

**Marc Cohodes**  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO

OVERSTOCK.COM, INC., a Delaware  
corporation, et al.,

Plaintiffs,

vs.

Case No.  
CGC-07-460147

MORGAN STANLEY & CO.,  
INCORPORATED, et al.,

Defendants.

---

VIDEOTAPED DEPOSITION OF MARC COHODES

Friday, November 18, 2011

11:09 a.m.

600 Montgomery Street, 14th Floor  
San Francisco, California 94111

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CERTIFIED COPY

REPORTED BY:

Jay W. Harbidge

CSR No. 4090

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1           APPEARANCES:

2  
3                   For Plaintiffs Overstock.com, et al.:

4                   STEIN & LUBIN, LLP  
5                   JONATHAN E. SOMMER  
6                   Transamerica Pyramid  
7                   600 Montgomery Street, 14th Floor  
8                   San Francisco, California 94111  
9                   415 381 0550  
10                  415 981 4343 Fax  
11                  jsommer@steinlubin.com

12  
13                   For Defendants GS Group, Goldman Sachs &  
14                   Co., and Goldman Sachs Execution &  
15                   Clearing, LP:

16                   MORGAN, LEWIS & BOCKIUS  
17                   JOSEPH E. FLOREN and GRACE SO  
18                   Spear Street Tower  
19                   San Francisco, California 94105  
20                   415 442 1392  
21                   415 442 1001 Fax  
22                   jfloren@morganlewis.com

23                   For The Deponent:

24                   BOIES, SCHILLER & FLEXNER, LLP  
25                   DAVID SHAPIRO  
26                   1999 Harrison Street, Suite 900  
27                   Oakland, California 94612  
28                   510 874 1005  
29                   510 874 1460 Fax  
30                   dshapiro@bsfllp.com

31           Also Present:

32                   Jerry Ku, Video Specialist  
33                   Mark J. Griffin, General Counsel,  
34                   Overstock.com

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November 18, 2011

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SAN FRANCISCO, CALIFORNIA;

FRIDAY, NOVEMBER 18, 2011, 11:09 A.M.

THE VIDEOGRAPHER: Good morning. We are  
on the record.

This is the videotaped deposition of Marc  
Cohodes in the matter of Overstock Incorporated, et  
al, versus Morgan Stanley & Co., et al. This  
deposition is taking place at 600 Montgomery Street,  
14th Floor, San Francisco, California 94111 on  
November 18th, 2011 at 11:09 a.m.

My name is Jerry Ku. I'm the  
videographer with U.S. Legal Support. Video and  
audio recording will be taking place unless all  
counsel have agreed to go off the record.

Would all present please identify  
themselves, beginning with the witness.

THE WITNESS: Marc Cohodes.

MR. SHAPIRO: David Shapiro of the firm  
Boies, Schiller & Flexner, for the witness, Mark  
Cohodes.

MR. FLOREN: Joseph Floren. I'm with  
Morgan Lewis & Bochiuss, for the defendants Goldman  
Sach & Co. and Goldman Sachs Execution & Clearing.  
And Grace So, S-o, of my firm will be joining us



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1           shortly.

2                       MR. SOMMER:   Jon Sommer of Stein & Lubin  
3           for the plaintiffs.

4                       THE VIDEOGRAPHER:   The certified court  
5           reporter is Jay Harbidge.

6                       Would you please swear in the witness.

7  
8                       MARC COHODES,  
9           having been first duly sworn, was examined and  
10                      testified as follows:

11  
12                      EXAMINATION

13           BY MR. SOMMER:

14                      Q.    Would you state your name, please.

15                      A.    Marc Cohodes.

16                      Q.    And do you understand that the testimony  
17           you're going to give here today is the same as if  
18           you were testifying in a court of law, even though  
19           we're in this conference room?

20                      A.    Oh, for sure.

21                      Q.    Have you reviewed any documents in  
22           preparation for this deposition?

23                      A.    No.

24                      Q.    Did you do anything to prepare, other  
25           than to meet with your counsel?

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1           A.    No.  Washed my hair, shaved, put on a  
2           clean shirt.

3           Q.    Is it correct that in 2006 you were the  
4           managing partner of a hedge fund named Copper River  
5           Partners?

6           A.    I don't know if I was a managing partner  
7           in 2006?  I was a general partner.  I don't know if  
8           I was a managing partner in 2006.

9           Q.    Well, let's back up a minute.  Is it  
10          correct that Copper River Partners was previously  
11          named Rocker Partners?

12          A.    Yes.

13          Q.    And is it correct that you were a  
14          general partner of Rocker Partners?

15          A.    Yes.

16          Q.    And was David Rocker also a general  
17          partner of Rocker Partners?

18          A.    Yes.

19          Q.    And did he retire around April of 2006?

20          A.    If that's -- I mean, I'm just not -- if  
21          it's -- if that's the date, that's the date.  I know  
22          he retired in April.  I forget what year.  I'm not  
23          prepared for that.  I have not -- I haven't reviewed  
24          anything for this deal, so if you say 2006.

25          Q.    Is it correct that when Mr. Rocker

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1           retired, the name was changed from Rocker Partners  
2           to Copper River Partners?

3           A.    Yes.

4           Q.    And at that time you became the managing  
5           general partner of Copper River Partners?

6           A.    Yes.

7           Q.    I'm going to hand you Exhibit 1.

8                   (Deposition Exhibit 1  
9                   marked for identification.)

10           MR. SHAPIRO:  Now, are these documents  
11           that we talked about and that you spoke to me --

12           MR. SOMMER:  This is a document that you  
13           produced to the defendants in this action.  It has a  
14           Bates number that your firm put on it, CRP-SF.

15           MR. SHAPIRO:  I see.

16           BY MR. SOMMER:

17           Q.    Exhibit 1, is that an organizational  
18           chart of Copper River.

19           A.    Yes.

20           Q.    And --

21           MR. SHAPIRO:  Can you just specify which  
22           page?  Because I think he's only looking at the  
23           first page.

24           BY MR. SOMMER:

25           Q.    Okay.  Well, there are multiple pages

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1           here, but just looking at the first page.

2           A.    Yes, yes.

3           Q.    And is it correct that as shown in this  
4           organizational chart, as well as being the managing  
5           partner you were president of Copper River  
6           Management, LP?

7           A.    If you say so.  I mean, I'm not -- I had  
8           many different entities.

9           Q.    Without going through every entity, is  
10          it correct that you were the top person --

11          A.    Yes, I was in charge of the entities.

12          Q.    Okay.

13          A.    How's that?

14          Q.    And you were based in Larkspur,  
15          California; is that right?

16          A.    Yes.

17                MR. FLOREN:  Objection, vague as to  
18          time.

19          BY MR. SOMMER:

20          Q.    The entirety of your -- well, how long  
21          were you a partner of Rocker Partners and then  
22          Copper River Partners, roughly?

23          A.    Oh, boy.

24          Q.    You can estimate.

25          A.    I was a partner of Rocker Partners in

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1       '87 maybe. And there were three offices: Larkspur,  
2       Jersey, Boston.

3               Q. And were you personally at all times  
4       working in the Larkspur office?

5               A. No. I used to work in New York.

6               Q. Okay. Do you recall what year you began  
7       working in the Larkspur office?

8               A. No.

9               Q. Were you in the Larkspur office by the  
10      year 2000?

11              A. Probably, yes. Yes, probably.

12              Q. Were you in the Larkspur office by the  
13      year 2004?

14              A. Yes.

15              Q. Okay. So from 2004 -- let's say 2004 to  
16      2008, you at all times were working out of the  
17      Larkspur office?

18              A. Yes.

19              Q. And in the 2004 to, say, 2008 time  
20      period, you were a resident of California, correct?

21              A. Yes, uh-huh.

22              Q. And let's just narrow it down a little  
23      bit. Let's say in 2006, is it correct that one of  
24      your partners was M.W. Montgomery?

25              A. Yes.

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1                   Q.    And he also worked in the California  
2 office?

3                   A.    Yes.

4                   Q.    And another partner was Richard Sauer;  
5 is that right?

6                   A.    Yes.

7                   Q.    And he also worked in the California  
8 office?

9                   A.    Yes.

10                  Q.    And then a senior analyst was Russell  
11 Lynde, right?

12                  A.    Yes, yes.

13                  Q.    And did he become a partner too?

14                  A.    Yes.

15                  Q.    And he also worked in the California  
16 office?

17                  A.    Yes.

18                  Q.    And is it correct that you had ultimate  
19 control of all investment decisions by Copper River  
20 Partners?

21                  A.    Yes, from 2006, or that date that you  
22 said, on.

23                  Q.    You're saying from the time it became a  
24 Copper River Partners?

25                  A.    Yes, yes, yes.

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1           Q.   And before that time, is it correct that  
2           you shared investment power with David Rocker?

3           A.   Yes.

4           Q.   Okay. And was it equal between the two  
5           of you?

6           A.   It was more David followed certain  
7           stocks or was responsible for certain stocks, and I  
8           was responsible for certain stocks. It wasn't one  
9           of those percentage type deals.

10          Q.   Okay. And is it correct that you were  
11          the one who decided to open a short position in  
12          Overstock?

13          A.   Yes.

14          Q.   Okay. And was that in 2004?

15          A.   I don't know on the dates, but if you  
16          say so and have the trades, I'm sure that's right.

17          Q.   Okay. We can go over some trades later.

18                Is it correct that, generally speaking,  
19          the investment model for Rocker Partners and Copper  
20          River was to take concentrated positions in a  
21          limited number of stocks?

22          A.   Uh-huh, yes.

23          Q.   And did Copper River have a focus on  
24          taking short positions as opposed to long positions?

25          A.   Yes.

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1           Q.    And did Copper River also act as a  
2           subadvisor for other hedge funds such as Provident  
3           and Ranger?

4           A.    I guess.  I'm -- I think that was more  
5           of a managed account, but if that's your choice of  
6           words.  I know we had some business dealings with  
7           them, but that was more David's thing than mine.

8           Q.    Well, I'm not trying to get hung up on  
9           the word "subadvisor."

10                  Did Copper River select short positions  
11           for hedge funds with which it had a relationship  
12           such as Ranger Capital?

13                  MR. SHAPIRO:  I'm going to object.  One  
14           of the objections we raised to the deposition notice  
15           or the subpoena is that Mr. Cohodes was subpoenaed  
16           in his individual capacity.  You can ask him  
17           questions -- from our perspective, you can ask him  
18           questions about what he did or what he knows, but  
19           he's not here as a person most qualified to  
20           represent any particular Copper River entity.

21                  MR. SOMMER:  Will, he was the general  
22           partner, so I can ask him about the business.

23                  THE WITNESS:  No, but the -- the Ranger  
24           and Provident things predated -- that was a Rocker  
25           Partners deal, not a Copper River deal.  So I think



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1           that stuff was no longer around when I took control.  
2           That was a -- that predated the switch to Copper  
3           River, if that's a help. That was a -- that was  
4           a -- it was more -- that was a David deal.

5           BY MR. SOMMER:

6                     Q.    Let me try to ask it this way: Copper  
7           River was well known for its experience in shorting  
8           companies; is that fair to say?

9                     A.    Yes.

10                    MR. SHAPIRO:  Objection.  You can ask  
11           him questions about what he knows, but what other  
12           people thought and what it was well known for, he'll  
13           be speculating about what other people think or what  
14           he thinks other people thought.

15                    You can ask him what he did and what he  
16           knows.  He's here as a fact witness.

17           BY MR. SOMMER:

18                     Q.    Is it correct that it was well known for  
19           its expertise --

20                    MR. SHAPIRO:  Don't answer --

21           BY MR. SOMMER:

22                     Q.    -- in shorting?

23                    MR. SHAPIRO:  Don't answer that  
24           question.

25                    MR. SOMMER:  Well, that's an improper

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1 instruction.

2 MR. SHAPIRO: Well, then we can stop the  
3 deposition, go get a protective order if that's what  
4 you want.

5 MR. SOMMER: Because I'm asking him if  
6 it was well known for its expertise in shorting.  
7 That's just a general question about the business.

8 MR. SHAPIRO: I'm telling you my  
9 objection and I think I've stated it as clearly as I  
10 can.

11 MR. SOMMER: Well, I don't understand  
12 what it is.

13 MR. SHAPIRO: The objection is that  
14 you're asking him to testify about what other people  
15 think, what other people think.

16 MR. SOMMER: Then object it calls for  
17 speculation. That's an objection to the form of the  
18 question. That's not a basis to instruct someone  
19 not to answer.

20 MR. SHAPIRO: Well, it is a basis  
21 because he's here to testify about what his own  
22 knowledge is, not on what other people's knowledge  
23 or thinking may be.

24 So we want to answer all of the  
25 questions. You can probe his memory for the things

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1           that he recalls about whatever is relevant to your  
2           case, but you can't ask him questions that ask him  
3           to speculate about what other people might think.

4           BY MR. SOMMER:

5                     Q.    What was your understanding as to why  
6           another hedge fund would come to Copper River  
7           seeking advice on short positions?

8                     A.    Am I good to answer this one?

9                     MR. SHAPIRO:  If you have an  
10          understanding about what other people think, yes,  
11          you can answer.

12                    THE WITNESS:  The only thing I would  
13          think is that people wanted help in either selecting  
14          or managing a short portfolio.

15          BY MR. SOMMER:

16                    Q.    And did you personally assist Provident  
17          and Ranger in establishing a short position in  
18          Overstock?

19                    A.    That would be no.

20                    MR. SOMMER:  I'm going to mark as  
21          Exhibit 2.

22                               (Deposition Exhibit 2  
23                               marked for identification.)

24          BY MR. SOMMER:

25                    Q.    Exhibit 2, if you look back at the

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1           fourth page, I think you'll see a subpoena to you?

2           A.    Yep.

3           Q.    Do you recall this subpoena being served  
4           on you?

5           A.    Yes.

6           Q.    Okay. And there are certain requests  
7           for documents starting on page 4 of the attachment.  
8           There you go.

9           A.    Uh-huh, yes.

10          Q.    Are you familiar with these requests?  
11          Could you look them over?

12          A.    Sort of.

13          Q.    Let me ask you for number 2. It  
14          requests all communication with William Conley, John  
15          Masterson, James Conti, Ralane Bonn, Richard Sussman  
16          and Robert Ceremsak. Do you see that?

17          A.    Yes.

18          Q.    And did you know each of those people at  
19          Goldman Sachs?

20                   MR. SHAPIRO: Object to the form.

21           BY MR. SOMMER:

22          Q.    All right. I'll ask it one-by-one,  
23          then.

24                   Did you know William Conley?

25          A.    Yes.

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1 Q. Did you know John Masterson?

2 A. Yes.

3 Q. Did you know James Conti?

4 A. Yes.

5 Q. Did you know Ralane Bonn?

6 A. I don't think so.

7 Q. Did you know Richard Sussman?

8 A. Yes.

9 Q. And did you know Robert Ceremsak?

10 A. Yes.

11 Q. Did you email William Conley from time  
12 to time?

13 A. Yes.

14 Q. Okay. You did do any sort of a -- make  
15 any sort of efforts to obtain emails that would be  
16 requested by this request number 2 in responding to  
17 the subpoena?

18 A. Yes.

19 Q. Okay. Can you describe for me what you  
20 did.

21 MR. SHAPIRO: Well, let me -- he can  
22 answer that question, but let me state for the  
23 record what we did.

24 We served on counsel for the case that  
25 we're here for objections to the subpoena, to each

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1           one of the requests. With respect to request number  
2           1, Mr. Sommer, after receiving our objections,  
3           offered to narrow the request.

4                       We then reached an agreement that  
5           Mr. Sommer would use particular search words, and I  
6           don't have them in front of me, to run a search  
7           through the production of documents that Copper  
8           River had provided to Overstock in the Marine case,  
9           Overstock versus Gradient and Copper River, and then  
10          furnished me with the documents that he thought were  
11          responsive as narrowed, as the subpoena is narrowed,  
12          and he sent me those last night.

13                     I've looked through them. There are 122  
14          pages, I think, and they seem to me, looking at them  
15          and looking at the search words that Mr. Sommer  
16          indicated he was going to use, they seem to me to be  
17          responsive. So as we understand it, those 122 pages  
18          are the documents that are responsive to the  
19          narrowed version of request number 1.

20                     With respect to the other requests, the  
21          objections that we served, and that's numbers 2  
22          through 9, the objections that we served indicated  
23          that there were no responsive documents.

24                     MR. SOMMER: I agree with the  
25          description of how we addressed request number 1,

1           and we may end up marking those 122 pages just for  
2           the record later.

3                       As to the other requests, I think I'll  
4           just introduce the objections and ask about certain  
5           statements made in those objections.

6                       (Deposition Exhibit 3  
7                       marked for identification.)

8           BY MR. SOMMER:

9                       Q.   Actually, before we get to Exhibit No.  
10          3, I think you were about to say something in  
11          response to, did you make any efforts to obtain  
12          documents or look for documents that we requested by  
13          request number 2?

14                      A.   Yes, we've been out of business and  
15          liquidated for some time. And I went to Phil Renna  
16          and asked him if we had anything, and he said we  
17          have nothing. We sold our server; we have now  
18          copies of email docs, anything as it relates to any  
19          of these -- anything in this request.

20          BY MR. SOMMER:

21                      Q.   So you're not aware of any -- if you  
22          wanted an email, let's just say for your own  
23          personal knowledge, you're not aware of any way to  
24          obtain an email that --

25                      A.   No.

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1           Q.    -- that you -- let me just finish the  
2 question for the record.

3           A.    Yes, but I mean, I'm just -- there's --

4           Q.    You're not -- as you sit here today,  
5 you're not aware of any way to obtain an email that  
6 you may have sent back in 2006 or 2007 to someone  
7 like William Conley?

8           A.    No.

9           Q.    And you believe that all of the servers  
10 that had such emails have been sold?

11          A.    Sold, thrown out, gotten rid of.

12          Q.    Are you aware of any sort of backup that  
13 was created anywhere like on a hosting service?

14          A.    (No audible response.)

15          Q.    Is that "no"?

16          A.    That's no.

17          Q.    And have you stored records with counsel  
18 beyond records from prior litigation?

19          A.    No, not to my knowledge.

20          Q.    And was Phil Renna the person who was  
21 functionally in charge of managing your record  
22 retention?

23          A.    I don't even recall, but he's the only  
24 one who is still -- you know, he can write some  
25 Copper River checks, so we still have some money



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1           that's still waiting to get sent out. But he's  
2           only, you know, part-time. He spends an hour a week  
3           maybe at this. There's no Copper River employees.  
4           There's no -- there's no there there. Everyone's  
5           moved on.

6           Q. Did you have computers in Larkspur?

7           A. At one time.

8           Q. Do you know if you kept any of those?

9           A. No, we haven't. We didn't.

10          Q. And did you download your emails onto  
11          any sort of personal system?

12          A. No.

13                 MR. SOMMER: I'll mark as Exhibit 4.

14                 (Deposition Exhibit 4

15                 marked for identification.)

16          BY MR. SOMMER:

17                 Q. Exhibit 4, which was previously marked  
18                 Exhibit 347 to your deposition in prior litigation,  
19                 do you recognize this as a listing of trades in  
20                 Overstock by Copper River Partners?

21                 MR. SHAPIRO: Is this one of the 122? I  
22                 don't remember seeing this one.

23                 MR. SOMMER: Copper River produced prior  
24                 depositions to Mr. Floren. You put a Bates number  
25                 at the bottom that's CPR-SF.

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1 MR. SHAPIRO: Okay.

2 MR. SOMMER: And so I'm using some of  
3 the exhibits from the depositions that you've  
4 produced.

5 MR. SHAPIRO: Got it, thank you.

6 MR. FLOREN: And just for the record,  
7 what Mr. Sommer is referring to is the fact that in  
8 December of 2009, my office, on behalf of Goldman  
9 Sachs, served a subpoena on Copper River Management  
10 and Copper River Partners and sought certain  
11 documents. And on behalf of those entities, Mr.  
12 Shapiro, you appeared as counsel and objected to the  
13 subpoena, and we resolved those objections with  
14 everybody reserving their rights by Copper River  
15 Partners and Management agreeing to produce certain  
16 documents, which largely consisted of deposition  
17 transcripts and exhibits.

18 MR. SHAPIRO: Okay.

19 MR. FLOREN: And that production  
20 happened sometime in 2010.

21 MR. SHAPIRO: Thank you.

22 BY MR. SOMMER:

23 Q. So do you recognize Exhibit 4 as a  
24 summary of trading in Overstock by Copper River  
25 Partners?

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1                   A.    Yes.

2                   Q.    And would you turn to page 12.  There's  
3                   page 12 of 33.  Do you see near the top left it  
4                   refers to short sales?

5                   A.    Yes.

6                   Q.    So is that a listing of short sales by  
7                   Copper River in Overstock?

8                   A.    Yes.

9                   Q.    And if you turn to page 24 of 33 --

10                  A.    Yes.

11                  Q.    -- if you look in the middle of the page  
12                  it says "Short Covers."  Do you see that?

13                  A.    Yes.

14                  Q.    Is that a listing of short covers by  
15                  Copper River in Overstock?

16                         MR. FLOREN:  Objection, vague and  
17                         ambiguous.

18                         THE WITNESS:  Yes.

19                  BY MR. SOMMER:

20                  Q.    Can you tell me what short cover is in  
21                  plain English?

22                  A.    It's just the unwinding of a short sale.

23                  Q.    And is a short sale where you sell stock  
24                  that you borrow but do not own?

25                  A.    Yes.

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1           Q.    And when you give that testimony, is  
2           that based on your more than twenty years of  
3           experience in short selling?

4           A.    Yes.

5           Q.    And if Copper River could not borrow  
6           this stock, it wouldn't sell short the stock; is  
7           that right?

8                     MR. FLOREN:   Object to the form.

9                     THE WITNESS:   Yes.

10          BY MR. SOMMER:

11           Q.    Okay.  And is it your understanding that  
12           selling short without borrowing the stock is called  
13           naked short selling?

14                     MR. FLOREN:   Same objection.

15                     THE WITNESS:   One way to describe it,  
16           yes.

17          BY MR. SOMMER:

18           Q.    And to your knowledge, you were  
19           paying -- well, for a stock like Overstock, is it  
20           correct that you had to pay a borrow fee each time  
21           you were selling short Overstock?

22                     MR. FLOREN:   Object to the form, vague  
23           and ambiguous.

24                     MR. SHAPIRO:   And objection, lack of  
25           foundation, hypothetical question, speculation,

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1 calls for speculation.

2 THE WITNESS: Shall I answer?

3 BY MR. SOMMER:

4 Q. Yes, you can answer --

5 MR. SHAPIRO: His question is for a  
6 stock like Overstock. I don't have the LiveNote in  
7 front of me. So he's asking you a theoretical  
8 question.

9 THE WITNESS: I like you, Jonathan. I  
10 think you need to ask a better question and then I  
11 can give you a better answer.

12 BY MR. SOMMER:

13 Q. Well, you have lots of experience in  
14 shorting stocks, right?

15 A. Well, if you promise to make this whole  
16 thing simple --

17 Q. I'll try to make it simple. You have  
18 lots of experience in shorting stocks, correct?

19 A. Yes.

20 Q. And one of the things you consider when  
21 shorting a stock is what the borrow fee is  
22 associated with a stock, correct?

23 A. Yes.

24 Q. Okay. And the borrow fee is money that  
25 you would pay to your clearing firm in connection

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1           with shorting the stock; is that right?

2                   A.    Yes.

3                   Q.    And for Overstock, there typically, to  
4                   your recollection, was a substantial borrow fee,  
5                   wasn't there?

6                   MR. FLOREN:   And objection, vague as to  
7                   time.

8                   MR. SHAPIRO:   Yes, and objection, lack  
9                   of foundation with respect to the witness' knowledge  
10                  of short sales in Overstock.

11                  THE WITNESS:   To make this process go  
12                  faster, I'll give you an answer even though it's not  
13                  really your question.

14                  When I first shorted Overstock, and my  
15                  only trades I ever did in Overstock in 2004, there  
16                  was never a borrow problem; there was never a borrow  
17                  issue.   So there was no fee; there was no negative  
18                  rebate; it was never an issue when I first did the  
19                  trade.

20                  The lawyer down there objected to time.  
21                  Yeah, I mean, we were in Overstock a long period of  
22                  time, and as things progressed, your issues  
23                  became -- your question becomes relevant.

24                  But when I first did the trade, which is  
25                  all I can speak of to this, there was never a borrow

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1           issue in 2004.

2           BY MR. SOMMER:

3                   Q.    Well, is it correct that you would speak  
4                   with David Rocker on a very frequent basis as  
5                   partners?

6                   A.    Yeah, but over a whole variety of  
7                   things, not specifically this or something else.  It  
8                   was just --

9                   Q.    You would talk with him about Overstock,  
10                  correct?

11                  A.    Among many things.

12                  Q.    And wasn't one of the things you talked  
13                  about with him that Overstock was an expensive stock  
14                  to borrow?

15                         MR. FLOREN:  Objection, vague and  
16                         ambiguous.

17                         MR. SHAPIRO:  Object to the form.

18                         THE WITNESS:  Well, from when I first  
19                         put in the trade in February of 2004 to somewhere  
20                         down the line, it became an expensive stock to  
21                         borrow.  When exactly it was, I don't remember.  But  
22                         at some point in our history of this, yeah, it  
23                         became expensive to borrow, yes.

24           BY MR. SOMMER:

25                   Q.    Okay.  And when you paid that borrow fee

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1           for Overstock or any of your stocks, you believed  
2           that your clearing firm is actually borrowing the  
3           stock on your behalf; is that right?

4           A.    Absolutely.

5           Q.    And your clearing firm at all times was  
6           Goldman Sachs, correct?

7                     MR. FLOREN:  Objection to the form,  
8           vague and ambiguous.  I'm going to have an objection  
9           in you're not specific on the name of the Goldman  
10          Sachs entity.  There are two Goldman Sachs entities  
11          that are defendants in this case.

12          BY MR. SOMMER:

13          Q.    We can specify the entity.  Was your  
14          clearing firm Goldman Sachs & Co.?

15                     MR. SHAPIRO:  If you know.

16                     THE WITNESS:  I don't know.

17                     (Deposition Exhibit 5  
18                     marked for identification.)

19          BY MR. SOMMER:

20          Q.    Exhibit 5, is that an account statement  
21          for your firm from Goldman Sachs & Co.?

22          A.    It would appear to be that, yes.

23          Q.    Does that lead you to believe that  
24          Goldman Sachs & Co. was your clearing firm?

25          A.    Yes.



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1           Q.    And so if I refer to Goldman Sachs, I'll  
2 just be referring to Goldman Sachs & Co., okay?

3           A.    Fine.

4           Q.    So is it correct that, say, from 2004 to  
5 2008 Goldman Sachs was your clearing firm?

6           A.    Ye.

7           Q.    Would you have paid a borrow fee to  
8 Goldman Sachs if they had told you that they weren't  
9 actually borrowing and making delivery on your  
10 Overstock trades?

11           MR. FLOREN:  Object to the form,  
12 improper hypothetical, lacks foundation,  
13 argumentative.

14           THE WITNESS:  No.

15           MR. FLOREN:  I want to just be real  
16 clear for the record, Counsel.  Every time you say  
17 "Goldman Sachs," you're referring to Goldman Sachs &  
18 Co., is my understanding.

19           MR. SOMMER:  Yes.

20           MR. FLOREN:  If it's not your  
21 understanding, then I'm going to need to keep  
22 objecting on that basis.  Is that right?

23           MR. SOMMER:  No.  We're exclusively  
24 referring to Goldman Sachs & Co. unless I  
25 specifically say otherwise.

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1                   MR. FLOREN: Thank you.

2           BY MR. SOMMER:

3                   Q. And did you ever come to believe that  
4           Goldman Sachs had not been borrowing stock when you  
5           were short selling stock?

6                   MR. FLOREN: Objection, vague and  
7           ambiguous.

8                   MR. SHAPIRO: Objection, lack of  
9           foundation.

10                  THE WITNESS: That's just speculation on  
11           my part at this point in time.

12           BY MR. SOMMER:

13                  Q. Well, I'm asking for your belief, so  
14           just tell me what your belief is one way or the  
15           other.

16                  MR. FLOREN: Same objection.

17                  MR. SHAPIRO: Don't speculate; just say  
18           what you -- answer the question about what you know.  
19           You're here to testify, as a fact witness, what you  
20           know from seeing, hearing --

21                  THE WITNESS: I don't know. I just  
22           don't know. I mean, I just -- I don't know.

23                  MR. SOMMER: I'll mark as Exhibit 6.

24                               (Deposition Exhibit 6

25                               marked for identification.)

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1                   MR. SHAPIRO: This a copyright  
2 violation, this whole book.

3 BY MR. SOMMER:

4                   Q. Are you familiar with Exhibit 6, a book  
5 by Richard Sauer named "Selling America Short"?

6                   A. I am, indeed.

7                   Q. Richard Sauer was your partner at Copper  
8 River, correct?

9                   A. Yes.

10                  MR. FLOREN: Object to the form, object  
11 vague as to time.

12 BY MR. SOMMER:

13                  Q. And he -- well, did you assist Mr. Sauer  
14 in any way in writing this book?

15                  A. No.

16                  Q. Did he consult with you from time to  
17 time on issues about Copper River in preparing the  
18 book?

19                  A. No.

20                  Q. Did you read drafts of the book?

21                  A. No.

22                  Q. Did you read the book?

23                  A. Totally.

24                  Q. Did you agree with what Mr. Sauer said  
25 in the book?

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1                   MR. FLOREN: Object to the form,  
2 grotesquely compound.

3                   MR. SHAPIRO: Objection. Again --

4                   MR. SOMMER: We can go to the specific  
5 statement. You objected compound. I'll withdraw it  
6 and move to something specific.

7 BY MR. SOMMER:

8                   Q. I'd like you to turn to page 300,  
9 please.

10                   Before I get to the exact language, let  
11 me just back up a minute and ask you, was there a  
12 time when the firm, Copper River, was under a lot of  
13 pressure to reduce some short positions?

14                   MR. FLOREN: Vague and ambiguous.

15 BY MR. SOMMER:

16                   Q. In 2008?

17                   MR. SHAPIRO: I'll let him answer the  
18 question. But again, you subpoenaed him in his  
19 individual capacity. You're right that he was a  
20 general partner, but you're asking about an entity.  
21 There are multiple Copper River entities.

22                   You can answer if you know. You answer  
23 from your own personal knowledge and from what you  
24 did and experienced.

25 BY MR. SOMMER:

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1           Q.    I'm trying to get to the point without  
2           too many lead-up questions to keep this as brief as  
3           I can. I can back up and ask more questions.

4           A.    Okay. Just simplify a little bit for  
5           me.

6           Q.    Do you recall there was a time when you  
7           were asked by Goldman Sachs to reduce your short  
8           positions in 2008?

9           A.    "Asked" isn't the word, but yeah.

10          Q.    Can you tell me generally what was going  
11          on?

12               MR. FLOREN: Vague and ambiguous.

13               THE WITNESS: Ask me generally what was  
14          going on?

15          BY MR. SOMMER:

16          Q.    Around September 2008 when you were in  
17          communication with Goldman Sachs about --

18          A.    Are you asking for a timeline of what  
19          was going on or --

20          Q.    I'm asking you, why were you reducing  
21          positions in September 2008 in general?

22               MR. SHAPIRO: He's asking a different  
23          question. Ignore the prior question. Now the  
24          question is, why did you reduce positions, you  
25          personally?

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1                   THE WITNESS: Goldman said we had to.  
2                   Goldman put us under a house margin call, so we were  
3                   left with no choice but to reduce positions. They  
4                   demanded it.

5                   BY MR. SOMMER:

6                   Q.    Okay. And in the world of short  
7                   selling, to reduce a position, is that effectively  
8                   done by buying stock to cover the short position?

9                   A.    Yes.

10                  Q.    And did you have discussions with your  
11                  partners, including Mr. Sauer and Russell Lynde  
12                  about buying stock to close out your short positions  
13                  at that time in September 2008?

14                  A.    Yes.

15                  Q.    And were people generally upset about  
16                  what was going on in terms of closing out these  
17                  positions?

18                  MR. SHAPIRO: Object to the form.

19                  THE WITNESS: Deeply so.

20                  MR. SHAPIRO: When you "say people," you  
21                  mean people that he works with?

22                  BY MR. SOMMER:

23                  Q.    Well, let me just start with you.

24                  A.    Yes.

25                  Q.    Were you personally upset?

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1                   A.    Yes.

2                   Q.    Can you describe for me in your own  
3 words why you were upset?

4                   A.    Basically Goldman was in the process of  
5 putting us out of business, so that's why I was  
6 upset.

7                   Q.    Okay. And what was the process of  
8 putting you out of business?

9                   A.    Forcing us to close positions in a  
10 reckless fashion.

11                  Q.    And what was your understanding as to  
12 why -- well, what was told to you as to why you had  
13 to close the positions?

14                  MR. FLOREN: Object to the form, vague  
15 and ambiguous.

16                  THE WITNESS: What was told to you --  
17 what was told to me? Goldman said they had us --  
18 had their various accounts under a house margin call  
19 and we had to get off the call, and the only way off  
20 the call was to eliminate/reduce positions.

21 BY MR. SOMMER:

22                  Q.    And were you speaking with a particular  
23 person in Goldman at that time?

24                  MR. FLOREN: Objection, vague and  
25 ambiguous, speaking about what?

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1 BY MR. SOMMER:

2 Q. What you just talked about.

3 MR. FLOREN: "At that time," what is  
4 that time? These are all extremely vague questions.

5 MR. SOMMER: Object to the statements on  
6 the record.

7 MR. FLOREN: I'm trying to help you out  
8 because I'm going to keep objecting. Anyway, go  
9 ahead.

10 BY MR. SOMMER:

11 Q. Who at Goldman told you that you had to  
12 reduce these positions?

13 A. Sussman, Richard Sussman; some Indian  
14 fellow who was running that outfit, I think Ravi.

15 Q. Ravi Singh?

16 A. Ravi Singh, yes.

17 Q. Did you understand Ravi Singh to be the  
18 head of prime brokerage at Goldman Sachs?

19 A. I didn't know who he was, but he was  
20 just a mother fucker. That's what I understood him  
21 to be.

22 Q. And was Richard Sussman someone you knew  
23 from before, or was this the first time you had run  
24 into him?

25 A. The first time I had run into him.



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1           Q.    And what did you understand his role in  
2 Goldman to be?

3           A.    Some form of "yes" man from the  
4 organizational chart on down. He just told accounts  
5 what the higher-ups said to do.

6           Q.    Did he tell you, when he told you to  
7 reduce your position, that that was the an  
8 instruction from Ravi Singh?

9           A.    Yes.

10          Q.    Were you instructed to reduce your  
11 position even when you were in compliance with your  
12 margin agreement?

13               MR. FLOREN:  Objection, vague and  
14 ambiguous, lacks foundation.

15               THE WITNESS:  Absolutely.

16 BY MR. SOMMER:

17          Q.    Did someone tell you why you had to  
18 reduce your positions even though you were in  
19 compliance with your margin agreement?

20               MR. FLOREN:  Same objection, calls for a  
21 legal conclusion.

22               THE WITNESS:  No.

23 BY MR. SOMMER:

24          Q.    Did you try calling anyone you knew at  
25 Goldman like William Conley to talk about it?

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1                   A.    Yes, I talked to everybody.

2                   Q.    Did you talk with William Conley at that  
3                   time?

4                   A.    No.  He wouldn't take my call.

5                   Q.    Did you call John Masterson?

6                   A.    No.  He wasn't with Goldman at the time.

7                   Q.    Did you try calling Jim Conti?

8                   A.    I tried calling everybody I knew there.

9                   Q.    Did that include Jim Conti?

10                  A.    Yes.

11                  Q.    Would he take your call?

12                  A.    I think he did.  Yes, he took my call.

13                  Q.    Do you recall what you talked to him  
14                  about specifically?

15                  A.    Yes.  I said, "What the hell are these  
16                  guys doing?"  And he said he didn't know; it's out  
17                  of his hands.

18                  Q.    Did you know -- well, just to be clear,  
19                  from that time in September 2008 to the present, did  
20                  you ever talk to William Conley about -- did you  
21                  ever talk to William Conley again?

22                  A.    No.

23                  Q.    Can you tell me roughly how many times  
24                  you tried calling him in September 2008, to the best  
25                  of your recollection?

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1           A.     Fifty.

2           Q.     And did you leave messages each time?

3           A.     Yep.

4           Q.     And he never called you back once?

5           A.     Not once.

6           Q.     How long -- in 2008, how long had you  
7 known Mr. Conley?

8           A.     Since he was -- ever since he was  
9 employed by Goldman. I don't know, a dozen years at  
10 least.

11          Q.     Did you consider him to be someone who  
12 was there to be your trusted partner?

13                 MR. FLOREN: Objection, argumentative,  
14 vague and ambiguous, calls for speculation.

15                 MR. SHAPIRO: Yes. I'll object because  
16 you're asking him for his opinion, and I think  
17 you're asking for his professional opinion given  
18 that it's in the course of his profession, and I  
19 think that's outside the scope of your deposition  
20 subpoena.

21 BY MR. SOMMER:

22          Q.     Well, my question stands. Did you  
23 consider William Conley to be your trusted partner?

24                 MR. FLOREN: Same objection.

25                 MR. SHAPIRO: Same objection.

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1                   THE WITNESS: Trusted, yes, I trusted  
2                   him; partner, I don't know if "partner" is the right  
3                   word. I thought they were our trusted -- whatever a  
4                   prime broker can be described as. I don't know  
5                   partner. Trusted, yeah, trusted. I trusted him,  
6                   that's true. I don't know about partner.

7                   BY MR. SOMMER:

8                   Q. And you sit here today, do you still  
9                   trust him?

10                  A. No. God, no.

11                  Q. Do you see page 300, the first full  
12                  paragraph, I'm going to read that and then I'm going  
13                  to ask you a question. It says:

14                         "So would another theory that Russell  
15                         proposes. He wonders if Goldman failed to  
16                         borrow shares it shorted for our accounts,  
17                         perhaps relying on the trusty options market  
18                         maker exemption, and with the tightening up of  
19                         the SEC short sale rules, is now making us  
20                         cover these naked short position at rapidly  
21                         escalating prices."

22                         Do you see where I read that?

23                         MR. FLOREN: I'm sorry, Counsel, what  
24                         page are we on?

25                         MR. SOMMER: Page 300, the first full

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1 paragraph.

2 THE WITNESS: Yes, I see where you read  
3 that.

4 BY MR. SOMMER:

5 Q. Have you read that before today?

6 A. Uh-huh, yes.

7 Q. And "Russell" is referring to your  
8 partner Russell Lynde, right?

9 A. Yes.

10 MR. SHAPIRO: Objection, only if you  
11 know. It may be a fair inference; it may be an  
12 inference Mr. Sommer wants to draw. You're here to  
13 answer fact questions.

14 THE WITNESS: That's fair, yes.

15 BY MR. SOMMER:

16 Q. Do you recall being present with Russell  
17 Lynde and discussing whether or not Goldman had  
18 naked positions?

19 MR. FLOREN: Objection, vague and  
20 ambiguous.

21 THE WITNESS: Yes, we discussed it.

22 BY MR. SOMMER:

23 Q. Can you tell me what you discussed?

24 A. I couldn't understand why, with the  
25 change of the rules, why Goldman, after paying them

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1       many hundreds of millions over the years, would be  
2       so heavy-handed to us, what would -- what would  
3       justify that type of behavior. That's what we would  
4       discuss.

5               Q.    And did you discuss something specific  
6       concerning naked short positions when you were  
7       talking about that?

8               A.    Well, we knew -- we knew that we were  
9       paying large sums of money for borrowed stock, so we  
10      knew we didn't have naked positions, Copper River,  
11      but we also wondered what would force Goldman to act  
12      so aggressively and heavy-handed over such a short  
13      period of time in a stock market that was basically  
14      in free-fall and not give us rationale.

15               So we assumed -- assumed, didn't know --  
16      that this could have been an issue with them.

17               Q.    By "this," you mean that there were  
18      naked short positions?

19               A.    Yeah, yes.

20               Q.    And were you trying to -- when you said  
21      you tried calling William Conley fifty times, is  
22      that one of the things you wanted to ask him?

23               A.    I wanted to ask him, what the fuck is  
24      going on, that's what I wanted to ask him, and "What  
25      are you doing?"

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1           Q.    Did you want to ask him if Goldman had a  
2 naked short position?

3           A.    Yes, among many things, yes.

4           MR. FLOREN:  Objection, vague and  
5 ambiguous.

6           THE WITNESS:  I mean, basically the  
7 theory was by Goldman putting us out of business,  
8 if -- and that's a big "if" because I don't know --  
9 I'm not privy to what Goldman does -- by a putting  
10 us out of business and forcing us to cover, would  
11 that have solved their issue, their naked issue  
12 because they had no economic reason to do what they  
13 did, and they caused us an awful lot of harm.  
14 That's for sure.

15          BY MR. SOMMER:

16           Q.    Did you try discussing that with Richard  
17 Sussman?

18           A.    Yeah, yes, we did.

19           Q.    And did he ever give you any concrete  
20 information in response?

21           A.    Yeah.  The quote he told me, and I'll  
22 never forget it, is -- he said, "Sometimes when  
23 there's a house fire, you end up burning down the  
24 block."  You know, and what I implied from that was  
25 that we were an unintended consequence of what was

1           going on.

2                       And this is a bonus for you: That  
3           cocksucker Ravi Singh never had the whatever to call  
4           and explain exactly what was going on and why,  
5           never, most cold-blooded thing I've ever seen in my  
6           life.

7                       Q.    And did Richard Sussman ever tell you in  
8           some way that he wasn't allowed to give you full  
9           information about what was going on with regard to  
10          Copper River?

11                      MR. FLOREN:  Objection, argumentative,  
12          lacks foundation.

13                      THE WITNESS:  Absolutely.

14                      BY MR. SOMMER:

15                      Q.    Can you describe for me, as best you  
16          recall, what he said in that regard?

17                      A.    He said that his hands were tied, it  
18          made him sick, he'd never seen anything like it.

19                      What made it particularly aggravating,  
20          again, and this is something I'll never forget, is  
21          that it was one of the Jewish holidays when we were  
22          in compliance, and we did exactly what we had to do,  
23          and Sussman said we were in compliance, he called me  
24          and told me that this nonsense was over.

25                      And the next day he showed up -- thinking



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1       we were going to be okay -- and said, "Nope, nope.  
2       You have to keep going." And that's when we were  
3       furious, and that's when he said his hands are tied;  
4       you know, it's Ravi's call. He specifically said  
5       that, as did his -- he had some sidekick who he  
6       worked with too who also commented at that point  
7       because he was sick to his stomach, that he'd never  
8       seen anything like it either, what went on.

9               Q.    Do you recall the name of that other  
10       person?

11              A.    Huh-uh, I don't. If you told it to me,  
12       I would, but I don't remember.

13              Q.    How many times have you spoken with Ravi  
14       Singh?

15              A.    Probably twice, maybe three times.

16              Q.    And it was right at that same time  
17       period, is that right, when all of this was going on  
18       about reducing your positions?

19              A.    No. It was before when he said this is  
20       what we had to do. And we said why, and he told us,  
21       and it wasn't a valid reason. And I argued with him  
22       and he got pissed off, and it seemed like he got  
23       punitive with us because I argued with him.

24              Q.    Did he stop taking your calls at some  
25       point?

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1                   A.    Yes, yeah.

2                   Q.    Did you try leaving messages with him?

3                   A.    Oh, sure.

4                   Q.    Could you estimate how many messages you  
5 left with him?

6                   A.    Maybe fifty.

7                   Q.    He never called you back after that when  
8 you left those fifty messages?

9                   A.    No.  We had another conversation with  
10 him because I had the Farallon guys in the office  
11 because they were going to take our positions, and  
12 Goldman made an outgoing call to Farallon saying  
13 that they shouldn't take our positions.

14                   MR. FLOREN:  Objection, move to strike.

15                   BY MR. SOMMER:

16                   Q.    That's what Farallon told you?

17                   A.    Uh-huh, that's what the CFO of Farallon  
18 told Bill Duhamel when they were in the office, that  
19 Goldman made an outgoing call to them and said they  
20 shouldn't take Copper River positions because we'll  
21 be out of business in a couple days anyway.

22                   Q.    Who is -- Bill Duhamel?

23                   A.    Bill Duhamel.

24                   Q.    Who is that?

25                   A.    He used to be a money manager at

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1 Farallon in the city.

2 Q. Is that someone you knew at the time?

3 A. Yes.

4 Q. And he's the one who told you that?

5 A. Uh-huh, yes. He's the guy who -- Acme  
6 Capital was considered as Farallon for the book  
7 sake.

8 Q. And if they had taken some of your  
9 positions, would Copper River have been able to  
10 survive, in your estimation?

11 A. Absolutely.

12 Q. And was it your understanding that it  
13 was someone on the Goldman prop trading desk who had  
14 said what you just described to Farallon?

15 MR. FLOREN: Objection, vague and  
16 ambiguous.

17 THE WITNESS: Yes.

18 BY MR. SOMMER:

19 Q. And did you know, was it told to you who  
20 it was on the Goldman prop trading desk who said  
21 that?

22 MR. FLOREN: Same objection.

23 THE WITNESS: No, because that person  
24 wouldn't be around today.

25 BY MR. SOMMER:

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1           Q.    Did it surprise you that Farallon told  
2           you it was someone on the Goldman prop trading desk?

3                   MR. FLOREN:  Objection.

4                   MR. SHAPIRO:  Same objection.  You can  
5           answer questions that ask you about one of your five  
6           senses, what you saw or heard, etcetera.  If there  
7           was some manifestation of your surprise, you can  
8           answer that.

9                   THE WITNESS:  Can you rephrase that or  
10          can you ask it again?  I forgot the question.

11          BY MR. SOMMER:

12                 Q.    I was just asking if you were surprised  
13                 that Farallon told you -- they told you it was told  
14                 to them by someone on the prop trading desk at  
15                 Goldman?

16                   MR. FLOREN:  Same objection.

17                   THE WITNESS:  Well, again, life-changing  
18           events you never forget, which this was.  And the  
19           market, the stock market, was literally falling  
20           apart, going straight down.  And our short positions  
21           would have benefitted hugely by the market falling  
22           apart and melting down.  But the stocks that we had  
23           to cover were all going straight up in violent  
24           fashions in a straight down market.  So someone was  
25           running in front of these trades, someone was.

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1                   So the fact that the Goldman prop desk  
2                   knew about this is not a surprise to me because I  
3                   think the guys at Goldman are common criminals, just  
4                   common criminals.

5                   BY MR. SOMMER:

6                   Q.    Did you believe that the Goldman prop  
7                   desk was frontrunning your trades?

8                   A.    Totally.

9                   Q.    Did you ever consider taking legal  
10                  action against Goldman?

11                  MR. SHAPIRO:  Objection.

12                  Don't answer the question.

13                  MR. SOMMER:  What's the basis for the  
14                  instruction?

15                  MR. SHAPIRO:  You're asking him to  
16                  testify about attorney-client privileged  
17                  communications.

18                  MR. SOMMER:  Well, I'm not asking what  
19                  he said to an attorney; I'm just asking if he,  
20                  before ever contacting an attorney, thought about  
21                  the possibility of legal action.

22                  MR. SHAPIRO:  I'm not going to let him  
23                  answer the question.  You're asking him -- you've  
24                  been going back and a forth between him personally  
25                  and him as general partner, but almost exclusively

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1       you're asking him questions about his position as  
2       general partner. And I've, you know, let it go even  
3       though my objection in both the response to the  
4       subpoena and today is he's here as an individual.  
5       But I've let you ask those questions.

6               Now you're asking him to talk about, as  
7       general partner, whether he considered legal action  
8       against anybody. And I'm not going to let him  
9       answer the question. I'm going to tell him not to  
10      answer the question.

11             MR. SOMMER: Well, I just want to state  
12      for the record what I'm asking. I'm not asking him  
13      to disclose any communication he had with any  
14      attorney. I'm asking if, given the circumstances,  
15      did he believe that this was a serious enough  
16      situation that he was going to consider the  
17      possibility of legal action without disclosing any  
18      communication he may have had with any attorney.

19             So I'm just going to ask the question  
20      once that way. If you want to instruct him, fine.

21      BY MR. SOMMER:

22             Q. But I'm just going to ask you for the  
23      record --

24             MR. SHAPIRO: I understand, and I'll  
25      give him the same instruction.

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1 BY MR. SOMMER:

2 Q. In light of your belief that your firm  
3 had been seriously injured by Goldman, did you,  
4 because of that, consider the possibility of legal  
5 action against Goldman?

6 MR. SHAPIRO: Isn't that the same  
7 question you just asked?

8 MR. SOMMER: Slightly different.

9 BY MR. SOMMER:

10 Q. But go ahead.

11 MR. SHAPIRO: Same instruction.

12 MR. SOMMER: Could we take a little  
13 break here? I just want to get reorganized.

14 MR. SHAPIRO: Okay.

15 THE VIDEOGRAPHER: Going off the record  
16 12:15 p.m., end of tape one.

17 (Brief recess.)

18 THE VIDEOGRAPHER: Going back on the  
19 record 12:25 p.m., start of tape two.

20 BY MR. SOMMER:

21 Q. Do you recall mentioning that you --  
22 your firm had paid hundreds of millions of dollars  
23 to Goldman a few minutes ago?

24 A. Yes.

25 Q. And by paying hundreds of millions of

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1           dollars, did you mean paying hundreds of millions of  
2           dollars in borrow fees for short stock?

3           A.    Yes.

4           Q.    I want to show you one other sentence on  
5           page 300 of "Selling America Short," which was  
6           Exhibit 6. This is in the next paragraph in the  
7           middle. There's a sentence that says, "Also, we  
8           have noticed that Goldman --" do you see where I'm  
9           looking now?

10          A.    Yes.

11          Q.    "Also, we have noticed that Goldman has  
12          sometimes been able to provide locates not  
13          available elsewhere."

14                Do you see where I read that?

15          A.    Yes.

16          Q.    Was it your regular practice in shorting  
17          a stock to contact Goldman to try to locate the  
18          stock first?

19                MR. SHAPIRO: I'm sorry, I missed that.  
20          Could you just read that or --

21          BY MR. SOMMER:

22          Q.    Was it your regular practice in shorting  
23          a stock to contact Goldman to try to locate the  
24          stock before shorting it?

25                MR. FLOREN: Object to the form, vague



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1           and ambiguous as to time, as to who is "you," all  
2           sorts of other things.

3                       MR. SHAPIRO: That would be my question,  
4           whether you're asking Mr. Cohodes or whether you're  
5           asking whether the firm did that. If it's the firm,  
6           I have to say an objection.

7                       But you can answer it, you can answer it.  
8           BY MR. SOMMER:

9                       Q. Well, did you have personal -- strike  
10          that.

11                      Was it your understanding that the firm  
12          would contact -- your firm would contact Goldman to  
13          ask for a locate before shorting a stock?

14                      A. Absolutely.

15                      Q. And what's your understanding based on?

16                      A. That was protocol at the firm. Before  
17          we could short any stock, we had to get a locate  
18          because naked shorting is illegal. And although we  
19          were accused many times by your customer Overstock,  
20          or specifically Byrne, of naked shorting, we never,  
21          ever, ever, ever shorted a stock we couldn't borrow.

22                      Q. Okay. And did you find, you,  
23          Mr. Cohodes, find that sometimes locates were  
24          available at Goldman that weren't available at some  
25          other clearing firm?

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1                   MR. FLOREN: Object to the form, vague  
2                   and ambiguous as to time and as to which stock, just  
3                   like most of your questions.

4                   MR. SOMMER: I object. That kind of  
5                   commentary is totally inappropriate.

6                   MR. FLOREN: You can't object to my  
7                   objections.

8                   MR. SOMMER: No, I can because you're  
9                   not objecting. You're just trying to coach the  
10                  witness and make statements.

11                  MR. FLOREN: You've got to be kidding,  
12                  Counsel, about coaching the witness.

13                  MR. SOMMER: No, I'm not kidding.  
14                  That's totally inappropriate.

15                  Mr. FLOREN: Look, Counsel, you've sat  
16                  here and you've asked the witness questions for 45  
17                  minutes that you know have nothing whatsoever to do  
18                  with Overstock. You're doing it over and over and  
19                  over and over and over again. And so, you know,  
20                  you're going to require me to go back on each one of  
21                  these questions, establish that they had nothing to  
22                  do with Overstock and so forth.

23                  So I'm just going to keep objecting. If  
24                  you want to keep asking these vague questions so  
25                  that you can create what you hope to be a misleading

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1           record, go ahead. And I will then go back and it  
2           will just make this proceeding take a lot longer.

3                       MR. SOMMER: That's a nice speech.

4                       MR. SHAPIRO: Well, I'd like to -- I'm  
5           not going to make a speech. I'm going to ask my  
6           witness, my client, to do the following: We're here  
7           about a case, you know, where Overstock has sued  
8           Goldman Sachs and I think other defendants. So is  
9           it -- you should answer the questions Mr. Sommer  
10          asks if you have a specific -- because I don't want  
11          this to go all day, this deposition. Answer the  
12          question if you know as to Overstock short sales,  
13          not just sort of general practice over the however  
14          many years you were working for Rocker Partners and  
15          then Copper River.

16                      MR. SOMMER: I appreciate that Mr.  
17          Shapiro would like this to go quickly. I'm trying  
18          to work with him on that. I think Mr. Cohodes is  
19          absolutely certain that his firm asked for locates  
20          as a matter of standard practice. And it is on  
21          point, and I'm not trying to waste his time. And if  
22          we have to argue about everything, it's just going  
23          to make it go longer. But with no further adieu,  
24          let me just try again here.

25          BY MR. SOMMER:

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1           Q.    You have spent most of your working life  
2           involved in short sales of stocks; is that fair to  
3           say?

4           A.    Yes.

5           Q.    And you were a managing partner of  
6           Copper River Partners in 2006, correct?

7           A.    Yes.

8           Q.    Okay.  And as part of shorting a stock,  
9           it was standard practice in your firm to call up  
10          Goldman and ask for a locate before shorting the  
11          stock; isn't that true?

12          A.    Call or email, yes.

13          Q.    And that would be true of whatever stock  
14          you were shorting, whether it was Overstock or some  
15          other stock, right?

16          A.    Yes.

17               MR. SHAPIRO:  And again, the "you" there  
18          he's referring to is the firm.

19               THE WITNESS:  The firm -- and it wasn't  
20          just Goldman; it was whatever firm we did business  
21          with -- it was standard practice, without fail, to  
22          get a locate before we would transact in the stock,  
23          period.

24               BY MR. SOMMER:

25          Q.    And as of the time Copper River changed

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1 names and became Copper River from Rocker Partners,  
2 did you have more than one clearing firm that you  
3 had a business relationship with?

4 A. Yes.

5 Q. Was it just one other one or more than  
6 one?

7 A. I think we did some business with B of A  
8 or whatever it was, or BNP, whatever they morphed  
9 into. People would always try to do business with  
10 us, but we were pretty much loyal to Goldman  
11 throughout the whole thing until the end.

12 Q. Did you sometimes clear trades at Copper  
13 River through this other firm, BNP?

14 A. Yes.

15 Q. Did you have a clearing relationship  
16 with Lehman?

17 A. We had a clearing relationship with  
18 Lehman International, LBIE, I think, offshore.

19 Q. And did you find that sometimes Goldman  
20 was able to provide locates that these other  
21 clearing firms couldn't get for you?

22 MR. FLOREN: Objection, vague and  
23 ambiguous.

24 THE WITNESS: Yes.

25 BY MR. SOMMER:

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1           Q.    And can you explain to me what your  
2           experience was in that regard?

3           A.    You know, at the time, you know, I  
4           thought that the stock loan department at Goldman  
5           was the best in the business by far, that they were  
6           always able to find borrows when others either  
7           couldn't or the borrows were too expensive. And  
8           Goldman to that end was very good. They always  
9           would you know, find borrows.

10                  And that's what we cared about. We  
11           didn't -- it wasn't our business to find out who,  
12           what, where, where do you get it from or this, that  
13           and the other. If they'd say it's okay to short the  
14           stock, we'd short it.

15           Q.    And is that one of the reasons why you  
16           wanted to have Goldman as your clearing firm?

17           A.    Yes. That was the only reason. That  
18           was the only reason.

19           Q.    Did you ever have any discussions with  
20           Mr. Rocker about Goldman engaging in conversion  
21           trades?

22           A.    Yes, yes.

23           Q.    Could you tell me what your  
24           understanding of a conversion trade is?

25           A.    Roughly because I'm -- I haven't

1           practiced this business in a while. You know, a  
2           firm or a market maker would synthetically create a  
3           short position by doing option trades in it, buying  
4           the stock, selling a call or buying a put or this,  
5           that and the other. And by buying the stock, they  
6           could create a borrow off an option trade. It would  
7           leave them essentially market neutral, but it would  
8           create long stock to them so they could lend out the  
9           shares.

10           Q. Did you ever talk to anyone at Goldman  
11           about conversion trades?

12           A. I'm sure. I don't specifically recall  
13           who, what, when, why or where, but I'm sure I did.

14           Q. Do you recall anyone at Goldman  
15           generally informing you that Goldman was acquiring  
16           stock through conversion trades to lend out?

17           MR. FLOREN: Vague and ambiguous.

18           THE WITNESS: No, not specifically, no.

19           BY MR. SOMMER:

20           Q. Do you remember talking to Mr. Conley  
21           about conversion trades?

22           A. Quite possibly, sure.

23           Q. But you don't recall anything specific?

24           A. Specific over --

25           Q. Let me ask it generally. Did he ever

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1 suggest to you that he could get you hard-to-borrow  
2 stock by doing conversion trades?

3 A. Not that I recall in those specific  
4 words, no.

5 Q. Do you recall something more generally  
6 on that topic?

7 A. I really don't as to specifics for this  
8 matter.

9 MR. SOMMER: Exhibit 7.

10 (Deposition Exhibit 7  
11 marked for identification.)

12 THE WITNESS: So you found these emails  
13 without me. I knew you would.

14 BY MR. SOMMER:

15 Q. Exhibit 7, is that an email from you to  
16 William Conley on January 31st, 2005?

17 A. It is.

18 MR. SHAPIRO: It would help me if --

19 MR. SOMMER: This is in the collection  
20 of the 122, just to --

21 MR. SHAPIRO: That would be good. For  
22 each one if you can identify if this is one of the  
23 ones that we are deeming that responds to the Marc  
24 Cohodes subpoena, I think that will help us.

25 BY MR. SOMMER:



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1           Q.    Just to hopefully expedite that, the  
2           ones that are from the depositions that you produced  
3           to Mr. Floren have a CRP-SF Bates number that you  
4           put on it. The 122 pages that we've identified to  
5           you last night just have the CRP markings without  
6           the SF, so the record will reflect that those are  
7           all part of the 122 pages that we sent over to Mr.  
8           Cohodes' counsel.

9           BY MR. SHAPIRO:

10          Q.    Exhibit 7, is that an email from you to  
11          William Conley on January 31st, 2005?

12          A.    Yes.

13          MR. SHAPIRO: If you know.

14          THE WITNESS: Yes. I mean, it's my  
15          email from Bloomberg to him.

16          BY MR. SOMMER:

17          Q.    And do you see in the subject line it  
18          says, "How much NFI can we borrow? How much  
19          Overstock?"

20          A.    Uh-huh, yes.

21          Q.    Okay. And that was something you would  
22          also talk to Mr. Conley about on the phone, how much  
23          stock could you borrow?

24          A.    From time to time.

25          Q.    And then you see in the text it says,

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1        "If the short interest is down on all of these  
2        names, why are they still on SHO?" Do you see that?

3            A.    Yes.

4            Q.    Okay. And were you referring to Reg  
5        SHO?

6            A.    Yes.

7            Q.    And was there a reason you were  
8        interested in knowing that?

9            A.    Yeah.

10           MR. SHAPIRO: If you remember.

11           THE WITNESS: Well, yeah. The reason  
12        we'd want to know it is why are these still on  
13        this -- you know, the SEC put out this Reg SHO  
14        whatever, and it's a function of unable to borrow or  
15        a fail to deliver or whatever the stupid thing is.  
16        And I was just asking if the short interest is down  
17        so much, why are these things still on the list;  
18        that's all.

19        BY MR. SOMMER:

20           Q.    You sort of described it there, but  
21        could you just tell me your general understanding of  
22        what it meant to you for a stock to be on the Reg  
23        SHO list?

24           A.    It was hard to borrow and whatever the  
25        rules of SHO were at the time, Reg SHO, and if you

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1       failed to deliver within five days, you could get  
2       bought in, some -- whatever the rule was.

3               MR. SOMMER:   Exhibit 8.

4               (Deposition Exhibit 8  
5               marked for identification.)

6       BY MR. SOMMER:

7               Q.   Exhibit 8, is that an email you received  
8       from Mr. Conley also on January 31st, 2005?

9               A.   Yes.

10              Q.   Okay.  And he responded to your email  
11     that was Exhibit 7?

12              A.   If that's the order, yes.

13              Q.   And he says in the text":

14                     "They are still on SHO because they have  
15     not reached the criteria to get off the list.  
16     They are still failing positions into CNS."

17                     I'm going to stop there for a second.

18     Did you know what CNS was?

19              A.   I think at the time I did.  I don't know  
20     what it is right now.

21              Q.   And then he goes on to say:

22                     "I can probably get some of each, but  
23     they're going to be expensive borrows and I  
24     don't want you yelling at me about it."

25                     Do you see that?

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1                   A.    Yes.

2                   Q.    Was the borrow rate a point of  
3 contention from time to time in terms of  
4 negotiating --

5                   A.    I'm sure at that point it was.

6                   Q.    Can you describe for me from a trader's  
7 perspective who sells short why the borrow rate is  
8 important in a short sale?

9                   A.    Well, if the borrow rate gets too high  
10 or negative rebate, and I think in these names it  
11 got into the high twenties maybe, it's basically the  
12 interest rate you're paying to borrow the shares on  
13 an annualized basis.

14                   So, for example, not specifically, if we  
15 were short \$10 million worth of Overstock, we'd have  
16 to pay a 28 percent interest rate on it for the  
17 right to borrow those shares.

18                   Q.    And is it correct that in that  
19 hypothetical you just described that the stock would  
20 have to drop 28 percent just for you to break even?

21                   A.    Yeah, on an annualized basis. Again, if  
22 it -- you know, if it was cut by fifty percent the  
23 next day, then it doesn't really matter. But if it  
24 was steady state for the next year, that becomes an  
25 issue.

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1                   MR. SOMMER: I'm going to mark two  
2 exhibits, 9 and 10.

3                   (Deposition Exhibits 9 and 10  
4                   marked for identification.)

5 BY MR. SOMMER:

6                   Q. Exhibit 9, is that an email, again, from  
7 you to Mr. Conley on January 31st, 2005?

8                   A. Yes.

9                   Q. And in the text you say, "Short interest  
10 is down so who is gumming the works," correct?

11                  A. Yes.

12                  Q. And Exhibit 10, do you see there's an  
13 email from Mr. Conley back to you that appears to be  
14 a few minutes later. Was that an email you received  
15 on January 31st, 2005 at 9:46?

16                  A. Yes.

17                  MR. SHAPIRO: Well, that's what the  
18 document says. Do you have any independent  
19 recollection of that?

20                  THE WITNESS: I'm just going by the  
21 exhibit.

22                  MR. SHAPIRO: Okay, just to be clear.

23 BY MR. SOMMER:

24                  Q. And Mr. Conley in the text, do you see  
25 where he says:

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1                   "Don't know our short position in --" and  
2                   there's some redacted text "over the last  
3                   month, and Overstock is up seven percent over  
4                   the last month. Go figure. The decline in  
5                   shorts reported makes no sense in either  
6                   name."

7                   Do you see where I was reading that?

8                   A.    Yes.

9                   Q.    Did you have any -- aside from this  
10                  email, did you have any discussions with Mr. Conley  
11                  about Goldman having a short position in Overstock?

12                  MR. FLOREN: Object to the form of the  
13                  question, vague and ambiguous.

14                  MR. SHAPIRO: And I'm going to object.

15                  MR. FLOREN: And let me finish my  
16                  objection. It seems clear from the document that  
17                  there is no discussion of a -- strike that.

18                  I think it's ambiguous whether that's  
19                  what the document states. There's something  
20                  redacted from it. And for the record, my office had  
21                  nothing to do with the redactions. I don't know  
22                  what those signify, and I would ask that there be  
23                  some clarification about that.

24                  MR. SHAPIRO: Well, I think these are  
25                  documents that we produced, that Copper River

1       produced in the Gradient litigation, and the  
2       redactions would have been put on the documents by  
3       my firm or possibly co-counsel, depending on when it  
4       was produced.

5               My objection is the same. I think you  
6       were characterizing the document. You might not  
7       have been characterizing it clearly, so I wanted the  
8       witness to be clear on what the question actually  
9       asked.

10       BY MR. SOMMER:

11              Q. Let me just point out for benefit of the  
12       record that although Exhibit 10 is redacted, Exhibit  
13       7 appears to show that the redacted text concerns  
14       NFI. I'm not asking about NFI. I'm just clarifying  
15       that for the record.

16              But my question is, you know, it appears  
17       there's a reference here to, quote, "our short  
18       position in," whatever is redacted, "over the last a  
19       month and Overstock is up seven percent over the  
20       last month."

21              Did you have any discussions with  
22       Mr. Conley about Goldman having a short position in  
23       Overstock?

24              MR. FLOREN: Object to the form of the  
25       question, argumentative, misstates the document.

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1                   MR. SHAPIRO: You can go ahead and  
2                   answer that. If you had conversations with  
3                   Mr. Conley --

4                   THE WITNESS: I don't know if I had  
5                   conversations, but what I think this is referring to  
6                   is Goldman had other customers who shorted stocks  
7                   other than just us, and I think this refers to the  
8                   cumulative effort of either Goldman and/or their  
9                   customers away from us. So just because our  
10                  position was down doesn't mean the firm's position  
11                  was down. I think that's --

12                 BY MR. SOMMER:

13                 Q. And by "the firm's position," do I  
14                 understand you right that you mean the position of  
15                 its aggregate clients?

16                 A. Other than us, which could be other  
17                 hedge funds and/or Goldman principally -- others,  
18                 just people other than us. I think that's what that  
19                 means.

20                 Q. Well, then let me ask the question  
21                 differently. Is that the sort of information that  
22                 Goldman would provide to you from time to time, what  
23                 the aggregate position of other Goldman clients was  
24                 in a stock like Overstock?

25                 MR. FLOREN: Object to the form, vague



1           and ambiguous.

2                       THE WITNESS: No, I don't think they  
3           would provide us and say XYZ is short X shares, and  
4           ZCB is short Y shares. They would never do anything  
5           like that.

6                       But I think they would say the aggregate  
7           position. You know, if I asked a question like, "If  
8           overall short interest is down, who's gumming up the  
9           works?" Conley's response is, "Their consolidated  
10          group is up seven percent."

11                      So -- and I think he's professional  
12          enough he would never give out account names or, you  
13          know, principally this, that or the other. They  
14          would never get into specifics. It was more of a  
15          generic conversation.

16          BY MR. SOMMER:

17                      Q. Well, let me -- let me see if this  
18          clarifies.

19                      Exhibit 11.

20                      (Deposition Exhibit 11  
21                      marked for identification.)

22          BY MR. SOMMER:

23                      Q. Let me just tell you that Exhibit 11 is  
24          between David Rocker and John Masterson. I don't  
25          see your name on it, but the reason I show it to you

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1       is it looks like the type of info you were talking  
2       about and I just wanted to make sure from your last  
3       answer I understand what you were talking about.

4               If you look at the email on page 3 second  
5       from the top, you'll see there's an email from  
6       Mr. Masterson that says, "Please check the firm  
7       shorts for the July '05." And if you look in the  
8       email below that, there's a reference to Overstock.  
9       And if you go to the very first email on the first  
10      page where Mr. Masterson emails Mr. Rocker, he says,  
11      "hi, David. Here's a list comparing current shorts  
12      versus September '04."

13             And I just want to understand -- I know  
14      you're not on this, but I want to understanding what  
15      the nature of information was when you described in  
16      your answer before. Are you saying that Goldman  
17      would give you the aggregate position of all Goldman  
18      clients in a stock such as Overstock listed here  
19      when you asked for that information?

20             MR. FLOREN: Object to the form, lacks  
21      foundation.

22             MR. SHAPIRO: You can look at Exhibit 11  
23      if you forgot something and it's going to refresh  
24      your memory.

25             THE WITNESS: Exhibit 11 doesn't do

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1 anything for me, and I would never go through the  
2 granularity of David. Now it would be just more  
3 general interest. And I've never seen anything like  
4 this or I don't even know these players.

5 BY MR. SOMMER:

6 Q. I understand. I'm just trying to  
7 figure -- let me try to ask it this way: Would  
8 Mr. Conley tell you in substance, "The firm shorts  
9 in Overstock are two and a half million shares"?

10 A. No.

11 MR. FLOREN: Same objection.

12 THE WITNESS: No, not to me.

13 BY MR. SOMMER:

14 Q. Is that something you would have wanted  
15 to know?

16 A. I could care less.

17 MR. SOMMER: Exhibit 12.

18 (Deposition Exhibit 12  
19 marked for identification.)

20 BY MR. SOMMER:

21 Q. Actually, I'm sorry. We'll skip Exhibit  
22 12. I thought that was from you. That's my  
23 mistake.

24 MR. SHAPIRO: Return it?

25 MR. SOMMER: You can keep it in the

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1           stack. We'll just skip over it. I just misread it.

2                       THE WITNESS: Can I talk to you for a  
3           second?

4                       MR. SHAPIRO: Yes. We'll step out.

5                       THE VIDEOGRAPHER: Going off the record,  
6           12:54.

7                       (Brief recess.)

8                       THE VIDEOGRAPHER: Going back on the  
9           record 12:57 p.m.

10                      MR. SOMMER: Exhibit 13, Exhibit 14.

11                      (Deposition Exhibits 13 and 14  
12                      marked for identification.)

13           BY MR. SOMMER:

14                      Q. Exhibit 13, is that an email from you to  
15           William Conley on March 2nd, 2005?

16                      A. Yes.

17                      Q. And in the subject it says, "So who are  
18           the guys failing in NFI? Overstock? That keep this  
19           on the SHO list?" Do you see that?

20                      A. Yes.

21                      MR. SHAPIRO: I'm sorry, how did you  
22           read that? Who are the guys --

23           BY MR. SOMMER:

24                      Q. "So who are the guys failing in NFI?  
25           Overstock? That keep this on the SHO list?"

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1                   MR. SHAPIRO: Got it. Actually, it  
2 doesn't say -- oh, you're looking at 13. I'm sorry,  
3 I'm sorry.

4                   MR. SOMMER: Thirteen.

5 BY MR. SOMMER:

6                   Q. Was this a subject of continuing  
7 interest to you, why Overstock was on the SHO list?

8                   MR. SHAPIRO: I'm going to object to the  
9 lack of foundation.

10                  MR. FLOREN: Vague and ambiguous.

11                  THE WITNESS: But answer it?

12                  MR. SHAPIRO: Answer it, yes, about  
13 Overstock.

14                  THE WITNESS: Yes. I mean, we wanted to  
15 know why, if the short positions were in the  
16 aggregate or ours were going down, why would it  
17 still be on this stupid list?

18 BY MR. SOMMER:

19                  Q. And did you ever get any answer that you  
20 recall from Mr. Conley as to why it was on the list?

21                  MR. FLOREN: Same objections.

22                  THE WITNESS: Not that I recall right  
23 now, no.

24 BY MR. SOMMER:

25                  Q. If you look at Exhibit 14, is that an

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1 email from Mr. Conley to you that same day, March  
2 2nd, 2005?

3 A. Uh-huh.

4 Q. Yes?

5 A. Yes.

6 Q. And he writes to you, "CNS does not  
7 disclose that. NFI has tightened up in the last few  
8 days."

9 Do you see that?

10 A. Yes.

11 Q. Was that essentially the response that  
12 you recall getting, was that it was unknown to  
13 Goldman why Overstock was on the Reg SHO list?

14 MR. FLOREN: Objection, vague and  
15 ambiguous, misstates the document.

16 THE WITNESS: I don't know. I just  
17 don't know.

18 BY MR. SOMMER:

19 Q. Did Mr. Conley ever tell you that any  
20 Goldman-affiliated entity did not make delivery on  
21 market maker trades?

22 A. Never.

23 Q. Did he ever tell you that Goldman did  
24 make delivery on market maker trades?

25 MR. FLOREN: Objection, vague and

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1           ambiguous, lacks foundation, argumentative,  
2           misstates the record as to Goldman Sachs & Co.

3                       THE WITNESS: He wouldn't tell me  
4           anything one way or the other which, you know, I  
5           view as totally appropriate.

6                       MR. SOMMER: Exhibit 15.

7                       (Deposition Exhibit 15  
8                       marked for identification.)

9           BY MR. SOMMER:

10                    Q. Exhibit 15, is that an email from Phil  
11           Renna to you on August 12th, 2005?

12                    A. Yep, yes.

13                    Q. Okay. And do you see it refers to term  
14           rates for Overstock beginning August 15th, 2005?

15                    A. Yes.

16                    Q. Okay. Did you sometimes borrow  
17           Overstock shares for a fixed term as opposed to day  
18           to day?

19                    A. From time to time.

20                    Q. Okay. And where it says Overstock minus  
21           15, would that be the borrow rate minus 15?

22                    A. Yes.

23                    Q. And do you have any -- in your  
24           experience, would the borrow rate be higher or lower  
25           if it was for a term as opposed to day to day?

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1           A.    It should be lower.

2           Q.    Did you negotiate rates or did Goldman  
3 just say, "This is the borrow rate and that's what  
4 it is"?

5           MR. FLOREN:  Objection, vague and  
6 ambiguous.

7           MR. SHAPIRO:  I'll object to the form  
8 too.

9           THE WITNESS:  How do I answer this?  
10 Well, I view stock loan sort of as the mafia and  
11 it's a black box where you don't know people's  
12 inputs and costs and it was sort of, "Here's the  
13 rate.  If you want to borrow it, this is the rate."  
14 And it is what it is.

15           The problem with stock loan when I was in  
16 the business was that more than once when we  
17 initially took a position -- and this is also the  
18 case with Overstock -- there was never a borrow  
19 issue and there was no rate.

20           If anything, the rate was zero or a  
21 positive rebate.  And then as time went on and/or a  
22 position got bigger, the rate would get jacked up on  
23 us, which we found to be, one, very expensive and,  
24 two, horrific.

25           So our cost of doing business in a



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1 particular name would go from not costing us  
2 anything to costing us tens of millions of dollars.  
3 So rate would become a problem.

4 BY MR. SOMMER:

5 Q. And if rates got to be high enough, you  
6 would have to consider covering your position,  
7 right?

8 A. Exactly.

9 MR. SOMMER: Exhibit 16.

10 (Deposition Exhibit 16  
11 marked for identification.)

12 BY MR. SOMMER:

13 Q. Exhibit 16, is this an email exchange on  
14 October 14th, 2004 between you and Donn Vickrey?

15 A. It would appear to be that.

16 Q. Can you tell me who -- what your  
17 relationship to Donn Vickrey was as of October 2004?

18 A. The only thing I know about Vickrey is  
19 that he was a principal of Gradient Analytics, which  
20 we were a customer of. That's what I know.

21 Q. Okay. And did you understand their  
22 business to be providing hedge funds such as yours  
23 with research reports?

24 A. Yes, to customers, yep.

25 Q. Okay. And do you see in the email below

1           it says in the text to you:

2                       "Got more in the large trades yesterday  
3                       and today. As it turns out, yesterday there  
4                       was one long selling off the Cincinnati  
5                       exchange for 200K plus shares, and 15- to 20K  
6                       trades. Same thing appears to have happened  
7                       today. Not sure if it was one large trade or  
8                       several smaller trades, but I think there's a  
9                       big long who's selling out."

10                      Do you see where I was reading?

11                      A. Yes.

12                      Q. Did you have a way -- you personally as  
13                      a trader have a way to see trades being posted on an  
14                      exchange like the Cincinnati Exchange in Overstock?

15                      MR. FLOREN: Object to the form, and  
16                      also lacks foundation and misstates the document.

17                      MR. SHAPIRO: I join in that objection.

18                      THE WITNESS: In this email he's talking  
19                      about large trades in NFI, so that's not Overstock.  
20                      Two, I'm not a trader; I'm an analyst and portfolio  
21                      manager. And three, I know people would have a way  
22                      to see trades, but that was something I didn't see  
23                      and didn't care about.

24                      BY MR. SOMMER:

25                      Q. I'm going to show you Exhibit 17.

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1 (Deposition Exhibit 17  
2 marked for identification.)

3 BY MR. SOMMER:

4 Q. Exhibit 17 is an email between your  
5 partner, David Rocker, and Mr. Conley at Goldman,  
6 and it appears to include an email that says:

7 "A large trade in Overstock went on in  
8 the Midwest at 10:21 a.m. Can you give me  
9 some color on this. No other trade came close  
10 in volume."

11 Do you see where I was looking at?

12 A. Yes.

13 Q. Were you familiar with the Midwest Stock  
14 Exchange in 2005?

15 A. I know what it is.

16 Q. Would you talk to David Rocker about  
17 trades that he would see on the Midwest Stock  
18 Exchange?

19 A. No.

20 MR. FLOREN: Vague and ambiguous, lacks  
21 foundation.

22 THE WITNESS: No.

23 BY MR. SOMMER:

24 Q. I guess what I'm trying to ask you is,  
25 do you have any understanding of how Mr. Rocker

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1           would be able to see a trade in Overstock in the  
2           Midwest?

3                   A.    No.  He's squirrely like that.  He  
4           fashions himself as a trader.  I could care less  
5           about Midwest and trades and the whole thing.  It's  
6           noise to me.

7                   MR. SOMMER:  Exhibit 18.

8                           (Deposition Exhibit 18  
9                           marked for identification.)

10          BY MR. SOMMER:

11                   Q.    Exhibit 18, is that an email from Ben  
12          Marsh to you on May 26, 2006?

13                   A.    It would appear that way.

14                   Q.    And was Ben Marsh somebody you knew at  
15          this time?

16                   A.    Yes, yes.

17                   Q.    Could you tell me generally what you  
18          understood his job to be at this point?

19                   A.    I think he was the guy -- he is the guy  
20          who covered us from whatever outfit this is, BTG  
21          maybe.

22                   Q.    Have you ever heard of Baypoint Trading?

23                   A.    Not as I sit here today, but I probably  
24          would have heard of it years ago.

25                   Q.    Did you know whether BTIG was shorting

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1 Overstock at this time?

2 MR. FLOREN: Objection, calls for  
3 speculation, lacks foundation.

4 THE WITNESS: I have no clue.

5 BY MR. SOMMER:

6 Q. That's not something Ben Marsh told you?

7 A. No.

8 MR. SOMMER: Exhibit 19.

9 (Deposition Exhibit 19  
10 marked for identification.)

11 BY MR. SOMMER:

12 Q. Is Exhibit 19 an email from David  
13 Scially at Kingsford Capital to you on March 8th,  
14 2005?

15 A. Yes.

16 Q. And do you know -- you knew at that time  
17 Mr. Scially quite well, correct?

18 A. Yes.

19 Q. And did you know him to be somebody who  
20 specialized in short selling?

21 A. Yes.

22 Q. And he's somebody who lived near you in  
23 Ross, California; is that right?

24 A. Yes.

25 Q. And he was someone who you knew was

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1 shorting Overstock, is that right, at this time?

2 A. I didn't know he was shorting Overstock  
3 specifically, no.

4 Q. Did you talk with him from time to time  
5 about Overstock in this time frame of 2005?

6 A. Probably.

7 Q. Was there a reason why you would talk to  
8 him about Overstock other than shorting the stock?  
9 I mean, is the reason why you talked to him because  
10 you both were shorting the stock? That's my  
11 question.

12 A. Well, yeah. And the guy who runs  
13 Overstock is kind of a -- what's the word --  
14 colorful figure, so it would be a topic of  
15 conversation.

16 Q. And did he say to you, "Hey, I'm going  
17 to short Overstock. It's a good short"?

18 A. I don't remember. I don't know. It  
19 doesn't work like that.

20 Q. You don't talk about your positions with  
21 other traders you know in the industry?

22 A. You know that answer. I testified to  
23 that in the last suit. No.

24 Q. Is it correct that -- strike that. Just  
25 give me one minute here.

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1                   Is it correct that Copper River wound up  
2                   its operations in 2008?

3                   A.    If that's the year, yes.   I know we  
4                   wound up operations.

5                   Q.    And is it correct that Copper River was  
6                   sued by Overstock in 2005?

7                   A.    If that's the year we were sued.

8                   Q.    Okay.   Do you recall being -- that  
9                   Copper River was sued by Overstock?

10                  A.    Yes, I recall that.

11                  Q.    Okay.   And Copper River filed a  
12                  cross-complaint against Overstock in that lawsuit.  
13                  Do you recall that?

14                  A.    Yes, yes.

15                  Q.    And you were deposed in that case,  
16                  correct?

17                  A.    Yes.

18                  Q.    And Copper River paid \$5 million to  
19                  Overstock as settlement in this case; is that  
20                  correct?

21                  A.    That's what I recall.

22                  Q.    And as you sit here today, you don't  
23                  have any reason to want to help Overstock, do you?

24                  A.    Oh, absolutely not.

25                  Q.    You don't have any particular affection

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1           for Overstock, do you?

2                   A.    I can't stand them.

3                   Q.    Okay.  And you don't have any particular  
4 affection for Patrick Byrne, do you?

5                   A.    I feel sorry for him because I think  
6 he's crazy.

7                   Q.    You don't want to help him out in any  
8 particular way, do you?

9                   A.    No.

10                  MR. SOMMER:  Give me one minute.

11                           I've got about ten more minutes if we  
12 can make it through without a break.

13                  MR. SHAPIRO:  That's fine with me.  I'll  
14 leave it to Marc.

15                  THE WITNESS:  I'm fine.

16                  MR. SOMMER:  Okay.  Just let me know if  
17 you need a break.  I take that as a no.

18                           Exhibit 20.

19                           (Deposition Exhibit 20

20                                   marked for identification.)

21 BY MR. SOMMER:

22                   Q.    Exhibit 20, is that an email from you to  
23 David Rocker on July 7, 2004?

24                   A.    Yes.

25                   Q.    Okay.  And you wrote, "Clearly Overstock



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1           has to be drilled," correct?

2           A.    Yes.

3           MR. SOMMER:   Exhibit 21.

4                   (Deposition Exhibit 21

5                   marked for identification.)

6       BY MR. SOMMER:

7           Q.    Exhibit 21, is that an email from you to  
8       David Rocker on July 19th, 2004?

9           A.    Yes.

10          Q.    Okay.  And you write to him, "These guys  
11       at Overstock... have to buy the farm," correct?

12          A.    Yes.  Exhibit 22.

13                   (Deposition Exhibit 22

14                   marked for identification.)

15       BY MR. SOMMER:

16          Q.    Is that an email from you to David  
17       Rocker on August 27th, 2004?

18          A.    Yes.

19          Q.    Okay.  And it refers to speaking to  
20       someone named Robert Hanson at the SEC, correct?

21          A.    Yes.

22          Q.    Is that someone you talked to about  
23       Overstock?

24          A.    Yes.

25          Q.    And were you hoping that the SEC would

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1           investigate Overstock?

2                   A.    Yes.

3                   MR. SOMMER:   Exhibit 23.

4                           (Deposition Exhibit 23

5                               marked for identification.)

6       BY MR. SOMMER:

7                   Q.    Is that an email from David Rocker to  
8       you on August 22nd, 2004, Exhibit 23?

9                   A.    Yes.

10                   MR. SHAPIRO:   Well, again, I mean, for  
11       look through all of these.   The document speaks for  
12       itself.   We produced it.   It came from Copper River,  
13       if you want us to authenticate it, but I don't know  
14       if he specifically remembers the email.

15                   THE WITNESS:   He said is this an email  
16       from him and I said yeah.

17                           (Discussion off the record.)

18       BY MR. SOMMER:

19                   Q.    And Mr. Rocker writes, "The Overstock  
20       guy wants to get into a fight.   Well, he has.   I'm  
21       in kill mode," correct?

22                   A.    Yes.

23                   Q.    Do you recall Mr. Rocker being in kill  
24       mode?

25                   A.    I mean, that's --

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1                   Q.    What's kill mode for Mr. Rucker, to your  
2                   understanding?

3                   A.    It just means he's upset.  He barks a  
4                   lot.

5                   MR. SOMMER:  Exhibit 24.

6                   (Deposition Exhibit 24  
7                   marked for identification.)

8                   BY MR. SOMMER:

9                   Q.    Is that an email from you to Mr. Rucker  
10                  on the same day as Exhibit 23, October 22nd, 2004?

11                  A.    Yes.

12                  Q.    And you write:

13                        "You are way too defensive.  We'll make a  
14                       pile on Overstock.  Just next time listen  
15                       instead of ask."

16                       Is that right?

17                  A.    Yes.

18                  Q.    Can you tell me what you meant by,  
19                  "We'll make a pile on Overstock"?

20                  A.    It probably means it's going to go down  
21                  or fall part, and hopefully we'd make.

22                  MR. SOMMER:  Okay.  And Exhibit 25.

23                  (Deposition Exhibit 25  
24                  marked for identification.)

25                  BY MR. SOMMER:

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1                   Q.    Is that an email from you to Donn  
2                   Vickrey of Gradient Research on October 25th, 2004?

3                   A.    Yes.

4                   Q.    And you wrote:

5                               "I would fly out and visit the SEC with  
6                   all of your Overstock data. The guy wants to  
7                   mess around. Well, there you go," correct?

8                   A.    Yes.

9                   Q.    And by "the guy," did you mean Patrick  
10                  Byrne?

11                  A.    I assume.

12                  Q.    And were you encouraging Mr. Vickrey to  
13                  fly out and talk to the SEC about Overstock?

14                  A.    Yes.

15                  Q.    Okay. Gradient Research at this time  
16                  was writing negative analyst reports about  
17                  Overstock; is that your recollection?

18                  A.    I don't -- you know, it's a long time  
19                  ago. I don't recall timeline stuff.

20                  Q.    Do you recall generally that Gradient  
21                  Research wrote a number of negative research reports  
22                  on Overstock?

23                  A.    In some period of time, yes.

24                  Q.    And you talked to Mr. Vickrey about  
25                  those reports from time to time; is that true?

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1                   MR. SHAPIRO: Well, I'm going to object,  
2                   because you know, we had a lawsuit. So I think you  
3                   need to lay a foundation for when he looked at those  
4                   reports.

5                   BY MR. SOMMER:

6                   Q. Well, as the reports -- I'm not trying  
7                   to relitigate a past case; I'm just asking you  
8                   generally --

9                   MR. SHAPIRO: No, I'm not suggesting you  
10                  are. What I'm saying is you're assuming -- I think  
11                  your question is did he look at the reports at the  
12                  time they were being written, but what I'm objecting  
13                  to is that he may not have been made aware of this  
14                  litigation because there was a lot of litigation  
15                  over those reports.

16                  MR. SOMMER: Well, let me just ask it  
17                  again. Let's just back up.

18                  BY MR. SOMMER:

19                  Q. You recall reading some of the Gradient  
20                  Research reports as a client of Gradient, correct?

21                  A. After they were published. That was  
22                  another point of contention, right.

23                  Q. And the reports that you read, you read  
24                  them at the time they were published long before the  
25                  litigation, right? I mean as they came out, you

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1 read them; is that right?

2 A. I think I did. But then at some point I  
3 remember just not reading anymore. I lost -- it  
4 became a David Vickrey obsession and I lost interest  
5 quickly.

6 Q. Do you recall that Gradient retracted  
7 some of its statements in its report about  
8 Overstock?

9 MR. FLOREN: Objection, vague and  
10 ambiguous.

11 THE WITNESS: You know, I don't really  
12 recall, no.

13 MR. SOMMER: I'll pass the witness.

14 MR. FLOREN: Why don't we take a lunch  
15 break, if that's okay. I'm going to have more than  
16 an hour's worth of questions.

17 THE VIDEOGRAPHER: Going off the record  
18 1:26 p.m., end of tape a two.

19 \* \* \*

20 (LUNCHEON RECESS)

21 \* \* \*

22

23

24

25

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AFTERNOON SESSION

2:27 P.M.

THE VIDEOGRAPHER: Going back on the  
record 2:26 p.m., start of tape three.

EXAMINATION

BY MR. FLOREN:

Q. Mr. Cohodes, as you understand, you're  
still under oath, correct?

A. Yes, sir.

Q. And you and I have never met before  
today; is that right?

A. Right.

Q. You described yourself as an analyst and  
portfolio manager. Is that what you would describe  
as your profession during the 2004 to 2007 period?

A. Yes.

MR. SOMMER: Objection, misstates prior  
testimony.

BY MR. FLOREN:

Q. What would you describe your profession  
as during the 2004 to 2007 period?

A. A portfolio manager and analyst of  
equities.

Q. "Equities" meaning stocks?

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1                   A.    Yeah, stocks.

2                   Q.    And generally speaking, does that mean  
3                   you were in the investment management business?

4                   A.    Yes, sir.

5                   Q.    And generally speaking, what were your  
6                   principal functions as an analyst and portfolio  
7                   manager during the '04 to '07 period?

8                   A.    I would analyze and find companies that  
9                   I thought were great shorts and occasionally find  
10                  some that were longs. I would manage the risk of  
11                  the fund, the positions of the funds, invested  
12                  exposure of the funds of the various Copper River  
13                  funds when it was developed. Prior to that, I would  
14                  share some duties with David Rocker.

15                  Q.    Were your responsibilities essentially  
16                  the same when it was -- the firm was known as Rocker  
17                  Partners except that you shared some duties with  
18                  David Rocker?

19                  A.    Yes.

20                  Q.    You said some investments were longs.  
21                  What did you mean by that?

22                  A.    We owned some stocks as well as shorts.  
23                  They were short by us but weren't all short.

24                  Q.    So you had some positions where you  
25                  bought the stock and the goal was to identify a good



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1 investment opportunity of a stock that would go up  
2 in value?

3 A. Yes.

4 Q. Whereas with the short investments, the  
5 goal is to identify a stock that you believe is over  
6 valued and is going to fall?

7 A. Yes, more we would focus on something we  
8 would call fads, frauds and failures.

9 Q. What do you mean by you'd focus on fads,  
10 frauds and failures?

11 A. Well, a fad would be something -- you  
12 know, a fad would be something like the Taser, which  
13 is a stun gun; or in Iomega's case, the Zip Drive,  
14 so something that would get hot and then fizzle out.

15 A fraud would be something like Bernard  
16 Housby or Krispy Kreme, AAIPharma.

17 And a failure would just be a bad  
18 business model: Subprime lending, distribution of  
19 records and CDs, Yellow Pages, just a business that  
20 gets outdated and goes away.

21 Q. When did you first start working as an  
22 analyst and portfolio manager?

23 A. I started at the Northern Trust Company  
24 in 1982 and then joined Rocker Funds in 1985.

25 Q. So was Northern Trust your first job out

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1           of college?

2                   A.    Yes.

3                   Q.    And what did you do at Northern Trust?

4                   A.    I managed personal trust accounts at the  
5           bank.

6                   Q.    And so from 1985 is when you joined  
7           Rocker Partners. That was in New York, correct?

8                   A.    Yes.

9                   Q.    And you were with that firm from then  
10          until you shut down the firm in about late 2008?

11                  A.    2008, yep.

12                  Q.    Is that right?

13                         How many -- and the management firm of  
14          Rocker Partners, was that called Rocker Management?

15                  A.    Yes.

16                  Q.    So you were an employee and then a  
17          principle of that firm?

18                  A.    Yes.

19                  Q.    And eventually the top guy when  
20          Mr. Rocker retired?

21                  A.    Yes.

22                  Q.    Just for simplicity I'm going to call  
23          that "Rocker Management," if that's all right?

24                  A.    Fine.

25                  Q.    It's the same firm as Copper River

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1 Management that was renamed in the middle of 2006;  
2 is that right?

3 A. Yes.

4 Q. How many different underlying funds  
5 did -- approximately did Rocker Management manage  
6 over the years that you were employed there?

7 MR. SHAPIRO: Are you asking from 1985  
8 to 2008?

9 MR. FLOREN: Right, just best estimate.

10 THE WITNESS: Somewhere between seven  
11 and ten.

12 BY MR. FLOREN:

13 Q. And are those underlying funds called  
14 hedge funds, or is there a term that you would use  
15 to describe them?

16 A. Anyone who has a margin account is  
17 considered a hedge fund, so I guess, you know it's  
18 as good as any characterization.

19 Q. Well, what did you consider them, just  
20 funds.

21 A. Yes, well, we're a hedge fund, but  
22 there's different funds under -- some are domestic,  
23 some are offshore, some are short only, some are  
24 short -- you know, short buyer hedge funds. I guess  
25 that's a safe assumption.

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1           Q.    Now, by 2005, did you consider yourself  
2           to be an expert in managing short positions?

3           A.    In 2005?  I don't know what --  I don't  
4           view myself as an expert of much, but I think I know  
5           what I'm doing.

6           Q.    You had been doing it for -- had you  
7           been managing short positions for 20 years as of  
8           2005?

9           A.    Yes.

10          Q.    When you left -- what did you do after  
11          you shut down Copper River?  What have you done  
12          since then?

13          A.    I'm a chicken farmer, I run a horse  
14          facility, and I grow fruit.

15          Q.    And where do you do that?

16          A.    In Sonoma County.

17          Q.    Do you have a farm up there?

18          A.    Yes.

19          Q.    So you've been out of the investment  
20          management business since the end of 2008; is that  
21          correct?

22          A.    Yes.

23          Q.    Okay.  I'm going to ask you some  
24          questions primarily focusing on the 2004 to 2007  
25          time period.

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1           A.    Okay.

2           Q.    If I want to get more specific, I'll ask  
3           you about a more specific period.  So this is --  
4           just for frame of reference, the period begins in  
5           '04, which the record shows is when Rocker  
6           Management first placed a short sale of Overstock,  
7           and ends in 2007, which is a year before the events  
8           you testified earlier about that led to the closure  
9           of the firm?

10          A.    Okay.

11               MR. FLOREN:  Exhibit 26.

12               (Deposition Exhibit 26  
13               marked for identification.)

14   BY MR. FLOREN:

15           Q.    Sir, I just handed you Exhibit 26, which  
16           is a document produced to us by your counsel.  It  
17           appears to be an organization chart for Copper River  
18           Management --

19          A.    Yes.

20           Q.    -- LLC.  And I'd like to just ask you  
21           questions about this chart in relation to what's  
22           been marked as Exhibit 1 to your right there or to  
23           your left, excuse me.

24               (Mr. Griffin enters room.)

25               Can you tell from looking at these two

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1 documents approximately what the dates of the two of  
2 them are in terms of your best estimate of what time  
3 frame they refer to? Why don't we start with  
4 Exhibit 26.

5 A. Yes.

6 Q. For example, on the top of the page, it  
7 says:

8 "Please note that effective April 2006,  
9 David A. Rocker is no longer involved with the  
10 management of the portfolios and will be  
11 retiring January 2007," correct.

12 A. Yes.

13 Q. Was this document, Exhibit 26, one of  
14 your org charts at your firm at the time?

15 A. I'm sure. It looks familiar.

16 Q. And there's someone named Michelle  
17 Blahnik who is shown there as an analyst --

18 A. Mike Blahnik?

19 Q. Oh, Michael, I'm sorry -- starting in  
20 June of '06.

21 A. Yes.

22 Q. Is it fair to say that this document is  
23 dated sometime between approximately then and the  
24 end of the year '06?

25 A. Yes.

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1           Q.    I notice on Exhibit 1 there's additional  
2           folks, and it's a more detailed org chart.  It  
3           appears to have on the first page, for example, a  
4           Richard Sauer who started in October of '06; is that  
5           right?

6           A.    Yes.

7           Q.    Do you know what the date -- was Exhibit  
8           1 prepared in '06 or was it sometime after, if you  
9           know?

10          A.    Well, it started after -- it was set up  
11          after 10/1/06.  That, I know.

12          Q.    Actually, now that I'm looking at it, I  
13          actually see on the bottom line, bottom part of  
14          Exhibit 1, Jerome Souza it says started February of  
15          '08, correct?

16          A.    Yes.

17          Q.    So is that consistent with your  
18          recollection that Jerome Souza was somebody that  
19          your firm hired in 2008?

20          A.    Yes.  I hired him.

21          Q.    So Exhibit 1, then, is a document  
22          created in 2008; is that right?

23          A.    I would assume.

24          Q.    Well, you didn't prepare any org charts  
25          after 2008, did you?

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1           A.    I personally didn't prepare any to begin  
2           with either.  You know, Phil or one of the New  
3           Jersey people created it.

4           Q.    So looking at Exhibit 26 --

5           A.    Uh-huh.

6           Q.    -- at the top of the page it describes  
7           four funds, correct?

8           A.    Yes.

9           Q.    Were those the four funds that were  
10          being managed by Copper River Management as of mid  
11          2006 when Exhibit 26 was created?

12          A.    I'm sure, yes.

13          Q.    And can we refer to those funds  
14          generally as either the Rocker Funds or the Copper  
15          River funds?

16          A.    Sure.

17          Q.    All of those funds were started when the  
18          firm was known as Rocker Management, correct?

19          A.    Yes.

20          Q.    Is the biggest one the Copper River  
21          Partners fund which used to be known as Rocker  
22          Partners?

23          A.    I think the biggest one turned out to be  
24          Compass Holdings, which is the offshore fund.

25          Q.    What does it mean for a fund to be an



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1 offshore fund?

2 A. Foreign investors.

3 Q. And was it your firm's -- strike that.

4 Your firm dealt with all the investors in  
5 the funds, correct?

6 A. Yes.

7 Q. What's your best estimate of the total  
8 assets that were in all of the Rocker Funds and  
9 Copper River funds in about the 2005 to 2006 period?

10 A. I don't know, maybe a billion.

11 Q. And were the -- were those funds owned  
12 by the various investors in the respective  
13 underlying funds that are shown on Exhibit 26?

14 A. Yes.

15 Q. And did those investors include public  
16 pension funds?

17 A. Yes.

18 Q. Did they include private pension funds,  
19 private companies?

20 A. Yes.

21 Q. Did they include other types of  
22 institutional investors?

23 A. All types.

24 Q. So can you just give us, without getting  
25 into the specific identities of the clients, what

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1 types of investors were in those funds -- were in  
2 the funds under Copper River and Rocker's management  
3 in the '05-'06 period?

4 A. Endowments, pensions, charitable, high-  
5 net-worth individuals, investment firms, fund to  
6 funds; and offshore, the same.

7 Q. And were you and your partners at Rocker  
8 Management also personally invested in the funds?

9 A. Yes, uh-huh, yes.

10 Q. Did anyone other than the investors in  
11 the funds and your management firm have any  
12 financial interest in any of the Rocker Funds or the  
13 Copper River funds?

14 A. No.

15 Q. To your knowledge, was any Goldman Sachs  
16 entity or affiliate ever an investor in any of the  
17 Rocker or Copper River funds during '04 to '07?

18 A. I don't think there were an investor,  
19 no.

20 Q. If the Rocker Funds made money on any of  
21 their investments during this period, was any of  
22 that profit shared with any Goldman Sachs entity, to  
23 your knowledge?

24 A. No.

25 Q. And if the Rocker Funds lost money on

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1           their investments during that period, did any of  
2           that loss have to be taken by Goldman Sachs or its  
3           affiliates, to your knowledge?

4           A.    No.

5           Q.    Looking back at Exhibit 26 for a moment,  
6           which is still in front of you --

7           A.    Uh-huh.

8           Q.    -- is this -- to your knowledge, is this  
9           a complete list of all of the employees of the firm  
10          as of sometime in '06?

11          A.    It looks pretty good to me.

12          Q.    So I count 15 folks on there.

13          A.    Uh-huh.

14          Q.    And looking at Exhibit 1, which appears  
15          to be the 2008 org chart, it looks like you by then  
16          had 18 people, if I've counted correctly.

17          A.    Yes.

18          Q.    Where was Rocker Partners founded, if  
19          you know?

20          A.    I'm confused. What do you mean,  
21          founded?

22          Q.    Where was its first offices when the  
23          firm was created, if you know?

24          A.    New York City.

25          Q.    How do you know that?

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1                   A.     Because I was there.

2                   Q.     How did the firm come to have offices in  
3 different places over the years, just generally  
4 speaking? Why did it move out of New York?

5                   A.     Because David is a New Jersey resident,  
6 Phil is a New Jersey resident, and they wanted to be  
7 closer to home.

8                   Q.     So I'm sorry, you said Phil?

9                   A.     Phil Renna.

10                  Q.     And Mr. Renna was the chief financial  
11 officer of the firm, correct?

12                  A.     Yes.

13                  Q.     Were most of the employees of Rocker  
14 Management and Copper River Management in New Jersey  
15 during 2005 to 2006?

16                         MR. SOMMER: Objection, vague.

17                         THE WITNESS: Can you rephrase that?

18 BY MR. FLOREN:

19                   Q.     Sure.

20                   A.     Or just reask it?

21                   Q.     Yes. During the '05 to '06 period, were  
22 most of Copper River Management's and Rocker  
23 Management's employees in New Jersey?

24                         MR. SOMMER: Objection, vague.

25                         THE WITNESS: Yes. Well, in California

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1           we had one.

2           BY MR. FLOREN:

3                   Q.    You're referring to Exhibit 21 right  
4           now, which is --

5                   MR. SHAPIRO:   Exhibit 1.

6                   THE WITNESS:   I remember when David  
7           left, I hired more people.   But in your period, in  
8           California there was one, two, three, four -- there  
9           were four.   In New Jersey, there were one, two,  
10          three, four, five, six, seven, eight.   And in --  
11          Russell Young was between New Jersey and California,  
12          so he was an analyst.   And then in Massachusetts  
13          there were two.   So yes, the majority were in New  
14          Jersey.

15          BY MR. FLOREN:

16                   Q.    And during that period of '05 and '06,  
17          did Mr. Rocker work anywhere other than the New  
18          Jersey office?

19                   A.    No.

20                   Q.    So looking at Exhibit 26 --

21                   A.    Uh-huh.

22                   Q.    -- it describes you as the president and  
23          portfolio manager.

24                   A.    Yes.

25                   Q.    And then there are several folks

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1           underneath you who are described as principals.

2                   A.    Uh-huh.

3                   Q.    Does "principal" mean they're partner of  
4           the firm?

5                   A.    Yes.

6                   Q.    And you were also a partner obviously,  
7           right?

8                   A.    Yes, right.

9                   Q.    So at this point it looks like one, two,  
10          three, four -- five partners, is that correct, in  
11          2006? Kathy Longinotti, Phil Renna --

12                  A.    Yes. I made Russel a partner; I brought  
13          in Richard Sauer in 2006 as a partner; Kathy  
14          retired -- she was a partner -- and I made Steve  
15          Tsimbinos a partner, so...

16                  Q.    Okay. What's the difference between  
17          your job as portfolio manager versus Mr. Montgomery,  
18          Mr. Warzecha, Mr. Lynde and Mr. Blahnik's as  
19          analysts or senior analysts?

20                  A.    Those guys all looked at and analyzed  
21          companies and made recommendations to me as the  
22          manager, and I determined what to be involved in or  
23          what not to be involved in.

24                  Q.    And then there's -- the next line on the  
25          org chart, Exhibit 26, has two people identified as

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1 traders, correct?

2 A. Yes.

3 Q. What was the -- and that's Carol Ju and  
4 Andre Ameer?

5 A. Uh-huh, yes.

6 Q. What is the function of the job and  
7 responsibility of the Rocker Management and Copper  
8 River Management traders in the 2005, 2006?

9 A. They secured locates in the case of  
10 short sales and executed trades, allocated it to the  
11 various accounts. They did what, you know, traders  
12 do. They were traders.

13 Q. What else do traders do, generally  
14 speaking, to your understanding?

15 A. Well, they trade stocks; they reconcile  
16 trades to make sure everything was reported  
17 correctly; they secure borrows; they sometimes take  
18 calls from brokerage firms on what people are  
19 buying, what people have to buy and sell; they take  
20 research calls. That's sort of the job description  
21 of a trader.

22 Q. And is that the job description of your  
23 traders at your firm during '05 and '06?

24 A. Yeah, pretty much.

25 Q. And were those folks located in New

1 Jersey?

2 A. Yes.

3 Q. Did Rocker Management or Copper River  
4 Management have any traders in California during  
5 2005 to 2006?

6 A. No.

7 Q. And actually, did you ever have any  
8 traders in California?

9 A. No.

10 Q. Were you ever a trader for Rocker  
11 Management?

12 A. No.

13 Q. Can you describe how your responsibility  
14 as a portfolio manager and analyst differed from  
15 that of a trader within your firm?

16 A. Yeah. I would make buy-sell decisions,  
17 like, "Buy 100,000 shares of Intel." I'd give it to  
18 a traders and it's the trader's job to buy Intel as  
19 efficiently as possible.

20 You know, a trader I think views their  
21 value-added as buying something without moving the  
22 price and selling the stock without moving the  
23 price. Then you're a good trader. So they executed  
24 orders that I gave them.

25 Q. So to your understanding, what would



1       they do, Rocker Management's traders once you had  
2       made a decision to buy or sell any particular  
3       security?

4               A.    They would either call a brokerage firm  
5       to work an order for the brokerage firm to do it, or  
6       as I kind of recall, you know, things have gotten  
7       more -- or things got more computerized through  
8       either systems or matches or things like that where  
9       you could enter an order into a computer and things  
10      worked that way. Things got more automated toward  
11      the end.

12             Q.    When you say things got more automated  
13      towards the end, are you referring to the process of  
14      placing an order with a brokerage firm?

15             A.    It wouldn't necessarily be with a  
16      brokerage firm; it would be with someone like  
17      InstaNet who has compute -- you know, it's sort of  
18      computers talking to computers. If you're Fidelity,  
19      you enter your orders into a computer and we enter  
20      our orders into a computer, and sometimes there  
21      would be a match, if you will. Every 15 minutes  
22      there's a matching system.

23                    So I think if you wanted to buy or sell,  
24      you enter it in the match, and blindly, if there's  
25      another side on the match, it goes off. If not,

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1           they say nothing's done. So things when I first  
2           started in the business were all manual with people,  
3           market makers, people who work orders. Now I think  
4           things are much more automated.

5           Q.    So in terms of making a decision about  
6           how to actually place that order into the market, is  
7           that something that you ever did or was that  
8           something that was handled by the traders in New  
9           Jersey?

10          A.    That was handled by the traders.

11          Q.    Did your firm use securities  
12          broker/dealers to place orders to buy or sell stock  
13          during the '05-'06 period?

14          A.    Security broker/dealers?

15          Q.    Brokerage firms.

16          A.    Yes, I'm sure.

17          Q.    Do you know what broker/dealers the firm  
18          used or the firm went to in order to make trades for  
19          the funds under its management during '05 and '06?

20          A.    I think we had 120 different firms we  
21          did business with at the time.

22          Q.    Within your firm, who decided which firm  
23          or market to send a particular order to for any  
24          particular trade?

25          A.    The traders.

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1           Q.    Do you know what the factors were that  
2           they were supposed to rely upon, to your  
3           understanding, in terms of deciding where to send a  
4           particular order and who should be executing it?

5           A.    That's sort of a multipart question.  On  
6           a specific name on a specific day on a specific  
7           instance, they knew to try to get the best possible  
8           price, whether if that was with a machine, a  
9           computer, a match.  Someone may have the match on  
10          their side; you just didn't know.  So on any given  
11          day it was where the best fit was.

12                If there was no fit or something like  
13          that, we would have a budget, something we reviewed  
14          every, I think, two months of who -- what brokerage  
15          firms or services to do business with, commissions.

16                And so we would set budgets for let's say  
17          100 different people for the year.  And then all  
18          things being equal, they would try to do business  
19          with who we wanted to budget with.  Sometimes it was  
20          soft dollar arrangements; we needed to pay for our  
21          terminals or certain research or things like that.

22                So if something fit easily, they would go  
23          toward the easiest fit.  But all things being equal,  
24          we had budgets that, over the course of a year,  
25          needed to be met.

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1           Q.    Do you know which other broker/dealers  
2           were involved in executing purchases and sales of  
3           Overstock stock for Rocker Management during  
4           2005-2006?

5           A.    I don't have a clue.

6           Q.    You said there were more than 100  
7           different firms that were used to execute Rocker's  
8           trades; is that right?

9           A.    Uh-huh.

10          Q.    Was Goldman Sachs one of those firms?

11          A.    Yeah.

12          Q.    On a percentage basis, do you have any  
13          idea of how many trades by Rocker Management in the  
14          '05-'06 period were executed through Goldman Sachs  
15          as opposed to one of those other firms?

16          A.    What percentage of dollar volume trades  
17          in --

18          Q.    If you can give me any estimate, either  
19          dollar volume or number of trades.

20          A.    I think Goldman, because they're a prime  
21          broker, we tried to somehow get it within ten  
22          percent of our total.

23          Q.    But most of the trades were executed by  
24          other brokerage firms?

25          A.    Yes.

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1           Q.   Was there anyone at your firm other than  
2           your two traders in New Jersey that was responsible  
3           for placing orders to buy or sell Overstock  
4           securities during '05 and '06?

5           A.   I mean, I can't speak -- I can speak for  
6           everyone except for David Rocker. He could have  
7           placed orders. I don't know. He fashioned himself  
8           as a trader sometimes, so he could have placed  
9           orders. I'm not -- I don't know.

10          Q.   Did you personally ever actually place  
11          an order into the market to buy Overstock  
12          securities, buy or sell at any time --

13          A.   No.

14          Q.   -- on behalf of any of these funds?

15          A.   No. I can remember giving the traders  
16          an initial order in Overstock in -- I think it was  
17          February of 2004. I can clearly remember that, but  
18          everything else, I don't really think I had much to  
19          do with it.

20          Q.   Let's take a look at Exhibit 4, if we  
21          could.

22          A.   Okay.

23          Q.   This appears to be a printout from some  
24          system that your firm had --

25          A.   Yes.

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1 Q. -- of Overstock trades; is that correct?

2 A. Yes.

3 Q. On the second page, it says at the top  
4 Axys, A-x-y-s, correct?

5 A. Yes.

6 Q. Is that the name of a system?

7 A. It must be.

8 Q. Are you familiar with that system?

9 A. No.

10 Q. Just a moment. So on page 12 of Exhibit  
11 4, it appears to be a chronological listing of short  
12 sales.

13 A. Yes.

14 Q. And it starts with a short sale -- it  
15 looks like two short sales on January -- or excuse  
16 me, February 25th of 2004, correct?

17 A. Uh-huh, yes.

18 Q. For -- I'm doing the math in my head and  
19 I'm a little slow at it, but it looks like about  
20 68,000 shares, approximately?

21 A. Yes, that's in Fund 01, yes.

22 Q. Is that an order that you instructed be  
23 placed?

24 A. Yes.

25 Q. And did you do that by calling up one of

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1           the traders who worked for your firm in New Jersey  
2           and telling them to get that done?

3           A.    Yes.

4           Q.    Why did you decide to do that?

5           A.    I think that's when, I think -- I don't  
6           know. I read some crazy letter that Byrne put out  
7           at the year-end thing, a year-end letter to  
8           shareholders or something, and I read it and I  
9           thought it was crazy and I just said -- I thought to  
10          myself, this is something we should probably be  
11          involved in as a short. I mean, somewhere there's  
12          that letter. I don't -- it's not here, but I read  
13          it and I said, "This is nuts."

14          Q.    So you read a letter to shareholders  
15          that Patrick Byrne the written --

16          A.    Uh-huh.

17          Q.    -- sometime on or before February 25th,  
18          2004?

19          A.    Yes.

20          Q.    Had you ever heard of Overstock before  
21          you read that letter?

22          A.    Never.

23          Q.    How did it first come to your attention,  
24          Overstock, that is?

25          A.    Someone sent it to me. It could have

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1       been Dave Scially. I'm not sure. Someone either  
2       emailed me or sent a fax or something and said, "You  
3       should read this." That's -- and I think at the  
4       time the stock was -- well, that thing says 27. It  
5       was 27 up from eight or some very low number.

6               So essentially the stock was up  
7       threefold. And I don't know. It was a letter that  
8       in all my years I had never seen anything quite like  
9       it, so I thought it was just written by a madman.

10              Q.    The letter that you're referring to is  
11       the letter from Patrick Byrne that you remember  
12       reading to shareholders in about February '04?

13              A.    Uh-huh.

14              Q.    Was it anyone at Goldman Sachs who  
15       brought that letter to your attention?

16              A.    No.

17              Q.    Did anyone at Goldman Sachs ever suggest  
18       to you that you might want to consider shorting  
19       Overstock?

20              A.    Never.

21              Q.    Did anyone -- once your firm -- strike  
22       that.

23                     Once your firm had started selling  
24       Overstock and had a short position, did anyone at  
25       Goldman Sachs ever, to your knowledge, suggest that



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1           your firm should increase its short position?

2                   A.    Never.

3                   Q.    In fact, you dealt with Goldman Sachs  
4           for more than twenty years; is that right?

5                   A.    Yes.

6                   Q.    And do you recall ever Goldman Sachs  
7           recommending that your firm either go short on a  
8           particular stock or increase a particular short  
9           position?

10                  A.    Never.

11                  Q.    So there appear to be hundreds --  
12           actually, thousands of different trades on Exhibit  
13           4, is that correct, purchases, sales, short sales?

14                  A.    A lot of exhibits, a lot of entries.  I  
15           mean, I don't know.

16                  Q.    Who gave the instructions for all of the  
17           other orders besides this first order, to the best  
18           of your knowledge, if you know?

19                  A.    David Rocker.

20                  Q.    And how do you know that?

21                  A.    Because he was the only one authorized  
22           to do so.

23                  Q.    So looking at page 7 --

24                  A.    Uh-huh.

25                  Q.    -- it looks like there's a handful of

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1           buy trades in the latter half of 2006, correct?

2                   A.    Yes.

3                   Q.    Was Mr. Rocker still involved in dealing  
4                   with this position although he had announced his  
5                   retirement by that point?

6                   A.    No.  I think I started -- I, you know,  
7                   pretty much covered the thing after he announced he  
8                   was done.

9                   Q.    So was that sort of a sudden thing, that  
10                  Mr. Rocker said he was going to retire?

11                  A.    No.  It had been in the works for quite  
12                  sometime.  And the way he was behaving as related  
13                  Byrne kind of hastened the decision.

14                  Q.    So what are you referring to when you  
15                  say the way he was behaving in relation to Byrne?

16                  A.    Well, Patrick Byrne is crazy, and David  
17                  Rocker operates with a chip on his shoulder where no  
18                  one can tell him what to do.  So the two of them  
19                  arguing back and forth with each other got us in a  
20                  lawsuit, and neither one of them would back down.

21                               And being in the hedge fund business and  
22                  being a party to a lawsuit is not a good thing.  I  
23                  just wanted nothing to do with it, and I told David  
24                  repeatedly that when you argue with a crazy person,  
25                  people watch and won't know who the crazy one is.

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1                   So he didn't take that advice and got us  
2                   sued and cost us god knows how many millions and we  
3                   basically said, you know, "Either you leave or we  
4                   leave." So he left.

5                   Q.    Do you know what Mr. Rocker did after  
6                   leaving the firm? Did he start a new fund or  
7                   anything like that?

8                   A.    He probably had nightmares about Byrne.  
9                   No, he just --

10                  Q.    Other than defend Overstock's lawsuit?

11                  A.    Yeah, other than -- no, he didn't defend  
12                  it. He just -- he would say, "You can't settle with  
13                  these guys. They're bad." You know, just -- he  
14                  was -- I don't know if Byrne was more obsessed with  
15                  David Rocker or David Rocker more obsessed with  
16                  Byrne, but it would have been a good UFC cage match  
17                  that I would have paid to watch.

18                  Q.    What's UFC?

19                  A.    That ultimate fighting stuff, you know,  
20                  with the hands and the feet and --

21                  Q.    So on -- hold on a second. From page 12  
22                  through 22 of Exhibit 4 appears to be a listing of,  
23                  excuse me, short sales by the Rocker Funds in  
24                  Overstock; is that correct?

25                  A.    It would appear that way.

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1                   Q.    It's like 987 of them if they're  
2                   counted?

3                   A.    Okay.

4                   Q.    Now, those weren't -- it adds up to --  
5                   it says 2.9 million shares on page 24, almost 3  
6                   million shares. Do you see that?

7                   A.    Okay, yep.

8                   Q.    Does that mean that the firm was short 3  
9                   million shares, or was that sort of adding all the  
10                  short sales --

11                  A.    That's adding it up. David would buy it  
12                  and sell it and buy it and sell it and buy it and  
13                  sell it and buy it and sell it. He was just  
14                  obsessed with this thing.

15                  Q.    So the last short sale shown on here is  
16                  May 9th, 2006 on page 24. Is that accurate in terms  
17                  of what this document shows?

18                  A.    Probably about right, yes.

19                  Q.    And is that consistent with your memory  
20                  that there was no further short selling by Copper  
21                  River after that time?

22                  A.    Yes.

23                  MR. SHAPIRO: I'm sorry, what page were  
24                  you just looking at?

25                  MR. FLOREN: 24.

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1 THE WITNESS: 24, right here.

2 MR. SHAPIRO: Okay, got it.

3 BY MR. FLOREN:

4 Q. Now, other than the first short sale in  
5 February, were you involved in deciding to make any  
6 of these other short sales of Overstock?

7 A. I didn't give the orders, but, you know,  
8 I was part of the discussion of the thing. The  
9 stock essentially went from, what, 27 to 80? So  
10 when you think something is supposed to go down and  
11 it goes from 27 to 80 and you lose your ass in  
12 something like this, you're none too happy.

13 Q. So did the firm -- your firm lose a lot  
14 of money on the position in 2004?

15 A. Hell, yeah. We lost a lot of money in  
16 this thing along the way until it collapsed, and  
17 then we made what -- we made some back.

18 Q. Overall in your trading, all the trading  
19 that your firm ever did in Overstock, do you know  
20 whether you made a profit or a loss?

21 A. I don't know. I don't know what we did.  
22 I don't think -- if we made, we made a Snickers bar;  
23 if we lost, we probably lost, you know, some.

24 Q. Is it accurate that generally speaking  
25 you lost an awful lot of money in 2004 and made

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1 money back in 2005 and 2006?

2 A. Yes.

3 Q. There's also, starting on page 30 here,  
4 a bunch of options trades.

5 A. Yes.

6 Q. Correct?

7 A. Yes.

8 Q. Who was it who made the decision, to  
9 your knowledge, to engage in all these options  
10 trades?

11 A. David.

12 Q. Do you know -- David Rocker, that is?

13 A. Yes.

14 Q. And are those options trades handled the  
15 same way as stock trades at your firm in the sense  
16 as a trader who actually places the trade?

17 A. No, David probably places the trade.  
18 Yeah, that, and David probably did it himself.

19 Q. So other than the two traders in New  
20 Jersey and David Rocker, is there anyone else at  
21 your firm who, to your knowledge, could have been  
22 involved in placing any of these trades in options,  
23 Overstock options?

24 A. Well, those three and me are the only  
25 ones authorized to trade. It wasn't me, so it would

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1           be those three.

2                   Q.    And who in your firm's contact people at  
3           Goldman Sachs & Co. were handling any matters  
4           relating to the fund's Overstock positions, to your  
5           knowledge, if you know?

6                   A.    I don't understand the question.

7                   Q.    Well, was there anyone in particular  
8           that your firm would make contact with at Goldman  
9           Sachs & Co. to discuss any matters pertaining to  
10          Overstock?

11                  A.    The only people we would discuss it with  
12          were just the stock loan group just to see if we  
13          could borrow it and the chatter about why the rate  
14          would be high or low or on Reg SHO, stuff like  
15          that -- those emails that were shown earlier, that  
16          kind of stuff.

17                  Q.    And was that something specific to  
18          Overstock, or is that what you would do with any  
19          stock that you were shorting?

20                  A.    That's what we would do with any stock  
21          we were shorting.

22                  Q.    Do you know where those stock loan folks  
23          that you were referring to that you spoke -- would  
24          speak to from time to time at Goldman Sachs & Co.  
25          were located?

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1                   A.    I think in New York City.

2                   Q.    How did it come to pass that as between  
3                   you and Mr. Rucker you made the first decision to go  
4                   short Overstock and then it sounds like he  
5                   essentially took it over from that point; is that  
6                   right?

7                   A.    Yes, I sort of asked him to take it over  
8                   because that's more his kind of cup of tea to look  
9                   at something like that because the accounting was a  
10                  little convoluted and I was really busy on a bunch  
11                  of other stuff, and he didn't have that much stuff  
12                  to do. That was the worst mistake I made, telling  
13                  him about it.

14                  Q.    Why do you say it was the worst mistake  
15                  you made?

16                  A.    Because it cost us a shitpot full of  
17                  money in legal fees, cost it us a hassle, probably  
18                  at the end of the day cost us our business. It was  
19                  horrible, just -- he just took it to the nth degree.  
20                  I mean, him and Byrne went at it, and I think it was  
21                  a horrible mistake by both of them to get in this  
22                  huge fight.

23                  Q.    By "both," you're referring to both  
24                  Mr. Rucker and Mr. Byrne?

25                  A.    Yeah, it takes two to tango. David



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1       would go to an Overstock luncheon and incite the  
2       guy, and the guy would incite David, and it would go  
3       back and forth. And I just told David to knock it  
4       off, and he just wouldn't. Can't talk to Byrne,  
5       so -- I mean, it just turned into just a bad scene.

6               Q.    Within the structure of your firm when  
7       Mr. Rocker was there and it was still called Rocker  
8       Partners, did one or the other of you have final  
9       decision-making authority on anything you disagreed  
10      upon?

11             A.    Not really. I mean, it wasn't like  
12      that. I mean, David would always claim if you put a  
13      gun to his head he had the final say because it was  
14      his name on the door, but if he pushed too hard, I'd  
15      leave and then he would really be in trouble. And  
16      just -- he just -- he just took this thing way too  
17      far. That's the problem. You can't tell someone to  
18      knock it off once they're -- you know, I'm not going  
19      to use what I was going to say. Once -- you know, I  
20      think he felt like his head was in a vice. I don't  
21      know.

22             Q.    So when you say he went too far, are you  
23      referring to sort of the public statement battle  
24      that was going on?

25             A.    Yeah, that kind of stuff.

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1           Q.    When you say he went too far, are you  
2           referring to the trading decisions he was making?

3           A.    No.  I mean, you know, it turned into a  
4           big position because the thing tripled and then some  
5           on us.  But, you know, he had basis to short it.  
6           It's not like it was a bad short.  It's just -- you  
7           know, then came the naked shorts, you know, clowns  
8           who came out of the woodwork and, you know, one  
9           group threatened to kill my son.  You know, they got  
10          this stupid Reg SHO legislated.

11                You know, it just got crazy.  They got  
12          the senators in Utah going on this thing; they got  
13          this nutcase Phil Saunders going.  They had this  
14          crazy ass Mary Helburn whose son murdered her.

15                I mean, it just brought all these nuts  
16          out of the woodwork and it was all -- it all could  
17          have been prevented.  Everything could have been  
18          prevented had he just kept his mouth shut and just  
19          let it play out.  But, you know, it's a lesson to be  
20          learned.

21           Q.    I think you referred earlier to -- you  
22           described -- strike that.

23                You described the types of investments  
24          that your firm focused on from the short side --

25           A.    Uh-huh.

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1                   Q.    -- as fads, frauds and failure, correct?

2                   A.    Yes.

3                   Q.    Did you have any -- was it your belief  
4                   that Overstock fit into one or more of those  
5                   categories when you first started shorting the  
6                   stock?

7                   A.    Yes, I thought it was a complete  
8                   failure, failure as a business, failure as a model.  
9                   It never made any money. All they do is burn cash.  
10                  And I think if it wasn't subsidized by Byrne and  
11                  Byrne's family and Byrne's wealth, they would have  
12                  been out of business years ago. They'll probably  
13                  still go out of business but it's been around a lot  
14                  longer than it should have been.

15                  I mean, they're completely out of money  
16                  and they're financing -- you know, they are naming a  
17                  stadium in Oakland. So you have a Utah company  
18                  naming the Oakland Coliseum after O.co, or whatever,  
19                  and now they've changed their strategy. I mean,  
20                  it's such a conglomeration of clusterfuck that I  
21                  can't even begin to say what goes on there. But  
22                  it's a failure as a business.

23                  Q.    And did you also have a belief at some  
24                  point that Overstock's -- that Overstock was what  
25                  you called a fraud?

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1           A.    Yeah.  I mean, they've restated their  
2           numbers quite a bit.  Their accounting is horrible.  
3           They did a bunch of stuff -- I mean, history is  
4           clear what they've copped to, admitted to, changed  
5           to.  When the CEO celebrates getting subpoenaed by  
6           the SEC, that should say all you really need.

7                     And again, I feel sorry for him because I  
8           think the guy's crazy.  But it's just -- the guy's  
9           not fit to run a public company, but it is what it  
10          is.  Their track record as a public company is quite  
11          clear.  I think the stock is somewhere now between  
12          seven and eight from eighty.

13          Q.    Let me change topics now.

14                    How many prime brokers did the Rocker  
15          Partners funds and Copper River funds work with in  
16          the '05 to '06 period?

17          A.    I think Goldman did 98 percent of our  
18          business, if not one hundred percent.  Maybe we did  
19          some with BNP or whatever the hell that is, B of A,  
20          BNP.  I mean, stuff cycles through.  But we didn't  
21          do anything with Morgan Stanley.  We did some  
22          business with Lehman overseas.  We didn't do  
23          anything with Bear Stearns.  We didn't do any with  
24          JP Morgan.  It was just pretty much Goldman.

25          Q.    So what, generally speaking, were the

1 principal responsibilities -- strike that.

2 What were the principal services that  
3 Goldman Sachs & Co. provided to the funds as their  
4 prime broker?

5 A. Well, they did back office, they cleared  
6 our trades, you know, they provided, you know, some  
7 form of accounting, you know, and this kind of  
8 stuff, and back up. But it was mainly stock loan.  
9 We used Goldman predominantly for stock loan because  
10 I thought they were the best in the business by far  
11 at the time.

12 Q. And why did you think that Goldman  
13 Sachs' stock loan business was the best in the  
14 business by far in '05 to '06?

15 A. Well, I thought they were the best in  
16 the business from when I started dealing with them  
17 in '85. I mean, they could find -- they had -- they  
18 could find us locates; they could find things.  
19 Sometimes the rate was too high, but the main thing  
20 if you use short stocks is being able to have  
21 reliable locates. And then the fee for locates  
22 would be different. And up until, you know, this  
23 Reg SHO or whatever started pulling through, Goldman  
24 was really -- was really, was really good. They  
25 were really good.

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1           Q.   And to your recollection, once Reg SHO  
2           came into effect, was Goldman Sachs & Co. generally  
3           less able than it had been before to provide locates  
4           to you?

5           A.   Yes.   That definitely was a setback.

6           Q.   What made -- sorry.   Go ahead.

7           A.   Yes.   It just -- it provided another,  
8           just call it regulatory hurdle.   And yeah, you know,  
9           it made things more expensive, much more expensive  
10          than it used to be to borrow names.   We found rates  
11          of existing positions to go higher, not lower.   It  
12          just made the business more difficult -- it made a  
13          very difficult business more difficult than it used  
14          to be.   It's a very difficult business shorting  
15          stocks to begin with, all this other stuff made it  
16          very hard.

17          Q.   So when you say it's a very difficult  
18          business to short stocks, what are you referring to?

19          A.   Well, when you short stocks, you're  
20          basically saying something is too high, overvalued,  
21          made up, is a failure, this, that and the other, and  
22          you have no natural allies.   The company hates you;  
23          shareholders hate you; no one wants to see you do  
24          well because you're basically saying something's  
25          wrong.   So everyone's bias is for up, not down.   So

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1           you have no natural advocates.

2                       So when regulatory, which is either SEC  
3           or the Treasury or whatever, you know, they passed  
4           these rules in 2008 when the market was about to  
5           fall apart and they passed these rules without even  
6           thinking what they were doing, you know, that,  
7           combined with some other stuff, put us out of  
8           business and what was earlier discussed.

9                       But it was a very, very, difficult  
10          because as everyone says on shitbag things like  
11          CNBC, stocks can go up an unlimited amount when  
12          they're short and the fastest way to make money is a  
13          short squeeze. But the problem is, after the short  
14          squeeze is over, things usually collapse. Most  
15          times they do. So it's very hard, very difficult.

16                      Q.    So in addition to -- you mentioned the  
17          services that the prime brokerage arm of Goldman  
18          Sachs & Co. provides included accounting, back  
19          office, account statements, stock lending and  
20          clearing, correct?

21                      A.    Cash management, you know.

22                      Q.    And they also custodied your assets,  
23          correct?

24                      A.    Yes.

25                      Q.    And did they also provide financing for

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1           when you wanted to take on long positions?

2                   A.    We were never on margin so, I mean, you  
3           know, when your short stocks are on margin, you have  
4           to borrow the stock, and the borrow is a loan and  
5           loan is margin. But we were never margined on the  
6           long side, no.

7                   Q.    And you paid fees to Goldman Sachs over  
8           the years based on transactions done and stock  
9           borrowing, correct?

10                  A.    Commission and stock loan, yes.

11                  Q.    And were those fees ever based upon the  
12           profitability of your transactions?

13                  A.    Never.

14                  Q.    Or they were the same whether your  
15           transactions made you money or lost you money,  
16           correct?

17                  A.    Exactly.

18                  Q.    Do the funds have other service  
19           providers other than Goldman Sachs?

20                  A.    Meaning?

21                  Q.    Well, were there other, for example,  
22           administrators or other third parties that  
23           provided -- that Rocker Management would hire to  
24           provide services to the funds?

25                  A.    Not really.



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1           Q.    So for example, on Exhibit 1 -- could  
2           you go back to that for a second.

3           A.    Yeah.

4           Q.    On the last page there's a list of --  
5           well, actually it's redacted. There's a blank spot  
6           for service providers. So you're saying that the  
7           only name that would be listed there would be  
8           Goldman Sachs & Co.?

9           A.    See, I don't know what -- I don't know  
10          what that refers to. I mean, service providers, I  
11          mean it could say AT&T for phone, or Bloomberg for  
12          terminals or -- and then we had outside accountants  
13          we paid cash money to; we had outside general  
14          counsel we paid cash money to. You know --

15          Q.    Was it one of the other partners'  
16          responsibility to run sort of the administration and  
17          deal with all of the different services that the  
18          firm used?

19          A.    Yes, you know, Phil.

20          Q.    So that he would be more knowledgeable  
21          than you about that?

22          A.    He'd be more knowledgeable than me about  
23          that. Yeah, that would be the case.

24          Q.    You mentioned earlier that you felt some  
25          loyalty to Goldman Sachs; is that right?

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1                   A.    Yes.

2                   Q.    Was that because you thought they were  
3 providing you with good service?

4                   A.    Yeah.  I thought they were, you know, I  
5 thought they were straight-up guys.

6                   Q.    Is there any other reason other than  
7 what you've said?

8                   A.    No.  I mean, to me, if I think someone  
9 is straight up, I go with them and rarely do I get  
10 burned.  But, you know, we got burned.

11                  Q.    You testified earlier about the set of  
12 circumstances in 2008 that led to your closing the  
13 firm, correct?

14                  A.    Uh-huh.

15                  Q.    Did any of those circumstances have  
16 anything whatsoever to do with Overstock stock?

17                  A.    No.

18                  Q.    When was the last time that any of your  
19 funds or the firm had any kind of position in  
20 Overstock stock?

21                  A.    It looks like we closed out the last of  
22 some options in 2007, but I think the end of the  
23 stock was 2006 after David left.

24                  Q.    Is it accurate to say that when David  
25 left, all that was done after that point was to make

1           the positions smaller?

2                   A.     Exactly.

3                   Q.     So you just gradually closed it out, and  
4           by 2007 it was gone?

5                   A.     Yes.

6                   Q.     After 2007, did any of your funds ever  
7           have any kind of investment related to Overstock  
8           whatsoever?

9                   A.     No.

10                  Q.     So to your knowledge, what were the  
11           factors that your firm based its decision on to --  
12           aside from your initial decision which you  
13           described, to make a short sale of Overstock stock,  
14           to then grow the position and trade it over time,  
15           what were the things that were important to the firm  
16           in deciding when to go short, when to buy some of it  
17           back and when to do other kinds of trades like  
18           options?

19                  A.     Well, all the crazy trades were, you  
20           know, David managing the position. I mean, the  
21           stock went straight up. So let's get that clear.  
22           So it's very hard to be short something that goes  
23           straight up. So there was a question of managing  
24           the position size, which was way too big.

25                           If you have a normal position at 30 and

1       the stock goes to 60, you're two times too big. If  
2       your firm then loses some money, you're two-and-  
3       change times big. If the thing goes to eight -- it  
4       becomes a multiplier on the way up because the  
5       position gets real big and you lose money. So as  
6       the denominator shrinks and the enumerator goes up,  
7       that's a bad thing. So you either have to cover,  
8       scramble -- you know, you have to do something to  
9       cut back risk.

10               And then David thought the business was  
11       structurally flawed, which it was, but that didn't  
12       come into play until years down the line. So it  
13       just became a complete clusterfuck from a portfolio,  
14       tactical, P&L, time -- then we got sued -- point of  
15       view.

16               Q.    So just focusing first in 2004, did the  
17       firm buy to cover to reduce its risk on the position  
18       as the year went on?

19               A.    Sure. I mean, we traded this thing like  
20       a crack addict. I mean, it was just buying,  
21       selling, buying, selling. So, I mean, I don't have  
22       the mind to analyze these trades, but there was just  
23       a lot of action around this thing. And, you know,  
24       it's 2011. I'm just not of the mind to go back  
25       there and figure it out.

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1           Q.   Well, it wasn't you who was doing it at  
2           that time?

3           A.   Exactly, so I'm not --

4           Q.   You're just describing your view of it  
5           now as you sit here?

6           A.   Yes. But back in the day, I wasn't --  
7           you know, I wasn't thrilled to lose as much as we  
8           lost, to spend as much time on this and to watch a  
9           partner get into a cat fight with Byrne.

10          Q.   At any time during '04 to '07, with  
11          respect to Overstock did anything that Goldman Sachs  
12          said or did influence your decisions -- your firm's  
13          decisions on when to buy or sell Overstock stock?

14          A.   No.

15          Q.   And your policy, the policy at your  
16          firm, was that any time the stock was going to be  
17          shorted that a locate would be obtained before the  
18          short sale was placed, correct?

19          A.   Yes.

20          Q.   And it was the traders in New Jersey who  
21          were responsible for going and getting the locates?

22          A.   Yes.

23          Q.   And did you -- are you ever aware of any  
24          instance where your firm did a short sale without  
25          getting a locate?

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1           A.    Never happened.

2           Q.    Were there ever times in '05 or '06  
3 when, to your knowledge, Goldman Sachs said it was  
4 unable to provide you a locate --

5           A.    Probably.

6           Q.    -- in a stock?

7           A.    Probably, yes.  Oh, for sure.

8           Definitely in a stock?

9           Q.    In any stock.

10          A.    Yes.

11          Q.    And do you believe that happened in  
12 Overstock also?

13          A.    I'm sure, yes.

14          Q.    Were there times when your firm was able  
15 to get a locate from a broker other than Goldman  
16 Sachs but Goldman Sachs could not provide?

17          A.    I'm sure, yes.

18          Q.    Have you heard the term "pay for hold"?

19          A.    Yes.

20          Q.    What's your understanding of what that  
21 is in relation to locates?

22          A.    I think it's borderline illegal, but  
23 allegedly some firms would try to preborrow the  
24 stock before they actually did it so if they wanted  
25 to short the stock the borrow would be there.

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1           Q.   Why do you say you think that's  
2           borderline illegal?

3           A.   Well, because if you're a big hedge  
4           fund, big, you could be long the stock.  You could  
5           be long half a million shares.  You could also then  
6           go to your prime broker and say, I want to borrow  
7           600,000 shares to orchestrate a short squeeze.

8                       So you pull 600,000 legitimately  
9           borrowable shares off the market and pay to hold  
10          them, you long the stock.  You can create a short  
11          squeeze through buying more, other people buying  
12          more, and you basically shrink the available pool  
13          that people can actually borrow.

14                     Or you pay to hold.  You pay at five  
15          percent thinking you can get the stock tight, and  
16          then turn around three months later and then loan  
17          out that stock at 21 percent and make an arbitrage.  
18          You can do that, which should be illegal.  Whatever  
19          it is has to do with making a flat pond not flat.

20           Q.   What do you mean by "a flat pond not  
21           flat"?

22           A.   You should have an efficient market  
23           that's fair for all players.  You shouldn't be able  
24           at that make an arbitrage in security lending or  
25           stock manipulation by either squeezing shorts or

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1        borrowing from David at five to lend it to you at 21  
2        because you're the first mover to a pot of stock.  
3        So I always thought it was fringe -- fringy.

4                Q.    Well, do you know how -- do you have any  
5        view as to whether the securities lending market is  
6        actually efficient or inefficient?

7                A.    I think the securities lending market is  
8        just like the mob. I think it's completely rigged.  
9        It's a completely manipulated black hole, non-  
10       transparent market.

11              Q.    Now, when you say you think they're just  
12       like the mob, are you referring to Goldman Sachs?

13              A.    Yes. I think Goldman Sachs is like the  
14       mob.

15              Q.    And are you referring to them in  
16       particular or them and the rest of the market  
17       altogether?

18              A.    I think Goldman Sachs is a racketeering  
19       entity that does whatever they can to make a dime  
20       without conscience, thought, foresight or care about  
21       ramifications. I think they are cold-blooded and  
22       could care less about the law. That's my opinion.  
23       I think I can back it up.

24              Q.    And that became your opinion when?

25              A.    When they put us out of business.



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1                   Q.     In 2008?

2                   A.     Yes.

3                   MR. SHAPIRO:   You know, I'm going to  
4                   interrupt here.   And I said this to Mr. Sommer:  
5                   Mr. Cohodes has obviously strong opinions about a  
6                   variety of things, but he's here to testify about  
7                   things he knows, facts, not his opinion.

8                   If either one of you want to hire  
9                   Mr. Cohodes as an expert, you can let me know and I  
10                  can let you know what his rates are.   And if you  
11                  want to hire him for that, he can give you all of  
12                  the expert opinions that you want.

13                  But I don't think at this point that your  
14                  questions are different from the ones that I  
15                  objected to when Mr. Sommer was asking them.   I  
16                  don't think it has anything to do with subpoenaing  
17                  him as a fact witness in a case.

18                  MR. FLOREN:   Let me move on.   Actually,  
19                  how long have we been going.

20                  MR. SOMMER:   About an hour.

21                  MR. SHAPIRO:   It's 3:30 now.

22                  MR. FLOREN:   Why don't we take a short  
23                  break, if that's all right.

24                  THE VIDEOGRAPHER:   Going off the record,  
25                  3:30 p.m., end of tape three.

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1 (Brief recess.)

2 THE VIDEOGRAPHER: Going back on the  
3 record at 3:38 p.m., start of tape four.

4 BY MR. FLOREN:

5 Q. Are you ready to continue, sir?

6 A. Yes, yes.

7 Q. Let's look at Exhibit 5. I'm going to  
8 ask follow-up questions on a few of these exhibits.

9 This is a sample of an account statement  
10 that Goldman Sachs & Co. would issue to one of the  
11 funds under your management -- under your firm's  
12 management?

13 A. Yes.

14 Q. So it looks like several hundred --  
15 about -- let's see. Let's count them. About 150  
16 pages, give or take, maybe 130 pages --

17 A. Yes.

18 Q. -- for one month worth of trading  
19 activity.

20 Does that sound about right?

21 A. Sure.

22 Q. So just to take a few examples here, if  
23 you look at -- starting with page 1, first one was  
24 Nick Lis --

25 A. Lisciandra.

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1           Q.    -- Lisciandra, he was one of the folks  
2           who was in charge of managing your firm's books?

3           A.    Yes.

4           Q.    And he was in New Jersey?

5           A.    Yes.

6           Q.    And when was it that you decided to  
7           change the firm's official address to California for  
8           purposes of account statements and things like that?

9           A.    I don't think we ever did.

10          Q.    Was the headquarters of the firm still  
11          in New Jersey until the time that Mr. Rocker retired  
12          in 2006?

13          A.    It's always been --

14               MR. SOMMER:  Objection, calls for  
15          speculation, no foundation.

16               THE WITNESS:  It's always been in New  
17          Jersey.

18          BY MR. FLOREN:

19          Q.    Where was the headquarters of the firm  
20          in 2005 until -- and '06 until Mr. Rocker retired?

21               MR. SOMMER:  Same objections.

22               THE WITNESS:  274 Millburn Avenue,  
23          Millburn, New Jersey.

24          BY MR. FLOREN:

25          Q.    And was that still the headquarters of

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1 the firm after Mr. Rucker retired?

2 MR. SOMMER: Same objections.

3 THE WITNESS: No. Then it went to Red  
4 Bank, New Jersey.

5 BY MR. FLOREN:

6 Q. Why did you still maintain your  
7 headquarters in New Jersey even though you were the  
8 top guy at the firm after middle of '06 and you were  
9 in California?

10 A. Because I wanted to keep these people  
11 who I liked employed, and I figured since  
12 infrastructure was already set up, just let these  
13 guys operate out of New Jersey.

14 Q. So most of the firm's operations were  
15 still in New Jersey even after Mr. Rucker retired  
16 and you were the president?

17 A. All the operations were in New Jersey.  
18 There was just a California office that had research  
19 people and a Massachusetts office that had research  
20 people, but everything was in New Jersey.

21 Q. Was that true throughout the 2004 to  
22 2007 time period?

23 A. Yes.

24 Q. To take an example -- I just want to ask  
25 you one question if you know the answer. Let's look

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1 at page CRP-SF03060. Look at the bottom right page  
2 number on this document.

3 A. 0360?

4 MR. SHAPIRO: 030 --

5 BY MR. FLOREN:

6 Q. 3060.

7 A. Yes, yes, yes, yes.

8 Q. So this looks like it's the -- it says  
9 page 30 of 138 of your account statement for the  
10 month of December '04, and then there's a list of  
11 buys and sells in Overstock.

12 A. Uh-huh.

13 Q. And beneath each transaction it says,  
14 "CTSY Burlington Securities," and then one of them  
15 says, "CTSY Adams, Harkness & Hill."

16 A. Uh-huh.

17 Q. Do you know what that refers to, that  
18 Burlington and Adams, Harkness & Hill?

19 A. Those were brokers that the traders were  
20 using for this.

21 Q. So for example, where it says a December  
22 7th buy, 2,430 shares of Overstock at \$74.2225000  
23 for \$180,000, is it your understanding that this  
24 means that that trade was actually executed by  
25 Adams, Harkness & Hill on behalf of Rocker Partners?

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1                   A.    Yes.

2                   Q.    And then it was cleared through the  
3 prime brokerage account at Goldman Sachs & Co.,  
4 right?

5                   A.    Yes.

6                   Q.    And generally speaking, you would expect  
7 to see that same sort of information for every one  
8 of these trades, correct?

9                   A.    Yes.

10                  Q.    Was LaBranche Financial also a firm that  
11 Rocker Partners worked with to execute its trade?

12                  A.    I guess.

13                  Q.    It doesn't ring a bell?

14                  A.    No.  It's one of the 120.

15                  Q.    With reference to Exhibit 6, Mr. Sauer's  
16 book, was Mr. Sauer still a partner of yours when he  
17 wrote this book, to your knowledge?

18                  A.    I don't exactly know when he wrote the  
19 book.

20                  Q.    Was Mr. Sauer still a partner of yours  
21 when he published the book, to your knowledge?

22                  A.    No.

23                  Q.    So it came out after he was a partner;  
24 is that right?

25                  A.    It came out after we closed down.

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1           Q.   What is a margin call, to your  
2 understanding?

3           A.   Well, there's different -- well, in  
4 general terms, there's a Fed margin call and then  
5 there's a house margin call. The house margin call  
6 is subject to the house and Fed margin calls, that's  
7 nonnegotiable. That's subject to the government.

8                   So if you have a Fed margin call, that's  
9 the government, and you have to meet it. If you  
10 have a house margin call, it tends to be negotiable,  
11 and if the house says, you know, there's no  
12 negotiation on it, then you got to meet it.

13          Q.   Well, when you're referring to a house  
14 margin call, the house that you're referring to is  
15 whoever is extending credit, right?

16          A.   Right, the brokerage firm.

17          Q.   So in the case of the margin calls that  
18 faced your firm in September '08, the house was  
19 Goldman Sachs & Co., right?

20          A.   Yes.

21          Q.   What were the -- what's your  
22 understanding of the circumstances that were  
23 occurring in the stock market that led to the point  
24 where your firm received a margin call, a house  
25 margin call from Goldman Sachs & Co.?

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1           A.    Well, that weekend before, Lehman went  
2 bankrupt. I think Lehman went bankrupt -- or Lehman  
3 went bankrupt on a Monday. We had collateral  
4 securities and cash at Lehman Brothers  
5 International --

6           Q.    Was that in London?

7           A.    That was in London, LBIE -- that was  
8 locked up, confiscated, whatever -- lost access to  
9 that. That wasn't a problem. I mean, it was a  
10 problem, but it wasn't that big a problem. So I  
11 think the markets went down Monday or Tuesday or  
12 maybe Wednesday, and then the government, without  
13 warning on Wednesday or Thursday, put through a  
14 must-cover, that Reg SHO deal must-cover in three  
15 days.

16          Q.    There was an amendment to Reg SHO?

17          A.    Yes. There was an amendment that was  
18 basically put through Wednesday at night, in the  
19 middle of the night, and immediately hit the next  
20 day. No, you had three days. So then the stocks we  
21 were involved in that had that went up. That still  
22 wasn't a problem. The next day, the government  
23 banned short selling in financials or financial-  
24 related, and then the market really went up. And  
25 that was the day that Goldman called us and said,



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1        "We have a problem." We said, "Okay. How do we fix  
2        this?"

3                    MR. SHAPIRO: Well, I think you've  
4        answered his question. He said what was the stock  
5        market condition.

6                    THE WITNESS: Okay. Then I've answered  
7        it.

8        BY MR. FLOREN:

9                    Q. Yes, I was trying to get at the  
10        circumstances that were the background --

11                   A. Yeah, Lehman went bankrupt and the  
12        government put through two emergency rules back to  
13        back.

14                   Q. And would it refresh your recollection  
15        if I told you that the second one of those, the  
16        banning of short selling of approximately 800  
17        stocks, went through late on a Thursday night and  
18        was announced or disclosed very early on a Friday  
19        morning of the same week that Lehman Brothers  
20        failed?

21                   A. That's probably right, yes.

22                   Q. So that problem started all in that  
23        week?

24                   A. Yes.

25                   Q. And was it over like that week and the

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1           next -- so the Friday of that week is when you first  
2           had a problem with Goldman Sachs & Co. telling  
3           you --

4           A.     Sort of that Thursday --

5           Q.     -- that you got a house margin call?

6           A.     Sort of that Thursday, that Friday. And  
7           one of the problems was because the stocks they said  
8           were acting erratic, they changed the haircuts on  
9           our loans, meaning we had -- if our multiplier was  
10          .15, they'd change it to .5. So not only did we  
11          have a house call, they said instead of putting up  
12          .15, you now have to put up .5.

13                         So what should have been a small issue  
14          was a huge issue because they changed two things on  
15          us -- two things -- they didn't change, two things  
16          changed on it. One, we lost a shitpot full of  
17          money; and two, they said because we lost a shitpot  
18          full of money, we need to have a whole lot more  
19          collateral. So it wasn't a Fed call; it was a house  
20          call.

21           Q.     It started with you losing a bunch of  
22          money because the stocks that you were short went  
23          way up in value; is that right?

24           A.     Yes.

25           Q.     And were some of those stocks among

1       those that the government banned short selling in,  
2       some of the stocks you were short in?

3               A.   Not -- some, but not really.  It was  
4       more -- other shorts were getting killed in the  
5       finance stocks, so they were covering anything that  
6       they could.  The government tried to basically  
7       orchestrate a short squeeze, which they did for two  
8       days.

9               Q.   Is it accurate to say, I mean, just  
10       hypothetically on that Friday and not knowing what  
11       the future holds, if the stocks that your firm was  
12       short had continued to increase at the same rate for  
13       the next couple of weeks that your firm could have  
14       lost everything on those investments?

15              A.   That's a stretch, but hypothetically,  
16       you could say that.

17              Q.   And is it also accurate hypothetically  
18       to say that if that situation had continued and the  
19       stocks that your firm was short continued to go up,  
20       that eventually Goldman Sachs & Co. could be left  
21       essentially in a money-losing position where it was  
22       losing the money because your firm no longer had any  
23       cash?

24              MR. SHAPIRO:  I'm going to object to it  
25       as both -- I think your hypotheticals are

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1           incomplete.

2                       THE WITNESS: Well, to frame it, frame  
3           the argument, by then, we were \$2 billion of a fund;  
4           we had 2 billion. And coming into that Monday, we  
5           were up 30 percent for the year. So we had a pretty  
6           big cushion and we were doing well before let's just  
7           say the shenanigans went on.

8                       Hypothetically everything the same, okay,  
9           when people say they short stocks they have  
10          unlimited risk, I totally get that. The problem  
11          began that Monday of that next week when the market  
12          completely and utterly fell apart, and as the market  
13          was literally going down the drain, our shorts were  
14          going through the roof.

15       BY MR. FLOREN:

16               Q.    The stocks that your firm was shorting?

17               A.    Yes.

18               Q.    And you thought that was just really  
19          bizarre and should not have been happening, correct?

20               A.    Mathematically it's impossible for  
21          that -- I mean, I can remember Goldman closing us  
22          out of American Capital Strategies at \$33 on that  
23          Monday, and when they stopped doing whatever they  
24          had to do, when the smoke cleared, we finished  
25          covering the thing four weeks later at 2, something

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1       like that. We finished covering it at 2 but they  
2       took us out of eighty percent of our position in the  
3       thirties, and when they were done, we covered at 2.  
4       They took us out of Tempur-Pedic at 16, covered  
5       that, the rest of it four weeks later, at 3. I  
6       mean, it was insane.

7                So it's kind of like I played the entire  
8       thing for a complete collapse, got the collapse and  
9       was closed out, closed out right before and during.  
10      And then after they completely did me in, said, "Oh,  
11      you know, we'll let you go."

12             Q.    If Goldman Sachs & Co. had not made  
13      these house calls and had extended you more credit  
14      during this time period --

15             A.    We didn't need more credit. All they  
16      had to do was not make the house calls.

17             Q.    But wasn't -- the credit at issue is the  
18      margin requirement of a short position, correct?

19             A.    There's a Fed call which we were in  
20      compliance of -- that's the government -- and then  
21      there's a house call. The house call is at the  
22      discretion of the house.

23             And the thing that just gets me to no end  
24      was this guy Ravi Singh was leaving in two weeks.  
25      He was retiring in two weeks, and he's the guy who

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1       made the call to do us in. And he was two weeks  
2       away from retiring. So why wouldn't he just say,  
3       "You've been a customer for 24 years. You pay us  
4       \$100 million in stock loan fees a year, right? You  
5       clearly have it right." Why did they have to do us  
6       in? And this guy was leaving in two weeks. And I  
7       begged him -- oh, it's troubling for me -- but I  
8       begged him to leave it alone, but they didn't, so --

9               Q. I understand it's upsetting. I'm going  
10       to just going to ask you a few more questions about  
11       it. I move to strike your last answer --

12              A. Okay.

13              Q. -- as nonresponsive.

14                     Is it accurate that if Goldman Sachs &  
15       Co. had not made that house call, looking back on  
16       it, or had just waited until couple of weeks and not  
17       forced your firm to cover its positions, essentially  
18       your investment strategy would have proved right and  
19       you would have made even more profits from what you  
20       already made for the year.

21              A. We probably would have maybe another  
22       billion dollars, with a B. We would have made fifty  
23       percent more at least.

24              Q. Now, you said you had to close out the  
25       positions because Goldman Sachs made you close them

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1 out, correct?

2 A. Yeah. And on those subsequent days,  
3 they actually took over the accounts. They actually  
4 took over them.

5 Q. And started buying back the short  
6 positions?

7 A. Uh-huh.

8 Q. Is it accurate that it was also possible  
9 to meet the house call by bringing in new capital  
10 such as making a cash deposit into the fund?

11 A. Possible, yes.

12 Q. Now, you said that you were upset that  
13 Bill Conley wouldn't return your phone calls during  
14 this time period, right?

15 A. Upset, that's not even the word I'd use.

16 Q. You were very upset? Okay.

17 Do you know whether Mr. Conley or his  
18 securities lending department had anything  
19 whatsoever to do with the house call decision?

20 A. I knew the house call was at the  
21 discretion of somebody.

22 Q. Somebody at Goldman Sachs & Co.,  
23 correct?

24 A. Exactly. And I knew that since it was  
25 generated by a machine, that if it's generated by

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1           somebody, I was hoping someone with reason would  
2           have talked to somebody to calm someone down to come  
3           up with a plan.

4           Q.    You don't have any understanding that  
5           Conley, Mr. Conley and the other folks in the  
6           securities lending department, are the ones who made  
7           this decision about the house call, do you?

8           A.    I don't think they did it, no. The one  
9           that did it was Ravi Singh. That was the one that  
10          did it. It was his call.

11          Q.    And the way the markets were acting in  
12          the stocks that you were investing in, in this week  
13          of the Lehman Brothers bankruptcy and then the  
14          following week, had you in your life, either before  
15          or since, ever seen a market that acted the way the  
16          stock market acted during those weeks?

17          A.    I was actually working part-time at  
18          Merrill Lynch in college and that was when you had  
19          the Bunker Hunt silver margin fiacso where they  
20          almost bankrupted Bache and a whole bunch of other  
21          guys. That was the closest thing I ever saw to it.  
22          But basically the world was coming to an end. I  
23          mean, totally it was coming to an end. But we were  
24          short so much, it was exactly what I had been  
25          waiting for. It's exactly what I thought was going



1           to happen.

2                   Q.    So was that the most severe such  
3           volatile and -- you described it as "world coming to  
4           an end" market that you had ever seen?

5                   A.    Yes.

6                   Q.    And how many days really was it from the  
7           beginning of this problem to the end of it with the  
8           problem with the margin call from Goldman Sachs was  
9           your firm -- did your firm and its funds lose most  
10          of their money?

11                  A.    Eight days, something like that.  But  
12          the problem was we were off the house call and we  
13          were still salvageable.  Sure, we had one fund which  
14          was up eighty percent and even with all the damage  
15          that was done still closed it up 35, so they  
16          couldn't kill that one as hard as they tried.  But  
17          it's when we got off the house call, they wouldn't  
18          let us go.

19                   And as I recall, to answer your other  
20          thing about infusing money, BNP was prepared to take  
21          all our positions and Goldman wouldn't release them.  
22          So I scrambled to find, you know, someone to back us  
23          since Goldman wouldn't, and I arranged for BNP to  
24          take them and Goldman refused to release them.

25                  Q.    Goldman refused to release what?

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1                   A.    Our positions.

2                   Q.    Now, just so I understand clearly --

3                   A.    Well, when you said on the margin call  
4 one was to deal was you could have made a cash  
5 deposit to ease house call, BNP was prepared to come  
6 in and take all our positions and Goldman wouldn't  
7 let it happen.

8                   Q.    All of your positions in every account?

9                   A.    Yes.

10                  Q.    And do you have any understanding as to  
11 why that was?

12                  A.    Never got an answer.

13                  Q.    You said that someone, a person at  
14 Farallon, told you that they had talked to someone  
15 on what you called a Goldman Sachs prop trading  
16 desk.

17                  A.    Uh-huh.

18                  Q.    Do you have any idea who that was or  
19 what prop desk that supposedly was?

20                  A.    I don't know the prop desk. I know that  
21 Bill Duhamel and a guy named Lee Hicks were meeting  
22 with us to go over our positions because they were  
23 going to take them, take the positions or give us  
24 money to solve the thing.

25                  Q.    And you said Duhamel and Hicks; is that

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1 right?

2 A. Bill Duhamel and Lee Hicks.

3 Q. And those were both people with the  
4 Farallon fund --

5 A. Yes. That was described in this book  
6 where the guy went to the bathroom and threw up  
7 somewhere in there. Duhamel went to the bathroom  
8 and threw up because we was so disgusted by what was  
9 going on, because he saw markets falling apart, and  
10 the names we're talking about were going straight  
11 up. And Duhamel suggested so me that I talk to  
12 Goldman and tell them someone's frontrunning the  
13 thing, which I did, and then that didn't work out so  
14 well either.

15 Q. You don't have any idea what desk, what  
16 prop trading desk was allegedly trading the same  
17 stocks that you were short in on those days, do you?

18 A. No. I'm sure if you wanted to, you  
19 could find out.

20 Q. You don't have any -- you've never had  
21 any way of finding out or knowing whether that's  
22 true; is that correct, Mr. Cohodes?

23 A. I have no way of finding out, and no way  
24 of knowing if it was true unless we sued them. Then  
25 I'd have to go up against you. That would be no

1 fun.

2 Q. Stipulated. Let's move on.

3 A. Okay. It's not like it's bad enough:  
4 I'd have this guy too. That's why I'm a chicken  
5 farmer, David.

6 Q. Is it correct that Overstock -- strike  
7 that. Give me just a second.

8 A. I'm sure glad we started this show at  
9 11:00. Oh, my god.

10 Q. Look at Exhibit 15, please.

11 A. Yep.

12 Q. So this is an example of a 30-day  
13 agreement on a term rate; is that right?

14 A. Uh-huh, yep.

15 Q. Was this something that your firm always  
16 did or occasionally did with particular positions,  
17 to agree to a term rate for a fixed period of time?

18 A. Occasionally did with a term thing on a  
19 thing occasionally.

20 Q. Why was this not the normal way of doing  
21 it, to your understanding?

22 A. Because sometimes we'd get out of  
23 something and sometimes the rates wouldn't move as  
24 fast as this thing was moving, so this was not the  
25 norm.

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1           Q.    And would you have to commit to a  
2           certain number of shares to pay that rate for a  
3           certain number of shares for the whole 30-day period  
4           date that the rate would be locked in?

5           A.    Yep.

6           Q.    So that meant that you were essentially  
7           promising to pay not only the negative rate of 15  
8           percent there for Overstock for that month, but also  
9           that you would pay it for a particular balance for  
10          that whole month?

11          A.    Correct.

12          Q.    And that would be true even if you  
13          decided to buy the stock back --

14          A.    Exactly.

15          Q.    -- and not be short, right?

16          A.    Yes.

17          Q.    So is this 15 percent rate there, to  
18          your understanding, was that a rate that would be  
19          substantially below what the overnight rate would be  
20          that could change any time?

21          A.    Yes.

22          Q.    And the normal way of charging negative  
23          rates on hard-to-borrow stocks, is it your  
24          understanding that the rates could change any time?

25          A.    Yes.

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1 Q. Even in the middle of the day?

2 A. It gets a little tough. I don't know.  
3 I guess, but, you know...

4 Q. Let's look at Exhibit 20.

5 A. Yep.

6 Q. This is the email where you said,  
7 "Clearly Overstock has to be drilled" in July of  
8 2004, correct?

9 A. Yes.

10 Q. What did you mean by saying, "Clearly  
11 Overstock has to be drilled"?

12 A. I don't know. You know, I just -- I had  
13 this issue in the prior case. This is obviously  
14 something out of a string of something, and it's a  
15 response to something out of a string. It's just  
16 not in the abstract to say, "Oh, Overstock has to be  
17 drilled." I don't even know what it meant.

18 Q. Were you saying something bad should  
19 happen to the company?

20 A. I was either saying this in response to  
21 something or they came out with bad news or  
22 something of that ilk. I just -- I also used to ask  
23 him to see my entire string of emails because one  
24 email, I know this is one of many out of a  
25 conversation.

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1           Q.    So there's a few of these.  The next  
2           one, Exhibit 21, it's a few weeks later in July of  
3           '04.  It looks like just one of these Bloomberg  
4           messages where you write, "These guys at Overstock  
5           have to buy the farm"?

6           A.    Yes, yes.

7           Q.    Do you recall what that was all about?

8           A.    Same thing.  If you were to see the  
9           entire string of emails or what happened on the  
10          evening of the 19th -- maybe they came out with bad  
11          earnings.  I don't know.  I don't know what the --  
12          what prompted that statement.

13          Q.    Were you saying that, and I apologize,  
14          it may sound like a stupid question, but I have to  
15          ask it.

16          A.    Okay.

17          Q.    Were you saying that somebody at  
18          Overstock ought to die?

19          A.    Oh, no.  That's almost in line with,  
20          there was an email in the prior case about shooting  
21          the bull, and same thing was said:  "What bull were  
22          you planning on assassinating," or something like  
23          that.  And I said, "No, it was shoot the bull, like  
24          chat back and forth."  And they thought I was  
25          shooting like the bull.  You asked me that:  I mean,

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1           who were you planning on killing?" I said --

2                       MR. SOMMER: No, I don't think I ever  
3           did, but I'm going to move to strike this  
4           conversation with counsel.

5                       MR. FLOREN: I'm sorry. What are you  
6           are moving to strike?

7                       MR. SOMMER: That we're now getting into  
8           some sort of chat between the witness and lawyer, so  
9           it was nonresponsive. I'm moving to strike that and  
10          I'm moving to strike comments that are not directed  
11          to a particular question.

12                      MR. FLOREN: Mr. Rocker -- I'm sorry.  
13          Mr. Cohodes was referring to you. You chatted with  
14          him. But leaving that aside, let's move on.

15                      MR. SOMMER: He was looking to me and  
16          talking to me.

17                      MR. FLOREN: Let's move on.

18                      MR. SOMMER: And mischaracterizing what  
19          was asked a long time ago.

20                      MR. FLOREN: I don't know about that. I  
21          think this transcript speaks for itself.

22                      MR. SOMMER: Well, you haven't shown him  
23          the transcript, have you?

24                      MR. FLOREN: Counsel, the transcript  
25          speaks for itself. Let's stop wasting --



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1                   MR. SOMMER: No, the entire transcript  
2 speaks for itself.

3                   MR. FLOREN: Counsel, that's what I  
4 said. That's what I was referring to. Let's let it  
5 go and let me finish my questions, please.

6 BY MR. FLOREN:

7                   Q. So Exhibit 23, Mr. Cohodes, and again,  
8 this is another one of the questions that I have to  
9 ask with apologies, when Mr. Rocker told you --

10                  MR. SOMMER: Objection --

11                  MR. FLOREN: You know what, Counsel?  
12 You're going to let me finish my question, and then  
13 you're going to make your interfering objection, and  
14 let's just move on with it. Don't interrupt me,  
15 please.

16 BY MR. FLOREN:

17                  Q. So let me start over. Mr. Cohodes, do  
18 you have Exhibit 23 in front of you?

19                  A. I do.

20                  Q. When Mr. Rocker emailed you on the  
21 Bloomberg terminal on October 22, 2004 to say, "The  
22 Overstock guy wants to get into fight. Well, he  
23 has. I am in kill mode," did you understand  
24 Mr. Rocker to be saying that he wanted to kill  
25 anybody?

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1                   A.    No, that's not what he meant.

2                   Q.    What did you understand him to mean?

3                   A.    He was just mad.  He was just an  
4 emotional guy and he would have loved to have killed  
5 the company, but he didn't have the wherewithal to  
6 do so.

7                   Q.    Did your firm ever do anything in any of  
8 its trades to try to manipulate the market for  
9 Overstock stock?

10                  A.    No.

11                  Q.    Did you?

12                  A.    No.

13                  Q.    Are you aware of anybody at Goldman  
14 Sachs who tried to do anything of any kind with  
15 respect to Overstock stock to manipulate the market?

16                  A.    No.

17                  Q.    Any other security during any of this  
18 time period, leaving aside everything in 2008 that  
19 you've talked about?

20                  A.    No.

21                  Q.    Was it common practice for you and your  
22 partner, Mr. Rocker, to speak sort of in a rough,  
23 off-the-cuff way over the Bloomberg terminal?

24                  A.    Totally.

25                  Q.    With respect to Exhibit 24, this is an

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1 email -- or I guess a Bloomberg message back from  
2 you to Mr. Rocker later the same day, October 22 of  
3 '04. You said, "We will make a pile on Overstock."

4 I believe you testified earlier that you  
5 felt that Overstock would go down or fall apart; is  
6 that right?

7 A. Yes.

8 Q. Why did you think at that point that  
9 Overstock would go down or fall apart?

10 A. Because the model was faulty and the  
11 numbers weren't any good, you know, the guy who ran  
12 it was crazy. So --

13 Q. Did you think that Overstock would go  
14 down or fall apart because of something that you or  
15 Mr. Rocker or anyone at your firm was either going  
16 to do or attempt to do?

17 A. There was nothing we could do.

18 Q. Why not?

19 A. Because individual guys can't recreate  
20 the markets for this, that and the other. That's  
21 why we have markets. Certain people can mess around  
22 in the short-term, but at the end of the day the  
23 markets are bigger than any one, two, three or four  
24 guys.

25 MR. SOMMER: This will be No. 27. Is

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1           that our next in order?

2                               (Deposition Exhibit 27

3                               marked for identification.)

4       BY MR. FLOREN:

5               Q.    Mr. Cohodes, I just handed you Exhibit  
6       27, which appears to be a Bloomberg message from you  
7       to Phil Renna dated December 7, 2004.

8               A.    Uh-huh.

9               Q.    Is that accurate?

10              A.    Uh-huh.

11              Q.    And it says:

12                       "Maybe we do a swap in Taser and  
13       Overstock and not trade them, take the losses  
14       and roll it into the swap."

15                       Did I read that correctly?

16              A.    Yep.

17              Q.    Do you recall using a swap transaction  
18       in Overstock at any point?

19              A.    I don't recall, but I'm sure we did.

20              Q.    Do you know what it means to take losses  
21       and roll them into a swap?

22              A.    Uh-huh, yes.

23              Q.    Can you tell us what that means.

24              A.    It means that when you have shorts and  
25       you have a loss, if you take the loss, it's a

1 short-term loss. So you can take your short-term  
2 loss. If you put it in a swap, which is a  
3 structured product, and the swap is a duration of  
4 one year and a day and you were to make money on it,  
5 it would be a long-term gain. So that's what that  
6 was about.

7 Q. Is a swap, as you've described it, a way  
8 for your firm to have short exposure to a stock  
9 without actually having a short stock position?

10 A. No, no. Somewhere in the swap the swap  
11 is short. The swap -- whoever is the party is short  
12 the stock.

13 Q. So one side of the swap position or the  
14 other is going to make money if the stock price goes  
15 down, correct?

16 A. Well, the swap makes money if the stock  
17 goes down. You get the economic benefit or economic  
18 detriment of the movement in the swap but the swap  
19 is a structured product. It could be a two-year  
20 swap if you wanted a two-year swap. But in the case  
21 of this, we were taking short-term losses to set up  
22 a long-term instrument.

23 So let's just, for example, say, let's  
24 say we were short 200,000 shares of Taser and  
25 200,000 shares of Overstock.

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1           Q.    Do you recall that by December of '04,  
2           for example, that Overstock stock had gone way up in  
3           price?

4           A.    Yes.  It was either way up or we had a  
5           loss because December tends to be the time when we  
6           do the tax things because we're having a bad year,  
7           so we sure don't want to pay you gains on a bad  
8           year.

9                        So we take the losses and if we're short  
10          200,000 shares of Taser, that 200,000 borrow goes  
11          into the swap, we're short 200,000 Overstock, the  
12          200,000 Overstock goes into the swap, the trade is  
13          closed and the new adventure, if you will, is a  
14          swap, is a longer duration instrument.

15          Q.    So the first part of it in taking the  
16          losses is buying back the stock, correct?

17          A.    You buy back the stock or box the stock  
18          or trade the stock into a swap.  It's a nonmarket-  
19          moving trade.

20          Q.    But at the end of the day -- you start  
21          this with a short stock position, correct?

22          A.    You start it with a short stock of  
23          200,000 shares of each, right.

24          Q.    And you end it with no short stock  
25          positions but you have a swap, correct?

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1                   A.    Of 200,000 each.

2                   Q.    And the swap has a duration on it that  
3 lasts for more than a year, correct?

4                   A.    Yes, a year and a day.

5                   Q.    And so is that essentially like a  
6 long-term, locked in short sale?

7                   A.    Well, not really.

8                   Q.    Except there's no actual short sale of  
9 stock?

10                  A.    No there's a -- well, there's a borrow  
11 of stock, there's a short of stock, but you can  
12 close the swap at any time too. It's just instead  
13 of it being a stock transaction, it's a structured  
14 product transaction.

15                  Mr. FLOREN: Let's mark a few more  
16 exhibits.

17                               (Deposition Exhibit 28, Exhibit 29 and  
18 Exhibit 30, marked for identification.)

19                  MR. SHAPIRO: Is the first one you gave  
20 us the next exhibit, 28?

21                  MR. FLOREN: I don't have the rest yet.  
22 Hold on a sec. I'll give them to you. That's 28,  
23 this is 29 and this will be 30.

24                  MR. SHAPIRO: Thank you.

25                  BY MR. FLOREN:

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1           Q.   Mr. Cohodes, do you have Exhibits 28  
2 through 30 in front of you?

3           A.   Yes.

4           Q.   Twenty-eight appears to be a table  
5 listing swap transactions.

6           A.   Yes.

7           Q.   Are those swap transactions that were  
8 entered into by your firm? And I'll represent to  
9 you this is a document that was produced to us by  
10 Copper River's counsel back in early 2010.

11          A.   It appears to be.

12          Q.   And Exhibit 29 -- hold on a second -- so  
13 Exhibit 29 appears to be -- it's a confirmation for  
14 a share swap?

15          A.   Uh-huh.

16          Q.   Is this part of the sort of thing that  
17 you worked on, share swaps?

18          A.   No.

19          Q.   This particular one has Mr. Rocker's  
20 signature on the last page, apparently?

21          A.   No, no.

22          Q.   So you didn't work on these deals?

23          A.   No.

24          Q.   Who did for your firm?

25          A.   David.



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1           Q.    So were you ever the person who  
2 negotiated the ins and outs of these transactions?

3           A.    No.

4           Q.    And do you know who it was at Goldman  
5 Sachs International that Mr. Rocker was working with  
6 on these transactions?

7           A.    Never heard of them.

8           Q.    So the same question about Exhibit 30  
9 which appears to be an amendment to the transaction.

10          A.    No.

11          Q.    And this describes a minus 3320 basis  
12 points being amended to minus 650 basis points. Do  
13 you know what that refers to?

14          A.    No.

15          Q.    Let's go Exhibit 31.

16                   (Deposition Exhibit 31  
17                   marked for identification.)

18 BY MR. FLOREN:

19          Q.    I'll represent to you, Mr. Cohodes, that  
20 Exhibit 31 was also produced to us by Copper River's  
21 counsel?

22          A.    Uh-huh.

23          Q.    It appears to be something called Axys  
24 Realized Gains and Loss Reports on a bunch of swaps,  
25 and it appears to show that as of January 2006 there

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1           was about a 6.4 million -- \$6.460 million long-term  
2           gain on an Overstock swap with Goldman Sachs; is  
3           that right?

4           A.    That's what it would appear.

5           Q.    And do you recall that your firm made  
6           millions of dollars on swaps with Goldman Sachs on  
7           Overstock?

8           A.    Yes.  Well, we made money on that swap.

9           Q.    And is it your understanding that if  
10          Rocker Partners is making money on the swap, that  
11          means Goldman Sachs is losing money?

12          A.    Totally not.

13               MR. SOMMER:  I'm sorry, I didn't hear  
14          that.

15          BY MR. FLOREN:

16          Q.    Totally not?  And that's because it's a  
17          hedged position by the original short, correct?

18          A.    Yes.  Goldman just structures the  
19          vehicle.  They're not taking either side.

20          Q.    And was this all done, to your  
21          knowledge, by Mr. Rocker dealing with whoever he  
22          dealt with at Goldman Sachs International?

23          A.    Yeah.

24               MR. SHAPIRO:  You're referring to that  
25          Overstock stock?

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1                   MR. FLOREN: I'm referring to the  
2 Overstock stock. I'm asking about any of the  
3 others.

4 BY MR. FLOREN:

5                   Q. And by the way, were you ever involved  
6 in structuring swap transactions in any stocks?

7                   A. No.

8                   Q. That's something that's a little bit  
9 outside of your expertise?

10                  A. My expertise is limited.

11                  Q. Is it your understanding that these swap  
12 transactions were primarily done for the tax reason  
13 that you described earlier?

14                  MR. SHAPIRO: If you know.

15                  THE WITNESS: Yes, I don't -- I think  
16 there was a lot of reasons it was done, that being  
17 one of them. I think the other thing is it was  
18 another way to secure a borrow for a year in  
19 something.

20 BY MR. FLOREN:

21                  Q. How was that, to your understanding?

22                  A. Well, I think part of the deal was  
23 the -- I think in some of that rate it locked in a  
24 borrow rate because you would be in the position for  
25 a year or whatever the duration of the swap is.

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1           Q.    So if the borrow rate went way up after  
2           this swap was initiated back in either late '04 or  
3           early '05, then that should not affect the swap  
4           unless somebody decided to exit out of it, correct?

5           A.    Yes.

6           MR. FLOREN:   Exhibit 32.

7                   (Deposition Exhibit 32  
8                   marked for identification.)

9           BY MR. FLOREN:

10          Q.    Do you have Exhibit 32 in front of you,  
11          sir?

12          A.    I do.

13          Q.    Is this an email message that you sent  
14          to David Rocker on or about February 9th, 2005?

15          A.    Yes.

16          Q.    The first two -- Bob O'Brien in the  
17          first line, who is Bob O'Brien?

18          A.    That's that Phil Saunders clown.  You  
19          know, he uses different names.  But he's the guy who  
20          turned Byrne on to this whole naked shorting thing.  
21          He appeared on an Overstock conference call.  He's a  
22          totally staged guy.

23          Q.    So just for reference purposes, the  
24          record shows that it was, I think, late January of  
25          2004 that there was a conference call, a quarterly

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1 earnings call led by Overstock at which this fellow,  
2 Bob O'Brien appeared --

3 A. Late January of '05, not '04.

4 Q. You actually remember that?

5 A. Yes.

6 Q. Did you listen to it?

7 A. Yes.

8 Q. Why did you listen to it?

9 A. Same reason people go to car races: To  
10 see wrecks. Ever time Byrne opened his mouth, you  
11 know, or wrote a letter or something like that, you  
12 just want to be part of it because something bizarre  
13 was bound to happen.

14 Q. Well, when you said that Bob O'Brien and  
15 Byrne were cut from the same cloth and described  
16 them as bad dudes cloaking themselves as the good  
17 guys, did I read that correctly?

18 A. Yes.

19 Q. Was that your genuine belief at that  
20 time?

21 A. Totally.

22 Q. Has it ever changed from then to now?

23 A. It's probably gotten even worse. I  
24 wouldn't say he's a bad dude; I'd say a sociopath or  
25 dangerous or crazy or worse. They totally fabricate

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1 things and use the media. That's exactly right.

2 All I really need is about three minutes  
3 with Saunders, maybe two minutes. That's all it  
4 would take.

5 MR. SHAPIRO: Right, there's no  
6 question.

7 THE WITNESS: I know. I'm trying to get  
8 him to say, "I object."

9 MR. FLOREN: Move to strike your last  
10 comment, nonresponsive.

11 THE WITNESS: That's what I like.

12 BY MR. FLOREN:

13 Q. Did you use other trading strategies  
14 besides the swaps and short stock positions to  
15 maintain the economic equivalent of short exposure  
16 to Overstock, your firm?

17 A. Yeah, long puts.

18 Q. So "long puts" means you buy the right  
19 to sell the stock at some point in the future?

20 A. Yes.

21 Q. If the stock price falls, goes down,  
22 then the value of that put increases?

23 A. Yes.

24 Q. And you may actually have the right to  
25 sell the stock at the rate of the market price if

1           the stock price falls below the strike price of the  
2           put, correct?

3           A.    Yes.

4           Q.    So is that sort of trading strategy  
5           something you've used in various stocks from time to  
6           time?

7           A.    Yes.

8           Q.    But you didn't actually yourself direct  
9           any of the options trading in Overstock, did you?

10          A.    I don't think I did, no.

11          Q.    Was there ever a point at which your  
12          firm had a net long position in Overstock?

13          A.    That, you would never have seen -- that,  
14          and God's face.

15          Q.    So when we see your firm conducting on  
16          Exhibit 4 it looks like hundreds of buy  
17          transactions, are those --

18          A.    It could be buy to cover; it could be  
19          long against the box to be able to reshort it. It  
20          would be type one, type two. There's all sorts  
21          of --

22          Q.    You may be buying the stock but you're  
23          not net long?

24          A.    Exactly.

25          Q.    You described something that you called

1           being long against the box to be able to reshort it,  
2           correct?

3                     A.    Yes.

4                     Q.    Can you describe what you're referring  
5           to there.

6                     A.    Well, there's two accounts.  There's a  
7           cash account, which is type one; margin account,  
8           type two.  So you can only short in a margin  
9           account, but you could buy in a margin account or a  
10          cash account.  So if we bought long, we would buy it  
11          in the cash account, meaning that's our stock; we  
12          paid cash for it; do not lend.  So Goldman couldn't  
13          lend it out.  We'd save it for if we wanted to  
14          reshort it.

15                    Q.    How can -- can you explain that a little  
16          more?

17                    A.    Goldman can only loan stock out from a  
18          margin account.  That's the only way they can loan  
19          stock, or they could go to us and say, "We want to  
20          borrow your long stock in the cash account.  We'll  
21          pay you this rate," and then we'd say yes or no.

22                    Q.    Did that also happen from time to time?

23                    A.    I think it did, yeah.  I think I can  
24          kind of sort of recall that happening from time to  
25          time.



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1           Q.    That your firm would have long stock in  
2           a cash account and Goldman Sachs & Co. would borrow  
3           it from you and your firm and --

4           A.    Uh-huh, yes.

5           Q.    And do you recall that that happened in  
6           Overstock?

7           A.    I think it's happened in everything, not  
8           just Overstock.

9           Q.    So what's the -- can you explain a  
10          little more what the purpose of holding the long  
11          position is if you're not -- if you're actually  
12          looking to be net short the stock?

13          A.    Well, we could be gross short half a  
14          million shares. The stock goes from seventy to  
15          fifty, you think this stock could bounce from fifty  
16          to sixty -- or David would. So we'd buy 100,000  
17          shares long in the one account. Our net position  
18          would be 400,000 and we'd have 100,000. That's our  
19          shares. If it goes up, we can go sell it back. If  
20          we just bought it to cover and the shares went out  
21          in the system and then we'd want to short it again  
22          at sixty, we'd call up Goldman and say, "Can we  
23          borrow Overstock?" Goldman would say no good, and  
24          then we'd be -- wouldn't be able to redo it. So it  
25          would just give us some flexibility.

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1           Q.    Did having long stock in a cash account  
2               also allow the possibility that you could short, use  
3               that long stock to support one of your own new short  
4               sales --

5           A.    Yes.

6           Q.    -- even if it was otherwise impossible  
7               to get a locate?

8           A.    No.  Then it would be sell long.  Then  
9               when we'd short it, it would be marked "sell long,"  
10              not "sell short."  We were very meticulous about  
11              that kind of stuff.

12          Q.    And what factors affected your decision  
13               of which kinds of these strategies to use with  
14               respect to the stocks that -- and I'm saying you  
15               generally to your understanding of your firm as to  
16               the way it traded Overstock in 2005 and 2006.

17          A.    There's too many factors to name.  It  
18               could be the market, it could be the portfolio, it  
19               could be what's going on with its stock.  It could  
20               be what's going on with other hard-to-borrows.  It  
21               could be going on with, do we have redemptions, do  
22               we have additions, what's news specific to  
23               Overstock?  Somewhere in there we got sued too.  So,  
24               you know, that affected -- when did we get sued?

25                       MR. SHAPIRO:  2005, August of 2005.

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1                   THE WITNESS: Yes, so there's a lot of  
2 things that go into that.

3 BY MR. FLOREN:

4                   Q. Did the fact that your firm got sued  
5 in -- actually, you got sued personally as well,  
6 right, in August of 2005?

7                   A. Oh, sure. They did everything except  
8 the dogs.

9                   Q. And when that happened, did that affect  
10 the way you did business going forward with respect  
11 to Overstock?

12                  A. It affected the way we did business with  
13 everything, yeah. I mean, if I had a rope I would  
14 have hung David then, but I didn't, so he's still  
15 alive.

16                  Q. Did your firm continue to short  
17 Overstock stock after you were sued in August 2005?

18                  A. I'm sure we still did.

19                  Q. Let's look at this?

20                               (Deposition Exhibit 33, Exhibit 34 and  
21                               Exhibit 35 marked for identification.)

22 BY MR. FLOREN:

23                  Q. Mr. Cohodes, with reference to Exhibit  
24 33, it appears to be an email from Rucker to  
25 rboyd@nypost.com dated August 30, 2005; is that

1 right?

2 A. It looks like that way.

3 Q. And it looks like -- do you know who  
4 rboyd@nypost.com was?

5 A. That would be Roddy Boyd.

6 Q. Is that a news reporter?

7 A. Yes.

8 Q. And it looks like -- by the way, do you  
9 recognize the handwriting on the second page as  
10 Mr. Rocker's handwriting?

11 A. Absolutely.

12 Q. Did you know at the time that Mr. Rocker  
13 was having communications with Roddy Boyd?

14 A. I'm sure.

15 Q. And to your knowledge, did he continue  
16 to have communications with members of the media  
17 about his views about Overstock from August 30, 2005  
18 and thereafter?

19 A. Oh, yeah. He'd talk to anyone who'd  
20 listen to him.

21 Q. And to your understanding, was he giving  
22 his genuine views that Overstock was, as he  
23 describes here, making false and manipulative claims  
24 or at lease that Byrne was making false and  
25 manipulative claims?

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1 MR. SOMMER: Objection, no foundation.

2 THE WITNESS: Totally.

3 BY MR. FLOREN:

4 Q. Exhibit 34 appears to be an email from  
5 Rick Sauer to someone named Todd Cranford it looks  
6 like at the U.S. House of Representatives.

7 Do you know who Todd Cranford was?

8 A. No.

9 Q. And it attaches a 41-page document  
10 relating generally to Overstock, Gradient and Rocker  
11 Partners.

12 Are you familiar with the submission that  
13 Mr. Sauer put together?

14 A. Yes, I think I read it, yes.

15 Q. There's a reference to sending it to  
16 Linda and others at the SEC in the second line. Do  
17 you know who that refers to?

18 A. That's the director of enforcement.

19 Q. That would be --

20 A. Thompson.

21 Q. -- Linda Thompson at that time?

22 A. Uh-huh.

23 Q. And at this point you were the top guy  
24 at Rocker Partners -- excuse me, Copper River?

25 A. Yes.

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1                   Q.    And so Mr. Sauer was one of your  
2 partners at this point?

3                   A.    Yes.

4                   Q.    And so the firm was giving a true and  
5 correct statement of its views to the government at  
6 this time?

7                   A.    Absolutely.

8                   MR. SOMMER:   Object, misstates the  
9 document.

10 BY MR. FLOREN:

11                  Q.    Exhibit 35 --

12                  A.    There are some lines in here that are  
13 just fantastic, though.

14                  Q.    What do you mean by that?

15                  A.    I think there's one where Byrne tells  
16 someone they need to be whipped, fucked and dragged  
17 across the land.   That's just vintage Dr. Byrne.  
18 I'm pretty sure it's in there.

19                  Q.    There's more where that came from?

20                  A.    No, I know.   But that's what we were  
21 dealing with.

22                  Q.    So then Exhibit 35 appears to be an  
23 email from Rick Sauer dated February 27, 2007 to  
24 nocera@nytimes.com.

25                               Did I look at that correctly?

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1                   A.    Yep.

2                   MR. SOMMER:  Objection, no foundation.

3                   BY MR. FLOREN:

4                   Q.    Did you know in February '07 whether or  
5                   not your partner was communicating with Joe Nocera  
6                   the New York Times about --

7                   A.    Rick Sauer?  Did I know he was?

8                   Q.    Yes, about these subjects.

9                   A.    Oh, yes.

10                  Q.    And that was something he was authorized  
11                  to do on behalf of your firm, correct?

12                  A.    For sure.

13                  Q.    So for example, on the second page of  
14                  Exhibit 35 where, at the bottom under item 3 where  
15                  it describes material misrepresentations by NCANS  
16                  and Patrick Byrne, is that information that your  
17                  firm thought should be out in the public domain and  
18                  that the news ought to take account for?

19                  A.    Totally.

20                  MR. SOMMER:  Vague as to form.

21                  BY MR. FLOREN:

22                  Q.    Your firm was Copper River Partners at  
23                  that point?

24                  A.    Yes.

25                               (Discussion off the record.)

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1 BY MR. FLOREN:

2 Q. Give me just a moment.

3 So did you ever communicate with  
4 journalists after August 2005 to give your genuine  
5 views, as you've described them, about Overstock?

6 A. I didn't really give views on Overstock;  
7 I gave views about suing short sellers, that kind of  
8 stuff.

9 Q. What were your views about suing short  
10 sellers to the extent they have anything to do with  
11 Overstock?

12 A. I just think it's horrible because  
13 you're basically trying to silence critics. See,  
14 that's why I want three minutes with that O'Brien  
15 because on page 18, it says:

16 "Prior to his involvement with Overstock,  
17 O'Brien aggressively promoted the stock of the  
18 subprime mortgage lender Novastar. Rocker  
19 Partners has been a vocal critic of Novastar,  
20 believing that its business model amounts to a  
21 sophisticated Ponzi scheme. Its criticisms of  
22 that company resulted in its being targeted by  
23 O'Brien for particularly vicious abuse on the  
24 internet site dedicated to promoting Novastar.  
25 O'Brien posted the home address of Rocker



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1 Partners general partner Marc Cohodes, with  
2 information about his wife, disabled son and a  
3 picture of his son. O'Brien's email messages  
4 which, it noted, 'threatened{ed} a kid in a  
5 wheelchair' We understand O'Brien was  
6 contacted by the FBI."

7 That's why I want three minutes with him.  
8 That's all it would take.

9 Q. So when you said that, you're referring  
10 to the fact that this fellow posted information  
11 about you and your family in particular on the  
12 internet?

13 A. Yes. He threatened to kill my son. I  
14 mean, it's flat out.

15 Q. And you're not kidding about that, are  
16 you?

17 A. No. It's well documented. Am I kidding  
18 about it? I mean, he'll tell you that I'm not  
19 kidding.

20 Q. Did you report it to the police?

21 A. Yes.

22 Q. Do you have any idea where Mr.  
23 O'Brien -- strike that.

24 Do you have any idea where Mr. O'Brien  
25 got the information that he used to make those

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1 threats?

2 A. Yes, from Byrne, Mary Helburn and that  
3 whole crew.

4 MR. SOMMER: Objection, no foundation.

5 THE WITNESS: There's total foundation;  
6 you know that. I mean, come on, Byrne admitted it.  
7 I mean, you know, that's who we're dealing with  
8 here.

9 MR. SOMMER: I move to strike that.

10 THE WITNESS: Okay. It's true.

11 BY MR. FLOREN:

12 Q. You believe that -- strike that.

13 Is it your understanding that Patrick  
14 Byrne admitted that he was involved with Bob O'Brien  
15 threatening to kill your son?

16 MR. SOMMER: Objection, no foundation.

17 THE WITNESS: Yes, he was involved with  
18 it.

19 BY MR. FLOREN:

20 Q. In what way?

21 A. Well, he put him up to the whole thing.  
22 I got it from Glen Clairborne, who was the largest  
23 shareholder of Overstock at the time. And those  
24 guys took it -- you know, they just got carried away  
25 and just did something really crazy. And Byrne

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1 admitted to me and he apologized for it. I'll never  
2 forgive him and I'll never forgive O'Brien.

3 Q. When did he admit it to you, Mr. Byrne,  
4 Patrick Byrne?

5 A. In the bathroom when he was being  
6 deposed over at his outfit. He apologized.

7 Q. This was about 2009; in other words,  
8 during your last lawsuit, Overstock versus your firm  
9 and you?

10 A. Yes.

11 Q. You eventually settled that case and  
12 your firm, Copper River, paid \$5 million to  
13 Overstock, correct?

14 A. Yes.

15 Q. Why did you agree to settle that case?

16 A. Because it could have cost us at least  
17 that much to go to trial and appeal and whatever.  
18 And again, my argument about arguing with a crazy  
19 person. You just don't know, you know, what 12  
20 random people would think. Even though we thought  
21 we were just dead right, he could be believable to  
22 some.

23 So if it costs us more to fight it than  
24 to get out of it, \$5 million was a breeze. He  
25 initially wanted a billion. So if you want a

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1 billion and you settle for \$5 million, that's a  
2 victory.

3 Q. So who was it who actually paid the  
4 check on the settlement from your end?

5 A. The fund.

6 Q. Copper River funds?

7 A. Uh-huh.

8 Q. And this was in December of 2009; is  
9 that right? I'll tell you that it was publicly  
10 disclosed in December of 2009?

11 A. Then it was December 2009.

12 Q. Was the public disclosure shortly after  
13 the deal was struck?

14 A. Yes.

15 Q. And that was more than a year after you  
16 had shut down the fund, correct?

17 A. Something like that, yes.

18 Q. So how was it that the fund paid \$5  
19 million settlement more than a year after you had  
20 shut down the business. If you could, just explain  
21 how that came about.

22 A. Because we held back -- we always had it  
23 as a, you know, contingent liability of an unrelated  
24 legal matter, just like we do with Fairfax, which is  
25 the same thing.

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1                   Q.    So Fairfax has got a lawsuit going in  
2                   New Jersey?

3                   A.    Yes, but that's --

4                   Q.    That's over now, isn't it?

5                   A.    Yes, that's been thrown out. But it was  
6                   thrown out without pay some cockamamy way. It's  
7                   still prohibiting us from finishing Findlishing  
8                   (phonetic).

9                   Q.    Was the desire to close down the fund  
10                  and return money to the investors one of the reasons  
11                  why you settled that case brought by Overstock  
12                  against your fund?

13                  A.    No.

14                  Q.    It was really just the costs and other  
15                  things you described, cost and who knows what a jury  
16                  will do?

17                  A.    Exactly. Plus I'm dealing with David  
18                  Rocker who is a complete another uncontrollable  
19                  wildcard. So in my mind, you have Byrne's  
20                  believability to a jury, which I didn't think they  
21                  had a case but you never know, and you have David  
22                  Rocker, who comes across as a condescending know-it-  
23                  all.

24                  Q.    To your knowledge, did your firm, when  
25                  it was Rocker Partners or when it became Copper

1 River, ever decide to make a short sale of Overstock  
2 stock because overall market short interest in  
3 Overstock was increasing?

4 A. Never.

5 Q. Why not?

6 A. That's not the way we operate.

7 Q. Well, is increasing short interest on a  
8 stock something that would make you more likely to  
9 want to short that stock?

10 A. No.

11 Q. Is it something that would make you less  
12 likely to want to short that stock?

13 A. No.

14 Q. Is it not relevant to your decision  
15 whether to short the stock what the outstanding  
16 short interest in the market is?

17 A. It's one of 35 variables, but I don't  
18 really -- I don't think that -- you can count that  
19 number to begin with, so I don't really believe it.

20 Q. So you don't pay any attention to that  
21 in making a decision whether to go short?

22 A. I don't really, no, or I didn't.

23 Q. And are you aware of other short-biased  
24 investors who think that increasing short interest  
25 is a sign that -- or have told you that they think

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1           that increasing short interest is a sign in favor of  
2           more short selling?

3           A.    I don't know anyone who thinks that way.

4           Q.    If there's a stock with short interest  
5           that's already a very high percentage of shares  
6           outstanding, is that something that would make you  
7           more likely, less likely or indifferent as to  
8           whether you would want to short stocks?

9           MR. SHAPIRO:  I'm going to object.  
10          Sorry to interrupt.  Did I interrupt?

11          MR. FLOREN:  Go ahead.

12          MR. SHAPIRO:  I'm going to object.  I  
13          think we're now getting to a point where you're  
14          asking him for his expert advice based on all the  
15          years of experience he had and has.  And like I said  
16          earlier, if you want him to be an expert witness, I  
17          think you've got to retain him.

18          MR. FLOREN:  I think I agree with the  
19          first part of what you said but not the second, and  
20          I'm only going to ask a few questions in this  
21          regard.

22          THE WITNESS:  Want me to answer?

23          MR. SHAPIRO:  So can you repeat the  
24          question again?  I don't mind if you read it.

25          MR. FLOREN:  Sure.  I'll tell you, I

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1           only have a few minutes of questions about this kind  
2           of stuff.

3           BY MR. FLOREN:

4                   Q.    If there was stock where the existing  
5                   reported shortages in the market were already a very  
6                   high percentage of the shares outstanding, what you  
7                   thought were a very high percentage, would that have  
8                   any effect one way or the other on whether you were  
9                   likely to want to short that stock?

10                   A.   No, it wouldn't attract me to it. But I  
11                   will say that historically high short interest names  
12                   tend to be names that eventually fall apart. But to  
13                   then get into a high short interest name because  
14                   there's high short interest to me is -- you should  
15                   find something else to do if that's the only reason  
16                   you're doing it.

17                   Q.    Why do you say that?

18                   A.    Because that's not a -- I'm a  
19                   fundamentally driven guy, and high short interest is  
20                   not a fundamental.

21                   Q.    So when you say you're a fundamentally  
22                   driven guy, what are the fundamentals that you're  
23                   referring to that drive and that actually drove  
24                   investment decisions at your firm during 2005 and  
25                   2006?



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1           A.    Balance sheet management, cash flow  
2           tendencies, lack of sense, prone to failure,  
3           management's prior track record, market conditions,  
4           is there fraud involved, stuff like that.

5           Q.    So -- and the degree of short interest  
6           in the market is not one of those fundamental  
7           factors?

8           A.    No.

9           Q.    Same question about the numbers of  
10          failures to deliver on a stock in the market. Are  
11          those among the fundamental factors that would be  
12          relevant to you in deciding whether to short a  
13          stock?

14          A.    Absolutely not.

15          Q.    Do you know what a failure to deliver  
16          is?

17          A.    Yes.

18          Q.    What's your understanding?

19          A.    A failure to deliver is I think now you  
20          have three days to transact in a stock and deliver  
21          the shares to the other side, whether it's a buyer  
22          or a seller. If you don't do it within three days,  
23          you know, whatever the rule is, you then got bought  
24          in and then the shares are delivered, your position  
25          closed out.

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1           Q.    Let me ask the same question about the  
2 fact that Overstock became a threshold stock.

3                   First, do you have an understanding of  
4 what a threshold stock was in this time period of  
5 '05-'06?

6           A.    Yes, I used to know.

7           Q.    And it referred to a stock that was  
8 identified under Reg SHO as having some threshold  
9 level of fails to deliver; is that correct?

10          A.    Yes.

11          Q.    Did it mean anything to you, as a person  
12 who specialized in short selling, whether or not a  
13 stock was a threshold stock?

14          A.    It didn't really mean that much to me.  
15 If it was a threshold stock, you probably couldn't  
16 get a new position. And if you had a new position  
17 or if you had a position, the borrow rate probably  
18 goes up. There's probably some form of conspiracy  
19 on borrow or rate, which I don't know who is the  
20 trigger on that.

21                   And then there's different ways you can  
22 create and cause fails, and I think a lot of times  
23 it's done by the longs trying to maintain the stock  
24 rather than the shorts.

25          Q.    So has there ever been a time where you

1           decided to short a stock in part because it was on  
2           the threshold list?

3           A.     Never.

4           Q.     Did the fact that a stock would show up  
5           on the threshold list be a factor that you think  
6           would make that stock more attractive to short?

7           A.     No.

8           Q.     Why not?

9           A.     Because again, it doesn't turn me on.

10          Q.     All right. Are you aware of any other  
11         short-biased investors that believe that -- or who  
12         have ever told anyone that they believed that stocks  
13         showing up on the threshold list is a factor  
14         indicating it should be shorted?

15         A.     No.

16         Q.     If a stock was on their threshold list  
17         and you were already short the stock, to you did  
18         that increase or decrease or have no effect on the  
19         risk of the stock being short or the risk of being  
20         short that stock?

21         A.     It definitely increased the risk.

22         Q.     What was the risk that it increased, to  
23         your understanding?

24         A.     The cost to borrow, volatility. A lot  
25         of money managers would buy back the list and try to

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1 squeeze shorts. That was a common practice too.

2 Q. And was there ever risk of being bought  
3 in?

4 A. Yes.

5 Q. Is that a risk that you ever faced in  
6 your career?

7 A. All the time.

8 Q. What is the risk of being bought in?

9 A. If the stock gets pulled from the  
10 borrows and you can't make a delivery, at 3:30 or  
11 ten of 4:00 each day, or whatever, Eastern time they  
12 close out your position.

13 Q. Did that ever happen to any of your  
14 positions over the years?

15 A. Sure, all the time.

16 Q. That wasn't something you wanted to have  
17 happen, was it?

18 A. No.

19 Q. That's because you were basically forced  
20 to buy a stock at a time when you had not chosen to  
21 buy it?

22 A. Yes, that's right.

23 Q. Now, this morning when we got started, I  
24 mentioned the fact that I represent two Goldman  
25 Sachs companies. One of them is Goldman Sachs &

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1 Co., which is the firm that's named on your account  
2 statements for your funds, and the other one is  
3 called Goldman Sachs Execution & Clearing, also  
4 known as GSEC. Do you recall that?

5 A. Well, yeah, I remember you saying it.

6 Q. Have you ever heard before today of  
7 Goldman Sachs Execution & Clearing?

8 A. No.

9 Q. So that, I think, makes my next question  
10 pretty obvious, that to your knowledge, has any of  
11 the Rocker Funds or Copper River funds ever done  
12 business with that firm?

13 A. Never heard of them.

14 Q. Do you know what business they're in?

15 A. No.

16 Q. Are you familiar with the options market  
17 making business at all?

18 A. Vaguely.

19 Q. And do you have any understanding as to  
20 whether options market makers during 2005 and 2006  
21 were exempt from the locate requirement when they  
22 shorted stock?

23 MR. SHAPIRO: Counsel, I'm going to  
24 object to lack of foundation.

25 THE WITNESS: I'm sure they were. I

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1 think they were, yes.

2 BY MR. FLOREN:

3 Q. And you mentioned -- the only reason I'm  
4 asking this, sir, is because earlier you said  
5 something about naked short selling being illegal.

6 Is it your understanding that naked short  
7 selling was illegal during this time period for  
8 options market makers, or do you know one way or the  
9 other?

10 MR. SHAPIRO: Objection, vague.

11 THE WITNESS: All I know is naked short  
12 selling for what I did was illegal.

13 Q. For a hedge fund?

14 A. For a hedge fund. If you shorted stock  
15 without a locate and you couldn't get a borrow,  
16 that's -- you're breaking the law. Everyone else I  
17 don't care about because it not me. I just know  
18 what the rules are for me. I've got no problems  
19 figuring out what I've got to get right.

20 MR. FLOREN: Thank you, sir. No further  
21 questions.

22 MR. SOMMER: I've got a few more.

23 (Discussion off the record.)

24 MR. FLOREN: This CD will be 36.

25

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1 (Deposition Exhibit 36

2 marked for identification.)

3 Mr. FLOREN: I was just going to  
4 describe what it is for the record.

5 This is -- as Mr. Shapiro explained  
6 earlier, the parties, after a series, a flurry of  
7 emails, worked out an understanding yesterday about  
8 production of documents in response to Overstock's  
9 subpoena to Mr. Cohodes in this case.

10 Exhibit 36 is a CD-ROM that consists of  
11 documents that Goldman Sachs has selected that it  
12 wishes to have deemed produced. Most of those have  
13 not been introduced as exhibits, and I'm not going  
14 to ask any questions about them. I'm just marking  
15 them as an exhibit.

16 And Mr. Shapiro will have the  
17 opportunity, we've agreed, that this is without  
18 prejudice to your right, Mr. Cohodes, to object, in  
19 which case we'll to have a further discussion about  
20 whether or not those things can be produced or not  
21 in this case.

22 MR. SHAPIRO: That's right, that's our  
23 agreement.

24 (Discussion off the record.)

25 MR. SOMMER: Just to be clear for the

1       record, we emailed Mr. Shapiro 122 pages. I wasn't  
2       planning on attaching it as an exhibit, but that's  
3       the equivalent of Exhibit 36 for plaintiffs, if  
4       that's all right, unless you want me to print it  
5       out.

6               MR. SHAPIRO: No, I have it. And I  
7       think what I said, and maybe we were not on the  
8       record, but if there's ever any disagreement, which  
9       I doubt, we can always try to work it out. But I  
10      think I have the 122 pages. Well, I know I have the  
11      122 pages.

12             MR. SOMMER: Okay.

13             (Deposition Exhibit 37  
14             marked for identification.)

15  
16                             EXAMINATION

17       BY MR. SOMMER:

18             Q. Exhibit 37, do you recognize that  
19       address on the "to" line as David Rocker's address?

20             A. I don't recognize that.

21             MR. FLOREN: What's the question?

22             MR. SHAPIRO: If that's David Rocker's  
23       address.

24             MR. SOMMER: In the "to" line.

25             Let me mark Exhibit 38.



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1                   MR. FLOREN:   So you mean the email  
2 address?

3                   MR. SOMMER:   Yes.

4                   (Deposition Exhibit 38  
5                   marked for identification.)

6 BY MR. SOMMER:

7                   Q.   Exhibit 38, you see there's an email  
8 from Phil Renna to David Rocker.   Do you see that?

9                   A.   Yes.

10                  Q.   And Exhibit 37, if you look at the text,  
11 appears to be the same email in terms of saying in  
12 the text:

13                   "Goldman cannot disclose number of  
14 shares, but the short interest rose 146  
15 percent from late Feb," which is February,  
16 "through Friday (prior to verdict.)   The short  
17 interest has increased five percent since  
18 then.   I will ask Tony about Overstock when he  
19 returns to his desk."

20                   Do you see where I was reading that?

21                  A.   Yes.

22                  Q.   And do you read this email as informing  
23 David Rocker as to the short interest in a company?

24                   MR. SHAPIRO:   Objection, lack of  
25 foundation.

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1                   If you know. Don't interpret the  
2 document for Mr. Sommer.

3                   THE WITNESS: Should I do him a favor?  
4 I kind of like him.

5                   MR. SHAPIRO: Give him your opinion  
6 that's right.

7                   THE WITNESS: See, it's kind of chopped  
8 up because it says "redacted." This email is about  
9 MSO, which was Martha Stewart, which we were long  
10 and loaning out, but we sold it. See, it says,  
11 "Subject: MSO interest."

12                  MR. SHAPIRO: Got you.

13 BY MR. SOMMER:

14                  Q. But it's talking about short interest,  
15 right?

16                  A. No -- but on a generic basis, not a  
17 specific Goldman issue.

18                  Q. Well, my question is simply, in speaking  
19 with David Rocker over the years, was short interest  
20 in stock something of interest him?

21                  A. Who knows with him. I don't know. I  
22 don't care about him. I'm not speaking for him.

23                  Q. Well, did you ever talk to Mr. Rocker  
24 about short interest in companies?

25                  A. No. I talked to him about too many

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1 things, but this doesn't fly with me. It's  
2 speculative. This is about Martha Stewart, which we  
3 got out of before they threw her in the slammer.

4 Q. Did you know Tony Rubilotta?

5 A. Yes. I talked to him. I couldn't  
6 recognize him.

7 MR. SOMMER: Exhibit 39.

8 (Deposition Exhibit 39  
9 marked for identification.)

10 BY MR. SOMMER:

11 Q. Do you have an email from Carol Ju to  
12 you on July 13th, 2004?

13 A. This says M. Cohodes to Phil Renna, "Why  
14 is David entering orders in Overstock?"

15 Q. I'm sorry, maybe I gave you the wrong  
16 one. Let me just correct it. Let me just clarify.  
17 I just want to make sure. I must have handed out  
18 the wrong one. Do you have that too?

19 MR. SHAPIRO: No, that's not what you  
20 gave me for 39.

21 MR. SOMMER: Let me take those back.  
22 I'll remark 39.

23 THE WITNESS: It's too late in the day  
24 to try to mess me up.

25 Can't pull one over on me, Counselor.

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1 BY MR. SOMMER:

2 Q. I see what I did. We'll remark Exhibit  
3 39.

4 Is Exhibit 39 that you have now an email  
5 from Carol Ju to you on July 13th, 2004?

6 A. Uh-huh.

7 Q. Okay. And is the correct way to read  
8 this that you told her to sell 50,000 shares of  
9 Overstock and she said "okay"?

10 MR. SHAPIRO: I'm going to object to it.  
11 And I think it's -- well, I think you haven't  
12 established any foundation to know what this  
13 Bloomberg email relates to other than whatever words  
14 happen to be on this email.

15 BY MR. SOMMER:

16 Q. It's an email you received, correct?

17 A. Yeah, that's correct.

18 Q. And you're the one who would say sell  
19 50,000 shares of Overstock. She wouldn't tell you  
20 that, right; you are the one giving the orders?

21 A. No, David could have been giving her the  
22 orders. This is just letting me know what she's  
23 putting in the overnight. This isn't me telling her  
24 what to do. This is the other way around. This is  
25 her saying, you know, "Buy," redacted, "in the

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1           overnight. Sell 50,000 Overstock." And she writes  
2           "okay," meaning like, is that okay? It's not me  
3           giving her the orders. Otherwise, it would have  
4           been from Marc to Carol.

5                   Q.    Why is she saying okay to you?

6                   MR. Floren:  Objection, calls for  
7           speculation.

8                   MR. SHAPIRO:  Yes, and I'm going to  
9           object also because unless you know what that refers  
10          to, you should not speculate.

11                  THE WITNESS:  I don't know.

12          BY MR. SOMMER:

13                  Q.    Let me just try to ask it simply here.  
14          Isn't it correct that you were giving Carol Ju  
15          orders to sell Overstock at various times?

16                  A.    Me.

17                  Q.    You.

18                  A.    If you can show that, then that's --  
19          then that's something to talk about.

20                  MR. SHAPIRO:  Well, you have to answer  
21          his question. Did you give her orders?

22                  THE WITNESS:  Yes, to initially sell the  
23          thing, yes. But following, oh, David's out of the  
24          office and David calls and says, "Sell some  
25          Overstock." I don't know.

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1 MR. SOMMER: Exhibit 40.

2 THE WITNESS: This is what, seven years  
3 ago?

4 MR. SHAPIRO: This is, yes.

5 THE WITNESS: Well?

6 MR. SOMMER: Let's just look at Exhibit  
7 40 here.

8 (Deposition Exhibit 40  
9 marked for identification.)

10 BY MR. SOMMER:

11 Q. Exhibit 40, is that an email from  
12 Mr. Cohodes, you, to Carol Ju July 8th, 2004,  
13 instructing her to sell 25,000 more shares of  
14 Overstock?

15 A. That would appear to be the case.

16 MR. SHAPIRO: Well, objection. He wants  
17 to know not what is written here, okay, but what you  
18 remember or whether you can say that this is  
19 definitely that.

20 THE WITNESS: Well, first of all, I  
21 don't know what this is part of. I don't know if  
22 David's out of the office. I don't know anything on  
23 these. If I had a string, that's one thing, but I  
24 don't have a string. And I don't know what this is.  
25 That's the problem.

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1 BY MR. SOMMER:

2 Q. Well, doesn't it -- isn't that your  
3 ordinary way of instructing her to sell a stock, you  
4 would send her an email and say, "Sell X number of  
5 shares of a stock?" Wasn't that your usual  
6 practice?

7 MR. SHAPIRO: Objection, lack of  
8 foundation.

9 THE WITNESS: I don't know, Jonathan. I  
10 don't know. You know, I don't know. Is that my  
11 usual practice? My usual practice is, I'd pick up  
12 the phone and tell her.

13 BY MR. SOMMER:

14 Q. Do you believe that you were giving  
15 instructions to any trader of Copper River to sell  
16 Overstock after that very initial moment back in  
17 February 2004 which you already testified about?

18 MR. FLOREN: You mean sell short?

19 BY MR. SOMMER:

20 Q. Sell short, yes.

21 A. You know, it could have been. But it's  
22 not -- again, it's not my sphere or realm of,  
23 whatever, what I was doing. You know, David can be  
24 out of town. David could say, "Do this, enter this,  
25 this, that and other," and that's the way it is. I

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1           just don't know in the abstract what any of this  
2           stuff is. I really don't. I had my hands full with  
3           my stuff. You know that from our last encounter.

4                   Q.     Actually, this was previously marked, so  
5           I don't need to mark it.

6                           This was Exhibit 32. I don't know if you  
7           have it in front of you. I can hand you another  
8           copy if it's easier.

9                           MR. SHAPIRO: Which one?

10                          MR. SOMMER: Here, I'll just hand you  
11          another copy.

12                          MR. SHAPIRO: What was this?

13                          MR. SOMMER: This was Exhibit 32 that  
14          Mr. Floren introduced.

15                          MR. FLOREN: Are you using Exhibit 32 or  
16          are you using some other document?

17                          MR. SOMMER: All right. Let's find  
18          Exhibit 32 so I don't get some objection about it.

19                          Can you find Exhibit 32 in your exhibit  
20          stack, please.

21                          MR. SHAPIRO: I got it.

22          BY MR. SOMMER:

23                          Q.     Now, it says -- this is an email from  
24          you to Mr. Rucker, right?

25                          A.     Yes.



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1 Q. Dated February 9th, 2005, right?

2 A. Yes.

3 Q. And you said, "Tomorrow we short the  
4 crap out of Overstock"?

5 A. No. I said Bob O'Brien and Byrne are  
6 cut from the same cloth. That was me. David's  
7 reply is, "Tomorrow we short the crap out of  
8 Overstock."

9 Q. Well, isn't the way Bloomberg works that  
10 the email at the bottom is the email from the "from"  
11 person?

12 A. I don't know. But that's not giving  
13 orders. If it's the case that tomorrow we short the  
14 crap out of Overstock, he's done tomorrow. That's  
15 when he missed his stupid number. But that's not --

16 Q. In terms of -- sorry, go ahead.

17 A. You're asking about me giving orders. I  
18 didn't give orders on this stupid thing. I really  
19 didn't.

20 Q. Well, it says, "We short Overstock,"  
21 right? So is it fair to characterize it as a joint  
22 decision of yours and Mr. Rucker to short Overstock?

23 A. I don't know, Jonathan. That's a  
24 stretch on your part. It really is. I love you,  
25 but, you know, I don't know what you're trying to

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1           get at here.

2                   Q.     Just what I asked.   It was a joint  
3           decision to short Overstock.   It wasn't just Mr.  
4           Rocker.   You guys were partners making a decision;  
5           is that fair?

6                   MR. SHAPIRO:   Objection, argumentative.

7                   THE WITNESS:   I like when he argues with  
8           me.

9                   It's like David was having a jihad.  
10          Honest, really, I don't know.   This was too long  
11          ago.   If you showed me everything in context or  
12          something more, that would help.   I'm just telling  
13          you, I'm not the guy who traded this piece of shit;  
14          I'm really not.   I could make suggestions to David,  
15          I could tell him what I want to do, I could tell him  
16          what I think, but he was the guy.   And it shows how  
17          much he listened to me too because we got our ass  
18          sued because of him.   So when you say your partner,  
19          yeah, a partner would have shut up.

20          BY MR. SOMMER:

21                   Q.     If you look at Exhibit 4 -- this was the  
22          table of trades --

23                   A.     I'm going to need like an espresso in a  
24          second here.   I'm ready to doze off.

25                   MR. SHAPIRO:   It's this one.

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1 THE WITNESS: Yep.

2 BY MR. SOMMER:

3 Q. All right. Could you turn to at the  
4 bottom of page 31 of 33.

5 A. Yep.

6 Q. And actually, I'm sorry, if you turn  
7 back to the page before, is it purchases of puts  
8 that are listed on pages 30 and the top of 31?

9 A. Oh, boy.

10 MR. SHAPIRO: You know, I was going to  
11 mention this before you or Mr. Floren were  
12 testifying before, my recollection from the other  
13 case is that this is not a document that Mr. Cohodes  
14 was familiar with and that you questioned Mr. Renna  
15 about it, who was more familiar with it.

16 MR. SOMMER: I know I don't need to take  
17 a long time on this. If you want to move forward.

18 BY MR. SOMMER:

19 Q. I mean, is it correct that you were  
20 buying puts of Overstock in general? You talked  
21 with plaintiff about that, right?

22 MR. FLOREN: Objection, object to the  
23 form of the question. He never talked to me about  
24 buying puts.

25 THE WITNESS: You said "you." Me or the

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1           firm?

2           BY MR. SOMMER:

3                   Q.    Was the firm buying puts of Overstock?

4                   A.    The firm was buying puts but the firm  
5                   could have also been covering shares and buying puts  
6                   together, right.

7                   Q.    I'm just asking if the firm was buying  
8                   puts.

9                   A.    It's not -- it doesn't work that way,  
10                  right? You know, if I match up buying the puts,  
11                  shorting stock, buying stock against it, you know,  
12                  there's different ways to slice this data.

13                  Q.    I mean, I want to make it like real  
14                  clear, right? Because I don't know what you're  
15                  getting at, but I'm not the trader in Overstock,  
16                  right? I can talk to David Rucker. I can say good  
17                  idea, bad idea, I think we should do more or this,  
18                  that and the other. But he was the guy who did it,  
19                  okay? If he's out of town and calls up and says,  
20                  "Sell more Overstock," then, you know, I relay it to  
21                  Carol. I'm not -- I'm out of synch here with what  
22                  you're --

23                         MR. SOMMER: I move to strike that as  
24                         nonresponsive.

25                         THE WITNESS: Fine, that's fine.

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1 BY MR. SOMMER:

2 Q. I'm simply asking, was the firm buying  
3 puts in Overstock, to your knowledge?

4 A. According to this, we were buying puts.

5 Q. And is it true that buying puts is a way  
6 of gaining short exposure?

7 A. Yes, sir.

8 Q. And if you look at page 31 of 33, do you  
9 see that on June 2nd, 2006, the firm bought about  
10 1.557 million worth of puts?

11 MR. SHAPIRO: Could you refer me to  
12 where you were just -- I didn't catch that.

13 MR. SOMMER: On page 31 of 33, if you  
14 look down to June 2nd, 2006 it says, "Quantity,  
15 1,604," and then it has an amount of roughly 1.557  
16 million.

17 BY MR. SOMMER:

18 Q. Did you see where I was looking,  
19 Mr. Cohodes?

20 A. I do. I don't like this "Mr. Cohodes"  
21 stuff. I wish you would call me Marc.

22 Q. So is it correct that that purchase of  
23 puts was after Mr. Rucker left the firm?

24 MR. SHAPIRO: Objection. You should not  
25 testify about this document unless you know what it

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1 means. If you do, then you can testify about what  
2 it means. That's what he's asking you.

3 BY MR. SOMMER:

4 Q. Had Mr. Rocker left the firm by June of  
5 2006?

6 A. He still had his ass in the office in  
7 June of 2006.

8 Q. Had you relieved him of his trading  
9 responsibilities by June 2006?

10 MR. SHAPIRO: Object to the form.

11 THE WITNESS: Not as it related to this  
12 piece of shit. I'm trying to go back and reconcile  
13 this stupid data that you gave me, then I'll have a  
14 better look at this thing. But this purchase of the  
15 puts was combined with buying the stock. That's the  
16 problem.

17 All right. So we bought 298,000 shares  
18 of stock in or around that period in June. So when  
19 you buy stock and also buy puts, it's essentially  
20 eliminating your borrow risk and moving it into  
21 another side bet. That's why I'm saying you can't  
22 look at all this stuff, you know, straight up. You  
23 have to see what the other corresponding trades are  
24 with this, you know, so I don't remember. You know,  
25 David Rocker was still in the office till the end.

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1 BY MR. SOMMER:

2 Q. Okay. Well, if you look a couple lines  
3 further down, it says June 11, 2007, and there's a  
4 purchase of 1,195 puts. I mean, by that time  
5 clearly he was gone from the firm, right?

6 A. Yes, but I would also bet that there was  
7 something on the stock as well. I see what you're  
8 saying, okay? But I -- you know, no one gave me  
9 this document to look at and say, "Do your homework  
10 on it so you can be ready for questions."

11 Q. Who were the -- strike that.

12 In 2006, is it correct that the partners  
13 of Copper River in California were yourself,  
14 Mr. Sauer, Mr. Montgomery and Mr. Lynne?

15 MR. SHAPIRO: Objection, asked and  
16 answered.

17 THE WITNESS: Partners in California  
18 what?

19 BY MR. SOMMER:

20 Q. Is it correct that the partners of  
21 Copper River Partners located in California in 2006  
22 were yourself, Mr. Montgomery, Mr. Lynne and  
23 Mr. Sauer?

24 A. Yes.

25 MR. SHAPIRO: Same objection.

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1 BY MR. SOMMER:

2 Q. And is it correct that that was a  
3 majority of the partners of Copper River Partners?

4 A. Yes.

5 Q. And is it correct that Copper River  
6 Partners, LP, as shown on Exhibit 4 as the name of  
7 the fund was a partnership controlled by the  
8 partners?

9 MR. SHAPIRO: Objection. I don't think  
10 he testified before that -- maybe I didn't  
11 understand it -- that LP was a fund.

12 BY MR. SOMMER:

13 Q. Well, wasn't Copper River Partners, LP,  
14 one of the funds?

15 A. Yes, but those things were all based in  
16 New Jersey.

17 Q. My question simply was, is it one of  
18 those funds that you managed?

19 A. I don't know. You've got me so twisted  
20 around in this thing.

21 Look, everything was -- you know, the  
22 management companies and LLC, everything was New  
23 Jersey-based. You know, we had an office in  
24 California because I live here, but it's a New  
25 Jersey partnership, traders in New Jersey, the back



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1 office is in New Jersey, the square footage is in  
2 New Jersey, the official mailing address is in New  
3 Jersey. The investment decisions were made in  
4 California and Massachusetts.

5 Q. Is it fair to say that 2006 -- well, I  
6 think you already testified that you had ultimate  
7 control in 2006 over investment decisions; is that  
8 right?

9 A. Yes.

10 Q. And is it fair to say that after you,  
11 the most senior person with investment authority in  
12 the firm was Mr. Montgomery in California?

13 A. Yes.

14 Q. And he had worked in California with you  
15 for many years; is that right?

16 A. Yes. I don't get this California stuff.

17 Q. Was BTIG -- we saw an email earlier. We  
18 can bring it up if you need it, but do you recall  
19 there was an email with Ben Marsh at BTIG that we  
20 looked at?

21 A. Uh-huh.

22 Q. Was Ben Marsh one of the people you used  
23 for execution?

24 A. Used to.

25 Q. And was BTIG one of the firms with Ben

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1 Marsh that you used for execution?

2 A. The traders used.

3 Q. Okay. And BTIG was -- to your  
4 knowledge, 2005 to 2006 Ben Marsh was in San  
5 Francisco, right?

6 A. No.

7 Q. Where was he?

8 A. He was in Boston.

9 MR. SHAPIRO: We've got five minutes.

10 MR. SOMMER: I'm getting very close.

11 THE WITNESS: What time is it?

12 MR. SHAPIRO: 5:22.

13 THE WITNESS: Unbelievable.

14 BY MR. SOMMER:

15 Q. Did I understand you right that Goldman  
16 Sachs & Co. executed trades for you?

17 MR. FLOREN: Objection, vague and  
18 ambiguous.

19 THE WITNESS: I don't know if I said  
20 that. I said we did business with them.

21 BY MR. SOMMER:

22 Q. I thought you said that they executed  
23 ten percent of your trades.

24 MR. FLOREN: Ask him a question; don't  
25 ask him what his testimony was three hours ago.

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1           Objection.

2                       MR. SOMMER:   Okay.   I move to strike  
3           that comment.

4           BY MR. SOMMER:

5                       Q.   Do you recall testifying earlier that --

6                       MR. FLOREN:   Objection, an objection.

7           BY MR. SOMMER:

8                       Q.   -- about ten percent of your trades were  
9           executed by Goldman Sachs?   Did I understand you  
10          right?

11                      A.   I think I said commissions, that  
12          commissions are paid either in trades, secondaries,  
13          IPOs, you know, option trades.   Commission dollars  
14          are generated through a variety of things, so it was  
15          commission dollars.

16                      Q.   Okay.   So just to ask it simply, did  
17          Goldman Sachs execute some of Copper River's trades?

18                      A.   Yes.

19                      Q.   And was there someone in particular that  
20          you know of who was your point of contact for  
21          executing trades at Goldman Sachs?

22                      A.   There was, but I don't know.   It would  
23          be the traders would have known that person, and  
24          that person would have been in New York.   We were  
25          covered out of Goldman Sachs in New York.

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1           Q.    You don't have personal knowledge as to  
2           where that person was because you don't know who the  
3           person is, correct?

4           A.    No.   I specifically know we were covered  
5           out of New York because Goldman always covered us  
6           out of New York until about 2007 when we were  
7           covered in San Francisco by Andy Brown.

8           Q.    Did you know Robert Ceremsak?

9           A.    Yes.

10          Q.    Was he in San Francisco?

11          A.    Yes, but he wasn't responsible for us.

12          Q.    What did he do for you?

13          A.    He did absolutely nothing.   I thought  
14          the guy was a huge lightweight and I didn't want to  
15          do business with him and he was the liaison out  
16          here.   That's why we were covered in New York.  
17          Goldman had all of the heavyweights in New York and  
18          all the lightweights were out here.

19          Q.    Well, what was he supposed to do for you  
20          here?

21          A.    Who knows?   You know what?   You know the  
22          story of Ceremsak?   When Conley and the stock loan  
23          guys would come out and visit, they would have  
24          Ceremsak drive the car and say, "We're going to go  
25          up and meet with him.   We don't want you to come up

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1           and screw it up. You stay down in the car."

2                       So I never had interaction with Ceremsak.  
3       Now, Ceremsak works at Farallon. He left that  
4       rathole Goldman Sachs.

5                       Mr. FLOREN: Move to strike the last  
6       comment.

7                       THE WITNESS: That's okay.

8                       MR. FLOREN: Nonresponsive.

9                       THE WITNESS: I can't help it. It's  
10      getting late. I didn't have any dealings with  
11      Ceremsak. I had dealings with a guy who had a big  
12      last name who is no longer, a George Leberopolous,  
13      yes.

14                      MR. SHAPIRO: Okay. Now you're not  
15      answering the question.

16                      THE WITNESS: He's asking, you know, who  
17      the contact was. I'm trying to remember.

18                      MR. SHAPIRO: Okay, all right.

19                      THE WITNESS: We were covered out of New  
20      York. I'm getting feisty with him. I've had a long  
21      day and I'm underpaid.

22                      MR. SHAPIRO: Really underpaid.

23                      THE WITNESS: Really underpaid.

24      BY MR. SOMMER:

25                      Q. I just have a couple more questions.

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1                   Was your fund focused on hard-to-borrow  
2 securities?

3                   A.    No.

4                   Q.    In terms of short positions of your  
5 fund, were the short positions focused on  
6 hard-to-borrow securities?

7                   A.    No.

8                   Q.    Counsel asked you about a swap.  I'm  
9 just going to ask you a question about it.  Was it  
10 your understanding that in the swap that you  
11 testified to earlier that effectively Goldman Sachs  
12 would have a short position that would be the basis  
13 for the swap in Overstock?

14                   MR. FLOREN:  Objection, lacks  
15 foundation.  It's Goldman Sachs International.  
16 Vague and ambiguous.

17                   THE WITNESS:  Yes, I don't know the  
18 details of such, how it -- exactly who was  
19 responsible with who on it.  I just know that's  
20 something we used to do.

21 BY MR. SOMMER:

22                   Q.    Just at a very high level, was it your  
23 understanding that some Goldman entity would short  
24 Overstock as part of the swap?

25                   A.    No.  My understanding was we had a big

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1 short position in Overstock. We closed that out.  
2 The short went to whatever vehicle against the swap.  
3 The shares followed the swap. We had a 200,000  
4 borrow whatever, 300,000 share. We would cover that  
5 and the borrow would then go into the swap.

6 Q. And did you have an understanding as to  
7 who would hold the shares after the swap?

8 A. I guess that part's none of my -- you  
9 know, that's beyond my pay grade.

10 MR. SOMMER: All right. I'll pass the  
11 witness.

12  
13 FURTHER EXAMINATION

14 BY MR. FLOREN:

15 Q. Mr. Cohodes, if a stock became hard to  
16 borrow, would that have an effect one way or the  
17 other on whether or not your firm in 2004 to 2007  
18 would be interested in shorting that stock?

19 A. No. We -- no. If something we were  
20 currently short became a hard to borrow, that means  
21 the rate of it would go up, which would be more  
22 expensive for us to maintain.

23 Q. So as a short seller, is it generally a  
24 good thing or a bad thing, from your perspective, if  
25 one of the stocks in which you're interested in

1 shorting is becoming hard to borrow?

2 A. That's a bad thing.

3 Q. You referred several times -- you said  
4 that your firm, Rocker Partners and then Copper  
5 River Partners, was -- and the management firms  
6 were, quote, covered in New York by Goldman Sachs &  
7 Co.; is that right?

8 A. Yes.

9 Q. What do you mean when you say that  
10 Rocker Partners and Copper River Partners were  
11 covered in New York by Goldman Sachs & Co.?

12 A. Goldman Sachs has offices all over the  
13 country, I think, San Francisco, L.A., Chicago, I  
14 think Dallas, New York, Boston. We happened to have  
15 been covered, the trader, the salesperson, was New  
16 York-based, not San Francisco-based. We were not  
17 covered out of San Francisco. Some people are San  
18 Francisco-based and they're covered out of London,  
19 some out of Tokyo. It depends on what goes on.

20 But since we were so stock loan centric,  
21 they covered us out of New York and we did business  
22 with -- you know, like if we had a problem up until  
23 the shit hit the fan, we had access to the -- you  
24 know, George Lip was the top guy of that space or  
25 whatever. He was Ceremsak's boss. Ceremsak was a



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1           lightweight, so anything that we needed from  
2           Ceremsak he would have had to go to George Lip. So  
3           instead of going to Ceremsak to go to George Lip, we  
4           went right to George Lip. That's why we were  
5           covered out of New York, so...

6                       MR. FLOREN: Nothing further. Thank  
7           you.

8                       MR. SHAPIRO: Thank you.

9                       THE VIDEOGRAPHER: This marks the end of  
10          tape four and the end of the deposition.

11                      (Deposition concluded at 5:31 p.m.)

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DECLARATION UNDER PENALTY OF PERJURY

I, MARC COHODES, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on November 18, 2011; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011, at \_\_\_\_\_, California.

\_\_\_\_\_  
MARC COHODES

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DEPOSITION ERRATA SHEET

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MARC COHODES

Dated \_\_\_\_\_

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STATE OF CALIFORNIA                     )  
   )  
COUNTY OF SAN FRANCISCO            )

I, Jay W. Harbidge, a Certified Shorthand  
Reporter, do hereby certify:

That prior to being examined, the witness  
in the foregoing proceedings was by me duly sworn to  
testify to the truth, the whole truth, and nothing  
but the truth;

That said proceedings were taken before  
me at the time and place therein set forth and were  
taken down by me in shorthand and thereafter  
transcribed into typewriting under my direction and  
supervision;

I further certify that I am neither  
counsel for, nor related to, any party to said  
proceedings, not in anywise interested in the  
outcome thereof.

In witness whereof, I have hereunto  
subscribed my name.

Dated: December 5, 2011



  
\_\_\_\_\_

Jay W. Harbidge, CSR NO. 4090

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U.S. LEGAL SUPPORT, INC.  
180 Montgomery Street, Suite 2180  
San Francisco, California 94104

December 5, 2011

MARC COHODES  
C/O: MORGAN, LEWIS & BOCKIUS  
JOSEPH E. FLOREN  
Spear Street Tower  
San Francisco, California 94105

Re: Overstock.com v. Morgan Stanley,  
et al.

Date of Deposition: November 18, 2011

Dear Mr. Cohodes,

Please be advised that the transcript of your deposition taken in the above-entitled matter is available for reading and signing. The transcript will be held in our office and made available for your review for 30 days.

If it is more convenient to read a copy of the transcript and waive signature of the original transcript, please notify said office by letter sent certified or registered mail of any changes made.

In the event you do not sign your deposition transcript within thirty (30) days of receipt of this letter, it may be used with the full force and effect as though it had been read, corrected and signed.

If you are represented by counsel in this matter, you may wish to ask your attorney how to proceed. If you are not represented by counsel and wish to review your transcript, please contact our office for a mutually convenient appointment to review your deposition.

Thank you.

Sincerely,

Jay W. Harbidge, CSR

cc All counsel present

File

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