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UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

IN THE MATTER OF:)
)
TOBY WAYNE DENNISTON II, 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 10:13 o'clock a.m.

SUSAN SOBLE ASSOCIATES, P.C.
Certified Shorthand Reporters
1460 North Clark Street - 2611
Chicago, Illinois 60610

1 PRESENT:

2 MR. THEODORE J. DOWD, II, Trial Attorney,
3 MR. MICHAEL SOLINSKY (By video conference), and
4 MR. JOSEPH VARGYAS (By video conference)
5 U.S. Commodity Futures Trading Commission
6 Division of Enforcement
7 1155 21st Street, N.W.
8 Washington, D.C. 20581
9 (202) 418-5407

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

12 HENDERSON & LYMAN, by:
13 MR. JEFFRY M. HENDERSON
14 175 West Jackson Boulevard - 240
15 Chicago, Illinois 60604
16 (312) 986-6960

17 appeared on behalf of the Witness.

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

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

7 If the court reporter would please swear in
8 the witness.

9 (Witness sworn.)

10 YURI PLYAM,
11 having been first duly sworn, was examined and testified as
12 follows:

13

DIRECT EXAMINATION

14 BY MR. DOWD:

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

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

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

19 A Yes, I am.

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

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

24 MR. DOWD: This is an investigation by the
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5

1 commission to determine whether or not there have been
2 violations of the Commodity Exchange Act or its regulations
3 or whether there are or may be violations in the future.
4 The facts developed in this investigation might also
5 constitute violations of other federal or state civil or
6 criminal laws.

7 My name is Ted Dowd and with me via video
8 conference from Washington, D.C. are Michael Solinsky and

9 Joseph Vargyas and we are each officers of the commission
10 for purposes of this proceeding.

11 BY MR. DOWD:

12 Q Mr. Plyam, do you recognize the document that's
13 been marked as exhibit number 1?

14 MR. HENDERSON: I just moved this to get it out of
15 the way of the document. I think we lost the picture.

16 MR. DOWD: Let's go off the record for a second.

17 (Off-the-record discussion.)

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

19 BY MR. DOWD:

20 Q Mr. Plyam, do you recognize the document marked as
21 exhibit number 1?

22 A Yes.

23 Q What do you recognize that document to be?

24 A It's a subpoena.
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6

1 Q And is that a true and correct copy of the
2 subpoena that you received from the CFTC?

3 A I believe it is, yes.

4 Q Does it appear to be so?

5 A Yes, it does.

6 Q If I could direct you to the middle of the
7 subpoena, specifically a document attached thereto that's
8 entitled Statement To Persons Directed To Provide
9 Information Pursuant To A Commission Subpoena.

10 A Yes.

11 Q One more page, I think.

12 A Yes.

13 Q And did you receive a copy of that document with
14 your subpoena?

15 A Yes, I did.

16 Q And have you had a chance to review that document?

17 A Yes, I did.

18 Q Okay. And have you had a chance to review that
19 document with your counsel?

20 A Yes, we did.

21 Q And do you have any questions about that document
22 at this point in time?

23 A No, I do not.

24 Q I'd like to direct you back a few pages in the
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1 subpoena to page number seven. The subpoena issued to you ⁷

2 required the production of certain documents.

3 Did you conduct a search for responsive
4 documents?

5 A We did, yes.

6 Q When you say "we" who do you mean?

7 A Myself and my wife, Natalia, N-a-t-a-l-i-a.

8 Q Did anyone else assist you in that search?

9 A No.

10 Q Okay. And can you describe what that search
11 entailed?

12 A We looked into our records, books and records, our
13 file cabinets and gathered all the information that was
14 relevant to Acceleration Mercury Fund.

15 Q Okay. And did you search for documents on behalf
16 of any other entity?

17 A Yes. Castle Trading. One of the documents was,
18 one of the sheets, one of the documents was related to
19 both, so Castle Trading.

20 Q Any other entity?

21 A No.

22 Q Where were those documents located? Were they in
23 an office or at your home?

24 A They were in our office.
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1 Q And is that the office for Acceleration Mercury
2 Fund?

3 A Yes.

4 Q What's the address of that office?

5 A It's 8619 Reseda Boulevard, suite 102, Northridge,
6 California.

7 Q And for the record, on March 7, 2006,
8 Mr. Henderson's office produced documents to the CFTC on
9 your behalf.

10 Did you review that document production prior
11 to its submission to the CFTC?

12 A Yes.

13 Q And are you aware of any documents that are
14 responsive to the CFTC's request that have not been
15 produced thus far?

16 A No.

17 Q Before we go any further, I just want to discuss a
18 few preliminary matters with you. If you don't hear a
19 question, please let me know; I'll be more than happy to
20 state it again.

21 If you don't understand a question that's
22 asked, let me know and I'll attempt to rephrase it or make

23 it clearer.

24 The goal of our discussion today or a goal is
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9
1 to get as clean of a transcript as possible and in order
2 for that to happen, you and I need to attempt to not speak
3 over one another. So if you could allow me the courtesy of
4 finishing my question before you begin your answer, I'd
5 certainly appreciate it and it will make for a clean
6 transcript. So even if you think you know what the
7 question is, just let me shoot it out and I will attempt to
8 do my best to give you the same courtesy, allow you to
9 finish your answer before I begin on my next question.

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

15 If at any time point you want to stop and
16 take a break during the questioning, I'll be more than
17 happy to accommodate you. If there's a question pending, I
18 may ask you to answer the question before we go off the

19 record. In that regard it's important to note that only
20 the CFTC controls the record today so only myself,
21 Mr. Solinsky or Mr. Vargyas can instruct the court reporter
22 to go off the record.

23 You should also be aware that any discussions
24 that we might have while off the record may be summarized
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10

1 when we go back on the record.

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

4 A Yes, sir.

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

8 A No.

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

11 A No.

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

14 A Just my wife, Natalia Plyam.

15 Q What did you say to Natalia.

16 MR. HENDERSON: Objection that that's privileged.
17 Those conversations are privileged by the spousal
18 privilege.

19 MR. DOWD: She's an employee.

20 MR. HENDERSON: Off the record for a second.

21 MR. DOWD: Sure.

22 (Off-the-record discussion.)

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

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11

1 BY MR. DOWD:

2 Q Mr. Plyam --

3 MR. HENDERSON: Just real quickly, I want to make
4 sure we're not mixing things. You're correct, she was an
5 employee of the firm and those conversations are fair game.

6 BY MR. DOWD:

7 Q So at some point you had a discussion with
8 Mrs. Plyam, Natalie, your wife, regarding the CFTC
9 subpoena?

10 A Yes. Yes, absolutely. Many times throughout the
11 entire several months process.

12 Q Okay. When was the first -- let me ask you this
13 way. Approximately how many conversations did you have
14 with your wife after you received a subpoena from the CFTC?

15 A Oh, after the subpoena. Maybe three. A few.

16 Q Okay. And do you recall when the first
17 conversation took place?

18 A Yes. It was the day we received the subpoena. At
19 the time we received the subpoena.

20 Q And that would have been February 28, 2006?

21 A I believe so, yes.

22 Q Okay. And what did you say to Natalia?

23 A Well, actually she was the one that got the mail
24 so she opened it and told me about it that there was a
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12
1 subpoena, and we looked at it and we didn't really, we've
2 never seen anything like this before so we read everything
3 and I believe we made a phone call.

4 I believe I spoke to you. I'm not sure if I
5 spoke to you. I spoke to some gentleman. Was it...

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

8 A No, no, I only spoke to one person. I just

9 assumed that was you. And I asked a few question --

10 MR. HENDERSON: He's asking about conversations
11 that you had with Natalie.

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

19 BY MR. DOWD:

20 Q Did you discuss anything of substance?

21 A No.

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

24 A No.
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13

1 Q -- other than timing issues?

2 A No.

3 Q Okay. And subsequent to that conversation did you
4 have any conversation with Natalia regarding the CFTC

5 subpoena?

6 A Yes, a few times, but it was all in, it was all in
7 -- yes, we did actually. Before we left she was assisting
8 me in gathering documents and we were talking about whether
9 we had all the documents, you know, we wanted to comply
10 with everything. We wanted to make sure all the documents
11 were here. So that was the scope of the conversation.

12 It was basically looking at the list that you
13 requested and trying to comply and discussing do we have
14 this, do we not have that.

15 Q Did you ever discuss what you anticipated your
16 testimony to be?

17 A No.

18 Q Did she ever provide you any instruction on how
19 you should testify?

20 A No.

21 Q Other than your wife and Mr. Henderson, have you
22 spoken with anyone regarding your appearance here today?

23 A No. Oh wait. Yes, I did. One of Jeff's
24 employees.

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1 Q Is he a lawyer?

2 A Yes.

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

8 A Yeah, just -- that was it.

9 Q Who was that attorney?

10 A That was Scott...

11 MR. HENDERSON: Slykas. S-l-y-k-a-s.

12 BY MR. DOWD:

13 Q And when did that conversation take place?

14 A About an hour ago.

15 Q Have you spoken with anyone else regarding the
16 CFTC subpoena?

17 A No.

18 Q And have you informed anyone what you anticipate
19 your testimony to be here today?

20 A No.

21 Q Has anyone given you any instructions on how to
22 testify today?

23 A No.

24 Q Do you know anyone else who has been subpoenaed or
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1 has testified in this investigation?

2 A Yes.

3 Q Who's that?

4 A Toby Denniston.

5 Q Let me clarify. By this investigation, excuse me.

6 By this investigation I'm referring to the CFTC's

7 investigation.

8 A Yes.

9 Q As opposed to any other governmental agency.

10 A Yes.

11 Q Okay. How do you know Mr. Denniston has
12 testified?

13 A I don't know that he testified. I know that he
14 was subpoenaed to testify.

15 Q Okay. How do you know that?

16 A 'Cause he left a message on my wife's voice mail
17 machine a few days ago.

18 Q Do you recall the precise date?

19 A No, but she still has it on her phone. We were
20 listening to it just about an hour ago for the first time
21 actually. She listened to it many times. Me, Jeff and

22 Scott listened to it for the first time about an hour ago.

23 Q What did Mr. Denniston say?

24 A Mr. Denniston said that -- I'm going to paraphrase
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16

1 what he said. I don't, I can't quote him.

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

9 Q Do you still have a copy of that recording?

10 A Sure do.

11 Q Okay.

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

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

16 A Sure.

17 Q And did you call Mr. Denniston back?

18 A No.

19 Q Do you know if Natalia called Mr. Denniston back?

20 A I do know. She did not.

21 Q How do you know she did not?

22 A I asked her.

23 Q What did she say?

24 A She said, I did not call him back.
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1 Q Other than Mr, Denniston do you know anyone else
2 who has been subpoenaed in this investigation?

3 A No.

4 Q Do you know anyone else that's testified in this
5 investigation?

6 A No.

7 Q Did you do anything to prepare for your testimony
8 here today?

9 A I looked over the documents and some dates just to
10 make sure I have good recollection of events and so forth.

11 Q What documents did you look over?

12 A I looked at when Toby was hired, his record, the
13 dates when these things occurred just so I have a, because
14 some of the, you know, these things go back some time. I

15 wanted to make sure I have the course of events correct in
16 my mind.

17 Q Did you review any documents that haven't been
18 produced to the CFTC?

19 A No.

20 Q Did you discuss these documents with anyone other
21 than your attorney?

22 A No.

23 Q What's your date and place of birth?

24 A 10-29-70. Ukraine, USSR.
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18

1 Q Are you a United States citizen?

2 A Yes.

3 Q And your current home address?

4 A It's 9813 Aldea Avenue, Northridge, California
5 91325.

6 Q What's your home telephone number?

7 A (818) 998-7223.

8 Q And what's your business address?

9 A 8619 Reseda Boulevard, suite 102, Northridge,
10 California 91324.

11 Q Do you have any other business address other than

12 that one?

13 A Yes. I have an address upstairs. I have a --

14 Q Upstairs meaning in your home?

15 A No, no, no, no. From our office we have another
16 business upstairs.

17 Q Okay.

18 A Suite 101 is commodities and suite 202 upstairs
19 and it has nothing to do with commodities in any way.

20 Q Okay. Identify for me all businesses that you're
21 affiliated with that you use the suite 101 address.

22 A Gauss, CHP Asset Management -- I misspoke. Just
23 CHP Asset Management, Acceleration Capital and Castle
24 Trading.

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19

1 Q Okay. Were you ever affiliated with any former
2 businesses that used that address?

3 A No.

4 Q And what businesses are at the suite 202 address?

5 A It's an architectural firm. We design and build
6 homes in Los Angeles. There's no affiliation to Castle
7 Trading in any way whatsoever.

8 Q Okay. What's your business telephone number for
9 the suite 101 address?

10 A 1-800-624-0626.

11 Q And your Social Security number?

12 A 568-55-8243.

13 Q Did you go to school at all after you graduated
14 high school? I should ask you did you graduate high
15 school?

16 A Yes.

17 Q Did you attend college?

18 A Yes, I did.

19 Q What's college or colleges did you attend?

20 A I attended Los Angeles City, excuse me, Los
21 Angeles Valley College. I earned an Associates degree in
22 administrative justice.

23 I then went on to --

24 Q What year did you receive that degree?
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1 A 1991, once again to the best of my knowledge.
2 1991, possibly beginning of '92, somewhere in that
3 vicinity.

4 Q And that was a B.A.?

5 A No, Associates degree.

6 Q Okay. Did you ever receive a B.A.?

7 A No, I did not.

8 Q Did you ever receive a B.S.?

9 A No, I did not.

10 Q Did you have any education beyond Los Angeles
11 Valley College?

12 A Yes, I did.

13 Q Okay. Identify that for me.

14 A I went to law school, earned a juris doctorate
15 degree. University of Laverne.

16 Q And did you ever attend any graduate school other
17 than the University of Laverne?

18 A No, I did not.

19 Q Are you a member of any state bar?

20 A No, I'm not.

21 Q Have you ever taken the bar exam?

22 A No, I have not.

23 Q Have you ever filed an application to sit for a
24 bar exam that's been denied?

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1 A No.

2 Q Have you ever filed an application to sit for a
3 bar exam?

4 A No. No, no, I did not.

5 Q Have you ever testified in a legal or
6 administrative proceeding before?

7 A Yes, I did.

8 Q How many times?

9 A Once.

10 Q When was that?

11 A Very recently. I don't know if it would be called
12 a, it was this type of a, it was a, I don't know the name
13 of it. It was a factfinding investigation for a lawsuit
14 that I may be having with my neighbors about an easement
15 that has absolutely nothing to do with commodities
16 whatsoever.

17 But that wasn't an actual -- we haven't gone
18 to trial so it was just --

19 Q Was it a deposition?

20 A Exactly. That was the extent of it. I've never
21 been sued before.

22 Q And other than possibly that deposition and today,
23 have you ever been subpoenaed before?

24 A No, I have not.

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1 Q Have you ever been a witness or a defendant in any
2 civil litigation?

3 A No, I have not.

4 Q Have you ever been -- go ahead.

5 MR. HENDERSON: Just, there's one NFA action. I'm
6 not sure, when you said civil litigation I'm assuming he
7 thinks that means civil litigation.

8 MR. DOWD: I believe an NFA action would be an
9 administrative action.

10 THE WITNESS: Oh.

11 MR. HENDERSON: It's a customer claim.

12 MR. DOWD: Okay.

13 BY MR. DOWD.

14 Q Tell me about the NFA customer claim.

15 A It is a claim against me that stemmed from an
16 action from a client who is trying to recover damages two
17 years, he filed a claim against me with the NFA a
18 year-and-a-half or two years after what he perceived as
19 damages occurred. He believes he wasn't informed. He was
20 a client for two years and --

21 Q What is his name?

22 A Alex Argiroff. L&A Investments. That's the name
23 of the account. A-r-g-i-r-o-f-f.

24 Q Okay. And is that pronounced, how do you
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23

1 pronounce it?

2 A Alex Argiroff.

3 Q Okay. And was he a client of CHP, Acceleration
4 Capital, Castle Trading?

5 A Castle Trading.

6 Q Any other entity?

7 A No.

8 Q And what service or services did you provide to
9 him?

10 A I was giving him very limited advice on his
11 position. He kept the same position for two years and he
12 kept rolling it over. It was a combination option spread
13 and I was there to get him bid and offers from the floor to
14 facilitate the position for him. It was a self directed
15 account. It was a business account that he had with his
16 boss.

17 Q Do you know who his boss is?

18 A You know, I don't remember that information. I've
19 never dealt with his boss. It was just a name on the
20 account. But I always dealt with Argiroff. He was the
21 authorized trader and L&A was the name of the account.

22 Q And specifically what does he allege against you
23 and/or Castle Trading?

24 A He, well, he specifically alleges that he wasn't
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24

1 informed when he started trading that you cannot use
2 increase in option premium as leverage for futures.

3 Q And do you know the current status of that matter?

4 A Yes. Jeff has filed a, two motions. One motion
5 was to...

6 Q Jeff meaning your lawyer, Mr. Henderson?

7 A Jeff Henderson who's sitting in this room. He
8 filed one cause of action for lapse of time for filing a
9 cause of action and one for not having a cause of action,
10 for not having a claim to file, that basically there's no
11 claim.

12 Q Have you ever been questioned by an SRO?

13 A I'm sorry.

14 Q Self-regulatory organization such as the NFA or

15 NASD?

16 A Yes, NFA.

17 Q Yes how many times have you been questioned by the
18 NFA?

19 MR. HENDERSON: Informally or formally?

20 BY MR. DOWD:

21 Q Both.

22 A Well, I've had -- would a dialogue with them
23 count?

24 Q Let's start with formal questioning.
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25

1 A Okay. Twice.

2 Q Identify those two occasions for me.

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

5 Q When was that?

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

10 Q Was it roughly March 2004?

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

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

15 A Yes, they have.

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

18 A Yes.

19 Q And what was the outcome of that action?

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

22 Q How much was that fine?

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

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

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26

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

2 Q Okay. And that was for which entities?

3 A That was for both CHP and for Castle Trading.

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

6 A Yes. It was basically several, it was mostly
7 related to advertising, to having material on my website

8 that was not approved and in their opinion it was
9 misleading. And all of that was taken off. Most of it was
10 system trader vendors' names. It was really not one big
11 thing. It was a bunch of little things.

12 Q Okay. Anything beyond advertising?

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

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

19 A Yes.

20 Q Okay. And did you pay a fine?

21 A Yes.

22 Q How much did you pay?

23 A That's, for each entity -- for Castle it was 9000,
24 for CHP was 9000 and for Yuri it was 9000. That's where
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1 the 27,000 came in.

2 Q Do you recall roughly when that settlement was
3 entered?

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

6 Q May 2004, does that ring a bell?

7 A Possibly. I don't have any reason -- I just don't
8 remember the exact time. But that does sound reasonable
9 because one of the -- yes, yes, it does because of one of
10 the outcomes of it.

11 Q What do you mean one of the outcomes?

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

17 So when you say -- it was about a year from
18 the time of the settlement, so when you said May I
19 superimposed that to a year from that point on and it was
20 right around the time he came last time, so yes, that
21 sounds about right.

22 Q When you say this event, what are you referring
23 to?

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

2 Q Mr. Denniston's theft of pool funds?

3 A Yes, right.

4 Q And who is Dennis Starr?

5 A Dennis Starr is a -- he's not affiliated -- he's a
6 private party that I got his name from...can I ask him for
7 a name of...

8 Q Sure.

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

11 MR. HENDERSON: Phil Raleigh.

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

21 BY MR. DOWD:

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

23 A Yes, he is.

24 MR. HENDERSON: You said Phil Riley. Raleigh, I

1 think, it's Phil Raleigh.

2 THE WITNESS: Phil Raleigh, yes.

3 BY MR. DOWD:

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

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

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

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

14 Q To the best of your recollection.

15 A Commodity Supervisors, something to that effect.
16 Once again, I'm just reaching. I don't remember. But he
17 has a company out of San Diego. He has a website.

18 The reason we chose him is because the person
19 who Refco hired while we were not independent, we didn't
20 feel he was doing a good job because he didn't spot all

21 these things and tell me to take them off the site.

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

24 A Yes, he did.
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1 Q Okay. How often did he conduct those audits?

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

4 Q For each entity?

5 A Yes. He -- yes.

6 Q From roughly spring 2004 forward?

7 A Mm-hm.

8 Q Does he still conduct quarterly audits?

9 A No.

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

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

15 Q June or July of 2005?

16 A Yes.

17 Q And dating back to September of '04, can you

18 identify for me approximately each audit that Mr. Starr
19 conducted from that point through the last one in June-July
20 2005?

21 A When you say identify you mean the dates?

22 Q The dates.

23 A I have no recollection of that.

24 Q Ballpark.
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1 A I just don't remember. I know that from the time 31
2 of the settlement it was every quarter and it was right
3 around that time because they give you a deadline and we
4 had to fill it. And this was pretty meticulously done
5 because it had to be forwarded to the NFA.

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

9 A Yes. Yes.

10 Q And another one four months before that one?

11 A Yes.

12 Q So every four months.

13 A Every four months there was an audit and the last

14 one was approximately three weeks to a month before the NFA
15 was in my office last time.

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

18 A Yes.

19 Q Did he ever audit Acceleration Mercury Fund?

20 A No, he did not.

21 Q Why?

22 A One of the reasons why he did not do so was
23 because Acceleration was not part of the fine and it was
24 not part of the NFA settlement where it had to be
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1 supervised so it had nothing to do with it.

2 Q And just for the record, what is Acceleration
3 Mercury Fund?

4 A It's a speculative futures fund. It's a long term
5 trend following fund.

6 Q And what is your relationship to Acceleration
7 Mercury Fund?

8 A I am the pool operator.

9 Q Are you familiar with an entity by the name of
10 Acceleration Capital?

11 A Yes.

12 Q Is Acceleration Capital a pool operator for
13 Acceleration Mercury Fund?

14 A Yes.

15 Q Are you a general partner of --

16 A Yes. Sorry.

17 Q Are you a general partner of Acceleration Capital?

18 A Yes, I am.

19 Q In that capacity you serve as CPO for Acceleration
20 Mercury Fund?

21 A Yes, I do.

22 Q Was Acceleration Mercury Fund ever audited?

23 A Yes, it was.

24 Q And when was that?

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1 A It was audited, I don't remember the exact time it
2 was audited. It was audited at the year end per NFA
3 requirements by a certified public accountant.

4 Q Okay. At how many year ends was it audited?

5 A I believe it was one. It was -- I remember. I
6 can tell you now. It was December of, either December of

7 '04 or January of '05. Yes.

8 Q And that was the only audit of Acceleration
9 Mercury Fund?

10 A Right, because we didn't get to the following
11 year.

12 Q And did Mr. Starr ever audit Acceleration Capital?

13 A No, he did not.

14 Q Okay. Was there ever an audit of Acceleration
15 Capital?

16 A I do not think so because the only -- no, I don't
17 think so.

18 Q Have you ever been registered with the NFA?

19 A Yes.

20 Q In what capacity or capacities?

21 A As a broker, as an associate person and as a
22 commodity pool operator and I believe as a CTA as well,
23 which I've never used or done. You know, I'm not sure if
24 I'm registered as a CTA or not.

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1 Q Okay. And do you recall your NFA registration
2 number?

3 A No, I cannot.

4 Q Does 0296807 sound right?

5 A I wouldn't even know where to begin. I apologize.

6 Q Have you ever been registered with the NASD?

7 A No, I have not.

8 Q Have you ever held any professional license?

9 A No, I have not.

10 Q Have you ever applied for registration with the
11 NASD?

12 A No, I have not.

13 Q Are you a member of any professional organization?

14 A No, I'm not.

15 Q Can you identify for us all formal training you've
16 received as it relates to futures trading?

17 A Formal experience. Formal? Traded from -- when
18 you say -- experience or education?

19 Q Training. So education, classes you might have
20 taken in college, seminars, anything of that ilk.

21 A I'm completely self taught.

22 Q How did you teach yourself?

23 A I started trading stocks and commodities on my own
24 back in the mid 90s while I was in law school. I would
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1 take classes at night and I would trade for myself during
2 the day. I did that between '96 and '99, I believe.

3 Q What commodities did you trade?

4 A The S&P 500, NASDAQ 500.

5 Q Mini or the large contract?

6 A Both. Dabbled in interest rates as well.

7 Q And what period of time was that?

8 A This was from January of '06 to somewhere around
9 '98, '99, I believe.

10 MR. HENDERSON: '96 I think is what you meant.

11 THE WITNESS: '96, sorry. I transposed. Yes.

12 BY MR. DOWD:

13 Q I'm sorry. I missed the end of that. January of
14 '96 'til when?

15 A 'Til '99. Around that time. '98, '99.

16 Q Where was your account located?

17 A It was located with Man and I believe Lind
18 Waldock.

19 Q The two accounts or was the account transferred at
20 some point in time?

21 A It was transferred. It was transferred.

22 Q What name was the account under?

23 A It was under my name and my dad's name.

24 Q What's your dad's name?
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1 A Mikail Plyam. M-i-k-h-a-i-l.

2 Q Is that account still currently open?

3 A No. We closed it years and years and years ago.

4 Q Were you successful?

5 A Yes.

6 Q Did you make money?

7 A Yes, I was, yes.

8 Q Over the life of the account, how much money did
9 you make roughly?

10 A I don't believe. I believe it was between 30- and
11 \$50,000. It wasn't something I was doing on a full-time
12 basis. It was just something I did to kill time while I
13 was in law school.

14 Q And did your father execute any trades in that
15 account?

16 A No, he did not.

17 Q So all the trades executed in that account are
18 attributable to you.

19 A Yes, they are.

20 Q And did you work while you were going to law

21 school?

22 A No, I did not.

23 Q So what period of time did you go to law school?

24 A From '94 or '94-'95 to '98.

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1 Q What year did you graduate college?

2 A '91, I believe, '92.

3 Q What did you do during that period of '91-'92 when
4 you graduated college until the time when you enrolled in
5 law school?

6 A I actually started studying law on my own.

7 Q What does that mean? Were you working for --

8 A No, I bought all the material for first year and
9 just started learning how to brief and learning how to
10 outline and learning how to write essays, just, you know,
11 all the things you'd need, the Socratic method and so
12 forth.

13 Q And when you graduated from law school, what did
14 you do?

15 A When I graduated from law school, boy...

16 Q Where did you work if you worked?

17 A Let me think. No, I did not work after law
18 school.

19 Q Where I'm going with this is I just want a
20 chronology of your employment history.

21 A Basically after law school, I took some time off
22 and I started working for Cannon Trading as an associate
23 person.

24 Q Okay. And when did you start working for Cannon
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1 Trading?

2 A I believe it was 2000. It was in the summer of
3 2000.

4 Q And how long did you work for Cannon Trading?

5 A Approximately six months.

6 Q So roughly winter 2000, early 2001.

7 A 'Til Christmas.

8 Q Why did you leave?

9 A I wanted to do something on my own.

10 Q Okay. And what did you do for Cannon Trading?

11 A I was an associate person. I called leads, placed
12 orders, did everything that associate people do.

13 Q What do associated people do other than call leads

14 and place orders?

15 A Give trading recommendations to clients.

16 Q And that was in the futures field?

17 A Futures, yes.

18 Q Did you ever work for Brookstreet Securities?

19 A Brookstreet, yes.

20 Q Brooke with an "r"?

21 A Yes.

22 Q When did you work for Brookstreet?

23 A Upon termination, upon me terminating my position

24 at Cannon, I transferred to Brookstreet.

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1 Q When did you start work at Brookstreet?

2 A Around Christmas of '01.

3 Q Okay. And earlier I believe you testified you
4 left Cannon Trading 'cause you wanted to do something on
5 your own.

6 Is that accurate?

7 A Yes, it is.

8 Q Elaborate on that for me.

9 A I wanted to start my own business. I was involved

10 in this industry for many years prior to Cannon. I went in
11 there and I kind of realized that everything they were
12 doing I was very, very familiar with and I didn't want to
13 give 60 percent of my profit to somebody else. Which is
14 why I want to Brookstreet, which is a profit sharing
15 situation, not a 50/50 type of situation.

16 Q When you say you were involved in the business,
17 are you referring to your trading with your E.F. Man/Lind
18 Waldock account?

19 A Yes, plus I've read almost every book at that time
20 on the futures industry. I met people in the industry that
21 have been trading for 20, 30 years, people affiliated with
22 the Turtles group, fund managers, so I felt very
23 comfortable doing what I was doing. It wasn't something,
24 like I really didn't have to learn everything while I was
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1 there. It was very boring very quickly.

2 Q What did you do for Brookstreet?

3 A I did the same -- Brookstreet is a different type
4 of organization. You don't really work for them; you work
5 for yourself. They provide people -- Brookstreet is an
6 organization where they take a very small share of your

7 profit where you basically work for yourself.

8 You don't work in their office. They have an
9 office and they have hundreds of people who work for them
10 in their own, from their own home or their own office.
11 They do mostly stocks and they do a little bit of futures.

12 Q Okay. And what were you doing while you were
13 employed by Brookstreet?

14 A I was doing --

15 Q How were you making a living? How were you paid?

16 A I was making commission from clients. I was doing
17 the same thing I was doing for Cannon Trading. I was doing
18 nothing different except I was doing it all for myself
19 versus splitting my commissions with my boss.

20 Q So you were recommending trades to members of the
21 public?

22 A Yes.

23 Q And you were soliciting members of the public to
24 open accounts with Brookstreet Securities?

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1 A Yes.

2 Q Were you doing anything other than recommending

3 trades and soliciting individuals to open accounts?

4 A No.

5 Q Were you registered with Brookstreet Securities?

6 A Yes.

7 Q In what capacity?

8 A As an associate person.

9 Q CHP Asset Management.

10 A Yes.

11 Q Is that a legal entity?

12 A Yes, it is.

13 Q What is it?

14 A It is a commodity pool management company.

15 Q Is it an LLC?

16 A Yes, it is.

17 Q And what's the state of registration for the LLC?

18 A Delaware, I believe.

19 Q When was CHP Asset Management formed?

20 A CHP was formed right around the beginning of, the
21 end of '03, I believe, beginning of '04, so right around
22 that ballpark. It's been a while.

23 Q Okay. Who formed CHP Asset Management?

24 A Me, Yuri Plyam, Charles Hasset and Charles
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1 Calamaris.

2 Q Okay. Who is Mr. Hasset?

3 A Mr. Hasset is one of the top economists in
4 Washington. He works for the American Enterprise Institute
5 where he is in charge of dealing with top economic issues.
6 He deals with Alan Greenspan and the Pentagon on a daily
7 basis, giving them advice on economics.

8 Q How do you know him?

9 A I met him through Charles Calamaris.

10 Q Okay. Who is Charles Calamaris?

11 A He's a professor of finance at Columbia
12 University.

13 Q How do you know Mr. Calamaris?

14 A He was one of my clients at Castle Trading.

15 Q Did you make money for him?

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

20 Q Okay. And CHP Asset Management. Is that located
21 at the Reseda address?

22 A Yes, it is.

23 Q Suite 101?

24 A Yes, it is. Yes.
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1 Q CHA registered with the NFA?

2 A Yes, it is.

3 Q In what capacity?

4 A As a commodity pool operator. We are actually, we
5 -- it's not relevant. Go ahead. It's fine.

6 Q Does CHP have any business other than that of a
7 commodity pool operator?

8 A No.

9 Q Identify for me all pools that CHP has served as a
10 CPO.

11 A Only one, the Gauss Fund.

12 Q Spell Gauss for me.

13 A G-a-u-s-s.

14 Q Is that an active pool?

15 A Yes, it is. As of right now, it is.

16 Q When was that pool formed?

17 A At the same time CHP was formed. End of '03,
18 beginning of '04, somewhere around there.

19 Q And how many participants are presently in that

20 pool?

21 A Five including myself.

22 Q And what's the capitalization on the pool?

23 A I believe it's in the mid 3 -- right now there's

24 half a million dollars in there roughly, give or take.

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1 Between 480 and 520 the last couple of weeks.

2 Q Are there any former participants in the Gauss

3 Fund?

4 A Yes, there is. One. One partner, yes.

5 Q Who is that?

6 A Charles Calamaris's nephew. He has a very strange

7 name. It's a very strange name. I don't...

8 Q Do you recall it?

9 A You know, I used to -- it's going to come to me.

10 It's a foreign name. He's a monk. He has a foreign name.

11 He put in his money. I just -- it will come to me, but I

12 don't remember it right now.

13 Q At any point in time it comes to you today,

14 interrupt me, just shout it out.

15 A If I may just add something.

16 Q Certainly.

17 A Gauss Fund was not, at the time when we registered
18 the fund, we did not know -- basically the reason for
19 starting the fund was to create a track record over several
20 years. It was not a fund to attract public money. That
21 was never the intent of that fund.

22 We assumed that the only way to get a
23 legitimate track record was to trade as a fund that, so
24 everything looks very clean, you know, black and white, so
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1 there's no problems versus just an individual account. But
2 the whole goal of that fund was not to get outside
3 investors. It was just so we have a fund with a track
4 record over years.

5 Q Where are the trading accounts located for that
6 fund?

7 A They are with formerly Refco, now Man Financial.

8 Q Okay. Under what name?

9 A Under Gauss Fund, LP.

10 Q What are your duties with respect to CHP?

11 A I supervise the trading. I put the trades in to,
12 I run the daily statistic sheet for the trades. I look

13 over the account statements for the trades, deposit money
14 for the trades, withdraw funds for the trades. Everything
15 in respect to running the fund.

16 Q And are you a general partner of CHP?

17 A Yes, I am.

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

20 A Yes, he is.

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

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

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

5 A No, he does not.

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

7 A Yes, he is.

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

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

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

15 A Yes.

16 Q Do you have the authority to hire employees?

17 A Yes, I do.

18 Q Do you have the authority to fire employees?

19 A Yes, I do.

20 Q Would you say you exercise managerial control over
21 CHP?

22 A Yes, I do.

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

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1 A No.

2 Q Has it ever?

3 A Well, yes. Toby Denniston.

4 Q And how was Mr. Denniston employed with CHP?

5 A CHP, Castle and Acceleration are all in the same

6 office. I'm getting to your question.

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

9 A In fact, not in law. I never said, Toby, you're
10 working for CHP Asset Management. It was yes, impliedly.
11 Yes, he was. Not expressly, impliedly.

12 Q What work did he do on behalf of CHP?

13 A He updated the disclosure documents. He --

14 Q Disclosure documents for the Gauss Fund?

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

20 Q Okay. Who supervised Mr. Denniston?

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

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

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1 A Yes.

2 Q And is she an employee of CHP?

3 A No, she is not.

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

6 A That's kind of what -- our office is about the
7 size of two of these rooms. There's, as far as other than
8 two brokers that were there, there is Mr. Denniston,
9 myself, my wife and a computer tech guy. We don't have a
10 200-person office. We all sit as we are sitting right now
11 in this type of a situation.

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

19 As he progressed in his job, he was there for
20 two-and-a-half years, I believe. The first year,
21 year-and-a-half, all he did was Castle Trading and then it
22 progressed onto other things which was his, he was, what we
23 thought at that time was he was trying to be a good
24 employee, he was taking responsibilities. But we never sat

1 down and said, okay, today you're hired to do this for --
2 it was, hey, we have to update this; do you think you can
3 take care of this. Yes, I can. Over time that's how it
4 developed.

5 Q Was Mr. Denniston ever paid by CHP?

6 A No, he was not.

7 Q Was he ever a legal employee of CHP?

8 A No, he was not.

9 Q Your wife, was she ever paid by CHP?

10 A No, she was not.

11 Q Was she ever an employee, a legal employee of CHP?

12 A No, she was not.

13 Q And I know you stated earlier that your office was
14 roughly the size of this room or twice the size of this
15 room. Now, when you and I go back and read the transcript
16 or anyone who wasn't here, they are not going to know how
17 big it was.

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

22 Q And how many people were in that office at any

23 given point in time?

24 A I can't answer that question.
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1 Q I should say how many people worked in that
2 office?

3 A Anywhere from five to seven at any given time.

4 Q How was CHP funded?

5 A I don't understand the question.

6 Q Did general partners make any capital contribution
7 to CHP aside from money that's in the Gauss Fund?

8 A Oh, yes, the three -- now I understand your
9 question. The three of us split the cost of registration
10 and maintenance and accounting and all of those things.

11 Q Okay. How much money did you contribute?

12 A Oh, maybe overall between 5- and 10,000. Maybe
13 15,000 over the last couple years.

14 Q Okay. And would Mr. Calamaris and Mr. Hasset have
15 made similar contributions?

16 A Identical contributions. Everything was split
17 three ways.

18 Q Does CHP have any relationship with Acceleration
19 Mercury Fund?

20 A No, it does not.

21 Q Has it ever?

22 A No, it does not. As a matter of fact, I don't
23 even believe Calamaris and Hasset know -- if you asked them
24 what Acceleration was, they wouldn't even know.

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1 Q But Acceleration Mercury Fund is located in the
2 same physical office, suite 101, of the Reseda office.

3 A Yes, yes. Both partners are in Washington and New
4 York so we're not in the same city. We don't, it's not --
5 yes.

6 Q When was Acceleration Mercury Fund formed?

7 A Acceleration was formed around March of '04, I
8 believe.

9 Q Okay. And who formed the pool?

10 A It was me and Curtis Faith, like Faith, yes.

11 Q Who is Mr. Faith?

12 A Mr. Faith is one of the original Richard Dennis
13 Turtles, a group of traders that is featured in many books
14 and legends about traders. They are considered the biggest
15 money making group of traders of all time in the late '70s,

16 early '80s.

17 Q And how did you know Mr. Faith?

18 A He contacted me one day. He contacted me -- I
19 don't remember the details, but I remember him contacting
20 me one day.

21 He was looking for, he invented a software
22 device that would be able to backtrack commodity fund
23 information. In other words, he would be able to put
24 historic data into the system, put your own, your own...

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1 Q Trading system?

2 A Yes, settings and you could test systems. It
3 didn't give you trading advice. It just allows you to, it
4 was a harness, an engine to test systems, and he read some
5 information that -- he went to my website. He saw that I
6 did system trading.

7 Q What website are you referring to?

8 A Castle Trading.

9 Q What's the address of that website.

10 A Castletrading.com. So he went to the website. He
11 saw that I had some information about system trading and he
12 saw that my information was in his -- from what he said it

13 looked like I knew what I was doing compared to the other
14 vendors 'cause I had some real deep information there,
15 statistical things and things that really make sense as
16 opposed to a bunch of hype.

17 So he saw I wasn't trying to scam clients out
18 of commissions. I wasn't charging 60, \$80 a trade. My
19 trades were 20, \$15. I was acting appropriately in his
20 mind and he was looking to get back into commodity trading.

21 Q So what did he want from you?

22 A He wanted some -- he lived in, not in Jamaica.

23 Q U.S. Virgin Islands?

24 A Yes, the U.S. part of the Virgin Islands. So he
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1 was looking to get back into the system, but he wasn't
2 interested in doing any of the paperwork, the legal work,
3 the bookkeeping work. So when he found out that I was
4 already dealing with Gauss, he thought it would be a
5 natural fit for us to get together and start something
6 because I already had experience dealing with a fund and he
7 had extensive trading experience. So he thought it would
8 be a good match and that's how we met.

9 Q Okay. And from that point forward, the two of you
10 formed Acceleration Mercury Fund?

11 A He flew out here to help me do some work, we
12 formed it, and he came out one more time and that was it.

13 Q And Acceleration Mercury Fund is a commodity pool?

14 A Yes.

15 Q And when did the pool commence trading?

16 A I would say within a month of, or two of us
17 forming it, so I would say roughly the spring of '04.
18 Maybe early summer of '04. We needed to have a certain
19 amount of money in order to start trading so we needed to
20 -- that's why we didn't start right away.

21 Q How much money did you need?

22 A I believe it was, you know, I don't remember. It
23 was either half a million or 400,000. It was a large
24 number that we needed because the kind of system we had
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1 needed X amount of dollars to begin trading.

2 Q Who developed the system?

3 A It was my system surprisingly. If you want, I
4 could expand on this if you're interested. What we were
5 supposed to do was --

6 MR. HENDERSON: Why don't you let Ted ask the
7 questions.

8 THE WITNESS: I'm sorry.

9 MR. HENDERSON: Why don't you let Ted ask the
10 questions. I don't think there was a question pending.

11 BY MR. DOWD:

12 Q Were you going to just say something?

13 A Yeah, I just wanted to finish.

14 Q What were you going to say? You were going to
15 finish with respect to information you wanted to provide me
16 about the trading system.

17 A Yes.

18 Q What information is that?

19 A Basically Curtis was a computer programmer and a
20 trader. What he was going to do was create a short term
21 trading system that would work with a good long term system
22 that I already had that's been around for 50 years. He
23 never came through with that system, so we ended up just
24 trading the long term system that we had that's been around
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1 for 30, God knows how many years.

2 Q Okay. And who developed that system?

3 A It was triple moving averages. I don't know --
4 probably Donchian. His name is Donchian, Richard Donchian,
5 D-o-n-c-h-i-a-n. It was a system he developed, I believe,
6 in the '40s or the 50s. It was based on triple moving
7 average.

8 Q Okay. And that was a system that you used to
9 trade Acceleration Mercury pool?

10 A Yes.

11 Q And how did you and/or Mr. Faith acquire that
12 system?

13 A This system is so common knowledge for traders,
14 it's a very, very well known system. It's provided in
15 almost every technical analysis program. It has three
16 rules.

17 Q It's widely available?

18 A Very widely available.

19 Q You didn't have to pay to get it?

20 A No, not at all.

21 Q Will you mark that, please.

22 THE WITNESS: It's been working for 40 years. It
23 still works. Nothing changed. The thing with the system
24 is you can't trade it with 20- or 30,000. You need over a
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1 hundred thousand to trade it correctly because it trades
2 20, 30, 40 markets at one time. That's the catch.

3 (CFTC Exhibit No. 2 was marked for
4 identification.)

5 BY MR. DOWD:

6 Q Mr. Plyam, do you recognize the exhibit marked
7 number 2?

8 A Yes.

9 Q And what do you recognize that document to be?

10 A It's an account statement.

11 Q An account statement for what?

12 A For Active Futures. Sorry. For Acceleration
13 Mercury Fund.

14 Q So this is the account statement for the pool
15 Acceleration Mercury Fund?

16 A Yes.

17 Q Okay. And where is this account located?

18 A Active Futures? Castle Trading is also known as
19 Active Futures. It's the same entity.

20 Q And Castle Trading is a registered IB?

21 A Yes. Yeah, Active Futures is also -- if you were
22 to go on the NFA website, it's under one entity.

23 Q Who does Castle Trading clear through?

24 A We clear through RCG.
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1 Q Rosenthal Collins Group.

2 A Yes, Cadent Financial, Refco, now Man.

3 MR. SOLINSKY: Can we have the Bates number of the
4 exhibit, please?

5 MR. DOWD: The Bates number of exhibit 2 is
6 Plyam00177.

7 BY MR. DOWD:

8 Q Mr. Plyam, did Acceleration Mercury Fund maintain
9 any account at any point in time other than that that's
10 contained in exhibit number 2?

11 A Yes, it had an account with Wells Fargo.

12 Q And I should say by account I'm referring to a
13 commodity futures trading account.

14 A No, it did not.

15 Q So the only commodity futures trading account is
16 that which is reflected by exhibit number 2?

17 A Yes, correct.

18 Q Were these statements mailed to your office?

19 A They were mailed to -- I don't remember if they
20 were mailed. I believe we just we just download these
21 statements.

22 Q How often were the statements available?

23 A Daily. Almost in real time. Let me correct
24 something. Yes, they were mailed and, but they were
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1 mailed, but we chose to look them up on line on a daily
2 basis.

3 Q And when they were mailed, were they mailed to
4 your attention?

5 A Yes, they were.

6 Q And you had access to the accounts via your
7 computer via on-line as well?

8 A Yes, I did.

9 Q Who else had access to the accounts on line?

10 A Toby Denniston and Natalia Plyam.

11 Q And is Acceleration Capital, LLC the CPO for
12 Acceleration Mercury Fund?

13 A Yes, it is.

14 MR. HENDERSON: I'm sorry. Can you read the
15 question back?

16 (The record was read.)

17 MR. HENDERSON: Thanks.

18 BY MR. DOWD:

19 Q Who founded Acceleration Capital?

20 A It was me.

21 Q Anyone else?

22 A And Curtis Faith.

23 Q Okay. And identify for us all the capacities in

24 which Acceleration Capital is registered with the NFA.

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1 A It's registered with the NFA as a commodity pool
2 operator and I believe also as a CTA, but that is not being
3 used. It was never used in any way.

4 Q And by CTA you mean commodity trading advisor?

5 A Sorry. Yes, commodity trading advisor.

6 Q And is Acceleration Capital registered with any
7 other entity?

8 A No, it is not.

9 Q Has it ever been?

10 A No, it has not.

11 Q Mark this as 3, please.

12 (CFTC Exhibit No. 3 was marked for
13 identification.)

14 BY MR. DOWD:

15 Q Mr. Plyam, you recognize the document that's been
16 marked exhibit number 3?

17 A Yes, I do.

18 Q And for the record, exhibit number 3 is Bates
19 numbered Plyam00135.

20 Mr. Plyam, what do you recognize exhibit
21 number 3 to be?

22 A It's an operating agreement.

23 Q An operating agreement for what?

24 A For Acceleration Capital, LLC.
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1 Q Okay. And was Acceleration Capital in existence
2 in existence prior to the execution of this document?

3 A Can you repeat the question?

4 Q Was Acceleration Capital formed, in business, in
5 existence prior to the execution of this document?

6 A Maybe for the purposes of, you know, Delaware,
7 with the state for that matter within a few days but
8 nothing, there was no business conducted. It was just for

9 the purpose of securing this and a bank account and so
10 forth.

11 Q If I could direct you to the last page which is
12 Bates numbered Plyam00175.

13 A Yes.

14 Q Do you see your signature on that page?

15 A Yes, I do.

16 Q Where is your signature?

17 A It's in the upper left-hand and, under Members and
18 under The Company.

19 Q And what date did you sign this?

20 A July 31, 2003.

21 Q So is that consistent with your recollection as to
22 the time that Acceleration Capital was formed, at or about
23 July 31, 2003?

24 A Right, right, right, right, right, yes. I might
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1 have said earlier the summer of 2004. I don't recall. But
2 it was obviously summer of 2003.

3 Q Has Mr. Faith always been a member of Acceleration
4 Capital?

5 A Well, yes, technically yes. Not -- after we
6 formed the company, within a few months we lost complete
7 contact with each other. He completely withdrew from any
8 kind of activity at all.

9 Q When was the last time you spoke with Mr. Faith?

10 A Probably eight months ago, eight months ago to a
11 year ago. A very long time ago. And I don't believe we
12 spoke. It was via e-mail.

13 Q Can you summarize that e-mail for us? What was
14 the subject matter?

15 A It was to contact me to -- basically I sent him an
16 e-mail. He was missing in action for months on end. I
17 sent him a letter saying, you know, hey, contact me, I
18 needed to talk to you about something. There was something
19 I needed to ask him and I sent him an e-mail, he didn't
20 respond, so it was basically an e-mail saying, hey, you
21 know, what happened to you? Where have you disappeared to?

22 Q What did Mr. Faith do for Acceleration Capital
23 subsequent to formation?

24 A Nothing.
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1 Q Does Acceleration Capital have any business

2 operation other than that of a CPA?

3 A No.

4 Q And identify for us all pools that Acceleration
5 Capital has served as a CPO for.

6 A Acceleration Mercury 4X Fund. We formed another
7 fund, the Granite 1X Fund, and we never solicited,
8 retained, traded or did anything with it.

9 Q And you're referring to Acceleration Granite Fund,
10 one time LP?

11 A Yes.

12 Q And you said "we" formed it. Who is "we"?

13 A Curtis and I formed it at the same time we formed
14 the Mercury Fund, but there was no activity, no trading
15 system.

16 Q Did you ever sell a subscription to Acceleration
17 Granite Fund?

18 A No. No.

19 Q Was there ever any money in the fund?

20 A No.

21 Q Was there ever a commodity futures trading account
22 opened for the fund?

23 A I don't believe so. I don't believe so.

24 Q So the only --

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1 A I don't think so, as a matter of fact. No, I
2 don't think so.

3 Q So the only pool that Acceleration Capital has
4 traded on behalf or acted as CPO is Acceleration Mercury
5 Fund four times LP?

6 A Correct.

7 Q How is Acceleration Capital funded?

8 A Through investors.

9 Q I should say not the pool, the capitalization of
10 the CPO, Acceleration Capital, LLC.

11 A That was done originally with money that Curtis
12 and I deposited and since that point I've been funding the
13 entire thing. He never made anything beyond the original
14 deposit to pay for the corporation and to, for the filing
15 fees. It was all me.

16 Q When you say corporation, was Acceleration Capital
17 incorporated at any point or has it always been an LLC?

18 A I'm sorry, I misspoke. LLC.

19 Q And what was Mr. Faith's initial capital
20 contribution to Acceleration Capital?

21 A Couple a thousand dollars. A few thousand.

22 Between 2- and 5000, if that.

23 Q And how much money have you contributed subsequent
24 to that point in time?

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1 A I --

2 Q Let me ask first was your initial contribution
3 equivalent to that of Mr. Faith?

4 A Yes, it was.

5 Q Subsequent to that point in time, how much have
6 you invested or how much of a capital contribution have you
7 made?

8 A It was all, I don't know the exact number, but any
9 fee like registration fee or banking fee or anything, any
10 fee that happened after the initial formation was all done
11 from me, it all stemmed from me. Nobody else paid for it.

12 Q Can you approximate how much money that was?

13 A Between 5- and \$10,000.

14 Q If we could go back to exhibit 3 and specifically
15 the page Bates numbered 00143.

16 A Okay.

17 Q Do you see the heading Initial Capital
18 Contributions?

19 A Yes.

20 Q Under that heading both you and Mr. Faith are
21 listed as having made a \$2000 initial capital contribution.

22 A That is correct.

23 Q And is that consistent with your recollection?

24 A Yes. Initially, yes.
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1 Q And then below that the sharing ratio, Mr. Faith
2 seems to have a double share of yours?

3 A Yes.

4 Q Why is that?

5 A Because initially, him being a -- he had a
6 reputation in the industry for being, for being part of a
7 very, very valuable enterprise from previous. So he
8 believed his name carried a lot of weight with raising
9 capital, which is the reason why I wanted to become
10 partners with him because he had the name that would
11 potentially raise a lot of money. So we thought it would
12 be fair to split it this way.

13 However, he did not, none of that occurred.

14 His name was not as well perceived as we thought and he did

15 not, he basically did not make any contributions that would
16 entail this.

17 Q Has this agreement ever been adjusted?

18 A No. We -- there hasn't been anyone to contact to
19 adjust anything. He lives on -- he travels -- he's not the
20 kind of guy you just pick up a phone and call. He travels
21 on boats. He lives a very different kind of life style
22 than I do.

23 Q So in terms of distribution of money received by
24 Acceleration Capital, do you receive a hundred percent of
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1 it?

2 A I receive a hundred percent of it, but I,
3 everything that -- I sent him his share up to the last
4 distribution.

5 Q And by his share, did you send him 66.67 percent?

6 A Minus the -- yes, minus the amount of money for
7 expenditures and so forth. Wait, wait. I'm sorry. I have
8 to make a correction. No, that's not the case because this
9 is for profit, sharing profit. We didn't have a profit so
10 we didn't, that's not the money we split. We were never in
11 a situation where we had a profit so this would never come

12 up.

13 The amount of money that I'm talking about is
14 management fee money and that was to be split 50/50, not
15 33/66 because I was obviously, you know, involved in the
16 management and he had nothing to do with it.

17 Q Okay. And have you received management fees? Has
18 Acceleration Capital received management fees?

19 A Yes.

20 Q Are those management fees divided 50/50 with
21 Mr. Faith?

22 A Yes, they are.

23 Q For the entire duration of Acceleration Capital's
24 existence?

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1 A Yes, but from that amount we subtract the
2 expenditures.

3 Q And the sharing ratios listed on page 143, that's
4 for trading profits that Acceleration Capital --

5 A Yes.

6 Q -- created, received?

7 A Yes.

8 Q So Acceleration Capital, did Acceleration Capital
9 receive a percentage of trading profits generated by
10 Acceleration Mercury Fund?

11 A That's the idea, but we didn't have any profits so
12 we didn't, this never came up.

13 Q But if Acceleration Mercury Fund was ever
14 profitable, Acceleration Capital would receive a percentage
15 thereof?

16 A Yes.

17 Q And that money would be divided 66.67 percent for
18 Mr. Faith, 33.33 percent for you?

19 A Correct. I just remembered something else. One
20 of the reasons why he was also interested in me is because
21 he knew I was partners with Calamaris and Hasset, so he
22 thought it would be a good idea to get into business --
23 that was another reason why he wanted to get into business
24 with me. I'm just remembering.

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1 Q Has Mr. Faith ever been registered with the NFA,
2 to your knowledge?

3 A Yes, he registered at the time of formation. I
4 remember it was, there was a delay because there was a

5 two-week investigation into his fingerprint background
6 check. So it happened right around the time we formed the
7 fund.

8 Q And in what capacity was he registered?

9 A The same as me, as a commodity pool operator and
10 I'm not sure but I believe also as a CTA.

11 Q Was he registered as a principal of Acceleration
12 Capital, LLC?

13 A Yes, he was.

14 Q Are you familiar with an entity by the name of
15 Galt Capital?

16 A Yes, yes.

17 Q What is Galt Capital?

18 A That's a firm that he was associated with prior to
19 us getting in contact with another. But they did, from
20 what I understand, they did securities and they did not
21 have anything to do with commodities. And I also believe
22 they never actually got off the ground to trade. It was
23 something they started. They ended up basically giving --
24 you've just recollected part of my memory. That's how I --
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1 Galt Capital, Curtis Faith and his partner, Bruce.

2 Q Do you remember Bruce's last name?

3 A No, I don't. I apologize. I don't remember.

4 Q And Galt Capital was on the securities side of the
5 business?

6 A Yeah. They were, they had a website. It was a
7 very, very short website without any details.

8 Q Do you know what they did on the security side of
9 the business? Was it a brokerage?

10 A No, no, no, no, no. They were starting five or
11 six different funds to trade stocks. I don't remember his
12 last name. It'll come to me.

13 Q Was there ever any trading at Galt Capital, to
14 your knowledge?

15 A Not that I'm aware of.

16 Q Do you know if Mr. Faith ever traded a futures
17 account independent of Acceleration Mercury Fund?

18 A I know for a fund that he did.

19 Q Okay. Which accounts do you know that he traded?

20 A For Richard Dennis in the early '80s.

21 Q What about the time period of January 2000
22 forward. Did Mr. --

23 A Not that I'm aware of. Sorry.

24 Q That's okay. From the period January 2000
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1 forward, did Mr. Faith, to your knowledge, ever trade any
2 commodity futures accounts?

3 A No. But there's an answer to a question that you
4 asked me previously that I remembered, how we contacted
5 each other. They had a website --

6 Q Who is "they"?

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

13 Q Who made the initial contact? Did you contact him
14 or did he contact you?

15 A I believe I contacted him, but it had nothing to
16 do with starting a business together. It was just finding
17 information about trading possibly, meeting him, talking to
18 him.

19 Q Based on those discussions, the two of you decided
20 to form Acceleration Capital at some point in time.

21 A That's exactly correct, yes.

22 Q Let's go off the record. Take five minutes.

23 (A short recess was taken.)

24 MR. DOWD: Mike, you guys ready?
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1 MR. SOLINSKY: I'm here. Joe is not, but I'd say ⁷¹
2 go right ahead and keep rolling.

3 MR. DOWD: Okay. Let's go back on the record.
4 Let the record reflect that we just took a short recess.

5 BY MR. DOWD:

6 Q Mr. Plyam, did you remember the name of an
7 individual you were searching for earlier?

8 A Yes. His name is William Vessili Dutch.

9 Q Can you take a shot at spelling Vessili for us?

10 A Yeah. V-e-s-s-i-l-i. To the best of my
11 knowledge.

12 Q And who is Mr. Dutch?

13 A He's the nephew of Mr. Calamaris. He's a monk.

14 Q And he was a participant in a commodity pool at
15 some point in time?

16 A Yes, of Gauss Fund. And he asked recently,
17 probably within the last seven months he asked for a

18 withdrawal of his funds which we sent.

19 Q Okay. Identify for me each of your duties and
20 responsibilities with respect to Acceleration Capital.

21 A To make sure that the disclosure document is
22 updated and current. To make sure that all the bills are
23 paid. To make sure that the trades are correct trades and
24 in the right amounts for the fund.

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1 Q For Mercury Fund?

2 A For Mercury Fund. To look at the trading account
3 and make sure that the trades are reflective of what is
4 supposed to be in there. To keep records. To delegate
5 duties.

6 Q Do you have a supervisor?

7 A Do I have a supervisor?

8 Q Do you report to anyone?

9 A No, I do not.

10 Q So you're the main guy?

11 A Yes.

12 Q Does anyone report to you?

13 A Yes.

14 Q Who reports to you?

15 A Natalia Plyam and used to be Tony Denniston.

16 Q Was Natalia Plyam an employee of Acceleration
17 Capital, LLC at any point in time?

18 A No, she was not.

19 Q Okay. What about Mr. Denniston?

20 MR. HENDERSON: Can you read the last question
21 back first?

22 (The record was read.)

23 BY MR. DOWD:

24 Q Did Natalia Plyam ever do any work on behalf of
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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
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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?

9 A Bradley Kaye, K-a-y-e.

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.
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1 Q Whose name is on the lease?

2 A Mine.

3 Q Is your wife's name on the lease?

4 A I don't know. I know she negotiated it. I'm not
5 sure if she put it on there. I don't think so, but I can't
6 say for sure.

7 Q Do you have the authority to hire employees on
8 behalf of Acceleration Capital?

9 A Yes, I do.

10 Q Do you have the authority to terminate employees
11 on behalf of Acceleration Capital?

12 A Yes, I do.

13 Q Does Acceleration Capital maintain any banking
14 accounts?

15 A Yes, it did.

16 Q Who opened those accounts?

17 A I did with Curtis Faith. Both of us did. But it
18 was only done in my name.

19 Q How did Mr. Faith open an account --

20 A He went with me to the bank when I was opening the
21 account. He was there.

22 Q How many accounts has Acceleration Capital opened
23 and by accounts I mean banking accounts.

24 A Two.

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1 Q Okay. Identify those two accounts for me.

2 A They are both with Wells Fargo. One is
3 Acceleration Capital and one is Acceleration Mercury 4X.

4 Q Identify for me all signatories on the
5 Acceleration Capital account.

6 A Only me.

7 Q Has that always been the case?

8 A Yes, it has.

9 Q Okay. And for Acceleration Mercury, identify all
10 signatories on the Wells Fargo account for me.

11 A Myself.

12 Q Anyone else?

13 A No.

14 Q Has anyone else ever been a signatory on that
15 account?

16 A No.

17 Q Do you have authority to secure credit on behalf
18 of Acceleration Capital?

19 A Authority from who?

20 Q Can you obtain a -- according to the LLC
21 agreement.

22 A I don't believe so. It's not really within the
23 scope of our, of anything we do. I wouldn't ask for it
24 because I wouldn't need to do that.

1 Q Do you have authority to enter into contracts on
2 behalf of Acceleration Capital?

3 A If they are within the scope of the fund, yes.

4 Q Does anyone else at Acceleration Capital have that
5 authority?

6 A No.

7 Q Has anyone else ever had that authority at
8 Acceleration Capital?

9 A No.

10 Q Who's ultimately responsible for the management of
11 Acceleration Capital?

12 A Me.

13 (CFTC Exhibit No. 4 was marked for
14 identification.)

15 BY MR. DOWD:

16 Q Mr. Plyam, do you recognize the document marked as
17 exhibit 4?

18 A Yes, I do.

19 Q What do you recognize that document to be?

20 A It is an offering memorandum for Acceleration

21 Mercury 4X, LP.

22 Q For the record, exhibit number 4 is Bates numbered
23 Plyam00083.

24 A I'm sorry. I missed the question.
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1 Q It wasn't a question. It was a statement for the
2 benefit of our friends in Washington.

3 A Okay, sorry.

4 Q Mr. Plyam, who drafted the document that's marked
5 as exhibit 4?

6 A It was myself.

7 Q Did you have any assistance?

8 A Yes, I did.

9 Q Who assisted you?

10 A That's actually one of the reasons why Curtis
11 came. He was helping me draft this and we used the
12 information, we used information from the previous fund
13 that I had, which was the Gauss Fund, in order to draft
14 this document. So we used sort of a, the documents from a
15 fund that was in existence to draft this document.

16 Q Did anyone other than Mr. Faith assist you in
17 drafting exhibit number 4?

18 A No.

19 Q And with respect to the drafting of exhibit number
20 4 and your role and that of Mr. Faith, are you able to
21 differentiate for us what you did as opposed to what
22 Mr. Faith did, what were your responsibilities as opposed
23 to his?

24 A I would not have a clue at this time. We
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1 basically needed to draft and make changes from one
2 document to the other. He was doing it a couple hours; I
3 was doing it a couple hours. There was no: You do this
4 part -- I wouldn't be able to recall that. But it was a
5 joint effort. That's actually -- when he came here the
6 first time for a week, that's what we spent our time doing.

7 Q Were there any sections of the document that you
8 were solely responsible for?

9 A If I did, I wouldn't be able to tell you which
10 ones.

11 Q What about Mr. Faith. Were there any portions or
12 sections of the document that he was solely responsible
13 for?

14 A Yes. His background history. And I was solely
15 responsible for my background history.

16 Q Okay. Any other portion?

17 A Not that I can recall, no.

18 Q Is this the first disclosure document used by
19 Acceleration Mercury Fund?

20 A We used the same disclosure document. There was
21 only one disclosure document used. It was just updated to
22 keep the table and to keep things current, but it was one
23 and the only disclosure document.

24 Q So there are other iterations of the document
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1 marked as exhibit 4?

2 A Yes. Ones that were submitted to the NFA every
3 time, when we registered it. The reason I'm saying that is
4 because this is January 15 of '05 and I know there were
5 versions prior to that, so I'm just assuming that that's
6 what you're talking about. But they were the same.

7 Q That is my question. I wanted to know if there
8 were prior versions, prior iterations of 4.

9 A Yes.

10 Q All right. How many?

11 A I do not recall. The reason is because sometimes
12 we were requested to make a change by the NFA. They would
13 call us up and say, Hey, you need to make this changes to
14 your document or sometimes it was just updating the table.
15 So...

16 Q And by updating the table you're referring to
17 what?

18 A To the --

19 Q If you want to go to a specific page in here, that
20 would be fine.

21 A The trading table.

22 Q Performance --

23 A The performance summary. Here we go. Page 17.

24 Yes, page 17.

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1 Q And that's Bates numbered Plyam00099?

2 A Yes. And Toby -- I'm sorry, go ahead.

3 Q Okay. So these performance tables on page 0099
4 were updated periodically?

5 A Yes, they were.

6 Q Okay. Did the prior iterations of this document

7 do anything other than update the tables that are on page
8 17 or 00099?

9 A Possibly very minor, a misspelling or something, a
10 line here or there per the NFA, but nothing substantial or
11 major.

12 Q And back on the first page of this document in the
13 first full paragraph, I'm looking at the fourth line which
14 references a Statement of Additional Information, Part II.

15 Do you see that?

16 A No.

17 Q The full sentence is:

18 The Disclosure Document is a two-part
19 document...

20 A Yes.

21 Q ...comprised of the Confidential Private
22 Offering Memorandum of Acceleration
23 Mercury Fund 4X, LP (Part I) and the
24 Statement of Additional Information (Part
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1 II).

2 A Yes, I see that.

3 Q Okay. Is exhibit number 4 Part I?

4 A Yes, it is.

5 Q What is Part II?

6 A It is a statement of additional information which,
7 it's another section that's required by the NFA in order to
8 submit this and that was never changed.

9 Q What information is in Part II, the statement of
10 additional information?

11 A It's more, it's more disclosures, more information
12 for our clients.

13 Q What type of disclosures?

14 A About risks, about, just different, different
15 risks, different information about the fund.

16 Q Have you produced a copy of that to the CFTC?

17 A I don't recall. I believe I did.

18 MR. HENDERSON: I'll have to check. I'm not sure.

19 MR. DOWD: Let's go off the record.

20 (Off-the-record discussion.)

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

22 MR. SOLINSKY: Ted, before you get back on the
23 record --

24 MR. DOWD: Off the record.
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1 (Off-the-record discussion.)

2 MR. DOWD: At this point in time I'm going to make
3 a formal request pursuant to the subpoena that the CFTC
4 issued Mr. Plyam that he produce a copy of the document
5 referenced on, in the first paragraph of exhibit number 4,
6 that being the Statement of Additional Information, Part
7 II.

8 MR. HENDERSON: Will do.

9 BY MR. DOWD:

10 Q Have you ever been affiliated with Galt Capital?

11 A No.

12 Q Ever been an owner of Galt Capital?

13 A No.

14 Q Ever have an ownership interest in Galt Capital?

15 A No.

16 Q If I could direct you to page 14 of exhibit 4?

17 A What was the page?

18 Q It's 14 and it's also Bates stamped Plyam00096.

19 A Okay.

20 Q And specifically the very bottom of the page, the
21 last paragraph which reads:

22 Yuri M. Plyam has been a managing member
23 of CHP Asset Management, LLC, an

24

investment management company and a
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1 General Partner of the Partnership....

2 Is CHP Asset Management a general partner of
3 Acceleration Capital, LLC?

4 A No.

5 Q Okay. So that sentence is referring to you as the
6 general partner of the partnership?

7 A Of the other partnership, of CHP. They have
8 nothing to do with one another, Acceleration and CHP.

9 Q So that sentence is stating that you're a general
10 partner of CHP Asset Management.

11 A Correct.

12 Q Then moving on to the subsequent page Bates
13 numbered Plyam00097, specifically the sentence that reads:

14 He has received several American Juris
15 Prudence awards for his studies in law,
16 see that?

17 A Yes.

18 Q What awards were those?

19 A Those are when you receive the highest mark in
20 your class. Our school was giving, those were called -- in

21 California when you received the highest mark in class, you
22 received juris prudence awards.

23 Q Okay. And what classes did you receive the
24 highest grade?

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1 A Business organization. Civil procedure. Torts. 85
2 UCC. There's more. Family law. Criminal law. I believe
3 that's it.

4 Q Did you graduate number one?

5 A Two.

6 Q Have you received any other juris prudence awards
7 other than the highest grade in the classes you just
8 identified?

9 A No. No.

10 Q And were those awards issued by your school?

11 A Yes.

12 Q If I could move you to the bottom of that
13 paragraph and the last sentence which reads:

14 In July 2003, Mr. Plyam formed
15 Acceleration Capital, LLC, where he served
16 as a managing member; his duties include

17 system research and development as well as
18 trade execution and pool compliance
19 issues.

20 You see that sentence?

21 A Yes.

22 Q Specifically what is meant by pool compliance
23 issues?

24 A Dealing with the NFA. Making sure all the
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1 requirements for the NFA and the CFTC were met.

2 Q And were you ultimately responsible for that on
3 behalf of Acceleration Capital?

4 A Yes.

5 Q The buck stopped with you?

6 A It did.

7 Q If I could back you up to page 11, which is Bates
8 numbered Plyam00093, and specifically under Investment
9 Program.

10 A Mm-hm.

11 Q The first sentence which says:

12 The investment program has been designed
13 to deliver high returns.

14 A Yes.

15 Q Okay. Describe for me how the investment program
16 is designed to deliver high returns.

17 A By using high leverage.

18 Q Okay. And that can also result in substantial
19 losses.

20 A Absolutely.

21 Q That's the other side of high returns.

22 A Of course.

23 Q And the trading system, did Acceleration Capital
24 employ a trading system?

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1 A Yes, it did.

2 Q And was that the trading system that you were
3 describing for us earlier?

4 A Yes, it was.

5 Q Remind me what the name of that was.

6 A Triple Moving Average.

7 Q And that was the widely available public, widely
8 available in the public trading system?

9 A Absolutely. It's probably the oldest, second

10 oldest system ever invented for trading large markets.

11 Q Do you have a copy of that trading system?

12 A Here with me?

13 Q Not with you.

14 A Yes, of course. I know the system.

15 Q Is it reduced to writing?

16 A Yeah. It's completely, everything we do is
17 completely statistical. There's no human interaction
18 whatsoever.

19 Q I'm going to request that a copy of that also be
20 produced.

21 A Sure.

22 MR. HENDERSON: No problem.

23 (CFTC Exhibit No. 5 was marked for
24 identification.)

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1 BY MR. DOWD:

2 Q Mr. Plyam, do you recognize the document that's
3 been marked as exhibit number 5?

4 A Yes.

5 Q And for the record, exhibit 5 is Bates stamped
6 Plyam00290.

7 Mr. Plyam, can you tell us what exhibit
8 number 5 is?

9 A It's a list of clients, their contact information
10 and the amount of money they deposited and/or withdrew and
11 -- withdrew.

12 Q Do you know who created this document?

13 A Toby Denniston.

14 Q Do you know when he created this document?

15 A It was revolving over time because we added
16 clients, took away clients, so he started this document
17 when we started the fund and then just kept updating it.

18 Q Are there any Mercury Fund pool participants,
19 whether current or former, that are not identified on
20 exhibit number 5?

21 A I do not believe so, no. That is it. To the best
22 of my knowledge, that's pretty much it.

23 Q Are you aware of any inaccuracies in this exhibit?

24 A No, I'm not. There may be some, but I'm not aware
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1 of them.

2 Q My question is are you aware of any.

3 A No. No.

4 Q So to the best of your knowledge, exhibit 5
5 accurately reflects former and present participants in
6 Acceleration Mercury Fund and their capital contributions?

7 A And/or withdrawals, yes.

8 Q And/or withdrawals.

9 A Yes.

10 Q Did you have a relationship with any of the pool
11 participants reflected on exhibit 5 that predated
12 discussions that you had with them with respect to
13 Acceleration Mercury Fund?

14 A Several of them.

15 Q Okay. Identify those people for us.

16 A Deitra and John Campbell.

17 Q What page are you on?

18 A The first page, the third from the top.

19 Q Okay. And how did you know Mr. and Mrs. Campbell?

20 A They were a client of mine in Castle Trading prior
21 to getting involved in Acceleration.

22 Q Anyone else?

23 A Yes. Neil Lewis on page two, third from the top.

24 Greg Homan.

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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
6 started your Acceleration Mercury Fund pool?

7 A Yes, but I'm not sure if he was a client or
8 prospective client, but I did know him prior to.

9 Q There was a pre-existing relationship of some
10 sort?

11 A Yes, yes.

12 Q Anyone else?

13 A Yes. Marc Rooker.

14 Q Is that on page three?

15 A The last page.

16 Q How did you know Mr. Rooker?

17 A We'd been corresponding for about a year prior to.
18 He was interested in trading systems through me for his own
19 account.

20 Q Was he a Castle customer?

21 A Yes, he was.

22 Q Anyone else?

23 A Yes, several. Michael Sutton, the next person

24 after Marc Rooker.

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1 Q Okay. How did you know Mr. Sutton?

2 A He was a very good friend of mine. He was also a
3 client of Castle Trading.

4 Q Was he a friend before he was a client of Castle
5 Trading?

6 A Yes.

7 Q How do you know him?

8 A From Albany, from another person who was a client
9 of mine for years before that. Just, we met. And we're
10 still very good friends.

11 Q Did you say Albany?

12 A Albany, yes.

13 Q Are you referring to a person or the city, Albany,
14 New York?

15 A City. Albany, New York.

16 Q Did you ever live in Albany?

17 A No.

18 Q And Mr. Sutton is from Albany?

19 A Yes. Well, now he lives -- used to live in New

20 York. Now he lives in Albany and Saratoga Springs. He has
21 dual addresses.

22 Q Okay. Anyone else?

23 A Yes. Hilon Tsigonias.

24 Q How do you know Mr. Tsigonias?
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1 A A client. Used to day trade at Castle Trading.

2 Q Anyone else?

3 A Probably so, but I don't want to say for sure.

4 These are just the ones that I'm very, very familiar with.

5 There might have been others.

6 Q So to the best of your recollection, the people
7 you identified thus far are those that you had a
8 pre-existing relationship prior to their participation in
9 Acceleration Mercury Fund?

10 A That is correct. I could tell you for sure which
11 ones I didn't if that would be helpful. If you want to.

12 Q That's not necessary.

13 A Okay. Okay.

14 Q How do you solicit customers or participants for
15 Acceleration Mercury Fund?

16 A Most of these clients wanted to trade systems and

17 they did not have, or they tried and lost money trading
18 long term trend following systems on their own. One of the
19 key secrets to long term trend following secrets (sic) is
20 you need money. You need to have a large amount of money
21 because you're trading many, many markets.

22 A lot of these guys were my clients, they
23 lost money trading on their own, and they were looking and
24 asking me all the time for an avenue to trade in a fund.

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

6 So when Curtis and I started talking about
7 this I said, Hey, I may be doing something in the future.
8 If you're interested, let me know and I'll keep you posted,
9 and they were very, very interested. As a matter of fact
10 --

11 Q Who is they?

12 A The clients that I mentioned to you.

13 Q Okay. Those that you had a pre-existing
14 relationship with?

15 A Correct. Correct.

16 Q So at some point in time you contacted them and
17 informed them that you were beginning a pool.

18 A Yes.

19 Q That being the Acceleration Mercury Fund.

20 A Correct.

21 Q Okay. What about the individuals that you didn't
22 have a pre-existing relationship with? How did you solicit
23 those participants for the pool?

24 A I did not. Curtis contacted -- those were Curtis.
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1 And that's what I wanted to mention, which ones came from
2 Curtis.

3 Q Which ones came from Curtis?

4 A Jean-Francois Brouillet. He had a working
5 relationship -- he's the second from the top. He had a
6 working relationship with Curtis in some capacity. I don't
7 remember or know. He just mentioned it to me once. So he
8 knew Curtis from a while back.

9 Q So Mr. Faith introduced Jean-Francois Brouillet to

10 the pool?

11 A Right.

12 Q Who else did Curtis introduce to the pool?

13 A And I believe Davis Legal Associates, Keenan
14 Davis. I think he might have been one of the people who
15 flew out there to take a course from Curtis a while back or
16 something to that effect. I don't know for sure, but he
17 contacted me -- it was Curtis's client or Curtis's contact.

18 And one more. Paul Maggio.

19 Q Okay.

20 A Didn't even talk to him. He just sent us a check.
21 Didn't, never, I don't think I've ever spoken to him
22 before.

23 Q Do you know how Mr. Faith knew Mr. Maggio?

24 A Mr. Maggio works in the futures industry. He
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1 worked for Rand, I believe. He worked for a firm and he
2 knew him prior to because they had some type of business
3 dealings in the commodities or he knew him from the
4 industry. Paul is in the industry.

5 Q Do you know if Paul Maggio was provided with a

6 disclosure document prior to participation?

7 A They all were because when I received the funds I
8 had a copy of his disclosure. There was a statement of
9 additional information, there was an agreement that they
10 had to sign, so we have it for all of these clients.

11 Q And presumptively he was also provided with a
12 subscription agreement?

13 A Correct.

14 Q Do you know who provided him, that is, Mr. Maggio,
15 with the disclosure document and subscription agreement?

16 A What we did was it was either Curtis or he sent us
17 an e-mail and said, Can you e-mail us a copy of your
18 disclosure document.

19 Q Okay. Is there anyone else reflected on exhibit
20 number 5 that Curtis introduced to the fund?

21 A You know, I don't remember any -- I don't
22 remember. Possibly, but I don't remember.

23 Q Did Acceleration Capital ever run any print
24 advertisements on behalf of Acceleration Mercury Fund?

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1 A No.

2 Q Do you know if any print advertisements were ever

3 run for Acceleration Mercury Fund?

4 A Not to my knowledge, no.

5 Q What about radio advertisements?

6 A No, no.

7 Q Television advertisements?

8 A No.

9 Q What about the Internet?

10 A We, well, that's -- during the audit when, the NFA
11 came to the office to audit us.

12 Q What audit was this?

13 A This is the last audit where they found Toby,
14 where they found Toby doing these things with the accounts.

15 Q That was roughly August of '05.

16 A Yes. David Groom told me that it wasn't --

17 Q Who is Mr. Groom?

18 A He works for the NFA. I guess he's the senior
19 auditor for the NFA.

20 We had a website that was just Acceleration
21 Capital and all it was was a copy of the disclosure
22 document. There was no other, additional information on
23 there.

24 Q What was the web address?

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1 A Accelerationcapital.com. And there was no, there
2 was no, it was just a link. It said Acceleration Capital
3 and it had a disclosure that you have here on the first
4 page of the CFTC disclosure document. It says, If you
5 accept, click here, and then it just has a copy of the
6 disclosure document.

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

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

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

20 A No, it does not.

21 Q What about for Acceleration Capital?

22 A No, it does not. There's no mention of it in any

23 way whatsoever.

24 Q Okay. And at any point in time did the
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1 Acceleration Capital website advertise for Acceleration
2 Mercury Fund other than posting the disclosure document to
3 the Internet?

4 A No.

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

7 BY MR. DOWD:

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

10 A Yes, I do.

11 Q What is that document?

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

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

16 Is that a December 20, 2005 letter from the
17 NFA to you, Mr. Plyam.

18 A Yes, it is.

19 Q And if I could direct your attention to page

20 three, which is Bates numbered Plyam00307.

21 A Okay.

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

24 NFA reviewed postings to the chat room.
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1 Quote, Trader's Roundtable, end quote,
2 from June 30, 2003 to April 15, 2005.

3 A Yes.

4 Q Do you know what the NFA is referring to.

5 A Yes, I do. They showed me this information when
6 they were in my office.

7 Q What is this information?

8 A It appeared to be some kind of a blog with
9 communications and I explained to them very strongly when
10 they were in my office that I did not post it or have
11 anything to do with it. And then I showed them --

12 Q Do you know who did post it?

13 A No, I do not. And then I showed them several
14 other postings from several other sites that were just
15 complete nonsense, people saying weird things about many,

16 many different topics. But none of them were posted by he
17 me and they were not posted under my direction.

18 Q Do you know if any Acceleration Capital employee
19 posted the information?

20 A I'm pretty sure nobody did it and nobody did it
21 under my approval, my supervision or under my guidance in
22 any way.

23 Q What about Castle Trading. Do you know if any
24 Castle Trading employee posted the information?
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1 A Not with my knowledge, with my -- not under my
2 knowledge. But I did have two people that worked for me,
3 for Castle Trading as brokers that were dismissed that I
4 found two years earlier through one of those forums.

5 Q And who are those people?

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

11 Q Okay. And what were Morgan Moore and the other
12 individual whose name you can't remember posting on, was it

13 the Trader's Roundtable website?

14 A Yes.

15 Q Is it a website?

16 A Turtle Trader software.

17 Q What were they posting on that website?

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

21 Q What were they doing that you fired them?

22 A They weren't doing anything in relationship to
23 this that I fired them. They were just not doing a good
24 job as brokers. That's why they were fired.

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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 years 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. 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?

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1 A Yes.

2 Q And specifically you posted something related to
3 futures trading on the Traders Roundtable website?

4 A I can tell you specifically what it was about.

5 There was a program --

6 Q Let's start here. Was it the Traders Roundtable
7 website?

8 A It was Turtle Trading software.

9 Q Is Turtle Trading software the same as the Traders
10 Roundtable?

11 A From what I understand, a few years after this
12 started, they changed the name but they kept the posts so,
13 yes.

14 Q So it started as Turtle Trading software.

15 A Right.

16 Q Do you recall the web address?

17 A No.

18 Q And at some point in time the name of the website
19 changed to Traders Roundtable?

20 A Yes, and I found that out when --

21 Q The posts that were made under the Turtle Trading
22 name were maintained when the website changed names?

23 A From what I understand, yes.

24 Q Okay. And so you posted on that website?
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1 A No. We were -- yes, originally. About a program

2 called Trading Recipes, which was a trading software
3 designed to test systems. It was a DOS program. I
4 purchased it and he purchased it and we wanted to know how
5 to set it up so we were talking about how to --

6 Q "He" being Marc Rooker?

7 A Yes.

8 Q That's how you met Mr. Rooker.

9 A Correct. And we were helping each other for a
10 couple of years, you know, tweaking this program, setting
11 it up, results, but it had nothing to do with trading
12 accounts or trading. It was just two guys talking about
13 commodities and tweaking with the program.

14 Q And other than the disclosure document that we
15 discussed that was on the Acceleration Capital website,
16 have you ever posted anything on the Internet, be it a
17 message board or a website that you were related to or
18 affiliated with related to Acceleration Capital or
19 Acceleration Mercury Fund?

20 A No.

21 (CFTC Exhibit No. 7 was marked for
22 identification.)

23 BY MR. DOWD:

24 Q Mr. Plyam, do you recognize the document marked as
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1 exhibit number 7?

2 A Yes, I do.

3 Q What do you recognize this document to be?

4 A This is a response that I wrote to the NFA in
5 response to their, to the previous document which was their
6 findings on December 20.

7 Q This is your response to exhibit number 6?

8 A Yes.

9 Q Let me get back to this letter with you. I just
10 wanted to mark it for consistency sake, but we'll discuss
11 this later on too.

12 (CFTC Exhibit No. 8 was marked for
13 identification.)

14 BY MR. DOWD:

15 Q Mr. Plyam, do you recognize the document marked as
16 exhibit number 8?

17 A Yes.

18 Q And for the record, exhibit 8 is Bates numbered
19 Plyam00062.

20 A Yes.

21 Q Mr. Plyam, what do you recognize that document to
22 be?

23 A It's a procedure for Written Material/Print
24 Material done while under the direction of David Groom
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1 while they were in my office for the last audit.

2 Q Who created this document?

3 A I did.

4 Q And when did you create this document?

5 A Between August 20 and 29 while the NFA was in my
6 office under direction of David Groom.

7 Q Of 2005?

8 A Yes.

9 Q And what do you mean under the direction of
10 Mr. Groom?

11 A He assisted me in creating this document. We
12 spent a lot of time on it actually.

13 Q Okay. Did you consult anyone prior to creating
14 this document?

15 A No.

16 Q Did you seek Mr. Faith's approval prior to
17 implementing this policy?

18 A No.

19 Q Did you seek anyone's approval on behalf of CHP
20 Asset Management, Acceleration Capital and Castle Trading
21 prior to implementing this policy?

22 A No.

23 Q Did you have the power to unilaterally implement
24 this policy?

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1 A Of course.

2 Q Was there a policy in place before this one?

3 A Yes, but it wasn't this detailed.

4 Q Who created this policy -- or who created the
5 prior policies?

6 A I did.

7 Q And how many policies are we talking?

8 A Just one policy.

9 Q What was the date of creation?

10 A I don't recall. Can I expand?

11 Q Go ahead.

12 A Well, it was, basically when I made a change to
13 the NFA I basically would take it and I would put it in a
14 folder and David Groom wanted the progression of things
15 there so he helped me create this method where it was more

16 A-B-C-D and that's what I adopted. And it makes sense and
17 it works great.

18 Q But there was a policy pre-existing this one?

19 A Yes.

20 Q And you created that policy?

21 A Yes.

22 Q Okay. Is that policy reduced to writing?

23 A I don't recall. No, I don't think it was because
24 we were look fog for it and we didn't have it so we made
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1 this one up. Basically I was under the impression that I
2 had to keep a record of it, but this kind of broke it down
3 more into detail so it worked out fine.

4 Q Where were the proceeds from the sale of
5 Acceleration Mercury Fund pool subscriptions deposited?

6 A In Wells Fargo.

7 Q That was a banking account at Wells Fargo?

8 A Yes, it was.

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

11 BY MR. DOWD:

12 Q Mr. Plyam, do you recognize the document marked
13 exhibit number 9?

14 A Yes.

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

17 Mr. Plyam, what do you recognize this
18 document to be?

19 A It's an Acceleration Mercury Fund account,
20 business checking account statement.

21 Q Okay. And is this the Wells Fargo statement that
22 you just referenced, the Wells Fargo bank account that you
23 just referenced?

24 A Well, there was two. There was Acceleration
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1 Capital and Acceleration Mercury Fund.

2 Q Do you recall I asked you where the proceeds of
3 Acceleration Mercury Fund's pool subscriptions were
4 deposited?

5 A Yes. Sorry.

6 Q Okay. And was it your answer that there was a
7 bank account at Wells Fargo?

8 A Yes.

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

12 A Yes.

13 Q So this is the bank account for Mercury Fund.

14 A Correct.

15 Q Did Mercury Fund ever have any other bank account?

16 A No.

17 Q Were account statements from this account, the
18 Wells Fargo bank account, mailed to your office?

19 A No.

20 Q Where were they mailed?

21 A They weren't mailed.

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

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1 A They would come on line and Toby Denniston would
2 print them out and show them to me.

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

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

7 Q Is it consistent with your recollection that the
8 account number is 535-7180347?

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

12 Q But to your knowledge --

13 A Yes, this looks like the right information.

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

16 A That's correct.

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

19 A No.

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

23 A No.

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

2 A We -- Toby Denniston would download them from the
3 Internet and he would show them to me.

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

6 A Yes, I did.

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

10 A Yes, I could.

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

13 A My wife, Natalia Plyam.

14 Q Anyone else?

15 A No.

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

18 A I did.

19 Q And could you check account transactions via the
20 Internet?

21 A I could.

22 Q Did Acceleration Mercury Fund use an introducing
23 broker?

24 A Yes, Castle Trading.
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- 1 Q Is Castle Trading a corporation?
- 2 A Yes.
- 3 Q Where is it incorporated?
- 4 A In Delaware, I believe.
- 5 Q And is Castle Trading registered with the NFA?
- 6 A Yes it is.
- 7 Q In what capacity?
- 8 A It's an independent broker, futures broker.
- 9 Q Is it registered as an introducing broker?
- 10 A Introducing broker, yes. Independent introducing
11 broker.
- 12 Q Is it registered in any other capacity?
- 13 A No.
- 14 Q When was Castle Trading formed?
- 15 A Castle Trading was formed around Christmas of
16 2000, around that time, sometime around there. February
17 maybe of 2001 or Christmas of 2000.
- 18 Q And who formed Castle Trading?
- 19 A Myself.
- 20 Q Anyone else?
- 21 A No.

22 Q Where is Castle Trading physically located?

23 A At 8619 Reseda Boulevard.

24 Q The suite 101 office?
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1 A Correct.

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

5 A No.

6 Q What is Active Futures?

7 A It's just another name that Castle goes by. It's
8 a website where clients want to do very, very quick
9 intraday trades on the mini S&P and they want to pay 3 or
10 \$4 a round turn. That's where they go to.

11 And Castle Trading is more broker assisted
12 type of trading. They are one and the same entity.
13 There's no difference between them.

14 Q Castle Trading is not a separate entity?

15 A No, it's not a separate entity. And actually, the
16 reason we cleared through -- everybody who was looking for
17 just a deep, deep discount rate we put with Active Futures
18 because Active Futures clears with Rosenthal Collins and

19 that's who we use for very quick, short-term trading
20 because their rates are lower and they have a program
21 called J-Trader where -- so Active Futures clears at
22 Rosenthal Collins.

23 My rates were a bit lower there so I decided
24 to put Acceleration with them because my rates were a
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1 little lower and I was trying to save money because
2 obviously commissions eat -- not in this case but
3 commissions can eat into the profits. So that's why they
4 were put with Rosenthal Collins.

5 If they were put with Refco, it would be
6 introduced by Man, but because they were through RCG it
7 said Active Futures. We really do separate them, but it's
8 the same company.

9 Q And Castle Trading clears through what FCM?

10 A Through Cadent -- 95 percent Refco/Man, 5 percent
11 Cadent and RCG a couple of accounts.

12 Q Okay. And Active Futures goes strictly through
13 Rosenthal Collins Group?

14 A Correct, because they have the platform we need

15 and Active Futures is for three to five round turn e-mini
16 S&P trades.

17 Q What is Castle FX?

18 A Castle FX is, it's just Castle Trading. We wanted
19 to give it a different website in order to do 4X so we
20 created a website. That's also part of Castle Trading.

21 Q It's not a separate entity?

22 A No.

23 Q Okay. And who does Castle FX clear through?

24 A Doesn't clear through anybody right now. When
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1 Refco, when the events with Refco occurred their FX
2 business went belly up.

3 Q Has Castle FX ever cleared through an FCM?

4 A It cleared through Refco for, 'til what occurred
5 with Refco occurred.

6 Q Has it ever cleared through any other entity other
7 than Refco?

8 A No, no.

9 Q What is Castle Trading Company?

10 A Before we incorporated, it was just Castle Trading
11 Company and then when we incorporated it was Castle

12 Trading, Inc. We didn't incorporate right away when we
13 started.

14 Q When did you start?

15 A Beginning of --

16 Q Christmas of 2000?

17 A Around that time.

18 Q And when did you incorporate?

19 A About a year later, I believe. Maybe a
20 year-and-a-half.

21 Q What's your position with Castle Trading
22 corporation? Do you have a title?

23 A I'm the president.

24 Q Are there any other officers?
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1 A My wife. She is vice president.

2 Q Anyone else?

3 A Yes.

4 Q Gregory Zane Parker?

5 A Gregory Zane Parker. But, he's a registered
6 principal, but he doesn't own any partnership interest in
7 the company.

8 Q He's a registered principal with the NFA?

9 A Yes.

10 Q For Castle Trading, Incorporated?

11 A Yes. Yes.

12 Q How do you know Mr. Parker?

13 A He was a, he was an associate person for a little
14 over a year now. He -- basically what we did was after the
15 NFA audit, we wanted to clean up and just have a much
16 smaller company.

17 Q Which NFA audit are you referring to?

18 A The last one.

19 Q August '05.

20 A Yes. And he's a young guy, he's a good guy so we
21 wanted --

22 Q Was he hired subsequent to that audit?

23 A No, prior to. He's been a client, excuse me, he's
24 been with us for over a year.

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1 Q And he's registered as an associated person with
2 Castle Trading, Incorporated?

3 A Yes.

4 Q And did you hire him?

5 A Yes, I did.

6 Q Okay. And describe what he does for Castle
7 Trading.

8 A He does the electronics. He sets up the
9 networking, computers, does all those things, and he's an
10 introducing broker for us as well.

11 Q Does he report to you?

12 A Yes, he does.

13 Q Do you know if he's ever been the subject of a
14 regulatory action or investigation?

15 A To the best of my knowledge, he has not.

16 Q And what was his background in the industry, if
17 any, before the time he joined Castle Trading?

18 A He did not have any experience whatsoever.

19 Q How old is he?

20 A He just turned 25.

21 Q And is he an officer of Castle Trading,
22 Incorporated?

23 A He is just -- yes, he's a principal. Part
24 principal.

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1 Q But with respect to the corporation.

2 A No. None. No interest at all.

3 Q And with respect to the corporation, does anyone
4 other than yourself and your wife, Mrs. Plyam, have any
5 interest?

6 A No.

7 Q Describe Natalia's role with Castle Trading.

8 A She assists me in supervising. She does the
9 payroll. She calculates the monthly payout, assists in
10 answering the phone, does a lot of the housekeeping type of
11 activities.

12 Q What do you mean by assist you in supervising?

13 A She makes sure the brokers are doing their job.
14 She looks over the equity run to make sure there's no
15 margin calls.

16 Q How many brokers does Castle Trading employ?

17 A We now have only one broker, Greg, and -- well,
18 not including my wife and myself.

19 Q Has Castle Trading ever employed any individuals
20 as brokers other than Mr. Parker?

21 A Yes.

22 Q Identify those people for us.

23 A Dion Campbell. Jeff, what's Jeff's last name.

24 Jeff Anthony. That was it for the last couple of years.

1 Before that, we had Morgan Moore and this other gentleman
2 who I cannot remember his name for the life of me and it's
3 going to hit me right when I leave here as it always does.

4 Q Well, if that happens you can tell Mr. Henderson
5 and I'm sure he'll be kind enough to give me a call.

6 What period of time was Dion Campbell
7 employed with Castle Trading.

8 A He was working for Castle Trading for about a
9 year, I believe, somewhere from right in the beginning of
10 '05 'til, or let's see. I would guess it was maybe from
11 January to January or from, about a year. He worked for us
12 for about a year and so did Jeff Anthony. They started
13 right around the same time.

14 Q Okay. And when was that when they started? Was
15 it early 2005?

16 A Yeah, either real, real late 2004 or real, real
17 early 2005.

18 Q Okay. And was it part of your duties and
19 responsibilities to supervise the brokers that Castle
20 employed?

21 A Yes.

22 Q And between yourself and your wife, Mrs. Plyam,
23 who ultimately bears the responsibility of supervising the
24 brokers?

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1 A It was myself.

2 Q Who hired the brokers that you've identified?

3 A I did.

4 Q Did anyone else hire them?

5 A No.

6 Q Have you ever fired anyone?

7 A Yes.

8 Q Okay. Who have you fired?

9 A Jeff Anthony.

10 Q Why did you fire Mr. Anthony?

11 A I was having too many problems with him. Didn't
12 believe he was giving clients proper information
13 disclosure. Just didn't like his attitude. Just didn't
14 feel comfortable having him around.

15 Q What do you mean by he wasn't giving clients
16 proper disclosures?

17 A I believe he was not, he was putting -- I believe

18 he was putting clients and trades that had no business --
19 he wasn't watching risk properly and I have no tolerance
20 for that.

21 Q Is that the sole reason why you fired him?

22 A That and we just, we really didn't get along.

23 Q So is it fair to say you had authority to fire

24 employees on behalf of Castle Trading, Incorporated?

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1 A Yes, I did.

2 Q Did anyone else have that authority at Castle
3 Trading, Incorporated?

4 A No.

5 Q Did you hire your wife to work for Castle Trading,
6 Incorporated?

7 A Yes.

8 Q Did you supervise her?

9 A Yes.

10 Q And what's your ownership interest in Castle
11 Trading, Incorporated?

12 A One hundred percent.

13 Q How is your compensation from Castle Trading,
14 Incorporated structured?

15 A Can you be more specific?
16 Q How do you get paid?
17 A I get paid through commissions from clients.
18 Q So Castle Trading is an entity that generates a
19 certain level of revenue.
20 A Yes.
21 Q And you get a percentage of that revenue?
22 A Yes.
23 Q What percentage of that revenue do you get?
24 A I get the entire, everything, 100 percent of the
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1 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
7 pocket as opposed to paying salaries and expenses?
8 A I...
9 Q Is there a set number?
10 A No, no, there's no set number because every month

11 the amount I receive is totally different than the month
12 before. There's no cut-and-dried numbers.

13 Q Do you have a salary?

14 A No. No.

15 Q So the revenue is used to pay salaries and other
16 expenses and whatever's left goes into your pocket; is that
17 fair?

18 A Exactly. Yes, yes.

19 Q Who's responsible for registering Castle Trading
20 with the NFA?

21 A My wife is. Natalia Plyam.

22 Q Who initially did it?

23 A I did.

24 Q And for what period of time did you handle NFA
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1 registrations on behalf of Castle Trading, Incorporated?

2 A Oh, between 2000 and 2003 I would believe. First
3 couple years.

4 MR. HENDERSON: So we're clear for the record, I
5 am only aware of one registration. Unless you're talking
6 updates.

7 BY MR. DOWD:

8 Q Yes, my question is updates to your IB
9 registration.

10 A Sure.

11 Q Okay. So you handled NFA registration issues,
12 that being the original registration and updates,
13 thereafter from roughly 2000 to 2003?

14 A Thereabouts, yes.

15 Q And then your wife assumed those duties?

16 A Yes.

17 Q And did you supervise her with respect to those
18 duties and responsibilities?

19 A Yes.

20 Q Who's responsible for securing funding for Castle
21 Trading?

22 A When you say securing funding...

23 Q Was there an initial capital contribution for
24 Castle Trading?

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1 A Yes. It was mine.

2 Q And how much was that?

3 A Ten thousand dollars.

4 Q Did anyone else make a capital contribution?

5 A No.

6 Q Has anyone else ever made a capital contribution
7 to Castle Trading?

8 A Unfortunately not, no.

9 Q Do you have authority to enter into contracts on
10 behalf of Castle Trading?

11 A Yes, I do.

12 Q To legally bind the corporation?

13 A Yes, I do.

14 Q Who's ultimately responsible for the management of
15 Castle Trading?

16 A Me, myself and I.

17 (CFTC Exhibit No. 10 was marked for
18 identification.)

19 BY MR. DOWD:

20 Q Mr. Plyam, do you recognize the document that's
21 been marked as exhibit number 10?

22 A Yes.

23 Q For the record exhibit 10 is Bates numbered
24 Plyam00063.

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1 Mr. Plyam, what do you recognize exhibit
2 number 10 to be.

3 A Employment Policy.

4 Q Do you know when this document was created?

5 A I don't know when this specific one was created,
6 but I know we created one a couple years, several years ago
7 and we kept updating it, so I don't know exactly when this
8 one was created.

9 Q When was the initial policy created?

10 A I don't recall.

11 Q Did you create the initial policy?

12 A Yes, I did.

13 Q Are you the one responsible for changes to that
14 initial policy?

15 A Yes, I am.

16 Q So you're responsible for the document marked as
17 exhibit number 10?

18 A I am responsible.

19 Q Did anyone help you create this policy reflected
20 in exhibit number 10?

21 A Yes.

22 Q Who did?

23 A Toby Denniston.

24 Q When did Mr. Denniston help you?

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
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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.

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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 Natalia Plyam serves as firm's Compliance
22 Officer.

23 A Yes.

24 Q What is meant by that sentence?
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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.
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1 Q What about with respect to her compliance duties
2 as they pertain to margin calls.

3 Does she report to you?

4 A Yes. Unfortunately.

5 Q So ultimately you're responsible for the
6 anti-money laundering program?

7 A Yes, I am.

8 Q And you're responsible for the margin calls?

9 A Yes.

10 Q I should say the supervision of margin calls.

11 A Correct.

12 Q When did Natalia assume the role of compliance
13 officer for the anti-money laundering program?

14 A Approximately two years ago, two-and-a-half years
15 ago she got more involved into the business.

16 Q And did Castle Trading have an anti-money
17 laundering program prior to Natalia's involvement in, or I
18 should say assumption of the duties of compliance officer?

19 A I don't believe she did because I believe -- this
20 all happened around 911 and I believe that's when we were
21 asked by the FCMS to make these type of arrangements that
22 comply.

23 And we were, this was brought to our
24 attention during our first audit, not the one that occurred
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1 August of '05. The first audit that we had.

2 Q The March 2004 audit?

3 A Thank you. And so we, either we tightened it up

4 during that time or we applied the one from the FCMs during
5 that time. And right after that audit is when she became
6 the supervisor dealing with anti-money laundering and those
7 type of issues.

8 Q So was there an anti-money laundering program
9 prior to the NFA audit and Natalia's assumption of the
10 duties as a, duties to be the compliance officer for the
11 anti-money laundering program?

12 A I don't recall. It's going back several years. I
13 don't remember.

14 Q If Castle Trading had an anti-money laundering
15 program prior to the one reflected in exhibit 12, would you
16 have been ultimately responsible for the supervision of
17 that program?

18 A Yes, I would.

19 Q Has Castle Trading, Incorporated ever had a
20 compliance manual other than what we've discussed thus far?

21 A Let's see. We've looked over so many documents
22 that I'm getting a little dizzy. I want to take a look if
23 you don't mind.

24 Q Take as much time as necessary.
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1 A Yes, we have a notebook that has all the different
2 things, but I don't think it's just one Castle Trading
3 policy manual. I think it contains all the requirements
4 such as a copy of this, of this anti-money laundering
5 policy and other things.

6 Q Does it contain anything other than the documents
7 we've discussed today?

8 A I cannot recall. I'm not 100 percent sure. I
9 believe it does. I believe we have more information than
10 what we've seen, than we're seeing here, yes.

11 Q I'm going to request that a copy of that be
12 produced.

13 A Sure.

14 Q Can you recall or do you know with any level of
15 specificity what information is in that compliance manual
16 other than what we've discussed today?

17 A It would be procedures for margin calls, other
18 things required by the NFA, registration certificates,
19 incorporation records, single stock futures procedures, I
20 believe, which we don't have any clients doing that.

21 It would have the office policies, general
22 office policies. It would have handling client fund
23 policies. It would have advertising policies and a copy of

24 all the advertising files, all the advertising material
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1 that we've forwarded to the NFA for review with a letter.

2 It would have all the NFA letters and
3 responses with the NFA as to checking our company and doing
4 all those things. It would have the accounting books.
5 It's all in one notebook, so I....

6 Q And to the extent that notebook has a compliance
7 procedure or Castle Trading policy, would you have been
8 responsible for approving each of those policies?

9 A Yes.

10 Q Okay. And would you have been responsible for
11 adopting each of those policies?

12 A Yes.

13 Q Has Acceleration Capital ever had a compliance
14 manual?

15 A Basically we adopted things from Castle Trading in
16 the same sense of the way everything that applied to Castle
17 would be applied to Acceleration Capital. I don't believe
18 we created a specific one for Acceleration, but we adopted
19 Castle's for Acceleration.

20 Q Okay. And are there any documents that reflect

21 that adoption?

22 A I don't recall. I don't recall.

23 Q To the extent there are, I'd like that they be
24 produced.

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1 What about CHP. Has CHP ever had a
2 compliance manual of any type?

3 A Same situation. It would have just been adopted
4 from Castle.

5 Q With respect to any policies or procedures that
6 Acceleration Capital adopted from Castle Trading, were you
7 responsible for adopting those programs?

8 A Yes, I was.

9 Q Those policies and procedures?

10 A I was responsible, yes.

11 Q And what about for CHP.

12 A I was responsible as well.

13 Q Okay. Did Castle Trading ever have any employees
14 other than those individuals you've identified thus far?

15 A It had a few more brokers that, yes, it had
16 brokers that, Ryan Davies worked for us for two-and-a-half

17 years. Oh, I remembered the gentleman's name who...

18 Q Tell us which gentleman.

19 A The gentleman who was let go, the gentleman who
20 was working with Morgan Moore who I found on Turtle Trader
21 software. His name was Eugene. The last name hasn't come
22 to me yet. We could obviously locate all this information,
23 but his name was Eugene.

24 Q Okay. My question is are there any individuals
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1 that ever worked for Castle Trading, Incorporated that you
2 haven't identified thus far?

3 A Yes.

4 Q Okay. You identified Mr. Davies, Eugene last name
5 unknown. Anyone else?

6 A I remembered his last name. Labrador.

7 Q Anyone else?

8 A Yes, two or three guys that were there for a week
9 or two that come, that flaked out, didn't want to go
10 through with it. One guy's name was Scott. I don't
11 remember.

12 Q Do you recall his last name?

13 A No, I don't. One guy's name was Alex and one

14 guy's -- there was one more. I don't remember his name.

15 Q Of all the individuals you've identified thus far,
16 even those that you can't remember their last name or
17 their, any of their name.

18 A Yes.

19 Q Were you ultimately responsible for supervising
20 them?

21 A I was responsible for supervising them, yes.

22 Q So you were ultimately responsible for CHP's, I'm
23 sorry, for Castle Trading, Incorporated's operations.

24 A Correct.
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1 Q Let's go off the record.

2 (A half-hour recess was taken.)

3 MR. DOWD: Let's go back on the record at
4 approximately 1:45 p.m. after a brief lunch break.

5 BY MR. DOWD:

6 Q Mr. Plyam, prior to the lunch break do you recall
7 you and I were discussing Castle Trading's anti-money
8 laundering program?

9 A Yes.

10 Q And do you recall that I asked you if Castle
11 Trading had a program prior to that set forth in exhibit
12 12?

13 A Yes.

14 Q And your answer, if I recall correctly, was that
15 you don't recall.

16 A I remember that we created one somewhere around
17 2001, early 2002, and then we changed it to its current
18 state.

19 Q To the extent that you have any of those programs
20 in documents, I'm going to request that you produce those.

21 A Absolutely.

22 Q Was Mr. Denniston an employee of Castle Trading?

23 A Yes.

24 Q When did Castle Trading hire Mr. Denniston?
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1 A March of '03, I believe.

2 MR. HENDERSON: That prior document you asked
3 about, you want what now?

4 THE WITNESS: The prior money laundering, prior to
5 this one.

6 MR. HENDERSON: That's what I thought. Okay.

7 THE WITNESS: No problem.

8 BY MR. DOWD:

9 Q I'm sorry. Remind me when Mr. Denniston was
10 hired?

11 A Spring of '03.

12 Q Okay. And who hired him?

13 A I did. I hired him unfortunately.

14 Q He was hired as a Castle Trading, Incorporated
15 employee?

16 A Yes, he was.

17 Q Did anybody other than yourself have input on the
18 decision to hire him?

19 A Yes, my wife did. Natalia Plyam.

20 Q And ultimately it was your decision?

21 A Yes, it was.

22 Q And what was Mr. Denniston's background?

23 A He worked for a company that went belly up. He
24 worked for not Home Depot but -- Home Base. He worked for
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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
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1 conversations between yourself and Mr. Denniston?

2 A Correct, yes.

3 Q Did Mr. Denniston have any experience in the
4 futures industry prior to the time that you hired him at
5 Castle Trading?

6 A None.

7 Q Did you have any pre-existing relationship with
8 Mr. Denniston prior to his employment at Castle Trading?

9 A No.

10 Q Did you run an advertisement for the job?

11 A Yes, we did, in Internet Advertising and Yahoo
12 Jobs.

13 Q Did Mr. Denniston reply to that advertisement?

14 A Yes.

15 Q That's how he got the job?

16 A Yes.

17 (CFTC Exhibit No. 13 was marked for
18 identification.)

19 BY MR. DOWD:

20 Q Mr. Plyam, do you recognize the document marked as
21 exhibit 13?

22 A Yes, I do.

23 Q And for the record, 13 is Bates numbered

24 Plyam00061.

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1 Mr. Plyam, what is exhibit 13?

2 A It's a California driver's license of Toby
3 Denniston.

4 Q And there's a notation below the driver's license
5 which appears to be a Social Security number; do you see
6 that?

7 A Yes, I do.

8 Q Who made that notation?

9 A Natalia Plyam.

10 Q When did she make that notation?

11 A At the time he started -- our policy when we hire
12 new employees is to make a copy of their driver's license
13 and put this information on there, so I would imagine
14 within a day or two of him starting work.

15 Q Okay. Are there any documents in Mr. Denniston's
16 personnel file other than what's been marked as 13?

17 A Not that I recall, no.

18 Q Does Castle Trading maintain personnel files for
19 its employees?

20 A Yes. Yes.

21 Q And typically what's in those files?

22 A It would be, well, if it is an administrative
23 person, it would be this and now we do credit checks as
24 well. But that's been a recent development after things
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1 that happened. It was just this. But it was this and
2 calling his last couple of employees.

3 MR. HENDERSON: Employers.

4 THE WITNESS: Employers, sorry. There's a list of
5 his previous employers with names of who he worked for and
6 so forth. And we called those to verify. Except his last
7 one which was out of business, so....

8 BY MR. DOWD:

9 Q To the extent you have that document for
10 Mr. Denniston, that is, a list of his former employers and
11 references, whatever might be on that document, we are
12 going to ask that you produce that.

13 A Okay.

14 Q And other than -- let me ask you, the credit check
15 --

16 MR. SOLINSKY: Just one thing. Mr. Plyam, to the

17 extent there are other documents in Mr. Denniston's
18 personnel file other than exhibit 13 and the list of former
19 employers such as a resume or anything else that you may
20 have, we would also ask that that be produced as well.

21 Is that agreeable?

22 THE WITNESS: Yes, sir.

23 MR. SOLINSKY: Thank you, sir.

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1 BY MR. DOWD:

2 Q Do you know where Mr. Denniston presently resides?

3 A Yes. In North Hollywood. This is, I don't know
4 if something changed, but when -- the last, when he was
5 working for us he lived in North Hollywood and I do have
6 the address. I cannot recall it.

7 Q And --

8 A We provided that also for NFA when they were in
9 our office and they went to do a drive-by, whatever they
10 called it, so I can provide you that information.

11 Q Did they share the results of their drive-by?

12 A They couldn't find him, locate him.

13 Q Do you know where Mr. Denniston resided when he
14 was employed by Castle Trading?

15 A Yes. In Orange County.

16 Q Okay. Do you recall the street address?

17 A No, I don't. And within a few weeks he moved to
18 Reseda within just a few blocks of our work because he had
19 to drive an hour to work every day and that was not very
20 practical for him. And that's the address that you see on
21 the driver's license. Actually on the same street as our
22 office, Reseda. Just 40 blocks south.

23 Q When was the last time you spoke with
24 Mr. Denniston?

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1 A August 25, '05.

2 Q What was Mr. Denniston's starting salary?

3 A \$15 an hour.

4 Q Did that change at any point in time?

5 A Yes. Over time it went from 15 to 20. I don't
6 remember the increments, but when he left it was 20.

7 Q Who supervised Denniston?

8 A I did.

9 Q Did he report to anyone other than you?

10 A Yes. Natalia.

11 Q For what did he report to Natalia?

12 A Sorry. I didn't mean to cut you off. When there
13 was a margin call. When something was wrong with a
14 client's account. When somebody wanted to speak to the
15 supervisor. Somebody wanted to put a trade in. When there
16 was some type of a problem with a check not hitting the
17 account. Usual clerk activities.

18 Q He would go to Natalia first?

19 A Unless -- if it was something super important, he
20 would come to me. If it was something, just a general type
21 of things that happens every day, he would start with
22 Natalia and then go to me.

23 Q Both you and, Natalia and you supervised

24 Mr. Denniston?

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1 A Yes.

2 Q Ultimately you were responsible for his
3 supervision?

4 A Yes.

5 Q You were the top guy.

6 A Unfortunately, yes.

7 Q What was Castle's role with respect to
8 Acceleration Capital?

9 A They had absolutely -- other than being in the
10 same office, they had no relationship whatsoever.

11 (CFTC Exhibit No. 14 was marked for
12 identification.)

13 BY MR. DOWD:

14 Q Mr. Plyam, do you recognize the document marked as
15 exhibit 14?

16 A Yes, I do.

17 Q Okay. Can you tell us what this document is?

18 A It's a System Trading Brokerage Agreement.

19 Q Okay. Between whom?

20 A Between Acceleration and Castle Trading.

21 Q For the record, 14 is marked Plyam00176.

22 What is a system trading brokerage agreement?

23 A It's an agreement where Castle Trading will
24 execute the trades for Acceleration Capital. Acceleration
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1 needed an introducing broker or an FCM to do its trades and
2 that's what we were doing.

3 Q Okay. So Castle Trading executed trades on behalf
4 of Acceleration Capital.

5 A Yes.

6 Q And Acceleration Capital was trading for
7 Acceleration Mercury Fund?

8 A Yes.

9 Q Acceleration Capital was the CPO for Acceleration
10 Mercury Fund?

11 A Correct.

12 If I could back you up to a question I asked
13 a few minutes ago which is what was the relationship, if
14 any, between Acceleration Capital and Castle Trading.

15 I believe your answer was none at all, is
16 that correct?

17 A That was my answer.

18 Q Looking at exhibit number 14, would you like to
19 change your answer?

20 A Yes. I didn't understand the scope of the -- yes,
21 absolutely, yes, yes.

22 Q And other than the agreement that's reflected in
23 exhibit number 14, did Acceleration Capital have any
24 business relationship with Castle Trading?

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1 A No.

2 Q And who at Castle Trading was responsible for
3 managing the system trading brokerage agreement that's
4 reflected in exhibit 14?

5 A Managing the agreement?

6 Q Managing trades executed pursuant to the
7 agreement.

8 A I was.

9 Q So Acceleration Capital, the CPO came to Castle
10 Trading wanting to execute trades on behalf of the pool,
11 Mercury Fund, and you were responsible for executing those
12 trades?

13 A Correct.

14 Q And in what role, working for whom, working for
15 Castle Trading you were responsible for executing those
16 trades?

17 A Yes.

18 Q Did Mr. Denniston perform any work on behalf of or
19 for Acceleration Mercury Fund?

20 A Yes.

21 Q Did Mr. Denniston perform any work for
22 Acceleration Mercury Fund?

23 A Yes, he did.

24 Q Okay. Tell us everything he did.
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1 A He would deposit the client's money into the
2 accounts. He would create monthly statements that would go
3 to the CPA for their yearly review. He would create the
4 monthly accounting statements to put into the, as a tab in
5 the disclosure document similarly to what we saw for CPH
6 Asset Management for the Gauss Fund.

7 He gave --

8 Q By that you're referring to the tables that were
9 in the disclosure document?

10 A Yes, the performance tables.

11 Q Just for the record that was exhibit 4, is that
12 correct?

13 A Yes, it is.

14 Q What else did Mr. Denniston do for, what other
15 work did he perform for Acceleration Mercury Fund?

16 A Updated the client list. Let me know every
17 morning the balance in the trading account, not the Wells
18 Fargo account but the trading account. I needed to have
19 that number in order to evaluate the positions in the

20 account on a daily basis.

21 Q Okay. And that's the commodity futures trading
22 account?

23 A Yes.

24 Q That's the account that's in exhibit -- let's go
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1 off the record.

2 (Off-the-record discussion.)

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

4 BY MR. DOWD:

5 Q That's the account reflected in exhibit number 2?

6 A Yes.

7 Q Did he do anything else?

8 A Not from the top of my head, no.

9 Q And the itemized list of work that you just gave
10 us that Mr. Denniston did for Acceleration Mercury Fund,
11 did he perform that work while working as a Castle
12 employee?

13 A Yes.

14 Q And did he perform that work on behalf of Castle
15 Trading?

16 A There was, it was never split up into any type of
17 talk or arrangement. It was a guy that was basically, hey,
18 you're not doing anything, there's no calls, take care of
19 this right now. There was no specific arrangements or
20 discussion or allocation. Basically it was, okay, there's
21 nothing to do between 9 and 11, why don't you do a little
22 bit of that and it just progressed. There was never any
23 expressed arrangement or discussion.

24 One thing about Toby, he was a go -- he
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1 wanted the responsibility. That's why he progressed. He
2 was the guy who would call me at 4 o'clock in the afternoon
3 and say, hey, is this what we need to do, is this how you
4 do it. He was very proactive unfortunately, now that I
5 look at it. But we never had a discussion as to his
6 responsibilities or his roles. They kind of just came
7 about in a natural way and he was more than happy to take
8 them on.

9 Q The work he did with respect to Acceleration
10 Mercury Fund, he performed that work either on behalf of
11 Castle Trading, Incorporated, Acceleration Capital or CHP,
12 is that correct?

13 A Yes.

14 Q And he was not legally an employee of Acceleration
15 Capital?

16 A No, no.

17 Q Okay. But nevertheless he did work for
18 Acceleration Capital?

19 A Yes.

20 Q Okay. And to the extent he did work on behalf of
21 Acceleration Capital, with respect to the fund he reported
22 to you?

23 A Yes.

24 Q And he was not an employee of CHP, is that
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1 correct?

2 A Exactly. Same situation.

3 Q Meaning he did work on behalf of CHP with respect
4 to Acceleration Mercury Fund?

5 A You said CHP as to Acceleration Mercury Fund. You
6 mean Gauss Fund. You said CHP as to Acceleration. They're
7 different.

8 Q Did CHP have any relationship with Acceleration

9 Mercury Fund?

10 A No.

11 Q And Mr. Denniston did work on behalf of CHP with
12 respect to Gauss Fund.

13 A Yes. Yes.

14 Q Mr. Denniston ever steal any money from
15 Acceleration Mercury Fund?

16 A Yes.

17 Q Okay. During what period of time?

18 A Between November of '04 and August of '05.

19 Q How much money did he steal approximately?

20 A Approximately \$190,000.

21 Q Do you know the exact figure by any chance?

22 A No, I don't. I believe it's 186 or 188. I don't
23 recall.

24 Q Does \$183,806.36 ring a bell?
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1 A I think it's a little more than that. I think
2 it's 186. And the reason is is because after the 183, we
3 found that he began going through -- he took one or two
4 checks from Acceleration Capital as well as Mercury, so
5 that added another 2- or 4000 above that.

6 Q Who was supervising Mr. Denniston during the
7 period November 2004 to August 2005 when this theft took
8 place?

9 A I was.

10 Q Were you ultimately responsible for his
11 supervision?

12 A I am, yes.

13 (CFTC Exhibit No. 15 was marked for
14 identification.)

15 BY MR. DOWD:

16 Q Mr. Plyam, do you recognize the document marked as
17 exhibit 15?

18 A I certainly do.

19 Q What do you recognize this document to be?

20 A It's a letter to our investors that took place,
21 that was written just a few days or a week after we
22 discovered what was going on.

23 Q And by what was going on, are you referring to the
24 theft of Acceleration Mercury Fund monies?

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1 A Yes, I am.

2 Q Okay. And for the record, exhibit 15 is Bates
3 numbered 00100008.

4 And this letter is dated August 30, 2005, is
5 that correct, Mr. Plyam?

6 A Yes. It is, yes.

7 Q Do you see your signature anywhere on this
8 document?

9 A Yes, I do.

10 Q Where do you see your signature?

11 A On the second page of this document.

12 Q Above the name Yuri Plyam?

13 A Yes.

14 Q And did you draft this document, Mr. Plyam?

15 A Jeff Henderson did. My attorney did.

16 Q Did you review this document?

17 A Yes, I did.

18 Q And did you insure this the information contained
19 in this document, did you insure its accuracy prior to
20 signing the document?

21 A Yes. Can I interject one thing?

22 Q Sure.

23 A The reason the monies are different is because we
24 found the remainder, 2- or 3000, several weeks after this.

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1 Q And by "monies" you're referring to the number in
2 the third line of this letter?

3 A Yes, that's correct.

4 Q It's 183,806.36?

5 A Right.

6 Q Okay. And it's your testimony that actually more
7 than that was stolen?

8 A Yes. A few weeks after this occurred Lisa Marlow
9 called us because they were still in the middle of auditing
10 --

11 Q Lisa Marlow of the NFA?

12 A Yes, I apologize. She contacted us because as
13 they left -- they were at our office for two weeks, but
14 after they left the investigation was still going on and
15 she brought to our attention that there was a discrepancy
16 in Acceleration Capital and not just Acceleration Mercury,
17 but there it was only, I believe, 2- to \$3000. And it
18 didn't have to do, it had nothing to do with the clients so
19 we didn't have to write a letter.

20 So when you asked me how much the total
21 amount was, it was a little more than this number as a
22 result of that.

23 Q Okay. And if I could keep you within that
24 paragraph, about midway through the paragraph the sentence
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1 that begins: The vast majority....

2 A Yes.

3 Q That sentence reads:

4 The vast majority of the misappropriated
5 funds belong to investors in the Fund, and
6 a much smaller amount is owed to the
7 general partner of the Fund.

8 A Yes.

9 Q What's the breakdown of subscriber funds to the
10 general partner funds?

11 A 95 to 5. It was -- which is how they found out he
12 was doing it. It was my management fee that was due to me.

13 Q What do you mean by your management fee that was
14 due to you?

15 A Okay. Every quarter I was supposed to get a
16 management fee for managing the fund.

17 Q You were supposed to get it or Acceleration
18 Capital was supposed to get it.

19 A Acceleration Capital was supposed to get it.

20 Q And you are a general partner of Acceleration
21 Capital so it passed through to you.

22 A Right. Yes, yes. That's correct.

23 Q And explain to me how the management fee revealed
24 the theft.

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1 A That's a good point. That's exactly how the whole 154
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
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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?

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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. DOWD:

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 thereabouts. 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
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1 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
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1 was maybe a handful of checks supposed to be going in and

2 out of it the whole time. It was basically for our clients
3 to redeem money or money to go into the account. There was
4 no other need for that account.

5 Q And Acceleration Mercury Fund also had a commodity
6 futures trading account?

7 A Yes.

8 Q Did Mr. Plyam ever transfer money --

9 A That's me.

10 Q Did Mr. Denniston ever transfer money from the
11 futures trading account to the checking account?

12 A Yes. When I gave -- when the client would call
13 and ask to redeem his money, which several did as you see
14 by the dates of redemption, he would, he would notify me of
15 that and then he would, he would then, we would take the
16 money from the futures account and wire it to the bank
17 account.

18 And he had, since he was a clerk he had full
19 authority with the FCMs. He was talking to them on a daily
20 basis.

21 Q Do you know if Mr. Denniston ever transferred
22 money from the futures trading account to the Wells Fargo
23 bank account for the purpose of covering a check that he
24 forged?

1 A You said hovering?

2 Q Covering. In other words, so there would be
3 enough money in the account.

4 A I believe he did at one point or another. I
5 believe he did.

6 Q What do you base that belief on?

7 A Well, because when we looked at the record of
8 withdrawals and deposits into that bank, we saw that there
9 was, he basically cleaned out the account.

10 Q Cleaned out which account?

11 A Cleaned out the Wells Fargo account. And his
12 appetite I guess at that point, he wasn't done yet. So he
13 then began transferring the money and doing those type of
14 things.

15 Q When did that begin?

16 A I believe that began literally the last
17 month-and-a-half, two months.

18 Q So roughly --

19 A June, July.

20 Q So would it be fair to say that the money that was
21 misappropriated from June '05 forward, I should say stolen

22 from June '05 forward, was transferred from the futures
23 trading account?

24 A Yes, but I don't remember the, I don't recall the
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1 exact amount of it and it wasn't something that he did a 160
2 lot. It was something that he did once or twice, I
3 believe, right towards the end.

4 Q If you looked at the futures trading account
5 statements, could you identify the transfers that were made
6 for the purpose of covering Wells Fargo's checks that
7 Mr. Plyam used to steal money?

8 A Mr. Denniston. I'm Mr. Plyam.

9 Q I'm sorry, that Mr. Denniston used.

10 A If I was to look at them at the same time, I was
11 to look at the withdrawal sheet, the sheet that we looked
12 at -- let me tell you the exhibit. I'm sorry. There we
13 go.

14 If I was to look at exhibit 5 and compare
15 that to the accounts, to statements, I would be able to see
16 because this gives me a record of when funds were
17 withdrawn.

18 Q And statements meaning the futures trading account

19 statements or --

20 A Yes.

21 Q And you have those as exhibit 2.

22 A Yes. I believe I do. Yes.

23 Q Looking at those two documents, are you able to

24 tell us when the money was transferred out of the futures
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1 trading account in order for Mr. Denniston to steal it?

2 A Not from the top of my head, but if you asked me
3 to take maybe half an hour to look at everything, I could
4 do that. But I can't just off the top --

5 Q It's not a five-minute analysis?

6 A I don't think so. I would have to look at these
7 things. Towards the end I don't know if you've looked at
8 the Wells Fargo record, but it behooves me of the last
9 month's activity. He was, when my -- I have a nanny that
10 takes care of my children. I give her a check for \$200, I
11 get a phone call from the bank ten minutes later that they
12 want to know if I gave her that check.

13 The last ten, fifteen transactions that he
14 did, I don't know if you've looked at the record, there was

15 a not sufficient fund fee, a -- he was going ape wild and
16 nobody from Wells Fargo contacted me. So it's very hard, I
17 would really have to kind of look through everything. But
18 the last month or two, it was just shocking what he was
19 doing.

20 I don't believe he made too many withdrawals
21 from the trading account to cover up his losses. I think
22 maybe one or two. It wasn't a, it wasn't the major crux of
23 it. Maybe a couple thousand dollars. It was truly
24 unbelievable when I looked at it. I believe there was
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1 insufficient funds twice. It was, it was unreal. It
2 almost made me think that he had somebody in the bank
3 helping him because I can't understand or believe how Wells
4 Fargo could not have contacted me once. I've been a client
5 of theirs for, since 1988.

6 Q Was Mr. Denniston ever authorized under any
7 circumstances to write checks from the Wells Fargo Mercury
8 Fund account?

9 A No.

10 Q And was there any checkbook for the Wells Fargo
11 Mercury Fund account in the office other than that which

12 was in Natalia's desk?

13 A Well, we found later that he ordered another book
14 from Wells Fargo.

15 Q When did he do that?

16 A In the middle of all this. I don't remember the
17 exact dates, but he did order another checkbook.

18 MR. HENDERSON: Set of checks.

19 THE WITNESS: I'm sorry?

20 MR. HENDERSON: Not a checkbook but a set of
21 checks.

22 THE WITNESS: A set of checks, yes.

23 BY MR. DOWD:

24 Q Was the Wells Fargo account charged for that?
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1 A No. I don't believe so, no.

2 Q Do you have any record of, any document that
3 records his ordering those additional checks?

4 A No, I don't. No.

5 Q How did he do it?

6 A That's a good -- probably through on-line.

7 MR. HENDERSON: If you know. If you know.

8 THE WITNESS: I don't know. I'm just guessing
9 probably through on-line or some means. I am seriously
10 inclined to think and I'm still inclined to think that he
11 had somebody at Wells Fargo helping him because we're
12 talking about so many checks. One person over so many
13 checks over so much time in such large numbers and not one
14 time I get a contact? A name verification?

15 BY MR. DOWD:

16 Q Did Mr. Denniston have on-line access to the Wells
17 Fargo account?

18 A Yes, he did.

19 Q Okay. Was he authorized by Castle Trading or
20 Acceleration Capital to have access to that fund?

21 A Yes, he was.

22 Q Or Acceleration Mercury Fund as well.

23 A He was authorized --

24 Q Which ones of those entities authorized his access
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1 to the Acceleration Mercury Fund on-line account, on-line
2 Wells Fargo account?

3 A It was Acceleration Capital.

4 Q So Acceleration Capital authorized Mr. Denniston's

5 on-line access to the Wells Fargo Mercury Fund account.

6 A Yes.

7 Q For what purpose?

8 A So he could look at account statements. So he
9 could make sure everything is fine in the account. But in
10 no way, shape or form anything to do with withdrawing or
11 depositing money of any kind into that account.

12 Q Who was responsible for balancing that account?

13 A He was responsible. That's actually why, that's
14 the reason he had access to it, so he could be able to do
15 the monthly statements and give me my daily number of how
16 much money's in the fund.

17 In order for me to be able to trade this
18 account, every morning I needed to know how much equity was
19 in the fund because each trade is a percentage of the
20 account size.

21 Q Who supervised Mr. Denniston in the balancing of
22 the Wells Fargo bank account?

23 A That was something he did on his own.

24 Q So it was unsupervised?

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1 A In that regard. That's one aspect. And I told
2 this to NFA the first day they were there before we knew
3 any of this is I don't have any accounting experience and
4 he seemed to have taken a really big liking to this. We
5 know why, hindsight obviously. But he was very adamant
6 about it.

7 Also, we had reasons to believe that he was
8 doing a very good job because we had Dennis Starr coming in
9 four times that year looking at everything else he was
10 doing, writing letters to the NFA saying how lucky we are
11 to have Dennis still working for us and how exemplary an
12 employee he is.

13 Q During the normal course of business, that is, not
14 the theft of Acceleration Mercury Fund monies, who wrote
15 the checks on behalf of Acceleration Mercury Fund?

16 A There was never any checks to write. All the
17 business --

18 Q How did you pay your bills?

19 A Through Acceleration Capital. Acceleration
20 Mercury never wrote any checks.

21 Q Okay. And who was responsible for writing
22 Acceleration Capital checks?

23 A I was.

24 Q And where was that checkbook kept?

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1 A At my wife's desk.

2 Q Why were the checkbooks kept in your wife's desk?

3 A She keeps all the checks. She sits right behind
4 me. We're not in -- we're talking about three feet away
5 from me. Behind me. Arm's reach.

6 Q Was Natalia, your wife, a signatory on the Wells
7 Fargo Mercury Fund account?

8 A No.

9 Q Was she a signatory on the Wells Fargo
10 Acceleration Capital account?

11 A No.

12 Q Was any anyone other than yourself a signatory on
13 either of those accounts?

14 A No.

15 (CFTC Exhibit No. 16 was marked for
16 identification.)

17 BY MR. DOWD:

18 Q Mr. Plyam, do you recognize the document marked as
19 16?

20 A Yes.

21 Q And for the record, exhibit 16 is Bates numbered

22 00100279.

23 Mr. Plyam, can you tell us what this document
24 is?

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1 A It's a copy of checks.

2 Q Drawn on what account?

3 A Acceleration Capital, LLC.

4 Q Did Mr. Denniston steal any money from this
5 account?

6 A Yes, as we found out two weeks after the NFA audit
7 when Lisa Marlow called me and told me he did, in fact. It
8 was a very small amount. It was 2- to \$4000. That's where
9 I add the 183 plus that and I got the 186.

10 Q Are any of the checks in exhibit number 16 checks
11 that Mr. Denniston used to steal money from Acceleration
12 Capital, LLC?

13 A You mean --

14 Q Are any of them forgeries? Is it your signature
15 on each and every one of these checks?

16 A Yes. Except for -- no, no, no, no. This one
17 right here. Here's the check I was talking about. Thank

18 you. 2528.

19 Q Hold on. Check number 2528.

20 A No, the amount, check number 1015.

21 Q And you're on page 00100285?

22 A Yes.

23 Q Okay.

24 A And that's the check that I believe I'm talking
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1 about. This may be a different check or in addition to
2 this check, but this is a check that he wrote.

3 Q And are any other checks in this exhibit checks
4 that Mr. Denniston forged, I should say forged your
5 signature?

6 A I'm still checking. Not that I can -- I don't
7 think so, no.

8 Q Let me ask you to go back to check 1015.

9 A Yes.

10 Q Is that your signature?

11 A No, it's not.

12 Q Do you know who signed that?

13 A I believe it's Toby Denniston, to the best of my
14 knowledge and everything else I know.

15 Q Who was responsible for balancing this particular
16 account?

17 A Toby Denniston.

18 Q Were account statements for this account mailed to
19 Acceleration Capital?

20 A No, it was the same situation as Acceleration
21 Mercury. They stopped sending checks about three years
22 ago.

23 Q What about account statements?

24 A Checks and account statements. They did not send
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1 them for about three years.

2 Q But you had access to this account on line?

3 A Yes, I did.

4 Q So you had the ability to go onto the Internet and
5 review account activity for this Acceleration Capital
6 account in exhibit 16?

7 A I did, yes. I didn't have a need to do it because
8 this wasn't a merchant type of an account. It was an
9 account that had very low activity and we had no reason to
10 assume anybody was doing anything.

11 Q During the period of November 2004 through the
12 time of discovery of the theft, did you ever review account
13 statements for Acceleration Mercury Fund, the Wells Fargo
14 account.

15 A Yes. The ones that he --

16 Q Did you understand the question?

17 MR. HENDERSON: Can you read it back.

18 THE WITNESS: Can you repeat the question?

19 BY MR. DOWD:

20 Q During the period of November '04 through the
21 discovery of the theft, and the discovery of the theft was
22 August of '05, is that correct?

23 A Yes, it is.

24 Q During the period of November '04 to August '05,
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1 did you ever review account statements for the Acceleration
2 Capital Mercury Fund -- I'm sorry, I'm going to start over.
3 I want this question to be clear.

4 During the period of November '04 to August
5 '05, did you ever review account statements for the
6 Acceleration Mercury Fund account at Wells Fargo.

7 A The ones he provided to me, not the ones on line.

8 I did not go on line and look at the real statements. I
9 thought I was looking at the real statements. I was
10 looking at statements that he provided me which were
11 falsified by him.

12 Q Him meaning Mr. Denniston?

13 A Mr. Denniston, yes.

14 Q You never took it upon yourself to look at the
15 actual on-line statements.

16 A I never went on line, no. I didn't have a need
17 to. They were provided to me. They looked real. There
18 was absolutely no reason to. I never, I have never done
19 on-line banking. I have never gone, registered on line to
20 do on-line banking. I don't do my banking right now for
21 any of my businesses on line. It's just not the way I do
22 banking.

23 Q Are copies of the Acceleration Mercury Fund
24 cancelled checks on the Wells Fargo account available on
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1 line?

2 A You have to request them X amount of days ahead of
3 time and then they give you a copy of it, yes.

4 Q And does that copy arrive via e-mail?

5 A No, it's available on their website and you can
6 download it, I think PDF or some nature. And there's no
7 water mark or anything, which is bizarre, on any of those
8 things.

9 Q Did you ever review any cancelled checks from the
10 Mercury Fund Wells Fargo account during the period of
11 November '04 to August '05?

12 A No, I did not.

13 Q With respect to the Acceleration Capital Wells
14 Fargo account, during the period of November '04 to August
15 '05, did you ever review any account statements?

16 A No, I did not. Other than what he, other than the
17 falsified copies that he had provided me.

18 Q Did you have access to those account statements?

19 A The real statements?

20 Q The real Acceleration Capital Wells Fargo account
21 statements.

22 A Yes, I did.

23 Q And you had access to the Acceleration Mercury
24 Fund Wells Fargo account statements.

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1 A I had access to every bank statement and every
2 account.

3 Q What safeguards did you have in place to prevent
4 this theft?

5 A Several things. Number one, during this period of
6 time -- there were several things. Number one was he was a
7 very, very good employee and we did not get any calls from
8 any clients or any customers complaining about anything of
9 any nature.

10 Number two, we had Dennis Starr coming into
11 our office four times that year, specifically that time
12 when all of this was going on and writing review letters to
13 the NFA saying how good of a job he was. And I do
14 understand that he wasn't dealing with the Acceleration
15 Fund; he was dealing with the Gauss Fund.

16 But in my mind Toby was doing identically the
17 same thing he was doing for the Gauss Fund as he was doing
18 for the Acceleration Fund. There was no difference between
19 the funds. The paperwork and those things were all the
20 same. Dennis Starr's job was to check things out. He did
21 a phenomenal job. According to him, we were lucky to have
22 him in our office.

23 Number two, this started in November. In
24 December we had to provide audited financial statements.

1 We gave Bradley Kaye our statements, the statements from
2 Toby. He didn't have any issues with it. That was a month
3 after Toby started doing it so there was obviously
4 falsified information that he gave to our CPA that our CPA
5 did not find.

6 So I relied on the CPA. I relied on Dennis
7 Starr and I had no reason to believe he was doing anything
8 wrong. He at one point wanted to become a commodity broker
9 when he first started working for us. Actually we wanted
10 him to become a commodity broker, at least to be licensed
11 so he would be a little more -- because he was concerned
12 about making more money in the future when he started
13 working.

14 The NFA gave him a full background as they do
15 everybody who's about to take -- they did his fingerprints;
16 they did everything. We had no problems. Afterwards the
17 Secret Agent Hegst told us the guy has a good record. He
18 never had anything remote to this, the most unlikely.
19 person to do this. Everybody, everybody, every one of my
20 employees, the NFA, Dennis Starr, I'm now quoting, this is

21 the most unlikely guy to do something like this.

22 Q Who are you quoting?

23 A I'm quoting the Secret Service guy, Agent Hegst.

24 He told us, called us, he said, I've never seen anything
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1 like this. I've never seen -- this is straight out of the 174
2 movies.

3 Q When did he tell you that?

4 A After Toby Denniston came in and gave him a full
5 confession.

6 Q Do you recall the date?

7 A No. August, September.

8 Q Regardless of --

9 A I'm going on a tangent. I apologize.

10 Q I want you to give me a complete answer. Have you
11 answered the question?

12 A Can you repeat the question?

13 Q The question was what safeguards were in place to
14 prevent this theft.

15 A It was -- there was safeguards. I relied on
16 people coming into my office that were checking my office.
17 I relied on looking at things, hearing things. I did

18 everything. I relied on statements. I looked at
19 statements. But they happened to be false.

20 The safeguards were the certified public
21 accounting, Dennis Starr, the accountant that was coming
22 into our office to do bookkeeping for the independent IB.
23 He had a relationship with Toby. Those were my safeguards
24 and I did, what I thought I was doing was everything
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1 completely reasonable under the circumstances.

2 I don't feel that there was anything that I
3 missed so I feel my safeguards, I had several safeguards.
4 One of the biggest things was getting audited four quarters
5 and having everything perfect. The first thing when the
6 NFA came into my office, the first thing I told them was,
7 I'm kind of glad you guys are here because I really want to
8 make sure I'm doing everything right. And I was even
9 making comments how we were lucky to have Toby and how this
10 guy should work for the NFA. We really thought we were
11 running a very tight ship. We did not think there was any
12 issues. We never had a problem with him before.

13 As a matter of fact, he was a model employee.

14 This guy in two-and-a-half years that he was working for
15 our company, my grandfather was dying. He was responsible
16 for helping my father move my grandfather into his dying
17 bed. I mean this guy, when we found out he was doing this
18 I cried like a little baby on the floor. I had so much
19 faith in this guy and so much trust and I was so
20 disappointed.

21 Q And I want to be clear that I understand your
22 answer that the safeguards that were in place were the
23 various audits that were performed of Acceleration Mercury
24 Fund.

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1 A Yes.

2 Q And Acceleration Capital.

3 A Yes, and our office in general.

4 Q What audits were those?

5 A They were --

6 Q I just want you to itemize them for me.

7 A Four audits by Dennis Starr.

8 Q And remind us who Dennis Starr is.

9 A He's the independent, he's an independent auditor
10 that the NFA does not object you using when you need -- he

11 qualifies for the purpose of supervision for the NFA.

12 Q Is he the auditor you retained in response to the
13 March-May 2004 NFA action?

14 A Yes, that is correct.

15 Q Okay.

16 A That was part of the settlement.

17 Q What other audits were in place to be safeguards
18 to prevent this theft?

19 A I was looking at account statements on a weekly
20 basis. I was checking the equity run every day on the
21 carrying broker statements. And --

22 Q How often were you checking the equity run?

23 A Every day. I had to because I had to make sure
24 the positions were rolled over. If not every day, then
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1 every other day depending on what was going on in the
2 account.

3 Q All right. Was anything else in place?

4 A We had the accountant who saw all of his
5 statements that he did at least for a month because he
6 started in November and --

7 Q What accountant is that?

8 A Bradley Kaye, the CPA.

9 Q And what did Mr. Kaye do? Is that a certified
10 audit?

11 A He did the yearly, the yearly certified statements
12 that you need as part of the NFA procedure to run a fund,
13 he did those audits for us.

14 Q And are there any other audits?

15 A No, there wasn't.

16 Q And the audits would catch this activity, if at
17 all, post theft, correct?

18 A I lost you there.

19 Q An audit looks at events that have occurred in the
20 past.

21 A Yes, correct.

22 Q How would an audit prevent the theft that occurred
23 in this instance?

24 A An audit would not prevent it.
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1 Q Was there anything in place that would prevent it?

2 Was there any safeguard in place that would prevent it. I

3 understand the audit would detect it.

4 A Yes.

5 Q But what, if anything, was in place to prevent it?

6 MR. HENDERSON: Actually the question has been
7 asked and answered. He's identified four things.

8 THE WITNESS: One more thing. When I opened the
9 account at Wells Fargo, I was sure to be the only signatory
10 on the account. He was not a signatory on the account. He
11 had no right at all to have anything to do with that
12 account in any way.

13 BY MR. DOWD:

14 Q Other than what you've identified thus far, was
15 there any safeguard in place to prevent this theft?

16 A No, there was not.

17 Q Okay.

18 A But there is a comment I want to make about what
19 your logic is when you said audit to prevent. Why this is
20 so important here is because he didn't do something one
21 time. He did something a series of times.

22 The audit that Bradley Kaye did in December
23 covered the fraud that he did in November because he

24 started in November. So what I'm saying is it wasn't a
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1 one-time theft. It was a continuous theft. So part of
2 that was, the audit was a way to prevent future thefts. If
3 Bradley Kaye said, Hey, I can't use these statements, I
4 need the real statements from the bank, that would have
5 been a red flag. If he said to me in December, Hey,
6 something's not right here, that would have been a red flag
7 that would have prevented him doing it seven other months.

8 So it was in fact an audit to see what was
9 done and it was something to see what would be done in the
10 future. Because I imagine if everything was good in this
11 audit, why would there be a problem? He was already doing
12 this for a while.

13 Also, he was doing it for a while for CPH and
14 there wasn't any problems there. So all these -- remember,
15 these were continuous things. They weren't a one-time
16 thing. So some of these checks and balances that you say,
17 well, what could you have done in the future, well, they
18 are, they are to protect you from something that happened
19 but also what may happen in the future.

20 If Wells Fargo called me in November,
21 December, January, February and said, Hey, what's going on,
22 did you write a check for \$4900 to Toby Denniston, I would
23 have said, What? -- from Acceleration Capital, that would

24 have been a red flag from the future.

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1 Q From Capital or Mercury?

2 A Either. Either. So I don't agree with your logic
3 in what you said, all due respect. I just, these things
4 that I'm mentioning were not retroactive, they were
5 proactive too. Dennis Starr didn't come once. Things
6 didn't happen in November; they happened the entire time.
7 So yes, it's a check and balance that you say, well, what
8 you could have done to prevent it. But these things, if I,
9 if these things would have raised red flags, we could have
10 prevented half of the loss or a third of the loss or some
11 of the loss. So I believed in these things as being
12 continuous checks and balances versus just a one time for
13 something that happened before.

14 MR. SOLINSKY: What documents were the auditors
15 looking at when they were checking over the bank records?
16 Were they looking at the same statements that were given to
17 you by Mr. Denniston or did they look at paper copies that
18 you received in the mail or did they go on line to look at
19 the, what would be considered a true version of the bank
20 statements?

21 THE WITNESS: They looked at the material that
22 Toby Denniston falsified. That's the copies he gave to the
23 NFA, to me and to the auditors and we never received, we
24 never received statements. We had a paperless account.
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1 There was no, nothing being sent to us over
2 the mail so we really relied on the on-line statements for
3 everything and we had no reason to believe anything was
4 wrong with them because this is such a -- there was
5 literally no transactions done on this account.

6 MR. SOLINSKY: Thank you, sir.

7 THE WITNESS: No problem.

8 BY MR. DOWD:

9 Q How did Mr. Denniston go about creating the false
10 account statements, if you know?

11 A He would -- I do know. He would, I found out
12 later on. He would come into our office in the middle of
13 the night and do this. And the way I found out was after
14 the NFA found out what he was doing, they found a printed
15 statement and it had a time on it and it was in the middle
16 of the night. He would come at 1:30, 2:00 in the morning

17 to our office and start doing his thing.

18 Q Do you know how he actually altered the
19 statements?

20 A This is another thing and this is very important
21 and I would -- this is really, really important. Most
22 statements when you go to a bank -- Jeff and I were just
23 talking about this.

24 When you go to a bank or you go on line to
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1 look at a statement, there's some type of a water mark so
2 you know it's a real statement. Wells Fargo does not use
3 water marks, okay? They can't -- it behooves me. They use
4 text files. Anybody that has a text editor can take their
5 statements and edit them on their computer and they look
6 like the real thing. There is no difference between them
7 and what Wells Fargo provides you. He was able to fool me,
8 the auditor and the NFA. They look a hundred percent real.

9 Q And you provided the auditors with copies of these
10 falsified account statements?

11 A Well, actually he did. But, yes, we did. Upon my
12 direction, correct.

13 Q Did you fire Mr. Denniston when you learned of his

14 theft?

15 A When we learned of his theft he left the office,
16 but yeah, I mean that kind of goes without saying. Yes.

17 Q Is there any paperwork documenting that
18 termination?

19 A Yes, we did. And all this was done while the NFA
20 was in our office. They were in our office for nine days
21 after this occurred including the time this occurred. They
22 caught him on the third day and they were there for two
23 weeks. So they -- obviously, yes.

24 Q And was it your decision to fire Denniston?
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1 A Yes, it was my decision and my wife's decision.
2 It was unanimous across the board.

3 Q But ultimately you're the one with the authority
4 to fire someone.

5 A Of course. And yes, he was let go immediately.

6 Q To the extent you have any paperwork on his
7 termination, I'm going to request that you produce it.

8 A Absolutely. May I just say something in regards
9 to this?

10 Q Go ahead.

11 A When this happened, when he left to go to the
12 bank, he was supposedly coming back and I didn't think
13 anything was wrong. I thought he was going to the bank,
14 which is a couple blocks away, to get the right
15 documentation to show the NFA what they were asking for.

16 And I kept calling him and literally after a
17 half hour, we realized something is not right. I started
18 calling him compulsively every ten, fifteen minutes, every
19 five minutes. And he called us back and I was outside and
20 he confessed to me and that's --

21 Q What did he say?

22 A He said, Yuri, I'm not coming back. I said, Why
23 are you not coming back? He said, I can't talk about it.
24 I did something really bad.

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1 I had no idea what he was talking about. I 184
2 was completely over my head. I said, What are you talking
3 about? He said, I'm not feeling well.

4 Recently he had a stomach stapling surgery.
5 He was a very big, obese, he was a 450-pound guy so he had
6 problems. So I'm thinking let's finish this audit,

7 whatever's wrong with you, we'll take you to the hospital
8 afterwards, but we need you here to finish this audit. I
9 didn't get any of it.

10 He said, No, I can't come back. I can't come
11 back. I said, Toby, What did you do? He said, Yuri, I
12 can't talk to you. I need a lawyer, I did something really
13 bad, I'm not coming back, and he hung up the phone.

14 A few minutes later my wife called him while
15 the NFA, they might have been listening over the phone or
16 any of that and he basically confessed --

17 Q Were any of these conversations recorded?

18 A Yes, they were recorded and I replayed some of
19 them to the NFA. I don't believe I have a copy of it or I
20 might. If I did, I gave it to the NFA.

21 Q Okay. If you still have a copy, I want that.

22 A Okay. All of this was done while four agents were
23 in my office. Then the next day or two days later he
24 called, either Natasha called him or -- NFA wanted to talk
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1 to him and we tried to reach him and he didn't want to --
2 his response was, I did something really, really bad. I

3 can't come back. I'm going to be gone for a long time.

4 Q When and how did you actually find out that what
5 he did was stole the money?

6 A During the next 24 hours the NFA and we all
7 started looking and probing and looking and they came, they
8 called me that night.

9 Q "They" being the NFA?

10 A The NFA. They called me that night. They said,
11 We want to do a drive-by to his house, can you give us his
12 address. I said, Sure, whatever you guys want, I'll
13 cooperate. I was very grateful they found this, you know.
14 So they tried to do a drive-by by his house. They couldn't
15 find him. They wanted us to contact him or they wanted to
16 contact him.

17 We tried contacting him. He left Natasha a
18 voice mail and -- that he's going to confess, he's got a
19 lawyer, he's going to go and confess to everything. Then
20 we contacted the FBI. I contacted the FBI.

21 Q Who at the FBI?

22 A I don't remember who, but they said, We don't deal
23 with this. We'll contact, we'll put you in contact -- they
24 transferred us to Secret Service, Agent Hegst, he's the guy
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1 dealing with this. And he's the man we talked to.

2 He took the whole story down, came to our
3 office, took his computers, found all these records on his
4 computer.

5 Q Who actually discovered the theft?

6 A It was Heather at the NFA. Heather.

7 Q How did she do that?

8 A I mentioned this to you earlier. She found a
9 check. She was looking at the flow of money and she was
10 looking for a check and she saw a check was withdrawn to me
11 to pay me a management fee and then she wanted to look at
12 my records --

13 Q I recall that. We have that in the record. And
14 then beyond that, how was the rest of it discovered? In
15 fact, if I recall it correctly, that was an Acceleration
16 Capital check, correct?

17 A Right, but --

18 Q How did you discover that there was theft in the
19 Acceleration Mercury Fund account?

20 A They started looking at all the records.

21 Q "They" being the NFA?

22 A Yes.

23 Q And they looked at the actual bank account

24 statements?

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1 A They asked us to contact Wells Fargo and it took
2 Wells Fargo, it takes them a day or two to create those
3 statements on line. They were there for nine more days --

4 Q So once the actual account statements were in
5 hand, that's when the NFA discovered the theft.

6 A Correct. Correct. And they called me that night
7 and they said -- we originally thought it was about \$20,000
8 and then they called me and they said, Yuri, it's a lot
9 more than that. And then the next day they had all the
10 information.

11 And then we also found out and this really
12 hurts me because I take my trading very, very seriously, we
13 found out, this really kills me, my actual performance for
14 the fund was down 9 percent. With his stealing, he was
15 compensating for it, it was down 40 percent. None of my
16 clients that withdrew, the clients that withdrew would not
17 have withdrawn. We were doing really well. For that year
18 the average was down 20, 25 percent. We were down 9
19 percent at the time of them finding this out. So that

20 wasn't pretty either.

21 (CFTC Exhibit No. 17 was marked for
22 identification.)

23 THE WITNESS: This was so shocking to us that
24 Heather, the girl who found this, she went into the
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1 bathroom and started crying. She couldn't believe -- it 188
2 was unreal. It was out of a movie.

3 BY MR. DOWD:

4 Q Do you recognize the document marked as 17?

5 A Yes, I do.

6 Q For the record, 17 is marked 00100011.

7 A Do you have a copy?

8 MR. DOWD: Sorry. Somehow I got down to two.

9 BY MR. DOWD:

10 Q Mr. Plyam, what do you recognize exhibit 17 to be?

11 A It is a letter that was sent to our clients within
12 a few days of, or a couple weeks after -- it was just an
13 update to our clients so they knew what was happening, what
14 was going on.

15 Q Who drafted this letter?

16 A Dion Campbell.

17 Q And if I could move you down roughly three
18 quarters of the page, the sentence that reads:

19 The Secret Service has taken a full
20 confession from Toby Denniston and he is
21 cooperating with their investigation.

22 A Yes.

23 Q Do you know what the basis for that statement was?

24 A Yes. We received a call from Agent Hegst. Agent
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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
8 remember. I don't recall. He said, Toby Denniston came to
9 our office, gave us a full confession, said that he's glad
10 that this happened because he couldn't live with himself
11 because you people treated him like family and he can't go
12 on like this anymore and he wants to take full

13 responsibility for what happened. And he came in, he read
14 us a full letter of confession.

15 And then he said --

16 Q Do you have a copy of that letter?

17 A No, he never gave it to us. And Jeff has
18 requested it from -- no, I've never seen the letter.

19 Q Jeff can let you answer that if he wants.

20 A I've never seen that letter.

21 Q What, if anything, do you know about the criminal
22 investigation at this point in time?

23 A I've been talking to Agent Hegst every couple of
24 months or so and basically he needed to delay things
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1 because Toby Denniston's mom, from what Agent Hegst told
2 us, died in the last few months. He said that because of
3 the stress of this she developed a mental, this is him
4 talking, she developed a mental illness, went outside and
5 died of natural elements. I'm quoting now.

6 We contacted his mom right when this
7 happened. We thought maybe she knew where he was. I
8 talked to her for a few minutes and we exchanged e-mails.
9 And she said, I'm sorry, I can't help you, I don't know

10 where he is. I can't believe he did this.

11 Q What government agencies or criminal authorities
12 have you discussed this matter with other than the CFTC and
13 the Secret Service?

14 A The Northridge police. Made a full police report
15 which they needed, which the Secret Service, I believe,
16 needed or requested us to do. We did it immediately the
17 night this happened.

18 Q Okay. And then beyond that, did you have any
19 contact with the Northridge police?

20 A No. They had nothing to do with this. They right
21 away put it to the Secret Service and that was that.

22 (CFTC Exhibit No. 18 was marked for
23 identification.)

24

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1 BY MR. DOWD:

2 Q Mr. Plyam, do you recognize the document marked as
3 18?

4 A Yes.

5 Q And what do you recognize this document to be?

6 A It is a theft report for affidavit of check fraud
7 for Wells Fargo.

8 Q For the record, 18 is Bates numbered Plyam00293
9 through Plyam00300.

10 Mr. Plyam, do you see your signature anywhere
11 on this document?

12 A Yes, I do.

13 Q Where is your signature?

14 A Underneath: I declare under penalty of perjury
15 that the above statement is true. Right below there.

16 Q Is this an exhaustive list of the checks that
17 Denniston used to steal from Mercury Fund?

18 A I believe so, yes. This is where we completely
19 ironed out everything and I believe this included the
20 entire amount.

21 Q And that's reflected in the claim total of
22 \$199,456.

23 A Yes, which is where the extra numbers from.

24 Q Does that number include the money that was taken
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1 from the Acceleration Capital account?

2 A I believe it is, yes.

3 Q If I could move you forward to page two and check
4 number 1189.

5 A Yes.

6 Q That's recorded as legitimate check, is that
7 correct?

8 A Yes.

9 Q Do you recall how you determined this was a
10 legitimate check?

11 A I don't recall, but I would imagine I looked, we
12 looked at it -- or looked at who it was made to.

13 MR. HENDERSON: Sorry, can you read the question
14 back?

15 THE WITNESS: I don't recall from the top of my
16 mind, no.

17 (The record was read.)

18 THE WITNESS: I could speculate and tell you how I
19 did it, how I did it here in this office by looking at who
20 the check was made out to.

21 BY MR. DOWD:

22 Q I'm going to get to that but let me ask you, did
23 you write "legitimate check"?

24 A No, this is not my handwriting.
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1 Q Who wrote that?

2 A I believe it's somebody at Wells Fargo.

3 Q Did you provide a Wells Fargo employee with the
4 check numbers or copies of the checks that you believed to
5 have been forged by Mr. Denniston?

6 A Yes, I did.

7 Q And did you provide that person with a copy of
8 check 1189?

9 A I believe I did.

10 (CFTC Exhibit No. 19 was marked for
11 identification.)

12 BY MR. DOWD:

13 Q Do you recognize the document marked as 19?

14 A Can you ask the question one more time?

15 Q Let me rephrase that. Okay. If I can move you to
16 page 00146.

17 A Okay.

18 Q The last page in the exhibit. Do you recognize
19 that document?

20 A Yes, it's my management fee.

21 Q Okay. And is this a copy of the check that is
22 recorded as a legitimate check on exhibit 18?

23 A Yes, it is.

24 Q And did you sign this check?
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1 A I believe I did. I'm not sure, but I believe I
2 did.

3 Q Do you see a signature on the bottom of that
4 check?

5 A Yes, I do.

6 Q And does that appear to be your signature?

7 A You know, I don't -- I have a very, it could be my
8 signature. I'm not a hundred percent sure. It doesn't
9 have that little thing on the end. I'm not, I don't
10 recall. I believe it is, but I don't recall.

11 Q Do you know if this check was deposited to an
12 account in your name or whether you cashed this check?

13 A I never cashed any checks so it must have been
14 deposited if it was my check.

15 Q Do you know if this particular check was in fact
16 deposited to an account in your name?

17 A No, I don't.

18 Q When you were paid a management fee by
19 Acceleration Capital, typically who wrote that check?

20 A I did.
21 Q Did anyone else ever write that check?
22 A No.
23 Q Did you ever authorize anyone other than yourself
24 or do you ever authorize anyone to sign an Acceleration
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1 Mercury Fund check?

2 A No.

3 Q What about Acceleration Capital?

4 A Never.

5 (CFTC Exhibit No. 20 was marked for
6 identification.)

7 BY MR. DOWD:

8 Q Mr. Plyam, do you recognize the document marked as
9 exhibit 20?

10 A Yes.

11 Q And for the record, 20 is Bates numbered
12 Plyam00001 through 00059.

13 Can you tell us what this exhibit is,
14 Mr. Plyam?

15 A Yes, it is a list of all the checks that Toby

16 Denniston forged.

17 Q Okay. And can you tell us specifically within the
18 first two pages of this document what information is
19 reflected in the first two pages of this document?

20 A It is the number, the first two pages are dates,
21 check numbers and the amounts of checks that were drawn.

22 Q Is there anything unique about those checks that
23 are reflected on pages one and two? Is it an itemization
24 of the checks that Mr. Denniston used to steal money from
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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
7 it as part of their investigation.

8 Q Did you draft any of the checks that are contained
9 in exhibit number 20?

10 A I don't think I wrote this check. I do not
11 believe I did, no. No.

12 Q Okay. And the first check, this is check number

13 1189, do you recall that we discussed this?

14 A Yes, we just discussed it a few minutes ago. I'm
15 not a hundred percent sure.

16 Q You're not a hundred percent sure that you drafted
17 that check?

18 A Yes.

19 Q What about all the checks following that one. Did
20 you draft any of those?

21 A No. Not -- no.

22 Q How do you know that?

23 A Because they are made out to Toby Denniston.

24 Q Did you ever write Toby Denniston a check from the
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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, 183,
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.

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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: 36.

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
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1 these checks to?

2 A No, I do not. I do know that his boyfriend had an
3 account at Wells Fargo.

4 Q What is his boyfriend's name?

5 A Leonardo. I don't remember Leonardo's last name.
6 They live together or they used to live together. I don't
7 know right now what the situation is.

8 But to summarize, there was about ten to
9 twelve checks which he did not deposit but cashed, and they
10 have his fingerprint on it.

11 Q How do you know it's his fingerprint?

12 A I assumed it was his fingerprint. While the NFA
13 was in my office -- we just assumed because you need to
14 put, when you're cashing a check you need to put a
15 fingerprint on it, so since it's his name on it we assumed
16 it was him. But you'll see several of them.

17 Q Let's go off the record.

18 (Off-the-record discussion.)

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

20 BY MR. DOWD:

21 Q Mr. Plyam, where is Mr. Starr's office located?

22 A In San Diego, California.

23 Q And does he operate under his own name?

24 A Compliance Supervisors or Dennis Starr, something
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1 to that effect. I can make a phone call and get you that
2 information if you'd like.

3 Q Is his last name Starr, S-t-a-r?

4 A R. Two r's.

5 Q D-e-n-n-i-s?

6 A Yes. And he comes with his wife. They work
7 together.

8 Q What's his wife's name?

9 A I don't recall.

10 Q Is her last name Starr?

11 A I believe so. I could verify it with a very quick
12 phone call. I could verify this information right now if
13 you'd like.

14 Q Not necessary.

15 (CFTC Exhibit No. 21 was marked for
16 identification.)

17 BY MR. DOWD:

18 Q Mr. Plyam, do you recognize the document marked as
19 exhibit 21?

20 A Yes, I do.

21 Q Can you tell us what this document is?

22 A It's a statement of income for one of our

23 participants in the Acceleration Mercury account 4X.

24 Q For the record 21 is Bates numbered 00100016
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1 through 31.

2 If I can move you forward to the page ending
3 in Bates number 23, can you tell us what that document is?

4 A It's a statement of income.

5 Q To whom?

6 A Paul Maggio.

7 Q So it's an account statement for Mercury Fund
8 participant Paul Maggio?

9 A Yes, it is.

10 Q Who prepared this document?

11 A Toby Denniston.

12 Q Do you see your signature on the bottom of the
13 page?

14 A I do.

15 Q And above your signature does it read:

16 This account statement is accurate and
17 complete to the best of my knowledge and
18 belief.

19 A Yes, it does.

20 Q Describe for us everything you did to confirm that
21 the information in this account statement was accurate.

22 A I looked at the equity run. I asked Toby to show
23 me the account balance for Wells Fargo and statement for
24 Wells Fargo for that month. I looked to see that the
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1 numbers looked normal and then I signed it.

2 I don't have any experience in accounting
3 though. That's the only thing.

4 Q And was, in fact, the information on this page
5 00100023 accurate?

6 A No, it was not accurate.

7 Q And why wasn't it accurate?

8 A Oh, wait a minute, wait a minute, wait a minute.
9 No, no, no, this is -- yeah, this is, this is right around
10 the time he started doing it. This should be accurate. I
11 assumed this was afterwards, but this is November 30 which
12 is, he started in November so, yeah, this is accurate.

13 Q If I could back you up to exhibit 20 -- not Bates
14 number 20, exhibit 20, this one.

15 A Okay.

16 Q The first six checks listed on exhibit 20.

17 A Yes.

18 Q First one being November 8, 2004, last one being
19 November 27, 2004?

20 A Yes.

21 Q Were those checks used for Mr. Denniston's theft
22 in the pool funds?

23 A Yes.

24 Q Did that theft occur prior to November 30, 2004?
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1 A No. It occurred in November, during November of
2 2004.

3 Q Okay. Would this account statement on exhibit
4 number 21 have reflected, or let me rephrase that.

5 Do you believe the information on page 00023
6 is accurate?

7 A I'm sorry. I'm looking at 21 and it had
8 September. Okay. No, it cannot be accurate because it
9 includes information that's part of this, checks that he
10 took, so it's impossible for it to be accurate.

11 Q Okay. Did the checks that Mr. Denniston used in

12 November of 2004 to steal money come out to roughly \$9700?

13 A I didn't do the math but -- yes.

14 Q And is that \$9700 withdrawal reflected in page
15 number 23 on exhibit 21?

16 A No, it is not.

17 Q So is that statement to Paul Maggio for November
18 30, 2004 accurate?

19 A No, it is not.

20 Q What about moving forward to the next page, 24.

21 Is that account statement accurate?

22 A No, it is not.

23 Q And did you sign this account statement?

24 A Yes, I did.

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1 Q And by signing it, did you represent that it's
2 accurate and complete to the best of your knowledge and
3 belief?

4 A Yes, I did.

5 Q Why wasn't this one accurate?

6 A Because it occurred in December after he started
7 doing his shenanigans.

8 Q After the theft of money?

9 A After the theft of money, yes.

10 Q And this account statement didn't take into
11 account that theft?

12 A I would imagine it took into account that theft,
13 yes. I mean it didn't take into account the theft, right.

14 Q And what about the next one, 25.

15 Is that an accurate account statement?

16 A I don't think it is, no.

17 Q Why don't you think it is?

18 A Because of the date, January 31, '05.

19 Q What about the date leads you to believe that's an
20 inaccurate account statement?

21 A We're going back to the same three things. It's
22 inaccurate because he started doing this in November and
23 this is January. So obviously this does not reflect money
24 he stole.

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1 Q So given that, looking forward from the pages
2 Bates numbered 26 through 31, would you say that any of
3 those account statements are accurate?

4 A I would imagine they are all inaccurate.

5 Q Okay. And they are all inaccurate why?

6 A Because they are not reflecting money that Toby
7 Denniston stole.

8 Q And did you sign each of those account statements?

9 A I did.

10 Q And by signing them, did you represent that they
11 were accurate and complete to the best of your knowledge
12 and belief?

13 A I did.

14 (CFTC Exhibit No. 22 was marked for
15 identification.)

16 BY MR. DOWD:

17 Q Do you recognize the document marked as 22,
18 Mr. Plyam?

19 A Yes, I do.

20 Q Can you tell us what 22 is?

21 A It's a statement of income for January 21, '05 for
22 Paul Maggio.

23 Q And are the statement of income, are there
24 statements of income following that for different periods
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1 of time?

2 A Yes.

3 MR. SOLINSKY: Counsel, could you identify the
4 Bates number, please?

5 MR. DOWD: 00100033 through 39.

6 BY MR. DOWD:

7 Q Mr. Plyam, are any of the account statements in
8 exhibit 22 accurate?

9 A I don't see how they could be accurate based on
10 what we know.

11 Q Did you sign any of these account statements?

12 A No. These I did not.

13 Q Do you know why these are unsigned?

14 A No, I don't.

15 Q Was it your practice to sign account statements
16 before distributing them?

17 A Yes, it was. Yes, of course.

18 Q And do you have copies of these signed account
19 statements?

20 A I'm sorry.

21 Q Do you have copies of these account statements
22 that are signed. In other words, do you have a signed
23 version of the account statements in exhibit 22?

24 A I don't recall. I can't give you an honest answer
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1 'cause I don't recall.

2 Q Okay. If you do, I request that you produce
3 those.

4 A Okay.

5 MR. SOLINSKY: Mr. Plyam, with respect to the
6 statements of income that are contained in exhibit 21 and
7 22, did you share those statements with the customers for
8 those, for the Mercy Fund 4X, LP?

9 THE WITNESS: Yes.

10 MR. SOLINSKY: How did you share it?

11 THE WITNESS: We would send them out. Toby would
12 send them out in the mail.

13 MR. SOLINSKY: And did you direct Mr. Denniston to
14 send those statements out in the mail?

15 THE WITNESS: Yes.

16 MR. SOLINSKY: Did you send them out any other way
17 besides sending them in the mail?

18 THE WITNESS: No.

19 MR. SOLINSKY: Thank you.

20 BY MR. DOWD:

21 Q Mr. Plyam, if I could direct you back to exhibit

22 number 7, which is a letter dated December 30, 2005.

23 A Okay.

24 Q And in response, the portion of the letter labeled
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1 Response to item 1, the second paragraph thereunder and
2 specifically where it reads:

3 Additionally, Denniston's background was
4 thoroughly checked by the FBI....

5 A Yes.

6 Q How do you know that Denniston's background was
7 checked by the FBI?

8 A Because we know that when somebody applies to, for
9 NFA registration, their fingerprints are sent to the FBI.
10 We were told so by the NFA years and years ago and that's
11 why there was a delay.

12 That's when I actually mentioned it to you
13 when we first started about Curtis Faith because we needed
14 him registered so he could be a member of the NFA for the
15 pool, and when he got his registration it took an extra
16 couple weeks and we were calling the NFA and they were
17 saying because he's in the Virgin Islands, it will take a
18 couple extra weeks or a month, we send the fingerprints out

19 to FBI. So I remembered that very well that that happens.

20 Q Do you know if the FBI actually ran any sort of
21 background check on Mr. Denniston's fingerprints?

22 A I don't know for sure, but I imagine so because he
23 was allowed to sit in for the exam.

24 Q Do you have personal knowledge that the FBI ran
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1 any sort of background check on Denniston?

2 A Not a personal knowledge. Just knowledge based on
3 normal circumstances of what I've been told and what I've
4 seen in the business.

5 Q Okay. And based on what you've been told and what
6 you've seen in the business, do you know if the FBI does
7 anything other than run the fingerprints through its
8 fingerprint database?

9 A I wouldn't know.

10 Q Okay. And moving down to the next line.

11 A One -- in regards to this, Agent Hegst did tell us
12 that he did an investigation on Toby. He voluntarily told
13 me and he said, There's absolutely nothing in his
14 background that would remotely show that he was capable of

15 doing this in any way whatsoever.

16 Q That's what I'm getting at in my second question
17 on this document. And the next line down which reads:

18 Criminal background check revealed no past
19 criminal conduct.

20 A Yes.

21 Q What's your basis for that statement?

22 A Agent Hegst. He wouldn't tell us what he found,
23 but he said, there's absolutely nothing on here that would
24 show that he had any propensity or disposition or anything
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1 of that nature to do something like this.

2 Q Okay. Going down in that same paragraph where it
3 says:

4 As stated by the FBI, Secret Service and
5 several employees..., do you see that?

6 A Yes.

7 Q Okay. Who at the FBI stated he was the least
8 likely person to commit such acts?

9 A You know, it was -- I might have misspoke. It was
10 Secret Service. It wasn't FBI. Because they were working
11 -- the FBI transferred to Secret Service. They were kind

12 of working at the same time.

13 Q But do you know if anyone at the FBI said that,
14 that Mr. Denniston was the least likely person to commit
15 such acts?

16 A Other than Secret Agent Hegst, no.

17 Q But Agent Hegst worked for the Secret Service,
18 right?

19 A Yes. But in L.A. if you call for the FBI, they
20 just transfer you. So we assumed it was in the same office
21 or the same division.

22 Q Okay. And then the several employees who worked
23 for him for extended periods of time, who were those
24 employees?

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1 A Oh. Jeff, what's his name. Dion Campbell. Jeff,
2 what's Jeff's last name. I gave it to you previously.

3 MR. HENDERSON: Anthony.

4 THE WITNESS: Jeff Anthony, thank you. Dion
5 Campbell, Greg Parker. Those -- all of them.

6 BY MR. DOWD:

7 Q Anyone else?

8 A No. And they were saying that while the NFA was
9 there the entire time. One guy said, I would -- if you
10 told me this, I would believe I did it more than I would
11 believe he would do it. He's the guy that would never do
12 something like that. You know, he was the happy-go-lucky
13 guy who would talk a lot. He wasn't private or secretive
14 or weird in any way like that. He's the guy that, you
15 know, you -- he's just a real, he seemed like a really good
16 guy.

17 Q Is the Acceleration Mercury pool still active?

18 A No. We closed it within weeks of this happening.
19 And I was actually, I believe one of the reasons why Toby
20 did this is because I was talking a lot about closing the
21 fund and what he was hoping for -- this is just all my
22 thinking. The reason he was doing this is because he would
23 hope we would close the fund before anybody would find out.

24 Because I was talking a lot about it and the
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1 reason I was talking a lot about it was because of my
2 relationship with Curtis Faith which has been completely
3 non-existent the last couple of years. So I was very
4 dissatisfied with it and I said, you know, I don't want to

5 do this, I'm tired of this fund, we should start -- and
6 when Lisa Marlow came I even said, I was going to call you
7 in the next few days to ask you about procedures of closing
8 the fund. So I believe that was one of his motives or
9 thoughts in doing it.

10 Q Has there been any distribution of fund monies
11 subsequent to the discovery of the theft?

12 A Yes. We immediately did a pro rata calculation
13 and distributed to every client exactly their proportionate
14 share minus the amount that was stolen in the fund. That
15 was done immediately.

16 Q And has the stolen money been returned to the pool
17 by any individual or entity?

18 A No, it has not. We are in the process of
19 litigation against Wells Fargo. In the disclosure document
20 there's a provision for me using the fund money to pay for
21 it. I have chosen to do it at my own cost. And I am going
22 after Wells Fargo full force right now.

23 Q So the pool is roughly \$199,000 short at the
24 moment?

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1 A Between 183 and 199, somewhere in that ballpark.

2 Q Okay. And what's the status of your request to
3 Wells Fargo that they reimburse this amount of money?

4 A We have sent them two letters. They have said no,
5 we are not responsible where I believe they are clearly
6 responsible, and we are filing a cause of action within the
7 next 30 to 40 days.

8 Q And currently no litigation has been filed?

9 A Not yet, but it's coming very, very shortly. That
10 was actually a reason why a couple of my clients called me.
11 They were concerned that they would have to flip the tab
12 for it and I said, No, this is something I am dealing with
13 out of my own pocket.

14 Q Is there any plan for reimbursement if Wells Fargo
15 does not make reimbursement?

16 A That's something I haven't thought of, but I would
17 imagine that either they or Toby Denniston would have to
18 make restitution.

19 Q And absent that, is there any plan for
20 restitution?

21 A No, I have not made any plans for restitution.

22 Q What about reimbursement?

23 A It would be the same thing. No.

24 Q Do you know how Mr. Denniston used the money he
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1 stole from Acceleration Mercury Fund?

2 A He got himself new teeth. He added, helped to get
3 his stomach surgery, got a new BMW.

4 Q Does he still have the BMW?

5 A I have no idea. Opened up a trading account which
6 was ceased by the Secret Service from what I was told
7 because we gave them the information on it, that \$15,000.
8 One of the things Natasha asked him when he called back the
9 next day when the NFA was in our office was, Do you still
10 have any of the money? He said no.

11 Q Have you ever had a conversation with Agent Hegst
12 or any other individual investigating this matter with
13 respect to the disposition of the money?

14 A No. We keep talking and he -- no, we never did.
15 We did, in the beginning we did, but he said that his
16 assets would be frozen and they would look into it. We
17 gave them the information of all the bank accounts we knew.
18 We gave them information that his boyfriend had a bank
19 account at Wells Fargo. We gave them all that information.

20 Q Are you aware of any asset that is attributable to
21 Mr. Denniston's theft of the pool's money?

22 A No. This is all speculation of what he spent it
23 on.

24 Q Do you know what Mr. Denniston's motivation for
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1 stealing the funds were or what his motivation was?

2 A You know, I think he told the secret agent that he
3 just got carried away. He started something and just
4 couldn't stop. This is what I gathered from the Secret
5 Service. He seems to have not -- I'm sorry. Go ahead.

6 Q And along those lines, subsequent to the time you
7 learned about this theft, you and your wife each had
8 conversations with Mr. Denniston, is that correct?

9 A I had a conversation right when it happened. I
10 did not speak to him since. She talked to him one time
11 afterwards and he had left us a few messages and he tried
12 to use us -- this is just unreal. He tried to use us as a
13 job -- don't ask. You know, I don't know. It's hilarious.

14 Q How many times did your wife speak with
15 Mr. Denniston subsequent to the time when you learned of
16 the theft?

17 A Either once or twice.

18 Q Okay. Did he inform her at any point in time
19 where the money was?

20 A No. And she asked. He said he had spent it.

21 Q Did he at any point in either of those
22 conversations describe his motivation for stealing the
23 money?

24 A No. He said he was on antidepressants, he
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1 started, he was taking an antidepressants around that time
2 and he just got carried away and that was pretty much all
3 that we could gather from him.

4 Q Do you know when Agent Hegst took the confession
5 from Mr. Denniston?

6 A I don't know exactly, but I know it wasn't right
7 away. It was, I would say about a month to two months
8 afterwards. He said he came in, he said -- this is what
9 happened.

10 He made an appointment to come in and then he
11 got a call from Toby's brother telling him that his mom had
12 passed away because of natural environment, whatever. So
13 they said we're giving him, we confirmed it with the
14 doctors or whatever and we extended this to him, so they

15 kind of took like a month off break so he could go to where
16 his mom was and then they started off again.

17 But they're saying he's right now about to,
18 he made some kind of a deal -- I don't know the details of
19 it. He made some kind of a deal with them where he gave a
20 full confession and I don't know what he gets in return. I
21 don't know the deal.

22 Q Did you testify earlier that Agent Hegst read you
23 a copy of that confession?

24 A No, he did not.
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1 Q Did he provide you any details of that confession? 217

2 A No. He --

3 Q Agent Hegst came to your office at one point in
4 time?

5 A Twice. Once to take the material and once to pick
6 up the computer.

7 Q Okay. And what did he say to you, if anything,
8 the first time he came?

9 A Basically very little. The first time he was just
10 there to get all the information, to make sure that he had

11 everything. It wasn't very detailed. It was not -- the
12 second time is when he told me that, and the rest of our
13 office that Toby Denniston came to his office saying how he
14 can't live with himself, he can't sleep at night, he can't
15 do anything. He feels so bad because we treated him better
16 than his family, which I know we did, and that he feels
17 really, really bad and he wants to do whatever he has to do
18 to make, you know, he's got to pay the price. He'll take
19 full responsibility for it. It's completely his fault.

20 And then he made a comment to us that in all
21 of his years as a secret agent, he has never, this is the
22 least likeliest person, he's never seen this -- he
23 mentioned that he did his background check. He couldn't
24 find anything in his background check and it just, he had
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1 the same reaction we all did.

2 Q And was it at that point in time when Agent Hegst
3 informed you that Mr. Denniston had made a confession?

4 A No. He told us about that prior to on the phone
5 and then he kind of filled us in afterwards.

6 Q Okay. And do you recall what he told you over the
7 phone? Do you recall any of the details?

8 A The details that I just mentioned to you were
9 really over the phone and he just kind of expanded upon
10 them in coming to our office, and then we talked about what
11 does he face for this and those kinds of things. It was
12 more kind of in the end.

13 Q What was his response when you asked what does he
14 face for this?

15 A Oh. I'll tell you what his response was. I'll
16 never forget it. He said this to me. He said, These days
17 you get fined less for doing what he did than -- he was
18 basically saying how the system is so screwed up that he
19 may get a slap on the wrist or do like a year in prison
20 because of this.

21 We were thinking because this is federal,
22 checks, fraud, we are talking 10, 15 years. He said no,
23 no, nothing like that. He was even using people, robbers
24 as an example, and saying, If you want to want to rip off
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1 banks, this is the way to do it. There's literally very
2 little punishment for this versus doing it with weapons or
3 things like that. He was, we were kind of talking about

4 that, you know.

5 Q Mike, do you have any questions?

6 MR. SOLINSKY: No questions. Thank you.

7 THE WITNESS: Could I tell you what David Groom
8 told me as a comment?

9 BY MR. DOWD:

10 Q Who is David Groom?

11 A He's the head of the NFA who was doing the audit,
12 who was flown in after the NFA told him this happened. He
13 was flown in because he was a supervisor and his comment to
14 me was, Yuri, there are two type of IBs. There are bad IBs
15 and there's IBs that make a mistake. You're not a bad IB,
16 you're not that kind of a person.

17 'Cause I was literally ill for two, three
18 days. I was shocked that this happened. When this
19 happened I threw down the phone, I sat in the corner crying
20 like a little baby. I'm not that kind of a guy. I was in
21 shock. I couldn't believe this occurred. It was just
22 unreal. It's literally something you see in the movies.

23 Q Mr. Henderson, do you have anything?

24 MR. HENDERSON: Nothing.
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1 MR. SOLINSKY: One thing just to underline. I know
2 we don't have signed copies of exhibit 22. I don't know if
3 I heard it, but we'd request if there are any signed copies
4 of exhibit 22, those are statements of account, that they
5 be produced, Mr. Henderson.

6 MR. HENDERSON: Not a problem. Ted had requested
7 those.

8 MR. DOWD: Beyond that, if there are any account
9 statements that we don't have that are signed, we want
10 them.

11 MR. HENDERSON: Okay.

12 MR. DOWD: Rather than just unsigned versions.

13 Mr. Plyam, do you wish to clarify anything or
14 add anything --

15 MR. VARGYAS: I'm sorry. It's Joe. If you can
16 get me more information on the address and phone number and
17 any other information you could supply me with with respect
18 to Dennis Starr, the name of his corporation and phone
19 number or e-mail, whatever.

20 MR. HENDERSON: I may be able to give it to you
21 right here.

22 MR. VARGYAS: Could you send it to Ted?

23 THE WITNESS: We'll get it to you, no problem.

24 MR. HENDERSON: Off the record for one minute.

1 (Off-the-record discussion.)

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

3 Mr. Henderson, do you have anything?

4 MR. HENDERSON: Nothing further.

5 BY MR. DOWD:

6 Q Mr. Plyam, do you wish to clarify anything or add
7 anything to the statements you've made today?

8 A I think I've said more than enough. No.

9 Q No, you don't want to clarify anything?

10 A No. Unless you want me to, I'm fine. I think you
11 guys have a good idea of all the facts here.

12 Q Have you answered all questions to the best of
13 your ability based on your knowledge?

14 A Absolutely yes.

15 Q Okay. We have no further questions for you at
16 this point in time. We may need to speak with you again in
17 the future. If that occurs, we'll contact you through
18 Mr. Henderson. And on behalf of the CFTC and my colleagues
19 in Washington, I'd like to thank you for coming in today
20 and testifying. And we are off the record at approximately

21 3:45 p.m.

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(FURTHER DEPONENT SAITH NAUGHT.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

I, Susan Soble, Certified Shorthand Reporter
4 for the State of Illinois and County of Cook, do hereby
5 certify that I reported in shorthand the proceedings had in
6 the above-entitled cause, and that the foregoing is a true
7 and correct transcript of said proceedings.

8

In witness whereof, I have hereunto set my
9 hand and affixed my seal at Chicago, Illinois, this 24th of
10 March, 2006.

11

12

13

Susan Soble, C.S.R. #84-902
Notary Public.

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