

Name of Offeree

Copy No.

(This offering memorandum does not constitute an offer unless the offeree's name and a memorandum copy number appear above)

# Acceleration Mercury Fund 4X, LP

## A Delaware Limited Partnership

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

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 This Disclosure Document is not to be distributed under any circumstances after September 14, 2005 and will be superseded after that date by a Disclosure Document containing then current information about this program.

## Acceleration Capital, LLC

General Partner

### ***Private and Confidential***

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

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

**THE INTERESTS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**RISK DISCLOSURE STATEMENT**

**YOU SHOULD CAREFULLY CONSIDER WHETHER YOU'RE FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT FUTURES AND OPTIONS TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON WITHDRAWALS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.**

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

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

**YOU SHOULD ALSO BE AWARE THAT THE COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.**

**TABLE OF CONTENTS**

**RISK DISCLOSURE STATEMENT** ..... 2

**TABLE OF CONTENTS** ..... 3

**NOTICES** ..... 5

**SUMMARY** ..... 7

**THE PARTNERSHIP** ..... 9

**OFFERING OF INTERESTS** ..... 9

Commencement of Trading ..... 9

Suitability Requirements ..... 10

Transferability ..... 10

Capital Contribution ..... 11

Purchase Procedure ..... 11

**USE OF PROCEEDS** ..... 11

**INVESTMENT METHODOLOGY** ..... 11

Trading Strategies ..... 11

Investment Program ..... 13

Markets To Be Traded

Principal Risk Factors with Forward Contracts

General ..... 14

**MANAGEMENT OF THE PARTNERSHIP** ..... 14

Principals of the General Partner ..... 14

**BREAK-EVEN ANALYSIS** ..... 15

**PERFORMANCE INFORMATION** ..... 16

**INCENTIVE ALLOCATION** ..... 17

**SUMMARY OF FEES AND EXPENSES** ..... 17

Management Fee ..... 17

Transaction Fees ..... 17

Expenses ..... 18

Organizational Expenses ..... 18

**CONFLICTS OF INTEREST** ..... 18

Introducing Broker/Futures Commission Merchant ..... 19

Non-Arms-Length Agreements ..... 19

Incentive Allocation and Fees ..... 19

Competition with the Partnership from Managed Accounts for Securities Transactions ..... 19

Competition with the Partnership from Affiliates of the General Partner for the Time and Services of the Managing Members ..... 19

Conflicts as to Investment Opportunities ..... 20

<b>RISK FACTORS .....</b>	<b>20</b>
<b>GENERAL .....</b>	<b>20</b>
<u>Limited Operating History .....</u>	<u>20</u>
<u>Reliance on the General Partner .....</u>	<u>20</u>
<u>Limited Partners Will Not Participate In Management .....</u>	<u>20</u>
<u>Operating Deficits .....</u>	<u>21</u>
<b>INVESTMENT RISKS .....</b>	<b>21</b>
<u>Investments May Be Speculative .....</u>	<u>21</u>
<u>Brokerage Commissions/Transaction Costs .....</u>	<u>21</u>
<u>Risks of Options Trading .....</u>	<u>21</u>
<u>Short Selling .....</u>	<u>21</u>
<u>Use of Leverage .....</u>	<u>21</u>
<u>Concentration of Investments .....</u>	<u>22</u>
<u>General Economic and Market Conditions .....</u>	<u>22</u>
<u>Changes in Investment Strategies .....</u>	<u>22</u>
<u>Limited Liquidity of Some Investments .....</u>	<u>22</u>
<u>Trading on Non-United States Exchanges Presents Certain Risks .....</u>	<u>23</u>
<u>Insolvency of the FCMs and Others .....</u>	<u>23</u>
<b>PARTNERSHIP RISKS .....</b>	<b>24</b>
<u>Tax Liability Without Distributions .....</u>	<u>24</u>
<u>Limited Liquidity .....</u>	<u>24</u>
<u>Effect of Substantial Withdrawals .....</u>	<u>24</u>
<u>Potential Mandatory Withdrawal .....</u>	<u>24</u>
<b>OTHER RISKS .....</b>	<b>25</b>
<u>Tax Considerations .....</u>	<u>25</u>
<u>Regulatory Matters .....</u>	<u>26</u>
<u>Litigation .....</u>	<u>27</u>
<u>Possible Indemnification Obligations .....</u>	<u>27</u>
<u>No Minimum Size of Partnership .....</u>	<u>27</u>
<b>TRANSACTIONAL PRACTICES .....</b>	<b>27</b>
<u>General Selection Criteria .....</u>	<u>27</u>
<u>Futures Commission Merchant .....</u>	<u>27</u>
<b>SUMMARY OF THE LIMITED PARTNERSHIP AGREEMENT .....</b>	<b>28</b>
<u>Management Responsibilities of the General Partner .....</u>	<u>28</u>
<u>Exercise of Rights by Limited Partners .....</u>	<u>28</u>
<u>Sharing of Profits and Losses .....</u>	<u>29</u>
<u>Withdrawals .....</u>	<u>29</u>
<u>Accounts, Records and Reports and Pricing .....</u>	<u>30</u>
<u>Liabilities .....</u>	<u>30</u>
<u>Indemnification .....</u>	<u>30</u>
<u>Termination .....</u>	<u>31</u>
<u>Fiscal Year .....</u>	<u>32</u>
<u>Arbitration .....</u>	<u>32</u>
<u>Miscellaneous Provisions .....</u>	<u>32</u>

**NOTICES**

**IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE INTERESTS HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

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

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

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

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

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

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

**BY ACCEPTING RECEIPT OF THIS MEMORANDUM, EACH PROSPECTIVE INVESTOR AGREES NOT TO DUPLICATE OR TO FURNISH COPIES OF THIS MEMORANDUM TO PERSONS OTHER THAN SUCH OFFEREE'S INVESTMENT, TAX, ACCOUNTING OR LEGAL ADVISERS AND AGREES TO RETURN THIS MEMORANDUM TO THE GENERAL PARTNER**

**PROMPTLY AFTER SUCH TIME AS SUCH OFFEREE IS NO LONGER CONSIDERING AN INVESTMENT IN THE INTERESTS.**

**THIS MEMORANDUM DOES NOT CONTAIN AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY TO MAKE THE STATEMENTS MADE HEREIN, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IT CONTAINS A FAIR SUMMARY OF THE MATERIAL TERMS OF DOCUMENTS PURPORTED TO BE SUMMARIZED HEREIN.**

## SUMMARY

The following summary briefly describes the offering of Interests in Acceleration Mercury Fund 4X, LP and is qualified in its entirety by the detailed information appearing elsewhere in this Memorandum.

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

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

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

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

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

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

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

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

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

**Allocation of Profits and Losses:** Each Limited Partner in the Partnership and the General Partner will have a Book Capital Account (as hereinafter defined) and a Tax Capital Account (as hereinafter defined), the initial balance of each of which will be the amount contributed to the Partnership by such partner. Any increase or decrease in the Net Asset Value of the Partnership will be allocated among the partners on a

monthly basis and will be added to or subtracted from the Book Capital Accounts of the partners in the ratio that each partner's Book Capital Account bears to all partners' Book Capital Accounts.

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

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

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

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

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

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

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

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

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

**Conflicts of Interests:** Certain inherent and potential conflicts of interests exist in the nature and operations of the Partnership. See “**CONFLICTS OF INTEREST.**”

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

## THE PARTNERSHIP

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

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

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

## OFFERING OF INTERESTS

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

### Suitability Requirements

The Partnership is only offering Interests for sale to “accredited investors”, and the General Partner may reject any subscription for an Interest, in whole or in part, for any reason. There is no maximum amount of capital contributions that may be accepted by the Partnership pursuant to this offering of Interests. Participation in the Partnership pursuant to this offering of Interests is limited to Qualified Investors who are defined as, either alone or in conjunction with their respective purchaser representative(s) (as defined in Rule 501 of Regulation D), those who are qualified to invest in the Partnership by (a) their knowledge and acceptance of the risks associated with highly leveraged trading in volatile markets and (b)

their financial ability to accept such risks. Interests which are offered hereby should only be purchased by those persons who can afford the possible loss of their entire investment and may only be purchased by those investors who represent and warrant that they are purchasing the Interests for their own account for investment purposes without any present intention to resell, distribute or otherwise transfer or dispose of the Interests.

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

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

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

#### **Transferability**

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

#### **Capital Contribution**

Capital Contributions must be made in cash.

## Purchase Procedure

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

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

## USE OF PROCEEDS

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

## INVESTMENT METHODOLOGY

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

### Trading Strategies

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

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

### Investment Program

The investment program has been designed to deliver high returns. These returns come with higher risk and higher monthly volatility relative to other investment programs offered by the General Partner and its principals.

Although the Investment Program tends to concentrate its trading activities on the futures markets the General Partner places no limitations on the exchanges or markets on which it trades pursuant to the Investment Program.

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

#### *Short term Trading Systems*

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

#### *Long and Medium-Term Trend Following Systems*

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

#### *Counter-Trend or Mean-Reversion Systems*

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

#### *General System Characteristics and Allocations*

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

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

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

### *Markets to be traded*

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

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

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

### **General**

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

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

The exact details of the General Partner's trading strategies and trading programs are proprietary and confidential. Therefore, the description of the General Partner's trading strategies and trading programs in this Disclosure Document is general in nature and not intended to be exhaustive.

## MANAGEMENT OF THE PARTNERSHIP

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

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

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

### Principals of the General Partner

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

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

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

**Yuri M. Plyam** has been a managing member of CHP Asset Management, LLC, an investment management company and a General Partner of the Partnership, since July 2002. His responsibilities include system research and development. His duties also include trade execution and pool compliance issues. Mr. Plyam has been the President of Castle Trading, Inc., since January 2000. Mr. Plyam consults many financial research companies on systematic trading system development and implementation

techniques. Mr. Plyam earned a Juris Doctorate Degree from the University of La Verne, from June 1991 through June 1999. He has received several American Juris Prudence awards for his studies in law. Mr. Plyam was a financial analyst for Prudential Realty Group from June 1989 until June 1991. His duties at Prudential Realty Group included research on the stock market and commodities markets. Mr. Plyam worked as a futures broker for Cannon Trading, Inc. from July 1999 to December 1999. His duties at Cannon Trading included trade execution and client solicitation. From December 1999 to August 2000, he worked for Brookstreet Securities, as a futures broker. His duties at Brookstreet Securities included trade execution and client solicitation. In July 2003, Mr. Plyam formed Acceleration Capital, LLC, where he serves as a managing member; his duties include system research and development as well as trade execution and pool compliance issues. See "CONFLICTS OF INTEREST".

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

**Litigation:**

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

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

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

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

**BREAK-EVEN ANALYSIS**

Selling Price per Unit	\$1,000
Operating Expenses (1)	\$0
Management Fee (2)	\$25

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

Explanatory Notes

- (1) The General Partner pays for all accounting, legal, and miscellaneous operating expenses incurred.
- (2) The CPO will receive a monthly management fee equal to 1/12<sup>th</sup> of 2.5% of Net Asset Value.
- (3) Estimated at five percent (5%) of Net Asset Value.
- (4) The Pool will earn interest on margin deposits with the commodity broker and from the investment of pool assets. Based on approximate current interest rates and rate of investment, interest income is estimated at one and one-half percent (1.5%) of Net Asset Value.
- (5) "Net Asset Value" shall mean the Partnership's total assets including all cash, cash equivalents and other securities (each valued at fair market value), less total liabilities, determined in accordance with generally accepted accounting principles, consistently applied under the accrual method of accounting. Net Asset Value shall reflect all gains and losses (whether realized or unrealized), income and expenses (including the compensation of the General Partner).
- (6) Note: As stated earlier a 2% withdrawal penalty will apply for all withdrawals made prior to six calendar months from the day in which an interest is purchased.

**PERFORMANCE INFORMATION**

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

**PROSPECTIVE INVESTORS ARE CAUTIONED THAT THE RESULTS SET FORTH IN THE FOLLOWING TABLES ARE NOT INDICATIVE OF THE RESULTS WITH ACCELERATION CAPITAL, LLC MAY ACHIEVE IN THE FUTURE. PAST PERFORMANCE ARE NOT NECESSARILLY INDICATIVE OF FUTURES RESULTS. NO REPRESENTATION IS MADE THAT ACCELERATION CAPITAL, LLC WILL OR IS LIKELY TO ACHIEVE FOR LIMITED PARTNERS PROFITS OR INCUR LOSSES COMPARABLE TO THOSE SHOWN.**

Name of Pool: Acceleration Mercury 4X Fund, LP  
 Type of Pool: Privately Offered  
 Inception of Trading: April 21, 2004  
 Aggregate Subscriptions: \$ 786,160.06  
 Current Net Asset Value: \$ 651,978.52  
 Worst Monthly Percentage Draw-down: June 2004 / (3.82%)  
 Worst Peak-to-Valley Draw-down: May 2004 - July 2004 / 6.08%

**PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS**

MONTH	Rate of Return
	2004
JANUARY	
FEBRUARY	
MARCH	
APRIL	0.08%
MAY	0.50%
JUNE	(3.82%)
JULY	(2.84%)
AUGUST	1.46%
SEPTEMBER	0.34%
OCTOBER	1.30%
NOVEMBER	5.75%
DECEMBER	(.61%)
YEAR TO DATE TOTAL	1.88%
COMMENCEMENT OF TRADING	1.88%

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

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

Name of Pool: Gauss Fund, LP  
 Type of Pool: Privately Offered  
 Inception of Trading: January 27, 2003  
 Aggregate Subscriptions: \$ 567,357.04  
 Current Net Asset Value: \$ 511,239.59  
 Worst Monthly Percentage Draw-down: June 2003 / 10.71%  
 Worst Peak-to-Valley Draw-down: January 2003 - September 2003 / 31.33%

**PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS**

MONTH	Rate of Return	Rate of Return
	2003	2004
JANUARY	1.29%	(0.30%)
FEBRUARY	(4.39%)	13.49%
MARCH	(6.05%)	4.55%
APRIL	1.88%	(7.87%)
MAY	3.16%	1.31%
JUNE	(10.71%)	(1.12%)
JULY	(6.00%)	(1.59%)
AUGUST	(8.65%)	(0.88%)
SEPTEMBER	(5.14%)	2.53%
OCTOBER	4.48%	5.24%
NOVEMBER	(3.95%)	7.49%
DECEMBER	3.32%	(0.67%)
YEAR TO DATE TOTAL	-27.64%	22.18%
COMMENCEMENT OF TRADING		-11.22%

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

## INCENTIVE ALLOCATION

At the end of each calendar quarter, the General Partner shall be allotted an Incentive Allocation equal to 20% of the Net New Appreciation of each Limited Partner's Book Capital Account during each calendar quarter.

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

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

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

## SUMMARY OF FEES AND EXPENSES

### Management Fee

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

### Transaction Fees

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

### Expenses

The General Partner will be obligated to pay the annual operating expenses on an ongoing basis, including periodic legal, accounting, auditing, filing, administrative and other regular operating expenses and extraordinary expenses, if any, as well as continuing offering expenses. The approximate cost for these annual expenses is approximately \$10,000. The General Partner will provide the Partnership with office space, if necessary, and certain support services at no cost to the Partnership. The Partnership, however,

will be obligated to pay its other direct and indirect trading related expenses. See "SUMMARY OF THE LIMITED PARTNERSHIP AGREEMENT" and "CONFLICTS OF INTERESTS."

### **Organizational Expenses**

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

### **CONFLICTS OF INTEREST**

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

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

### **Introducing Broker/Futures Commission Merchant**

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

### **Non-Arms-Length Agreements**

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

### **Incentive Allocation and Fees**

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

### **Competition with the Partnership from Managed Accounts for Securities Transactions**

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

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

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

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

### **Conflicts as to Investment Opportunities**

The General Partner is obligated to use its best efforts to provide the Partnership with continuing and suitable investment opportunities consistent with its investment objectives, policies and strategies; however, the General Partner is not required to present to the Partnership any investment opportunity which has come to its attention, even if such opportunity is consistent with the investment objectives, policies and strategies of the Partnership. Accordingly, the Partnership may not be given the opportunity to participate in certain investments made by the General Partner and its Affiliates. In addition, if the Partnership rejects an investment opportunity for any reason, the General Partner and its Affiliates may accept it. The General Partner will endeavor to resolve conflicts of interest with respect to investment opportunities in a manner deemed equitable to all to the extent possible under the prevailing facts and circumstances and consistent with the General Partner's fiduciary duties.

## RISK FACTORS

Prospective investors should carefully consider the risks involved in an investment in the Partnership, including but not limited to those discussed below. Many of those risks are discussed more fully elsewhere in this Memorandum. Prospective investors should consult their own legal, tax, and financial advisers as to all these risks and an investment in the Partnership generally.

### GENERAL

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

#### Limited Operating History

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

#### Reliance on the General Partner

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

#### Limited Partners Will Not Participate In Management

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

#### Operating Deficits

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

### INVESTMENT RISKS

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

### **Investments May Be Speculative**

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

### **Brokerage Commissions/Transaction Costs**

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

### ***Principal Risk Factors with Forward Contracts***

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

### **Risks of Options Trading**

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

### **Short Selling**

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

### **Use of Leverage**

The Partnership Agreement authorizes the General Partner, in the General Partner's sole discretion, to leverage the Partnership's investment positions. Such leverage, if employed, would increase both the possibilities for profit and the risk of loss. Under certain circumstances, a FCM may demand an increase in the collateral that secures the borrower's obligations, and if the borrower were unable to provide

additional collateral, the lender could liquidate assets held in the account to satisfy the borrower's obligation. If the Partnership were to become subject to liquidation in that manner it could suffer extremely adverse consequences.

### **Concentration of Investments**

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

### **General Economic and Market Conditions**

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

### **Changes in Investment Strategies**

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

### **Limited Liquidity of Some Investments**

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

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

As part of his emergency powers, an exchange or the CFTC can suspend limit trading in a particular contract, order immediate liquidation and settlement of a particular contract, or order that trading in a particular contract be conducted for liquidation only.

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

### **Speculative Position Limits**

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

### **Trading on Non-United States Exchanges Presents Certain Risks**

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

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

### **Insolvency of the FCM's and Others**

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

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

## **PARTNERSHIP RISKS**

### **Tax Liability without Distributions**

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

### **Limited Liquidity**

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

### **Effect of Substantial Withdrawals**

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

### **Potential Mandatory Withdrawal**

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

## **OTHER RISKS**

### **Tax Considerations**

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

#### *Limitations on Deductions*

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

#### *Foreign Investors*

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

#### *Allocations*

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

#### *Possibility of Taxation as a Corporation*

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

#### *Possibility of Tax Audits*

Under the terms of the allocation provisions in the Limited Partnership Agreement, partners experiencing depreciation in their Book Capital Accounts during the fiscal year may be allocated capital loss for Federal income tax purposes even though the Partnership realized a net capital gain for the year. Conversely, partners experiencing appreciation in their Book Capital Accounts during the fiscal year may be allocated capital gain for Federal income tax purposes even though the Partnership realized a net capital loss for the year. As a result, the Partnership's method of allocating gain and loss to the partners may enhance the possibility that the Partnership's tax return and individual partners' returns might be audited by the IRS.

If the Partnership's tax return were to be audited by the IRS, there can be no assurance that adjustments would not be made to the return as a result of such an audit. The Partnership audit procedures have been simplified and adjustments may be made at the Partnership level that will bind all the partners. A general partner of a partnership is to be designated as the "tax matters partner," who is to be the Partnership's primary representative with respect to the IRS and will possess the power to extend the statute of limitations for assessment and collection with respect to such audits for all partners. By executing the Limited Partnership Agreement, the Limited Partners appoint the General Partner to act as the "tax matters partner" of the Partnership. If an audit of the Partnership returns results in an adjustment, the Limited Partners' returns may be audited. Any expenses incurred in an audit of their individual returns must be borne by the Limited Partners. Furthermore, interest charged by the IRS on tax deficiencies is substantial and is compounded daily.

#### *Other Possible Tax Law Changes*

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

#### **Regulatory Matters**

##### *Investment Company Regulation*

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

##### *Private Offering Exemption*

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

*Other*

The Partnership and the General Partner will be subject to various other regulations, securities laws and others rules, laws or regulations that could limit some aspects of the Partnership's operations or subject the Partnership or the General Partner to the risk of sanctions for noncompliance.

**Litigation**

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

**Possible Indemnification Obligations**

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

**No Minimum Size of Partnership**

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

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

**TRANSACTIONAL PRACTICES**

**General Selection Criteria**

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

**Futures Commission Merchant**

The General Partner intends to utilize Rosenthal Collins Group, LLC. ("RCG") as the Partnership's Futures Commission Merchant ("FCM"). The Partnership may engage additional FCM's in the future. Rosenthal Collins Group, L.L.C. is an Illinois Limited Liability Company organized in October of 1998 with its principal office at 216 West Jackson Boulevard, Chicago, Illinois 60606. It is a registered Futures Commission Merchant and a member of the National Futures Association.

Rosenthal Collins Group, L.P., an Illinois limited partnership, was the culmination of the 1988 unification between Rosenthal & Company, a commodities brokerage firm established in 1970, and Collins Commodities, a commodities brokerage firm established in 1923. In January 1999, Rosenthal Collins Group, L.L.C. assumed all of the assets and liabilities of the limited partnership.

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

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

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

#### SUMMARY OF THE LIMITED PARTNERSHIP AGREEMENT

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

#### **Management Responsibilities of the General Partner**

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

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

### **Exercise of Rights by Limited Partners**

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

### **Sharing of Profits and Losses**

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

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

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

### **Withdrawals**

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

The General Partner may, in its sole discretion (a) postpone the distribution of any Partnership assets which cannot be properly valued on the withdrawal date until such time when the assets can be properly valued; (b) establish a reserve against any undetermined or contingent liability in an amount deemed reasonable by the General Partner; and (c) amend, modify, liberalize or restrict the terms and conditions of the Limited Partners' withdrawal privileges to the extent deemed necessary or advisable in connection with any further offerings (public or private) of Interests for sale.

A Limited Partner will be deemed to have withdrawn from the Partnership upon its giving notice of withdrawal of its entire Interest in the Partnership. The withdrawal of a Limited Partner will not terminate the Partnership. It will terminate the interest of the withdrawn partner in the Partnership except that such partner shall have access to the books and records of the Partnership and to such data as may be necessary to give full information with respect to its distributive interest.

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

#### **Accounts, Records and Reports and Pricing**

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

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

#### **Liabilities**

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

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

#### **Indemnification**

The Limited Partnership Agreement provides that in any threatened, pending or completed action, suit or proceeding to which the General Partner was or is a party or is threatened to be made a party by reason of the fact that it is or was the General Partner of the Partnership, the Partnership shall indemnify, defend, and hold harmless the General Partner and its "affiliates" (as defined below) from and against any loss, liability, damage, cost, expense (including, without limitation, attorneys' and accountants' fees and expenses incurred in defense of any demands, claims or lawsuits), judgments and amounts paid in

settlement (collectively, "Losses"), incurred by them if the General Partner acted in good faith and in a manner it reasonably believed to be in or not opposed to, the best interests of the Partnership and, provided that the omission, act or conduct that was the basis for such Losses was not the result of misconduct or negligence and was taken or omitted in good faith and in the reasonable belief that it was taken or omitted in, or not opposed to the best interests of the Partnership. Any indemnification under the Limited Partnership Agreement, unless ordered by a court, shall be made by the Partnership only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the General Partner is proper under the circumstances. To the extent that the General Partner has been successful on the merits or otherwise in defense of any action, claim, suit or proceeding, or issue or matter presented therein, the opinion of independent legal counsel shall not be required and the Partnership shall indemnify them against any Losses incurred by them in connection therewith.

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

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

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

#### **Termination**

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

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

The Limited Partnership Agreement provides that in the event of the dissolution of or liquidation of the Partnership, its affairs shall be wound up and all assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof and the proceeds therefore shall be applied and distributed in the following order: (a) to the expenses of liquidation and termination and to creditors, in the order of priority

as provided by law; and (b) to the partners in accordance with their respective Book Capital Account balances.

#### **Fiscal Year**

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

#### **Arbitration**

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

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

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

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

SEE 17 CFR 180.1 - 180.5

#### **Miscellaneous Provisions**

The Partnership may do business with any person, firm, or corporation notwithstanding that such person, firm, or corporation is a partner or an affiliate of any partners or of the Partnership.

The General Partner is not required to devote its full business time to the Partnership and will continue to have other business interests, including acting in the same or similar capacity for other partnerships or entities.



January 20, 2005

**Sent via Electronic Mail**  
yuri@castletrading.com

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

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

Dear Mr. Plyam:

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

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

Sincerely,

Greg Schrader  
Compliance Department

cc: Kevin Walek  
Commodity Futures Trading Commission

PLYAM00117

**AGREEMENT OF  
LIMITED PARTNERSHIP  
OF  
ACCELERATION MERCURY FUND 4X, LP**

**AGREEMENT OF  
LIMITED PARTNERSHIP  
OF  
ACCELERATION MERCURY FUND 4X, LP**

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

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

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

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

**Section 1      General Provisions**

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

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

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

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

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

c) to execute, deliver and perform all contracts and other undertakings, and engage in all activities and transactions that the General Partner determines are necessary or advisable in carrying out the purposes in this Section 1.3.

1.4 Offices. The initial principal office of the Partnership shall be at 8949 Reseda Blvd., Suite 224, Northridge, California 91325, or at such other locations as may from time to time be determined by the General Partner.

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

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

## Section 2 Certain Definitions

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

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

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

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

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

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

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

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

2.9 "Limited Partner" shall mean any person (other than the General Partner) admitted to the Partnership, and any other person who becomes a Limited Partner by substitution after receiving an assignment from a Limited Partner and the consent of the General Partner as set forth hereinafter.

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

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

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

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

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

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

3.2 Additional Capital Contributions. The Limited Partners may, with the consent of the General Partner make additional capital contributions to the Partnership on the first business day of each Fiscal Quarter or at such other times as the General Partner in its sole discretion shall determine.

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

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

3.5 Capital Accounts and Allocations.

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

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

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

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

3.5.3 Adjustments to Book Capital Accounts. At the close of each Fiscal Quarter, there shall be determined, for each Partner, his Closing Book Capital Account (the "Closing Book Capital

Account") which shall be equal to his Opening Book Capital Account for such Fiscal Quarter, adjusted as follows:

- (a) increased by (i) any cash and the fair market value of other property contributed to the Partnership by such Partner during such Fiscal Quarter in addition to such Partner's original capital contribution, and (ii) positive adjustments made to such Partner's Book Capital Account with respect to such Fiscal Quarter in accordance with Section 3.5.4 below; and
- (b) decreased by (i) the amount of cash and the fair market value of other property distributed to such Partner during such Fiscal Quarter (net of liabilities recorded on such property that such Partner is considered under Section 752 of the Code to assume or take subject to), and (ii) negative adjustments made to such Partner's Book Capital Account with respect to such Fiscal Quarter in accordance with Section 3.5.4, below.

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

- (a) the Net Asset Value of the Partnership's assets shall be determined as of the end of the Fiscal Quarter in question, without reduction for any accrued Incentive Allocations, and each Partner's Closing Book Capital Account shall be increased or decreased by such Partner's "Pro Rata Share" of any increase or decrease in the Net Asset Value of the Partnership for the Fiscal Quarter. For purposes of this Agreement, a Partner's "Pro Rata Share" shall be that percentage equal to the ratio that such Partner's Opening Book Capital Account for the Fiscal Quarter in question bears to the Opening Book Capital Accounts for all Partners and, except as otherwise set forth herein, any calculation on a "Pro Rata Basis" shall mean a calculation determined by applying such formula; and
- (b) the Closing Book Capital Account of each Limited Partner shall be reduced by any Incentive Allocations allotted to the General Partner from such Limited Partner's Book Capital Account with respect to the Fiscal Quarter in question in accordance with Section 3.5.5.

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

"Net New Appreciation" is hereby defined as the increase in a Limited Partner's Book Capital Account over the Limited Partner's highest prior Book Capital Account ("Maximum Capital Account") from which a share of Net New Appreciation was allocated to the General Partner, (except that (1) for purposes of calculating Net New Appreciation, taxes and extraordinary expenses shall be ignored, and

and appropriate, shall be established to satisfy such contingent debt, obligation or liability, which reserve shall be distributed as provided in this Section 10.3(a) only upon the termination of such contingency;

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

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

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

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

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

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

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

## Section 11 Amendments

11.1 Permitted Amendments. The General Partner and a "majority in interest" of the Limited Partners (hereby defined as those Limited partners owning Book Capital Accounts which at the close of the last Fiscal Quarter represented a majority of the Net Asset Value of all Book Capital Accounts of the Limited Partners) shall have the right to amend this Agreement, provided that no amendment may:

(i) convert a Limited Partner's Interest into the General Partner's Interest, or modify the limited liability of a Limited Partner, in each case, without the consent of each such affected Partner;

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

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

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

## Section 12 Power of Attorney

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

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

(i) is coupled with an interest and shall be irrevocable and survive the death, incompetency or bankruptcy of the Limited Partner granting the same;

(ii) may be exercised by the General Partner either by signing separately as attorney-in-fact for each Limited Partner or, after listing all of the Limited Partners executing an instrument, by a single signature of the General Partner acting as attorney-in-fact for all of them; and

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

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

### Section 13 Representations of Limited Partners

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

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

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

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

(d) The Limited Partner has been advised and is aware that (i) the Interests are not freely transferable, (ii) it may be impossible to immediately liquidate this investment, and (iii) the interests have not been registered under the Securities Act of 1933, as amended (the "Act");

(e) The Limited Partner or his or her representative has received, read and understood this Agreement and any amendments thereto, and has had the opportunity to ask questions of, and receive answers from, the General Partner concerning the Partnership and its business, and has had the opportunity to obtain additional information in order to permit him to evaluate the merits and risks of investing in the Partnership;

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

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

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

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

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

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

#### Section 14 Miscellaneous

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

14.2 Governing Law. It is the intention of the parties that the internal laws of the State of Delaware and, as the same may be amended from time to time, shall govern the validity of this Agreement, the construction of its terms and interpretation of the rights and duties of the parties.

14.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or understanding, oral and written, relating to the Partnership.

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

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

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

14.7 Successors in Interest.

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

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

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_  
2003. (date)

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

By: \_\_\_\_\_  
Curtis Faith, Managing Member

By: \_\_\_\_\_  
Yuri Plyam, Managing Member

Name, Address and  
Signature of Limited Partner

Dollar Amount  
Limited Partnership  
Interests Acquired

\_\_\_\_\_  
Print Name

\$ \_\_\_\_\_

\_\_\_\_\_  
Print Address

\_\_\_\_\_  
Signature

Social Security or  
Tax Identification Number

# **ACCELERATION MERCURY FUND 4X**

Subscription Documents

## EXHIBIT B

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

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

1. **Agreement to Subscribe for Interests.** The undersigned ("*Subscriber*") hereby offers to purchase a limited partnership interest (the "*Interest*") in Acceleration Mercury Fund 4X, LP, a Delaware limited partnership (the "*Partnership*"), in the amount set forth on the signature page to the Subscriber's Questionnaire. Subscriber agrees that (a) the Partnership's general partner, Acceleration Capital, LLC (the "*General Partner*") may reject Subscriber's offer to purchase an Interest for any reason; (b) as of the date designated by the General Partner when (if at all) the General Partner accepts this Subscription Agreement and Subscriber's subscription funds on behalf of the Partnership, Subscriber shall become obligated under the terms and conditions of this document and of the Partnership Agreement as a Limited Partner; and (c) by executing the signature page of the Questionnaire, Subscriber agrees to be bound by those terms and conditions.
2. **Representations and Warranties.** Subscriber hereby represents and warrants as follows, with the understanding that the Partnership will rely on the accuracy of these representations to establish the eligibility of this offering for certain registration exemptions under federal and state securities laws, and to enable the Partnership to comply with certain other laws and regulations:
  - (a) **Interests Not Registered.** Subscriber understands that the Partnership's offer and its sale to Subscriber of an Interest have not been registered under the Securities Act of 1933, as amended (the "*1933 Act*"), or registered or qualified under state securities laws, on the ground, among others, that Interests are being offered and sold in a transaction that does not involve any public offering within the meaning of Section 4(2) of the 1933 Act and Rule 506 of Regulation D thereunder. Subscriber understands that no federal or state agency has passed on the merits or fairness of this investment.
  - (b) **Interest Acquired for Investment.** Subscriber is acquiring the Interest with Subscriber's own funds and for Subscriber's own account (or for a designated custodial or trust account, if Subscriber is a custodian or trustee) for investment and not with a view to the distribution of any interest therein. No other person will own any part of Subscriber's Interest or have any right to acquire such a part.
  - (c) **Review of Offering Materials and Independent Advice.** Subscriber has carefully reviewed the Confidential Offering Memorandum (the "*Offering Memorandum*") relating to the Partnership's Agreement of Limited Partnership (the "*Partnership Agreement*") and its exhibits (including the Partnership Agreement) and has discussed with Partnership representatives any questions Subscriber may have had as to such materials or the Partnership or the business, operations or financial condition of the Partnership or the General Partner. Subscriber understands the risks of this investment, as described in the "Certain Risk Factors" section and other portions of the Offering Memorandum, and the conflicts of interest to which the General Partner will be subject. Subscriber has consulted with Subscriber's own legal, accounting, tax, investment and

other advisers in connection with this investment, to the extent that Subscriber has deemed necessary.

- (d) **Offer Made Privately.** The Partnership's offer of Interests was privately communicated to Subscriber. At no time has Subscriber received information concerning this offering or the Partnership or the General Partner from any newspaper, magazine, television or radio broadcast, leaflet or other advertisement, public promotional meeting or any other form of general advertising or general solicitation.
- (e) **Subscriber Able to Bear Risks and Protect Own Interests.** Subscriber is able to bear the economic risks associated with this investment, including the likelihood that this investment will not generate current income or distributions even if the Partnership is successful, and the possibility that some or all of the amount invested will be lost if the Partnership is not successful.
- (f) **Representations of Entity Subscribers.** If Subscriber is an entity, then:
  - (1) Subscriber has or will have substantial business activities or investments other than its investment in the Partnership and was not specifically formed for the purpose of purchasing Interests;
  - (2) less than 40% of Subscriber's assets will be invested in the Partnership;
  - (3) under Subscriber's governing documents and in practice, Subscriber's investment decisions are based on the investment objectives of Subscriber and its owners generally, not on the particular investment objectives of any one or more of its owners; and
  - (4) under Subscriber's governing documents and in practice, the participation of each owner of Subscriber in each investment made by Subscriber is based on the owners' ownership percentages or on some other allocation provision that (a) does not result in varying levels of participation among owners based on the nature, amount or other characteristics of a particular investment; and (b) cannot be varied for particular investments made by Subscriber as a result of any election or other decision by any such owner in connection with a particular investment, any exercise of judgment or discretion made by Subscriber's investment decision-maker(s) in connection with a particular investment, or any other reason.
- (g) **Authority.** Subscriber is duly authorized to enter into this Subscription Agreement (including the power of attorney granted herein), and the person signing this Subscription Agreement on behalf of Subscriber is authorized to do so, under all applicable governing documents (e.g., partnership agreement, trust instrument, pension plan, certificate of incorporation, bylaws, operating agreement). Each individual who may participate in Subscriber's investment decision is over twenty-one years of age (or the age of majority in such individual's state of residence). This Subscription Agreement constitutes a legal, valid and binding agreement of Subscriber enforceable against Subscriber in accordance with its terms.
- (h) **Self-Direction.** The individual whose signature appears on the signature page certifies that the shareholders, partners, benefit plan participants or other holders of equity or beneficial interests in the undersigned corporation, partnership, trust, benefit plan or other entity are not permitted and have not been provided the opportunity to decide individually whether or how much to contribute to or to participate in the undersigned's investment in the Partnership.

(i) **Taxpayer Identification Number; No Backup Withholding; Not a Foreign Entity.** Under penalty of perjury, Subscriber certifies that the taxpayer identification number being supplied herewith by Subscriber is Subscriber's correct taxpayer identification number and that Subscriber is not subject to backup withholding under Section 3406(a)(1)(c) of the Internal Revenue Code. If Subscriber is an entity, then (1) Subscriber is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and Regulations thereunder; and (2) if Subscriber hereafter becomes such a foreign entity, Subscriber shall notify the General Partner within 60 days thereafter.

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

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

4. **Indemnification.** Subscriber agrees to indemnify and hold harmless the Partnership and the General Partner, and each of their employees, agents, and attorneys, from and against any and all loss, liability, claims, damage, and expense (including any expense reasonably incurred in investigating, preparing or defending against any litigation commenced or threatened or any claim whatsoever) related to any false representation or warranty or any breach of agreement by Subscriber contained herein or in any other document furnished by the Subscriber to the Partnership in connection with this transaction.
5. **Power of Attorney.** Subscriber hereby irrevocably constitutes and appoints the General Partner, Subscriber's true and lawful attorney-in-fact, with full power and authority in Subscriber's name, place and stead to execute, deliver, certify, acknowledge, swear to, file, record and publish all documents and other instruments described in the section of the Partnership Agreement entitled "Appointment of the General Partner as Attorney-in-Fact," which is hereby incorporated in this paragraph by this reference.
6. **Agreement Binding on Subscriber's Successors.** The representations, warranties and agreements in this Subscription Agreement shall be binding on Subscriber's successors, assigns, heirs and legal representatives and shall inure to the benefit of the respective successors and assigns of the Partnership and the General Partner.
7. **Arbitration.** Any controversy between Subscriber and the Partnership or the General Partner involving the Partnership, this Agreement, or the Partnership Agreement will be submitted to arbitration on the request of any party to any such controversy in the county and state in which the General Partner maintains its principal office at the time such request is made. The arbitration will comply with and be governed by the provisions of the commercial arbitration rules of the

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

**Governing Law.** This Agreement shall be governed by the laws of the State of Delaware .

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ACCELERATION CAPITAL, LLC**

**A DELAWARE LIMITED LIABILITY COMPANY**

**EFFECTIVE AS OF July 31, 2003**

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**THE MEMBERSHIP INTERESTS REPRESENTED BY THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. THE MEMBERSHIP INTERESTS MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS SO REGISTERED OR QUALIFIED OR UNLESS AN EXEMPTION EXISTS, THE AVAILABILITY OF WHICH IS TO BE ESTABLISHED BY AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY.**

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This Limited Liability Company Agreement is made and entered into this 31<sup>st</sup> day of July, 2003, by and among the Members whose signatures appear on the signature page hereof and the Company, by its Manager, Yuri Plyam.

## COVENANTS

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

### Article 1 – DEFINITIONS

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

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

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

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

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

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

1.6 “Certificate of Formation” shall mean the Certificate of Formation of the

Company as filed with the Delaware Secretary of State on July 22, 2003, as the same may be amended from time to time.

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

1.8 “Company” shall mean Acceleration Capital, LLC.

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

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

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

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

1.13 “Distributable Cash” shall mean all cash and cash equivalents received by the Company, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company’s business; (iii) those amounts to be paid to the Managers as Management Fee Performance.

Bonuses or Total Return under Section 5.13(a); and (iv) such Reserves as the Managers reasonably deem necessary for the proper operation of the Company's business.

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

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

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

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

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

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

1.20 "Family" of a Person shall mean such Person's spouse, parent or children.

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

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

1.23 "Gross Asset Value" shall mean, with respect to any asset, the asset's adjusted basis for federal income tax purposes, subject to the following:

(a) The initial Gross Asset Value of property contributed shall be as set forth in Section 8.4;

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

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

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

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

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

1.25 "Limited Liability Company Agreement" shall mean this Limited Liability Company Agreement as originally executed and as amended from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

1.32 "Ownership Interest" shall mean:

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

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

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

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

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

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

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

1.38 "Sharing Ratio" shall mean the measure of an Equity Owner's Economic Interest,

as set forth in Section 4.2.

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

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

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

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

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

## Article 2 – THE COMPANY

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

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

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

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

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

Formation or the Act.

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

### Article 3 – BUSINESS OF COMPANY

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

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

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

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

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

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

<u>NAME</u>	<u>TAX ID NUMBER</u>	<u>INITIAL CAPITAL CONTRIBUTION</u>
Plyam, Yuri	568-55-8243	\$2000.00
Faith, Curtis M.	033-58-2778	\$2000.00

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

<u>NAME</u>	<u>SHARING RATIO</u>
Plyam, Yuri	33.33%
Faith, Curtis M.	66.67%

4.3 Voting Interest. Unless and until adjusted pursuant to the terms of this Limited Liability Company Agreement, the Voting Interests of the Members shall be as follows:

<u>NAME</u>	<u>VOTING INTEREST</u>
Plyam, Yuri	33.33%
Faith, Curtis M.	66.67%

#### Article 5 – RIGHTS AND DUTIES OF MANAGERS

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

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

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

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

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

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

(f) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;

(g) To Sell or otherwise dispose of the Company's real or personal property, in whole or in part, on such terms as the Managers shall deem appropriate;

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

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

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

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

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

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

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

5.3 Manner of Acting. At any time when there is more than one manager, any action permitted to be taken by the Managers shall require an affirmative vote of a majority of the Managers, unless the approval of a greater or smaller number of the Managers is expressly required or permitted by this Limited Liability Company Agreement.

5.4 Budget. The Managers shall use their best efforts to manage the business of the Company as set forth in the budget which shall be determined by the Managers.

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

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

5.7 Managers and Members Have No Exclusive Duty to Company.

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

(b) Except as set forth in the foregoing paragraph, neither the Company nor any Equity Owner shall have any right, by virtue of this Limited Liability Company Agreement, to share or participate in such other investments or activities of any Manager or any Equity Owner or to the income or proceeds derived therefrom. Although a business opportunity of the sort engaged in by the Company may come to the attention of one or more of the Managers or Equity Owners, the Managers and the Equity Owners shall not be under a duty, express or implied, to first offer such opportunity to the Company or to the other Equity Owners before such Managers or Equity Owner may, personally or on behalf of another Entity with which the Manager or Equity Owner is affiliated, take advantage of such opportunity, and the Equity Owners personally and the Company as an Entity, hereby discharge and release the Managers and other Equity Owners of and from any duty to the contrary which may be owed by Managers or

Equity Owners, directly or indirectly, from the doctrine generally referred to as the "corporate opportunity doctrine" or any like principle of law applicable to limited liability companies. No Manager or Equity Owner shall incur any liability to the Company or to any of its Equity Owners as a result of engaging in any other business venture.

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

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

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

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

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

5.12 Reimbursement, Organization Expenses.

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

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

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

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

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

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

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

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

**Article 6 – RECORDS AND INSPECTION RIGHTS**

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

(a) True and full information regarding the status of the business and financial condition of the Company;

(b) Promptly after becoming available, a copy of the Company's federal, state and local income tax returns for each year;

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

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

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

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

## Article 7 – MEETINGS OF MEMBERS

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

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

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

7.4 Meeting of all Members. If all of the Members shall meet at any time and place and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.5 Record Date. For the purpose of determining Members: (a) entitled to notice of or to vote at any meeting of Members or any adjournment thereof; (b) Members entitled to receive payment of any Distribution; or (c) Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such Distribution is adopted, or the date on which determination of Members is made for any other purpose, respectively, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 7.5, such determination shall apply to any adjournment thereof.

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

7.7 Manner of Acting.

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

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

(c) If a Person voting, consenting, waiving, appointing a Proxy, or revoking a Proxy appointment is not a Member, the Managers, if acting in good faith, may accept such vote, consent, waiver, Proxy appointment or Proxy appointment revocation and to give it effect as the act of the Member for whom such Person purports to be acting, if: (i) subject to the provisions of Section 10.3(a), (A) the Person so acting purports to be that of an administrator, personal representative, executor, trustee (other than a trustee in bankruptcy), guardian, or conservator representing the Member and, if the Managers request, evidence of fiduciary status acceptable to

the Managers has been presented with respect to the vote, consent, waiver, Proxy appointment or Proxy appointment revocation; (B) the Person so acting purports to be a receiver or trustee in bankruptcy of the Member and, if the Managers request, evidence of this status acceptable to the Managers has been presented with respect to the vote, consent, waiver, Proxy appointment or Proxy appointment revocation; or (C) the Person so acting purports to be a pledgee, beneficial owner or attorney-in-fact of the Member and, if the Managers request, evidence acceptable to the Managers of the Person's authority to so act for the Member has been presented with respect to the vote, consent, waiver, Proxy appointment or Proxy appointment revocation; (ii) the Member is an Entity and the Person so acting purports to be that of an officer or agent of the Entity; (iii) two or more Persons are the Member as co-tenants or fiduciaries and the Person so acting purports to be at least one of the co-tenants or fiduciaries, and appears to be acting on behalf of all the co-tenants or fiduciaries; or (iv) the acceptance of the vote, consent, waiver, Proxy appointment or Proxy appointment revocation is otherwise proper under rules established by the Managers that are not inconsistent with this Limited Liability Company Agreement.

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

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

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

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

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

7.11 Meetings by Telecommunication. Any or all of the Members may participate in a

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

## **Article 8 – CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

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

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

### 8.4 Valuation of Contributed Property.

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

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

(i) The value of the property other than cash contributed shall be the fair market value thereof, taking into consideration any liabilities to which the property is subject, as determined by the Managers in good faith. Upon such a determination by the Managers, the Managers shall give notice thereof to the Members, which determination shall be final,

conclusive and binding, unless, within 20 days after the giving of such notice a Member makes demand upon the Company objecting to such determination.

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

#### 8.5 Capital Accounts.

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

(b) In the event of a permitted sale or exchange of an Ownership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Ownership Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.5 is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.5 should be modified in order to comply with Section 704(b) of the Code and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.5, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Equity Owners.

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

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

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

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

8.6 Remedies for Non-Payment of Enforceable Obligations. Upon a failure of any Equity Owner (the "Defaulting Equity Owner"), to make full and timely payment to the Company of an Enforceable Obligation, the Managers shall promptly give notice (the "Default Notice") to all Equity Owners of: (a) the failure and (b) a meeting to determine the appropriate course of action (the "Non-Defaulting Equity Owners Meeting"). The Equity Owners who have timely satisfied their Enforceable Obligations to make the required Capital Contributions (the

“Non-Defaulting Equity Owners”) may, upon the affirmative vote of Non-Defaulting Equity Owners which are Members holding a majority of the Voting Interests owned by all Non-Defaulting Equity Owners, pursue any of the following remedies:

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

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

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

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

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

Defaulting Equity Owner from time to time hereunder shall be paid to such Non-Defaulting Equity Owner(s). Any such payments shall be deemed to be Distributions to the Defaulting Equity Owner by the Company followed by appropriate payments by the Defaulting Equity Owner to the respective Non-Defaulting Equity Owner(s). Payments shall be credited first to accrued interest. Payments to Non-Defaulting Equity Owners of loans by them pursuant to this 8.6(c)(ii) shall be made *pari passu*.

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

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

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

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

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

(v) Upon any purchase of a Defaulting Equity Owner's Ownership Interest pursuant to this Section 8.6(d), the Default Buyout Price may be paid at closing in

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

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

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

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

$$A \times (B / C) = \text{"Percentage Interest Adjustment"}$$

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

(B) The numerator for the formula ("B") shall be the amount of

required Capital Contribution which the Defaulting Equity Owner has failed to make;

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

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

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

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

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

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

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

For example, if an Equity Owner with a 25% Sharing Ratio has made an Initial Capital Contribution of \$100,000.00 and fails to make its 25% share (\$150,000.00) of a Mandatory Additional Capital Contribution totaling \$600,000.00, the Defaulting Equity Owner would have such Equity Owner's Sharing Ratio decreased from 25% to 7%.

**Article 9 – ALLOCATIONS, INCOME TAX, DISTRIBUTIONS,  
ELECTIONS AND REPORTS**

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

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

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

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

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

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

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

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

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

(a) In the event any Equity Owner unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Treasury Regulations, which create or increase a Deficit Capital Account of such Equity Owner,

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

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

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

(d) Notwithstanding any other provision of this Section 9.2, except Section 9.2(c), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain, as defined in Section 1.704-2(i)(2) of the Treasury Regulations, attributable to a Partner Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt (determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations) as of the beginning of the year shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) equal to such Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt. A Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain shall be determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations; provided that a Member shall not be subject to

this provision to the extent that an exception is provided by Section 1.704-2(i)(4) of the Treasury Regulations and any Revenue Rulings issued with respect thereto. Any Partner Nonrecourse Debt Minimum Gain allocated pursuant to this provision shall consist of first, gains recognized from the disposition of Company property subject to the Partner Nonrecourse Debt, and, second, if necessary, a *pro rata* portion of the Company's other items of income or gain for that year. This Section 9.2(d) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

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

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

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

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

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

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

9.5 Permissive Distributions. The following Distributions shall be permitted:

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

(b) Distributions of property other than Distributable Cash, if approved by the affirmative vote of Members holding a Majority Interest.

9.6 Method of Distribution. All Distributions described in Sections 9.4 or 9.5, except Distributions resulting from Liquidation, shall be made to the Equity Owners in proportion to their Sharing Ratios.

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

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

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

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

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

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

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

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

Members owning a Majority Interest.

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

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

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

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

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

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

(2) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Equity Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Equity Owner under Section 704(c)(1)(B) of the

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

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

#### Article 10 – TRANSFERABILITY

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

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

- (a) any Economic Interest Owner may Transfer its Economic Interest to any Equity Owner;
- (b) any Member may Transfer its Membership Interest to any Member;
- (c) any Equity Owner may Transfer its Ownership Interest to an administrator, personal representative, executor, receiver, trustee involuntarily by operation of law, Family member, or trustee of a trust in which the Equity Owner or any one or more members of its Family retains the entire beneficial interest; *provided however*, that (i) any such administrator, personal representative, executor, trustee or Family member shall not be entitled to any Voting Interest by reason of such Transfer, except if the Managers, in their sole and absolute discretion, accept a vote of such Voting Interest pursuant to Section 7.7(c), and (ii) any Transfer by such administrator, personal representative, executor, receiver, trustee or Family member shall be subject to all of the limitations upon Transfers of Ownership Interests arising or provided under Sections 10.3, and 10.6;
- (d) any Equity Owner may Transfer its interest as collateral to a secured party under a grant of a security interest in an Ownership Interest, provided that the transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the

Company to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Limited Liability Company Agreement, including without limitation: (i) acknowledgment and agreement by the transferee that it shall have no Voting Interest, except if the Managers, in their sole and absolute discretion accept a vote of such Voting Interest pursuant to Section 7.7(c); and (ii) acknowledgment and agreement by the transferee that the provisions of Article 10.3 shall apply to any subsequent Transfer, including a Transfer under the rights of sale accorded to the transferee as secured party;

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

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

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

### 10.3 Conditions to and Restrictions on Permitted Transfers.

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

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

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

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

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

(v) No Transfer of an Ownership Interest that causes the Company to terminate under Section 708(b)(1)(B) of the Code shall be permitted, unless such Transfer is approved by the affirmative vote of the Members holding a Majority Interest determined without regard to any Voting Interest held by the transferor, if any.

(vi) Unless waived by the Managers, the transferor and transferee shall furnish to the Company an opinion of counsel, which counsel and opinion shall be reasonably satisfactory to the Managers, that the Transfer will not cause the Company to terminate for federal income tax purposes and that such Transfer will not cause the application of the rules of Code Sections 168(g)(1)(B) and 168(h) (generally referred to as the "tax exempt entity leasing rules") or similar rules to apply to the Company, property of the Company, or the Equity Owners.

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

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

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

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

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

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

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

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

deliver to the remaining Equity Owners, by certified mail or personal delivery.

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

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

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

10.6 Effect of Transfers Not In Compliance with Agreement.

(a) In the event of a Transfer not in compliance with this Limited Liability Company Agreement, the transferee shall be merely an Economic Interest Owner.

(b) The Transferring Equity Owner shall indemnify the Company and the remaining Equity Owners against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any Transfer or purported Transfer in violation of this Article 10.

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

#### **Article 11 – ADDITIONAL MEMBERS**

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

- (a) upon a Permitted Transfer of a Membership Interest, so long as it is approved pursuant to Section 10.3(b)(iv); or
- (b) upon the consent of Members holding at least a Majority Interest.

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

#### **Article 12 – DISSOLUTION AND TERMINATION**

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

- (a) by the agreement of Members holding at least a Majority Interest;
- (b) upon the death, retirement, resignation, expulsion, bankruptcy or

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

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

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

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

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

### 12.3 Winding Up and Distribution of Assets.

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

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

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

(ii) Allocate any Net Profit or Net Loss resulting from such sales to the

Equity Owners' Capital Accounts in accordance with Article 9 hereof,

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

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

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

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

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

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

12.4 Certificate of Cancellation. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Equity Owners, a certificate of cancellation

setting forth the information required by the Act shall be executed and delivered to the Delaware Secretary of State.

### Article 13 – MISCELLANEOUS PROVISIONS

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

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

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

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

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

to the property of the Company.

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

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

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

13.9 Effect of Inconsistencies with the Act. The Members and the Company hereby agree that the duties and obligations imposed on the Members of the Company as such shall be those set forth in this Limited Liability Company Agreement, which is intended to govern the relationship among the Company and the Equity Owners, notwithstanding any provision of the law to the contrary. In the event the Act is subsequently amended or interpreted in such a way to make valid any provision of this Limited Liability Company Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. If any provision of this Limited Liability Company Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Limited Liability Company Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Without limiting the generality of the foregoing sentence, to the extent any provision of this Limited Liability Company Agreement is prohibited or ineffective under the Act or common law, this Limited Liability Company Agreement shall be considered amended to the smallest degree possible in order to make the Limited Liability Company Agreement effective under the Act or common law.

13.10 Headings. The headings in this Limited Liability Company Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Limited Liability Company Agreement or any provision hereof.

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

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

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

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

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

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

13.17 Investment Representations. The undersigned Members, if any, understand (1) that the Ownership Interests evidenced by this Limited Liability Company Agreement have not

been registered under the Securities Act of 1933, the Delaware Securities Act or any other state securities laws (the "Securities Acts") because the Company is issuing these Ownership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the Ownership Interests are to be held by each Equity Owner for investment, and (3) that exemption from registrations under the Securities Acts would not be available if the Ownership Interests were acquired by a Member with a view to distribution.

Accordingly, each Member hereby confirms to the Company that such Member is acquiring the Ownership Interests for such own Member's account, for investment and not with a view to the resale or distribution thereof. Each Member agrees not to transfer, Sell or offer for sale any of portion of the Ownership Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Ownership Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Member understands that the Company is under no obligation to register the Ownership Interests or to assist such Member in complying with any exemption from registration under the Securities Acts if such Member should at a later date, wish to dispose of the Ownership Interest. Furthermore, each Member realizes that the Ownership Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an "affiliate" of the Company and the Ownership Interest has been beneficially owned and fully paid for by such Member for at least two years.

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

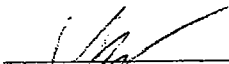
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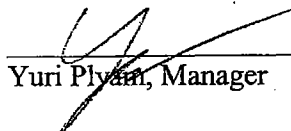
CERTIFICATE


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

**MEMBERS:**

**THE COMPANY:**

  
\_\_\_\_\_  
Yuri Piyam, as individual Member

  
\_\_\_\_\_  
Yuri Piyam, Manager

  
\_\_\_\_\_  
Curtis Faith, Member

**System Trading Brokerage Agreement**

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

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

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

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

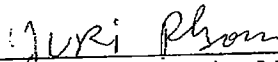
Fund Manager agrees to pay a brokerage commission equal to the costs paid by Broker to third-party Futures Commission Merchants, commodity exchanges, governmental agencies or companies that are charged on a per contract basis.


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


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

**For Acceleration Capital, LLC:**

**For Castle Trading, Inc.:**

  
Yuri Plyam, Managing Member

  
Yuri Plyam, President

  
Curtis Faith, Member

1 UNITED STATES OF AMERICA  
 2 BEFORE THE  
 3 COMMODITY FUTURES TRADING COMMISSION  
 4 IN THE MATTER OF: )  
 5 )  
 6 TOBY WAYNE DENNISTON II, YURI PLYAM )  
 7 and ACCELERATION CAPITAL, LLC. )  
 8  
 9 Examination under oath of  
 10 YURI PLYAM, taken pursuant to subpoena and the rules of the  
 11 U.S. Commodity Futures Trading Commission, reported by  
 12 Susan Soble, a Certified Shorthand Reporter and Notary  
 13 Public within and for the County of Cook and State of  
 14 Illinois, at 525 West Monroe Street, Suite 1100, Chicago,  
 15 Illinois, on Monday, March 13, 2005, commencing at the hour  
 16 of 10:13 o'clock a.m.  
 17  
 18  
 19  
 20  
 21  
 22 SUSAN SOBLE ASSOCIATES, P.C.  
 23 Certified Shorthand Reporters  
 1460 North Clark Street - 2611  
 24 Chicago, Illinois 60610  
 (312) 988-9868

1 INDEX OF EXAMINATIONS  
 2 WITNESS PAGE  
 3 YURI PLYAM  
 4 Direct Examination by Mr. Dowd 4  
 5  
 6  
 7 INDEX OF EXHIBITS  
 8 CFTC DEP EX. BATES NO.  
 9 1 Subpoena 4  
 10 2 PLYAM00177-246 56  
 11 3 PLYAM00135-175 59  
 12 4 PLYAM0083-134 77  
 13 5 PLYAM00290-292 88  
 14 6 PLYAM00305-311 98  
 15 7 Response 103  
 16 8 PLYAM00062 104  
 17 9 PLYAM00247-289 107  
 18 10 PLYAM00063-066 123  
 19 11 PLYAM00067 125  
 20 12 PLYAM0068-082 127  
 21 13 PLYAM00061 138  
 22 14 PLYAM00176 143  
 23 15 00100008-009 150  
 24 16 00100279-287 166  
 17 17 00100011 187  
 18 18 PLYAM00293-300 190  
 19 19 00100135-146 193  
 20 20 PLYAM00001-059 195  
 21 21 00100016-031 200  
 22 22 00100033-039 205  
 23 \*\*\*\*\*  
 24

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  
 11 appeared on behalf of the U.S. Commodity Futures  
 12 Trading Commission;  
 13  
 14  
 15 HENDERSON & LYMAN, by:  
 16 MR. JEFFRY M. HENDERSON  
 17 175 West Jackson Boulevard - 240  
 18 Chicago, Illinois 60604  
 19 (312) 986-6960  
 20 appeared on behalf of the Witness.  
 21  
 22 \*\*\*\*\*  
 23  
 24

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

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.

1 subpoena to page number seven. The subpoena issued to you  
 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.

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

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

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

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

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.

24

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 Natalia.

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.

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.

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

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

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.

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.

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?

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.

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?

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.

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

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

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.

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.

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

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

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.

1 A I just don't remember. I know that from the time  
 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

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.

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?

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.

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?

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

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.

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

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

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.

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?

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

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.

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.

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

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

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?

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. Hassett, 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?

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.

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.

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...

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 Castlettrading.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

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

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

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

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.

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

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.

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.

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

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.

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?

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 --

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

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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68

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?

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 --

69

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

70

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?

71

1 MR. SOLINSKY: I'm here. Joe is not, but I'd say  
 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.

72

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

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

1 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.

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.

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.

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

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

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.

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

(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

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.

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?

1 A Business organization. Civil procedure. Torts.  
 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

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.)

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?

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

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.

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?

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.

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.

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.

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?

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

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

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?

98

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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.

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.

101

103

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?

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

102

104

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?

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

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?

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

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

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?

109

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

110

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.

111

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?

112

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

113

115

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

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.

114

116

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?

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.

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 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?

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?

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

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

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.

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?

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

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?

1 Plyam00067.  
 2 Mr. Plyam, who created this document?  
 3 A My wife, Natalia Plyam, and Toby Denniston and I  
 4 did supervise this and I did know about it, all the other  
 5 stuff.  
 6 Q Did you as president of Castle Trading,  
 7 Incorporated, did you approve this policy?  
 8 A Yes, I did.  
 9 Q And did anyone else have the authority to approve  
 10 this policy on behalf of Castle Trading, Incorporated?  
 11 A No. This just jogged my memory. I just wanted to  
 12 go back and say something very quickly, if I may, related  
 13 to this.  
 14 One of the reasons why Jeff Anthony was fired  
 15 was he -- when you come into our office his monitor would  
 16 be facing the doorway, so the first thing you saw when you  
 17 would enter the room was his computer. About 150 times I  
 18 told him not to look at porn on the Internet and he  
 19 consistently kept doing it.  
 20 This jogged -- and my wife really did not  
 21 appreciate it and other women who walked upstairs who would  
 22 come in and out and I told him about a million times about  
 23 it. So that was just another wrinkle. So anyway, that's  
 24 that.

1 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.

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

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

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.

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.

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

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?

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.

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

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

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

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.

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.  
 24

141

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?

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?

142

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

143

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?

144

145

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.

146

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

147

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

148

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

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?

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.

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?

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

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.

1 it all happened. So when your question is exactly how we  
 2 found out, all of us found out he was doing this, by  
 3 looking at that deposit.  
 4 Q Let me back you up here. The 183,000 number  
 5 that's in the third line of this letter.  
 6 A Yes.  
 7 Q And then moving down to the sentence that we just  
 8 went through, the vast majority of the misappropriated  
 9 funds.  
 10 A Yes.  
 11 Q Okay. Now is the 95-5 break down roughly within  
 12 that 183,000 number?  
 13 A Yes.  
 14 Q So it was at some point subsequent to this letter  
 15 that you discovered that additional money was stolen.  
 16 A Yes, from Acceleration Capital and that was Lisa  
 17 Marlow letting us know. That was probably two weeks after  
 18 the investigation occurred and it didn't have anything to  
 19 do with clients and it didn't really involve the clients so  
 20 it didn't really have anything to do with this number, but  
 21 your original question was how much was taken, so -- I just  
 22 want to be clear.  
 23 Q Do you know exactly how much was taken from the  
 24 subscribers in the pool?

1 A That's a good point. That's exactly how the whole  
 2 thing got started and how he got caught. Not Lisa, the  
 3 other one. Heather, Heather, her name was Heather, I don't  
 4 remember her last name and she was part of the NFA  
 5 auditors. What happened was this.  
 6 On the third day -- this is very crucial. On  
 7 the third day of their audit they were looking at checks  
 8 that were deposited. Obviously they couldn't look at my  
 9 client's records because they didn't know, let's say a  
 10 check went out to my client. They couldn't go and look,  
 11 NFA had no authority to look under my client's bank  
 12 account. But they had full authority, thank God, to look  
 13 under my accounts.  
 14 So Heather saw a check being written to  
 15 Acceleration Capital for my management fee. When she  
 16 looked at the deposits she said, Yuri, where's your money?  
 17 I said, That's a good question. Toby, where's my money?  
 18 And that's when he said, I gotta go to the bank. The bank  
 19 is just a few blocks away. And he said -- this was 9:30 in  
 20 the morning. Four NFA agents at my office. Third day of  
 21 the audit.  
 22 And that's when he said, I'll be right back.  
 23 I'm going to the bank to figure things out and he just, he  
 24 took off. And we kept calling and that's how we found out

1 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

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

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

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 exact amount of it and it wasn't something that he did a

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

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

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

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?

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?

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?

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

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?

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

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,

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.

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

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

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.

1 like this. I've never seen -- this is straight out of the  
 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

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

177

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.

178

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

179

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.

180

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.

181

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

182

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?

183

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.

184

1 I had no idea what he was talking about. I  
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

185

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

186

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?

187

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

188

1 bathroom and started crying. She couldn't believe -- it  
 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

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

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

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

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.

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?

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

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

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

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.

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

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

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

201

203

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

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.

202

204

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?

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 look 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.

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

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

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

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

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

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

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?

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?

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

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

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

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.

217

1 Q Did he provide you any details of that confession?  
 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

218

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

219

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.

220

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.  
 22 (FURTHER DEPONENT SAITH NAUGHT.)  
 23  
 24

1 STATE OF ILLINOIS )  
 ) SS.  
 2 COUNTY OF C O O K )  
 3  
 4 I, Susan Soble, Certified Shorthand Reporter  
 5 for the State of Illinois and County of Cook, do hereby  
 6 certify that I reported in shorthand the proceedings had in  
 7 the above-entitled cause, and that the foregoing is a true  
 8 and correct transcript of said proceedings.  
 9 In witness whereof, I have hereunto set my  
 10 hand and affixed my seal at Chicago, Illinois, this 24th of  
 11 March, 2006.  
 12  
 13 \_\_\_\_\_  
 14 Susan Soble, C.S.R. #84-902  
 15 Notary Public.  
 16  
 17  
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 20  
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 22  
 23  
 24

UNITED STATES OF AMERICA  
BEFORE THE COMMODITY FUTURES TRADING COMMISSION

EXHIBITS

-----x  
:  
In the Matter of:       :  
                          : Order Designating  
TOBY WAYNE DENNISTON, II, : Officers to Take  
YURI PLYAM, and         : Testimony in a  
ACCELERATION CAPITAL, LLC : Private Investigation  
:  
-----x

DENNISTON DEPOSITION	MARKED
No. 1	6
No. 2	6
No. 3	25
No. 4	60
No. 5	93
No. 6	104
No. 7	126
No. 8	136
No. 9	171
No. 10	172
No. 11	174
No. 12	174
No. 13	177

Washington, D.C.  
Friday, March 24, 2006  
The deposition of TOBY WAYNE DENNISTON, II,  
called for examination by counsel for the Commission  
in the above-entitled matter, pursuant to notice, at  
the offices of the Commodity Futures Trading  
Commission, 1155 21st Street, N.W., Washington,  
D.C., convened, pursuant to notice, at 8:58 a.m.,  
before Catherine B. Crump, a notary public in and  
for the District of Columbia, when were present on  
behalf of the parties:

APPEARANCES:

On behalf of the Commission:  
  
THEODORE J. DOWD, II, ESQ.  
  
MICHAEL SOLINSKY, ESQ.  
  
JOSEPH VARGAS, ESQ.  
  
Commodity Futures Trading Commission  
  
1155 21st Street, N.W.  
  
Washington, D.C. 20581  
  
(202) 418-5407

On behalf of the Respondent:  
  
TOBY WAYNE DENNISTON, Pro Se

C O N T E N T S

EXAMINATION BY COUNSEL FOR

WITNESS        COMMISSION    RESPONDENT

Toby Wayne Denniston

By Mr. Dowd:        4        --

1        P R O C E E D I N G S

2        MR. DOWD: We're on the record at  
3 approximately 9 a.m. on March 24, 2006 in connection  
4 with the Commission's investigation in the matter of  
5 Toby Wayne Denniston, II, Yuri Plyam, and  
6 Acceleration Capital, LLC.

7        Will the court reporter please swear in  
8 the witness.

9        Whereupon,

10        TOBY WAYNE DENNISTON, II  
11 was called to testify and, having first been duly  
12 sworn by the notary public, was examined and  
13 testified as follows:

14        EXAMINATION BY COUNSEL FOR THE COMMISSION

15        BY MR. DOWD:

16        Q Mr. Denniston, would you please state  
17 and spell your full name?

18        A Toby Wayne Denniston, II,  
19 D-E-N-N-I-S-T-O-N.

20        Q Mr. Denniston, are you represented by  
21 counsel today?

22        A I am not.

1 Q Have you had adequate time to seek  
 2 counsel?  
 3 A I have.  
 4 Q Do you need more time to seek an  
 5 attorney?  
 6 A I do not.  
 7 Q Do you wish to proceed today without an  
 8 attorney?  
 9 A Yes.  
 10 Q This is an investigation by the  
 11 Commission to determine whether or not there have  
 12 been violations of the Commodity Exchange Act or its  
 13 regulations or whether there are or may be  
 14 violations in the future. The facts developed in  
 15 this investigation might also constitute violations  
 16 of other Federal or State, civil or criminal laws.  
 17 My name is Ted Dowd, and with me today  
 18 is Michael Solinsky, and we are both officers of the  
 19 Commodity Futures and Trading Commission for purpose  
 20 of this proceeding. At some point later today, we  
 21 may be joined by Joe Vargas, who is also an officer  
 22 of the Commission for purposes of this proceeding.

1 document marked as Exhibit No. 2?  
 2 A Is it not the same thing? Oh. There's  
 3 a different address. Yes.  
 4 Q Right. So the document marked as  
 5 Exhibit No. 1, it was mailed to 5139 Aspen Drive,  
 6 Montclair, California; is that correct?  
 7 A Yes.  
 8 Q And the document marked as two was  
 9 mailed to a different address; is that correct?  
 10 A Yes.  
 11 Q And that's 5825 Reseda Boulevard, No.  
 12 208?  
 13 A Yes, sir.  
 14 MR. DOWD: And for the record, Joe  
 15 Vargas has now joined us.  
 16 BY MR. DOWD:  
 17 Q Mr. Denniston, did you receive a copy of  
 18 the document that's been marked as Exhibit No. 1?  
 19 A Yes.  
 20 Q And did you also receive a copy of the  
 21 document marked as Exhibit No. 2?  
 22 A No.

1 When and if Mr. Vargas enters the room, I will  
 2 announce that for the record.  
 3 MR. DOWD: Will you mark this as one,  
 4 please?  
 5 [Denniston Exhibit No. 1 was  
 6 marked for identification.]  
 7 BY MR. DOWD:  
 8 Q Mr. Denniston, do you recognize the  
 9 document that's been marked as Exhibit No. 1?  
 10 A Yes, sir.  
 11 Q What do you recognize this document to  
 12 be?  
 13 A A subpoena asking for documents  
 14 pertaining to my employment with Castle Trading.  
 15 Q And also requiring you to appear here  
 16 today?  
 17 A Exactly. Yes.  
 18 MR. DOWD: We'll mark this as two.  
 19 [Denniston Exhibit No. 2 was  
 20 marked for identification.]  
 21 BY MR. DOWD:  
 22 Q Mr. Denniston, do you recognize the

1 Q All right. If we could look at Exhibit  
 2 No. 1, attached to the subpoena on the ninth page is  
 3 a document entitled "Statement to Persons Directed  
 4 to Provide Information Pursuant to a Commission  
 5 Subpoena or Requested to Provide Information  
 6 Voluntarily". Do you see that?  
 7 A Yes.  
 8 Q Did you receive a copy of that document  
 9 with the subpoena you received?  
 10 A Yes.  
 11 Q Have you had a chance to review that  
 12 document?  
 13 A Yes.  
 14 Q And I'd like to go this document with  
 15 you in a little bit of detail. Specifically on Page  
 16 No. 1, under the heading "False Statements and  
 17 Documents", do you see that heading?  
 18 A Yes.  
 19 Q Do you see the language that states "any  
 20 person who knowingly and willfully makes false or  
 21 fraudulent statements whether under oath or  
 22 otherwise or who falsifies, conceals, or covers up a

1 material fact or submits any false writing or  
 2 document knowing to contain false, fictitious, or  
 3 fraudulent information is subject to criminal  
 4 penalties set forth in 18 U.S.C. Section 1001 which  
 5 includes imprisonment of not more than five years,  
 6 imposition of a substantial fine under the Federal  
 7 Sentencing Guidelines or both?"  
 8 A I do.  
 9 Q Do you see that statement?  
 10 A Yes.  
 11 Q Do you understand that statement?  
 12 A I do.  
 13 Q So you understand there are criminal  
 14 penalties for providing false statements and  
 15 documents?  
 16 A Yes.  
 17 Q If I could move you forward to the next  
 18 page, Page No. 2, and under No. 4, "Routine Uses of  
 19 Information ", do you see that paragraph?  
 20 A Yes.  
 21 Q Have you had an opportunity to review  
 22 that?

1 Q And do you understand that the  
 2 information you provide us today might be used in an  
 3 injunctive action against you?  
 4 A Yes.  
 5 Q If I could move you forward to page 3,  
 6 paragraph C, do you see that?  
 7 A Yes.  
 8 Q Okay. Have you had an opportunity to  
 9 read that particular paragraph?  
 10 A Yes.  
 11 Q And do you understand that paragraph?  
 12 A Yes.  
 13 Q And do you understand that information  
 14 that you provide us today may be shared with the  
 15 United States Justice Department?  
 16 A Yes.  
 17 Q Do you understand that information you  
 18 provide us today may be used in a criminal action  
 19 against you?  
 20 A Yes.  
 21 Q If I could move you forward to Page No.  
 22 4 under the heading "Testimony"--

1 A Yes.  
 2 Q Do you understand the information that's  
 3 in that paragraph?  
 4 A Yes.  
 5 Q And do you see the heading "Specific  
 6 Routine Uses Including the Following Information"?  
 7 Do you see that heading?  
 8 A Yes.  
 9 Q And do you see where it states that the  
 10 information you provide us today may be used in  
 11 administrative proceedings before the Commission--  
 12 A Yes.  
 13 Q --injunctive actions authorized under  
 14 the Commodity Exchange Act, or in any other action,  
 15 proceeding in which the Commission or any member of  
 16 the Commission or staff participates as a party or  
 17 the Commission participate amicus surae?  
 18 A Yes.  
 19 Q So do you understand that the  
 20 information you provide us today may be used in an  
 21 administrative action against you?  
 22 A Yes.

1 A Yes.  
 2 Q Okay. And specifically Item 2--  
 3 A Yes.  
 4 Q --labelled "Counsel", do you see that?  
 5 A Yes, sir.  
 6 Q Have you had an opportunity to review  
 7 that paragraph?  
 8 A I have.  
 9 Q Do you have any questions about that  
 10 paragraph?  
 11 A Not anymore.  
 12 Q Do you understand that you have the  
 13 right to have an attorney here with you today?  
 14 A Yes.  
 15 Q Okay. Is it your intention to go  
 16 forward today without an attorney?  
 17 A It is.  
 18 Q Do you need more time to find an  
 19 attorney?  
 20 A I do not.  
 21 Q If we go forward to page 5 and under  
 22 Paragraph No. 3 entitled "Perjury", have you had an

1 opportunity to review that paragraph?  
 2 A Yes.  
 3 Q Do you understand that there are  
 4 criminal penalties for perjuring yourself today?  
 5 A I do.  
 6 Q Finally, if I could move you down to  
 7 paragraph 5 on page 5, which says "Fifth Amendment".  
 8 A Yes.  
 9 Q Have you had an opportunity to review  
 10 that paragraph?  
 11 A I have.  
 12 Q And are you aware that you have the  
 13 right to assert your Fifth Amendment privileges  
 14 today?  
 15 A I do.  
 16 Q Under your Fifth Amendment rights, are  
 17 you aware that you may refuse to provide information  
 18 that may tend to incriminate you or otherwise  
 19 subject you to a fine, penalty, or forfeiture by  
 20 invoking your Fifth Amendment rights?  
 21 A Yes.  
 22 Q If I could back you up in Exhibit No. 1

1 A Received?  
 2 Q Has Acceleration Mercury Fund ever paid  
 3 you any money?  
 4 A No.  
 5 Q No. 2, "All documents relating to any  
 6 correspondence between you and Yuri Plyam,  
 7 Acceleration Capital, or Acceleration Mercury Fund  
 8 relating to Acceleration Mercury Fund monies", do  
 9 you have any correspondence in your possession that  
 10 fits under that category?  
 11 A You know what? Come to think about it,  
 12 I do have, I believe, one document not with me  
 13 today, but I can get it to you, from a lawyer  
 14 representing the Mercury Fund.  
 15 Q Do you recall the date of that letter?  
 16 A Sometime in September.  
 17 Q September of 2005?  
 18 A Right.  
 19 Q Do you recall the lawyer who sent you  
 20 that letter?  
 21 A Jeffrey Henderson of Chicago, I believe  
 22 it is.

1 to page 7, which is entitled "Documents to be  
 2 Produced by Toby Wayne Denniston, II Pursuant to  
 3 Subpoena.  
 4 A Yes.  
 5 Q To date, have you produced any documents  
 6 in response to the CFTC's subpoena?  
 7 A I have not.  
 8 Q Did you conduct a search for documents  
 9 that were responsive to these requests?  
 10 A No, sir.  
 11 Q Why not?  
 12 A I know for a fact I don't have any of  
 13 them in my possession.  
 14 Q Let's go through these items.  
 15 A Okay.  
 16 Q Specifically No. 1, which required you  
 17 to produce all documents related to any funds  
 18 received from Acceleration Mercury Fund including  
 19 but not limited to all checks payable to you or  
 20 payable to cash that you deposited or cashed, have  
 21 you ever received a check from Acceleration Mercury  
 22 Fund?

1 Q Was that a demand letter?  
 2 A I believe it was.  
 3 Q Okay. Let's move down to Item 3.  
 4 A I may or may not have that. I think I  
 5 do, but I don't remember if I do or not.  
 6 Q Okay. If you have it, I'm going to  
 7 request that you produce it.  
 8 A I will.  
 9 Q Item 3, "All statements you provided to  
 10 any governmental agency relative to Acceleration  
 11 Mercury Fund monies paid to you and/or summaries of  
 12 such statements", do you have any of those documents  
 13 in your possession?  
 14 A I do not.  
 15 Q Have you provided any statements to any  
 16 governmental agency with respect to Acceleration  
 17 Mercury Fund monies?  
 18 A I have.  
 19 Q Did you receive a copy of that  
 20 statement?  
 21 A I have not.  
 22 Q Do you have a bank account?

1 A Currently, no, sir.  
 2 Q Have you ever had a bank account?  
 3 A Yes, sir.  
 4 Q Have you ever deposited any Acceleration  
 5 Mercury Fund fund monies into that bank account?  
 6 A I have.  
 7 Q What bank did you maintain that account  
 8 with?  
 9 A Wilshire State Bank on Reseda Boulevard  
 10 in Northridge.  
 11 Q Did you ever deposit Acceleration  
 12 Mercury Fund monies into any other bank account?  
 13 A Not that I am aware of.  
 14 Q The Wilshire State Bank, what was the  
 15 name on that account?  
 16 A It was under Toby Wayne Denniston, II.  
 17 I have the account number too, if you'd like.  
 18 Q Sure.  
 19 A 0503-51049.  
 20 Q Do you have any account statements for  
 21 that bank account?  
 22 A I do not.

1 no documents.  
 2 Q Okay.  
 3 A Does that make sense?  
 4 Q Yeah. Did Acceleration Capital pay you  
 5 any money?  
 6 A Acceleration Capital never voluntarily  
 7 paid me money.  
 8 Q Did Acceleration Mercury Fund ever pay  
 9 you any money?  
 10 A Not voluntarily, no, sir.  
 11 Q Were you an employee of Castle Trading?  
 12 A I was.  
 13 Q Did Castle Trading pay you?  
 14 A They did.  
 15 Q Do you have account statements or pay  
 16 stubs for the money Castle Trading paid you?  
 17 A I can get possession of a W-2 from last  
 18 year.  
 19 Q I'm going to request that you produce  
 20 that W-2.  
 21 A Yes, sir. Would it be possible to get a  
 22 piece of paper? I know you asked me that before,

1 Q Have you ever?  
 2 A Yes.  
 3 Q When was the last time you had an  
 4 account statement for that account?  
 5 A I don't recall. I would believe August  
 6 or September of 2005.  
 7 Q Item 5, "All documents related to the  
 8 disposition of any monies paid to you from  
 9 Acceleration Mercury Fund"--  
 10 A I have nothing. I don't have anything,  
 11 any documents related to the disposition.  
 12 Q "All documents relating to any  
 13 correspondence with Wells Fargo Bank or any other  
 14 entity or individual concerning any monies paid to  
 15 you from Acceleration Mercury Fund"?  
 16 A I have never received anything from  
 17 Wells Fargo Bank.  
 18 Q "All documents reflecting any  
 19 compensation paid to you by Acceleration Capital or  
 20 Acceleration Mercury Fund", do you have any  
 21 responsive documents to that request?  
 22 A There was no compensation. So there was

1 and I apologize.  
 2 Q [Mr. Dowd complies.] At any point you  
 3 need more, let me know.  
 4 A Yes. So I'm going to provide a W-2 from  
 5 Castle Trading and a letter from Jeffrey Henderson;  
 6 is that correct?  
 7 Q That's correct.  
 8 Item No. 8, "All documents related to  
 9 your employment with Acceleration Mercury Fund  
 10 and/or Acceleration Mercury Fund, including but not  
 11 limited to all personnel and disciplinary files", do  
 12 you have any responsive documents to that request?  
 13 A I was never an employee of Acceleration  
 14 Capital or Acceleration Mercury Fund.  
 15 Q "All documents related to all  
 16 supervision policies or procedures employed by  
 17 Acceleration Capital and/or Acceleration Mercury  
 18 Fund", do you have any responsive documents to that  
 19 request?  
 20 A I do not.  
 21 Q Item 10, "All documents concerning or  
 22 relating to Acceleration Capital compliance

1 procedures, including but not limited to compliance  
2 manuals", do you have any documents responsive to  
3 that request?  
4 A I do not. I know one exists, but I do  
5 not have possession of it.  
6 Q How do you know one exists?  
7 A I created it.  
8 Q When?  
9 A When the fund was created back in, I  
10 believe, 2004, maybe 2003. I don't recall.  
11 Q Was that document ever in your  
12 possession?  
13 A Personally, no. In the office of Castle  
14 Trading, yes.  
15 Q When was the last time you had access to  
16 that document?  
17 A August of 2004.  
18 MR. SOLINSKY: 2005?  
19 THE WITNESS: Excuse me. You're right.  
20 2005. Sorry about that.  
21 BY MR. DOWD:  
22 Q Item 11, "All training or compliance

1 A In my possession, no, sir.  
2 I have my camera in here, and it's going  
3 off.  
4 MR. SOLINSKY: Off the record.  
5 [Pause.]  
6 BY MR. DOWD:  
7 Q Before we go any further, Mr. Denniston,  
8 I just want to discuss a few preliminary matters  
9 that will hopefully make your testimony go a little  
10 smoother today.  
11 A Sure.  
12 Q If you don't hear a question, let me  
13 know. I'll be more than happy to state it again.  
14 If you don't understand a question, let me know, and  
15 I'll attempt to rephrase it and make it clearer.  
16 The goal of our discussion today or a goal is to get  
17 a clean transcript or as clean of a transcript as  
18 possible, and in order for that to happen, you need  
19 to allow me to finish my question before you begin  
20 to answer, because the court reporter can't record  
21 us talking over one another. So in that regard,  
22 please allow me to finish my question even if you

1 materials provided to you by Acceleration Capital or  
2 Yuri Plyam", do you have any documents responsive to  
3 that request?  
4 A I do not.  
5 Q No. 12, "All documents containing  
6 descriptions of your duties for Acceleration Capital  
7 and/or Acceleration Mercury Fund"?  
8 A Nothing exists.  
9 Q "All documents that identify any current  
10 or former participants of Acceleration Mercury  
11 Fund"?  
12 A I do not have possession of that.  
13 Again, I know that it exists. I created it, but I  
14 do not have possession of it.  
15 Q Item 14, have you reviewed that request?  
16 A Yes. There was never any promotional  
17 material except for the disclosure document.  
18 Q Item 15, have you reviewed that request?  
19 A Yes, and I do not have any possession of  
20 them.  
21 Q You don't have any documents responsive  
22 to that request?

1 think you know what it is before you begin your  
2 answer, and in turn, I will attempt to provide you  
3 the same courtesy, that is allow you to finish your  
4 answer before I begin my next question.  
5 Also in that regard, the court reporter  
6 can't record you making a nod or shaking your head.  
7 So you need to answer my questions audibly. So  
8 rather than shaking your head, I need a yes or a no.  
9 A Yes.  
10 Q If at any point you want to take a  
11 break, I'll be more than happy to accommodate you.  
12 If there is a question pending, I might ask you to  
13 answer the question before we go off the record.  
14 It's also important to know that only the CFTC  
15 controls the record. So you can't instruct the  
16 court reporter to go off the record. Only myself,  
17 Mr. Solinsky, or Mr. Vargas can do so. You should  
18 also know that any discussion we have off the record  
19 may be summarized when we go back on the record.  
20 A I understand that. In regards to what  
21 we just went through, Mr. Solinsky asked me to write  
22 a letter in regards to the documents that I have. I

1 have that letter. Would you like it?  
 2 MR. DOWD: Okay. We'll mark this as  
 3 three, please.  
 4 [Denniston Exhibit No. 3 was  
 5 marked for identification.]  
 6 BY MR. DOWD:  
 7 Q Mr. Denniston, can you summarize the  
 8 information that is contained in the document marked  
 9 as Exhibit No. 3?  
 10 A It goes something like I have no  
 11 possession of any materials that were requested in  
 12 the subpoena, the two mistakes that made, the two  
 13 letters that we have.  
 14 Q And that's the letter from Mr.  
 15 Henderson?  
 16 A And the W-2 from Castle Trading, yes,  
 17 sir.  
 18 Q So absent those two documents, it's your  
 19 position that you have no responsive documents to  
 20 the CFTC's subpoena?  
 21 A That is true.  
 22 Q Do you understand all the instructions

1 A Leonardo Martinez.  
 2 Q And how many discussions with Mr.  
 3 Martinez did you have regarding the CFTC subpoena?  
 4 A I couldn't tell you. I don't know.  
 5 Q Approximately?  
 6 A Two or three.  
 7 Q When was the first conversation?  
 8 A The day that I received the subpoena,  
 9 on--I believe it was March 8th.  
 10 Q What did you say to Mr. Martinez upon  
 11 receiving this subpoena?  
 12 A Just that I had received it.  
 13 Q What was his response?  
 14 A He was worried. He is not very English  
 15 proficient. So we don't go too much detail into the  
 16 financials and the financial markets. He's just not  
 17 interested. So we don't really have conversations  
 18 about that kind of stuff, about this situation.  
 19 Q Did you say anything to him other than  
 20 the fact that you received a subpoena from the CFTC?  
 21 A Not that I am aware of. I don't think I  
 22 did.

1 I've just given you?  
 2 A Yes.  
 3 Q Is there any reason sitting here today  
 4 that you cannot give full and complete testimony?  
 5 A There is not.  
 6 Q Are you taking any medication that may  
 7 prevent you from giving full and complete testimony?  
 8 A Not that I'm aware of.  
 9 Q Do you understand all the instructions  
 10 I've given you?  
 11 A Yes.  
 12 Q Who have you spoken with regarding the  
 13 CFTC's subpoena to you?  
 14 A My family and Agent Michael--Secret  
 15 Service Agent Mark Heingst.  
 16 Q Who specifically in your family did you  
 17 discuss the CFTC subpoena with?  
 18 A My stepmother, my father, my brother, my  
 19 sister, and my partner. Oh. And one of his nieces.  
 20 Q One of your partner's nieces?  
 21 A Yes.  
 22 Q What is your partner's name?

1 Q Okay. And at any point subsequent to  
 2 that discussion, did you have another discussion  
 3 with Mr. Martinez with respect to the CFTC subpoena?  
 4 A Before?  
 5 Q No. After that March--what was the date  
 6 of it? March 3rd?  
 7 A March 8th, I believe it was.  
 8 Q Okay. After that March 8th conversation  
 9 that you just identified, did you have another  
 10 conversation with Mr. Martinez?  
 11 A Except for the travel arrangements being  
 12 made, no.  
 13 Q What is the name of Mr. Martinez's  
 14 niece?  
 15 A Gabriella Martinez.  
 16 Q The tennis player?  
 17 A No.  
 18 Q When did you have a conversation with  
 19 Gabriella Martinez?  
 20 A Probably the 9th or the 10th--I don't  
 21 recall--of March, this year.  
 22 Q How many conversations did you have with

1 Ms. Martinez?  
 2 A One.  
 3 Q And what did you say to her?  
 4 A Just that I was going to Washington in  
 5 regards to this.  
 6 Q What was her response?  
 7 A She wanted me to bring back a tee shirt.  
 8 Q How old is Ms. Martinez?  
 9 A In her mid-twenties, late twenties.  
 10 Q Did you have any discussion with her  
 11 about what you expected to testify about?  
 12 A I don't believe so.  
 13 Q Did--  
 14 A She is in the same situation as Mr.  
 15 Martinez, very English deficient, and we don't get  
 16 into too many details. Most of our conversation was  
 17 in regards to my trip here.  
 18 Q Did any of your conversations with Ms.  
 19 Martinez concern anything other than your travel  
 20 plans?  
 21 A I don't believe so.  
 22 Q What is your father's name?

1 A Toby Wayne Denniston.  
 2 Q And how many conversations did you have  
 3 with your father with respect to the CFTC subpoena?  
 4 A One.  
 5 Q When was that?  
 6 A On this past Sunday. I don't recall the  
 7 date.  
 8 Q So approximately March 19th?  
 9 A Yes.  
 10 Q What did you say to your father?  
 11 A That I was coming to Washington.  
 12 Q Did you tell him why?  
 13 A To testify for you guys in regards to my  
 14 problems.  
 15 Q What do you mean by your problems?  
 16 A Oh, in regards to the situation with the  
 17 fund and myself.  
 18 Q Did you have any discussion with your  
 19 father other than your travel plans?  
 20 A No, I did not.  
 21 Q What was your father's response when you  
 22 told him you were coming to Washington?

1 A He was a little surprised. He had other  
 2 things on his mind, burying my stepmother the  
 3 following day and with my aunt who doesn't anything  
 4 about my situation. The conversation was mostly  
 5 toward just travel plans. I told him that I would  
 6 talk to him after I got home tomorrow.  
 7 Q What is your sister's name?  
 8 A Tammy Denniston. No. Excuse me. Tammy  
 9 Llewelyn.  
 10 Q How many conversations with Tammy did  
 11 you have with respect to the CFTC subpoena?  
 12 A One.  
 13 Q When was that?  
 14 A A week ago this past Wednesday.  
 15 Q What did you say to her?  
 16 A I told her that I was coming to  
 17 Washington to testify in regards to the fund. I  
 18 told her that I was going to give you the same  
 19 information that I gave to the Secret Service, that  
 20 that was my plan, so just along those lines.  
 21 Q Okay. What information did you give to  
 22 the Secret Service?

1 A That I had stole money from the fund.  
 2 Q What was your sister's response?  
 3 A She wanted me to call her. She was  
 4 worried. She wanted me to call her when I was done.  
 5 Q Did she give you any advice on how to  
 6 testify?  
 7 A She did not.  
 8 Q Has anyone ever given you any advice on  
 9 how to testify?  
 10 A No.  
 11 Q Have you discussed what you expected  
 12 your testimony to be with any person?  
 13 A I did not. I didn't know myself. The  
 14 only thing, the only conversation I had with regards  
 15 to that was that I was going to be up-front and  
 16 truthful as I was with the Secret Service.  
 17 Q Who did you say that to?  
 18 A My sister and--my sister and my brother.  
 19 Q What is your brother's name?  
 20 A Richard Denniston.  
 21 Q How many conversations with Richard  
 22 Denniston have you had with respect to the CFTC

1 subpoena?  
 2 A Just one.  
 3 Q When did that conversation take place?  
 4 A The same date as my sister's, Wednesday  
 5 the past. A week ago Wednesday.  
 6 Q Was that a conversation separate from  
 7 that, that you had with your sister?  
 8 A It was.  
 9 Q What did you say to your brother?  
 10 A It was the same content as my sister,  
 11 that I was going to be truthful and provide you the  
 12 information that I had provided to the Secret  
 13 Service, as best as I could.  
 14 Q What was your brother's response?  
 15 A He was worried about Mr. Plyam's  
 16 situation, the trouble that I probably caused for  
 17 Mr. Plyam.  
 18 Q Can you elaborate on that for us? Why  
 19 was he worried? Specifically, what was he worried  
 20 about with respect to Mr. Plyam?  
 21 A He believes that the situation that I  
 22 brought upon Mr. Plyam may cause him to lose his

1 left my primary residence afraid that I was going to  
 2 be arrested and did not tell anybody in my family  
 3 where I was.  
 4 Q What is your stepmother's name?  
 5 A Her name was Delores Kolb. Excuse me.  
 6 I apologize. Debbie Henderson.  
 7 Q Who is Delores Kolb?  
 8 A Delores Kolb is my stepmother that  
 9 passed away in January. Debbie Henderson is my  
 10 stepmother from my mother's side, my mother's  
 11 partner.  
 12 Q Okay. Earlier, I believe you testified  
 13 that you had a conversation with your stepmother  
 14 regarding the CFTC subpoena; is that correct?  
 15 A Yes.  
 16 Q Okay.  
 17 A I consider Debbie Henderson as my  
 18 stepmother.  
 19 Q Okay. At any point, did you have a  
 20 conversation with Delores Kolb with respect to the  
 21 CFTC subpoena?  
 22 A No. She had passed before.

1 license to trade commodities. He feels that this  
 2 whole thing was my fault, that it should have been  
 3 avoided by not doing it, and that I brought shame to  
 4 him.  
 5 Q Has your brother ever met Mr. Plyam?  
 6 A Not that I'm aware of.  
 7 Q Do you know if your brother has ever had  
 8 any conversations with Mr. Plyam?  
 9 A I do.  
 10 Q Do you know how many conversations your  
 11 brother has had with Mr. Plyam?  
 12 A I do not.  
 13 Q How do you know your brother has had  
 14 conversations with Mr. Plyam?  
 15 A He's told me.  
 16 Q What did he tell you?  
 17 A This happened in August of 2005 when Mr.  
 18 Plyam was trying to get ahold of me in regards to  
 19 the matter.  
 20 Q By the matter, you're referring to your  
 21 theft of Acceleration Mercury Fund money?  
 22 A Yes. And he was trying to locate me. I

1 Q Okay. What did you say so  
 2 Mrs. Henderson?  
 3 A The same as I did with my brother and my  
 4 sister, that I was planning to come. I actually had  
 5 two conversations with Debbie. The subpoena came to  
 6 her house.  
 7 Q Okay. Which subpoena was that?  
 8 A The one addressed to 5139 Aspen Drive,  
 9 Exhibit 1, I believe it is. That's how I knew that  
 10 the subpoena existed.  
 11 Q So did she call you to tell you that a  
 12 subpoena had arrived at her house for you?  
 13 A No. The conversation came from my  
 14 brother. She was on the phone with my brother when  
 15 it came. My brother called me and told me it was  
 16 there.  
 17 Q What did your brother say to you when he  
 18 called you to tell you the subpoena was at your  
 19 stepmother's house?  
 20 A Just that, that she received a subpoena  
 21 from the CFTC for me and I needed to go get it.  
 22 Q Where were you living at that point in

1 time?  
 2 A The address is 10123 Finch Avenue, and  
 3 that's in Alta Loma, California 91737. The address  
 4 that you mailed the letter to is a different  
 5 address. I misspoke when I told you before. I told  
 6 you 10125. The real address is 10123. You'll want  
 7 to change your record.  
 8 Q By letter, are you referring to the  
 9 letter I sent you confirming our testimony for  
 10 today?  
 11 A Yes. I want to make sure you had the  
 12 correct address. The address I gave you before was  
 13 not that address.  
 14 Q And the correct address is 10123 Finch  
 15 Avenue, Alta Loma, California 91737?  
 16 A It is.  
 17 Q Is there an apartment with that?  
 18 A It is not.  
 19 Q And what, if anything, did Debbie say to  
 20 you when you informed her you were coming here to  
 21 testify?  
 22 A About the same thing as my brother. She

1 Q Okay. And have you ever had any other  
 2 conversations with Mark Heingst with respect to the  
 3 subpoena from the CFTC?  
 4 A The one and only was that day.  
 5 Q Did you contact him or did he contact  
 6 you?  
 7 A I contacted him.  
 8 Q What did you say to him when you  
 9 contacted him?  
 10 A That I received the subpoena, that I was  
 11 going to Washington, that I talked to you, and he  
 12 said that he was expecting it.  
 13 Q Did he say anything else?  
 14 A He said something to the effect that now  
 15 they're going after Yuri.  
 16 Q Did he explain what he meant by that?  
 17 A That it was administrative. I was  
 18 worried at the time that more charges, criminal  
 19 charges, would be filed against me. He told me that  
 20 this was administrative and that he wasn't aware  
 21 that any other criminal charges could be filed.  
 22 Q Okay. Have any criminal charges been

1 wanted me to make sure that I told the truth. She  
 2 was worried that it had come to this. She wanted to  
 3 make sure that I was okay.  
 4 Q And at some point subsequent to  
 5 receiving the subpoena from the CFTC, did you have a  
 6 conversation with Special Agent Mark Heingst?  
 7 A I did.  
 8 Q When did that conversation take place?  
 9 A As in response to the very first  
 10 conversation that I had with him? Because I talk to  
 11 him every week.  
 12 Q You received a subpoena from the CFTC on  
 13 March 8, 2006; is that correct?  
 14 A It is.  
 15 Q And at some point subsequent to that,  
 16 you have had a conversation with Agent Mark Heingst  
 17 regarding the CFTC subpoena?  
 18 A Yes.  
 19 Q When did that conversation take place?  
 20 A It was Monday of the week that I  
 21 received it. The 8th was a Thursday, I believe. I  
 22 don't know. It was the following Monday.

1 filed against you?  
 2 A No, not yet. My first conversation with  
 3 Mr. Heingst was that the criminal charges that would  
 4 be filed against me would be specifically bank fraud  
 5 versus any other, like embezzlement or anything like  
 6 that. My first conversation with him was in regards  
 7 to being worried that I could be charged with  
 8 commodity laws, with embezzlement, bank fraud, all  
 9 of it, and he told me that the U.S. Attorney--I  
 10 believe his name is Bill Yu--I received that name  
 11 from Mr. Solinsky--was going to just file bank fraud  
 12 charges against me.  
 13 Q Was that part of the conversation you  
 14 had with Mr. Heingst with respect to CFTC's subpoena  
 15 or is that a separate conversation?  
 16 A That was a separate conversation.  
 17 Q Are you aware that Agent Mark Heingst is  
 18 not an officer, a representative of the Commodity  
 19 Futures Trading Commission?  
 20 A I do.  
 21 Q And do you understand that any action  
 22 that the CFTC may take against you is set forth in

1 the Privacy Act document that we discussed earlier  
 2 today?  
 3 A Yes.  
 4 Q So do you understand that Mr. Heingst is  
 5 not qualified to tell you what the CFTC may or may  
 6 not do?  
 7 A Yes.  
 8 Q Do you understand the potential actions  
 9 that the CFTC may take against you?  
 10 A I believe so, yes. Both criminal and  
 11 civil.  
 12 Q The CFTC is a civil agency.  
 13 A You can recommend to the U.S. Attorney.  
 14 Q Do you recall the Privacy Act we  
 15 discussed stated that the CFTC could take an  
 16 administrative action against you?  
 17 A Yes.  
 18 Q And do you recall that it stated that it  
 19 could take an injunctive action against you?  
 20 A Yes.  
 21 Q Do you understand than an injunctive  
 22 action is a civil action in the United States

1 testimony today?  
 2 A Other than a few deep breaths and a long  
 3 walk, no, sir.  
 4 Q Did you review any documents?  
 5 A Just the letter that I wrote for Mr.  
 6 Solinsky.  
 7 Q Let's slow down here for a minute. I  
 8 just want to get some general background information  
 9 from you?  
 10 A Certainly.  
 11 Q What's your date and place of birth?  
 12 A November 3, 1971 in Vista, California.  
 13 Q And your current home address is 10123  
 14 Finch Avenue, Alta Loma, California?  
 15 A It is.  
 16 Q How long have you lived there?  
 17 A Two months--one month.  
 18 Q Where did you live immediately before  
 19 that?  
 20 A I was homeless.  
 21 Q How long were you homeless?  
 22 A Approximately two months.

1 District Court?  
 2 A Yes.  
 3 Q Okay. Other than the people we've  
 4 identified thus far, have you had any conversation  
 5 with anyone with respect to the subpoena the CFTC  
 6 issued you?  
 7 A A conversation, no. Can I clarify?  
 8 Q Please.  
 9 A I did leave a message for Mrs. Piyam  
 10 that I did receive the subpoena, but I never talked  
 11 to them.  
 12 Q What did you say in that message?  
 13 A That I received a subpoena from the  
 14 CFTC, that I was going to have a conversation with  
 15 you in regards to it and wanted any feedback from  
 16 them that might help them.  
 17 Q Did they return your message?  
 18 A They did not.  
 19 Q Do you know anyone else who has been  
 20 subpoenaed or has testified in this investigation?  
 21 A I do not.  
 22 Q Did you do anything to prepare for your

1 Q Where did you stay while you were  
 2 homeless?  
 3 A In my car.  
 4 Q Prior to the time you were homeless,  
 5 where did you live?  
 6 A At Gabriella Martinez's home.  
 7 Q And what's the address of that house or  
 8 apartment?  
 9 A 1512 East Fifth Street, Space 187.  
 10 That's in Ontario, California.  
 11 Q How long did you live at that address?  
 12 A Since August of 2005.  
 13 Q Prior to August 2005, where did you  
 14 live?  
 15 A You want the address?  
 16 Q Please.  
 17 A 10741 Camarillo, C-A-M-A-R-I-L-L-O,  
 18 Street, Apartment 216, in Toluca Lake, T-O-L-U-C-A,  
 19 California.  
 20 Q What is your current home telephone  
 21 number?  
 22 A (818) 378-8016. It's a cell phone

1 number.  
 2 Q Do you have a home telephone number?  
 3 A I do not.  
 4 Q Are you currently employed?  
 5 A I am.  
 6 Q Where are you employed?  
 7 A Empire Lakes Golf Course.  
 8 Q Where is that located?  
 9 A In Rancho Cucamonga.  
 10 Q Can you give us an address?  
 11 A 11015 Sixth Street in Rancho Cucamonga.  
 12 Q What do you do for the golf course?  
 13 A I'm a golf attendant in the pro shop.  
 14 Q How long have you been in that job?  
 15 A Two months.  
 16 Q What is your Social Security number?  
 17 A 550-63-7217.  
 18 Q Have you ever testified in a legal or  
 19 administrative proceeding before?  
 20 A Small Claims Court.  
 21 Q What was the nature of that case?  
 22 A An accident. I was the plaintiff, and

1 Q Do you have a question?  
 2 A I guess not, a statement. There was a  
 3 misdemeanor that was expunged.  
 4 Q Have you ever been questioned in  
 5 connection with a disciplinary proceeding by an  
 6 exchange or self-regulatory organization?  
 7 A By the exchange? No.  
 8 Q What about by a self-regulatory  
 9 organization?  
 10 A No.  
 11 Q Do you understand--  
 12 A I apologize. Yes. Yes, I have.  
 13 Q Okay. When was that?  
 14 A The National Futures Association in  
 15 August of 2005.  
 16 Q Other than the NFA inquiry in August of  
 17 2005, have you ever been questioned by an SRO?  
 18 A No. And those questions with the NFA  
 19 was just pertaining to the audit prior to. It  
 20 wasn't anything--it was me answering questions  
 21 through an audit.  
 22 Q It wasn't a formal disciplinary

1 it was ruled against us, against me.  
 2 Q What type of accident?  
 3 A A vehicle, motor vehicle.  
 4 Q Other than that, have you ever testified  
 5 in a legal or administrative proceeding before?  
 6 A I have not.  
 7 Q Have you ever been subpoenaed in any  
 8 legal or administrative proceeding prior to today?  
 9 A No.  
 10 Q Have you ever been a witness or a  
 11 defendant in any civil litigation other than the  
 12 small claims action that you've identified?  
 13 A No.  
 14 Q Have you ever been a witness or a  
 15 defendant in any criminal litigation?  
 16 A I'll asset my Fifth Amendment. Well,  
 17 can I ask a question, if we go off the record, ask a  
 18 question?  
 19 Q Why don't you ask your question on the  
 20 record?  
 21 A. Okay. I was--I do have a misdemeanor  
 22 that was expunged.

1 proceeding?  
 2 A It was not.  
 3 Q Are you currently registered with the  
 4 NFA?  
 5 A I am not.  
 6 Q Have you ever been registered with the  
 7 NFA?  
 8 A I believe I was registered, but I didn't  
 9 pass the Series 3 exam. So it was never brought to  
 10 fruition.  
 11 Q So you applied for registration with the  
 12 NFA?  
 13 A I did.  
 14 Q But you were never actually registered?  
 15 A Exactly.  
 16 Q Were you ever registered as an  
 17 associated person?  
 18 A I was not.  
 19 Q Have you ever held any professional  
 20 licenses?  
 21 A No.  
 22 Q Have you ever been registered with NASD?

1 A No.  
 2 Q Have you ever applied for registration  
 3 with the NASD?  
 4 A No.  
 5 Q Have you ever been a member of any  
 6 professional organization?  
 7 A No.  
 8 Q Did you complete high school?  
 9 A Yes.  
 10 Q What year did you graduate high school?  
 11 A 1990.  
 12 Q And what high school did you graduate?  
 13 A Church Hill County High School, Fallon,  
 14 Nevada.  
 15 Q And did you ever enroll in college?  
 16 A Yes.  
 17 Q Identify every college that you've ever  
 18 enrolled in for us.  
 19 A Waterson College in 2001, a business  
 20 school. I graduated with a diploma in accounting.  
 21 Q Was that a B.A. or an associate's  
 22 degree?

1 Q Forty-five classes or forty-five  
 2 credits?  
 3 A Forty-five separate classes. I was a  
 4 long time ago, sir. I wish I could remember. I  
 5 don't.  
 6 Q Did you take any classes related to  
 7 futures trading at Waterson College?  
 8 A I did not.  
 9 Q Have you ever attended any other  
 10 college?  
 11 A University of Phoenix.  
 12 Q Is that an online institution?  
 13 A It is, but at the time I was going, it  
 14 was a classroom setting.  
 15 Q Where did you take classes?  
 16 A In Diamond Bar, California.  
 17 Q During what period of time did you  
 18 attend the University of Phoenix?  
 19 A From 1996 to 1999, I believe.  
 20 Q Did you receive a degree from the  
 21 University of Phoenix.  
 22 A Not yet. Seventy-two from 120 credits

1 A It was a certificate diploma.  
 2 Q Okay. And how many credits did you take  
 3 at Waterson College?  
 4 A I don't recall.  
 5 Q When did you receive the certificate?  
 6 A In 1992.  
 7 Q I'm sorry. I thought you said you  
 8 enrolled in Waterson College in 2001.  
 9 A Excuse me. 1991. My apologies.  
 10 Q Was that the fall of 1991?  
 11 A You know, I don't recall.  
 12 Q When in 2001 did you receive the  
 13 certificate?  
 14 A 1990.  
 15 Q I'm sorry?  
 16 A The certificate was received in 1992,  
 17 and I believe that was in June, maybe. I don't  
 18 recall.  
 19 Q Do you recall how many classes you took?  
 20 A Oh, gosh.  
 21 Q Approximately?  
 22 A Forty-five.

1 completed, business management.  
 2 Q Is that an undergraduate degree or a  
 3 master's degree?  
 4 A Undergraduate.  
 5 Q That was in business management, you  
 6 said?  
 7 A Yes.  
 8 Q Have you taken any classes since 1999?  
 9 A Not that I recall.  
 10 Q Have you ever attended any other  
 11 institution other than Waterson College and the  
 12 University of Phoenix?  
 13 A No.  
 14 Q Have you ever taken any classes related  
 15 to futures trading?  
 16 A No.  
 17 Q What was the first job you held after  
 18 you graduated from high school?  
 19 A Lloyds Equipment in Ontario, California.  
 20 Q During what period of time were you  
 21 employed by Lloyds Equipment?  
 22 A 1990 to 1991, I believe.

1 Q What did you do for Lloyds Equipment?  
 2 A I was a parts driver.  
 3 Q Auto parts?  
 4 A Forklift.  
 5 Q What was your next job?  
 6 A ICN Pharmaceuticals.  
 7 Q I-C what?  
 8 A ICN Pharmaceuticals.  
 9 Q What did you do for ICN Pharmaceuticals?  
 10 A At first, I was a receptionist, and then  
 11 I became a--I got into purchasing, a purchasing  
 12 clerk.  
 13 Q During what period of time were you a  
 14 receptionist?  
 15 A '91 to '92 maybe.  
 16 Q Okay. During what period of time were  
 17 you a purchasing clerk?  
 18 A From '92 to '93.  
 19 Q What was your next job after that?  
 20 A '93, Home Base.  
 21 Q How long were you employed by Home Base?  
 22 A Eight years.

1 Q And you were employed at Burkhart Sales  
 2 for approximately a year?  
 3 A Yes.  
 4 Q So in July of 2001, you left Burkhart  
 5 Sales?  
 6 A Yes.  
 7 Q What did you do at that point in time?  
 8 A I went to work for Wood Flooring  
 9 Distributors.  
 10 Q What did you do for Wood Flooring  
 11 Distributors?  
 12 A I was a buyer.  
 13 Q During what period of time?  
 14 A July of '01 to September--oh, man. All  
 15 the dates are bad, I believe.  
 16 Q What is your best recollection?  
 17 A I started the next company, Moon  
 18 International, September of 2001. It was like right  
 19 after September 11th. I can get you my resume, I  
 20 believe, with the proper dates. I apologize.  
 21 Q Actually, I will request that you  
 22 produce that.

1 Q So '93 to roughly 2001?  
 2 A Yeah.  
 3 Q Do you recall when in 2001 you left Home  
 4 Base?  
 5 A July.  
 6 Q What did you do for Home Base?  
 7 A I was a replenishment analyst at first,  
 8 and then I was an inventory supervisor.  
 9 Q Okay. What was your next job after Home  
 10 Base?  
 11 A Burkhart Sales.  
 12 Q I'm sorry?  
 13 A Burkhart, B-U-R-K-H-A-R-T.  
 14 Q And during what period of time were you  
 15 employed by Burkhart Sales?  
 16 A From July of '01--maybe Home Base was  
 17 2000 and then July of 2000 to July of 2001 at  
 18 Burkhart.  
 19 Q So you left Home Base in July of 2000?  
 20 A I think so, yes.  
 21 Q And then you joined Burkhart Sales?  
 22 A Yes.

1 A Okay.  
 2 Q What did you do for Moon International?  
 3 A Moon International, I was a buyer.  
 4 Q When did you leave Moon International?  
 5 A In April of 2003.  
 6 Q Okay. And what was your next job after  
 7 that?  
 8 A Castle Trading.  
 9 Q So you joined Castle Trading in April of  
 10 2003?  
 11 A Yes.  
 12 Q At any point prior to joining Castle  
 13 Trading, did you work involve commodity futures  
 14 contracts?  
 15 A It did not.  
 16 Q Did you ever trade a futures contract  
 17 prior to joining Castle Trading?  
 18 A I did not.  
 19 Q Have you ever held any securities  
 20 trading accounts?  
 21 A No. Securities trading? I had a stock  
 22 trading account at--what's the name of that company?

1 I don't remember the name of the company. I  
 2 apologize.  
 3 Q During what period of time was that  
 4 stock account opened?  
 5 A 2005.  
 6 Q Is it still open?  
 7 A It is not.  
 8 Q Do you recall when you closed the  
 9 account?  
 10 A August of 2005, I believe.  
 11 Q So it was both opened and closed in  
 12 2005?  
 13 A Yes. I believe it might have been June  
 14 when I opened it.  
 15 Q Do you recall the name on the account?  
 16 A Toby Denniston.  
 17 Q Is it Toby Denniston, II?  
 18 A Yes.  
 19 Q Was that a joint account?  
 20 A It was not.  
 21 Q Have you ever had any other security or  
 22 brokerage accounts?

1 account?  
 2 A No.  
 3 Q Have you ever had access to trade any  
 4 securities account other than that account that  
 5 you've identified thus far?  
 6 A I apologize. Read the question one more  
 7 time.  
 8 Q Have you ever had access to trade any  
 9 securities account other than that account that's  
 10 been identified thus far?  
 11 A Did I have access to trade an account?  
 12 Q Did someone allow you to trade their  
 13 account?  
 14 A No.  
 15 Q Have you ever deposited money into any  
 16 securities account other than the account you've  
 17 identified?  
 18 A Have I ever deposited money in my  
 19 personal--  
 20 Q Any account, any securities account.  
 21 A Securities account, no.  
 22 Q Going back to the IRA--

1 A No.  
 2 Q Have you ever had a IRA?  
 3 A Yeah. That was an IRA, actually. That  
 4 was an IRA. Other than that, no. It was a 401(k)  
 5 I've had.  
 6 Q And do you recall the brokerage firm or  
 7 bank where the IRA was located?  
 8 A One of the ones that I--I don't  
 9 remember. I'm sorry.  
 10 Q Do you still have account statements for  
 11 that brokerage account?  
 12 A Not in my possession, no. I'll get you  
 13 the name of that. I'm sorry.  
 14 Q Yeah. I'm going to request that you  
 15 produce any documents that are related to that  
 16 account.  
 17 Have you ever had any discretionary  
 18 trading authority over any security or brokerage  
 19 account that was not in your name?  
 20 A No.  
 21 Q Have you ever had discretionary trading  
 22 authority over any commodity futures trading

1 A Yes.  
 2 Q --account that you can't remember the  
 3 name of the brokerage, what was the most amount of  
 4 money you ever had in that account?  
 5 A About \$4,000, I believe.  
 6 [Denniston Exhibit No. 4 was  
 7 marked for identification.]  
 8 BY MR. DOWD:  
 9 Q Mr. Denniston, do you recognize the  
 10 document marked as four?  
 11 A Yes.  
 12 Q Can you tell us what this document is?  
 13 A It's a check from a personal bank  
 14 account that I held.  
 15 Q When did you open this account?  
 16 A I don't know.  
 17 Q Can you approximate what year it was?  
 18 A Late 2004, maybe.  
 19 Q Is the account number for the Wilshire  
 20 State Bank account in your name 005351049?  
 21 A It is.  
 22 Q Has anyone else ever been a signatory on

1 this account?  
 2 A No.  
 3 Q Is this account currently open?  
 4 A It is not.  
 5 Q When was it closed?  
 6 A In August or September of 2005.  
 7 Q Identify for us all bank accounts you've  
 8 held since October 2004.  
 9 A This one and a Wells Fargo account.  
 10 Q What was the name of the Wells Fargo  
 11 account?  
 12 A Toby Wayne Denniston, II and Leonardo  
 13 Martinez.  
 14 Q Do you recall the account number for  
 15 that account?  
 16 A I do not.  
 17 Q When was that account opened?  
 18 A In June, I believe, of 2005. Maybe  
 19 July.  
 20 Q Is that account currently open?  
 21 A It is not.  
 22 Q When was the account closed?

1 Q So from October 2004 forward, the  
 2 accounts that you held were an IRA at an unnamed  
 3 brokerage, the Wilshire State Bank account, and the  
 4 Wells Fargo checking account?  
 5 A That's right.  
 6 Q No others?  
 7 A That's right.  
 8 Q When did you start at Castle Trading?  
 9 A In April of 2003.  
 10 Q How did you learn about the job at  
 11 Castle Trading?  
 12 A On line, I think. Maybe Monster.com.  
 13 Q Do you recall the position that was  
 14 posted on Monster?  
 15 A Office clerk, maybe.  
 16 Q Did you have any preexisting  
 17 relationship with anyone at Castle Trading prior to  
 18 applying for the job?  
 19 A I did not.  
 20 Q Do you recall who interviewed you?  
 21 A Natalia Plyam, Yuri Plyam, and one other  
 22 gentleman. I don't recall his name.

1 A In November 2005. Maybe October.  
 2 Q Other than the Wilshire State Bank and  
 3 the Wells Fargo Bank account, have you held any  
 4 other bank accounts from October 2004 forward?  
 5 A No.  
 6 Q What about certificates of deposit?  
 7 A No.  
 8 Q Savings accounts?  
 9 A No.  
 10 Q Any type of bank account?  
 11 A Those two accounts and the IRA, that was  
 12 it.  
 13 Q At any point from October 2004 forward,  
 14 have you ever held any money at any financial  
 15 institution other than that that you've identified?  
 16 A Since what date?  
 17 Q October 2004.  
 18 A October 2004, have I ever held money?  
 19 No, I have not.  
 20 Q At any financial institution other than  
 21 what you've identified thus far?  
 22 A That's right.

1 Q Do you recall who hired you?  
 2 A Yuri Plyam.  
 3 Q Mr. Plyam had the authority to hire  
 4 employees?  
 5 A Yes.  
 6 Q Do you know if anyone else at Castle  
 7 Trading had that authority?  
 8 A Maybe Mrs. Plyam.  
 9 Q Do you know that for a fact or are you  
 10 speculating?  
 11 A Well, he made all of the decisions. It  
 12 was based on her recommendation.  
 13 Q But he had the final word?  
 14 A Absolutely.  
 15 Q Are you currently employed by Castle  
 16 Trading?  
 17 A I am not.  
 18 Q When did you leave Castle Trading?  
 19 A August of 2005.  
 20 Q During your employment with Castle  
 21 Trading, how many people did Castle Trading employ?  
 22 A Anywhere between three to maybe six.

1 Q And those employees would include  
2 yourself?  
3 A Yes.  
4 Q And Yuri Plyam?  
5 A Yes.  
6 Q Natalie Plyam?  
7 A Yes.  
8 Q Who else?  
9 A Different people on occasion.  
10 Q Do you recall the names of those people?  
11 A No, not off the top of my head.  
12 Q Do you know who Gregory Zane Parker is?  
13 A That's his name. Yeah, I do. Yes.  
14 Q Who is Gregory Zane Parker?  
15 A I've been trying to think of his name  
16 for a while. He was an MIS tech, information  
17 systems tech, that was hired for Castle Trading.  
18 Q And do you know what period of time Mr.  
19 Parker worked for Castle Trading?  
20 A Within a month or two prior to August of  
21 2004, he was hired.  
22 Q Okay. So he was hired in the summer of

1 Q Does it have any other business  
2 operation other than that of introducing broker?  
3 A Castle Trading?  
4 Q Yes.  
5 A No.  
6 Q Where were Castle Trading's offices  
7 located?  
8 A Reseda Boulevard, I think 8619 Reseda  
9 Boulevard, Space 102, Northridge, California 91324.  
10 Q Did it ever have an address at 8949  
11 Reseda Boulevard?  
12 A It did.  
13 Q Was that separate from the address that  
14 you just identified?  
15 A No, sir. We lived--we were at 8949.  
16 Then we moved to 8619.  
17 Q When did that move take place?  
18 A Oh, shoot. About a year--August of  
19 2004, maybe.  
20 Q So as of August of 2004, Castle Trading  
21 was located at 8619 Reseda Boulevard, Northridge,  
22 California?

1 2004?  
2 A I believe so. Excuse me. 2005.  
3 Q 2005?  
4 A Yeah.  
5 Q So just a month or two before you left  
6 the company?  
7 A Within that time frame. Maybe a few  
8 months.  
9 Q What did he do for Castle Trading?  
10 A He made sure that the web site was  
11 updated. He did all the MIS, all the computer  
12 stuff.  
13 Q Do you know who hired him?  
14 A Mr. Plyam, Yuri.  
15 Q And is Mr. Parker still with Castle  
16 Trading?  
17 A I do not know.  
18 Q What is Castle Trading?  
19 A Castle Trading is a futures commodity  
20 brokerage.  
21 Q Is it an introducing broker?  
22 A It is.

1 A Prior to August 2004?  
2 Q What office did you move to? 8949 or  
3 8619?  
4 A We were at 8949. We moved to 8619.  
5 Q Okay. So August 2004 forward, Castle  
6 Trading was located at 8619 Reseda Boulevard?  
7 A It was.  
8 Q Describe those offices for me.  
9 A One room with a kitchenette-ish, like a  
10 closet for supplies and filing cabinets and stuff.  
11 Q Did employees have separate offices or  
12 was it an open work environment?  
13 A It was an open work environment.  
14 Q Did anyone have a separate office?  
15 A Nobody.  
16 Q Did you have a desks? Did you have  
17 cubicles?  
18 A We had desks, no cubicles.  
19 Q Where did you sit in relation to Yuri  
20 Plyam?  
21 A Directly in front of him like I am to  
22 you.

1 Q And that would be approximately three  
2 feet?

3 A Oh, six feet.

4 Q And where did you sit in relation to  
5 Natalia Plyam?

6 A She sat facing me, directly behind Mr.  
7 Plyam.

8 Q Approximately how far away was her desk  
9 from yours?

10 A Ten, fifteen feet maybe.

11 Q Did you have the ability to lock your  
12 desk?

13 A No. There was no drawers in any desk.

14 Q In any desk?

15 A In any desk. That was Mr. Plyam's  
16 policy.

17 Q Where did the company keep its  
18 documents?

19 A In a filing cabinet inside a closet in  
20 the office. Filing cabinets.

21 Q Where did you keep your personal  
22 belongings?

1 A I didn't have any.

2 Q Where did you keep your pens, papers?

3 A On my desk.

4 Q Describe Natalia Plyam's role at Castle  
5 Trading for us.

6 A She handled--god. She did a lot of the  
7 things that Yuri didn't want to do. Yuri did the  
8 trading. She did everything else, the paying of  
9 bills, that sort of thing.

10 Q How often was she in the office?

11 A Every day.

12 Q Full time every day?

13 A Yes.

14 Q And what was the supervision role at  
15 Castle Trading?

16 A Yuri was strict-handed. He did  
17 everything.

18 Q Yuri was the supervisor?

19 A He was.

20 Q Yuri was in charge of the entire  
21 operation?

22 A He was.

1 Q Did anyone supervise you other than  
2 Yuri?

3 A On occasion, Natasha, but through Yuri.

4 Q Is it Natalia or Natasha?

5 A Both. We called her Natasha.

6 Q What specifically did Natasha do to  
7 supervise you?

8 A She had access to all incoming E-mails,  
9 went through all of the postal mail, about that.  
10 She handled phone calls when there were problems.

11 Like if there was a trading problem, she handled  
12 some of those phone calls when Yuri wasn't  
13 available.

14 Q What did you do for Castle Trading when  
15 you started?

16 A When I first started, I was just a  
17 clerk. I took daily orders from customers.

18 Q Orders for futures trades?

19 A Yes.

20 Q What else did you do?

21 A And I monitored written tickets versus  
22 what the FCM posted in each of the individual

1 accounts.

2 Q Did that role change at any point in  
3 time?

4 A It did.

5 Q When did it change?

6 A When the Gauss Fund started trading  
7 in--no. Excuse me. I'm sorry. Almost immediately.  
8 Maybe June of 2003.

9 Q How did your role change in June 2003  
10 from that of clerk?

11 A I notified Mr. Plyam that I had an  
12 accounting background and that he just received a  
13 fine from the National Futures Association in  
14 regards to the accounting of the Gauss Fund, a  
15 separate fund that was administered by Mr. Plyam.

16 Q What is the Gauss Fund?

17 A The Gauss Fund is a commodity fund.

18 Q A commodity pool?

19 A Um-hum.

20 Q Who is the CPO for the Gauss Fund?

21 A Remind me what a CPO.

22 Q The commodity pool operator.

1 A Mr. Plyam.  
 2 Q Did he do that through Acceleration  
 3 Capital?  
 4 A No. Through CHP Asset Management.  
 5 Q CHP Asset Management, was that a  
 6 registered CPO?  
 7 A It was.  
 8 Q And describe for us how your role  
 9 changed in June 2003 when the NFA fined Mr. Plyam  
 10 for activity relating to the Gauss Fund.  
 11 A I got more involved in making sure that  
 12 the office was compliant in regards to having the  
 13 correct paperwork or organizing the office and doing  
 14 accounting for the fund, the Gauss Fund, on  
 15 Quickbooks, sending out invoices to customers,  
 16 keeping all documents required by the NFA and the  
 17 CFTC.  
 18 Q Okay. Customer invoices for the Gauss  
 19 Fund?  
 20 A Yes.  
 21 Q Did you send out customer invoices for  
 22 Castle Trading?

1 [Recess.]  
 2 BY MR. DOWD:  
 3 Q Mr. Denniston, would you like to make a  
 4 clarification to the dates of employment that we've  
 5 discussed thus far?  
 6 A Yes. I recall the dates.  
 7 Q Okay.  
 8 A I worked at Lloyds Equipment as a parts  
 9 clerk from 1990 to 1991; at ICN Pharmaceuticals as a  
 10 receptionist first and then as a purchasing clerk  
 11 after from 1991 to 1993; Home Base as a  
 12 replenishment analyst and then an inventory  
 13 supervisor from 1993 to 1998; at Burkhardt Sales as  
 14 an office manager from 1998 to 1999; at Wood  
 15 Flooring Distributors as a buyer from 1999 to 2001;  
 16 at Moon International as a buyer from 2001 to 2003;  
 17 at Castle Trading first as a clerk, then as an  
 18 office manager from 2003 to 2005; and then from  
 19 February 2005 to currently, I'm at Empire Lakes.  
 20 Q When did you become an office manager at  
 21 Castle Trading?  
 22 A In June of 2005.

1 A No.  
 2 Q Were you ever an employee for CHP Asset  
 3 Management?  
 4 A I was not.  
 5 Q Did you ever do any work on behalf of  
 6 CHP Asset Management?  
 7 A I did.  
 8 Q And was that with respect to the Gauss  
 9 Fund?  
 10 A Yes.  
 11 Q And that was the paperwork for the Gauss  
 12 Fund?  
 13 A That's right.  
 14 Q Compliance issues that the Gauss Fund?  
 15 A Yes.  
 16 Q Did you prepare customer statements for  
 17 the Gauss Fund?  
 18 A I did.  
 19 Q Who supervised that?  
 20 A Mr. Plyam. I'm getting a little cold.  
 21 MR. DOWD: Why don't we go off the  
 22 record, take a break.

1 Q 2005 or 2003?  
 2 A 2005.  
 3 Q In June of 2003, did you testify that  
 4 your role changed at Castle Trading?  
 5 A It did.  
 6 Q Did you receive a title change?  
 7 A No.  
 8 Q Okay. And did you ever hold a title at  
 9 Castle Trading other than clerk or office manager?  
 10 A I did not.  
 11 Q Regardless of title change, did your  
 12 role at Castle Trading ever change at any point in  
 13 time subsequent to that of June 2003 when you became  
 14 involved in the compliance aspect?  
 15 A Prior to that, no.  
 16 Q What about subsequent to that?  
 17 A Since that, yes.  
 18 Q Okay.  
 19 A I became an officer manager in June of  
 20 2005. I took on more responsibilities as to  
 21 disciplining employees.  
 22 Q What do you mean by disciplining

1 employees?  
 2 A We put together an employee--we got more  
 3 involved in giving out benefits to employees, having  
 4 an employee manual, that sort of thing. I  
 5 administered a lot of that.

6 Q Prior to June of 2005, did Castle  
 7 Trading have any compliance procedures?

8 A Prior to--I'm sorry--what date?

9 Q June of 2005.

10 A Prior to 2005, yes.

11 Q Okay. Were those procedures reduced to  
 12 writing?

13 A Prior to 2005, yes.

14 Q Prior to June of 2005?

15 A Yes.

16 Q Okay.

17 A Prior to June of 2003 is a different  
 18 story.

19 Q So what happened between June of 2003  
 20 and June of 2005?

21 A In regards to?

22 Q In regards to compliance policies or

1 Q And did Castle Trading do any work on  
 2 behalf of CHP Asset Management?

3 A CHP Asset Management, no. Gauss Fund,  
 4 it was its I.B.

5 Q So Castle Trading was the I.B. for the  
 6 Gauss Fund?

7 A The Gauss Fund.

8 Q Did you ever receive any training from  
 9 Castle Trading?

10 A Yes.

11 Q Okay. What training did you receive  
 12 from Castle Trading?

13 A How to write orders, how to answer the  
 14 phone, how to place orders for customers. Gosh. It  
 15 was ongoing verbally, nothing in writing. All  
 16 verbal.

17 Q Who provided that training?

18 A Mr. Plyam.

19 Q Anyone else?

20 A No.

21 Q What was your salary when you started at  
 22 Castle Trading?

1 procedures implemented or used by Castle Trading.

2 A A compliance manual was completed.

3 Q When was the compliance manual  
 4 completed?

5 A Ongoing from that date of June of 2003  
 6 through June of 2005. The NFA required that Mr.  
 7 Plyam through Castle Trading or the Gauss Fund have  
 8 audits every four months. I was responsible to make  
 9 sure that those audits were completed.

10 Q And who developed the compliance manual  
 11 for Castle Trading?

12 A I did.

13 Q Did anyone help you?

14 A With the help of Mr. and Mrs. Plyam  
 15 both.

16 Q Who had final word on compliance  
 17 procedures adopted by Castle Trading?

18 A Mr. Plyam.

19 Q What relationship, if any, was there  
 20 between Castle Trading and CHP Asset Management?

21 A Mr. Plyam was the managing member of  
 22 both.

1 A I believe it was \$15 an hour.

2 Q Did that change at any point in time?

3 A It did.

4 Q When did it change?

5 A I don't recall. Several times between  
 6 April of 2003 and August of 2005.

7 Q What was your salary when you left  
 8 Castle Trading?

9 A \$19 per hour.

10 Q What is Acceleration Capital?

11 A It is a CPO for a Mercury--the Mercury.

12 Q For Acceleration Mercury Fund 4X?

13 A Exactly. Acceleration Mercury and  
 14 Acceleration Granite Fund actually never began  
 15 trading.

16 Q Do you know if Acceleration Capital is  
 17 registered as a CPO with the NFA?

18 A At the time, I believe it was. As of  
 19 today, I do not know that.

20 Q So during your employment at Castle  
 21 Trading, Acceleration Capital was a registered CPO?

22 A It was.

1 Q Do you know if it was also a registered  
2 CTA?

3 A It was.

4 Q Did it ever provide any CTA services?

5 And by CTA, I'm referring to commodity trading  
6 advisor.

7 A I'm not exactly sure.

8 Q Do you know who founded Acceleration  
9 Capital?

10 A Curtis Faith and Yuri Plyam.

11 Q Who is Mr. Faith?

12 A Curtis Faith was a prodigy in futures  
13 trading. He was taken under a wing by some big  
14 investor, traded for this investor, and a book was  
15 written about the whole experiment.

16 Q And aside from being involved in the  
17 formation of Acceleration Capital, what did Mr.  
18 Faith do on behalf of Acceleration Capital?

19 A Nothing.

20 Q Do you know how often Mr. Faith was in  
21 contact with Acceleration Capital?

22 A At the beginning, once ever few months.

1 Towards the end, not at all.

2 Q Do you know how often he was in touch  
3 with Mr. Plyam?

4 A At the same time. When Curtis Faith  
5 contacted Acceleration Capital, it was Yuri Plyam.

6 Q So do you know how often Mr. Plyam and  
7 Mr. Faith spoke or corresponded after the formation  
8 of Acceleration Capital?

9 A I do not know that.

10 Q Who ran Acceleration Capital?

11 A Yuri Plyam.

12 Q Okay. Did Mr. Faith run Acceleration  
13 Capital at all?

14 A Did not.

15 Q Did he have any role in Acceleration  
16 Capital policies and procedures other than the  
17 formation of the entity?

18 A The formation only. They were using his  
19 name, Yuri's know-how.

20 Q Where is Acceleration Capital located?

21 A The same address as Castle Trading, 8619  
22 Reseda Boulevard in Northridge.

1 Q So the two entities shared an office?

2 A As well as the CH Asset Management.

3 Q Was any other entity located at that  
4 address?

5 A I don't know. They have Castle  
6 Development, which was a real estate company,  
7 separate.

8 Q That was in a separate office?

9 A At the beginning, it was not. At the  
10 end of my employment, it was.

11 Q You said Castle Real Estate Development?

12 A I believe it was called Castle  
13 Development.

14 Q What business was Castle Development  
15 engaged in?

16 A Castle Development purchased land to  
17 develop for multimillion dollar homes.

18 Q And who founded Castle Development?

19 A Mr. Plyam.

20 Q Who ran Castle Development?

21 A Mr. Plyam.

22 Q Were any Castle Trading employees

1 involved with Castle Development other than Mr.  
2 Plyam?

3 A No.

4 Q Did Castle Trading employees ever do any  
5 work on behalf of Castle Development other than Mr.  
6 Plyam?

7 A Mrs. Plyam.

8 Q Anyone else?

9 A You know what? Greg Parker might have  
10 done computer stuff, but anything technical or  
11 anything like that, I don't recall.

12 BY MR. VARGAS:

13 Q Was Castle Development a corporation?

14 A I believe it was.

15 Q Do you know what State it was  
16 incorporated in?

17 A I do not know.

18 BY MR. DOWD:

19 Q Were you ever employed by Acceleration  
20 Capital?

21 A I was not.

22 Q Did Acceleration Capital ever have any

1 employees?  
 2 A No.  
 3 Q And Acceleration Capital served as a CPO  
 4 for Acceleration Mercury Fund 4X; is that correct?  
 5 A That is correct.  
 6 Q As well as the Granite Fund; is that  
 7 correct?  
 8 A Yes, but the Granite Fund never traded.  
 9 Q Aside from those two funds or pools, did  
 10 Acceleration Capital ever serve as a CPO for any  
 11 other commodity pool?  
 12 A It did not.  
 13 Q Who supervised Acceleration Capital's  
 14 operations?  
 15 A Mr. Plyam.  
 16 Q Anyone else?  
 17 A No.  
 18 Q What relationship, if any, existed  
 19 between Acceleration Capital and Castle Trading?  
 20 A Castle Trading was the I.B. for the  
 21 Mercury Fund and Mr. Plyam was managing member of  
 22 both.

1 a disclosure document. What else? And the  
 2 accounting statements for each participant.  
 3 Q What about monthly account statements?  
 4 A That's what I just said. Yes.  
 5 Q So by accounting statements, you're  
 6 referring to monthly account statements that were  
 7 distributed to Acceleration Mercury Fund pool  
 8 participants?  
 9 A That is right.  
 10 Q During that period of time did you  
 11 prepare those account statements?  
 12 A I believe the fund began trading in  
 13 January of 2004, and I stopped doing it in August  
 14 2005.  
 15 Q Were you doing it in January 2004 when  
 16 the fund started trading?  
 17 A I was.  
 18 Q So from January of 2004 through August  
 19 of 2005, you prepared account statements for  
 20 Acceleration Mercury Fund participants?  
 21 A Yes.  
 22 Q Did you mail those account statements?

1 Q Did Castle Trading ever perform any work  
 2 on behalf of Acceleration Capital?  
 3 A Besides being the I.B., no, not that I'm  
 4 aware of.  
 5 Q Did you ever do any work on behalf of  
 6 Acceleration Capital?  
 7 A Yes.  
 8 Q Who supervised that work?  
 9 A Mr. Plyam.  
 10 Q And what specifically did you do on  
 11 behalf of Acceleration Capital?  
 12 A The same as with CHP Asset Management.  
 13 I did the accounting. I did the compliance work.  
 14 Q Compliance for what?  
 15 A Made sure that all the documents were on  
 16 hand for any particular reason that the CFTC and the  
 17 NFA required.  
 18 Q What documents specifically are you  
 19 referring to?  
 20 A A compliance manual.  
 21 Q Any others?  
 22 A A list of participants, the creation of

1 A I did.  
 2 Q Did anyone review those account  
 3 statements prior to the time they were mailed to the  
 4 pool participants?  
 5 A Yes.  
 6 Q Who?  
 7 A Mr. Plyam.  
 8 Q What did Mr. Plyam do to review those  
 9 accounts statements?  
 10 A I don't know.  
 11 Q What was the procedure before they were  
 12 mailed?  
 13 A There's a statement on the bottom of  
 14 each that Mr. Plyam had to sign.  
 15 Q That stated what?  
 16 A That to the best of his knowledge and  
 17 belief, the account statements were correct.  
 18 Q Do you know if he did anything to ensure  
 19 that the account statements were correct?  
 20 A I do not know. I believe that he just  
 21 relied on me.  
 22 Q Why do you believe that?

89

1 A I believe his knowledge of accounting is  
2 minimal and the ability that I had to steal from the  
3 fund was not caught.

4 Q Do you know if--let me state it this  
5 way: Do you recall any instance in which Mr. Plyam  
6 took any affirmative step to ensure that the  
7 information in the participant account statements  
8 was accurate?

9 A I cannot tell you. I don't know.

10 Q What specifically did Mr. Plyam do to  
11 supervise your work on behalf of Acceleration  
12 Capital?

13 A He did all the trading. I gave him the  
14 numbers. He reviewed the overall--we had to create  
15 an overall document that showed the participant--or  
16 the changes by month on an Excel spread sheet.

17 Q Changes in what?

18 A On the performance.

19 Q Performance of Mercury Fund?

20 A Yes. We did that together constantly.

21 Q And did you do any work independent of  
22 Mr. Plyam?

90

1 A The accounting, yes.

2 Q And did he supervise that accounting  
3 work?

4 A I don't believe that he did. I mean up  
5 until--like I said, his knowledge in accounting is  
6 minimal. Other than wanting to know the performance  
7 or working with me on the performance, doing the  
8 trades, and signing the statements to the customers,  
9 his participation was left to me to do.

10 Q And when you say working on the  
11 performance, what specifically do you mean?

12 A Like I said, he wanted to know all the  
13 time how he was doing in comparison to the prior  
14 month, the prior day.

15 Q In terms of rate of return of Mercury  
16 Fund?

17 A Yes.

18 Q And you prepared that information for  
19 him?

20 A I did.

21 Q Who founded Acceleration Mercury Fund?

22 A Curtis Faith and Mr. Plyam.

91

1 Q And where is the fund located? Does it  
2 have a mailing address?

3 A It does, the 8619 Reseda Boulevard.

4 Q And do you recall when the pool was  
5 formed?

6 A The pool, I believe, was July of 2003.

7 No. That couldn't have been right. July of 2004.

8 I don't recall now, sir. We started trading the  
9 fund in January of 2004.

10 Q January of 2004, the Acceleration  
11 Mercury Fund commenced trading?

12 A I believe that's the date. I might be  
13 mixing the dates up again. I apologize if I am.

14 Q And you prepared the account statements  
15 for the life of the Acceleration Mercury Fund?

16 A I did. I set the entire accounting  
17 system up for the fund as well as the Gauss Fund.

18 Q Did anyone supervise you in the creation  
19 of the accounting system for the Mercury Fund?

20 A The NFA--or the auditor that we had, he  
21 was an accountant. He helped me.

22 Q Who was the auditor?

92

1 A I don't recall his name. I don't recall  
2 his name.

3 Q Do you know how participants--  
4 Dick, Dick something.

5 Q Do you know how participants for Mercury  
6 Fund were solicited?

7 A I do not know that, no.

8 Q Do you know if Mercury Fund or  
9 Acceleration Capital advertised for the fund via  
10 print advertisements?

11 A They did not.

12 Q What about radio?

13 A They did not.

14 Q Television?

15 A No.

16 Q Internet?

17 A No. I believe advertising would have  
18 been required by the NFA to get approval from them,  
19 and there was none that I remember. So no.

20 Q It's your testimony that you did work on  
21 behalf of the Acceleration Mercury Fund?

22 A It is.

1 Q And were you an employee of Castle  
2 Trading during the period of time that you did this  
3 work on behalf of Acceleration Mercury Fund?

4 A I was.

5 Q Who authorized you to do work on behalf  
6 of Acceleration Mercury Fund?

7 A Yuri Plyam.

8 Q Were you ever compensated by Mercury  
9 Fund?

10 A I was not.

11 Q What about by Acceleration Capital?

12 A No. In regards to official paychecks  
13 from either of those companies, I was not.

14 Q Did Acceleration Mercury Fund maintain a  
15 futures trading account anywhere?

16 A Yes. Rosenthal Collins Group.

17 [Denniston Exhibit No. 5 was  
18 marked for identification.]

19 BY MR. DOWD:

20 Q Mr. Denniston, do you recognize the  
21 document marked as No. 5?

22 A I do.

1 Acceleration Capital receive daily account  
2 statements for the Rosenthal Collins account?

3 A When it traded, yes.

4 Q How were those daily account statements  
5 delivered to Acceleration Capital and Mercury Fund?

6 A I believe via E-mail. It might have  
7 been postal mail.

8 Q Okay.

9 A You know what? It was postal mail at  
10 first.

11 Q So you received daily account statements  
12 via postal mail?

13 A Yes.

14 Q Who were those accounts statements  
15 mailed to?

16 A Acceleration Mercury Fund at 8619 Reseda  
17 Boulevard.

18 Q Were they directed to any particular  
19 individual's attention?

20 A Attention Yuri Plyam.

21 Q Okay. And you're referring to Exhibit  
22 No. 5 when you say attention Yuri Plyam?

1 Q Can you tell us what that document is?

2 A It's a commodity statement from  
3 Rosenthal Collins for the Acceleration Mercury Fund  
4 4X Fund.

5 Q Do you know if the Acceleration Mercury  
6 Fund ever had a futures trading account other than  
7 that reflected in Exhibit No. 5?

8 A I don't believe so. It might have been  
9 Revco, but I don't recall. I think all of it was  
10 done through Acceleration Mercury--I mean through  
11 R.C., Rosenthal Collins. I don't think anything was  
12 done through Revco, is my recollection.

13 Q Do you know who opened the account in  
14 Exhibit No. 5?

15 A Mr. Plyam and Mr. Faith.

16 Q And who is responsible for reviewing the  
17 account statements for the Acceleration Mercury Fund  
18 Rosenthal Collins account?

19 A These statements monthly and daily, that  
20 was my responsibility.

21 Q Okay. So in addition to the monthly  
22 account statements that are in Exhibit No. 5, did

1 A I am.

2 Q Do you recall if the daily account  
3 statements were addressed in the same fashion?

4 A I do recall that they were, yes.

5 Q So they were addressed to Acceleration  
6 Mercury Fund 4XLP, Attention Yuri Plyam?

7 A Yes.

8 Q And at some point in time, were the  
9 daily account statements E-mailed to Acceleration  
10 Capital and/or Yuri Plyam?

11 A Yes.

12 Q Do you recall the E-mail address that  
13 those were sent to?

14 A Info at, I believe, Castle Trading.com.  
15 It might have been Info at Acceleration Capital.com.

16 Q Do you when that change took place?

17 A No.

18 Q Do you recall the year?

19 A 2004.

20 Q It's your testimony that the  
21 account--that the Mercury Fund started trading in  
22 approximately January of 2004?

1 A If I'm not mistaken, yes.  
 2 Q Do you recall when in 2004 approximately  
 3 the daily account statements were sent via E-mail  
 4 rather than postal mail?  
 5 A I don't believe that postal mail  
 6 stopped. I believe it was both.  
 7 Q And who had access to the E-mail account  
 8 Info@CastleTrading.com?  
 9 A Yuri Plyam and Natasha Plyam.  
 10 Q Who had access to the E-mail account  
 11 Info@Acceleration Capital.com?  
 12 A I believe both of those them as well,  
 13 Yuri Plyam and Natasha Plyam.  
 14 Q Was that the correct address,  
 15 Info@CastleTrading.com?  
 16 A Yes.  
 17 Q Did you have access to either of those  
 18 E-mail accounts?  
 19 A On my computer, no.  
 20 Q Did you have access in any way to either  
 21 of those E-mail accounts?  
 22 A Yes.

1 Q Did the monthly account statements  
 2 continue to arrive via postal mail after they were  
 3 available via E-mail?  
 4 A I believe that they did. I take that  
 5 back. I don't think that they did. I think they  
 6 stopped.  
 7 Q So the monthly account statements  
 8 stopped arriving via postal mail once they were  
 9 available via E-mail?  
 10 A I believe so.  
 11 Q What about the daily account statements;  
 12 were there two statements mailed, both an electronic  
 13 mail and postal mail?  
 14 A I believe at one time, yes. At some  
 15 particular time after that, I don't believe that  
 16 they were. I think everything was E-mail. So let  
 17 me clarify my statement from before. I believe the  
 18 postal mail did stop and the E-mails--it was the  
 19 Gauss Fund where they did not.  
 20 Q Where the postal mail did not stop?  
 21 A Right.  
 22 Q Whose responsibility was it to review

1 Q How did you have access?  
 2 A I had keys to the building and access to  
 3 Mr. Plyam's computer. It wasn't in a locked office.  
 4 Q Did Mr. Plyam ever grant you access to  
 5 those E-mail addresses officially?  
 6 A Yes.  
 7 Q Okay. For what purpose?  
 8 A If he was running errands to monitor his  
 9 E-mail; if he was on vacation, to monitor his  
 10 E-mail; to transfer these particular E-mails from  
 11 Info@CastleTrading to Toby@Castle Trading so that I  
 12 could do the accounting. The monthly statements  
 13 were done that way.  
 14 Q Did the monthly accounts statements also  
 15 arrive via E-mail?  
 16 A Yes.  
 17 Q Do you recall what address they arrived  
 18 to via E-mail?  
 19 A Either of those, Info@Castle or  
 20 Info@Acceleration. I believe it was  
 21 Info@CastleTrading. I don't believe it was  
 22 Info@Acceleration.

1 the Rosenthal Collins daily account statements for  
 2 accuracy?  
 3 A Mine.  
 4 Q And how--  
 5 A With Mrs. Plyam's assistance.  
 6 Q What do you mean by "with her  
 7 assistance"?  
 8 A She looked for margin calls and stuff  
 9 like that on both Revco and Rosenthal Collins  
 10 statements, and she had done that work as well.  
 11 Q So what was the procedure once the  
 12 account statement arrived at the office whether it  
 13 was via postal mail or electronic mail?  
 14 A The procedure was just to file it, to  
 15 review it for accuracy and to file it, match it  
 16 against a ticket.  
 17 Q If it came via E-mail, would someone  
 18 print it or forward it to another person?  
 19 A I believe it was automatically forwarded  
 20 to me through a rule in Outlook.  
 21 Q What was your E-mail address?  
 22 A Toby@CastleTrading.com.

1 Q And what was the procedure if the  
2 statement arrived via postal mail?  
3 A All mail, all postal mail, went to  
4 Natasha Plyam. She would open the envelope and then  
5 review it and then give it to me if it had anything  
6 to do with my work.  
7 Q What would you do with the daily account  
8 statements once you received them?  
9 A I put them in a file.  
10 Q Did you do anything else?  
11 A Besides checking them for accuracy, I  
12 would put them in a file.  
13 Q Was anyone else responsible for checking  
14 the account statements for accuracy?  
15 A No.  
16 Q With respect to the monthly account  
17 statements, was the procedure the same?  
18 A Yes.  
19 Q So you would review the monthly account  
20 statements for accuracy?  
21 A Yes.  
22 Q And then you would place the monthly

1 wanting to know the performance, where the fund  
2 stood at all times.  
3 Q But regardless of whether or not he  
4 reviewed them, he had access to those account  
5 statements?  
6 A He did.  
7 Q Where are the proceeds from the sale of  
8 Acceleration Mercury Fund pool subscriptions  
9 deposited?  
10 A Wells Fargo Bank.  
11 Q What was the name on that account?  
12 A Acceleration Mercury Fund.  
13 Q Do you know if Acceleration Mercury Fund  
14 ever maintained a bank account other than that Wells  
15 Fargo account?  
16 A I don't believe so. I think Wells Fargo  
17 was the only account.  
18 Q How many accounts did Acceleration  
19 Mercury Fund have with Wells Fargo?  
20 A One.  
21 Q Do you recall the account number?  
22 A I don't.

1 account statements in a file?  
2 A Yes. With the monthly account  
3 statements, we did the accounting based on the  
4 monthly account statements.  
5 Q Who is we?  
6 A I did the accounting for the fund based  
7 on the monthly account statements.  
8 Q Do you know if Mr. Plyam ever reviewed  
9 the Rosenthal Collins monthly and/or daily account  
10 statements?  
11 A I would believe yes. I couldn't tell  
12 you for a fact, but yes.  
13 Q Why do you have that belief?  
14 A Because, you know, he sat at his desk.  
15 His computer didn't face mine. He didn't tell me  
16 everything he was doing all hours of the day. He  
17 did things that--  
18 Q But if you didn't know what he was doing  
19 at all times, why do you believe that he reviewed  
20 Rosenthal Collins daily or monthly account  
21 statements? What is your basis for that belief?  
22 A Just because of his wanting to know, his

1 [Denniston Exhibit No. 6 was  
2 marked for identification.]  
3 BY MR. DOWD:  
4 Q Mr. Denniston, do you recognize the  
5 document marked as six?  
6 A I do.  
7 Q Can you tell else what that document is?  
8 A It's a Wells Fargo Bank statement for  
9 Acceleration Mercury Fund.  
10 Q What's the account number?  
11 A 535-7180347.  
12 Q Are you aware of any Wells Fargo account  
13 that Acceleration Mercury Fund had other than the  
14 one with the accounted number 535-7180347?  
15 A I'm sorry. Who?  
16 Q Acceleration Mercury Fund.  
17 A The fund, no. I believe this is the  
18 only account.  
19 Q Do you know who opened this account?  
20 A Yuri Plyam and Curtis Faith.  
21 Q Were you a signatory on this account?  
22 A I was not.

1 Q Do you know who was the signatory on  
2 this account?  
3 A Yuri Plyam.  
4 Q Anyone else?  
5 A I don't believe so.  
6 Q And were the account statements  
7 reflected in Exhibit No. 6 mailed to the  
8 Acceleration Capital office?  
9 A Were they mailed? Yes.  
10 Q Where were they mailed to?  
11 A The only address that they were mailed  
12 to was 8949 Reseda Boulevard.  
13 Q Were they ever mailed to the other  
14 office at Acceleration Capital?  
15 A 86 19? They were forwarded from 8949.  
16 They were never mailed directly to them.  
17 Q Do you know what period of time the  
18 account statements for this Wells Fargo account were  
19 mailed to Acceleration Capital?  
20 A From the very beginning.  
21 Q From the inception of the account?  
22 A Yes.

1 Q And then the account statements stopped  
2 arriving at 8619 in approximately December 2004?  
3 A It may have been January 2005, but yes.  
4 Q In the December 2004-January 2005  
5 timeframe?  
6 A Yes. That is true.  
7 Q It's your testimony that the account  
8 statements stopped arriving via mail because  
9 Acceleration Capital and/or Acceleration Mercury  
10 Fund didn't update its address with Wells Fargo?  
11 A I personally updated the address with  
12 Wells Fargo, but it never changed for some reason.  
13 In November of 2004, I called Wells Fargo to change  
14 the address, and they took that information, but for  
15 some reason--I don't know why--it never changed; but  
16 as far as Wells Fargo, the statements we received  
17 from Wells Fargo, that is correct. The 8949 was the  
18 only address that they were mailed to.  
19 Q Who at Acceleration Capital had the  
20 authority to request an address change for the  
21 account in Exhibit No. 6?  
22 A Just Mr. Plyam.

1 Q Okay. Did that stop at any point in  
2 time?  
3 A Yes.  
4 Q When was that?  
5 A December of 2004.  
6 Q Okay. Why did that stop; do you know?  
7 A I believe that the post office's  
8 forwarding expired.  
9 Q So when the account was opened, the 8949  
10 Reseda Boulevard address was the address for the  
11 account?  
12 A It was.  
13 Q At some point in time, Acceleration  
14 Capital and Acceleration Mercury Fund moved to  
15 another address on Reseda Boulevard?  
16 A They did.  
17 Q And that address was what?  
18 A 8619 Reseda Boulevard.  
19 Q For a period of time thereafter, the  
20 Acceleration Mercury Fund Wells Fargo Bank account  
21 statements were forwarded to the 8619 address?  
22 A They were.

1 Q Did he ever instruct you to change the  
2 address for this Wells Fargo account in Exhibit 6?  
3 A He did.  
4 Q And what did he say?  
5 A Change the address.  
6 Q And is it your testimony that that  
7 address change wasn't effective; it didn't work?  
8 A For some reason, yes.  
9 Q Did Mr. Plyam ever ask you why the  
10 account statements weren't coming to the 8619  
11 address?  
12 A No.  
13 Q It's your testimony that the account  
14 statements stopped arriving in December 2004 to  
15 January 2005?  
16 A Yes.  
17 Q And you left Acceleration Capital in  
18 August of 2005?  
19 A Yes.  
20 Q At any point between December  
21 2004-January 2005 and the time you left Acceleration  
22 Capital, did Mr. Plyam ask you why the Wells Fargo

1 account statements weren't being mailed to the  
2 company?  
3 A I left Castle Trading, and he did not.  
4 He didn't review postal mail. That was Mrs. Plyam's  
5 responsibility.  
6 Q Did Mrs. Plyam ever ask you why the  
7 Wells Fargo account statements weren't being mailed  
8 to Acceleration Mercury Fund or Acceleration  
9 Capital?  
10 A No.  
11 Q Were the account statements for the  
12 Wells Fargo account in Exhibit No. 6 ever E-mailed  
13 to Acceleration Mercury Fund or Acceleration  
14 Capital?  
15 A Yes.  
16 Q Okay. Who were they E-mailed to?  
17 A Info@CastleTrading.com. They were  
18 E-mailed in one lump sum. They weren't continually  
19 E-mailed.  
20 Q What do you mean by one lump sum?  
21 A In getting prepared for the year-end  
22 audit, we didn't have several of the bank statements

1 A They mailed them every month.  
2 Q Did they E-mail them?  
3 A No, they did not.  
4 Q Did Wells Fargo ever E-mail account  
5 statements for Wells Fargo Account 535-7180347 to  
6 Acceleration Mercury Fund or Acceleration Capital?  
7 A Via E-mail, I don't believe so.  
8 Q Do you know if Acceleration Capital or  
9 Acceleration Mercury Fund ever received an E-mail  
10 with the Wells Fargo account statements other than  
11 the group E-mail that was sent in anticipation of  
12 the audit?  
13 A I am almost certain it did not. It did  
14 not receive other than the lump.  
15 Q So after the postal mail stopped  
16 arriving with the Wells Fargo account statements,  
17 did Acceleration Capital or the fund ever regularly  
18 receive account statements for the Wells Fargo  
19 account?  
20 A Never.  
21 Q Okay. Identify for me each instance  
22 from November 2004 forward that Acceleration Mercury

1 in our possession. A couple of months were missing  
2 for some reason, and we asked Wells Fargo Bank--at  
3 the time that I told them to change the address, we  
4 asked them to E-mail us those statements.  
5 Q When was that?  
6 A In November of 2004.  
7 Q So in November 2004, Wells Fargo  
8 E-mailed account statements for the account in  
9 Exhibit No. 6 to Info@CastleTrading.com?  
10 A Yes.  
11 Q What account statements were encompassed  
12 in that E-mail?  
13 A From the beginning of January until  
14 November of 2004. It might have been December of  
15 2004 when all that took place. We were getting  
16 ready for the audit that had to take place for the  
17 year-end, and so it might have been December just  
18 because that was the year-end of the fund.  
19 Q And if I understand you correctly, Wells  
20 Fargo did periodically mail the account statements  
21 for the account in six during the period of January  
22 2004 to November 2004?

1 Fund or Acceleration Capital received an account  
2 statement for the Wells Fargo account regardless of  
3 manner of delivery.  
4 A It did not.  
5 Q It did not? So after--  
6 A After the lump sum and I believe the  
7 December statement in the postal mail, it never once  
8 received from Wells Fargo a statement for the  
9 account.  
10 Q So from December 2004 through August of  
11 2005 when you left Castle Trading, to your  
12 knowledge, the Acceleration Mercury Fund or  
13 Acceleration Capital never received a Wells Fargo  
14 bank account statement?  
15 A I believe that is the best of my  
16 knowledge, yes.  
17 BY MR. SOLINSKY:  
18 Q How did you or others determine what the  
19 status of the Wells Fargo account was if you didn't  
20 receive statements?  
21 A Based on my accounting of the cash on  
22 Quickbooks.

1 BY MR. DOWD:  
 2 Q Did you have internet access to the  
 3 Wells Fargo Bank account?  
 4 A I did not.  
 5 BY MR. SOLINSKY:  
 6 Q Did you have any other way to call in by  
 7 telephone to get the balance of the account?  
 8 A I did not.  
 9 Q Was there any other way that you used to  
 10 determine the status of the account?  
 11 A No.  
 12 BY MR. DOWD:  
 13 Q Did Mr. Plyam have access to the Wells  
 14 Fargo bank account in any manner?  
 15 A I don't know. Would you like me to  
 16 expand now?  
 17 Q Please.  
 18 A Okay. This is beginning my testimony  
 19 with Agent Heingst, Secret Service Agent Heingst in  
 20 the beginning of November of 2004. I wrote a check  
 21 in which I forged Mr. Plyam's name to myself. I  
 22 deposited it into--I believe I deposited it into my

1 A They did not.  
 2 Q Did anyone at Acceleration Capital or  
 3 Acceleration Mercury Fund?  
 4 A No.  
 5 BY MR. SOLINSKY:  
 6 Q What was your purpose, then, in creating  
 7 these statements?  
 8 A To hide the fact that I was cashing  
 9 checks in my name.  
 10 Q Could you explain? Since you said that  
 11 no one had looked at these statements, how was it  
 12 hiding them?  
 13 A For anybody that wanted to look at them,  
 14 just in case. What I did, if I can get personal,  
 15 I'm very ashamed of. I destroyed my life. I was--I  
 16 had a lot of promise at Castle Trading. Castle  
 17 Trading had a lot of promise for everyone. I  
 18 deeply, deeply regret what I did by stealing money  
 19 from the fund. I deeply regret putting the Plyams  
 20 through what I'm them through, and my family. If I  
 21 could take it back, I would. I took money. I hid  
 22 it based on changing the statements. I changed

1 checking account at Wilshire State Bank. I might  
 2 have cashed it at Wells Fargo. I don't recall.  
 3 When the statements stopped coming, I had access to  
 4 the E-mails. Because of the audit, I had all of  
 5 those statements in an E-mail from Wells Fargo. So  
 6 what I did was I changed the date and--I changed the  
 7 date and I changed the numbers to reflect the  
 8 monthly statements, and I posed those as the  
 9 statements that we were receiving from Wells Fargo.  
 10 BY MR. SOLINSKY:  
 11 Q And who did you give those statements  
 12 to?  
 13 A I did not give them to anybody. I kept  
 14 them for my records for the fund. I was responsible  
 15 for all the files of the fund.  
 16 BY MR. DOWD:  
 17 Q So Mr. Plyam never came to you and said,  
 18 Hey, we're not getting any statements from Wells  
 19 Fargo?  
 20 A That's correct.  
 21 Q Did Mrs. Plyam ever come to you and say,  
 22 Hey, where are the Wells Fargo statements?

1 RCG's statements to reflect the money that I was  
 2 taking and was hiding it without Mr. Plyam's  
 3 knowledge, but not that he wasn't supervising, that  
 4 I had access to his computer to be able to change  
 5 it. Does that make sense?  
 6 I had a key to the office. I had access  
 7 to his computer. I was there very early in the  
 8 morning, and I changed the documents. So if he saw  
 9 them, they looked legitimate.  
 10 BY MR. DOWD:  
 11 Q Did Acceleration Capital have a bank  
 12 account?  
 13 A Acceleration Capital did, yes.  
 14 Q Was that bank account located at Wells  
 15 Fargo?  
 16 A It was.  
 17 Q How many Wells Fargo Bank accounts did  
 18 Acceleration Capital have?  
 19 A The company itself, one.  
 20 Q Did you ever steal money from that  
 21 account?  
 22 A Once.

1 Q When was that?

2 A Gosh. Spring of 2004. I don't recall

3 the exact month. 2005. Excuse me. Spring of 2005.

4 Q How many money did you take from the

5 Acceleration Capital Bank account?

6 A Over a thousand, under two thousand. I

7 don't recall the exact amount.

8 Q And did you take any steps to conceal

9 that theft?

10 A I did.

11 Q What steps?

12 A The same steps. I changed the--we were

13 receiving both RCG statements and the statement that

14 I got in a lump sum from Wells Fargo in a Word

15 document. It wasn't a PDF file that I couldn't

16 change. I didn't have--I don't have the ability or

17 the know-how to change a PDF file. I did have the

18 ability and the know-how to change a Word file, and

19 I changed them.

20 Q So the Wells Fargo Mercury Fund account

21 statements that you had access to were in Word

22 format?

1 A From November of 2004 through July of

2 2005, I believe was the last time.

3 Q Who was supervising you during that

4 period of time?

5 A Yuri Plyam.

6 Q And how much money did you steal from

7 the Mercury Fund account?

8 A It was later told me to by Agent Heingst

9 \$179,000 plus change.

10 Q When did Agent Heingst tell you that?

11 A In October of 2005.

12 Q Describe in detail for us how you stole

13 the money.

14 A I wrote checks. I had access to the

15 checks.

16 Q How did you have access to the checks?

17 A They were at my desk. They were in a

18 filing cabinet in the office, in that back office,

19 and I knew where they were.

20 Q So they weren't on your desk?

21 A No. I took them. I wrote the check

22 out. I signed Yuri Plyam's name.

1 A Yes.

2 Q And were the Acceleration Capital, LLC

3 statements also in Word format?

4 A They were. You know what? We never

5 received Acceleration Capital Bank statements via

6 E-mail from Wells Fargo Bank. I created that based

7 on Acceleration Mercury Fund, just changing the

8 name.

9 Q How often were the Acceleration Capital

10 account statements mailed to the company?

11 A It was a ditto story with Acceleration

12 Capital and the Mercury Fund. They stopped coming.

13 Q Were you a signatory on the Wells Fargo

14 Acceleration Capital account?

15 A I was not.

16 Q Do you know who was a signatory on that

17 account?

18 A Mr. Plyam.

19 Q Do you know if anybody else was?

20 A Nobody was.

21 Q During what period of time did you steal

22 from the Mercury Fund account?

1 BY MR. SOLINSKY:

2 Q As part of your duties, did you

3 ever--prior to this incident of taking funds for the

4 account, did you ever have duties that would require

5 you to prepare checks for Mr. Plyam's signature?

6 A Not at all.

7 Q How did you know where the checks were?

8 A My access to all the filing cabinets in

9 the office. I was the office manager at the time.

10 I had access to all of it.

11 Q Did anyone ever request that you go get

12 the checkbook so Mr. Plyam could use it?

13 A No.

14 Q So you simply saw the checks by going

15 through the drawers?

16 A Yes. A lot of times--a lot of times, I

17 could have been stopped. If we received the

18 statements from Wells Fargo, I would have been

19 stopped if they were reviewed. I took the checkbook

20 and I cut the checkbook up. I'd take three or four

21 checks and I'd cut the rest of them up so nobody

22 would see that there were three or four checks

1 missing from the book. So, again, not that Mr.  
 2 Plyam or Mrs. Plyam wasn't trying to supervise me.  
 3 I had the ability based on my access to do what I  
 4 did without their knowledge.  
 5 BY MR. DOWD:  
 6 Q Was the filing cabinet locked?  
 7 A No.  
 8 Q Was there a lock on the filing cabinet?  
 9 A I don't recall.  
 10 Q What was the source of the money in the  
 11 Mercury Fund account?  
 12 A Customer funds.  
 13 Q How did you know how much was in the  
 14 account?  
 15 A I lost track keeping—just keeping track  
 16 of how much I took and then how much I would  
 17 replace.  
 18 Q Did you know how much was in the account  
 19 when you initially—the first time you stole from  
 20 the account?  
 21 A Yes, based on the account statement.  
 22 Q Do you recall what that number was?

1 A Yes.  
 2 Q When did you do that?  
 3 A Ongoing between November and July  
 4 of—November of '04 to July of '05.  
 5 Q How many times did you transfer money  
 6 from Rosenthal Collins to steal it?  
 7 A I don't know.  
 8 Q Approximately?  
 9 A The only number that I do know is how  
 10 many checks were written to me, and that was 55.  
 11 How many checks were written from Rosenthal Collins  
 12 back into the fund, I don't know that number. I  
 13 couldn't even venture to guess. I don't know.  
 14 Q Can you approximate how much money you  
 15 transferred from Rosenthal Collins for the purpose  
 16 of stealing it?  
 17 A 180,000 less 50,000, so 120,000 [sic], I  
 18 believe.  
 19 MR. VARGAS: Thirty.  
 20 BY MR. DOWD:  
 21 Q And you did that periodically?  
 22 A Yes.

1 A I don't. I think about—I think between  
 2 30 and 40 thousand.  
 3 Q Were the deposits made to that account  
 4 regularly?  
 5 A Regularly, no; but, yes, deposits were  
 6 made.  
 7 Q And if a deposit was made, would you  
 8 have knowledge of that deposit?  
 9 A I made that deposit.  
 10 Q You made that deposit with customer  
 11 money?  
 12 A Yes.  
 13 Q In other words, someone bought a  
 14 subscription for the Mercury Fund pool, and that  
 15 money went into the Mercury Fund Wells Fargo  
 16 account?  
 17 A Yes.  
 18 Q And you had knowledge of that deposit?  
 19 A Yes.  
 20 Q Did you ever transfer money from the  
 21 Rosenthal Collins account to the Wells Fargo Mercury  
 22 Fund account for the purpose of stealing that money?

1 Q That is you transferred money from  
 2 Rosenthal Collins to Wells Fargo periodically?  
 3 A Yes.  
 4 Q For the purpose of writing a check for  
 5 that money to yourself?  
 6 A Yes.  
 7 Q To steal it?  
 8 A Yes.  
 9 Q Is there any typical time of day that  
 10 you would take the checks?  
 11 A Late afternoon. I would come in on  
 12 weekends occasionally. No specific time, no.  
 13 Q Did you ever order checks for the Wells  
 14 Fargo Mercury Fund account?  
 15 A I don't recall. I don't believe so.  
 16 Q Were you ever authorized to order checks  
 17 for the Wells Fargo Mercury Fund account?  
 18 A No.  
 19 Q How many checks are we talking about at  
 20 the filing cabinet? Was it several books?  
 21 A Yes.  
 22 Q Can you approximate how many checks were

1 there when you started the theft?

2 A I'm not sure how many checks are in a

3 book, but I would guess about maybe 10 books, 15

4 books. Very rarely was a check written from the

5 fund out anywhere. I mean, it stayed in either

6 Wells Fargo or Rosenthal Collins. So Mrs. Plyam had

7 access to one checkbook that she used when she would

8 draft a check for Mr. Plyam's signature, but all the

9 other checkbooks were put away and were never used

10 besides for me.

11 Q Do you know if the Mercury Fund ever

12 bounced a check during the period of your theft?

13 A Yes.

14 Q Yes, you know?

15 A Yes, I do know.

16 Q And did it ever bounce a check?

17 A We're talking about Mercury Fund or

18 Acceleration Capital?

19 Q Mercury Fund.

20 A I believe once, yes.

21 Q When did that happen?

22 A In the spring of 2005.

1 what's been marked Exhibit No. 7, and if I could

2 direct you to the page which is Bates numbered Plyam

3 00004. Do you recognize that document?

4 A Yes. The document, no; the check, yes.

5 Q There's a check captured on that page;

6 is that correct?

7 A Yes.

8 Q And you recognize that check?

9 A I do.

10 Q The signature on that check--

11 A Mr. Plyam's signature was mine.

12 Q So you forged Mr. Plyam's signature on

13 that check?

14 A I did.

15 Q And you drafted the check to yourself?

16 A I did.

17 Q What about the following one, the page

18 Bates numbered ending in a five; did you forge that

19 check as well?

20 A I did.

21 Q And the subsequent page ending in six,

22 you forged that check?

1 Q Who had knowledge of that bounced check?

2 A Me.

3 Q Anyone else?

4 A No.

5 Q How did you have knowledge of that

6 bounced check?

7 A I believe the check was returned to my

8 bank as unpaid.

9 Q Do you recall the amount of that check?

10 A I don't.

11 Q Your theft continued during the summer

12 of 2005; is that correct?

13 A Through July, yes.

14 Q So after that check bounced, did you

15 deposit more money into the Mercury Fund account?

16 A I did, and I continued to steal.

17 Q And where did that money come from?

18 A From the Rosenthal Collins.

19 [Denniston Exhibit No. 7 was

20 marked for identification.]

21 BY MR. DOWD:

22 Q Mr. Denniston, you've just been handed

1 A I did.

2 Q And the following page ending in seven,

3 did you forge that check?

4 A I did.

5 Q Page 8, did you forge that check?

6 A I did.

7 Q Page 9, did you forge that check?

8 A I did.

9 Q And page 10, Check 1077, did you forge

10 that check?

11 A Yes.

12 Q Page 11, Check 1078, did you forge that

13 check?

14 A Yes.

15 Q By forging that check, I'm referring

16 to--

17 A My signature of signing Yuri Plyam's

18 name.

19 Q You signed Mr. Plyam's name?

20 A I did.

21 Q And you drafted the check to yourself?

22 A I did.

1 Q Page 12, Check No. 1117, did you forge  
 2 Mr. Plyam's signature on that check?  
 3 A I did.  
 4 Q Page 13, Check 1118, did you forge Mr.  
 5 Plyam's signature on that page?  
 6 A I did.  
 7 Q Do you see on that particular check,  
 8 there appears to be a thumb print to the left of Mr.  
 9 Plyam's signature?  
 10 A Yes.  
 11 Q Is that your thumb print?  
 12 A I believe it is, yes.  
 13 Q Do you recall that the bank required you  
 14 to put a thumb print on a check you cashed?  
 15 A Sometimes I would deposit the checks  
 16 into my own checking account at Wilshire State Bank.  
 17 Sometimes I would take them to Wells Fargo to cash  
 18 them. When I did that, they required a thumb print,  
 19 yes.  
 20 Q What was the breakdown of checks  
 21 deposited versus checks cashed?  
 22 A I don't know. All of them were cashed,

1 A Yes.  
 2 Q And did you forge this check? Did you  
 3 forge Mr. Plyam's signature on this check?  
 4 A I did.  
 5 Q Moving one page forward to 17, Check  
 6 1124, did you forge Mr. Plyam's signature on that  
 7 check?  
 8 A I did.  
 9 Q And page 18, Check 10789, did you forge  
 10 Mr. Plyam's signature on that check?  
 11 A I did.  
 12 Q Page 19, Check 1008, did forge Mr.  
 13 Plyam's signature on that check?  
 14 A I did.  
 15 Q Page 20, Check 1110, did you forge Mr.  
 16 Plyam's signature on that check?  
 17 A I did.  
 18 Q Page 21, Check 1111, did you forge Mr.  
 19 Plyam's signature on that check?  
 20 A I did.  
 21 Q Page 22, Check 1112, did you forge Mr.  
 22 Plyam's signature on that check?

1 but in regards to Wilshire State Bank versus Wells  
 2 Fargo, I don't know.  
 3 Q The checks that went to Wilshire State  
 4 Bank, did you deposit those in your account first?  
 5 A Yes.  
 6 Q Then did you withdraw the money?  
 7 A Yes.  
 8 Q Okay. How soon after you deposited the  
 9 checks did you withdraw the money?  
 10 A Most of the time, immediately.  
 11 Q And page 14, Check 1113, did you forge  
 12 Mr. Plyam's signature on that check?  
 13 A I did.  
 14 Q And page 15, Check 1114, did you forge  
 15 Mr. Plyam's signature on that check?  
 16 A I did.  
 17 Q Page 16, Check 1115, did you forge that  
 18 check?  
 19 A I did.  
 20 Q And the next page does not appear to be  
 21 Bates numbered, but the check number is 1116. Do  
 22 you see that?

1 A Can we just say that I forged them on  
 2 all of them?  
 3 Q Why don't you take an opportunity to  
 4 look through the remainder of this document--  
 5 A I just did.  
 6 Q --which is Bates number Plyam 00023  
 7 through Plyam 00059. Take as much time as you need  
 8 and let me know if there are any checks from that  
 9 point forward that you did not forge Mr. Plyam's  
 10 signature on.  
 11 A I reviewed them. There's not one that I  
 12 did not forge Mr. Plyam's signature.  
 13 Q If I could back you up to the front of  
 14 this document and the first very first check which  
 15 is on the page Bates number Plyam 00003, did you  
 16 forge that check?  
 17 A Yes.  
 18 Q And you can see on that document what  
 19 appears to be the back of the check and the  
 20 endorsement. It says: "Pay to the order of Wells  
 21 Fargo Bank for deposit only, Acceleration Capital,  
 22 LLC." Do you see that?

1 A Yes.

2 Q Did you deposit this check into the

3 Acceleration Capital account?

4 A I don't know.

5 Q Do you know why that endorsement is on

6 the back of this particular check?

7 A Well, you know, because I put it there.

8 I'm sure that it was deposited into Acceleration

9 Capital.

10 Q Okay. And this particular check, who is

11 it made out to?

12 A Acceleration Capital.

13 Q Is it your recollection--and what's the

14 amount of this check?

15 A \$2,127.10.

16 Q And is it your recollection that you

17 used this particular check to steal money from the

18 Mercury Fund?

19 A Yes.

20 Q Okay.

21 A By paying Acceleration Capital back the

22 money that I stole previously from the Acceleration

1 Q Do you recall writing any checks from

2 the Acceleration Mercury Fund that are not

3 encompassed within Exhibit No. 7?

4 A No.

5 Q So to the best of your knowledge, all of

6 the checks that you used to steal from Mercury Fund

7 are covered in Exhibit No. 7?

8 A I believe so, yes. I don't have--I

9 didn't keep a record or have knowledge of the

10 amounts or the dates or any of that. I don't know,

11 but from what has been told to me by Agent Heingst,

12 I believe that this is correct.

13 Q What did Agent Heingst say to you?

14 A Just that, that there were checks--we

15 went through the same process that you and I just

16 went through, forge, forge, forge, forge, and I

17 signed them all and dated them.

18 Q What do you mean you signed and dated

19 them all?

20 A I signed and dated every copy of his

21 file.

22 Q And by signing and dating them, you were

1 Capital.

2 Q So you stole money from the Acceleration

3 Capital Wells Fargo Bank account?

4 A One time, yes.

5 Q And to conceal that theft, you deposited

6 money from the Acceleration Mercury Fund into the

7 Acceleration Capital account?

8 A I did.

9 Q So is it your testimony that all of the

10 checks encompassed in Exhibit No. 7 were forged by

11 you?

12 A That is my testimony, yes.

13 Q You forged Mr. Plyam's signature on each

14 of those checks?

15 A That's true.

16 Q And each of those checks were used by

17 you to steal money from Acceleration Mercury Fund or

18 Acceleration Capital--

19 A Yes.

20 Q --for the very first check appearing in

21 this exhibit?

22 A Yes.

1 acknowledging that they were forged checks?

2 A I believe that, yeah.

3 Q Okay. And I believe it was your

4 testimony earlier that the period of theft was

5 November 2004 through July of 2005. Is that

6 correct?

7 A That was my testimony, but I see that it

8 went through August of 2005.

9 Q So--

10 A I'm changing the testimony to August of

11 2005.

12 Q Having reviewed Exhibit No. 7, it's now

13 your--

14 A My recollection.

15 Q --testimony, recollection, that you

16 stole money in August of 2005 as well?

17 A That is true.

18 [Denniston Exhibit No. 8 was

19 marked for identification.]

20 BY MR. DOWD:

21 Q Mr. Denniston, do you recognize the

22 document marked as Exhibit 8?

1 A Yes.

2 Q Can you tell us what this document is?

3 A It's a check to Hilon Tsigonias for

4 \$74.22.

5 Q What Bates number are you referring to?

6 A 00100279.

7 Q All right. And Exhibit No. 8 contains a

8 series of checks; is that correct?

9 A Yes.

10 Q Ranging in Bates Nos. 00100279 through

11 287; is that correct?

12 A Yes.

13 Q And reviewing these checks, are you able

14 to say if any of these checks were used by you for

15 the purpose of stealing money from Acceleration

16 Capital? In other words, did you forge any of the

17 checks in Exhibit No. 8?

18 A Yes.

19 Q Which check or checks?

20 A Bates No. 00100285, Check No. 1015 for

21 \$2,528.69.

22 Q Any other checks in this exhibit?

1 Q So you had a checking account at

2 Wilshire Bank and you also had a checking account at

3 Wells Fargo?

4 A That's right.

5 Q And the money you stole from the Mercury

6 Fund, Acceleration Capital was either cashed or

7 deposited into the Wilshire Bank account, to the

8 best of your knowledge?

9 A To the best of my knowledge, yes.

10 Q Do you have any recollection of ever

11 depositing money into the Wells Fargo account that

12 was the product for your theft?

13 A My recollection is no, strictly

14 recollection. If I did it, I don't remember. I

15 might have, but I don't remember.

16 Q Do you recall ever depositing money that

17 you stole from either Mercury Fund or Acceleration

18 Capital into any bank account other than the

19 Wilshire Bank account regardless of whether or not

20 the account was in your name?

21 A My recollection is that the only checks

22 that were ever cashed, forged checks that were

1 A That were forged and stolen by me, no.

2 Q So it's your testimony that the only

3 check in Exhibit No. 8 that you forged is that

4 referenced on page 00100285?

5 A Yes.

6 Q Which is Check 0115?

7 A 1015.

8 Q I'm sorry. 1015.

9 A Yes.

10 Q Dated April 22, 2005?

11 A Yes.

12 Q Did you ever deposit money that you

13 stole either from Mercury Fund or Acceleration

14 Capital into any account other than the Wilshire

15 Bank account?

16 A My recollection is and my intention was

17 no. If I did, it was unintentional, but I don't

18 believe that I did. I don't believe that I did

19 other than cash that Wells Fargo or deposit it into

20 Wilshire State Bank. If I did deposit it into my

21 Wells Fargo account, it was unintentional, and I

22 don't recall whether or not I did.

1 cashed by me, were cashed at Wells Fargo or

2 deposited into Wilshire State Bank only.

3 Q So you never deposited the checks into

4 anyone else's account?

5 A No. That was not done.

6 Q From November 2004 forward, had you

7 given money to anyone?

8 A Have I given money? Yes.

9 Q Who have you given money to?

10 A Gosh. Several people. I wrote checks

11 from my Wilshire State Bank to myself and deposited

12 into my Wells Fargo Bank. I wrote checks--I mean, I

13 used it like it was my money. I mean, I used it.

14 Q Who did you give money to from November

15 2004 forward to?

16 A Gosh. I couldn't tell you. I don't

17 know. I mean, I--

18 Q Did you give--

19 A It was a broad, broad, broad base of

20 people and organizations and companies and bills.

21 Q Let's start with people.

22 A Okay.

1 Q From November 2004, did you give money  
2 to any individuals as opposed to a company, an  
3 entity, opposed to paying your phone bill, things  
4 like that?  
5 A Okay. Leonardo Martinez, Gabriella  
6 Martinez, Benjamin Alvarez. Other than that, no. I  
7 don't recall.  
8 Q Okay.  
9 A People-wise.  
10 Q How much money did you give to Leonardo  
11 Martinez from November 2004 forward?  
12 A I don't know.  
13 Q Approximately?  
14 A I don't know.  
15 Q More than a thousand dollars?  
16 A Yes.  
17 Q More than \$5,000?  
18 A I don't know.  
19 Q How many checks did you write him?  
20 A I don't know.  
21 Q Do you know what he did with the money?  
22 A Paid bills.

1 Fargo.  
2 Q Other than that joint account, do you  
3 know where Mr. Martinez maintains any bank accounts?  
4 A He does not. Like that account is  
5 closed, and he does not have a bank account as of  
6 now.  
7 Q At any point during November 2004  
8 through today, did Mr. Martinez have a bank account  
9 other than the Wells Fargo joint account he shared  
10 with you?  
11 A I believe he might have had a Washington  
12 Mutual. No, no, no, no. I take that back. He did  
13 not. He had a Washington Mutual prior to November  
14 2004. So, no, he did not.  
15 Q Prior to November of 2004?  
16 A That's right.  
17 Q Do you know when he closed that account?  
18 A I don't know.  
19 Q Was that account closed as of November  
20 2004?  
21 A It was.  
22 Q How much money did you give Gabriella

1 Q Did you ever give him any cash?  
2 A Probably.  
3 Q How much cash?  
4 A I don't know.  
5 Q Is it your testimony that you gave Mr.  
6 Martinez over a thousand dollars?  
7 A That could be correct, yes.  
8 Q Is it correct?  
9 A Yes. He was my partner. I gave him  
10 money when he needed it, and he used it the way that  
11 he used it.  
12 Q Did you give him more than \$10,000?  
13 A I don't know.  
14 Q Is it possible?  
15 A It might be.  
16 Q Is it consistent with your recollection  
17 that you gave Mr. Martinez over \$10,000?  
18 A I have no recollection, sir. Honest to  
19 God, I don't know.  
20 Q Do you know where Mr. Martinez has a  
21 bank account?  
22 A It was a joint account with me at Wells

1 Martinez?  
2 A One or two hundred dollars a month for  
3 that period of time, between November of 2004 and  
4 August of 2005.  
5 Q What did you give her one to two hundred  
6 dollars a month for?  
7 A She cleaned our apartment.  
8 Q How much total would you say you gave  
9 Ms. Martinez from November 2004 forward?  
10 A More than a thousand, under five  
11 thousand, I would guess.  
12 Q Is it closer to a thousand or five  
13 thousand?  
14 A Probably closer to five.  
15 Q And if she's cleaning your apartment  
16 for, say, \$200 a month over the course of--  
17 A Eight or nine months.  
18 Q --eight or nine months--  
19 A 1800, 2,000. So probably closer to a  
20 thousand.  
21 Q Okay. And my question is did you give  
22 her money for anything other than cleaning your

1 apartment?  
 2 A I gave her cash to help with her kids's  
 3 stuff. Her and her husband were going through a  
 4 separation, and I would help give her cash whenever  
 5 she needed it.  
 6 Q So in addition to giving her money for  
 7 cleaning your apartment, you gave her money?  
 8 A Yes.  
 9 Q You gave her cash?  
 10 A Yes.  
 11 Q So for cleaning your apartment, you gave  
 12 her roughly \$1800?  
 13 A Yes.  
 14 Q And then on top of that, how much money  
 15 did you give her?  
 16 A Another thousand or maybe two.  
 17 Q So you gave her, to your recollection,  
 18 between 2800 and \$3800?  
 19 A Yes.  
 20 Q Who is Mr. Benjamin Alvarez?  
 21 A He is Leonardo's nephew.  
 22 Q Let me back up to Gabriella Martinez.

1 2005.  
 2 Q How much did you give him in the winter  
 3 of 2005?  
 4 A I think it was around 1500.  
 5 Q And in the summer of 2005, how much  
 6 money did you give him?  
 7 A Same amount.  
 8 Q Why did you give Mr. Alvarez \$3,000?  
 9 A He had—he wanted to get eye surgery,  
 10 laser eye surgery, and his father was going to give  
 11 him money and his father fell through. So I offered  
 12 it to him.  
 13 Q That was for both the winter of '05 and  
 14 summer of '05?  
 15 A Yes.  
 16 Q Was that each eye?  
 17 A No. I believe—I gave him the money for  
 18 that purpose. What he used the money for was  
 19 to—the first time was—let's do this: The first  
 20 time was a loan. It was a loan. Leonardo and him  
 21 made the arrangement that it would be a loan.  
 22 Benjamin never paid back the loan. So I gave him

1 Do you know where she maintains any bank accounts?  
 2 A I don't know.  
 3 Q Have you ever known?  
 4 A No.  
 5 Q Has she ever written you a check?  
 6 A I don't think so.  
 7 Q Do you know what she did with the money  
 8 you gave her?  
 9 A Took care of her kids.  
 10 Q And Benjamin Alvarez is Leonardo  
 11 Martinez's nephew?  
 12 A Yes. Gabriella's brother.  
 13 Q How much money did you give Mr. Alvarez  
 14 from November 2004 forward?  
 15 A Three thousand, I believe it was.  
 16 Q Was that over a period of time or one  
 17 lump sum?  
 18 A Two sums, I believe.  
 19 Q Okay. When did you give him each of  
 20 those sums?  
 21 A The first time was in the winter of  
 22 2005. The second time was probably the summer of

1 the money again to pay back Leonardo so that there  
 2 wouldn't be family strife. Leonardo took it very  
 3 hard that Benjy didn't pay him back.  
 4 Q So you and Leonardo jointly loaned  
 5 Benjamin Alvarez roughly \$1500 in the winter of  
 6 2005?  
 7 A It was Benjy and Leonardo's arrangement,  
 8 but it was the money—I provided the money.  
 9 Q Did it come out of the Wells Fargo joint  
 10 account?  
 11 A No, I don't believe so. I believe it  
 12 was the Wilshire State Bank account.  
 13 Q And subsequent to that, you gave Mr.  
 14 Alvarez another \$1500?  
 15 A Right.  
 16 Q For the purpose of repaying a loan you  
 17 gave him?  
 18 A Right. Just so that it would—it was  
 19 causing family strife. Benjy wasn't paying it back.  
 20 Leonardo didn't want to have anything to do with  
 21 him. I wanted to keep the family on good terms. So  
 22 I gave the money to Benjy to give it back to us so

1 it looked like he was paying us back.  
 2 Q Were there two separate surgeries?  
 3 A I don't think so.  
 4 Q Do you know where Mr. Alvarez maintains  
 5 any bank accounts?  
 6 A I don't know.  
 7 Q Other than the loan you made to Mr.  
 8 Alvarez, have you ever loaned money to anyone from  
 9 November 2004 forward?  
 10 A No.  
 11 Q Have you ever owned any real estate from  
 12 November 2004 through today?  
 13 A No.  
 14 Q Have you owned an automobile at any  
 15 point in time from November 2004 through today?  
 16 A I financed an automobile. I never owned  
 17 one.  
 18 Q You leased one?  
 19 A Yes.  
 20 Q When did you acquire the automobile?  
 21 A I had a car prior to November 2004. In  
 22 February of 2005, I think it was, I acquired--I got

1 A In February of 2005. As part of the  
 2 deal to buy the other vehicle, the loan company paid  
 3 off the P.T. Cruiser.  
 4 Q What was the other vehicle?  
 5 A A 1999 BMW 323.  
 6 Q Did you lease that BMW or did you buy  
 7 it?  
 8 A I leased it--financed it.  
 9 Q Financed as in you had a payment on it?  
 10 A I put a down payment and I made monthly  
 11 payments.  
 12 Q But the title was in your name?  
 13 A Right.  
 14 Q Okay. And you weren't required to  
 15 return that car the to dealership at any point in  
 16 time?  
 17 A That is correct. As long as I  
 18 maintained the payments, yes.  
 19 Q So you owned the car?  
 20 A Yes.  
 21 Q You had a loan on the car, but it was  
 22 your car?

1 rid of the first automobile and got another  
 2 automobile.  
 3 Q Okay. What type of automobile did you  
 4 have prior to February '05?  
 5 A The Chrysler 2002 P.T. Cruiser.  
 6 Q And was that a lease or did you own that  
 7 car?  
 8 A It was lease. It was a buy. It wasn't  
 9 a lease. I financed it.  
 10 Q Okay. And how much did you owe on that  
 11 car as of October 31, 2004?  
 12 A I don't know.  
 13 Q Approximately?  
 14 A I couldn't tell you. I don't know.  
 15 Q More than \$5,000?  
 16 A Probably.  
 17 Q More than \$10,000?  
 18 A I don't know.  
 19 Q Did you ever pay off the balance on the  
 20 loan for the Chrysler P.T. Cruiser?  
 21 A Yes.  
 22 Q When did you do that?

1 A Exactly. That's the same with the P.T.  
 2 Cruiser. It was the exact same arrangement.  
 3 Q How much did you pay for the BMW?  
 4 A I paid down \$4,000.  
 5 Q What was the purchase price?  
 6 A A little under 20, I believe. It might  
 7 have been a little under 25. Between 20 and 25.  
 8 Q So you had a loan of between \$16,000 and  
 9 \$20,000 on the 1999 BMW?  
 10 A That's right.  
 11 Q At any point in time, did you pay off  
 12 that loan?  
 13 A I did not.  
 14 Q Do you still have that car?  
 15 A I do not.  
 16 Q What happened to that car?  
 17 A It was repossessed.  
 18 Q When?  
 19 A January, I believe, of this year.  
 20 Q Do you recall what the balance was at  
 21 the time of repossession, balance on the loan, that  
 22 is?

1 A Maybe 15,000.  
 2 Q Okay. Excluding the car, identify for  
 3 us every item you purchased during the period of  
 4 November 2004 that cost more than a thousand  
 5 dollars?  
 6 A My teeth.  
 7 Q How much did that cost you?  
 8 A About 9,000.  
 9 Q What did you have done to your teeth?  
 10 A Two bridges and one crown, cosmetic.  
 11 Q What else? When did you make that  
 12 purchase for your teeth?  
 13 A June of 2005, I believe it was.  
 14 Q Okay. What else?  
 15 A Let's see here. I had about \$5,000 in  
 16 hospital bills related to my gastric bypass surgery.  
 17 Q When did you have that surgery?  
 18 A January 2005.  
 19 Q What else?  
 20 A Let's see. Gosh. We took vacations to  
 21 San Diego, to San Francisco, I think maybe four or  
 22 five thousand dollars apiece on those.

1 Q Each or in total?  
 2 A Yes. Each.  
 3 BY MR. DOWD:  
 4 Q And that was the San Diego trip and two  
 5 San Francisco trips?  
 6 A No. One San Francisco trip, two San  
 7 Diego trips. Let me think. Other things I spent  
 8 on, Christmas gifts, maybe \$10,000 in Christmas  
 9 gifts of 2005.  
 10 Q Who did you give those gifts to?  
 11 A Gosh. Everybody.  
 12 Q Who is everybody?  
 13 A My entire family: My mom, my brother,  
 14 his fiance, Leonardo. Let me think. I don't recall  
 15 any others.  
 16 Q What gifts did you give that ran up to  
 17 \$10,000?  
 18 A A Sharper Image air purifier.  
 19 Q Who did you give that to?  
 20 A To my mom. That was like \$500. Maybe  
 21 it wasn't \$10,000. Maybe it was like--gosh. If you  
 22 have my bank statements from Wilshire State Bank and

1 Q When did you take the San Diego  
 2 vacation?  
 3 A It was February of 2005, I believe it  
 4 was.  
 5 Q What about the San Francisco vacation;  
 6 when did you take that?  
 7 A December of 2004, I think.  
 8 Q Did you take any other vacation from  
 9 November 2004 forward?  
 10 A San Diego, San Francisco. Two trips to  
 11 San Diego, actually.  
 12 Q When was the second trip?  
 13 A January 1st, the holiday.  
 14 Q January 1st of?  
 15 A 2005.  
 16 Q Remind me when the other trip was.  
 17 A February, maybe March, 2005.  
 18 Q And on the January trip, how much did  
 19 you spend?  
 20 A All three trips were between four and  
 21 five thousand dollars.  
 22 BY MR. SOLINSKY:

1 I could recollect my memory that way, maybe I could  
 2 give you list of where I spent the money, but off  
 3 the top of my head, I've been thinking about it for  
 4 a long time and I don't know. A lot of it was  
 5 through ebay, purchased stuff myself.  
 6 Q What did you buy on ebay?  
 7 A Barbie dolls for a collection that I  
 8 wanted to start.  
 9 Q How much money did you spend on ebay?  
 10 A Several thousand dollars. Several  
 11 thousand dollars.  
 12 BY MR. SOLINSKY:  
 13 Q What did you buy?  
 14 A All kinds of stuff ranging from like the  
 15 Barbie dolls to Ipods.  
 16 Q How many Ipods did you buy?  
 17 A Two.  
 18 Q What else?  
 19 A What else? I don't recall. It was so  
 20 much stuff. I mean, it was just a lot of stuff.  
 21 Q Do you still have the stuff?  
 22 A No.

1 Q What happened to it?

2 A Well, when I left Camarillo, I gave a

3 lot of it away to miscellaneous people, people I

4 don't remember. I mean, I don't have a list of I

5 gave this to this person, this to this person. I

6 don't know. I don't have any of it in my possession

7 anymore.

8 BY MR. DOWD:

9 Q The IRA account that you had, did you

10 put any money that you stole into that account?

11 A Yes. All the money that was in that

12 account was stolen money.

13 Q How much was in that account?

14 A Under five, over three.

15 Q And you closed that account out at some

16 point in time?

17 A Yes.

18 Q What did you do with the money when you

19 closed out that account?

20 A Used it to pay bills, used it to live

21 on. I wasn't employed from August of 2004 until

22 recently.

1 ago myself. I didn't know it was that much until

2 Agent Heingst told me. I didn't keep a record. I

3 didn't know how out of control I was. I mean, you

4 see toward the end how big, how much bigger the

5 checks got.

6 Q Of the money that you stole from Mercury

7 Fund and Acceleration Capital, do you currently have

8 any of that money in a bank account?

9 A I do not.

10 Q In a brokerage account?

11 A No money whatsoever.

12 Q At any financial institution?

13 A Or in my possession.

14 Q Do you know if any person that you gave

15 the money to currently has that money in a bank

16 account or at a financial institution?

17 A They do not. Like I said, the only

18 money that I--

19 Q Do you know if--

20 A No. I'm almost positive they don't.

21 Q Why are you positive?

22 A Because the money that I gave to people

1 BY MR. SOLINSKY:

2 Q You mean 2005?

3 A Excuse me. Yes. When I left Castle

4 Trading until I started Empire Lakes, I wasn't

5 employed. I used anything and everything that I

6 could get, selling stuff, selling a lot of the stuff

7 that I had to the money that was still in the

8 accounts.

9 BY MR. DOWD:

10 Q And having looked at the checks that you

11 forged and relying on your recollection, remind us

12 how much money you stole in total.

13 A Agent Heingst told me was it was

14 179,000, but I see on Exhibit 7, this totalled

15 185,000. He told, also, it was 55 checks. This

16 says 57 checks. So Agent Heingst didn't know about,

17 I guess, two checks at the time that I talked with

18 him.

19 Q So it's consistent with your

20 recollection that you stole \$185,000 roughly?

21 A My recollection is nothing. If I knew

22 it was that much, I would have stopped a long time

1 was used for specific reasons. Like if Gabriella

2 needed help to pay Taekwondo lessons for the kids, I

3 would give her the money; for Benjy, the eye

4 surgery; for Leonardo, to pay bills.

5 Q And the items that bought with the

6 stolen money, do you have any of those?

7 A I have nothing in my possession at all.

8 I don't have--the only thing I have is the air

9 mattress that I'm sleeping on in my bedroom.

10 Q What happened to all the money? How did

11 you spend \$185,000?

12 A Like I told you, I don't know. I was

13 out of control. I've been trying to reconstruct the

14 ideas, reconstruct how the money was spent. After

15 Agent Heingst told me in October how much money it

16 was, I've been wracking my brain to try to figure

17 how and why I did what I did and where it went to.

18 I don't know. Food, vacations, paying bills, living

19 high, living--going and eat sushi every night. I

20 was spending cash-wise three or four hundred dollars

21 a day on different things, fixing up the car, and I

22 spent \$3,000 after I bought the BMW to fix the BMW.

1 I paid so much money in advance for rent at one  
 2 apartment that I lived at.  
 3 Q How much money?  
 4 A Gosh. \$800 times like four months, so  
 5 \$3200.  
 6 Q When were you living in that apartment?  
 7 A Prior to living to Toluca Lake, so in  
 8 late of '04.  
 9 Q Where else did the money go?  
 10 A Gosh. Paying rent, going on vacations,  
 11 spending it, making purchases. Like I said, I went  
 12 on ebay and bought all kinds of stuff, and I'm sure  
 13 that you can go to ebay—I'm not sure how that  
 14 works—to find out exactly what I spent the money  
 15 on, but it was a lot on ebay.  
 16 Q It's your testimony sitting here today  
 17 under oath that you don't have any of the money that  
 18 you stole left?  
 19 A That is true.  
 20 Q And it's your testimony sitting here  
 21 under oath that you don't have any of the items that  
 22 you purchased with the money you stole?

1 Wells Fargo account. I also did have one credit  
 2 card that was linked—two credit cards that were  
 3 linked to Pay Pal that were used as well.  
 4 Q And what credit cards were those that  
 5 were linked to Pay Pal?  
 6 A One was a debit card from Wilshire State  
 7 Bank and the other one was a credit card from  
 8 Orchard in Leonardo's name.  
 9 Q What is the full name of the institution  
 10 known as Orchard?  
 11 A Household HSBC, Orchard Bank, I believe.  
 12 Q How long was the ebay account open?  
 13 A Since Christmas of '04.  
 14 Q How did you access the account?  
 15 A Via the internet.  
 16 Q Did you have a computer?  
 17 A Did I have? Yes.  
 18 Q Was that computer purchased from money  
 19 you took from Acceleration Capital?  
 20 A Yes.  
 21 Q Or, rather, Acceleration Mercury Fund?  
 22 A It was a laptop computer, yes, sir.

1 A That is true.  
 2 Q And you don't have any knowledge of  
 3 individuals holding money on your behalf?  
 4 A I have knowledge and there is nobody  
 5 holding money on my behalf. I was homeless for two  
 6 months. If someone had money, I would have used it  
 7 to live.  
 8 Q How much money does Leonardo currently  
 9 have?  
 10 A Nothing.  
 11 BY MR. SOLINSKY:  
 12 Q What was your account name or sign on at  
 13 ebay?  
 14 A TWDI18629.  
 15 Q How would you pay for items through  
 16 ebay?  
 17 A Pay Pal, same log-on I.D.  
 18 Q And does Pay Pal require you to give a  
 19 credit card?  
 20 A No. It's taken from the bank account,  
 21 from Wilshire State Bank. I eventually transferred  
 22 the Pay Pal account from Wilshire State Bank to my

1 Q Where is that laptop today?  
 2 A It was destroyed by Coke spilling on it.  
 3 Q Do you still have it?  
 4 A I don't. There were three or four  
 5 electronic pieces of equipment that I bought. I  
 6 bought a TV for, like, four grand.  
 7 BY MR. DOWD:  
 8 Q Do you have that TV?  
 9 A I sold it.  
 10 Q What happened to it?  
 11 A I sold it.  
 12 Q Who did you sell it to?  
 13 A I don't recall the name of the person.  
 14 I sold it when I left Camarillo to get money to live  
 15 on.  
 16 Q How much did you sell it for?  
 17 A 1500.  
 18 Q What did you do with that \$1500?  
 19 A Used it to live.  
 20 MR. DOWD: Let's go off the record.  
 21 [Recess.]  
 22 BY MR. DOWD:

1 Q Mr. Denniston, I understand that you  
2 have recalled the name of the brokerage firm where  
3 you had your IRA?  
4 A Yes. It was Scott Trade.  
5 Q And the name on that account was what?  
6 A Toby Denniston.  
7 Q Toby Denniston, II?  
8 A No. I don't recall that. Most of my  
9 legal documents is Toby Wayne Denniston, II. So if  
10 that was required, then yes.  
11 Q And if I could back you up to the time  
12 when you started at Castle Trading--  
13 A Sure.  
14 Q --at that point in time, what did you  
15 represent your credentials or background to be to  
16 Mr. Plyam?  
17 A Administrative. When I was  
18 interviewing, my only background was in purchasing,  
19 mostly.  
20 Q And when you interviewed for the  
21 position or when you submitted an application, did  
22 you make any representation that you had experience

1 Castle Trading and Acceleration Capital for the  
2 Acceleration Mercury Fund.  
3 Q Who authorized you to do that compliance  
4 work?  
5 A Mr. Plyam.  
6 Q And did you make any representation at  
7 any point in time to Mr. Plyam concerning your  
8 qualifications for doing compliance work?  
9 A No. No. A lot of it was just my  
10 ability to organize. He recognized that I could  
11 organize an office well, and he just--when the NFA  
12 audit came down, he just put me in charge of it with  
13 Mrs. Plyam's assistance at the beginning.  
14 Q Okay. I'd like you to look at Exhibit  
15 No. 7 again.  
16 A Sure.  
17 Q Can you tell us what is in Exhibit No.  
18 7?  
19 A These are the checks that I forged from  
20 Acceleration Mercury Fund, copy of checks that I  
21 forged.  
22 Q And you forged the checks by forging Mr.

1 in the futures industry?  
2 A No. He asked me the question and I  
3 said--I told him that other than watching TV and  
4 seeing the stock market, I didn't.  
5 Q And at some point in time during your  
6 employment with Castle Trading, you started to do  
7 accounting work on behalf of the Gauss Fund; is that  
8 correct?  
9 A That's right.  
10 Q What representations did you make to Mr.  
11 Plyam with respect to your accounting background?  
12 A That I had gone to Waterson College and  
13 had accounting training.  
14 Q And at some point in your employment  
15 with Castle Trading, you did compliance work on  
16 behalf of Acceleration Mercury Fund; is that  
17 correct?  
18 A For all three entities, I did the  
19 compliance work for, yes.  
20 Q What three entities are you referring  
21 to?  
22 A CHP Asset Management for the Gauss Fund,

1 Plyam's signature on the checks?  
2 A That's right.  
3 Q And then upon forging Mr. Plyam's  
4 signature, did you cash those checks?  
5 A I did.  
6 Q Did you also deposit some of those  
7 checks?  
8 A I did.  
9 Q And by cash or depositing those checks,  
10 did you steal money from Acceleration Mercury Fund?  
11 A I did.  
12 Q As well as Acceleration Capital?  
13 A Yes.  
14 Q How often was the Acceleration Mercury  
15 Fund audited?  
16 A The Mercury Fund was audited twice.  
17 Q When was the first audit?  
18 A In January of 2005.  
19 Q Who performed that audit?  
20 A The auditor, his first name is Dick. I  
21 don't recall his last name, the auditor that Castle  
22 Trading hired. They performed the year-end audits

1 for both Acceleration Mercury and the Gauss Fund.  
 2 He also did the NFA paperwork for Castle Trading,  
 3 you know, how much money you're supposed to have in  
 4 the account, the \$30,000 or whatever it was. He did  
 5 all that work too. He also did the audits for  
 6 Castle and Gauss Fund for the four audits that were  
 7 required by the NFA, BCC.

8 Q And when was the second audit of Mercury  
 9 Fund?

10 A That was done by the NFA in August of  
 11 2005.

12 BY MR. SOLINSKY:

13 Q When this fellow you identified only as  
 14 Dick did the year-end audit of Acceleration Mercury  
 15 Fund, what documents did he review?

16 A He reviewed the balance sheet created by  
 17 me, the income statements created by me, the Wells  
 18 Fargo Bank statements, some of which were created by  
 19 me, the Rosenthal Collins statements, some of which  
 20 were amended by me.

21 Q And which of those--when the auditor  
 22 looked at the statements, which of those statements

1 checks written out of the fund.

2 [Denniston Exhibit No. 9 was  
 3 marked for identification.]

4 BY MR. DOWD:

5 Q Mr. Denniston, do you recognize the  
 6 document marked as Exhibit 9?

7 A I believe so.

8 Q What do you recognize this document to  
 9 be?

10 A A bank statement from Wells Fargo Bank.

11 Q And for the record, Exhibit 9 contains  
 12 pages Bates numbered 00100148 through 167. Mr.

13 Denniston, anywhere in Exhibit 9, do you see any  
 14 documents that you created? In other words, are any  
 15 of these bank statements statements that you

16 altered?

17 A Yes.

18 Q Okay. Can you identify by month each  
 19 altered statement?

20 A All of them were altered between  
 21 November 2004 and August 22, 2005. All of them in  
 22 Exhibit 9 were altered by me.

1 were statements that you had altered to reflect  
 2 false amounts?

3 A November of 2004 and December of 2004.

4 Q What false statements was the auditor  
 5 looking at in November 2004 related to the  
 6 Acceleration Mercury Fund?

7 A The month-end statement from Rosenthal  
 8 Collins and the Wells Fargo Bank statement.

9 Q And the same question for December 2004:  
 10 What forged or altered statements by you was the  
 11 auditor looking at in December 2004 relating to the  
 12 Acceleration Mercury Fund?

13 A The same two documents, the Wells Fargo  
 14 and the Rosenthal Collins month-end statement.

15 Q Did Mr.--I'm sorry. Did this fellow  
 16 named Dick ever seek to look behind the statements  
 17 to look at any checks from the statements?

18 A I believe so, yes.

19 Q And how did he get those checks?

20 A I believe we had possession of them. I  
 21 believe that we had copies of them. Not every  
 22 check, but yeah, some checks, yes, both deposits and

1 Q And you altered these documents to  
 2 conceal your theft of Acceleration Mercury Fund  
 3 money?

4 A That's right.

5 Q These are the statements that referenced  
 6 before that you created from a Word document?

7 A Yes.

8 [Denniston Exhibit No. 10 was  
 9 marked for identification.]

10 BY MR. DOWD:

11 Q Mr. Denniston, do you recognize the  
 12 document marked as Exhibit 10?

13 A I believe so, yes.

14 Q Can you tell us what this document is?

15 A It is a month-end statement for  
 16 Acceleration Mercury Fund.

17 Q For what period of time?

18 A If it's in chronological order, from  
 19 January 31, 2005 through July 29, 2005.

20 Q Looking at these documents contained in  
 21 Exhibit No. 10, can you tell us if these are the  
 22 actual account statements for the Rosenthal Collins

1 Acceleration Mercury Fund, or are these account  
2 statements that you altered?

3 A As far as I can see, they are ones that  
4 I altered.

5 Q Okay. And which months are the altered  
6 statements? For reference, feel free to refer to  
7 Exhibit No. 5, if necessary.

8 A I appreciate that.  
9 [Witness peruses exhibits.]

10 THE WITNESS: Can you repeat the  
11 question?

12 MR. DOWD: Can you read back my last  
13 question?

14 [Whereupon, the pending question was  
15 read back by the court reporter.]

16 THE WITNESS: All of them in Exhibit 10  
17 were altered by me.

18 BY MR. DOWD:

19 Q And why did you alter the statements in  
20 Exhibit No. 10?

21 A To conceal my theft.

22 Q Your theft of what?

1 Fargo Bank for Acceleration Capital.

2 Q Okay. And is that true for both 11 and  
3 12?

4 A I believe so. One might be mine versus  
5 the bank's.

6 Q So one is the actual account statements  
7 and the other is account statements that you created  
8 to conceal your theft?

9 A Yes.

10 Q Which one is which?

11 A I believe 11, Exhibit 11, is mine and  
12 Exhibit 12 is the actual statement for Wells Fargo  
13 Bank.

14 Q Okay. Are any of the account statements  
15 in Exhibit No. 11 accurate, or did you create all of  
16 them?

17 A I believe I created all of them.

18 Q By creating all of them, I'm referring  
19 to your practice of altering account statements to  
20 conceal your theft.

21 A My practice, yes, sir.

22 Q So Exhibit No. 11, all the account

1 A Theft of monies from the fund.

2 Q The Acceleration Mercury Fund?

3 A Yes.

4 Q Who did you provide the documents in  
5 Exhibit No. 10 to?

6 A I believe that would have been the NFA.

7 Q Anyone else?

8 A No.

9 Q If we could back up for a moment to  
10 Exhibit No. 9--

11 A Yes, sir.

12 Q --who did you provide the documents in  
13 Exhibit No. 9 to?

14 A The auditor for the month-end, which was  
15 Dick somebody and the NFA.

16 [Denniston Exhibit Nos. 11 and 12  
17 were marked for identification.]

18 BY MR. DOWD:

19 Q Mr. Denniston, I've just handed you  
20 documents marked Exhibits 11 and 12. Tell us what  
21 those documents are.

22 A These are bank statements from Wells

1 statements therein, were created by you to conceal  
2 your theft?

3 A Yes.

4 Q Who did you provide the documents in  
5 Exhibit No. 11 to?

6 A The NFA.

7 Q And for the record, Exhibit No. 11 is  
8 Bates numbered 00100259?

9 A 289?

10 Q I'm looking at 00100259 as 11. Exhibit  
11 No. 11 is Bates numbered 00100289 through 298; is  
12 that correct?

13 A Yes.

14 Q Is it your testimony that Exhibit No. 11  
15 encompasses the false account statements that you  
16 created?

17 A I believe so, yes.

18 Q To whom did you provide those false  
19 account statements?

20 A The NFA.

21 Q Anyone else?

22 A To my recollection, no, sir.

1 [Denniston Exhibit No. 13 was  
 2 marked for identification.]  
 3 BY MR. DOWD:  
 4 Q Mr. Denniston, do you recognize the  
 5 document marked as Exhibit No. 13?  
 6 A I do.  
 7 Q Tell us what this document is.  
 8 A It is a month-end statement for each  
 9 participant in the Mercury Fund.  
 10 Q For the record, 13 is Bates numbered  
 11 0010016 through 31, and, Mr. Denniston, if I could  
 12 move you forward--  
 13 A Excuse. Me it's not each client. It  
 14 just looks like two clients.  
 15 Q Which two clients?  
 16 A Andrew Diener and Paul Maggio.  
 17 Q If I could move you forward to the page  
 18 Bates numbered 00100023--  
 19 A Yes.  
 20 Q --what is this document?  
 21 A It is the month-end statement for Paul  
 22 Maggio's shares of the Mercury Fund for November 30,

1 page Bates numbered 23?  
 2 A The change in unrealized futures.  
 3 Q And did you send the document Bates  
 4 numbered 23 to Mr. Maggio?  
 5 A I'm sure that I did, yes.  
 6 Q Do you recognize the signature on the  
 7 bottom of that page?  
 8 A I do.  
 9 Q Whose signature is that?  
 10 A Yuri Plyam.  
 11 Q If I could move you forward to the page  
 12 Bates numbered 24--  
 13 A Yes.  
 14 Q --what is this document?  
 15 A That is for--the month--end statement  
 16 for Mr. Maggio for December 30, 2004.  
 17 Q And does this document contain any  
 18 inaccurate information?  
 19 A I'm sure that it does, yes.  
 20 Q What information on this document is  
 21 inaccurate?  
 22 A The unrealized futures.

1 2004.  
 2 Q Do you know who created this document?  
 3 A I did.  
 4 Q Is this document accurate? Does it  
 5 accurately reflect Mr. Maggio's interest in the  
 6 Mercury Fund?  
 7 A With my theft, yes.  
 8 Q Does it accurately reflect the balance  
 9 of the Acceleration Mercury Fund?  
 10 A I'm going to try to answer this. I'm  
 11 trying to be honest with you. You know that.  
 12 Right? This was that what the RCG statement said at  
 13 the end of November. It does not, however,  
 14 reflect--no. There was an additional included in  
 15 each of the statements from RCG to conceal my theft.  
 16 So is it accurate as to the amount of  
 17 money that was in RCG, yes. Is it accurate to what  
 18 really was the loss or the profit for the fund? No.  
 19 Q Okay. So the document at 23 contains  
 20 inaccurate information?  
 21 A I believe so, yes. Yeah.  
 22 Q What information is inaccurate on the

1 Q Anything else?  
 2 A This looks like my forgery of Mr.  
 3 Plyam's signature.  
 4 Q Why did you forge Mr. Plyam's signature  
 5 on this document?  
 6 A I don't believe--let me take that back.  
 7 I didn't forge his signature. I signed his name for  
 8 him.  
 9 Q Were you authorized to sign his name on  
 10 this document?  
 11 A Probably, yes.  
 12 Q Who authorized you to sign his name on  
 13 this document?  
 14 A He probably did. He would have, yes.  
 15 Q Why did he authorize you to sign his  
 16 name on this document?  
 17 A Just so that I can get the document out.  
 18 Q How often did you do that?  
 19 A I don't recall. A couple of times.  
 20 Q Did you send this document to Mr.  
 21 Maggio?  
 22 A I'm sure that I did.

1 Q Moving forward to page 25, can you tell  
 2 us what this document is?  
 3 A It is the month-end statement for  
 4 January 31, 2005 for Mr. Maggio's shares of Mercury  
 5 Fund.  
 6 Q Does this document contain any  
 7 inaccurate information?  
 8 A I'm sure that it does.  
 9 Q What inaccurate information is that?  
 10 A The unrealized futures. I'm sorry. The  
 11 realized futures. It would have been the realized  
 12 futures.  
 13 Q Okay. Explain that to us.  
 14 A Realized are actual changes. Unrealized  
 15 is open contracts that have not yet been closed out.  
 16 This is a snapshot of what it contained at the end  
 17 of January.  
 18 Q Would that have been true for Documents  
 19 23 and 24 as well?  
 20 A That is right. I misspoke.  
 21 Q The inaccurate information on 23 and 24  
 22 is the realized, gross realized, futures

1 A I do--they did.  
 2 BY MR. SOLINSKY:  
 3 Q Other than by mailing, did you transmit  
 4 the account statements in this exhibit Bates  
 5 numbered 0010016 through 0010031 in any other  
 6 manner?  
 7 A I don't recall.  
 8 Q Did you ever fax statements to people?  
 9 A No.  
 10 Q Did you ever E-mail statements to  
 11 people?  
 12 A I did.  
 13 Q Who did you E-mail statements to?  
 14 A The people that lived in Europe. I  
 15 don't recall their names. There were two clients, I  
 16 believe, that lived in Europe that didn't get them  
 17 quickly enough. So I mailed them in the postal mail  
 18 and E-mailed them, I believe.  
 19 BY MR. DOWD:  
 20 Q How was your theft initially discovered?  
 21 A Through the audit done by the NFA.  
 22 Q What specifically happened?

1 information?  
 2 A Not the change of unrealized futures,  
 3 that is right. Also, can I add the commission  
 4 charged would have been false as well.  
 5 Q And moving forward, if you could look at  
 6 Documents 26 through 31, do each of these documents  
 7 contain inaccurate information?  
 8 A Yes.  
 9 Q And what inaccurate information is that?  
 10 A The same as the previous, the gross  
 11 realized futures.  
 12 Q Are each of the documents Bates numbered  
 13 26 through 31 account statements for the Mercury  
 14 Fund?  
 15 A Yes, sir, for Paul Maggio's share of the  
 16 fund.  
 17 Q Did you mail each of those account  
 18 statements to Mr. Maggio?  
 19 A I believe that I did.  
 20 Q At the time you mailed these account  
 21 statements to Mr. Maggio, were you aware that the  
 22 account statements contained inaccurate information?

1 A My changes to the Acceleration Capital  
 2 didn't reflect a deposit that was taken out of the  
 3 Mercury Fund statement.  
 4 Q Your changes to the Acceleration Capital  
 5 Bank statements?  
 6 A Yes. The Wells Fargo Bank statement.  
 7 Q Did not reflect--  
 8 A A deposit that should have been in.  
 9 What happened was a check that was written from  
 10 Acceleration Mercury to Acceleration Capital,  
 11 Acceleration Mercury I showed as being withdrawn,  
 12 but did not show the deposit into Acceleration  
 13 Capital in my forged statements.  
 14 Q Okay. And--  
 15 A How they reflected--how they got to the  
 16 Mercury Fund, I don't know. I left the building.  
 17 Q What do you mean you left?  
 18 A I walked out the door.  
 19 Q Who was doing the audit for the NFA?  
 20 A Michelle. I don't remember her last  
 21 name. There were four people there, and I don't  
 22 know their names. I don't recall their names.

1 Q Do you recall if it was Michelle or  
 2 someone else who asked you about this transaction in  
 3 the Acceleration Capital account?  
 4 A It was one of the NFA people, yes.  
 5 Q Do you recall specifically who was?  
 6 A The main person in charge, and I believe  
 7 that was Michelle.  
 8 Q And did Michelle come to you and ask you  
 9 about this transaction?  
 10 A She did.  
 11 Q What was your response?  
 12 A I would have to get back to her; I don't  
 13 know.  
 14 Q Did you get back to her?  
 15 A I did not.  
 16 Q What did you do?  
 17 A I walked out of the building.  
 18 Q Where did you go?  
 19 A I went home.  
 20 Q What did you do at that point?  
 21 A I picked up my partner and we went to  
 22 Ontario, to Gabriella's house.

1 A After that, I don't recall. I remember  
 2 Mrs. Plyam, I had a conversation with her. She  
 3 called Leonardo's cell phone and I talked to her.  
 4 Q When did that conversation take place?  
 5 A I believe it was the next day. And she  
 6 wanted to know how far it had gone.  
 7 Q What did you say to her?  
 8 A I said I wasn't going to say anything.  
 9 I had--that's another thing I spent money on. I had  
 10 hired an attorney to take care of a matter in  
 11 regards to a ticket, and I paid him \$4,000 to take  
 12 care of that ticket. When I left that afternoon,  
 13 the day that this was discovered, I called him and  
 14 asked him what him what I should do. He told me to  
 15 return, that maybe nobody would ever find out about  
 16 the Acceleration Mercury, because that hadn't been  
 17 found out yet. It was just Acceleration Capital,  
 18 and I told him that they would find out because the  
 19 money that was in the Wells Fargo Bank account was  
 20 not what was reflected on the statement, that it was  
 21 \$50,000 short and that we were getting ready to  
 22 close the fund and that that would have been found

1 Q Why did you do that?  
 2 A I was afraid.  
 3 Q Afraid of what?  
 4 A Being arrested.  
 5 Q And at any point after you left, did you  
 6 have a conversation with Yuri?  
 7 A Yes.  
 8 Q When did that happen?  
 9 A I believe it was that afternoon.  
 10 Q Do you recall the date?  
 11 A The 24th of August.  
 12 Q 2005?  
 13 A Yes.  
 14 Q What did Yuri say to you?  
 15 A He says, Toby, when are you coming back?  
 16 I said, I'm not coming back. He said, We have to do  
 17 the audit; you have to come here; you have to  
 18 participate in this. I said, Yuri, I'm not coming  
 19 back. He said, What's going on? I said, Yuri, I  
 20 took the money. And I hung up the phone.  
 21 Q Did you have a conversation with him  
 22 subsequent to that?

1 out very soon.  
 2 Q Did you say anything else to Natalie  
 3 Plyam other than--  
 4 A That I wasn't going to talk to her?  
 5 Q That you weren't going to talk to her?  
 6 A No. I don't think so.  
 7 Q At any point subsequent to that  
 8 conversation, did you have a conversation with  
 9 Natalia Plyam?  
 10 A I called them the day that I went and  
 11 saw Agent Heingst. I didn't talk to them. I left  
 12 them a message. They did not return the message.  
 13 Q Is that the same message you described  
 14 earlier?  
 15 A No. I left them a message that I had  
 16 seen Agent Heingst, that I gave him a full  
 17 confession, and that I apologize. I felt bad for  
 18 what I had done.  
 19 Q When you say you gave Agent Heingst a  
 20 full confession, what exactly do you mean?  
 21 A Just exactly what I told you today, that  
 22 I had taken money from the fund and how I did it.

1 Q Did you sign a statement to that effect?  
 2 A I did.  
 3 Q Have you ever had a copy of that  
 4 statement?  
 5 A No.  
 6 Q Have you ever spoken with any  
 7 representative of the Acceleration Mercury Fund  
 8 since the time you walked out of the building?  
 9 A No, except for that afternoon.  
 10 Q Expect what you've identified thus far?  
 11 A Yeah. That afternoon, I talked to Yuri,  
 12 and the next day I talked to Natasha. Since then,  
 13 I've not spoken to either one. I've left them  
 14 messages. They've not returned my call.  
 15 Q Have you had any conversations with NFA  
 16 since the time you walked out of the building?  
 17 A No. Nobody as far as I know has tried  
 18 to contact me. I've had the same phone number.  
 19 Nobody has tried to contact me. Agent Heingst got a  
 20 hold of me through my brother.  
 21 Q When was that?  
 22 A Late August. No. It was September.

1 Q You called him?  
 2 A He never called me direct. He  
 3 communicated through my brother. I called him and  
 4 told him that I was ready to meet.  
 5 Q When was that, roughly?  
 6 A Late September.  
 7 Q When did you actually meet with Agent  
 8 Heingst?  
 9 A October, I think it was 10th or 12th,  
 10 something like that. Early October 2005.  
 11 Q Where did you meet?  
 12 A In his office at the Secret Service  
 13 office in Los Angeles, downtown.  
 14 Q Was it during that meeting that you gave  
 15 Agent Heingst a confession?  
 16 A I did.  
 17 Q Have you had any meetings with Agent  
 18 Heingst subsequent to that meeting?  
 19 A Yes. I was processed in January where  
 20 my picture was taken and my fingerprints taken, and  
 21 I leave him a message and/or talk to him every  
 22 Friday.

1 Q When in September?  
 2 A Mid-September, looking for me.  
 3 Q What did you say to him?  
 4 A Who? My brother?  
 5 Q When Agent Heingst called you in  
 6 mid-September.  
 7 A He didn't call me. He called my brother  
 8 looking for me. I didn't talk to Agent Heingst  
 9 until October 10th or 12th or whatever date that  
 10 was.  
 11 Q What did your brother say to you?  
 12 A He was mad that all--because I guess  
 13 Yuri--well, let's back up. This was found out that  
 14 Wednesday or Thursday prior to the Labor Day  
 15 weekend. Saturday and Sunday, I had heard from my  
 16 mother who had heard from Yuri that I had done this.  
 17 Yuri contacted my family, did not contact me, and my  
 18 family urged me to talk to Agent Heingst. That's  
 19 the process of how that happened.  
 20 Q Okay. So at some point in time, you got  
 21 in contact with Agent Heingst?  
 22 A I did.

1 Q Does he require that?  
 2 A Yes.  
 3 Q What do you discuss during those weekly  
 4 conversations?  
 5 A Just where I live, my phone number, and  
 6 that I'm in town, what am I doing precisely. He  
 7 just wants to keep tabs to make sure that I am  
 8 available for whenever they decide to move forward  
 9 with my case.  
 10 Q Have you had any conversations with Bill  
 11 Yu?  
 12 A I have not.  
 13 Q Have you had any conversations with  
 14 anyone in the United States Attorney's Office?  
 15 A No.  
 16 Q Have you had any discussions with any  
 17 police departments?  
 18 A No. Agent Heingst told me that the Los  
 19 Angeles Police Department was going to process the  
 20 claim, but he said he would take care of it, and  
 21 they dropped it so it would be a federal issue; I  
 22 wouldn't have to deal with the State, as far as I

1 know, right now, they weren't going to process  
 2 anything. I did leave a message for Bill Yu after--  
 3 Q Mr. Solinsky?  
 4 A Solinsky gave me his number. I  
 5 contacted him. I asked him to call me back. He  
 6 never did.  
 7 MR. SOLINSKY: Off the record.  
 8 [Recess.]  
 9 BY MR. DOWD:  
 10 Q Mr. Denniston, if I could back you up to  
 11 Exhibit No. 5, do you have that in your pile to your  
 12 left?  
 13 A Yes.  
 14 Q Okay. These are the account statements  
 15 for Acceleration Mercury Fund for Rosenthal Collins;  
 16 is that correct?  
 17 A Yes.  
 18 Q Were these account statements mailed to  
 19 Acceleration Capital?  
 20 A Post mail, no, sir. E-mailed.  
 21 Q Were they ever post mailed?  
 22 A Maybe. I don't recall. I believe so.

1 A Info@AccelerationCapital.  
 2 Q Whatever address it went to of those  
 3 two, it was subsequently forwarded to you?  
 4 A Yes.  
 5 Q Do you wish to add anything to clarify  
 6 anything to the statements you made today?  
 7 A Again, my humblest, deepest and  
 8 sincerest apologies to everyone and everything that  
 9 my theft cause. I expect that when and if--not  
 10 if--when I'm brought up on charges that my  
 11 cooperation with both you and Agent Heingst will  
 12 subdue any of my liability, but I understand that  
 13 and I expect that--I deserve to be punished, and Mr.  
 14 Plyam's ability to manage the office, it's a  
 15 very--he's very good at it. What I did was behind  
 16 his back, was obviously behind his back, but I  
 17 also--with the ability to change the documents, I  
 18 was able to get in there early in the morning. So  
 19 when he was looking at might have been actual and  
 20 factual for what he thought would have been the  
 21 case.  
 22 Do you know what I mean? Does that make

1 I believe I had both copies. No. I apologize.  
 2 That was Revco. Revco, I had both copies.  
 3 Acceleration Mercury was E-mail only.  
 4 Q E-mail only from Rosenthal Collins  
 5 Group?  
 6 A Right.  
 7 Q And those were sent to the  
 8 Info@CastleTrading.com E-mail address?  
 9 A I believe so, yes.  
 10 Q Were they sent to any other E-mail  
 11 address?  
 12 A If they were, it would have been the  
 13 Info@AccelerationCapital. I don't think so. I  
 14 think they were Info@CastleTrading.  
 15 Q And Mr. Plyam had access to both of  
 16 those accounts?  
 17 A Yes.  
 18 Q Both of those E-mail accounts?  
 19 A Yes.  
 20 Q Were the account statements forwarded to  
 21 you from the Info@AccelerationCapital address, or  
 22 what was the other one?

1 sense?  
 2 Q Do you have anything else you want to  
 3 say?  
 4 A No. I'm sorry. Thank you.  
 5 Q Have you answered all questions to the  
 6 best of your ability based on your knowledge?  
 7 A Yes.  
 8 MR. DOWD: Okay. We have no further  
 9 questions for you at this point in time. If we need  
 10 to speak to you again, we will be in touch. On  
 11 behalf of the CFTC, I'd like to thank you for coming  
 12 in and testifying today, and we're off the record at  
 13 approximately 1 p.m.  
 14 [Whereupon, at 12:57 p.m., the  
 15 deposition concluded.]  
 16 [Signature waived.]  
 17  
 18  
 19  
 20  
 21  
 22