarded to the NFA for review with a letter.
A: It would have all the NFA letters and responses with the NFA as to checking our company and doing all those things. It would have the accounting books.
Q: It's all in one notebook, so I...
A: And to the extent that notebook has a compliance procedure or Castle Trading policy, would you have been responsible for approving each of those policies?
A: Yes.
Q: Okay. And would you have been responsible for adopting each of those policies?
A: Yes.
Q: Has Acceleration Capital ever had a compliance manual?
A: Basically we adopted things from Castle Trading in the same sense of the way everything that applied to Castle would be applied to Acceleration Capital. I don't believe we created a specific one for Acceleration, but we adopted Castle's for Acceleration.
Q: Okay. And are there any documents that reflect that adoption?
A: I don't recall. I don't recall.
Q: To the extent there are, I'd like that they be produced.

August of '05. The first audit that we had.
Q: The March 2004 audit?
A: Thank you. And so we, either we tightened it up during that time or we applied the one from the FCMs during that time. And right after that audit is when she became the supervisor dealing with anti-money laundering and those type of issues.
Q: So was there an anti-money laundering program prior to the NFA audit and Natalia's assumption of the duties as a, duties to be the compliance officer for the anti-money laundering program?
A: I don't recall. It's going back several years. I don't remember.
Q: If Castle Trading had an anti-money laundering program prior to the one reflected in exhibit 12, would you have been ultimately responsible for the supervision of that program?
A: Yes, I would.
Q: Has Castle Trading, Incorporated ever had a compliance manual other than what we've discussed thus far?
A: Let's see. We've looked over so many documents that I'm getting a little dizzy. I want to take a look if you don't mind.
Q: Take as much time as necessary.

A: Yes, a notebook that has all the different things, but I don't think it's just one Castle Trading policy manual. I think it contains all the requirements such as a copy of this, of this anti-money laundering policy and other things.
Q: Does it contain anything other than the documents we've discussed today?
A: I cannot recall. I'm not 100 percent sure. I believe it does. I believe we have more information than what we've seen, than we're seeing here, yes.
Q: I'm going to request that a copy of that be produced.
A: Sure.
Q: Can you recall or do you know with any level of specificity what information is in that compliance manual other than what we've discussed today?
A: It would be procedures for margin calls, other things required by the NFA, registration certificates, incorporation records, single stock futures procedures, I believe, which we don't have any clients doing that.
Q: It would have the office policies, general office policies. It would have handling client fund policies. It would have advertising policies and a copy of all the advertising files, all the advertising material that we've forwarded to the NFA for review with a letter.
A: It would have all the NFA letters and responses with the NFA as to checking our company and doing all those things. It would have the accounting books.
Q: It's all in one notebook, so I...
A: And to the extent that notebook has a compliance procedure or Castle Trading policy, would you have been responsible for approving each of those policies?
A: Yes.
Q: Okay. And would you have been responsible for adopting each of those policies?
A: Yes.
Q: Has Acceleration Capital ever had a compliance manual?
A: Basically we adopted things from Castle Trading in the same sense of the way everything that applied to Castle would be applied to Acceleration Capital. I don't believe we created a specific one for Acceleration, but we adopted Castle's for Acceleration.
Q: Okay. And are there any documents that reflect that adoption?
A: I don't recall. I don't recall.
Q: To the extent there are, I'd like that they be produced.

Dennison
1  Q. Let's go off the record.
2  
3  (A half-hour recess was taken.)
4  
5  MR. DOWD: Let's go back on the record at
6  approximately 1:45 p.m. after a brief lunch break.
7  
8  BY MR. DOWD:
9  
10  Q. Mr. Plyam, prior to the lunch break do you recall
11  you and I were discussing Castle Trading's anti-money
12  laundering program?
13  
14  A. Yes.
15  
16  Q. And do you recall that I asked you if Castle
17  Trading had a program prior to that set forth in exhibit
18  12?
19  
20  A. Yes.
21  
22  Q. And your answer, if I recall correctly, was that
23  you don't recall.
24  
25  A. I remember that we created one somewhere around
26  2001, early 2002, and then we changed it to its current
27  state.
28  
29  Q. To the extent that you have any of those programs
30  in documents, I'm going to request that you produce those.
31  
32  A. Absolutely.
33  
34  Q. Was Mr. Denniston an employee of Castle Trading?
35  
36  A. Yes.
37  
38  Q. When did Castle Trading hire Mr. Denniston?
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Yuri Plyam 3/13/2005 10:13:00 AM

1 Home Base as a buyer for many, many years.
2 Q What is Home Base.
3 A It's a store like Lowe's or Home Depot. That type
4 of a store.
5 Q And what did he do for Home Base, do you know?
6 A He was a buyer. He purchased -- he would figure
7 out and order what he would in his mind figure they would
8 need to sell. It was not an entry level position. He was
9 there for many years and from what he explained to me, he
10 was the buyer for that store.
11 Q Okay. And do you know what his educational
12 background was?
13 A He had a college degree.
14 Q Do you know where he went to college?
15 A No, I do not recall.
16 Q Do you know what discipline his degree was in?
17 A Accounting. From the best of my recollection,
18 finance or accounting.
19 Q Do you know if he's a CPA?
20 A No, he's not. I know for a fact that he's not a
21 CPA.
22 Q Okay. How do you know that for a fact?
23 A We've talked about it numerous times.
24 Q And when you say "we," you're referring to
25 conversations between yourself and Mr. Denniston?
26 A Correct, yes.
27 Q Did Mr. Denniston have any experience in the
28 futures industry prior to the time that you hired him at
29 Castle Trading?
30 A None.
31 Q Did you have any pre-existing relationship with
32 Mr. Denniston prior to his employment at Castle Trading?
33 A No.
34 Q Did you run an advertisement for the job?
35 A Yes, we did, in Internet Advertising and Yahoo
36 Jobs.
37 Q Did Mr. Denniston reply to that advertisement?
38 A Yes.
39 Q That's how he got the job?
40 A Yes.
41 Mr. Plyam, what is Exhibit 13?
42 A It's a California driver's license of Toby
43 Denniston.
44 Q And there's a notation below the driver's license
45 which appears to be a Social Security number; do you see
46 that?
47 A Yes, I do.
48 Q Who made that notation?
49 A Natalia Plyam.
50 Q When did she make that notation?
51 A At the time he started -- our policy when we hire
52 new employees is to make a copy of their driver's license
53 and put this information on there, so I would imagine
54 within a day or two of him starting work.
55 Q Okay. Are there any documents in Mr. Denniston's
56 personnel file other than what's been marked as 13?
57 A Not that I recall, no.
58 Q Does Castle Trading maintain personnel files for
59 its employees?
60 A Yes. Yes.
61 Q And typically what's in those files?
62 A It would be, well, if it is an administrative
63 person, it would be this and now we do credit checks as
64 well. But that's been a recent development after things
65 that happened. It was just this. But it was this and
66 calling his last couple of employees.
67 MR. HENDERSON: Employers.
68 THE WITNESS: Employers, sorry. There's a list of
69 his previous employers with names of who he worked for and
70 so forth. And we called those to verify. Except his last
71 one which was out of business, so.....
72 BY MR. DOWD:
73 Q To the extent you have that document for
74 Mr. Denniston, that is, a list of his former employers and
75 references, whatever might be on that document, we are
76 going to ask that you produce that.
77 A Okay.
78 Q And other than -- let me ask you, the credit check
79 --
80 MR. SOLINSKY: Just one thing. Mr. Plyam, to the
81 extent there are other documents in Mr. Denniston's
82 personnel file other than exhibit 13 and the list of former
83 employers such as a resume or anything else that you may
84 have, we would also ask that that be produced as well.
85 Is that agreeable?
86 THE WITNESS: Yes, sir.
87 MR. SOLINSKY: Thank you, sir.
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Dennison
BY MR. DOWD:
Q Do you know where Mr. Denniston presently resides?
A Yes. In North Hollywood. This is, I don't know
if something changed, but when -- the last, when he was
working for us he lived in North Hollywood and I do have
the address. I cannot recall it.
Q And --
A We provided that also for NFA when they were in
our office and they went to do a drive-by, whatever they
called it, so I can provide you that information.
Q Did they share the results of their drive-by?
A They couldn't find him, locate him.
Q Do you know where Mr. Denniston resided when he
was employed by Castle Trading?
A Yes. In Orange County.
Q Okay. Do you recall the street address?
A No. I don't. And within a few weeks he moved to
Reseda within just a few blocks of our work because he had
to drive an hour to work every day and that was not very
practical for him. And that's the address that you see on
the driver's license. Actually on the same street as our
office, Reseda. Just 40 blocks south.
Q When was the last time you spoke with
Mr. Denniston?
A August 25, '05.
Q What was Mr. Denniston's starting salary?
A $15 an hour.
Q Did that change at any point in time?
A Yes. Over time it went from 15 to 20. I don't
remember the increments, but when he left it was 20.
Q Who supervised Denniston?
A I did.
Q Did he report to anyone other than you?
A Yes. Natalia.
Q For what did he report to Natalia?
A Sorry. I didn't mean to cut you off. When there
was a margin call. When something was wrong with a
client's account. When somebody wanted to speak to the
supervisor. Somebody wanted to put a trade in. When there
was some type of a problem with a check not hitting the
account. Usual clerical activities.
Q He would go to Natalia first?
A Unless -- if it was something super important, he
would come to me. If it was something, just a general type
of things that happens every day, he would start with
Natalia and then go to me.
Q Both you and, Natalia and you supervised
Mr. Denniston?
A: No.

Q: And who at Castle Trading was responsible for managing the system trading brokerage agreement that's reflected in exhibit 147?

A: Managing the agreement?

Q: Managing trades executed pursuant to the agreement.

A: I was.

Q: So Acceleration Capital, the CPO came to Castle Trading wanting to execute trades on behalf of the pool, Mercury Fund, and you were responsible for executing those trades?

A: Correct.

Q: And in what role, working for whom, working for Castle Trading were you responsible for executing those trades?

A: Yes.

Q: Did Mr. Denniston perform any work on behalf of or for Acceleration Mercury Fund?

A: Yes.

Q: Did Mr. Denniston perform any work for Acceleration Mercury Fund?

A: Yes, he did.

Q: Okay. Tell us everything he did.

A: He would deposit the client's money into the accounts. He would create monthly statements that would go to the CPA for their yearly review. He would create the monthly accounting statements to put into the, as a tab in the disclosure document similar to what we saw for CPH Asset Management for the Gauss Fund.

Q: By that, you're referring to the tables that were in the disclosure document?

A: Yes, the performance tables.

Q: Just for the record that was exhibit 4, is that correct?

A: Yes, it is.

Q: What else did Mr. Denniston do for what other work did he perform for Acceleration Mercury Fund?

A: Updated the client list. Let me know every morning the balance in the trading account, not the Wells Fargo account but the trading account. I needed to have that number in order to evaluate the positions in the account on a daily basis.

Q: Okay. And that's the commodity futures trading account?

A: Yes.

Q: That's the account that's in exhibit -- let's go.
A: Yes, I am.
Q: Okay. And for the record, exhibit 15 is Bates numbered 00100008.
A: And this letter is dated August 30, 2005, is that correct, Mr. Plyam?
Q: Yes. It is, yes.
A: Yes. Do you see your signature anywhere on this document?
Q: Yes, I do.
A: Yes. Where do you see your signature?
Q: On the second page of this document.
A: Above the name Yuri Plyam?
Q: Yes.
A: And did you draft this document, Mr. Plyam?
Q: Jeff Henderson did. My attorney did.
A: Did you review this document?
Q: Yes, I did.
A: And did you insure this the information contained in this document, did you insure its accuracy prior to signing the document?
Q: Yes. Can I interject one thing?
A: Sure.
Q: The reason the monies are different is because we found the remainder, 2, or 3000, several weeks after this.

A: I think it's a little more than that. I think it's 186. And the reason is is because after the 183, we found that he began going through -- he took one or two checks from Acceleration Capital as well as Mercury, so that added another 2 or 4000 above that.
Q: Who was supervising Mr. Denniston during the period November 2004 to August 2005 when this theft took place?
A: I was.
Q: Were you ultimately responsible for his supervision?
A: I am, yes.

(CFTC Exhibit No. 15 was marked for identification.)

BY MR. DOWD:
Q: Mr. Plyam, do you recognize the document marked as exhibit 15?
A: I certainly do.
Q: What do you recognize this document to be?
A: It's a letter to our investors that took place, that was written just a few days or a week after we discovered what was going on.
Q: And by what was going on, are you referring to the theft of Acceleration Mercury Fund monies?
1 A Yes.
2 Q That sentence reads:
3 The vast majority of the misappropriated
4 funds belong to investors in the Fund, and
5 a much smaller amount is owed to the
6 general partner of the Fund.
7 A Yes.
8 Q What's the breakdown of subscriber funds to the
9 general partner funds?
10 A 95 to 5. It was -- which is how they found out he
11 was doing it. It was my management fee that was due to me.
12 Q What do you mean by your management fee that was
13 due to you?
14 A Okay. Every quarter I was supposed to get a
15 management fee for managing the fund.
16 Q You were supposed to get it or Acceleration
17 Capital was supposed to get it.
18 A Acceleration Capital was supposed to get it.
19 Q And you are a general partner of Acceleration
20 Capital so it passed through to you.
21 A Right. Yes, yes. That's correct.
22 Q And explain to me how the management fee revealed
23 the theft.
24

1 A That's a good point. That's exactly how the whole
2 thing got started and how he got caught. Not Lisa, the
3 other one. Heather, Heather, her name was Heather, I don't
4 remember her last name and she was part of the NFA
5 auditors. What happened was this.
6 On the third day -- this is very crucial. On
7 the third day of their audit they were looking at checks
8 that were deposited. Obviously they couldn't look at my
9 client's records because they didn't know, let's say a
10 check went out to my client. They couldn't go and look,
11 NFA had no authority to look under my client's bank
12 account. But they had full authority, thank God, to look
13 under my accounts.
14 So Heather saw a check being written to
15 Acceleration Capital for my management fee. When she
16 looked at the deposits she said, Yuri, where's your money?
17 I said, That's a good question. Toby, where's my money?
18 And that's when he said, I gotta go to the bank. The bank
19 is just a few blocks away. And he said -- this was 9:30 in
20 the morning. Four NFA agents at my office. Third day of
21 the audit.
22 And that's when he said, I'll be right back.
23 I'm going to the bank to figure things out and he just, he
24 took off. And we kept calling and that's how we found out

1 it all happened. So when your question is exactly how we
2 found out, all of us found out he was doing this, by
3 looking at that deposit.
4 Q Let me back you up here. The 183,000 number
5 that's in the third line of this letter.
6 A Yes.
7 Q And then moving down to the sentence that we just
8 went through, the vast majority of the misappropriated
9 funds.
10 A Yes.
11 Q Okay. Now is the 95-5 break down roughly within
12 that 183,000 number?
13 A Yes.
14 Q So it was at some point subsequent to this letter
15 that you discovered that additional money was stolen.
16 A Yes, from Acceleration Capital and that was Lisa
17 Marlow letting us know. That was probably two weeks after
18 the investigation occurred and it didn't have anything to
19 do with clients and it didn't really involve the clients so
20 it didn't really have anything to do with this number, but
21 your original question was how much was taken, so -- I just
22 want to be clear.
23 Q Do you know exactly how much was taken from the
24 subscribers in the pool?

1 MR. HENDERSON: Object to the form of the
2 question. I think I know what you're trying to ask, but do
3 you understand the question?
4 THE WITNESS: Can you repeat the question?
5 BY MR. DOWID:
6 Q There was money stolen from Acceleration Mercury
7 Fund.
8 A Yes.
9 Q At some point after that theft was identified, a
10 calculation was made as to what belonged to pool
11 subscribers and what belonged to the general partnership?
12 A Yes.
13 Q Do you know how much of the stolen money belonged
14 to pool subscribers?
15 A It was approximately $180,000 and 3- was
16 management fee or whereabouts. It was a quarterly
17 management fee. It might have been a thousand or two more,
18 but it was very, you know, it was 175 to -- very small
19 percentage.
20 Q So it's the quarterly management fee that belonged
21 to the general partner of the fund which is Acceleration
22 Capital.
23 A Correct.
24 Q Describe in detail how Mr. Denniston stole money
from the fund.
2. A He would take Wells Fargo, on-line statements from
3. Wells Fargo, and he would duplicate them on his computer to
4. look so real that neither me, the NFA or the CPA could tell
5. the difference between them.
6. Q I think that -- is that how he concealed the
7. theft?
8. A Yes.
9. Q How did he actually take the money?
10. A He would go to my wife's desk where she kept the
11. checks, checkbook. He would take a check. He would forge
12. my signature, go to the bank, deposit some and some he
13. would cash.
14. Q Deposit to his own account?
15. A Yes. All the checks were made out to him either
16. through deposit or through withdrawal.
17. Q And approximately how many checks?
18. A Between, approximately 60 checks.
19. Q Does 56 ring a bell.
20. A Between 56 and 60. I believe it was 60, but...
21. Q And what was the source of the money in the Wells
22. Fargo checking account?
23. A It was clients' money, money that was not used for
24. trading. It was a low activity business account and there
25. was maybe a handful of checks supposed to be going in and
26. out of it the whole time. It was basically for our clients
27. to redeem money or money to go into the account. There was
28. no other need for that account.
29. Q And Acceleration Mercury Fund also had a commodity
30. futures trading account?
31. A Yes.
32. Q Did Mr. Plyam ever transfer money --
33. A That's me.
34. Q Did Mr. Denniston ever transfer money from the
35. futures trading account to the checking account?
36. A Yes. When I gave -- when the client would call
37. and ask to redeem his money, which several did as you see
38. by the dates of redemption, he would, he would notify me of
39. that and then he would, he would then, we would take the
40. money from the futures account and wire it to the bank
41. account.
42. And he had, since he was a clerk he had full
43. authority with the FCMs. He was talking to them on a daily
44. basis.
45. Q Do you know if Mr. Denniston ever transferred
46. money from the futures trading account to the Wells Fargo
47. bank account for the purpose of covering a check that he
48. forged?
A trading account in order for Mr. Denniston to steal it?

A: Not from the top of my head, but if you asked me
to take maybe half an hour to look at everything, I could
do that. But I can't just off the top --

Q: It's not a five-minute analysis?

A: I don't think so. I would have to look at these
things. Towards the end I don't know if you've looked at
the Wells Fargo record, but that behooves me of the last
month's activity. He was, when my -- I have a nanny that
takes care of my children. I give her a check for $200, I
got a phone call from the bank ten minutes later that they
want to know if I gave her that check.

The last ten, fifteen transactions that he
did, I don't know if you've looked at the record, there was
a not sufficient fund fee, a -- he was going ape wild and
nobody from Wells Fargo contacted me. So it's very hard, I
would really have to kind of look through everything. But
the last month or two, it was just shocking what he was
doing.

I don't believe he made too many withdrawals
from the trading account to cover up his losses. I think
maybe one or two. It wasn't a, it wasn't the major cruz of
it. Maybe a couple thousand dollars. It was truly
unbelievable when I looked at it. I believe there was

almost made me think that he had somebody in the bank
helping him because I can't understand or believe how Well's
Fargo could not have contacted me once. I've been a client
of theirs for, since 1988.

Q: Was Mr. Denniston ever authorized under any
circumstances to write checks from the Wells Fargo Mercury
Fund account?

A: No.

Q: And was there any checkbook for the Wells Fargo
Mercury Fund account in the office other than that which
was in Natalie's desk?

A: Well, we found later that he ordered another book
from Wells Fargo.

Q: When did he do that?

A: In the middle of all this. I don't remember the
exact dates, but he did order another checkbook.

MR. HENDERSON: Set of checks.

THE WITNESS: I'm sorry?

MR. HENDERSON: Not a checkbook but a set of
checks.

THE WITNESS: A set of checks, yes.

BY MR. DOWD:

Q: Was the Wells Fargo account charged for that?

A: No. I don't believe so, no.

Q: Do you have any record of, any document that
records his ordering those additional checks?

A: No, I don't. No.

Q: How did he do it?

A: That's a good -- probably through on-line.

MR. HENDERSON: If you know. If you know.

THE WITNESS: I don't know. I'm just guessing
probably through on-line or some means. I am seriously
inclined to think and I'm still inclined to think that he
had somebody at Wells Fargo helping him because we're
talking about so many checks. One person over so many
checks over so much time in such large numbers and not one
time I get a contact? A name verification?

BY MR. DOWD:

Q: Did Mr. Denniston have on-line access to the Wells
Fargo account?

A: Yes, he did.

Q: Okay, was he authorized by Castle Trading or
Acceleration Capital to have access to that fund?

A: Yes, he was.

Q: Or Acceleration Mercury Fund as well.

A: He was authorized --

Q: Which ones of those entities authorized his access
to the Acceleration Mercury Fund on-line account, on-line
Wells Fargo account?

A: It was Acceleration Capital.

Q: So Acceleration Capital authorized Mr. Denniston's
on-line access to the Wells Fargo Mercury Fund account.

A: Yes.

Q: For what purpose?

A: So he could look at account statements. So he
could make sure everything is fine in the account. But in
no way, shape or form anything to do with withdrawing or
depositing money of any kind into that account.

Q: Who was responsible for balancing that account?

A: He was responsible. That's actually why, that's
the reason he had access to it, so he could be able to do
the monthly statements and give me my daily number of how
much money's in the fund.

In order for me to be able to trade this
account, every morning I needed to know how much equity was
in the fund because each trade is a percentage of the
account size.

Q: Who supervised Mr. Denniston in the balancing of
the Wells Fargo bank account?

A: That was something he did on his own.

Q: So it was unsupervised?
A. In that regard. That's one aspect. And I told
this to NFA the first day they were there before we knew
any of this is I don't have any accounting experience and
he seemed to have taken a really big liking to this. We
know why, hindsight obviously. But he was very adament
about it.

Also, we had reasons to believe that he was
doing a very good job because we had Dennis Starr coming in
four times that year looking at everything else he was
doing, writing letters to the NFA saying how lucky we are
to have Dennis still working for us and how exemplary an
employee he is.

Q. During the normal course of business, that is, not
the theft of Acceleration Mercury Fund monies, who wrote
the checks on behalf of Acceleration Mercury Fund?

A. There was never any checks to write. All the
business —

Q. How did you pay your bills?

A. Through Acceleration Capital. Acceleration
Mercury never wrote any checks.

Q. Okay. And who was responsible for writing
Acceleration Capital checks?

A. I was.

Q. And where was that checkbook kept?

A. At my wife's desk.

Q. Why were the checkbooks kept in your wife's desk?

A. She keeps all the checks. She sits right behind
me. We're not in -- we're talking about three feet away
from me. Arm's reach.

Q. Was Natalia, your wife, a signatory on the Wells
Fargo Mercury Fund account?

A. No.

Q. Was she a signatory on the Wells Fargo
Acceleration Capital account?

A. No.

Q. Was any one other than yourself a signatory on
either of those accounts?

A. No.

(CFTC Exhibit No. 16 was marked for
identification.)

BY MR. DOWD:

Q. Mr. Plym, do you recognize the document marked as
16?

A. Yes.

Q. And for the record, exhibit 16 is Bates numbered
00100276.

A. Yes. Mr. Plym, can you tell us what this document
is?
Q. But you had access to this account on line?
A. Yes, I did.
Q. So you had the ability to go onto the Internet and review account activity for this Acceleration Capital account in exhibit 16?
A. I did, yes. I didn't have a need to do it because this wasn't a merchant type of an account. It was an account that had very low activity and we had no reason to assume anybody was doing anything.
Q. During the period of November 2004 through the time of discovery of the theft, did you ever review account statements for Acceleration Mercury Fund, the Wells Fargo account.
A. Yes. The ones that he —
Q. Did you understand the question?
MR. HENDERSON: Can you read it back.
THE WITNESS: Can you repeat the question?
BY MR. DOWD:
Q. During the period of November '04 through the discovery of the theft, and the discovery of the theft was August '05, is that correct?
A. Yes, it is.
Q. During the period of November '04 to August '05, did you ever review account statements for the Acceleration Capital Mercury Fund — I'm sorry, I'm going to start over.
A. I want this question to be clear.
Q. During the period of November '04 to August '05, did you ever review account statements for the Acceleration Mercury Fund account at Wells Fargo.
A. The ones he provided to me, not the ones on line.
Q. I did not go on line and look at the real statements. I thought I was looking at the real statements. I was looking at statements that he provided me which were falsified by him.
Q. Him meaning Mr. Denniston?
A. Mr. Denniston, yes.
Q. You never took it upon yourself to look at the actual on-line statements.
A. I never went on line, no. I didn't have a need.
Q. They were provided to me. They looked real. There was absolutely no reason to. I never, I have never done on-line banking. I have never gone, registered on line to do on-line banking. I don't do my banking right now for any of my businesses on-line. It's just not the way I do banking.
Q. Are copies of the Acceleration Mercury Fund cancelled checks on the Wells Fargo account available on line?
A. You have to request them X amount of days ahead of time and then they give you a copy of it, yes.
Q. And does that copy arrive via e-mail?
A. No, it's available on their website and you can download it, I think PDF or some nature. And there's no water mark or anything, which is bizarre, on any of those things.
Q. Did you ever review any cancelled checks from the Mercury Fund Wells Fargo account during the period of November '04 to August '05?
A. No, I did not.
Q. With respect to the Acceleration Capital Wells Fargo account, during the period of November '04 to August '05, did you ever review any account statements?
A. No, I did not. Other than what he, other than the falsified copies that he had provided me.
Q. Did you have access to those account statements?
A. The real statements?
Q. The real Acceleration Capital Wells Fargo account statements.
A. Yes, I did.
Q. And you had access to the Acceleration Mercury Fund Wells Fargo account statements.
We gave Bradley Kaye our statements, the statements from Toby. He didn't have any issues with it. That was a month after Toby started doing it so there was obviously falsified information that he gave to our CPA that our CPA did not find.

So I relied on the CPA. I relied on Dennis Starr and I had no reason to believe he was doing anything wrong. He at one point wanted to become a commodity broker when he first started working for us. Actually we wanted him to become a commodity broker, at least to be licensed so he would be a little more — because he was concerned about making more money in the future when he started working.

The NFA gave him a full background as they do everybody who's about to take -- they did his fingerprints; they did everything. We had no problems. Afterwards the Secret Agent Hegst told us the guy has a good record. He never had anything remote to this, the most unlikely person to do this. Everybody, everybody, every one of my employees, the NFA, Dennis Starr, I'm now quoting, this is the most unlikely guy to do something like this.

Q. Who are you quoting?
A. I'm quoting the Secret Service guy, Agent Hegst.

He told us, called us, he said, I've never seen anything completely reasonable under the circumstances.

I don't feel that there was anything that I missed so I feel my safeguards, I had several safeguards.

One of the biggest things was getting audited four quarters and having everything perfect. The first time when the NFA came into my office, the first thing I told them was, I'm kind of glad you guys are here because I really want to make sure I'm doing everything right. And I was even making comments how we were lucky to have Toby and how this guy should work for the NFA. We really thought we were running a very tight ship. We did not think there was any issues. We never had a problem with him before.

As a matter of fact, he was a model employee. This guy in two-and-a-half years that he was working for our company, my grandfather was dying. He was responsible for helping my father move my grandfather into his dying bed. I mean this guy, when we found out he was doing this I cried like a little baby on the floor. I had so much faith in this guy and so much trust and I was so disappointed.

Q. And I want to be clear that I understand your answer that the safeguards that were in place were various audits that were performed of Acceleration Mercury Fund.

like this. I've never seen -- this is straight out of the movies.

Q. When did he tell you that?
A. After Toby Denniston came in and gave him a full confession.

Q. Do you recall the date?
A. No, August, September.

Q. Regardless of --
A. I'm going on a tangent. I apologize.

Q. I want you to give me a complete answer. Have you answered the question?
A. Can you repeat the question?

Q. The question was what safeguards were in place to prevent this theft.
A. It was -- there was safeguards. I relied on people coming into my office that were checking my office. I relied on looking at things, hearing things. I did everything. I relied on statements. I looked at statements. But they happened to be false. The safeguards were the certified public accounting, Dennis Starr, the accountant that was coming into our office to do bookkeeping for the independent firm. He had a relationship with Toby. Those were my safeguards and I did, what I thought I was doing was everything.
every other day depending on what was going on in the account.
Q All right. Were anything else in place?
A We had the accountant who saw all of his statements that he did at least for a month because he started in November and
Q What accountant is that?
A Bradley Kaye, the CPA.
Q And what did Mr. Kaye do? Is that a certified audit?
A He did the yearly, the yearly certified statements that you need as part of the NFA procedure to run a fund, he did those audits for us.
Q And are there any other audits?
A No, there wasn’t.
Q And the audits would catch this activity, if at all, post theft, correct?
A I lost you there.
Q An audit looks at events that have occurred in the past.
A Yes, correct.
Q How would an audit prevent the theft that occurred in this instance?
A An audit would not prevent it.
Q Was there anything in place that would prevent it?
Was there any safeguard in place that would prevent it. I understand the audit would detect it.
Q But what, if anything, was in place to prevent it?
MR. HENDERSON. Actually the question has asked and answered. He's identified four things.
THE WITNESS: One more thing. When I opened the account at Wells Fargo, I was sure to be the only signatory on the account. He was not a signatory on the account. He had no right at all to have anything to do with that account in any way.
BY MR. DOWD.
Q Other than what you've identified thus far, was there any safeguard in place to prevent this theft?
A No, there was not.
Q Okay.
A But there is a comment I want to make about what your logic is when you said audit to prevent. Why this is so important here is because he didn't do something one time. He did something a series of times.
THE audit that Bradley Kaye did in December covered the fraud that he did in November because he started in November. So what I'm saying is it wasn't a one-time theft. It was a continuous theft. So part of that was, the audit was a way to prevent future thefts. If Bradley Kaye said, Hey, I can't use these statements, I need the real statements from the bank that would have been a red flag. If he said to me in December, Hey, something's not right here, that would have been a red flag that would have prevented him from doing it seven other months.
So it was in fact an audit to see what was done and it was something to see what would be done in the future. Because I imagine if everything was good in this audit, why would there be a problem? He was already doing this for a while.
Also, he was doing it for a while for CPH and there wasn’t any problems there. So all these - remember, these were continuous things. They weren’t a one-time thing. Some of these checks and balances that you say, well, what could you have done in the future, well, they are, they are to protect you from something that happened but what may happen in the future.
If Wells Fargo called me in November, December, January, February and said, Hey, what's going on, did you write a check for $4000 to Toby Denniston, I would have said, What? - from Acceleration Capital, that would have been a red flag from the future.
Q From Capital or Mercury?
A Either. Either. So I don't agree with your logic in what you said, all due respect. I just, these things that I'm mentioning were not retroactive, they were proactive too. Dennis Starr didn't come once. Things didn’t happen in November; they happened the entire time.
So yes, it's a check and balance that you say, well, what you could have done to prevent it. But these things, if I, if these things would have raised red flags, we could have prevented half of the loss or a third of the loss or some of the loss. So I believed in these things as being continuous checks and balances versus just a one time for something that happened before.
MR. SOUNKY: What documents were the auditors looking at when they were checking over the bank records?
Were they looking at the same statements that were given to you by Mr. Denniston or did they look at paper copies that you received in the mail or did they go on line to look at the, what would be considered a true version of the bank statements?
THE WITNESS: They looked at the material that Toby Denniston gave to the NFA, to me and to the auditors and we never received, we never received statements. We had a paperless account.
There was no, nothing being sent to us over
the mail so we really relied on the on-line statements for
everything and we had no reason to believe anything was
wrong with them because this is such a - there was
literally no transactions done on this account.
MR. SOLINSKY: Thank you, sir.
THE WITNESS: No problem.
BY MR. DOWD:
Q. How did Mr. Denniston go about creating the false
account statements, if you know?
A. He would -- I do know. He would, I found out
later on. He would come into our office in the middle of
the night and do this. And the way I found out was after
the NFA found out what he was doing, they found a printed
statement and it had a time on it and it was in the middle
of the night. He would come at 12:00 at 2:00 in the morning
to our office and start doing his thing.
Q. Do you know how he actually altered the
statements?
A. This is another thing and this is very important
and I would -- this is really, really important. Most
statements when you go to a bank -- Jeff and I were just
talking about this.
When you go to a bank or you go on line to
look at a statement, there's some type of a water mark so
you know it's a real statement. Wells Fargo does not use
water marks, okay? They can't -- it behooves me. They use
text files. Anybody that has a text editor can take their
statements and edit them on their computer and they look
like the real thing. There is no difference between them
and what Wells Fargo provides you. He was able to fool me,
the auditor and the NFA. They took a hundred percent real,
Q. And you provided the auditors with copies of these
false account statements?
A. Well, actually he did. But, yes, we did. Upon my
direction, correct.
Q. Did you fire Mr. Denniston when you learned of his
theft?
A. When we learned of his theft he left the office,
but yeah, I mean that kind of goes without saying. Yes.
Q. Is there any paperwork documenting that
termination?
A. Yes, we did. And all this was done while the NFA
was in our office. They were in our office for nine days
after this occurred including the time this occurred. They
called him on the third day and they were there for two
weeks. So they -- obviously, yes.
Q. And was it your decision to fire Denniston?
A. Yes, it was my decision and my wife's decision.
Q. It was unanimous across the board.
A. Of course. And yes, he was let go immediately.
Q. To the extent you have any paperwork on his
termination, I'm going to request that you produce it
A. Absolutely. May I just say something in regards
to this?
Q. Go ahead.
A. Well, what happened, when he left to go to the
bank, he was supposedly coming back and I didn't think
anything was wrong. I thought he was going to the bank,
which is a couple blocks away, to get the right
documentation to show the NFA what they were asking for.
And I kept calling him and literally after a
half hour, we realized something is not right. I started
calling him compulsively every ten, fifteen minutes, every
five minutes. And he called us back and I was outside and
he confessed to me and that's --
Q. What did he say?
A. He said, Yuri, I'm not coming back. I said, Why
are you not coming back? He said, I can't talk about it.
I did something really bad.
A: They asked us to contact Wells Fargo and it took
Wells Fargo, it takes them a day or two to create those
statements on line. They were there for nine more days --
Q: So once the actual account statements were in
hand, that's when the NFA discovered the theft.
A: Correct. Correct. And they called me that night
and they said -- we originally thought it was about $20,000
and then they called me and they said, Yuri, it's a lot
more than that. And then the next day they had all the
information.

And then we also found out and this really
hurts me because I take my trading very, very seriously, we
found out, this really kills me, my actual performance for
the fund was down 9 percent. With his stealing, he was
compensating for it, it was down 40 percent. None of my
clients that withdrew, the clients that withdrew would not
have withdrawn. We were doing really well. For that year
the average was down 20, 25 percent. We were down 9
percent at the time of them finding this out. So that
wasn't pretty either.

(CFTC Exhibit No. 17 was marked for
identification.)

THE WITNESS: This was so shocking to us that
Heather, the girl who found this, she went into the
bathroom and started crying. She couldn't believe -- it
was unreal. It was out of a movie.

BY MR. DOWD:
Q: Do you recognize the document marked as 17?
A: Yes, I do.
Q: For the record, 17 is marked 00100011.
A: Do you have a copy?

BY MR. DOWD: Sorry. Somehow I got down to two,
Q: Mr. Plyam, what do you recognize exhibit 17 to be?
A: It is a letter that was sent to our clients within
a few days of, or a couple weeks after -- it was just an
update to our clients so they knew what was happening, what
was going on.

Q: Who drafted this letter?
A: Dion Campbell.
Q: And if I could move you down roughly three
quarters of the page, the sentence that reads:
The Secret Service has taken a full
confession from Toby Dennison and he is
cooperating with their investigation.
A: Yes.
Q: Do you know what the basis for that statement was?
A: Yes. We received a call from Agent Hegst. Agent
1 Hegst said that Toby Denniston came into my office. --
2 Q Who did he actually speak to?
3 A To me.
4 Q Agent Hegst called you.
5 A Yes.
6 Q What did he tell you?
7 A He might have come over to our office. I don’t remember. I don’t recall. He said, Toby Denniston came to our office, gave us a full confession, said that he’s glad that this happened because he couldn’t live with himself because you people treated him like family and he can’t go on like this anymore and he wants to take full responsibility for what happened. And he came in, he read us a full letter of confession.
8 And then he said --
9 Q Do you have a copy of that letter?
10 A No, he never gave it to us. And Jeff has requested it from -- no, I’ve never seen the letter.
11 Q Jeff can let you answer that if he wants.
12 A I’ve never seen that letter.
13 Q What, if anything, do you know about the criminal investigation at this point in time?
14 A I’ve been talking to Agent Hegst every couple of months or so and basically he needed to delay things because Toby Denniston’s mom, from what Agent Hegst told us, died in the last few months. He said that because of the stress of this she developed a mental illness, this is him talking, she developed a mental illness, went outside and died of natural elements. I’m quoting now.
15 We contacted his mom right when this happened. We thought maybe she knew where he was. I talked to her for a few minutes and we exchanged e-mails. And she said, I’m sorry, I can’t help you, I don’t know where he is. I can’t believe he did this.
16 Q What government agencies or criminal authorities have you discussed this matter with other than the CFTC and the Secret Service?
17 A The Northridge police. Made a full police report which they needed, which the Secret Service, I believe, needed or requested us to do. We did it immediately the night this happened.
18 Q Okay. And then beyond that, did you have any contact with the Northridge police?
19 A No. They had nothing to do with this. They right away put it to the Secret Service and that was that. (CFTC Exhibit No. 18 was marked for identification.)

BY MR. DOWD:
2 Q Mr. Plyam, do you recognize the document marked as 18?
3 A Yes.
4 Q And what do you recognize this document to be?
5 A It is a theft report for affidavit of check fraud for Wells Fargo.
6 Q For the record, 18 is Bates numbered Plyam00233 through Plyam00300.
7 Mr. Plyam, do you see your signature anywhere on this document?
8 A Yes, I do.
9 Q Where is your signature?
10 A Underneath: I declare under penalty of perjury that the above statement is true. Right below there, is this an exhaustive list of the checks that Denniston used to steal from Mercury Fund?
11 A I believe so, yes. This is where we completely ironed out everything and I believe this included the entire amount.
12 Q And that’s reflected in the claim total of $196,456.
13 A Yes, which is where the extra numbers from.
14 Q Does that number include the money that was taken from the Acceleration Capital account?
15 A I believe it is, yes.
16 Q If I could move you forward to page two and check number 1189.
17 A Yes.
18 Q That’s recorded as legitimate check, is that correct?
19 A Yes.
20 Q Do you recall how you determined this was a legitimate check?
21 A I don’t recall, but I would imagine I looked, we looked at it — or looked at who it was made to.
22 MR. HENDERSON: Sorry, can you read the question back?
23 A THE WITNESS: I don’t recall from the top of my mind, no.
24 (The record was read.)
25 THE WITNESS: I could speculate and tell you how I did it, how I did it here in this office by looking at who the check was made out to.
26 BY MR. DOWD:
27 Q I’m going to get to that but let me ask you, did you write “legitimate check”?
28 A No, this is not my handwriting.
10 (CFTC Exhibit No. 19 was marked for identification.)
11 BY MR. DOWID:
12 Q. Do you recognize the document marked as 19?
13 A. Can you ask the question one more time?
14 Q. Let me rephrase that. Okay. If I can move you to page 00146.
15 A. Okay.
16 Q. The last page in the exhibit. Do you recognize that document?
17 A. Yes, it's my management fee.
18 Q. Okay. And is this a copy of the check that is recorded as a legitimate check on exhibit 18?
19 A. Yes, it is.
20 Q. And did you sign this check?

1 Mercury Fund check?
2 A. No.
3 Q. What about Acceleration Capital?
4 A. Never.
5 (CFTC Exhibit No. 20 was marked for identification.)
6 Q. Mr. Plyam, do you recognize the document marked as exhibit 207?
7 A. Yes.
8 Q. And for the record, 20 is Bates numbered P00001 through 00099.
9 A. Can you tell us what this exhibit is,
10 Mr. Plyam?
11 A. Yes, it is a list of all the checks that Toby Denniston forged.
12 Q. Okay. And can you tell us specifically within the first two pages of this document what information is reflected in the first two pages of this document?
13 A. It is the number, the first two pages are dates, check numbers and the amounts of checks that were drawn.
14 Q. Is there anything unique about those checks that are reflected on pages one and two? Is it an itemization of the checks that Mr. Denniston used to steal money from

1 Acceleration Mercury Fund?
2 A. It appears to be, yes.
3 Q. Who created this document?
4 A. I believe our office did.
5 Q. Do you know who at your office?
6 A. Probably Natalia, I believe Wells Fargo requested it as part of their investigation.
7 Q. Did you draft any of the checks that are contained in exhibit number 20?
8 A. I don't think I wrote this check. I don't believe I did, no. No.
9 Q. Okay. And the first check, this is check number 1189, do you recall that we discussed this?
10 A. Yes, we just discussed it a few minutes ago. I'm not a hundred percent sure.
11 Q. You're not a hundred percent sure that you drafted that check?
12 A. Yes.
13 Q. What about all the checks following that one. Did you draft any of those?
14 A. No. Not -- no.
15 Q. How do you know that?
16 A. Because they are made out to Toby Denniston.
17 Q. Did you ever write Toby Denniston a check from the
Yuri Plyam  3/13/2005  10:13:00 AM

1  Acceleration Mercury account?
2  A  Never. Never.
3  Q  Did you ever write Toby Denniston a check from the
4  Acceleration Capital account?
5  A  No.
6  Q  Do you know who wrote each of the checks reflected
7  in exhibit number 20 other than check, the first one, 1189?
8  A  Toby Denniston.
9  Q  How do you know that?
10 A  Well, because he wrote them to himself. He
11 confessed to it. Neither me nor my wife did it. It was
12 him. Just common knowledge. I don't know how else I can
13 answer this question.
14 Q  That's all I'm asking for. Are you aware of any
15 check that Mr. Denniston used to steal money from
16 Acceleration Mercury Fund that is not reflected in this
17 exhibit?
18 A  Not from the top of my head, no. And the amounts
19 seem to, this was the thing that the -- as you see, the
20 numbers are a little different on every sheet. That's why
21 I said the numbers kind of fluctuated from 86 to 190, 163,
22 but -- so no, I don't, I don't recall the details of it.
23 We found it very interesting that some of
24 them had his nice big fat fingerprint on it.

1  Q  How did you learn that information?
2  A  By looking at these checks.
3  Q  Show me one. What number are you on?
4  A  Check 1030. There were several.
5  Q  What's the Bates number?
6  MR. HENDERSON: 38.
7  THE WITNESS: That's what really shocked us and
8  why we thought that Wells Fargo was in it because a lot of
9  these checks were cashed, not deposited.
10 MR. SOLINSKY: What is the page number, sir?
11 MR. HENDERSON: 36.
12 MR. SOLINSKY: Thank you.
13 THE WITNESS: There are several.
14 MR. HENDERSON: 34.
15 THE WITNESS: Yeah, 34, check 1028. Check 1009.
16 1072, I believe about ten checks were not deposited but
17 were cashed and these checks were for very high amounts.
18 That is why I said earlier, I don't understand how Wells
19 Fargo could have done that without contacting me where my
20 nanny goes in there for $400 and they call me every time.
21 Check number 1116. Check number 1115. Check number 1113.
22 Check number 1118.
23 BY MR. DOWD.
24 Q  Do you know what account Mr. Denniston deposited
25 these checks in?
26 A  No, I do not. I do know that his boyfriend had an
27 account at Wells Fargo.
28 Q  What is his boyfriend's name?
29 A  Leonardo. I don't remember Leonardo's last name.
30 They live together or they used to live together. I don't
31 know right now what the situation is.
32 But to summarize, there was about ten to
33 twelve checks which he did not deposit but cashed, and they
34 have his fingerprint on it.
35 Q  How do you know it's his fingerprint?
36 A  I assumed it was his fingerprint. While the NFA
37 was in my office -- we just assumed because you need to
38 put, when you're cashing a check you need to put a
39 fingerprint on it, so since it's his name on it we assumed
40 it was him. But you'll see several of them.
41 Q  Let's go off the record.
42 (Off-the-record discussion.)
43 MR. DOWD: Let's go back on the record.
44 BY MR. DOWD: Q Mr. Plyam, where is Mr. Starr's office located?
45 A  In San Diego, California.
46 Q  And does he operate under his own name?
47 A  Compliance Supervisors or Dennis Starr, something
48 to that effect. I can make a phone call and get you that
49 information if you'd like.
50 Q  Is his last name Starr, S-t-a-r-r?
51 A  R. Two 's
52 Q  D-e-n-n-i-s?
53 A  Yes. And he comes with his wife. They work
54 together.
55 Q  What's his wife's name?
56 A  I don't recall.
57 Q  Is her last name Starr?
58 A  I believe so. I could verify it with a very quick
59 phone call. I could verify this information right now if
60 you'd like.
61 Q  Not necessary.
62 (CFTC Exhibit No. 21 was marked for
63 identification.)
64 BY MR. DOWD: Q Mr. Plyam, do you recognize the document marked as
65 exhibit 21?
66 A  Yes, I do.
67 Q  Can you tell us what this document is?
68 A  It's a statement of income for one of our
69 participants in the Acceleration Mercury account 4X.
70 Q  For the record 21 is Bates numbered 03100016

Dennison
through 31.

1. If I can move you forward to the page ending
2. in Beires number 23, can you tell us what that document is?
3. A. It's a statement of income.
4. Q. To whom?
5. A. Paul Maggio.
6. Q. So it's an account statement for Mercury Fund
7. participant Paul Maggio?
8. A. Yes, it is.
9. Q. Who prepared this document?
10. A. Toby Denniston.
11. Q. Do you see your signature on the bottom of the page?
12. A. I do.
13. Q. And above your signature does it read: 'This account statement is accurate and complete to the best of my knowledge and belief.'
14. A. Yes, it does.
15. Q. Describe for us everything you did to confirm that the information in this account statement was accurate.
16. A. I looked at the equity run. I asked Toby to show me the account balances for Wells Fargo and statement for Wells Fargo for that month. I looked to see that the numbers looked normal and then I signed it.

1. Q. And by signing it, did you represent that it's accurate and complete to the best of your knowledge and belief?
2. A. Yes, I did.
3. Q. Why wasn't this one accurate?
4. A. Because it occurred in December after he started doing his shenanigans.
5. Q. After the theft of money?
6. A. After the theft of money, yes.
7. Q. And this account statement didn't take into account that theft?
8. A. I would imagine it took into account that theft, yes. I mean it didn't take into account the theft, right.
9. Q. And what about the next one, 25.
10. A. It's an accurate account statement?
11. A. I don't think it is, no.
12. Q. Why don't you think it is?
13. A. Because of the date, January 31, 05.
14. Q. What about the date leads you to believe that's an inaccurate account statement?
15. A. We're going back to the same three things. It's inaccurate because he started doing this in November and this is January. So obviously this does not reflect money he stole.
Q: So given that, looking forward from the pages Bates numbered 26 through 31, would you say that any of those account statements are accurate?
A: I would imagine they are all inaccurate.
Q: Okay. And they are all inaccurate why?
A: Because they are not reflecting money that Toby Denniston stole.
Q: And did you sign each of those account statements?
A: I did.
Q: And by signing them, did you represent that they were accurate and complete to the best of your knowledge and belief?
A: I did.
(CFTC Exhibit No. 22 was marked for identification.)
BY MR. DOWD:
Q: Do you recognize the document marked as 22, Mr. Plyam?
A: Yes, I do.
Q: Can you tell us what 22 is?
A: It's a statement of income for January 21, '05 for Paul Maggio.
Q: And are the statement of income, are there statements of income following that for different periods or time?
A: Yes.
MR. SOLINSKY: Counsel, could you identify the Bates number, please?
BY MR. DOWD:
Q: Mr. Plyam, are any of the account statements in exhibit 22 accurate?
A: I don't see how they could be accurate based on what we know.
Q: Did you sign any of these account statements?
A: No. These I did not.
Q: Do you know why these are unsigned?
A: No, I don't.
Q: Was it your practice to sign account statements before distributing them?
A: Yes, it was. Yes, of course.
Q: And do you have copies of these signed account statements?
A: I'm sorry.
Q: Do you have copies of these account statements that are signed. In other words, do you have a signed version of the account statements in exhibit 22?
A: I don't recall. I can't give you an honest answer.

Response to item 1, the second paragraph thereunder and specifically where it reads:
Additionally, Denniston's background was thoroughly checked by the FBI....
A: Yes.
Q: How do you know that Denniston's background was checked by the FBI?
A: Because we know that when somebody applies to, for NFA registration, their fingerprints are sent to the FBI. We were told so by the NFA years and years ago and that's why there was a delay.
That's when I actually mentioned it to you when we first started about Curtis Faith because we needed him registered so he could be a member of the NFA for the pool, and when he got his registration it took an extra couple weeks and we were calling the NFA and they were saying because he's in the Virgin Islands, it will take a couple extra weeks or a month, we send the fingerprints out to FBI. So I remembered that very well that that happens.
Q: Do you know if the FBI actually ran any sort of background check on Mr. Denniston's fingerprints?
A: I don't know for sure, but I imagine so because he was allowed to sit in for the exam.
Q: Do you have personal knowledge that the FBI ran
A. Not a personal knowledge. Just knowledge based on normal circumstances of what I’ve been told and what I’ve seen in the business.

Q. Okay. And based on what you’ve been told and what you’ve seen in the business, do you know if the FBI does anything other than run the fingerprints through its fingerprint database?

A. I wouldn’t know.

Q. Okay. And moving down to the next line.

A. One -- in regards to this, Agent Hegst did tell us that he did an investigation on Toby. He voluntarily told me and he said, ‘There’s absolutely nothing in his background that would remotely show that he was capable of doing this in any way whatsoever.’

Q. That’s what I’m getting at in my second question on this document. And the next line down which reads: "Criminal background check revealed no past criminal conduct."

A. Yes.

Q. What’s your basis for that statement?

A. Agent Hegst. He wouldn’t tell us what he found, but he said, ‘There’s absolutely nothing on here that would show that he had any propensity or disposition or anything of that nature to do something like this.’

Q. Okay. Going down in that same paragraph where it says:

A. As stated by the FBI, Secret Service and several employees... do you see that?

A. Yes.

Q. Okay. Who at the FBI stated he was the least likely person to commit such acts?

A. You know, it was -- I might have misread. It was Secret Service. It wasn’t FBI. Because they were working -- the FBI transferred to Secret Service. They were kind of working at the same time.

Q. But do you know if anyone at the FBI said that, that Mr. Denniston was the least likely person to commit such acts?

A. Other than Secret Agent Hegst, no.

Q. But Agent Hegst worked for the Secret Service, right?

A. Yes. But in L.A. If you call for the FBI, they just transfer you. So we assumed it was in the same office or the same division.

Q. Okay. And then the several employees who worked for him for extended periods of time, who were those employees?
stealing the funds were or what his motivation was?

A. You know, I think he told the secret agent that he just got carried away. He started something and just couldn't stop. This is what I gathered from the Secret Service. He seems to have not -- I'm sorry. Go ahead.

Q. And along those lines, subsequent to the time you learned about this theft, you and your wife each had conversations with Mr. Denniston, is that correct?

A. I had a conversation right when it happened. I didn't speak to him since. She talked to him one time afterwards and he had left us a few messages and he tried to use us -- this is just unreal. He tried to use us as a job -- don't ask. You know, I don't know. It's hilarious.

Q. How many times did your wife speak with Mr. Denniston subsequent to the time when you learned of the theft?

A. Either once or twice.

Q. Okay. Did he inform her at any point in time where the money was?

A. No. And she asked. He said he had spent it.

Q. Did he at any point in either of those conversations describe his motivation for stealing the money?

A. No. He said he was on antidepressants, he stole from Acceleration Mercury Fund?

A. He got himself new teeth. He added, helped to get his stomach surgery, got a new BMW.

Q. Does he still have the BMW?

A. I have no idea. Opened up a trading account which was ceased by the Secret Service from what I was told because we gave them the information on it that $15,000. One of the things Natasha asked him when he called back the next day when the NFA was in our office was, Do you still have any of the money? He said no.

Q. Have you ever had a conversation with Agent Hegst or any other individual investigating this matter with respect to the disposition of the money?

A. No. We kept talking and he -- no, we never did.

Q. We did, in the beginning we did, but he said that his assets would be frozen and they would look into it. We gave them the information of all the bank accounts we knew. We gave them information that his boyfriend had a bank account at Wells Fargo. We gave them all that information.

Q. Are you aware of any asset that is attributable to Mr. Denniston's theft of the pool's money?

A. No. This is all speculation of what he spent it on.

Q. Do you know what Mr. Denniston's motivation for

---

Dennison
Q. Did he provide you any details of that confession?
A. No. He –
Q. Agent Hegst came to your office at one point in
time?
A. Twice. Once to take the material and once to pick
up the computer.
Q. Okay. And what did he say to you, if anything,
the first time he came?
A. Basically very little. The first time he was just
to get all the information, to make sure that he had
everything. It wasn't very detailed. It wasn't – the
second time is when he told me that, and the rest of our
office that Toby Denniston came to his office saying how he
can't live with himself, he can't sleep at night, he can't
do anything. He feels so bad because we treated him better
than his family, which I know we did, and that he feels
really, really bad and he wants to do whatever he has to do
to make, you know, he's got to pay the price. He'll take
full responsibility for it. It's completely his fault.
And then he made a comment to us that in all
of his years as a secret agent, he has never, this is the
least likely person, he's never seen this – he
mentioned that he did his background check. He couldn't
find anything in his background check and it just, he had

the same reaction we all did.

Q. And was it at that point in time when Agent Hegst
informed you that Mr. Denniston had made a confession?
A. I heard it, but we'd request if there are any signed copies
of exhibit 22, those are statements of account, that they
be produced, Mr. Henderson.
MR. HENDERSON: Not a problem. Ted had requested
those.
MR. DOWD: Beyond that, if there are any account
statements that we don't have that are signed, we want
them.
MR. HENDERSON: Okay.
MR. DOWD: Rather than just unsigned versions.
Mr. Plyam, do you wish to clarify anything or
add anything –
MR. VARGAS: I'm sorry. It's Joe. If you can
get me more information on the address and phone number and
any other information you could supply me with with respect
to Dennis Starr, the name of his corporation and phone
number or e-mail, whatever.
MR. HENDERSON: I may be able to give it to you
right here.
MR. VARGAS: Could you send it to Ted?
THE WITNESS: We'll get it to you, no problem.
MR. HENDERSON: Off the record for one minute.

Dennison
(Off-the-record discussion.)

MR. DOWD: Let's go back on the record.

Mr. Henderson, do you have anything?

MR. HENDERSON: Nothing further.

BY MR. DOWD:

Q Mr. Plym, do you wish to clarify anything or add anything to the statements you've made today?

A I think I've said more than enough. No.

Q No, you don't want to clarify anything?

A No. Unless you want me to, I'm fine. I think you guys have a good idea of all the facts here.

Q Have you answered all questions to the best of your ability based on your knowledge?

A Absolutely yes.

Q Okay. We have no further questions for you at this point in time. We may need to speak with you again in the future. If that occurs, we'll contact you through Mr. Henderson. And on behalf of the CFTC and my colleagues in Washington, I'd like to thank you for coming in today and testifying. And we are off the record at approximately 3:45 p.m.

(FURTHER DEPOSITION SATETH NAUGHT.)

STATE OF ILLINOIS )
 ) SS.
COUNTY OF COOK )

I, Susan Sobie, Certified Shorthand Reporter
for the State of Illinois and County of Cook, do hereby certify that I reported in shorthand the proceedings had in the above-entitled cause, and that the foregoing is a true and correct transcript of said proceedings.

In witness whereof, I have hereunto set my hand and affixed my seal at Chicago, Illinois, this 24th of March, 2006.

______________________________
Susan Sobie, C.S.R. #84-902
Notary Public.
UNITED STATES OF AMERICA  
BEFORE THE COMMODITY FUTURES TRADING COMMISSION  

*

In the Matter of:  

: Order Designating  
TOBY WAYNE DENNISTON, Ill.  : Officers to Take  
YURI PLYAM, and  : Testimony in a  
ACCELERATION CAPITAL, LLC  : Private Investigation  

*

Washington, D.C.  

Friday, March 24, 2006  

The deposition of TOBY WAYNE DENNISTON, II, called for examination by counsel for the Commission in the above-entitled matter, pursuant to notice, at the offices of the Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C., convened, pursuant to notice, at 8:55 a.m., before Catherine B. Crump, a notary public in and for the District of Columbia, when were present on behalf of the parties:

APPEARANCES:

On behalf of the Commission:

THEODORE J. DOWD, II, ESQ.

MICHAEL SULINSKY, ESQ.

JOSEPH VARGAS, ESQ.

Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, D.C.  20581  
(202) 418-5407

On behalf of the Respondent:

TOBY WAYNE DENNISTON, Pro Se

EXHIBITS

DENNISTON DEPOSITION  MARKED

No. 1  6
No. 2  6
No. 3  25
No. 4  60
No. 5  93
No. 6  104
No. 7  126
No. 8  136
No. 9  171
No. 10  172
No. 11  174
No. 12  174
No. 13  177

P R O C E E D I N G S

1  
MR. DOWD: We’re on the record at
2  
approximately 9 a.m. on March 24, 2006 in connection
3  
with the Commission’s investigation in the matter of
4  
Toby Wayne Denniston, Ill. Yuri Plyam, and
5  
Acceleration Capital, LLC.
6  
Will the court reporter please swear in
7  
the witness.
8  
Whereupon,
9  
TOBY WAYNE DENNISTON, II
10  
was called to testify and, having first been duly
11  
sworn by the notary public, was examined and
12  
tested as follows:
13  
EXAMINATION BY COUNSEL FOR THE COMMISSION
14  
BY MR. DOWD:
15  
Q Mr. Denniston, would you please state
16  
and spell your full name?
17  
A Toby Wayne Denniston, Ill.
18  
Q D-E-N-N-I-S-T-O-N.
19  
Q Mr. Denniston, are you represented by
20  
counsel today?
21  
A I am not.
Q. Have you had adequate time to seek counsel?
A. I have.
Q. Do you need more time to seek an attorney?
A. I do not.
Q. Do you wish to proceed today without an attorney?
A. Yes.
Q. This is an investigation by the Commission to determine whether or not there have been violations of the Commodity Exchange Act or its regulations or whether there are or may be violations in the future. The facts developed in this investigation might also constitute violations of other Federal or State civil or criminal laws.

My name is Ted Dowd, and with me today is Michael Solinsky, and we are both officers of the Commodity Futures Trading Commission for purposes of this proceeding. At some point later today, we may be joined by Joe Vargas, who is also an officer of the Commission for purposes of this proceeding.

When and if Mr. Vargas enters the room, I will announce that for the record.

MR. DOWD: Will you mark this as one, please?

[Denniston Exhibit No. 1 was marked for identification.]  
BY MR. DOWD:
Q. Mr. Denniston, do you recognize the document that's been marked as Exhibit No. 1?
A. Yes, sir.
Q. What do you recognize this document to be?
A. A subpoena asking for documents pertaining to my employment with Castle Trading.
Q. And also requiring you to appear here today?
A. Exactly. Yes.
MR. DOWD: We'll mark this as two.

[Denniston Exhibit No. 2 was marked for identification.]  
BY MR. DOWD:
Q. Mr. Denniston, do you recognize the document marked as Exhibit No. 2?
A. Is it not the same thing? Oh. There's a different address. Yes.
Q. Right. So the document marked as Exhibit No. 1, it was mailed to 5139 Aspen Drive, Montclair, California; is that correct?
A. Yes.
Q. And the document marked as two was mailed to a different address; is that correct?
A. Yes.
Q. And that's 5825 Reseda Boulevard, No.
209?
A. Yes, sir.
MR. DOWD: And for the record, Joe Vargas has now joined us.

BY MR. DOWD:
Q. Mr. Denniston, did you receive a copy of the document that's been marked as Exhibit No. 1?
A. Yes.
Q. And did you also receive a copy of the document marked as Exhibit No. 2?
A. No.

Q. All right. If we could look at Exhibit No. 1, attached to the subpoena on the ninth page is a document entitled "Statement to Persons Directed to Provide Information Pursuant to a Subpoena or Requested to Provide Information Voluntarily." Do you see that?
A. Yes.
Q. Did you receive a copy of that document with the subpoena you received?
A. Yes.
Q. Have you had a chance to review that document?
A. Yes.
Q. And I'd like to go this document with you in a little bit of detail. Specifically on Page 16 No. 1, under the heading "False Statements and Documents", do you see that heading?
A. Yes.
Q. Do you see the language that states "any person who knowingly and willfully makes false or fraudulent statements whether under oath or otherwise or who falsifies, conceals, or covers up a
Toby Wayne Denniston 3/24/2006 8:58:00 AM

1. Q And do you understand that the
2. information you provide us today might be used in an
3. injunctive action against you?
4. A Yes.
5. Q If I could move you forward to paragraph C, do you see that?
6. A Yes.
7. Q Okay. Have you had an opportunity to
8. read that particular paragraph?
9. A Yes.
10. Q And do you understand that paragraph?
11. A Yes.
12. Q And do you understand that information
13. that you provide us today may be shared with the
14. United States Justice Department?
15. A Yes.
16. Q Do you understand that information you
17. provide us today may be used in a criminal action
18. against you?
19. A Yes.
20. Q If I could move you forward to Page No.
21. 4 under the heading "Testimony" –

Dennison
opportunity to review that paragraph?
1 Q Do you understand that there are
criminal penalties for perjuring yourself today?
1 A I do.
1 Q Finally, if I could move you down to
paragraph 5 on page 5, which says "Fifth Amendment".
1 A Yes.
1 Q You have had an opportunity to review
that paragraph?
2 A I have.
2 Q And are you aware that you have the
right to assert your Fifth Amendment privileges
today?
2 A I do.
2 Q Under your Fifth Amendment rights, are
you aware that you may refuse to provide information
that may tend to incriminate you or otherwise
subject you to a fine, penalty, or forfeiture by
invoking your Fifth Amendment rights?
3 A Yes.
3 Q If I could back you up in Exhibit No. 1
to page 7, which is entitled "Documents to be
produced by Toby Wayne Denniston, III Pursuant to
Subpoena.
4 A Yes.
4 Q To date, have you produced any documents
in response to the CFTC's subpoena?
4 A I have not.
5 Q Did you conduct a search for documents
that were responsive to these requests?
6 A No, sir.
6 Q Why not?
7 A I know for a fact I don't have any of
them in my possession.
7 Q Let's go through these items.
7 A Okay.
8 Q Specifically No. 1, which required you
then to produce all documents related to any funds
received from Acceleration Mercury Fund including
but not limited to all checks payable to you or
payable to cash that you deposited or cashed, have
you ever received a check from Acceleration Mercury
Fund?
9 Q Has Acceleration Mercury Fund ever paid
you any money?
9 A No.
10 Q No. "All documents relating to any
correspondence between you and Yuri Pyram,
Acceleration Capital, or Acceleration Mercury Fund
relating to Acceleration Mercury Fund monies", do
you have any correspondence in your possession that
fits under that category?
11 A You know what? Come to think about it,
I do have, I believe, one document not with me
today, but I can get it to you, from a lawyer
representing the Mercury Fund.
12 Q Do you recall the date of that letter?
12 A Sometime in September.
13 Q September of 2005?
14 A Right.
15 Q Do you recall the lawyer who sent you
that letter?
16 A Jeffrey Henderson of Chicago, I believe
it is.
Toby Wayne Denniston 3/24/2006 8:58:00 AM

1. A  Currently, no, sir.
2. Q  Have you ever had a bank account?
3. A  Yes, sir.
4. Q  Have you ever deposited any Acceleration Mercury Fund monies into that bank account?
5. A  I have.
6. Q  What bank did you maintain that account with?
8. Q  Did you ever deposit Acceleration Mercury Fund monies into any other bank account?
9. A  Not that I am aware of.
10. Q  The Wilshire State Bank, what was the name on that account?
11. A  It was under Toby Wayne Denniston, Jr.
12. Q  I have the account number too, if you'd like.
15. Q  Do you have any account statements for that bank account?
17. Q  Have you ever?
18. A  Yes.
19. Q  When was the last time you had an account statement for that account?
20. A  I don't recall. I believe it was August or September of 2005.
21. Q  Item 5, "All documents related to the disposition of any monies paid to you from Acceleration Mercury Fund"--
22. A  I have nothing. I don't have anything, any documents related to the disposition.
23. Q  "All documents relating to any correspondence with Wells Fargo Bank or any other entity or individual concerning any monies paid to you from Acceleration Mercury Fund"?
24. A  I have never received anything from Wells Fargo Bank.
25. Q  "All documents reflecting any compensation paid to you by Acceleration Capital or Acceleration Mercury Fund", do you have any responsive documents to that request?
26. A  There was no compensation. So there was no documents.
27. Q  Okay.
28. A  Does that make sense?
29. Q  Yeah. Did Acceleration Capital pay you any money?
30. A  Acceleration Capital never voluntarily paid me money.
31. Q  Did Acceleration Mercury Fund ever pay you any money?
32. A  Not voluntarily, no, sir.
33. Q  Were you an employee of Castle Trading?
34. A  I was.
35. Q  Did Castle Trading pay you?
36. A  They did.
37. Q  Do you have account statements or pay stubs for the money Castle Trading paid you?
38. A  I can get possession of a W-2 from last year.
39. Q  I'm going to request that you produce that W-2.
40. A  Yes, sir. Would it be possible to get a piece of paper? I know you asked me that before, and I apologize.
41. Q  [Mr. Dowd complies.] At any point you need more, let me know.
42. A  Yes. So I'm going to provide a W-2 from Castle Trading and a letter from Jeffrey Henderson; is that correct?
43. Q  That's correct.
44. Q  Item No. 8, "All documents related to your employment with Acceleration Mercury Fund and/or Acceleration Mercury Fund, including but not limited to all personnel and disciplinary files", do you have any responsive documents to that request?
45. A  I was never an employee of Acceleration Capital or Acceleration Mercury Fund.
46. Q  "All documents related to all supervision policies or procedures employed by Acceleration Capital and/or Acceleration Mercury Fund", do you have any responsive documents to that request?
47. A  I do not.
48. Q  Item 10, "All documents concerning or relating to Acceleration Capital compliance
procedures, including but not limited to compliance
manuals", do you have any documents responsive to
that request?
A: I do not. I know one exists, but I do
not have possession of it.
Q: How do you know one exists?
A: I created it.
Q: When?
A: When the fund was created back in, I
Q: Was that document ever in your
possession?
A: Personally, no. In the office of Castle
Trading, yes.
Q: When was the last time you had access to
that document?
A: August of 2004.
MR. SOLINSKY: 2005?
THE WITNESS: Excuse me. You're right.
2005. Sorry about that.
BY MR. DOWD:
Q: Item 11, "All training or compliance
materials provided to you by Acceleration Capital or
Yun Pi Yan", do you have any documents responsive to
that request?
A: No. 12, "All documents containing
descriptions of your duties for Acceleration Capital
and/or Acceleration Mercury Fund"?
A: Nothing exists.
Q: "All documents that identify any current
or former participants of Acceleration Mercury
Fund"?
A: I do not have possession of that.
Again, I know that it exists. I created it, but I
do not have possession of it.
Q: Item 14, have you reviewed that request?
A: Yes. There was never any promotional
material except for the disclosure document.
Q: Item 15, have you reviewed that request?
A: Yes, and I do not have any possession of
them.
Q: You don't have any documents responsive
to that request?
1 have that letter. Would you like it?
2 MR. DOWD: Okay. We'll mark this as
3 three, please.
4 [Denniston Exhibit No. 3 was
5 marked for identification.]
6 BY MR. DOWD:
7 Q Mr. Denniston, can you summarize the
8 information that is contained in the document marked
9 as Exhibit No. 3?
10 A It goes something like I have no
11 possession of any materials that were requested in
12 the subpoena, the two mistakes that made, the two
13 letters that we have.
14 Q And that's the letter from Mr.
15 Henderson?
16 A And the W-2 from Castle Trading, yes,
17 sir.
18 Q So absent those two documents, it's your
19 position that you have no responsive documents to
20 the CFTC's subpoena?
21 A That is true.
22 Q Do you understand all the instructions

1 I've just given you?
2 A Yes.
3 Q Is there any reason sitting here today
4 that you cannot give full and complete testimony?
5 A There is not.
6 Q Are you taking any medication that may
7 prevent you from giving full and complete testimony?
8 A Not that I'm aware of.
9 Q Do you understand all the instructions
10 I've given you?
11 A Yes.
12 Q Who have you spoken with regarding the
13 CFTC's subpoena to you?
14 A My family and Agent Michael—Secret
15 Service Agent Mark Heintzel.
16 Q Who specifically in your family did you
17 discuss the CFTC subpoena with?
18 A My stepbrother, my father, my brother, my
19 sister, and my partner. Oh. And one of his nieces.
20 Q One of your partner's nieces?
21 A Yes.
22 Q What is your partner's name?

1 Q Okay. And at any point subsequent to
2 that discussion, did you have another discussion
3 with Mr. Martinez with respect to the CFTC subpoena?
4 A Before?
5 Q No. After that March—what was the date
6 of it? March 3rd?
7 A March 8th, I believe it was.
8 Q Okay. After that March 8th conversation
9 that you just identified, did you have another
10 conversation with Mr. Martinez?
11 A Except for the travel arrangements being
12 made, no.
13 Q What is the name of Mr. Martinez's
14 niece?
15 A Gabriella Martinez.
16 Q The tennis player?
17 A No.
18 Q When did you have a conversation with
19 Gabriella Martinez?
20 A Probably the 9th or the 10th—I don't
21 recall—of March, this year.
22 Q How many conversations did you have with
Ms. Martinez?
1 A One.
2 Q And what did you say to her?
3 A Just that I was going to Washington in regards to this.
4 Q What was her response?
5 A She wanted me to bring back a tee shirt.
6 Q How old is Ms. Martinez?
7 A In her mid-twenties, late twenties.
8 Q Did you have any discussion with her about what you expected to testify about?
9 A I don't believe so.
10 Q Did—
11 A She is in the same situation as Mr. Martinez, very English deficient, and we don't get into too many details. Most of our conversation was in regards to my trip here.
12 Q Did any of your conversations with Ms. Martinez concern anything other than your travel plans?
13 A I don't believe so.
14 Q What is your father's name?
15 A Toby Wayne Denniston.
16 Q And how many conversations did you have with your father with respect to the CFTC subpoena?
17 A One.
18 Q When was that?
19 A On this past Sunday. I don't recall the date.
20 Q So approximately March 19th?
21 A Yes.
22 Q What did you say to your father?
23 A That I was coming to Washington.
24 Q Did you tell him why?
25 A To testify for you guys in regards to my problems.
26 Q What do you mean by your problems?
27 A, in regards to the situation with the fund and myself.
28 Q Did you have any discussion with your father other than your travel plans?
29 A No, I did not.
30 Q What was your father's response when you told him you were coming to Washington?
31 A He was a little surprised. He had other things on his mind, burying my stepmother the following day and with my aunt who doesn't anything about my situation. The conversation was mostly toward just travel plans. I told him that I would talk to him after I got home tomorrow.
32 Q What is your sister's name?
34 Q How many conversations with Tammy did you have with respect to the CFTC subpoenas?
35 A One.
36 Q When was that?
37 A A week ago this past Wednesday.
38 Q What did you say to her?
39 A I told her that I was coming to Washington to testify in regards to the fund. I told her that I was going to give you the same information that I gave to the Secret Service, that was my plan, so, just along those lines.
40 Q Okay. What information did you give to the Secret Service?
subpoena?
A Just one.
Q When did that conversation take place?
A The same date as my sister's, Wednesday the past. A week ago Wednesday.
Q Was that a conversation separate from that, that you had with your sister?
A It was.
Q What did you say to your brother?
A It was the same content as my sister, that I was going to be truthful and provide you the information that I had provided to the Secret Service, as best as I could.
Q What was your brother's response?
A He was worried about Mr. Plyam's situation, the trouble that he probably caused for Mr. Plyam.
Q Can you elaborate on that for us? Why was he worried? Specifically, what was he worried about with respect to Mr. Plyam?
A He believes that the situation that I brought upon Mr. Plyam may cause him to lose his license to trade commodities. He feels that this whole thing was my fault, that it should have been avoided by not doing it, and that I brought shame to him.
Q Has your brother ever met Mr. Plyam?
A Not that I'm aware of.
Q Do you know if your brother has ever had any conversations with Mr. Plyam?
A I do.
Q Do you know how many conversations your brother has had with Mr. Plyam?
A I do not.
Q How do you know your brother has had conversations with Mr. Plyam?
A He's told me.
Q What did he tell you?
A This happened in August of 2005 when Mr. Plyam was trying to get ahead of me in regards to the matter.
Q By the matter, you're referring to your theft of Acceleration Mercury Fund money?
A Yes. And he was trying to locate me. I left my primary residence afraid that I was going to be arrested and did not tell anybody in my family where I was.
Q What is your stepmother's name?
A Her name was Dolores Kolb. Excuse me. I apologize. Debbie Henderson.
Q Who is Dolores Kolb?
A She is my stepmother that passed away in January. Debbie Henderson is my stepmother from my mother's side, my mother's partner.
Q Okay. Earlier, I believe you testified that you had a conversation with your stepmother regarding the CFTC subpoena; is that correct?
A Yes.
Q Okay.
A I consider Debbie Henderson as my stepmother.
Q Okay. At any point, did you have a conversation with Dolores Kolb with respect to the CFTC subpoena?
A No. She had passed before.
Okay. And have you ever had any other conversations with Mark Heingst with respect to the subpoena from the CFTC?

A The one and only was that day.

Q Did you contact him or did he contact you?

A I contacted him.

Q What did you say to him when you contacted him?

A That I received the subpoena, that I was going to Washington, that I talked to you, and he said that he was expecting it.

Q Did he say anything else?

A He said something to the effect that now they're going after Yuri.

Q Did he explain what he meant by that?

A That it was administrative. I was worried at the time that more charges, criminal charges, would be filed against me. He told me that this was administrative and that he wasn't aware that any other criminal charges could be filed.

Q Okay. Have any criminal charges been filed against you?

A No, not yet. My first conversation with Mr. Heingst was that the criminal charges that would be filed against me would be specifically bank fraud versus any other, like embezzlement or anything like that. My first conversation with him was in regards to being worried that I could be charged with commodity laws, with embezzlement, bank fraud, all of it, and he told me that the U.S. Attorney— I believe his name is Bill Yu— I received that name from Mr. Solinsky— was going to just file bank fraud charges against me.

Q Was that part of the conversation you had with Mr. Heingst with respect to CFTC's subpoena or is that a separate conversation?

A That was a separate conversation.

Q Are you aware that Agent Mark Heingst is not an officer, a representative of the Commodity Futures Trading Commission?

A I do.

Q And do you understand that any action that the CFTC may take against you is separate from
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A. Yes.

Q. Do you understand the potential actions that the CFTC may take against you?

A. I believe so, yes. Both criminal and civil.

Q. The CFTC is a civil agency.

A. You can recommend to the U.S. Attorney.

Q. Do you recall the Privacy Act we discussed stated that the CFTC could take an administrative action against you?

A. Yes.

Q. And do you recall that it stated that it could take an injunctive action against you?

A. Yes.

Q. Do you understand that an injunctive action is a civil action in the United States?

District Court?

A. Yes.

Q. Okay. Other than the people we've identified thus far, have you had any conversation with anyone with respect to the subpoena the CFTC issued you?

A. A conversation, no. Can I clarify?

Q. Please.

A. I did leave a message for Mrs. Piym that I did receive the subpoena, but I never talked to them.

Q. What did you say in that message?

A. That I received a subpoena from the CFTC, that I was going to have a conversation with you in regards to it and wanted any feedback from them that might help them.

Q. Did they return your message?

A. They did not.

Q. Do you know anyone else who has been subpoenaed or has testified in this investigation?

A. I do not.

Q. Did you do anything to prepare for your testimony today?

A. Other than a few deep breaths and a long walk, no, sir.

Q. Did you review any documents?

A. Just the letter that I wrote for Mr. Solinsky.

Q. Let's slow down here for a minute. I just want to get some general background information from you?

A. Certainly.

Q. What's your date and place of birth?

A. November 3, 1971 in Vista, California.

Q. And your current home address is 10123 Finch Avenue, Alta Loma, California?

A. It is.

Q. How long have you lived there?

A. Two months--one month.

Q. Where did you live immediately before that?

A. I was homeless.

Q. How long were you homeless?

A. Approximately two months.

Q. Where did you stay while you were homeless?

A. In my car.

Q. Prior to the time you were homeless, where did you live?

A. At Gabriella Martinez's home.

Q. And what's the address of that house or apartment?

A. 1512 East Fifth Street, Space 187. That's in Ontario, California.

Q. How long did you live at that address?

A. Since August of 2005.

Q. Prior to August 2005, where did you live?

A. You want the address?

Q. Please.


Q. What is your current home telephone number?

A. (818) 378-8016. It's a cell phone.
Q: Do you have a question?
A: I have one. It's a statement. There was a
misdemeanor that was expunged.

Q: Have you ever been questioned in
connection with a disciplinary proceeding by an
exchange or self-regulatory organization?
A: By the exchange? No.

Q: What about by a self-regulatory
organization?
A: No.

Q: Do you understand--
A: I apologize. Yes, yes, I have.

Q: Okay. When was that?
A: The National Futures Association in
August of 2005.

Q: Other than the NFA inquiry in August of
2005, have you ever been questioned by an SRO?
A: No. And those questions with the NFA
was just pertaining to the audit prior to. It
wasn't anything--it was me answering questions
through an audit.

Q: It wasn't a formal disciplinary
proceeding?
A: It was not.

Q: Are you currently registered with the
NFA?
A: I am not.

Q: Have you ever been registered with the
NFA?
A: I believe I was registered, but I didn't
pass the Series 3 exam. So I was never brought to
fruition.

Q: So you applied for registration with the
NFA?
A: I did.

Q: But you were never actually registered?
A: Exactly.

Q: Were you ever registered as an
associated person?
A: I was not.

Q: Have you ever held any professional
license?
A: No.

Q: Have you ever been registered with NASD?
1 A No.
2 Q Have you ever applied for registration
3 with the NASD?
4 A No.
5 Q Have you ever been a member of any
6 professional organization?
7 A No.
8 Q Did you complete high school?
9 A Yes.
10 Q What year did you graduate high school?
11 A 1990.
12 Q And what high school did you graduate?
13 A Church Hill County High School, Fallon,
14 Nevada.
15 Q And did you ever enroll in college?
16 A Yes.
17 Q Identify every college that you've ever
18 enrolled in for us.
19 A Wateron College in 2001, a business
20 school. I graduated with a diploma in accounting.
21 Q Was that a B.A. or an associate's
22 degree?
23 A It was a certificate diploma.
24 Q Okay. And how many credits did you take
25 at Wateron College?
26 A I don't recall.
27 Q When did you receive the certificate?
29 Q I'm sorry. I thought you said you
30 enrolled in Wateron College in 2001.
32 Q Was that the fall of 1991?
33 A You know, I don't recall.
34 Q When in 2001 did you receive the
35 certificate?
36 A 1990.
37 Q I'm sorry?
38 A The certificate was received in 1992,
39 and I believe that was in June, maybe. I don't
40 recall.
41 Q Do you recall how many classes you took?
42 A Oh, gosh.
43 Q Approximately?
44 A Forty-five.
Q: What did you do for Lloyds Equipment?
A: I was a parts driver.

Q: Auto parts?
A: Forklift.

Q: What was your next job?
A: IC Pharmaceuticals.

Q: 1-C what?
A: IC Pharmaceuticals.

Q: What did you do for IC Pharmaceuticals?
A: At first, I was a receptionist, and then

I became a--I got into purchasing, a purchasing
clerk.

Q: During what period of time were you a
receptionist?
A: '91 to '92 maybe.

Q: Okay. During what period of time were
you a purchasing clerk?
A: From '92 to '93.

Q: What was your next job after that?
A: '93, Home Base.

Q: How long were you employed by Home Base?
A: Eight years.

Q: So '93 to roughly 2001?
A: Yeah.

Q: Do you recall when in 2001 you left Home
Base?
A: July.

Q: What did you do for Home Base?
A: I was a replenishment analyst at first,
and then I was an inventory supervisor.

Q: Okay. What was your next job after Home
Base?
A: Burkhardt Sales.

Q: I'm sorry?

Q: And during what period of time were you
employed by Burkhardt Sales?
A: From July of '01--maybe Home Base was
2000 and then July of 2000 to July of 2001 at
Burkhardt.

Q: So you left Home Base in July of 2000?
A: I think so, yes.

Q: And then you joined Burkhardt Sales?
A: Yes.
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1  I don't remember the name of the company. I
2  apologize.
3  Q. During what period of time was that
4  stock account opened?
5  A. 2005.
6  Q. Is it still open?
7  A. It is not.
8  Q. Do you recall when you closed the
9  account?
10 A. August of 2005, I believe.
11 Q. So it was both opened and closed in
12 2005?
13 A. Yes. I believe it might have been June
14  when I opened it.
15 Q. Do you recall the name on the account?
16 A. Toby Denniston.
17 Q. Is it Toby Denniston, II?
18 A. Yes.
19 Q. Was that a joint account?
20 A. It was not.
21 Q. Have you ever had any other security or
22 brokerage accounts?

1 A. No.
2 Q. Have you ever had a IRA?
3 A. Yeah. That was an IRA, actually. That
4 was an IRA. Other than that, no. It was a 401(k)
5 I've had.
6 Q. And do you recall the brokerage firm or
7 bank where the IRA was located?
8 A. One of the ones that I—I don't
9 remember. I'm sorry.
10 Q. Do you still have account statements for
11 that brokerage account?
12 A. Not in my possession, no. I'll get you
13 the name of that. I'm sorry.
14 Q. Yeah. I'm going to request that you
15 produce any documents that are related to that
16 account.
17 Q. Have you ever had any discretionary
18 trading authority over any security or brokerage
19 account that was not in your name?
20 A. No.
21 Q. Have you ever had discretionary trading
22 authority over any commodity futures trading

1 A. Yes.
2 Q. --account that you can't remember the
3 name of the brokerage, what was the most amount of
4 money you ever had in that account?
5 A. About $4,000, I believe.
6 [Denniston Exhibit No. 4 was
7 marked for identification.]
8 BY MR. DOWD.
9 Q. Mr. Denniston, do you recognize the
10 document marked as tour?
11 A. Yes.
12 Q. Can you tell us what this document is?
13 A. It's a check from a personal bank
14 account that I held.
15 Q. When did you open this account?
16 A. I don't know.
17 Q. Can you approximate what year it was?
18 A. Late 2004, maybe.
19 Q. Is the account number for the Wilshire
20 State Bank account in your name 005351048?
21 A. It is.
22 Q. Has anyone else ever been a signatory on
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1. Q So from October 2004 forward, the
2. accounts that you held were an IRA at an unnamed
3. brokerage, the Wilshire State Bank account, and the
4. Wells Fargo checking account?
5. A That's right.
6. Q No others?
7. A That's right.
8. Q When did you start at Castle Trading?
10. Q How did you learn about the job at
11. Castle Trading?
13. Q Do you recall the position that was
14. posted on Monster?
15. A Office clerk, maybe.
16. Q Did you have any preexisting
17. relationship with anyone at Castle Trading prior to
18. applying for the job?
19. A I did not.
20. Q Do you recall who interviewed you?
21. A Natalia Piyam, Yuri Piyam, and one other
22. gentleman. I don't recall his name.

2. Q Other than the Wilshire State Bank and
3. the Wells Fargo Bank account, have you held any
4. other bank accounts from October 2004 forward?
5. A No.
6. Q What about certificates of deposit?
7. A No.
8. Q Savings accounts?
9. A No.
10. Q Any type of bank account?
11. A Those two accounts and the IRA, that was
12. it.
13. Q At any point from October 2004 forward,
14. have you ever held any money at any financial
15. institution other than that that you've identified?
16. A Since what date?
18. A October 2004, have I ever held money?
19. No, I have not.
20. Q At any financial institution other than
21. what you've identified thus far?
22. A That's right.
Q And those employees would include yourself?
A Yes.
Q And Yuri Plyam?
A Yes.
Q Natalie Plyam?
A Yes.
Q Who else?
A Different people on occasion.
Q Do you recall the names of those people?
A No, not the top of my head.
Q Do you know who Gregory Zane Parker is?
A That’s his name. Yeah, I do. Yes.
Q Who is Gregory Zane Parker?
A I’ve been trying to think of his name for a while. He was an MIS tech, information systems tech, that was hired for Castle Trading.
Q And do you know what period of time Mr. Parker worked for Castle Trading?
A Within a month or two prior to August of 2004, he was hired.
Q Okay. So he was hired in the summer of 2004?
A 2005?
A Yeah.
Q So just a month or two before you left the company?
A Within that timeframe. Maybe a few months.
Q What did he do for Castle Trading?
A He made sure that the web site was updated. He did all the MIS, all the computer stuff.
Q Do you know who hired him?
A Mr. Plyam, Yuri.
Q And is Mr. Parker still with Castle Trading?
A I do not know.
Q What is Castle Trading?
A Castle Trading is a futures commodity brokerage.
Q Is it an introducing broker?
A It is.
Q Does it have any other business operation other than that of introducing broker?
A Castle Trading?
Q Yes.
A No.
Q Where were Castle Trading’s offices located?
A Reseda Boulevard. I think 8619 Reseda Boulevard, Space 102, Northridge, California 91324.
Q Did it ever have an address at 8949 Reseda Boulevard?
A It did.
Q Was that separate from the address that you just identified?
A No, sr. We lived—we were at 8949.
Q Then we moved to 8619.
Q When did that move take place?
A Oh, shoot. About a year—August of 2004, maybe.
Q So as of August of 2004, Castle Trading was located at 8619 Reseda Boulevard, Northridge, California?
1 Q And that would be approximately three feet?
2 A Oh, six feet.
3 Q And where did you sit in relation to Natalia Plyam?
4 A She sat facing me, directly behind Mr. Plyam.
5 Q Approximately how far away was her desk from yours?
6 A Ten, fifteen feet maybe.
7 Q Did you have the ability to lock your desk?
8 A No. There was no drawers in any desk.
9 Q In any desk?
10 A In any desk. That was Mr. Plyam's private policy.
11 Q Where did the company keep its documents?
12 A In a filing cabinet inside a closet in the office. Filing cabinets.
13 Q Where did you keep your personal belongings?
14 A I didn't have any.
15 Q Where did you keep your pens, papers?
16 A On my desk.
17 Q Describe Natalia Plyam's role at Castle Trading for us.
18 A She handled—god. She did a lot of the things that Yuri didn't want to do. Yuri did the trading. She did everything else, the paying of bills, that sort of thing.
19 Q How often was she in the office?
20 A Every day.
21 Q Full time every day?
22 A Yes.
23 Q And what was the supervision role at Castle Trading?
24 A Yuri was strict-handed. He did everything.
25 Q Yuri was the supervisor?
26 A He was.
27 Q Yuri was in charge of the entire operation?
28 A He was.
29 Q Did anyone supervise you other than Yuri?
30 A On occasion, Natasha, but through Yuri.
31 Q Is it Natalia or Natasha?
32 A Both. We called her Natasha.
33 Q What specifically did Natasha do to supervise you?
34 A She had access to all incoming E-mails, went through all of the postal mail, about that. She handled phone calls when there were problems. Like if there was a trading problem, she handled some of those phone calls when Yuri wasn't available.
35 Q What did you do for Castle Trading when you started?
36 A When I first started, I was just a clerk. I took daily orders from customers.
37 Q Orders for futures trades?
38 A Yes.
39 Q What else did you do?
40 A And I monitored written tickets versus what the FCM posted in each of the individual accounts.
41 Q Did that role change at any point in time?
42 A It did.
43 Q When did it change?
45 Q How did your role change in June 2003 from that of clerk?
46 A I notified Mr. Plyam that I had an accounting background and that he just received a fine from the National Futures Association in regards to the accounting of the Gauss Fund, a separate fund that was administered by Mr. Plyam.
47 Q What is the Gauss Fund?
48 A The Gauss Fund is a commodity fund.
49 Q A commodity pool?
50 A Um-hum.
51 Q Who is the CPO for the Gauss Fund?
52 A Remind me what a CPO.
53 Q The commodity pool operator.
Mr. Plym.

Q. Did he do that through Acceleration Capital?

A. No. Through CHP Asset Management.

Q. CHP Asset Management, was that a registered CPO?

A. It was.

Q. And describe for us how your role changed in June 2003 when the NFA fined Mr. Plym for activity relating to the Gauss Fund.

A. I got more involved in making sure that the office was compliant in regards to having the correct paperwork or organizing the office and doing accounting for the fund, the Gauss Fund, on Quickbooks, sending out invoices to customers, keeping all documents required by the NFA and the CFTC.

Q. Okay. Customer invoices for the Gauss Fund?

A. Yes.

Q. Did you send out customer invoices for Castle Trading?

A. No.

Q. Were you ever an employee for CHP Asset Management?

A. I was not.

Q. Did you ever do any work on behalf of CHP Asset Management?

A. I did.

Q. And was that with respect to the Gauss Fund?

A. Yes.

Q. And that was the paperwork for the Gauss Fund?

A. That's right.

Q. Compliance issues that the Gauss Fund?

A. Yes.

Q. Did you prepare customer statements for the Gauss Fund?

A. I did.

Q. Who supervised that?

A. Mr. Plym. I'm getting a little cold.

MR. DOWD: Why don't we go off the record, take a break.

Q. 2005 or 2003?


Q. In June of 2003, did you testify that your role changed at Castle Trading?

A. It did.

Q. Did you receive a title change?

A. No.

Q. Okay. And did you ever hold a title at Castle Trading other than clerk or office manager?

A. I did not.

Q. Regardless of title change, did your role at Castle Trading ever change at any point in time subsequent to that of June 2003 when you became involved in the compliance aspect?

A. Prior to that, no.

Q. What about subsequent to that?

A. Since that, yes.

Q. Okay.

A. I became an officer manager in June of 2005. I took on more responsibilities as to disciplining employees.

Q. What do you mean by disciplining?
1 Q And did Castle Trading do any work on behalf of CHP Asset Management?
2 A CHP Asset Management. No. Gauss Fund, it was its I.B.
3 Q So Castle Trading was the I.B. for the Gauss Fund?
4 A The Gauss Fund.
5 Q Did you ever receive any training from Castle Trading?
6 A Yes.
7 Q Okay. What training did you receive from Castle Trading?
8 A How to write orders, how to answer the phone, how to place orders for customers. Gosh it was ongoing verbally, nothing in writing. All verbal.
9 Q Who provided that trading?
10 A Mr. Plym.
11 Q Anyone else?
12 A No.
13 Q What was your salary when you started at Castle Trading?
14 A $15 an hour.
15 Q Did that change at any point in time?
16 A It did.
17 Q When did it change?
18 A I don't recall. Several times between April of 2003 and August of 2005.
19 Q What was your salary when you left Castle Trading?
20 A $15 per hour.
21 Q What is Acceleration Capital?
22 A It is a CPO for a Mercury—the Mercury.
23 Q For Acceleration Mercury Fund 4X?
25 Q Do you know if Acceleration Capital is registered as a CPO with the NFA?
26 A At the time, I believe it was. As of today, I do not know that.
27 Q So during your employment at Castle Trading, Acceleration Capital was a registered CPO?
28 A It was.
Q: Do you know if it was also a registered CTA?
A: It was.
Q: Did it ever provide any CTA services?
A: And by CTA, I'm referring to commodity trading advisor.
Q: I'm not exactly sure.
A: Curtis Faith and Yuri Plyam.
Q: Who is Mr. Faith?
A: Curtis Faith was a prodigy in futures trading. He was taken under a wing by some big investor, traded for this investor, and a book was written about the whole experiment.
Q: And aside from being involved in the formation of Acceleration Capital, what did Mr. Faith do on behalf of Acceleration Capital?
A: Nothing.
Q: Do you know how often Mr. Faith was in contact with Acceleration Capital?
A: At the beginning, once every few months. Towards the end, not at all.
Q: Do you know how often he was in touch with Mr. Plyam?
A: At the same time. When Curtis Faith contacted Acceleration Capital, it was Yuri Plyam.
Q: So do you know how often Mr. Plyam and Mr. Faith spoke or corresponded after the formation of Acceleration Capital?
A: I do not know that.
Q: Who ran Acceleration Capital?
A: Yuri Plyam.
Q: Okay. Did Mr. Faith run Acceleration Capital at all?
A: Did not.
Q: Did he have any role in Acceleration Capital?
A: The formation only. They were using his name, Yuri's know-how.
Q: Where is Acceleration Capital located?
A: The same address as Castle Trading, 8619 Reseda Boulevard in Northridge.
Q: So the two entities shared an office?
A: As well as the CH Asset Management.
Q: Was any other entity located at that address?
A: I don't know. They have Castle Development, which was a real estate company. That was in a separate office.
Q: At the beginning, it was not. At the end of my employment, it was.
Q: You said Castle Real Estate Development?
A: I believe it was called Castle Development.
Q: What business was Castle Development engaged in?
A: Castle Development purchased land to develop for multimillion dollar homes.
Q: And who founded Castle Development?
A: Mr. Plyam.
Q: Who ran Castle Development?
A: Mr. Plyam.
Q: Were any Castle Trading employees involved with Castle Development other than Mr. Plyam?
A: No.
Q: Did Castle Trading employees ever do any work on behalf of Castle Development other than Mr. Plyam?
A: You know what? Greg Parker might have done computer stuff, but anything technical or anything like that, I don't recall.

BY MR. VARGAS:
Q: Was Castle Development a corporation?
A: I believe it was.
Q: Do you know what State it was incorporated in?
A: I do not know.

BY MR. DOWD:
Q: Were you ever employed by Acceleration Capital?
A: I was not.
Q: Did Acceleration Capital ever have any
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1 employees?
2 A No.
3 Q And Acceleration Capital served as a CPO
4 for Acceleration Mercury Fund 4X; is that correct?
5 A That is correct.
6 Q As well as the Granite Fund; is that correct?
7 A Yes, but the Granite Fund never traded.
8 Q Aside from those two funds or pools, did Acceleration Capital ever serve as a CPO for any other commodity pool?
9 A It did not.
10 Q Who supervised Acceleration Capital's operations?
11 A Mr. Plyam.
12 Q Anyone else?
13 A No.
14 Q What relationship, if any, existed between Acceleration Capital and Castle Trading?
15 A Castle Trading was the I.B. for the Mercury Fund and Mr. Plyam was managing member of both.
16 Q Did Castle Trading ever perform any work on behalf of Acceleration Capital?
17 A Besides being the I.B., no, not that I'm aware of.
18 Q Did you ever do any work on behalf of Acceleration Capital?
19 A Yes.
20 Q Who supervised that work?
21 A Mr. Plyam.
22 Q And what specifically did you do on behalf of Acceleration Capital?
23 A The same as with CHP Asset Management. I did the accounting. I did the compliance work.
24 Q Compliance for what?
25 A Made sure that all the documents were on hand for any particular reason that the CFTC and the NFA required.
26 Q What documents specifically are you referring to?
27 A A compliance manual.
28 Q Others?
29 A A list of participants, the creation of a disclosure document. What else? And the accounting statements for each participant.
30 Q What about monthly account statements?
31 A That's what I just said. Yes.
32 Q So by accounting statements, you're referring to monthly account statements that were distributed to Acceleration Mercury Fund participants?
33 A That is right.
34 Q During that period of time did you prepare those account statements?
35 A I believe the fund began trading in January of 2004, and I stopped doing it in August 2005.
36 Q Were you doing it in January 2004 when the fund started trading?
37 A I was.
38 Q So from January of 2004 through August of 2005, you prepared account statements for Acceleration Mercury Fund participants?
39 A Yes.
40 Q Did you mail those account statements?
41 A I did.
42 Q Did anyone review those account statements prior to the time they were mailed to the pool participants?
43 A Yes.
44 Q Who?
45 A Mr. Plyam.
46 Q What did Mr. Plyam do to review those accounts statements?
47 A I don't know.
48 Q What was the procedure before they were mailed?
49 A There's a statement on the bottom of each that Mr. Plyam had to sign.
50 Q That stated what?
51 A That to the best of his knowledge and belief, the account statements were correct.
52 Q Do you know if he did anything to ensure that the account statements were correct?
53 A I do not know. I believe that he just relied on me.
54 Q Why do you believe that?
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1. Q And where is the fund located? Does it have a mailing address?
2. A It does, the 8619 Reseda Boulevard.
3. Q And do you recall when the pool was formed?
4. A The pool, I believe, was July of 2003.
5. Q That couldn't have been right. July of 2004.
6. A I don't recall now, sir. We started trading the fund in January of 2004.
7. Q January of 2004, the Acceleration Mercury Fund commenced trading?
8. A I believe that's the date. I might be mixing the dates up again. I apologize if I am.
9. Q And you prepared the account statements for the life of the Acceleration Mercury Fund?
10. A Yes. We did that together constantly.
11. Q And did you do any work independent of Mr. Piym?
13. Q And did he supervise that accounting work?
14. A I don't believe that he did. I mean up until--like I said, his knowledge in accounting is minimal. Other than wanting to know the performance or working with me on the performance, doing the trades, and signing the statements to the customers, his participation was left to me to do.
15. Q And when you say working on the performance, what specifically do you mean?
16. A Like I said, he wanted to know all the time how he was doing in comparison to the prior month, the prior day.
17. Q In terms of rate of return of Mercury Fund?
18. A Yes.
19. Q And you prepared that information for him?
20. A I did.
21. Q Who founded Acceleration Mercury Fund?
22. A Curtis Faith and Mr. Piym.
Q. And were you an employee of Castle Trading during the period of time that you did work on behalf of Acceleration Mercury Fund?

A. I was.

Q. Who authorized you to do work on behalf of Acceleration Mercury Fund?

A. Yuri Plyam.

Q. Were you ever compensated by Mercury Fund?

A. I was not.

Q. What about by Acceleration Capital?

A. No. In regards to official paychecks from either of those companies, I was not.

Q. Did Acceleration Mercury Fund maintain a futures trading account anywhere?


[Exhibit No. 5 was marked for identification.]

BY MR. DOWD:

Q. Mr. Denniston, do you recognize the document marked as No. 5?

A. I do.

1  Q  Can you tell us what that document is?

2  A  It's a commodity statement from Rosenthal Collins for the Acceleration Mercury Fund, 4X Fund.

3  Q  Do you know if the Acceleration Mercury Fund ever had a futures trading account other than that reflected in Exhibit No. 5?

4  A  I don't believe so. It might have been Revco, but I don't recall. I think all of it was done through Acceleration Mercury— I mean through R.C., Rosenthal Collins. I don't think anything was done through Revco, so my recollection.

5  Q  Do you know who opened the account in Exhibit No. 5?

6  A  Mr. Plyam and Mr. Faith.

7  Q  And who is responsible for reviewing the account statements for the Acceleration Mercury Fund Rosenthal Collins account?

8  A  These statements monthly and daily, that was my responsibility.

9  Q  Okay. So in addition to the monthly account statements that are in Exhibit No. 5, did

A. I think so.
Q: Did you recall when in 2004 approximately the daily account statements were sent via E-mail rather than postal mail?
A: I don't believe that postal mail stopped. I believe it was both.
Q: And who had access to the E-mail account
info@CastleTrading.com?
A: Yuri Plyam and Natasha Plyam.
Q: Who had access to the E-mail account info@Acceleration Capital.com?
A: I believe both of those them as well, Yuri Plyam and Natasha Plyam.
Q: Was the correct address, info@CastleTrading.com?
A: Yes.
Q: Did you have access to either of those E-mail accounts?
A: On my computer, no.
Q: Did you have access in any way to either of those E-mail accounts?
A: Yes.
Q: How did you have access?
A: I had keys to the building and access to Mr. Plyam's computer. It wasn't in a locked office.
Q: Did Mr. Plyam ever grant you access to those E-mail addresses officially?
A: Yes.
Q: Okay. For what purpose?
A: If he was running errands to monitor his E-mail; if he was on vacation, to monitor his E-mail; to transfer these particular E-mails from info@CastleTrading to Toby@Castle Trading so that I could do the accounting. The monthly statements were done that way.
Q: Did the monthly accounts statements also arrive via E-mail?
A: Yes.
Q: Do you recall what address they arrived to via E-mail?
A: Either of those, info@Castle or Info@Acceleration. I believe it was Info@CastleTrading. I don't believe it was

Q: Did the monthly account statements continue to arrive via postal mail after they were available via E-mail?
A: I believe that they did. I take that back. I don't think that they did. I think they stopped.
Q: So the monthly account statements stopped arriving via postal mail once they were available via E-mail?
A: I believe so.
Q: What about the daily account statements; were there two statements mailed, both an electronic mail and postal mail?
A: I believe at one time, yes. At some particular time after that, I don't believe that they were. I think everything was E-mail. So let me clarify my statement from before. I believe the postal mail did stop and the E-mails—it was the Gauss Fund where they did not.
Q: Where the postal mail did not stop?
A: Right.
Q: Whose responsibility was it to review the Rosenthal Collins daily account statements for accuracy?
A: Mine.
Q: And how—
A: With Mrs. Plyam's assistance.
Q: What do you mean by "with her assistance"?
A: She looked for margin calls and stuff like that on both Revo and Rosenthal Collins statements, and she had done that work as well.
Q: So what was the procedure once the account statement arrived at the office whether it was via postal mail or electronic mail?
A: The procedure was just to file it, to review it for accuracy and to file it, match it against a ticket.
Q: If it came via E-mail, would someone print it or forward it to another person?
A: I believe it was automatically forwarded to me through a rule in Outlook.
Q: What was your E-mail address?
A: Toby@CastleTrading.com.
Q: And what was the procedure if the statement arrived via postal mail?
A: All mail, all postal mail, went to Natasha Plym. She would open the envelope and then review it and then give it to me if it had anything to do with my work.

Q: What would you do with the daily account statements once you received them?
A: I put them in a file.

Q: Did you do anything else?
A: Besides checking them for accuracy, I would put them in a file.

Q: Was anyone else responsible for checking the account statements for accuracy?
A: No.

Q: With respect to the monthly account statements, was the procedure the same?
A: Yes.

Q: So you would review the monthly account statements for accuracy?
A: Yes.

Q: And then you would place the monthly account statements in a file?
A: Yes. With the monthly account statements, we did the accounting based on the monthly account statements.

Q: Who is ti?
A: I did the accounting for the fund based on the monthly account statements.

Q: Do you know if Mr. Plym ever reviewed the Rosenthal Collins monthly or daily account statements?
A: I would believe yes. I couldn't tell you for a fact, but yes.

Q: Why do you have that belief?
A: Because, you know, he sat at his desk. His computer didn't face mine. He didn't tell me everything he was doing all hours of the day. He did things that--

Q: But if you didn't know what he was doing at all times, why do you believe that he reviewed Rosenthal Collins daily or monthly account statements? What is your basis for that belief?
A: Just because of his wanting to know, his wanting to know the performance, where the fund stood at all times.

Q: But regardless of whether or not he reviewed them, he had access to those account statements?
A: He did.

Q: Where are the proceeds from the sale of Acceleration Mercury Fund pool subscriptions deposited?
A: Wells Fargo Bank.

Q: What was the name on that account?
A: Acceleration Mercury Fund.

Q: Do you know if Acceleration Mercury Fund ever maintained a bank account other than that Wells Fargo account?
A: I don't believe so. I think Wells Fargo was the only account.

Q: How many accounts did Acceleration Mercury Fund have with Wells Fargo?
A: One.

Q: Do you recall the account number?
A: I don't.
Q. Do you know who was the signatory on this account?
A. Yuri Plyam.
Q. Anyone else?
A. I don't believe so.
Q. And were the account statements reflected in Exhibit No. 6 mailed to the Acceleration Capital office?
A. They were mailed.
Q. Where were they mailed to?
A. The only address that they were mailed to was 8949 Reseda Boulevard.
Q. Were they ever mailed to the other office at Acceleration Capital?
A. 8819. They were forwarded from 8949.
Q. They were never mailed directly to them.
A. Do you know what period of time the account statements for this Wells Fargo account were mailed to Acceleration Capital?
A. From the very beginning.
Q. From the inception of the account?
A. Yes.

Q. Okay. Did that stop at any point in time?
A. Yes.
Q. When was that?
Q. Okay. Why did that stop, do you know?
A. I believe that the post office's forwarding expired.
Q. So when the account was opened, the 8949 Reseda Boulevard address was the address for the account?
A. It was.
Q. At some point in time, Acceleration Capital and Acceleration Mercury Fund moved to another address on Reseda Boulevard?
A. They did.
Q. And that address was what?
A. 8819 Reseda Boulevard.
Q. For a period of time thereafter, the Acceleration Mercury Fund Wells Fargo Bank account statements were forwarded to the 8819 address?
A. They were.
Q. And then the account statements stopped arriving at 8819 in approximately December 2004?
A. It may have been January 2005, but yes.
Q. In the December 2004-January 2005 timeframe?
A. Yes. That is true.
Q. It's your testimony that the account statements stopped arriving via mail because Acceleration Capital and/or Acceleration Mercury Fund didn't update its address with Wells Fargo?
A. I personally updated the address with Wells Fargo, but it never changed for some reason.
Q. In November of 2004, I called Wells Fargo to change the address, and they took that information, but for some reason—I don't know why—it never changed; but as far as Wells Fargo, the statements we received from Wells Fargo, that is correct. The 8949 was the only address that they were mailed to.
Q. Who at Acceleration Capital had the authority to request an address change for the account in Exhibit No. 6?
A. Just Mr. Plyam.
account statements weren't being mailed to the company?
A 1 left Castle Trading, and he did not.
He didn't review postal mail. That was Mrs. Plyant's responsibility.
Q Did Mrs. Plyant ever ask you why the Wells Fargo account statements weren't being mailed to Acceleration Mercury Fund or Acceleration Capital?
A No.
Q Were the account statements for the Wells Fargo account in Exhibit No. 6 ever E-mailed to Acceleration Mercury Fund or Acceleration Capital?
A Yes.
Q Okay. Who were they E-mailed to?
A Info@CastleTrading.com. They were E-mailed in one lump sum. They weren't continually E-mailed.
Q What do you mean by one lump sum?
A In getting prepared for the year-end audit, we didn't have several of the bank statements in our possession. A couple of months were missing for some reason, and we asked Wells Fargo Bank—at the time that I told them to change the address, we asked them to E-mail us those statements.
Q When was that?
A In November of 2004.
Q So in November 2004, Wells Fargo E-mailed account statements for the account in Exhibit No. 6 to Info@CastleTrading.com?
A Yes.
Q What account statements were encompassed in that E-mail?
A From the beginning of January until November of 2004. It might have been December of 2004 when all that took place. We were getting ready for the audit that had to take place for the year-end, and so it might have been December just because that was the year-end of the fund.
Q And if I understand you correctly, Wells Fargo did periodically mail the account statements for the account in six during the period of January 2004 to November 2004?
Q They mailed them every month.
Q Did they E-mail them?
A No, they did not.
Q Did Wells Fargo ever E-mail account statements for Wells Fargo Account 535-7180347 to Acceleration Mercury Fund or Acceleration Capital?
A Via E-mail, I don't believe so.
Q Do you know if Acceleration Capital or Acceleration Mercury Fund ever received an E-mail with the Wells Fargo account statements other than the group E-mail that was sent in anticipation of the audit?
A I am almost certain it did not. It did not receive other than the lump.
Q So after the postal mail stopped arriving with the Wells Fargo account statements, did Acceleration Capital or the fund ever regularly receive account statements for the Wells Fargo account?
A Never.
Q Okay. Identify for me each instance from November 2004 forward that Acceleration Mercury Fund or Acceleration Capital received an account statement for the Wells Fargo account regardless of manner of delivery.
A It did not.
Q It did not? So after—
A After the lump sum and I believe the December statement in the postal mail, it never once received from Wells Fargo a statement for the account.
Q So from December 2004 through August of 2005 when you left Castle Trading, to your knowledge, the Acceleration Mercury Fund or Acceleration Capital never received a Wells Fargo bank account statement?
A I believe that is the best of my knowledge, yes.
BY MR. SOLINSKY:
Q How did you or others determine what the status of the Wells Fargo account was if you didn't receive statements?
A Based on my accounting of the cash on Quickbooks.
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BY MR. DOWD:
Q. Did you have internet access to the Wells Fargo Bank account?
A. I did not.

BY MR. SOLINSKY:
Q. Did you have any other way to call in by telephone to get the balance of the account?
A. I did not.
Q. Was there any other way that you used to determine the status of the account?
A. No.

BY MR. DOWD:
Q. Did Mr. Plyam have access to the Wells Fargo bank account in any manner?
A. I don't know. Would you like me to expand now?
Q. Please.
A. Okay. This is beginning my testimony with Agent Heingst, Secret Service Agent Heingst in the beginning of November of 2004, I wrote a check in which I forged Mr. Plyam's name to myself. I deposited it into—I believe I deposited it into my checking account at Wilshire State Bank. I might have cashed it at Wells Fargo. I don't recall.

When the statements stopped coming, I had access to the E-mails. Because of the audit, I had all of those statements in an E-mail from Wells Fargo. So what I did was I changed the date and—changed the date and I changed the numbers to reflect the monthly statements, and I posed those as the statements that we were receiving from Wells Fargo.

BY MR. SOLINSKY:
Q. And who did you give those statements to?
A. I did not give them to anybody. I kept them for my records for the fund. I was responsible for all the files of the fund.

BY MR. DOWD:
Q. So Mr. Plyam never came to you and said, "Hey, we're not getting any statements from Wells Fargo?"
A. That's correct.
Q. Did Mrs. Plyam ever come to you and say, "Hey, where are the Wells Fargo statements?"
A. Once.
1 Q. When was that?
2 A. Gosh. Spring of 2004. I don’t recall
4 Q. How many money did you take from the
5 Acceleration Capital Bank account?
6 A. Over a thousand, under two thousand. I
7 don’t recall the exact amount.
8 Q. And did you take any steps to conceal
9 that theft?
10 A. I did.
11 Q. What steps?
12 A. The same steps. I changed the—we were
13 receiving both RCG statements and the statement that
14 I got in a lump sum from Wells Fargo in a Word
15 document. It wasn’t a PDF file that I couldn’t
16 change. I didn’t have—I don’t have the ability or
17 the know-how to change a PDF file. I did have the
18 ability and the know-how to change a Word file, and
19 I changed them.
20 Q. So the Wells Fargo Mercury Fund account
21 statements that you had access to were in Word
22 format?
23 A. Yes.
24 Q. And were the Acceleration Capital, LLC
25 statements also in Word format?
26 A. They were. You know what? We never
27 received Acceleration Capital Bank statements via
28 E-mail from Wells Fargo Bank. I created that based
29 on Acceleration Mercury Fund, just changing the
30 name.
31 Q. How often were the Acceleration Capital
32 account statements mailed to the company?
33 A. It was a ditto story with Acceleration
34 Capital and the Mercury Fund. They stopped coming.
35 Q. Were you a signatory on the Wells Fargo
36 Acceleration Capital account?
37 A. I was not.
38 Q. Do you know who was a signatory on that
39 account?
40 A. Mr. Plyam.
41 Q. Do you know if anybody else was?
42 A. Nobody was.
43 Q. During what period of time did you steal
44 from the Mercury Fund account?
45 A. From November of 2004 through July of
46 2005, I believe was the last time.
47 Q. Who was supervising you during that
48 period of time?
49 A. Yuri Plyam.
50 Q. And how much money did you steal from
51 the Mercury Fund account?
52 A. It was later told me to by Agent Heingst.
53 $179,000 plus change.
54 Q. When did Agent Heingst tell you that?
55 A. In October of 2005.
56 Q. Describe in detail for us how you stole
57 the money.
58 A. I wrote checks. I had access to the
59 checks.
60 Q. How did you have access to the checks?
61 A. They were at my desk. They were in a
62 filing cabinet in the office, in that back office,
63 and I knew where they were.
64 Q. So they weren’t on your desk?
65 A. No. They were in the back office. I took them. I wrote the check
66 out. I signed Yuri Plyam’s name.

BY MR. SOLINSKY:
1 Q. As part of your duties, did you
2 ever—prior to this incident of taking funds for the
3 account, did you ever have duties that would require
4 you to prepare checks for Mr. Plyam’s signature?
5 A. Not at all.
6 Q. How did you know where the checks were?
7 A. My access to all filing cabinets in
8 the office. I was the office manager at the time.
9 I had access to all of it.
10 Q. Did anyone ever request that you get
11 the checks so Mr. Plyam could use it?
12 A. No.
13 Q. So you simply saw the checks by going
14 through the drawers?
15 A. Yes. A lot of times—a lot of times, I
16 could have been stopped. If we received the
17 statements from Wells Fargo, I would have been
18 stopped if they were reviewed. I took the checkbook
19 and I put the checkbook up. I’d take three or four
20 checks and I’d cut the rest of them up so nobody
21 would see that there were three or four checks
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1. A Yes.
2. Q When did you do that?
3. A Ongoing between November and July
4. Q of-November of '04 to July of '05.
5. Q How many times did you transfer money
6. from Rosenthal Collins to steal it?
7. A I don't know.
8. Q Approximately?
9. A The only number that I do know is how
10. many checks were written to me, and that was 55.
11. How many checks were written from Rosenthal Collins
12. back into the fund, I don't know that number. I
13. couldn't even venture to guess. I don't know.
14. Q Can you approximate how much money you
15. transferred from Rosenthal Collins for the purpose
16. of stealing it?
17. A 180,000 less 50,000, so 120,000 [sic], I
18. believe.
19. MR. VARGAS: Thirty.
20. Q And you did that periodically?
21. A Yes.

1. A I don't. I think about—I think between
2. 30 and 40 thousand.
3. Q Were the deposits made to that account
4. regularly?
5. A Regularly, no; but, yes, deposits were
6. made.
7. Q And if a deposit was made, would you
8. have knowledge of that deposit?
9. A I made that deposit.
10. Q You made that deposit with customer
11. money?
12. A Yes.
13. Q In other words, someone bought a
14. subscription for the Mercury Fund pool, and that
15. money went into the Mercury Fund Wells Fargo
16. account?
17. A Yes.
18. Q And you had knowledge of that deposit?
19. A Yes.
20. Q Did you ever transfer money from the
21. Rosenthal Collins account to the Wells Fargo Mercury
22. Fund account for the purpose of stealing that money?
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1. There when you started the theft?
   2. A: I'm not sure how many checks are in a book, but I would guess about maybe 10 books, 15 books. Very rarely was a check written from the fund out anywhere. I mean, it stayed in either Wells Fargo or Rosenthal Collins. So Mrs. Plyam had access to one checkbook that she used when she would draft a check for Mr. Plyam's signature, but all the other checkbooks were put away and were never used besides for me.
   3. Q: Do you know if the Mercury Fund ever bounced a check during the period of your theft?
   4. A: Yes.
   5. Q: Yes, you know?
   7. Q: And did it ever bounce a check?
   8. A: We're talking about Mercury Fund or Acceleration Capital?
   10. A: I believe once, yes.
   11. Q: When did that happen?

1. Who had knowledge of that bounced check?
   2. A: Me.
   3. Q: Anyone else?
   5. Q: How did you have knowledge of that bounced check?
   6. A: I believe the check was returned to my bank as unpaid.
   7. Q: Do you recall the amount of that check?
   9. Q: Your theft continued during the summer of 2005, is that correct?
   11. Q: So after that check bounced, did you deposit more money into the Mercury Fund account?
   12. A: I did, and I continued to steal.
   13. Q: And where did that money come from?

[Denniston Exhibit No. 7 was marked for identification.]

By Mr. Dowd:

19. Q: Mr. Denniston, you've just been handed a what's been marked Exhibit No. 7, and if I could direct you to the page which is Bates numbered Plyam 00004. Do you recognize that document?
   20. A: Yes. The document, no, the check, yes.
   21. Q: There's a check captured on that page, is that correct?
   22. A: Yes.
   23. Q: And you recognize that check?
   25. Q: The signature on that check--
   26. A: Mr. Plyam's signature was mine.
   27. Q: So you forged Mr. Plyam's signature on that check?
   29. Q: And you drafted the check to yourself?
   31. Q: What about the following one, the page Bates numbered ending in a five; did you forge that check as well?
   32. A: I did.
   33. Q: And the subsequent page ending in six, you forged that check?
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1 Q. Page 12, Check No. 1117, did you forge
2 Mr. Plyam's signature on that check?
3 A. I did.
4 Q. Page 13, Check 1119, did you forge Mr.
5 Plyam's signature on that page?
6 A. I did.
7 Q. Do you see on that particular check,
8 there appears to be a thumb print to the left of Mr.
9 Plyam's signature?
10 A. Yes.
11 Q. Is that your thumb print?
12 A. I believe it is, yes.
13 Q. Do you recall that the bank required you
14 to put a thumb print on a check you cashed?
15 A. Sometimes I would deposit checks
16 into my own checking account at Wilshire State Bank.
17 Sometimes I would take them to Wells Fargo to cash
18 them. When I did that, they required a thumb print,
19 yes.
20 Q. What was the breakdown of checks
21 deposited versus checks cashed?
22 A. I don't know. All of them were cashed,

but in regards to Wilshire State Bank versus Wells
Fargo, I don't know.

Q. The checks that went to Wilshire State
Bank, did you deposit those in your account first?
A. Yes.
Q. Then did you withdraw the money?
A. Yes.
Q. Okay. How soon after you deposited the
checks did you withdraw the money?
A. Most of the time, immediately.
Q. And page 14, Check 1113, did you forge
Mr. Plyam's signature on that check?
A. I did.
Q. And page 15, Check 1114, did you forge
Mr. Plyam's signature on that check?
A. I did.
Q. Page 16, Check 1115, did you forge that
check?
A. I did.
Q. And the next page does not appear to be
Bates numbered, but the check number is 1116. Do
you see that?
A. Yes.
Q. And you can see on that document what
appears to be the back of the check and the
date. It says: "Pay to the order of Wells
Fargo Bank for deposit only, Acceleration Capital,
LLC." Do you see that?
1 A Yes.
2 Q Did you deposit this check into the Acceleration Capital account?
3 A I don't know.
4 Q Do you know why that endorsement is on the back of this particular check?
5 A Well, you know, because I put it there.
6 Q I'm sure that it was deposited into Acceleration Capital.
7 Q Okay. And this particular check, who is it made out to?
8 A Acceleration Capital.
9 Q Is it your recollection—and what's the amount of this check?
10 A $2,127.10.
11 Q And is it your recollection that you used this particular check to steal money from the Mercury Fund?
12 A Yes.
13 Q Okay.
14 A By paying Acceleration Capital back the money that I stole previously from the Acceleration Capital.
15 Q Do you recall writing any checks from the Acceleration Mercury Fund that are not encompassed within Exhibit No. 7?
16 A No.
17 Q So to the best of your knowledge, all of the checks that you used to steal from Mercury Fund are covered in Exhibit No. 7?
18 A I believe so, yes. I don't have--I didn't keep a record or have knowledge of the amounts or the dates or any of that. I don't know, but from what has been told to me by Agent Heingst, I believe that this is correct.
19 Q What did Agent Heingst say to you?
20 A Just that, that there were checks—we went through the same process that you and I just went through, forge, forge, forge, forge, and I signed them all and dated them. Q What do you mean you signed and dated them all?
21 A I signed and dated every copy of his file.
22 Q And by signing and dating them, you were acknowledging that they were forged checks?
23 A I believe that, yeah.
24 Q Okay. And I believe it was your testimony earlier that the period of theft was November 2004 through July of 2005. Is that correct?
25 A That was my testimony, but I see that it went through August of 2005.
26 Q So—
27 A I'm changing the testimony to August of 2005.
28 Q Having reviewed Exhibit No. 7, it's now your—
29 A My recollection.
30 Q—testimony, recollection, that you stole money in August of 2005 as well?
31 A That is true.
32 Q [Denniston Exhibit No. 8 was marked for identification.]
33 BY MR. DOWD:
34 Q Mr. Denniston, do you recognize the document marked as Exhibit 8?
1. A Yes.
2. Q Can you tell us what this document is?
3. A It's a check to Hilton Taigonas for
4. $74.22.
5. Q What Bates number are you referring to?
6. A 00100270.
7. Q All right. And Exhibit No. 8 contains a
8. series of checks. Is that correct?
9. A Yes.
10. Q Ranging in Bates Nos. 00100279 through
11. 287, is that correct?
12. A Yes.
13. Q And reviewing these checks, are you able
14. to say if any of these checks were used by you for
15. the purpose of stealing money from Acceleration
16. Capital? In other words, did you forge any of the
17. checks in Exhibit No. 8?
18. A Yes.
19. Q Which check or checks?
20. A Bates No. 00100285, Check No. 1015 for
21. $2,528.69.
22. Q Any other checks in this exhibit?

1. A That were forged and stolen by me, no.
2. Q So it's your testimony that the only
3. check in Exhibit No. 8 that you forged is that
4. referenced on page 00100285?
5. A Yes.
6. Q Which is Check 0115?
7. A 1015.
8. Q I'm sorry. 1015.
9. A Yes.
10. Q Dated April 22, 2005?
11. A Yes.
12. Q Did you ever deposit money that you
13. stole either from Mercury Fund or Acceleration
14. Capital into any account other than the Wilshire
15. Bank account?
16. A My recollection is and my intention was
17. no. If I did, it was unintentional, but I don't
18. believe that I did. I don't believe that I did
19. other than cash that Wells Fargo or deposit it into
20. Wilshire State Bank. If I did deposit it into my
21. Wells Fargo account, it was unintentional, and I
22. don't recall whether or not I did.

1. Q So you had a checking account at
2. Wiltshire Bank and you also had a checking account at
3. Wells Fargo?
4. A That's right.
5. Q And the money you stole from the Mercury
6. Fund, Acceleration Capital was either cashed or
7. deposited into the Wiltshire Bank account, to the
8. best of your knowledge?
9. A To the best of my knowledge, yes.
10. Q Do you have any recollection of ever
11. depositing money into the Wells Fargo account that
12. was the product for your theft?
13. A My recollection is no, strictly
14. recollection. If I did it, I don't remember. I
15. might have, but I don't remember.
16. Q Do you recall ever depositing money that
17. you stole from either Mercury Fund or Acceleration
18. Capital into any bank account other than the
19. Wiltshire Bank account regardless of whether or not
20. the account was in your name?
21. A My recollection is that the only checks
22. that were ever cashed, forged checks that were
Q. From November 2004, did you give money to any individuals as opposed to a company, an entity, opposed to paying your phone bill, things like that?

A. Okay. Leonardo Martinez, Gabriella Martinez, Benjamin Alvarrez. Other than that, no. I don't recall.

Q. Okay.

A. People-wise.

Q. How much money did you give to Leonardo Martinez from November 2004 forward?

A. I don't know.

Q. Approximately?

A. I don't know.

Q. More than a thousand dollars?

A. Yes.

Q. More than $5,000?

A. I don't know.

Q. How many checks did you write him?

A. I don't know.

Q. Do you know what he did with the money?

A. Paid bills.

Q. Did you ever give him any cash?

A. Probably.

Q. How much cash?

A. I don't know.

Q. Is it your testimony that you gave Mr. Martinez over a thousand dollars?

A. That could be correct, yes.

Q. Is it correct?

A. Yes. He was my partner. I gave him money when he needed it, and he used it the way that he used it.

Q. Did you give him more than $10,000?

A. I don't know.

Q. Is it possible?

A. It might be.

Q. Is it consistent with your recollection that you gave Mr. Martinez over $10,000?

A. I have no recollection, sir. Honest to God, I don't know.

Q. Do you know where Mr. Martinez has a bank account?

A. It was a joint account with me at Wells Fargo.

Q. Other than that joint account, do you know where Mr. Martinez maintains any bank accounts?

A. He does not. Like that account is closed, and he does not have a bank account as of now.

Q. At any point during November 2004 through today, did Mr. Martinez have a bank account other than the Wells Fargo joint account he shared with you?

A. I believe he might have had a Washington Mutual. No, no, no, no. I take that back. He did not. He had a Washington Mutual prior to November 2004. So, no, he did not.

Q. Prior to November of 2004?

A. That's right.

Q. Do you know when he closed that account?

A. I don't know.

Q. Was that account closed as of November 2004?

A. It was.

Q. How much money did you give Gabriella Martinez?

A. One or two hundred dollars a month for that period of time, between November of 2004 and August of 2005.

Q. What did you give her one to two hundred dollars a month for?

A. She cleaned our apartment.

Q. How much total would you say you gave Ms. Martinez from November 2004 forward?

A. More than a thousand, under five thousand, I would guess.

Q. Is it closer to a thousand or five thousand?

A. Probably closer to five.

Q. And she's cleaning your apartment for, say, $200 a month over the course of--

A. Eight or nine months.

Q. Eight or nine months--


Q. Okay. And my question is did you give her money for anything other than cleaning your apartment?
1. Do you know where she maintains any bank accounts?
   A. I don't know.
   Q. Have you ever known?
   A. No.
   Q. Has she ever written you a check?
   A. I don't think so.
   Q. Do you know what she did with the money you gave her?
   A. Took care of her kids.
   Q. And Benjamin Alvarez is Leonardo Martinez's nephew?
   A. Yes. Gabriella's brother.
   Q. How much money did you give Mr. Alvarez from November 2004 forward?
   A. Three thousand, I believe it was.
   Q. Was that over a period of time or one lump sum?
   A. Two sums, I believe.
   Q. Okay. When did you give him each of those sums?
   A. The first time was in the winter of 2005. The second time was probably the summer of 2005.

   Q. How much did you give him in the winter of 2005?
   A. I think it was around 1500.
   Q. And in the summer of 2005, how much money did you give him?
   A. Same amount.
   Q. Why did you give Mr. Alvarez $3,000?
   A. He had—he wanted to get eye surgery, laser eye surgery, and his father was going to give him money and his father fell through. So I offered it to him.
   Q. That was for both the winter of '05 and summer of '05?
   A. Yes.
   Q. Was that each eye?
   A. No. I believe—I gave him the money for that purpose. What he used the money for was to—first time was—let's do this: The first time was a loan. It was a loan. Leonardo and him made the arrangement that it would be a loan. Benjamin never paid back the loan. So I gave him the money again to pay back Leonardo so that there wouldn't be family strife. Leonardo took it very hard that Benji didn't pay him back.
   Q. So you and Leonardo jointly loaned Benjamin Alvarez roughly $1500 in the winter of 2005?
   A. It was Benji and Leonardo's arrangement, but it was the money—I provided the money.
   Q. Did it come out of the Wells Fargo joint account?
   A. No, I don't believe so. I believe it was the Wishirre State Bank account.
   Q. And subsequent to that, you gave Mr. Alvarez another $1500?
   A. Right.
   Q. For the purpose of repaying a loan you gave him?
   A. Right. Just so that it would—it was causing family strife. Benji wasn't paying it back.
   Q. Leonardo didn't want to have anything to do with him. I wanted to keep the family on good terms. So I gave the money to Benji to give it back to us so
Q. Were there two separate surgeries?
A. I don't think so.
Q. Do you know where Mr. Alvarez maintains any bank accounts?
A. I don't know.
Q. Other than the loan you made to Mr. Alvarez, have you ever loaned money to anyone from November 2004 forward?
A. No.
Q. Have you ever owned any real estate from November 2004 through today?
A. No.
Q. Have you owned an automobile at any point in time from November 2004 through today?
A. I financed an automobile. I never owned one.
Q. You leased one?
A. Yes.
Q. When did you acquire the automobile?
A. I had a car prior to November 2004. In February of 2005, I think it was, I acquired--I got rid of the first automobile and got another.
Q. Okay. What type of automobile did you have prior to February '05?
A. The Chrysler 2002 P.T. Cruiser.
Q. And was that a lease or did you own that car?
A. It was a lease. It was a buy, it wasn't a lease. I financed it.
Q. Okay. And how much did you owe on that car as of October 31, 2004?
A. I don't know.
Q. Approximately?
A. I couldn't tell you. I don't know.
Q. More than $5,000?
A. Probably.
Q. More than $10,000?
A. I don't know.
Q. Did you ever pay off the balance on the loan for the Chrysler P.T. Cruiser?
A. Yes.
Q. When did you do that?
A. In February of 2005. As part of the deal to buy the other vehicle, the loan company paid off the P.T. Cruiser.
Q. What was the other vehicle?
A. A 1999 BMW 323.
Q. Did you lease that BMW or did you buy it?
A. I leased it--financed it.
Q. Financed as in you had a payment on it?
A. I put a down payment and I made monthly payments.
Q. But the title was in your name?
A. Right.
Q. Okay. And you weren't required to return that car to the dealership at any point in time?
A. That is correct. As long as I maintained the payments, yes.
Q. So you owned the car?
A. Yes.
Q. You had a loan on the car, but it was your car?
Toby Wayne Denniston 3/24/2006 8:58:00 AM

1 Q Each or in total?
2 A Yes. Each.
3 BY MR. DOWD:
4 Q And that was the San Diego trip and two
5 San Francisco trips?
6 A No. One San Francisco trip, two San
7 Diego trips. Let me think. Other things I spent
8 on, Christmas gifts, maybe $10,000 in Christmas
9 gifts of 2005.
10 Q Who did you give those gifts to?
11 A Gosh. Everybody.
12 Q Who is everybody?
13 A My entire family: My mom, my brother,
14 his fiancé, Leonardo. Let me think. I don't recall
15 any others.
16 Q What gifts did you give that ran up to
17 $10,000?
18 A A Sharpie Image air purifier.
19 Q Who did you give that to?
20 A To my mom. That was like $500. Maybe
21 it wasn't $10,000. Maybe it was like—gosh. If you
22 have my bank statements from Wilshire State Bank and

1 Q When did you take the San Diego
2 vacation?
3 A It was February of 2005, I believe it
4 was.
5 Q What about the San Francisco vacation;
6 when did you take that?
7 A December of 2004, I think.
8 Q Did you take any other vacation from
9 November 2004 forward?
10 A San Diego, San Francisco. Two trips to
11 San Diego, actually.
12 Q When was the second trip?
13 A January 1st, the holiday.
14 Q January 1st of?
15 A 2005.
16 Q Remind me when the other trip was.
17 A February, maybe March, 2005.
18 Q And on the January trip, how much did
19 you spend?
20 A All three trips were between four and
21 five thousand dollars.
22 BY MR. SOLINSKY:
Q. What happened to it?
A. Well, when I left Camarillo, I gave a lot of it away to miscellaneous people, people I don't remember. I mean, I don't have a list of I gave this to this person, this to this person, I don't know. I don't have any of it in my possession anymore.

BY MR. DOWD:
Q. The IRA account that you had, did you put any money that you stole into that account?
A. Yes. All the money that was in that account was stolen money.
Q. How much was in that account?
A. Under five, over three.
Q. And you closed that account out at some point in time?
A. Yes.
Q. What did you do with the money when you closed out that account?
A. Used it to pay bills, used it to live on. I wasn't employed from August of 2004 until recently.

BY MR. SOLINSKY:
Q. You mean 2005?
A. Excuse me. Yes. When I left Castle Trading until I started Empire Lakes, I wasn't employed. I used anything and everything that I could get, selling stuff, selling a lot of the stuff that I had to the money that was still in the accounts.

BY MR. DOWD:
Q. And having looked at the checks that you forged and relying on your recollection, remind us how much money you stole in total.
A. Agent Heingst told me it was 179,000, but I see on Exhibit 7, this totaled 185,000. He told, also, it was 55 checks. This says 57 checks. So Agent Heingst didn't know about, I guess, two checks at the time that I talked with him.
Q. So it's consistent with your recollection that you stole $185,000 roughly?
A. My recollection is nothing. If I knew it was that much, I would have stopped a long time ago myself. I didn't know it was that much until Agent Heingst told me. I didn't keep a record. I didn't know how out of control I was. I mean, you see toward the end how big, how much bigger the checks got.
Q. Of the money that you stole from Mercury Fund and Acceleration Capital, do you currently have any of that money in a bank account?
A. No. I don't.
Q. In a brokerage account?
A. No money whatsoever.
Q. At any financial institution?
A. Or in my possession.
Q. Do you know if any person that you gave the money to currently has that money in a bank account or at a financial institution?
A. They do not. Like I said, the only money that I--
Q. Do you know if--
A. No. I'm almost positive they don't.
Q. Why are you positive?
A. Because the money that I gave to people was used for specific reasons. Like if Gabriella needed help to pay Taekwondo lessons for the kids, I would give her the money; for Benji, the eye surgery, for Leonardo, to pay bills. And the items that bought with the stolen money, do you have any of those?
A. I have nothing in my possession at all. I don't have--the only thing I have is the air mattress that I'm sleeping on in my bedroom.
Q. What happened to all the money? How did you spend $185,000?
A. Like I told you, I don't know. I was out of control. I've been trying to reconstruct the ideas, reconstruct how the money was spent. After Agent Heingst told me in October how much money it was, I've been wracking my brain to try to figure out how and why I did what I did and where it went to.
I don't know. Food, vacations, paying bills, living high, living--going and eat sushi every night. I was spending cash-wise three or four hundred dollars a day on different things, fixing up the car, and I spent $3,000 after I bought the BMW to fix the BMW.
I paid so much money in advance for rent at one apartment that I lived at.

Q: How much money?

A: Gosh. $600 times like four months, so $2400.

Q: When were you living in that apartment?

A: Prior to living to Toluca Lake, so in late of '04.

Q: Where else did the money go?

A: Gosh. Paying rent, going on vacations, spending it, making purchases. Like I said, I went on eBay and bought all kinds of stuff, and I'm sure that you can go to eBay--I'm not sure how that works—to find out exactly what I spent the money on, but it was a lot on eBay.

Q: It's your testimony sitting here today under oath that you don't have any of the money that you stole left?

A: That is true.

Q: And it's your testimony sitting here under oath that you don't have any of the items that you purchased with the money you stole?

A: Nothing.

BY MR. SOLINSKY:

Q: What was your account name or sign on at eBay?

A: Twist8829.

Q: How would you pay for items through eBay?

A: Pay Pal, same log-on I.D.

Q: And does Pay Pal require you to give a credit card?

A: No. It's taken from the bank account, from Wilshire State Bank. I eventually transferred the Pay Pal account from Wilshire State Bank to my Wells Fargo account. I also did have one credit card that was linked--two credit cards that were linked to Pay Pal that were used as well.

Q: And what credit cards were those that were linked to Pay Pal?

A: One was a debit card from Wilshire State Bank and the other one was a credit card from Orchard in Leonardo's name.

Q: What is the full name of the institution known as Orchard?

A: Household HSBC, Orchard Bank, I believe.

Q: How long was the eBay account open?

A: Since Christmas of '04.

Q: How did you access the account?

A: Via the internet.

Q: Did you have a computer?

A: Did I have? Yes.

Q: Was the computer purchased from money you took from Acceleration Capital?

A: Yes.

Q: Or, rather, Acceleration Mercury Fund?

A: It was a laptop computer, yes, sir.

BY MR. DOWD:

Q: Where is that laptop today?

A: It was destroyed by Coke spilling on it.

Q: Do you still have it?

A: I don't. There were three or four electronic pieces of equipment that I bought. I bought a TV for, like, four grand.

BY MR. DOWD:

Q: Do you have that TV?

A: I sold it.

Q: What happened to it?

A: I sold it.

Q: Who did you sell it to?

A: I don't recall the name of the person.

I sold it when I left Camarillo to get money to live on.

Q: How much did you sell it for?

A: 1500.

Q: What did you do with that $1500?

A: Used it to live.

MR. DOWD: Let's go off the record.

[Recess.]
Mr. Denniston, I understand that you have recalled the name of the brokerage firm where you had your IRA?

A Yes. It was Scott Trade.

Q And the name on that account was what?

A Toby Denniston.

Q Toby Denniston, II?

A No. I don't recall that. Most of my legal documents is Toby Wayne Denniston, III. So if that was required, then yes.

Q And if I could back you up to the time when you started at Castle Trading--

A Sure.

Q --at that point in time, what did you represent your credentials or background to be to Mr. Plyam?

A Administrative. When I was interviewing, my only background was in purchasing, mostly.

Q And when you interviewed for the position or when you submitted an application, did you make any representation that you had experience in the futures industry?

A No. He asked me the question and I said—told him that other than watching TV and seeing the stock market, I didn't.

Q And at some point in time during your employment with Castle Trading, you started to do accounting work on behalf of the Gauss Fund; is that correct?

A That's right.

Q What representations did you make to Mr. Plyam with respect to your accounting background?

A That I had gone to Waterson College and had accounting training.

Q And at some point in your employment with Castle Trading, you did compliance work on behalf of Acceleration Mercury Fund; is that correct?

A For all three entities, I did the compliance work for, yes.

Q What three entities are you referring to?

A CHP Asset Management for the Gauss Fund,
for both Acceleration Mercury and the Gauss Fund.

He also did the NFA paperwork for Castle Trading,
you know, how much money you’re supposed to have in
the account, the $30,000 or whatever it was. He did
all that work too. He also did the audits for
Castle and Gauss Fund for the four audits that were
required by the NFA, BCC.

Q. And when was the second audit of Mercury
Fund?
A. That was done by the NFA in August of
2005.

BY MR. SOLINSKY:

Q. When this fellow you identified only as
Dick did the year-end audit of Acceleration Mercury
Fund, what documents did he review?
A. He reviewed the balance sheet created by
me, the income statements created by me, the Wells
Fargo Bank statements, some of which were created by
me, the Rosenthal Collins statements, some of which
were amended by me.

Q. And which of those—when the auditor
looked at the statements, which of those statements
were statements that you had altered to reflect
false amounts?
A. November of 2004 and December of 2004.

Q. What false statements was the auditor
looking at in November 2004 related to the
Acceleration Mercury Fund?
A. The month-end statement from Rosenthal
Collins and the Wells Fargo Bank statement.

Q. And the same question for December 2004:
What forged or altered statements by you was the
auditor looking at in December 2004 relating to the
Acceleration Mercury Fund?
A. The same two documents, the Wells Fargo
and the Rosenthal Collins month-end statement.

Q. Did Mr. — I’m sorry. Did this fellow
denied Dick ever seek to look behind the statements
to look at any checks from the statements?
A. I believe so, yes.

Q. And how did he get those checks?
A. I believe we had possession of them. I
believe that we had copies of them. Not every
check, but yeah, some checks, yes, both deposits and
MR. DOWD: Can you read back my last question?

[Whereupon, the pending question was read back by the court reporter.]

THE WITNESS: All of them in Exhibit 10 were altered by me.

BY MR. DOWD:

Q: And why did you alter the statements in Exhibit No. 10?

A: To conceal my theft.

Q: Your theft of what?

A: Theft of monies from the fund.

Q: The Acceleration Mercury Fund?

A: Yes.

Q: Who did you provide the documents in Exhibit No. 10 to?

A: I believe that would have been the NFA.

Q: Anyone else?

A: No.

Q: If we could back up for a moment to Exhibit No. 9—

A: Yes, sir.

Q: Who did you provide the documents in Exhibit No. 9 to?

A: The auditor for the month-end, which was Dick somebody and the NFA.

[Dennington Exhibit Nos. 11 and 12 were marked for identification.]

BY MR. DOWD:

Q: Mr. Denniston, I've just handed you documents marked Exhibits 11 and 12. Tell us what those documents are.

A: These are bank statements from Wells Fargo Bank for Acceleration Capital.

Q: Okay. And is that true for both 11 and 12?

A: I believe so. One might be mine versus the bank's.

Q: So one is the actual account statements and the other is account statements that you created to conceal your theft?

A: Yes.

Q: Which one is which?

A: I believe 11, Exhibit 11, is mine and Exhibit 12 is the actual statement for Wells Fargo Bank.

Q: Okay. Are any of the account statements in Exhibit No. 11 accurate, or did you create all of them?

A: I believe I created all of them.

Q: By creating all of them, I'm referring to your practice of altering account statements to conceal your theft.

A: My practice, yes, sir.

Q: So Exhibit No. 11, all the account statements therein, were created by you to conceal your theft?

A: Yes.

Q: Who did you provide the documents in Exhibit No. 11 to?

A: The NFA.

Q: And for the record, Exhibit No. 11 is Bates numbered 00100259?

A: 269?

Q: I'm looking at 00100259 as 11. Exhibit No. 11 is Bates numbered 00100259 through 268; is that correct?

A: Yes.

Q: Is it your testimony that Exhibit No. 11 encompasses the false account statements that you created?

A: I believe so, yes.

Q: To whom did you provide those false account statements?

A: The NFA.

Q: Anyone else?

A: To my recollection, no, sir.
Q. Mr. Denniston, do you recognize the document marked as Exhibit No. 13?
A. I do.
Q. Tell us what this document is.
A. It is a month-end statement for each participant in the Mercury Fund.
Q. For the record, 13 is Bates numbered 0010016 through 31, and, Mr. Denniston, if I could move you forward--
A. Excuse. Me it's not each client. It just looks like two clients.
Q. Which two clients?
A. Andrew Dienier and Paul Maggio.
Q. If I could move you forward to the page Bates numbered 00100023--
A. Yes.
Q. --what is this document?
A. It is the month-end statement for Paul Maggie's shares of the Mercury Fund for November 30, 2004.

Q. Do you know who created this document?
A. I did.
Q. Is this document accurate? Does it accurately reflect Mr. Maggio's interest in the Mercury Fund?
A. With my theft, yes.
Q. Does it accurately reflect the balance of the Acceleration Mercury Fund?
A. I'm going to try to answer this. I'm trying to be honest with you. You know that. Right? This was that what the RCG statement said at the end of November. It does not, however, reflect--no. There was an additional included in each of the statements from RCG to conceal my theft. Is it accurate as to the amount of money that was in RCG, yes. Is it accurate to what really was the loss or the profit for the fund? No.
Q. Okay. So the document at 23 contains inaccurate information?
A. I believe so, yes. Yeah.
Q. What information is inaccurate on the

Q. Anything else?
A. This looks like my forgery of Mr. Plyam's signature.
Q. Why did you forge Mr. Plyam's signature on this document?
A. I don't believe--let me take that back. I didn't forge his signature. I signed his name for him.
Q. Were you authorized to sign his name on this document?
A. Probably, yes.
Q. Who authorized you to sign his name on this document?
A. He probably did. He would have, yes.
Q. Why did he authorize you to sign his name on this document?
A. Just so that I can get the document out.
Q. How often did you do that?
A. I don't recall. A couple of times.
Q. Did you send this document to Mr. Maggio?
A. I'm sure that I did.
Q Moving forward to page 25, can you tell us what this document is?
A It is the month-end statement for January 31, 2005 for Mr. Maggio's shares of Mercury Fund.
Q Does this document contain any inaccurate information?
A I'm sure that it does.
Q What inaccurate information is that?
A The unrealized futures. I'm sorry. The realized futures. It would have been the realized futures.
Q Okay. Explain that to us.
A Realized are actual changes. Unrealized is open contracts that have not yet been closed out.
This is a snapshot of what it contained at the end of January.
Q Would that have been true for Documents 23 and 24 as well?
A That is right. I misspoke.
Q The inaccurate information on 23 and 24 is the realized, gross realized, futures information?
A Not the change of unrealized futures, that is right. Also, can I add the commission charged would have been false as well.
Q And moving forward, if you could look at Documents 26 through 31, do each of these documents contain inaccurate information?
A Yes.
Q And what inaccurate information is that?
A The same as the previous, the gross realized futures.
Q Are each of the documents Bates numbered 26 through 31 account statements for the Mercury Fund?
A Yes, sir, for Paul Maggio's share of the fund.
Q Did you mail each of those account statements to Mr. Maggio?
A I believe that I did.
Q At the time you mailed these account statements to Mr. Maggio, were you aware that the account statements contained inaccurate information?
Q: Do you recall if it was Michelle or someone else who asked you about this transaction in the Acceleration Capital account?

A: It was one of the NFA people, yes.

Q: Do you recall specifically who was that main person in charge, and I believe that was Michelle.

A: And did Michelle come to you and ask you about this transaction?

A: She did.

Q: What was your response?

A: I would have to get back to her, I don't know.

Q: Did you get back to her?

A: I did not.

Q: What did you do?

A: I walked out of the building.

Q: Where did you go?

A: I went home.

Q: What did you do at that point?

A: I picked up my partner and we went to Ontario, to Gabriella's house.

Q: Why did you do that?

A: I was afraid.

Q: Afraid of what?

A: Being arrested.

Q: And at any point after you left, did you have a conversation with Yuri?

A: Yes.

Q: When did that happen?

A: I believe it was that afternoon.

Q: Do you recall the date?

A: The 24th of August.

Q: 2005?

A: Yes.

Q: What did Yuri say to you?

A: He says, Toby, when are you coming back?

A: I said, I'm not coming back. He said, We have to do the audit, you have to come here, you have to participate in this. I said, Yuri, I'm not coming back. He said, What's going on? I said, Yuri, I took the money. And I hung up the phone.

Q: Did you have a conversation with him subsequent to that?

A: After that, I don't recall. I remember Mrs. Plyam, I had a conversation with her. She called Leonardo's cell phone and I talked to her.

Q: When did that conversation take place?

A: I believe it was the next day. And she wanted to know how far it had gone.

Q: What did you say to her?

A: I said I wasn't going to say anything, I had hired an attorney to take care of a matter in regards to a ticket, and I paid him $4,000 to take care of that ticket. When I left that afternoon, the day that this was discovered, I called him and asked him what him what I should do. He told me to return, that maybe nobody would ever find out about the Acceleration Mercury, because that hadn't found out yet. It was just Acceleration Capital, and I told him that they would find out because the money that was in the Wells Fargo Bank account was not what was reflected on the statement, that it was $50,000 short and that we were getting ready to close the fund and that that would have been found out very soon.

Q: Did you say anything else to Natalie Plyam other than--

A: That I wasn't going to talk to her?

Q: That you weren't going to talk to her?

A: No. I don't think so.

Q: At any point subsequent to that conversation, did you have a conversation with Natalia Plyam?

A: I called them the day that I went and saw Agent Heingst. I didn't talk to them. I left them a message. They did not return the message.

Q: Is that the same message you described earlier?

A: No. I left them a message that I had seen Agent Heingst, that I gave him a full confession, and that I apologized. I felt bad for what I had done.

Q: When you say you gave Agent Heingst a full confession, what exactly do you mean?

A: Just exactly what I told you today, that I had taken money from the fund and how I did it.
Q. Did you sign a statement to that effect?
A. I did.
Q. Have you ever had a copy of that statement?
A. No.
Q. Have you ever spoken with any representative of the Acceleration Mercury Fund since the time you walked out of the building?
A. No, except for that afternoon.
Q. Expect what you've identified thus far?
A. Yeah. That afternoon, I talked to Yuri, and the next day I talked to Natasha. Since then, I've not spoken to either one. I've left them messages. They've not returned my call.
Q. Have you had any conversations with NFA since the time you walked out of the building?
A. No. Nobody as far as I know has tried to contact me. I've had the same phone number.
Q. Nobody has tried to contact me. Agent Heingst got a hold of me through my brother.
A. Late August. No. It was September.
Q. When was that?
A. Late August. No. It was September.
Q. When in September?
A. Mid-September, looking for me.
Q. What did you say to him?
A. Who? My brother?
Q. When Agent Heingst called you in mid-September.
A. He didn't call me. He called my brother looking for me. I didn't talk to Agent Heingst until October. 10th or 12th or whatever date that was.
Q. What did your brother say to you?
A. He was mad that all--because I guess Yuri--well, it's back up. This was found out that Wednesday or Thursday prior to the Labor Day weekend. Saturday and Sunday, I had heard from my mother who had heard from Yuri that I had done this. Yuri contacted my family, did not contact me, and my family urged me to talk to Agent Heingst. That's the process of how that happened.
Q. Okay. So at some point in time, you got in contact with Agent Heingst?
A. I did.
Q. You called him?
A. He never called me direct. He communicated through my brother. I called him and told him that I was ready to meet.
Q. When was that, roughly?
A. Late September.
Q. When did you actually meet with Agent Heingst?
A. October, I think it was 10th or 12th, something like that. Early October 2005.
Q. Where did you meet?
A. In his office at the Secret Service office in Los Angeles, downtown.
Q. Was it during that meeting that you gave Agent Heingst a confession?
A. I did.
Q. Have you had any meetings with Agent Heingst subsequent to that meeting?
A. Yes. I was processed in January where my picture was taken and my fingerprints taken, and I leave him a message and/or talk to him every Friday.
Q. Does he require that?
A. Yes.
Q. What do you discuss during those weekly conversations?
A. Just where I live, my phone number, and that I'm in town, what am I doing precisely. He just wants to keep tabs to make sure that I am available for whenever they decide to move forward with my case.
Q. Have you had any conversations with Bill Yu?
A. I have not.
Q. Have you had any conversations with anyone in the United States Attorney's Office?
A. No.
Q. Have you had any discussions with any police departments?
A. No. Agent Heingst told me that the Los Angeles Police Department was going to process the claim, but he said he would take care of it, and they dropped it so it would be a federal issue, I wouldn't have to deal with the State, as far as I
Toby Wayne Denniston 3/24/2006 8:58:00 AM

1. I know, right now, they weren't going to process
2. anything. I did leave a message for Bill Yu after--
3. Q Mr. Solinsky?
4. A Solinsky gave me his number. I
5. contacted him. I ask him to call me back. He
6. never did.
7. MR. SOLINSKY: Off the record
8. [Recess.]
9. BY MR. DOWD:
10. Q Mr. Denniston, if I could back you up to
11. Exhibit No. 5, do you have that in your file to your
12. left?
13. A Yes.
14. Q Okay. These are the account statements
15. for Acceleration Mercury Fund for Rosenthal Collins;
16. is that correct?
17. A Yes.
18. Q Were these account statements mailed to
19. Acceleration Capital?
20. A Post mail, no, sir. E-mailed.
21. Q Were they ever post mailed?

1. I believe I had both copies. No. I apologize.
2. That was Revco. Revco, I had both copies.
3. Acceleration Mercury was E-mail only.
4. Q E-mail only from Rosenthal Collins
5. Group?
6. A Right.
7. Q And those were sent to the
8. Info@CastleTrading.com E-mail address?
10. Q Were they sent to any other E-mail
11. address?
12. A If they were, it would have been the
13. Info@AccelerationCapital. I don't think so. I
14. think they were Info@CastleTrading.
15. Q And Mr. Pfy ams had access to both of
16. those accounts?
17. A Yes.
18. Q Both of those E-mail accounts?
19. A Yes.
20. Q Were the account statements forwarded to
21. you from the Info@AccelerationCapital address, or
22. was the other one?

1. A Info@AccelerationCapital.
2. Q Whatever address it went to of those
3. two, it was subsequently forwarded to you?
4. A Yes.
5. Q Do you wish to add anything to clarify
6. anything to the statements you made today?
7. A Again, my humblest, deepest and
8. sincerest apologies to everyone and everything that
9. my theft caused. I expect that when and if--not
10. if--when I'm brought up on charges that my
11. cooperation with both you and Agent Hoingst will
12. subdue any of my liability, but I understand that
13. and I expect that--I deserve to be punished, and Mr.
14. Pfy ams's ability to manage the office, it's a
15. very--he's very good at it. What I did was behind
16. his back, was obviously behind his back, but I
17. also--with the ability to change the documents, I
18. was able to get in there early in the morning. So
19. when he was looking at might have been actual and
20. factual for what he thought would have been the
21. case.
22. Do you know what I mean? Does that make

1. sense?
2. Q Do you have anything else you want to
3. say?
4. A No. I'm sorry. Thank you.
5. Q Have you answered all questions to the
6. best of your ability based on your knowledge?
7. A Yes.
8. MR. DOWD: Okay. We have no further
9. questions for you at this point in time. If we need
10. to speak to you again, we will be in touch. On
11. behalf of the CFTC, I'd like to thank you for coming
12. in and testifying today, and we're off the record at
13. approximately 1 p.m.
14. [Whereupon, at 12:57 p.m., the
15. deposition concluded.]
16. [Signature waived.]
17.
18.
19.
20.
21.
22.