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# Appendix 798

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SUPERIOR COURT OF THE STATE OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY

Docket No.: MRS-L-2032-06

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FAIRFAX FINANCIAL HOLDINGS LIMITED and  
CRUM & FORSTER CORP.,

Plaintiffs,

-against-

S.A.C. CAPITAL MANAGEMENT, LLC, et al.,

Defendants.  
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787 Seventh Avenue  
New York, New York

February 22, 2011  
10:02 A.M.

Videotaped Deposition of STEVEN A. COHEN, taken by Plaintiffs, pursuant to Notice, held at the above-mentioned time and place, before Jeffrey Benz, a Certified Realtime Reporter, Registered Merit Reporter and Notary Public within and for the State of New York.

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2 Q. You're going to follow the instructions  
3 of your counsel?

4 A. Absolutely.

5 DIR Q. Were there any other people deposed in  
6 connection with that investigation?

7 MR. KLOTZ: Object, and instruct him not  
8 to answer.

9 DIR Q. Was that an investigation into any  
10 conduct in which you were involved?

11 MR. KLOTZ: Objection, and instruct him  
12 not to answer.

13 Q. Mr. Cohen, have you ever been sanctioned  
14 by any regulatory body?

15 MR. KLOTZ: You can go ahead and answer  
16 that.

17 A. Yes, I was, the New York Stock Exchange.

18 Q. And what were you sanctioned for?

19 A. I was sanctioned for --

20 THE WITNESS: I can answer?

21 MR. KLOTZ: Go ahead.

22 A. For a violation related to a stock  
23 called Anacom (phonetic).

24 DIR Q. What was the nature of the violation?

25 MR. KLOTZ: Objection, and I instruct

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2 A. I don't remember.

3 Q. Do you remember speaking to him before  
4 that?

5 A. Sure.

6 Q. It wasn't unusual to speak to  
7 Mr. Sender, right? You just don't remember when  
8 you spoke to him?

9 A. I spoke to him on relatively rare  
10 occasions.

11 Q. About what?

12 A. It was probably -- I mean, I ran into  
13 him at auction houses, so there was art  
14 conversations.

15 Q. Is that the only thing you talked to  
16 Mr. Sender about?

17 A. Well, I mean, there was one time when  
18 he -- and I can't tell you when, this was many  
19 years ago, where he tried to talk to me on  
20 Fairfax, and I just had no interest in it.

21 Q. Okay. That was a January dinner  
22 meeting?

23 MR. KLOTZ: Object to the form.

24 You can answer.

25 A. I believe so.



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2 Q. Now, you remember that dinner meeting?

3 A. No.

4 Q. How do you know that you had no interest  
5 in talking about Fairfax then?

6 A. Because what I remember is, whenever --  
7 I just had no interest in what he was doing.

8 Q. Okay. But I just want to understand --  
9 you told me you couldn't really remember whether  
10 you met counsel last week and where you met him.  
11 I want to understand how it is that you remember  
12 precisely that several years ago Mr. Sender tried  
13 to talk to you about Fairfax and you had no  
14 interest whatsoever.

15 MR. KLOTZ: Object to the form.

16 A. That's absolutely correct.

17 Q. So tell me what you remember about that  
18 meeting. Where was it?

19 A. I don't remember.

20 Q. When was it?

21 A. I would say, and this is just a ballpark  
22 guess, between, you know, five to seven -- four to  
23 seven years ago.

24 Q. Do you remember where it was?

25 A. No.

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2 Q. Do you remember who was there?

3 A. No.

4 Q. Do you remember, was it a dinner?

5 A. I'm not sure.

6 Q. Do you remember anything Mr. Sender said  
7 in that meeting?

8 A. The only thing I remember is, there was  
9 talk of him trying to get me to invest in his  
10 fund, and the idea, you know, he may have talked  
11 about Fairfax, and I had no interest in it.

12 Q. Before you said you remembered that he  
13 tried to talk about Fairfax --

14 A. I just said he may have --

15 Q. Let me finish my question, sir.

16 Your testimony a moment ago was that you  
17 remember talking to him years ago, and he wanted  
18 you -- he wanted to talk about Fairfax, and you  
19 said you had absolutely no interest in that.

20 A. That's right.

21 Q. Now, you said at this dinner he may have  
22 mentioned Fairfax. Which one was it?

23 A. He definitely mentioned Fairfax to me at  
24 some point. The issue is whether it was a dinner  
25 or not.

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2 Q. Your testimony a moment ago is that:  
3 The only thing I remember is, there was talk to  
4 him trying to get me to invest in his fund, and  
5 the idea, you know, he may have talked about  
6 Fairfax, and I had no interest in it.

7 A. Uh-huh.

8 Q. What meeting are you talking about?

9 A. I don't know.

10 Q. But you're also not sure -- whatever  
11 meeting it was, now you're not sure whether he  
12 raised Fairfax or not; is that your testimony?

13 MR. KLOTZ: Object to the form.

14 Go ahead and answer.

15 A. My belief is that at some point he tried  
16 to interest me in Fairfax, and I had no interest.  
17 The question is, you know, I can't remember if it  
18 was a dinner, or we met -- or we had a phone call  
19 when that was brought up. Either way, I had no  
20 interest.

21 Q. But you tie it to him also trying to get  
22 you to invest in his fund?

23 A. He's been trying to get me to invest in  
24 his fund for a while.

25 Q. And you were invested in his fund,

1

2 correct?

3 A. Absolutely.

4 Q. At the time you had this conversation,  
5 were you already invested in his fund?

6 A. I don't remember.

7 Q. How many times did he -- so he's always  
8 trying to get you to invest in his fund?

9 A. Sure.

10 MR. VAN DE WATER: Objection.

11 Q. Even when you were invested in his fund?

12 A. He would either try to keep me as an  
13 investor in the fund when I was in the fund, or  
14 when at some point we redeemed, he made an effort  
15 to keep me in the fund, yeah, have me reinvest in  
16 the fund.

17 Q. When did you first invest in his fund?

18 A. I believe it might have been early  
19 2000s, but I'm not sure about the actual year.

20 Q. When did he leave S.A.C.?

21 A. He left in 1998.

22 Q. Did you invest as soon as he left?

23 A. I don't remember.

24 Q. Now, when you invested in his fund in  
25 the early 2000s, did he continue to talk to you

1

2 about the fund to get you to continue to invest or  
3 invest more?

4 A. He would -- he would keep me up on the  
5 results of the fund.

6 Q. And was that as a -- was that for the  
7 purpose of trying to get you to invest more, to  
8 keep your investment in?

9 A. I don't remember.

10 Q. Now, why would he be doing that, making  
11 those calls to you?

12 MR. KLOTZ: Object to the form.

13 MR. VAN DE WATER: Objection.

14 A. I have no idea what he was thinking.

15 Q. Well, you were an investor, right?

16 A. Uh-huh. That's right.

17 Q. So he would call and keep you up on the  
18 fund, right?

19 A. On occasion.

20 Q. And you were a substantial investor in  
21 his fund, right?

22 A. I'm not sure what that means.

23 Q. Do you understand the word  
24 "substantial"?

25 A. Yes, I do.

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2 call?

3 A. No.

4 Q. You don't -- but you -- do you recall he  
5 called you?

6 A. He did call me.

7 Q. It wasn't a call from you?

8 A. I don't believe so.

9 Q. Okay. Is that the -- well, withdrawn.  
10 And you can't tell me when that call  
11 occurred?

12 A. No.

13 MR. KLOTZ: Object to the form.

14 Q. You can't tell me what was said on that  
15 call?

16 MR. KLOTZ: Object to the form.

17 A. I just don't remember.

18 Q. Okay. But you do recall that the  
19 outcome was you just -- quote, just weren't  
20 interested, correct?

21 A. That's correct.

22 Q. What do you mean by "just wasn't  
23 interested"?

24 A. I wasn't interested in his ideas.

25 Q. You weren't interested in his ideas

1  
2 period?

3 A. Period.

4 Q. Okay. So why was that?

5 A. Because I didn't believe in his work.

6 Q. Why didn't you believe in his work?

7 A. Because I felt that it wasn't up to my  
8 standards.

9 Q. Why was that?

10 A. Just -- it was just my belief.

11 Q. Okay. What -- when you say "was not up  
12 to my standards," what does that mean?

13 A. I questioned the depth of the quality of  
14 the work.

15 Q. How so?

16 A. It's -- it's my -- it was just my belief  
17 that he didn't do the quality of work that we do  
18 in my firm.

19 Q. What about when he was at your firm?

20 A. Adam was a trader.

21 Q. What does that mean?

22 A. He traded stocks. He was not an  
23 analyst.

24 Q. Okay. So just so I'm clear on what you  
25 mean by that, I know this is what you do for a

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2 A. That's correct.

3 Q. And how does it get allocated to various  
4 funds?

5 A. There's an allocation process that's  
6 consistent over every -- mostly every stock or  
7 situation.

8 Q. Okay. Was he one of your most  
9 successful traders during his time there, or was  
10 he -- where did he fall in the percentiles?

11 A. I would say he was successful. I don't  
12 remember if he was the most successful.

13 Q. I didn't ask if he was the most but was  
14 he one of the better traders?

15 A. Yes, he was.

16 Q. Did he leave, or did you ask him to  
17 leave?

18 A. He left.

19 Q. Okay. And when he left, you -- your  
20 view of his work, of his trading changed?

21 A. No. Actually, I -- I thought he was a  
22 very good trader.

23 Q. So when you say you weren't interested  
24 in his ideas, your point was, you're not  
25 interested in his investment ideas; is that right?



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2 A. Well, later on, yes.

3 Q. Why later on?

4 A. Because that's the question you asked  
5 me, when I was interested, before, and that was  
6 2005, and I just wasn't interested in his work.

7 Q. Okay. You weren't interested in any of  
8 his work?

9 A. Pretty much.

10 Q. Were you interested in his work when he  
11 was at S.A.C.?

12 A. Only his technical work.

13 Q. Why did you invest in his fund?

14 A. Because I thought I could make money.

15 Q. Did you?

16 A. I -- I don't -- I don't remember the  
17 actual cumulative total.

18 Q. Do you remember generally whether you  
19 made money or lost money?

20 A. I believe I made money early in my -- in  
21 the investing with him, and then later on I know  
22 he had some losses, and I'm not sure when and how  
23 much.

24 Q. You withdrew from his investment,  
25 according to Mr. Nussbaum, for performance

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**REDACTED**

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2 A. I -- I don't remember.

3 Q. Did you have one back in 2002?

4 A. That -- I just don't remember.

5 Q. Who is Peter Schwartz?

6 A. He's a trading assistant for one of my  
7 portfolio managers.

8 Q. How long has he been a trading  
9 assistant?

10 A. I -- I don't remember the amount of  
11 years. I would say between five and ten years.

12 Q. Do you also know a Peter Schwartz who  
13 was in real estate?

14 A. I don't know who that is.

15 Q. You don't know any other Peter Schwartz  
16 or Mr. Schwartz who was involved in real estate?

17 A. No, I don't.

18 Q. Is Peter Schwartz still employed by you?

19 A. Yes, he is.

20 Q. Does he know Mr. Contogouris?

21 A. I have no idea.

22 Q. Were you ever introduced to  
23 Mr. Contogouris by him?

24 A. I don't remember.

25 Q. So you could have been?

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2 reasons. In this case it's my belief that he's  
3 angry.

4 Q. Okay. But what is your understanding of  
5 the facts in this case, sir?

6 MR. KLOTZ: Object to the form.

7 A. The -- I -- I don't understand the  
8 question. You're going to have to be more  
9 specific.

10 Q. Well, when you say someone brought a  
11 case because they're angry, are you suggesting  
12 they brought it even though it doesn't have merit?  
13 They couldn't have brought it because it was a  
14 meritorious claim?

15 A. You know, I don't know enough about the  
16 case to make a judgment on that.

17 Q. But you did make a judgment that he  
18 brought it because he was angry?

19 A. Yeah, it's my belief that when you bring  
20 a lawsuit in a case, that, you know, he's angry.

21 Q. But you don't have a view as to whether  
22 it has merit?

23 A. I have no view on that.

24 Q. Now, what was your basis for saying your  
25 company shouldn't be in the lawsuit?

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2           A.    Because of my belief that, you know,  
3 we -- in how we acted, that we were -- we were --  
4 I believe I'm in that -- I'm in the lawsuit  
5 because of marquee value.

6           Q.    What do you mean by that?

7           A.    Meaning that, you know, I'm a well-known  
8 guy and -- on Wall Street.

9           Q.    You don't think you're in the lawsuit  
10 because you were actually shorting Fairfax shares?

11          A.    No. I -- actually, my belief is that  
12 his judgment, or whoever is suing me, and my  
13 involvement in this case is totally off base.

14          Q.    What was your involvement -- as you  
15 understand it here, what do you recall about your  
16 firm's involvement?

17          A.    Whatever --

18               MR. KLOTZ: Object to the form.

19          A.    I recall we traded the stock in 2002. I  
20 recall we traded the stock in 2003. In  
21 conversations with counsel, I recall trading the  
22 stock in 2006, in my firm.

23          Q.    Is that -- have you given me the sum and  
24 substance of your entire understanding of the  
25 facts that relate to S.A.C.?

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MR. BOWE: Counsel -- are you done?

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MR. KLOTZ: If you don't like it, you  
can follow it.

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MR. BOWE: I will. Are you done?

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MR. KLOTZ: Am I done? Yes. He's not.  
I'd like to have your question reread and his  
answer to it.

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MR. BOWE: Why don't you find his  
question.

10

11

Q. Listen to the question carefully, sir.

12

I don't want to know what documents you looked at,

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because previously counsel objected to that and

14

asserted privilege. What I want to know is,

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sitting here today, after that process, what is

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your best recollection of the facts of this case.

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MR. KLOTZ: Read the question back.

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(The record was read back.)

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MR. KLOTZ: And I object to the form of

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that question, but you can go ahead and

21

answer it.

22

A. It's going to be a long-winded answer.

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MR. KLOTZ: That's fine.

24

A. What I understand is the firm had a

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short position in 2002. We started covering the

1  
2 short position in late 2002. And I believe we  
3 were covering that position into this report that  
4 you mentioned, this -- this -- this report that --  
5 from the Morgan Keegan analyst in January of 2003.  
6 I believe we had a very small position left into  
7 the issuance of that report.

8 I was shown -- I was told there was  
9 trading in 2004 that I didn't remember, and there  
10 was trading in Fairfax in 2006, when S&P, I think,  
11 downgraded Fairfax, or put it on watch, and we  
12 went short Fairfax; and then maybe a week later or  
13 a few days later, I'm not sure, we covered with a  
14 loss.

15 Q. Is that the sum and substance of your  
16 recollection?

17 A. Yes.

18 Q. Is there any part of that recollection  
19 that's not based on what your lawyers told you?

20 A. I think what my lawyers did was showed  
21 me the trading in Fairfax and jogged my memory.

22 Q. Okay. So now, before they did that, you  
23 had no independent recollection of any of the  
24 events that are related to the complaint?

25 A. I had a general idea that we were in

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2 Fairfax. I didn't have what's -- I didn't have  
3 with certitude how we had handled the position in  
4 Fairfax from 2002 into 2003. I had no knowledge  
5 of trading that I remember in 2004. And they  
6 jogged my memory on the trading in Fairfax in  
7 2006.

8 Q. Okay. Did they jog your memory about  
9 getting a Bloomberg from Adam Sender, before you  
10 started shorting in 2006, about Fairfax?

11 A. Yes, they did.

12 Q. Okay. What did that jog your memory on?

13 A. I didn't remember that, but my counsel  
14 mentioned that.

15 Q. Okay. So now you're aware that just  
16 before you started shorting in '06 again, you got  
17 an e-mail from Adam Sender -- Bloomberg from Adam  
18 Sender telling you that he thought Fairfax was  
19 going to be what?

20 A. Showed me a -- a -- an -- actually,  
21 he -- the exact -- if I remember correctly, that  
22 it was going to be like PXRE.

23 Q. Which was what?

24 A. Which -- I knew as an insurance company  
25 but not much else.



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2 people in your group not to trade in those  
3 securities?

4 MR. KLOTZ: Object to the form.

5 Q. Withdrawn.

6 Did anyone at the time after you  
7 received the e-mails indicating that people in  
8 your group expected the Morgan Keegan report that  
9 had John Gwynn's initial report to come out the  
10 following week, were any of those people told not  
11 to trade?

12 MS. BARNHOUSE: Objection. Form.

13 A. The answer is, I have no knowledge about  
14 that. And based on the documents that were shown  
15 to me, I -- I -- it doesn't look that way.

16 Q. Now, if, in fact, people from -- people  
17 from your group had information from Morgan Keegan  
18 that a report was coming out, they should have  
19 been told to stop trading, correct?

20 MR. KLOTZ: Object to the form.

21 A. Not necessarily.

22 MS. BARNHOUSE: Objection to form.

23 Q. What is your understanding of what their  
24 obligations would have been?

25 A. If they -- like -- it gets to --

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2 where -- was it a rumor, was it a fact? If  
3 they -- if we -- in my testimony, we talked about  
4 if you know that a report's coming out for  
5 certain, and you know it's coming from -- from the  
6 person writing it or someone working for the firm  
7 where you know it's coming out, I would advise not  
8 to trade on it.

9           If it's a rumor in the marketplace,  
10 they -- you know, and -- and unsubstantiated, then  
11 I would say that it would a totally different  
12 situation, I'll be more -- more amenable to trade  
13 on it.

14           Q. My question was, if people in your group  
15 had it from Morgan Keegan that a report was coming  
16 out next week, they should not have been trading  
17 in a security, correct?

18           MR. KLOTZ: Object to the form.

19           A. Well, not necessarily again. I can  
20 think of -- if you -- possibilities where if  
21 you're buying the stock, and the recommended --  
22 recommendation, if you believe, you know, that  
23 it's coming from Morgan Keegan, and it's a sell,  
24 then I would have no problem with buying stock in  
25 front of a report like that.

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2 Q. Okay. So when you say you would have no  
3 problem, you think that would be legal?

4 A. Yes.

5 Q. You think that would be consistent with  
6 the SEC rules on trading on inside information?

7 A. The way I understand the rules on  
8 trading on inside information, it's very vague.

9 Q. Are you familiar with Rule 10b5-1?

10 A. No. No, I -- not that -- you would have  
11 to explain it to me.

12 Q. Okay do you have an understanding that  
13 when in possession of material nonpublic  
14 information you're ever allowed to trade in the  
15 security?

16 A. That's not the way it's explained to me.

17 Q. So you believe you can trade while in  
18 possession of material nonpublic information?

19 A. I believe that if you're -- if -- if the  
20 result is that you are trading on the other side  
21 of the -- you know -- in this case the way I  
22 understand it is, he was going to give a sell  
23 recommendation. I have no problem if you're -- to  
24 buy stock in front of a sell recommendation.

25 Q. Even if -- even if you have possession

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2 of that sell recommendation and no one else does?

3 A. Yes.

4 Q. That's -- that would be okay at S.A.C.?

5 A. Yes.

6 Q. And that would be part of S.A.C.'s  
7 practices?

8 MR. KLOTZ: Object to the form.

9 A. The answer is, it's not part of any  
10 practice. It would be -- I have no problem with  
11 going against a -- an analyst recommendation.

12 Q. Okay. Now, the S.A.C. compliance manual  
13 at the time provided that if you were in  
14 possession of material nonpublic information, you  
15 could not trade, period, correct?

16 A. Yes. Well, the way --

17 Q. Is that correct?

18 MR. KLOTZ: Object to the form.

19 A. Actually, I don't know what it says.

20 Q. Okay. So you don't know -- at the time  
21 you didn't know what S.A.C.'s compliance manual  
22 said on insider trading?

23 A. When it comes to trading, I rely on  
24 counsel.

25 Q. Okay. Did anyone consult counsel with

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2 respect to these trades?

3 A. I have no idea.

4 Q. Okay. Now, is it your testimony, as the  
5 head of the firm at this time, other than  
6 consulting counsel, you didn't know what the  
7 compliance manual said?

8 MR. KLOTZ: Object to the form.

9 A. It's -- the answer is, I've read the  
10 compliance manual but I don't remember exactly  
11 what it says.

12 Q. Do you recall that it said that if  
13 you're in possession of material nonpublic  
14 information, you cannot trade in that security?

15 A. Answer is, I don't remember.

16 Q. Do you know today whether your  
17 compliance manual says that if you are in  
18 possession of material nonpublic information, you  
19 can't trade it?

20 A. I've read it and I will say again, if --  
21 if -- if there's an analyst recommendation and  
22 you're going to the other way, I have no problem  
23 with that.

24 Q. My question was, do you know today  
25 whether your compliance manual says that if you're

1

2 in possession of material nonpublic information,  
3 you can't trade, period?

4 A. I don't remember what it says.

5 Q. So you don't know today, sitting here  
6 today as the head of the firm, what your  
7 compliance manual says?

8 A. That's right. I've read it. But if  
9 you're asking me what it says today, I don't  
10 remember.

11 Q. Are you concerned at all that what  
12 you're telling me would be okay would be contrary  
13 to your compliance manual?

14 MR. KLOTZ: Object to the form.

15 A. The answer is, when you're trading  
16 securities, it's a judgment call. Whatever the  
17 compliance manual says, it probably doesn't take  
18 into account every -- every potential situation.

19 Q. Okay. So the compliance manual -- you  
20 have authority, Stevey Cohen, to ignore the  
21 compliance manual?

22 MR. KLOTZ: Object to the form. And I  
23 particularly object to the obnoxious,  
24 deliberate use of "Stevy" in addressing  
25 Mr. Cohen.

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MR. BOWE: It wasn't deliberate. It was  
a mistake.

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MR. KLOTZ: No, it was intentional,  
Mr. Bowe. Knock it off.

5

6

MR. BOWE: How do you know?

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MR. KLOTZ: Because I know.

8

MR. BOWE: I know you're trying to be a  
tough guy in front of your client, but why  
don't you knock it off? I know you're trying  
to be a tough -- defend your big client. I  
understand that. This was a mistake.

12

13

Q. I'm sorry I used the word "Stevey" if I  
offended you.

14

15

A. I'm not a big client.

16

17

Q. If I offended you, I apologize. I'll  
the word Steven from now on.

18

19

MR. KLOTZ: Why don't you use the word  
Mr. Cohen?

20

MR. BOWE: Steven Cohen.

21

22

MR. KLOTZ: Why don't you call him  
Mr. Cohen.

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MR. BOWE: I'll tell you what, Marty,  
I'll question this witness however I like.

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MR. KLOTZ: I just ask that you be

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professional.

MR. BOWE: You know what's not professional is when you accuse someone of doing something intentionally when you have no idea whether they did or didn't. Okay. That's not professional.

Q. Mr. Cohen --

MR. BOWE: Can you read back my question?

Withdrawn. I'll rephrase it.

Q. So is it your testimony, Mr. Cohen, that you are able to ignore an unequivocal direction in the compliance manual concerning insider trading?

MR. KLOTZ: Object to the form. Go ahead and answer.

A. The answer would be if I have a different belief than what's in the compliance manual, I would go to counsel.

Q. Okay. And nobody went to counsel, that you know of, with respect to these trades, right?

A. I have no knowledge of it now.

Q. Now, you also know -- you were also aware that a story was coming out in Forbes prior to it coming out during the same time period,



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2 receiving that e-mail, you made any inquiry from  
3 these people as to what they --

4 A. I don't remember receiving the e-mail.

5 Q. Let me finish my question.

6 Do you recall at the time of that e-mail  
7 that you made any -- took any steps to inquire  
8 from the people who had sent it about what  
9 information they had received from that reporter?

10 MR. KLOTZ: Object to the form.

11 A. I don't remember.

12 Q. Okay. Now, you understand, do you not,  
13 that it's illegal to trade in front of a newspaper  
14 report, correct?

15 MR. KLOTZ: Object to the form.

16 A. You know, I'm not so sure about that.

17 Q. What is your understanding?

18 A. My understanding is, you can talk to  
19 reporters -- I mean, first -- you may not know  
20 what direction a report is going to be suggesting.  
21 Okay? I mean, it could be a great report, could  
22 be a lousy report.

23 If you have knowledge about what the  
24 guy's going to write, I would say, you know, you  
25 might want to restrict yourself. If -- if a

1  
2 reporter is calling and you don't know sort of  
3 what his angle is, or why he's writing -- writing  
4 a report, I would say you don't need to restrict  
5 yourself.

6 Q. So if you know from a reporter it's  
7 going to be a negative story, you shouldn't trade,  
8 right?

9 MR. KLOTZ: Object to the form.

10 A. I would say that if you know a reporter  
11 is going to write a negative story on a stock, I  
12 would say you should probably refrain.

13 Q. Okay. Now, did you tell anyone at the  
14 time in your group not to trade in Fairfax  
15 securities after you got that e-mail?

16 A. I don't remember getting the e-mail, so  
17 the answer is, I can't -- I mean, the answer is  
18 probably not.

19 Q. Okay. It's not whether you received the  
20 e-mail or not. You're certain you got the e-mail,  
21 correct?

22 A. I don't remember telling people not to  
23 trade.

24 Q. Okay. And you're not aware of any facts  
25 where anyone told those people not to trade,

1  
2 right?

3 A. I'm not aware of any facts.

4 Q. Now, do you know whether any of the  
5 people in your group, while in possession of the  
6 information reflected in those e-mails concerning  
7 the Gwynn report and the Forbes story, actually  
8 shorted shares?

9 MR. KLOTZ: Object to the form.

10 A. The way I remember the -- the trading  
11 pattern, refreshed by counsel, was that there was  
12 a short position in 2002 that we were covering  
13 into 2003.

14 Q. Okay. Now, is it your understanding  
15 that it's okay under the law to be covering and  
16 transacting in those securities if it was -- if  
17 the -- if the nonpublic information you had was  
18 consistent or was contrary to your trading?

19 MR. KLOTZ: Object to the form.

20 Q. Withdrawn.

21 It's your testimony that if people at  
22 S.A.C. were in possession of material nonpublic  
23 information concerning the issuance of the Gwynn  
24 report, they could, consistent with the law and  
25 S.A.C.'s compliance manual, trade in those

1  
2 securities?

3 MS. BARNHOUSE: Objection. Form.

4 A. The way I understand the law is that if  
5 you are buying stock into a sell recommendation,  
6 which was what Gwynn's report was -- was what it  
7 was, then I would have no problem with that.

8 Q. Okay. It's not whether you have a  
9 problem with it. I want to know whether you  
10 understand it to be legal.

11 A. I believe it's legal.

12 Q. Why do you believe it's legal? Because  
13 you're not relying on it?

14 MR. KLOTZ: Object to the form.

15 A. I believe if -- you know, because you're  
16 buying stock -- the way I understand the law, when  
17 it comes to material nonpublic information, is  
18 that if -- you know, they're trying to protect  
19 people who would not -- who -- who were taken  
20 advantage of.

21 In this case, if I'm buying stock into a  
22 sell recommendation, there is nobody on the other  
23 side that gets hurt.

24 Q. Okay. Is that your understanding of  
25 what the law provides?

1

2           A.    The way I understand the law is that  
3 it's very vague, so it's an interpretation of the  
4 law.

5           Q.    So your understanding of the SEC rules  
6 on trading on inside information is that they do  
7 not preclude unequivocally trading while in  
8 possession of such information?

9           A.    I'm not aware of that.

10          Q.    You don't know one way or the other?

11          A.    No.

12          Q.    That's not something you've ever asked  
13 to be educated about at S.A.C.?

14               MR. KLOTZ: Object to the form.

15          A.    We -- I ask all the time, but I've never  
16 been told in this type of situation that what we  
17 were doing with -- what we were -- what we were  
18 doing was legal.

19          Q.    You -- I'm sorry, did you say legal or  
20 illegal?

21          A.    Legal.

22          Q.    I'm sorry, legal or --

23          A.    Legal, L-E-G-A-L.

24               MR. KLOTZ: Could you read the answer --  
25 read it back and listen to it, make sure it's

1

2 your answer.

3 (The record was read back.)

4 A. Let me rephrase my answer.

5 Q. Okay.

6 A. I appreciate it. That the -- you know,  
7 the way I understand the transactions is we were  
8 buying stock in front of this report. It's my  
9 belief that doing so was not in violation of any  
10 SEC regulation at all.

11 (Securities and Exchange Commission Rule  
12 Section 240 10b5-1 entitled "Trading on the  
13 Basis of Material Nonpublic Information in  
14 Insider Trading Cases," was marked Cohen  
15 Exhibit 1 for identification, as of this  
16 date.)

17 Q. Mr. Cohen, I've marked as Cohen  
18 Exhibit 1 --

19 THE WITNESS: What do I do with this?

20 MR. KLOTZ: He will ask you to -- direct  
21 your attention to portions of it.

22 Q. -- Securities and Exchange Commission  
23 Rule Section 240 10b5-1 entitled "Trading on the  
24 Basis of Material Nonpublic Information in Insider  
25 Trading Cases." You understand, do you not, that

1

2 it is illegal to trade on the basis of material  
3 nonpublic information, correct?

4 MR. KLOTZ: Object to the form.

5 A. I just answered that question.

6 Q. And the answer is yes, correct?

7 A. The answer --

8 MR. KLOTZ: Object to the form.

9 A. The answer is -- the answer is that in  
10 this situation, where there was -- a -- a supposed  
11 report coming out, that I have -- I don't believe  
12 that that is trading on -- on inside information.

13 Q. You believe it's not trading on the  
14 basis of inside information?

15 A. I believe that because I'm acting in the  
16 opposite way of the proposed report -- the report  
17 that was coming, and -- what you would expect the  
18 reaction to be, that I -- you know, that's  
19 perfectly fine.

20 Q. And it's perfectly fine because, in your  
21 view, you're not trading based on that report,  
22 right?

23 MR. KLOTZ: Object to the form. He  
24 already explained why he thought it was  
25 perfectly fine, but go ahead again.

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2           A.    The answer is if I'm trading on the  
3 other side of a report that is coming out, and in  
4 this case was a sell recommendation, and I'm  
5 buying stock, I don't believe S.A.C. or -- or  
6 anyone who has traded in that stock at S.A.C. has  
7 done anything wrong.

8           Q.    Okay. My question is, is your reason  
9 for saying that they haven't done anything wrong  
10 your belief that they haven't been trading on the  
11 basis of that report because it's the opposite of  
12 what you're trading?

13           MR. KLOTZ: Object to the form.

14           A.    The answer is, they are making an  
15 investment decision that is clearly different than  
16 what was in this report and what was said, and --  
17 and being a buyer as opposed to what he was  
18 recommending, which was a sale. Therefore, the  
19 only conclusion I can come up with is they had a  
20 different investment view.

21           Q.    Okay. And so a different investment  
22 view, why is that relevant to your understanding  
23 about this, that they're not relying on that  
24 report?

25           MR. KLOTZ: Object to the form.



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2           A.    My belief is that they have -- had their  
3 own investment view -- they've done their own  
4 analysis.  It clearly, to me, looks like a totally  
5 different view than -- than what's -- what's being  
6 written by the analyst.

7           Q.    Okay.  And why does that make it okay as  
8 you understand the law?

9           MR. KLOTZ:  Object to the form.

10          A.    The way I understand the law is, or the  
11 way that -- if I'm acting, you know, with my own  
12 view, and there's nobody on the other side  
13 getting -- my belief is those laws are in place to  
14 protect investors who don't have that type of  
15 information.

16                If I'm -- and if I'm acting in the  
17 other -- you know, in -- in the opposite way of  
18 what the -- the report intends to suggest, then  
19 there's nobody hurt.  And therefore, we're  
20 obviously acting in our -- you know, with our own  
21 opinion, and therefore, you know, whatever the  
22 report says is irrelevant.

23          Q.    Okay.  And so when you say "we're  
24 obviously acting in our own opinion," what you're  
25 saying is you're not relying on that report, you

1  
2 have an independent reason for doing the trade; is  
3 that right?

4 MR. KLOTZ: Object to the form.

5 A. The answer is, there are many reasons  
6 why you might do a trade. And the fact that  
7 somebody's coming out with a report suggesting a  
8 sell, you know, when we're on the buy side, is, to  
9 me, you know -- you know, all -- or that there's a  
10 rumor that it's going to come out is -- you know,  
11 part of the marketplace, and -- and totally  
12 acceptable that we can be on the other side.

13 Q. Okay. I want to leave the rumors aside.  
14 I want to talk about material nonpublic  
15 information. So do I understand your position  
16 correctly, as the head of S.A.C., that if you know  
17 an analyst report is coming out, that you can  
18 trade in front of that if you're trading in the  
19 opposite -- with the opposite indication of the  
20 report as long as you have an independent basis  
21 for doing so?

22 MR. KLOTZ: Object to the form, but go  
23 ahead.

24 A. The answer is, if that's the reason why  
25 you're doing it, then I would have no problem with

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2 that.

3 Q. Okay. So I'm trying to understand where  
4 your belief comes from. Your belief is hinging on  
5 whether or not you have a reason other than the  
6 report for doing your trade; is that right?

7 MR. KLOTZ: Object to the form.

8 A. No. The reason is, the way I understand  
9 the rule, and why it -- it exists is to protect  
10 people who don't have -- are not in possession of  
11 that information. If I'm on the other side of  
12 that trade, there is nobody hurt in that  
13 situation.

14 Q. Okay. I understand your belief as to  
15 what the purpose of the rule is, but I want to  
16 talk about what the rule actually provides. Do  
17 you understand that distinction?

18 MR. KLOTZ: Objection to the form.

19 A. It's my belief that the rule is vague,  
20 and therefore, you can interpret the rule any  
21 way -- you know, with -- as a lawyer, you can  
22 probably interpret it in lots of different ways.

23 Q. You were about to say you can interpret  
24 it any way you want. That's what you were about  
25 to say?

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2 A. I wasn't going to say that.

3 MR. KLOTZ: Object to the form.

4 Q. You started to say that, right?

5 MR. KLOTZ: Object to the form.

6 A. I don't remember what I was going to  
7 say.

8 Q. Okay. So now you say the rule is vague.  
9 Is it your view that there is some ambiguity that  
10 permits you to trade on the basis of material  
11 nonpublic information?

12 MR. KLOTZ: Object to the form.

13 A. It is my view that if you're in  
14 possession of nonmaterial public information, you  
15 wouldn't want to trade unless -- and here is an  
16 instance, and there may be other instances, where  
17 in doing so you're on the other side of the trade,  
18 and therefore, perfectly acceptable.

19 Q. So your understanding of the rule is  
20 there are times when you are permitted to trade on  
21 the basis of material nonpublic information?

22 MR. KLOTZ: Objection to the form.

23 Q. Yes or no?

24 A. I can't give you a yes-or-no answer.

25 Q. Okay. So you can't answer for me yes or

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2 no whether there are times -- withdrawn.

3 You can't answer for me whether you are  
4 prohibited categorically from trading on the basis  
5 of material nonpublic information?

6 MR. KLOTZ: Objection to the form.

7 A. If you're in possession of -- of  
8 material nonpublic information, I think we just --  
9 well, because the rule is vague, I think we've  
10 just gone through an example of where I would  
11 accept that you could trade.

12 Q. Okay. And your example, the ambiguity  
13 is, if the material nonpublic information is  
14 something that is not something you're relying on,  
15 then you can trade?

16 MR. KLOTZ: Object to the form. That's  
17 not what he testified.

18 A. Maybe I'll help you with what I said.

19 Q. Please do.

20 A. What I said was, the way I understand  
21 the -- the law is that it was set up to protect  
22 investors who didn't -- who were not in possession  
23 of non--- of -- of material nonpublic information.  
24 Because in -- and here is a situation where we are  
25 on the other side of that trade.

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2           Now, whether they were in possession of  
3 non--- of material public information, whether it  
4 was a rumor, I'm not clear. However, because in  
5 my view they were on the other side of the trade,  
6 and they were buying stock when there was a clear  
7 potential sell recommendation, either rumored or  
8 actual, then I would have no problem with my  
9 portfolio managers buying stock in front of that  
10 recommendation.

11           Q.    Okay. And is it -- is it -- the reason  
12 you have no problem because nobody's getting hurt?

13           A.    It's in my belief --

14           MR. KLOTZ: Object to the form.

15                    You can go ahead and answer.

16           A.    It's my belief the law is there to  
17 protect investors who are not in possession of  
18 that information. Because I'm on the other side  
19 of the trade, I believe -- and the way it's been  
20 explained to me is that that law is there to  
21 protect investors so that they're not hurt by  
22 this. In our case, in this specific example,  
23 which is what we're talking about, nobody was hurt  
24 with us buying stock.

25           Q.    Okay. And that's your basis for

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2 believing it's okay sometimes to buy on the basis  
3 of material -- withdrawn.

4           Whether or not someone gets hurt is the  
5 qualification on the prohibition against trading  
6 on the basis of material nonpublic information?

7           A. I will give you a second qualification.

8           Q. I just want to know whether that's a  
9 qualification.

10           MR. KLOTZ: Object to the form.

11           Q. Whether somebody gets hurt.

12           A. The way I understand the law is, it was  
13 written that way; therefore, in this situation I  
14 have no problem with my portfolio managers buying  
15 stock.

16           Q. My question was simpler. I just want to  
17 know if I understand you correctly. Is it your  
18 testimony that there's a qualification to the  
19 prohibition on trading on the basis of material  
20 nonpublic information, and that qualification is  
21 that it's okay if no one gets hurt?

22           MR. KLOTZ: Object to the form.

23           Q. Yes or no?

24           A. I think we're -- well, the answer is  
25 probably -- the way you stated the answer, I think

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2 you're confusing the issue.

3 Q. How am I confusing the issue?

4 A. Because the law is vague, and because of  
5 my understanding, given -- and in this situation  
6 it's my belief that buying stock in front of a  
7 sell recommendation is -- you know, even -- even  
8 if they knew the sell recommendation was coming  
9 out, I have no problem with that.

10 Q. Okay. I'm going to go back to my  
11 original question, sir. Yes or no, is it your  
12 testimony that's a qualification to the  
13 prohibition on trading on the basis of material  
14 nonpublic information, and that qualification is  
15 it's okay as long as no one gets hurt?

16 MR. KLOTZ: Object to the form.

17 A. Because of the vagueness of the law, I  
18 believe it's a judgment call. In this case, we're  
19 talking about this case now, I believe that we  
20 acted totally appropriately.

21 Q. Okay. Now, is it also the case, so  
22 you're not saying that -- withdrawn.

23 Is it also your position that it's okay  
24 to trade in this circumstance because you're not  
25 relying on the material nonpublic information?



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MR. KLOTZ: Object to the form.

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A. I can think of circumstances where if you believe that even if you were trading on the same side as a -- as a recommendation, if you felt or if you knew that it would have no impact on the stock, then I can theoretically suggest that trading on that stock, even -- while I might refrain from trading on that stock, if you believe that would have no impact on the stock, that therefore, I -- theoretically, you might be able to trade on that stock even if you knew that was coming out.

14

Q. My question was, is there any part of your belief and understanding that these trades was -- were appropriate, that depends on a view that it's okay as long as you're not relying on the material nonpublic information?

19

MR. KLOTZ: Object to the form.

20

A. Just repeat that again.

21

Q. I'll withdraw it and try it a different way.

22

23 Would you agree with me or disagree with  
24 me that once in possession of material nonpublic  
25 information, you are trading on the basis of it

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2 once you have it?

3 MR. KLOTZ: Object to the form.

4 A. I think that would be a very narrow  
5 view.

6 Q. What do you mean, a very narrow view?

7 A. Because there's lots of reasons why you  
8 would trade.

9 Q. And that's what I'm trying to get at.  
10 Is it your view as long as you have another basis,  
11 you're not -- you can say, I'm not trading on that  
12 material nonpublic information, and therefore,  
13 it's okay, while in possession of that  
14 information?

15 MR. KLOTZ: Object to the form.

16 A. I think it really depends on a  
17 situation-by-situation basis. I don't think this  
18 is an easy question to answer.

19 Q. Okay. So it's -- it depends on --

20 A. Now, what I might do is different  
21 from -- what I might do personally, or what I'll  
22 want -- you know, what my GC would recommend,  
23 in -- to be cautious, or to -- might not  
24 necessarily be necessarily the right decision.

25 Q. Okay. But we already know the

1  
2 compliance manual says that if you're in  
3 possession of material nonpublic information, you  
4 do not trade, right?

5 MR. KLOTZ: Object to the form.

6 A. Well, that's what it says. But like I  
7 said before, I'm sure it says it somewhere. And  
8 if you're asking me if I remember where it is  
9 in -- you know, I'm sure it says that in the  
10 compliance manual.

11 Q. So -- but my question is whether or not  
12 it's your position that it's legal to trade while  
13 in possession of material --

14 A. You know what I'm going to do? I'm  
15 going to revise my compliance manual.

16 Q. How so?

17 A. Well, you know, maybe we can provide an  
18 example like we're talking about today, where --  
19 to provide maybe a little bit more clarity on our  
20 views, or what we think is acceptable.

21 Q. Okay. And how would you do that?

22 A. You know, by -- be a perfect example,  
23 you know, where maybe I would include, you know,  
24 where there's a sell recommendation, if you're on  
25 the buy side, I would have no problem with -- so I

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2           A.    I -- I'll say it again.  If you're on  
3 the other side of the proposed -- or the expected  
4 movement in the stock, I would have no problem  
5 with that.

6           Q.    Okay.  Is that legal?

7           A.    I have no idea.

8           Q.    If you take a look at Exhibit 1, look at  
9 paragraph B.  Could you read it?

10          A.    Definition -- is that what we're talking  
11 about?

12          Q.    Yes.

13          A.    Definition of -- on the basis of --  
14 "basis of subject to the affirmative defenses in  
15 Paragraph C of this section, a purchase or sale of  
16 a security of an issuer is on the basis of  
17 material nonpublic information about the security  
18 or issuer if the person making the purchase or  
19 sale was aware of the material nonpublic  
20 information when the person made the purchase or  
21 sale."

22          Q.    Okay.  Now let's look up at A.  "The  
23 manipulative and deceptive devices prohibited by  
24 Section 10b of the act, 15 USC 78 J, and Section  
25 2410b-5 include, among other things, the purchase

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2 and sale of a security of an issuer on the basis  
3 of material nonpublic information about the  
4 security or issuer."

5           It goes on to talk about other things.  
6 Do you understand that to be a correct statement  
7 of the law?

8           MR. KLOTZ: Object to form.

9           A. Are you reading A?

10          Q. A.

11          A. So I'm going to read it myself. Okay?

12          Q. Yup.

13          A. I'm a slow reader.

14                 (The witness read.)

15          A. I don't know. I mean, it -- what -- I  
16 think I get it, but this is legalese, so.

17          Q. So what?

18          A. What do you mean?

19          Q. You said it's legalese. So what? It's  
20 not important?

21          A. It is important, but I -- a clause like  
22 that I would go to my general counsel for  
23 clarification.

24          Q. Okay. Well, you said the law was  
25 ambiguous. Okay? Here it says, "The manipulative

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2 and deceptive devices prohibited include, among  
3 other things, the purchase or sale of a security  
4 of an issuer on the basis of material nonpublic  
5 information about the security or issuer."

6 You see that?

7 A. Uh-huh.

8 Q. Is that ambiguous to you?

9 MR. KLOTZ: Object to the form.

10 A. I don't rely on this copy to -- I rely  
11 on general counsel to clarify.

12 Q. My question is, is there anything  
13 ambiguous about the clause I read?

14 MR. KLOTZ: Object to the form.

15 A. I'm not sure.

16 Q. Do you understand from this that you are  
17 prohibited from the purchase or sale of a security  
18 of any issuer on the basis of material nonpublic  
19 information?

20 MR. KLOTZ: Object to the form.

21 A. If that's what it says, but I'm advised  
22 by counsel differently.

23 Q. Okay. But that is what it says, right?

24 A. I don't rely on -- on a literal reading  
25 of these laws of a paragraph. Okay? I rely on my

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2 counsel to advise me on what we can do and what we  
3 can't do.

4 Q. Okay. We'll get to some what you rely  
5 on, but my question is simply whether or not what  
6 I read is in any way ambiguous to you.

7 MR. KLOTZ: Object to the form.

8 Q. Whether you rely on it or not is not  
9 what I'm asking.

10 A. I think it's out of context.

11 Q. What context is it out of?

12 A. I don't know, there's a whole thing  
13 here.

14 Q. So it's not your understanding that --  
15 your understanding is that this is somehow subject  
16 to some doubt that the -- the manipulative and  
17 deceptive devices prohibited include the purchase  
18 and sale of a security of an issuer on the basis  
19 of material nonpublic information?

20 MR. KLOTZ: Object to the form.

21 A. I'm having a hard time reconciling your  
22 view with the view of my counsel.

23 Q. I -- I'm actually not asking you to  
24 reconcile anything. They might be different.  
25 Okay? So understand my question the right way.

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2 I'm just asking you whether what I read to you is  
3 clear.

4 MR. KLOTZ: Object to the form.

5 A. That sentence is -- that sentence is --  
6 I understand the sentence.

7 Q. It's clear, right?

8 MR. KLOTZ: Object to the form.

9 A. I don't know if its' clear, but I  
10 understand the sentence.

11 Q. Okay. And you understand it to mean  
12 that you cannot trade -- you cannot purchase or  
13 sell a security on the basis of material nonpublic  
14 information?

15 MR. KLOTZ: Object to the form.

16 A. I'm having a problem reconciling your  
17 interpretation of that sentence and my general --  
18 my counsel's view on what we can do and what we  
19 can't do.

20 Q. Okay. I'm not asking for my view. I  
21 just read you the language. Okay? Do you  
22 understand the language to say --

23 A. Well, you asked me if it was clear.

24 Q. Is it clear that this prohibits the  
25 purchase or sale of a security --



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2 A. No.

3 Q. -- of the issuer -- no? What is it  
4 about what I read that's not clear?

5 MR. KLOTZ: Object to the form.

6 A. Because there's a whole context, there's  
7 a whole thing here, and I'm not relying on this  
8 paragraph or this sentence to dictate my view  
9 on -- on -- on that sentence and that paragraph.

10 Q. Okay. Now, let's look at what was --  
11 you having read Section B, on the basis of -- for  
12 the purposes of what is prohibited includes  
13 whether or not you -- withdrawn.

14 You are trading, according to Section B,  
15 on the basis of material nonpublic information by  
16 the mere fact you possess it. That's what  
17 Section B says, correct?

18 MR. KLOTZ: Object to the form.

19 A. We're having the same discussion, and my  
20 view is whatever a paragraph says I'm not going to  
21 interpret myself. I'm going to let my counsel  
22 interpret it for me.

23 Q. All right. You're -- you're the head of  
24 S.A.C., right?

25 A. Doesn't matter.

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2 Q. That wasn't my question. You're the  
3 head of S.A.C., right?

4 A. That's correct.

5 Q. And you take compliance seriously,  
6 right?

7 A. Absolutely.

8 Q. You take not trading on material  
9 nonpublic information seriously, right?

10 A. Very seriously.

11 Q. Have you ever taken it upon yourself to  
12 actually read the rules?

13 A. I rely on my counsel.

14 Q. The answer would be, No, I haven't read  
15 the rules?

16 A. Well, I might have read them. I just  
17 don't remember.

18 Q. And you don't remember these particular  
19 rules until I put them in front of you, right?

20 A. These particular words and sentences  
21 are -- if you asked me to say it myself, I would  
22 not be able to say it that way.

23 Q. Okay. Did you understand that you're  
24 trading on the basis of material nonpublic  
25 information by the mere fact you have it?

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2 MR. KLOTZ: Object to the form.

3 A. The way I -- when -- if I'm unsure  
4 about -- when I'm trading on something that might  
5 be material nonpublic information, I always go to  
6 counsel for clarification.

7 Q. Wasn't my question. We're assuming for  
8 the purposes of my question at the moment that  
9 there is material nonpublic information. Was it  
10 your understanding, when you came in the door  
11 today, that the mere fact that you possessed  
12 material nonpublic information means that if you  
13 trade, you're trading on the basis of it?

14 MR. KLOTZ: Object to the form.

15 A. Let me just give an example where --  
16 according to your view, we're trading on material  
17 nonpublic information. My view is that based on  
18 counsel, that if we're -- we're transacting on the  
19 other side of the transaction, we -- it's  
20 perfectly acceptable.

21 Q. My question, was different, sir. Was it  
22 your understanding, when you came in the door  
23 today, that the mere fact that you possessed  
24 material nonpublic information meant that if you  
25 traded, you would be trading on the basis of it?

1

2 MR. KLOTZ: Object to the form.

3 A. There's a lot of reasons where you  
4 transact, and that's a judgment call.

5 Q. I'll ask it again, sir. Was it your  
6 understanding, when you came in the door today,  
7 that the mere fact that you possessed material  
8 nonpublic information meant that if you traded,  
9 you would be trading on the basis of it?

10 MR. KLOTZ: Object to the form.

11 A. Not necessarily.

12 Q. Now, Section B, why don't you read it?

13 A. No, why don't you read it. I don't want  
14 to read it.

15 Q. You can read it, sir. Please read it  
16 into the record.

17 MR. KLOTZ: No. Now, ask him a  
18 question. Don't tell him to read something  
19 into the record.

20 MR. BOWE: I can ask him to read it.

21 MR. KLOTZ: No, you can't. You can ask  
22 him a question, and he can give you an answer  
23 to the question. You want it read into the  
24 record, read it yourself.

25 Q. Mr. Cohen, please read paragraph B.

1

2 MR. KLOTZ: You can read it to yourself.

3 (The witness read.)

4 A. I read it.

5 Q. Okay. Do you agree with me that this  
6 provides that if you possess material nonpublic  
7 information and you trade in that security, you  
8 are trading on the basis of it?

9 MR. KLOTZ: Object to the form.

10 A. Because of the vagueness of --  
11 because -- counsel advised me because of the  
12 vagueness of the law, I don't think you can come  
13 to an easy conclusion on that sentence.

14 Q. So you believe on its face this  
15 question -- this sentence is somehow ambiguous?

16 MR. KLOTZ: Object to the form.

17 A. Based on advice from counsel, I believe  
18 it is.

19 Q. Apart from advice of counsel, the  
20 literal words, are they ambiguous?

21 MR. KLOTZ: Object to the form.

22 A. The -- the words are interpreted --  
23 words are subject to interpretation. The -- based  
24 on the advice of counsel, their interpretation is  
25 that, you know, it is -- you know, that -- as that

1  
2 understand from counsel that you're not trading on  
3 the basis of that information?

4 MR. KLOTZ: Object to the form.

5 A. Say that again?

6 Q. Sure. Is your understanding from your  
7 discussions with counsel that in the circumstance  
8 you just described, you're not trading on the  
9 basis of that information?

10 MR. KLOTZ: Object to the form.

11 A. I'm getting a little weary here.

12 MR. KLOTZ: We all are.

13 A. I'm trying to hang in there. You're  
14 going to have to do it again. Sorry.

15 MR. BOWE: Read back the question.

16 (The record was read back.)

17 Q. I tell you what, I'll rephrase it.

18 You keep citing your understanding based  
19 on your counsel. Is your understanding, so I'm  
20 clear, based on your conversations with counsel,  
21 that as long as you're not relying on the material  
22 nonpublic information, you're not trading on the  
23 basis of it?

24 MR. KLOTZ: Object to the form.

25 A. I think that's a very -- because it's so

1  
2 subjective, if -- if I were in possession of  
3 non -- material nonpublic information, and I  
4 thought it was going to move the stock, and I was  
5 on the same side as the -- what -- what the  
6 expected recommendation would say, I would -- I  
7 personally would suggest not trading on it.

8           If you're trading on the -- the other  
9 side, where you've made your own analysis, and you  
10 view what is about to be published as irrelevant  
11 to your investment thesis, than I would have no  
12 problem recommending it.

13           Q.    Okay.  So the reason you would have no  
14 problem is because you've made your own analysis  
15 and you have an independent analysis.

16           MR. KLOTZ:  Object to the form.

17           Q.    Right?

18           A.    My view is -- my view is you would -- I  
19 would -- I'd be clear that you could trade on  
20 that.

21           Q.    Okay.  And because you have your own  
22 independent analysis, you're not, in your view,  
23 trading on the basis of that information, right?

24           MR. KLOTZ:  Object to the form.

25           A.    Even if you had the information, and in

1

2 this case, whether -- whether people did or not, I  
3 don't know.

4 But if they did, and -- and they were in  
5 possession of that information, because they were  
6 transacting on the other side, based on the advice  
7 of counsel, I would have no problem with that.

8 Q. You know, you keep saying counsel told  
9 you something and you don't have a problem with.  
10 I'm trying to understand what it is about that  
11 that's okay. So let me try to try it a different  
12 way.

13 A. Let's put it a different way. I'm  
14 relying on counsel. I'm not making a judgment  
15 on -- to understand it. I'm relying on counsel to  
16 tell me what's appropriate.

17 Q. Okay. When did you get that counsel?

18 A. Well, you know, it's -- it's --  
19 specifically, I was told that last week.

20 In general, I've got counsel who has  
21 never refrained on anything like that.

22 Q. So you've actually brought stuff to him  
23 like that and traded on it?

24 A. I don't remember.

25 MR. KLOTZ: Object to the form.



1

2 Q. Did you ever get that advice any time  
3 before last week?

4 MR. KLOTZ: Object to the form.

5 A. There are many times when I go to  
6 counsel.

7 Q. That wasn't my question. My question  
8 was, did you get the advice you've testified about  
9 this morning any time prior to last week?

10 A. I don't remember.

11 Q. So you can't remember a single instance  
12 in your life where you've been told what you came  
13 here and testified you were told last week.

14 MR. KLOTZ: Object to the form.

15 A. The answer is, I don't remember.

16 Q. Okay. So, prior to last week, how long  
17 had you been trading in securities?

18 A. 30 years.

19 Q. And during those 30 years, what was your  
20 view? Did you have a different view than what you  
21 were advised last week?

22 MR. KLOTZ: Object to the form.

23 A. I had no view.

24 Q. You had no view as to whether or not it  
25 was legal or illegal to trade on the basis of

1  
2 material nonpublic information?

3 MR. KLOTZ: Object to the form.

4 A. That's not what we're talking about.

5 Q. That is what I'm talking about. But it  
6 doesn't really matter. Did you have a view prior  
7 to last week in your 30 years of trading  
8 securities whether it was legal or illegal to  
9 trade on material nonpublic information?

10 A. It depends on the circumstance.

11 Q. So there are circumstances, in your  
12 view, in which it is legal to -- to trade on the  
13 basis of material nonpublic information --

14 A. Yes.

15 Q. Let me finish my question. I want to be  
16 clear.

17 -- that was obtained through some breach  
18 of fiduciary duty or misappropriated?

19 MR. KLOTZ: Object to the form.

20 A. I think we got to parse the word  
21 "material."

22 Q. Okay, but my assumption is that this was  
23 material. We can -- we can go on, and we will,  
24 about whether this stuff was material, whether you  
25 knew it at the time. I want to know first what

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2 your understanding was, if you have material  
3 nonpublic information, okay, such as knowing the  
4 content and timing of an analyst report, whether,  
5 prior to last week in your 30 years, you thought  
6 it was okay to trade on that.

7 MR. KLOTZ: Object to the form.

8 Q. In any circumstance.

9 MR. KLOTZ: Object to the form.

10 A. I think I answered that before. But  
11 I'll be happy to answer it again.

12 Theoretically, if there was an analyst  
13 recommendation, and your view it would have no  
14 impact on the price of that stock, then  
15 theoretically, it would be viewed as not material.  
16 And therefore, you could trade on it.

17 Q. I understand, but I asked you to assume  
18 that it's material.

19 So you have an analyst report, you know  
20 about an analyst report coming out, you know what  
21 the rating is going to be, okay? And you believe  
22 it's -- it -- it might move the stock price.

23 A. It's my view that if you're trading in  
24 front of that report, in the same direction as the  
25 analyst view, where you think it's going to move

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2 the stock, then my view would be, don't trade it.

3 If you're trading on the other side of a  
4 stock, even in possession of that analyst report,  
5 my view is that that's okay.

6 Q. Okay. And prior to last week, that was  
7 your -- did anyone ever tell you that?

8 MR. KLOTZ: Object to the form.

9 A. The answer is, if I'm unsure about  
10 transacting in a stock, because it is a judgment  
11 call, I would go to counsel.

12 Q. Okay. But the scenario you just  
13 described, as I understand it, you're not unsure.  
14 You haven't been unsure for 30 years, right?

15 MR. KLOTZ: Objection to the form.

16 A. In that scenario?

17 Q. Uh-huh.

18 A. If -- if I was unsure, I would go to  
19 counsel. If I wasn't unsure in that scenario,  
20 then I wouldn't go to counsel.

21 Q. Okay, but sitting here today, you --  
22 your testimony is you're sure under that scenario  
23 that it's okay to trade.

24 A. Based on counsel.

25 MR. KLOTZ: Object to the form.

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2 A. Based on counsel's advice.

3 Q. And were you sure for the 30 years prior  
4 to you got that advice last week, that that was  
5 okay?

6 MR. KLOTZ: Object to the form.

7 A. While I can't give you a specific  
8 example. It -- it's highly likely there have been  
9 other situations like this.

10 Q. And in those situations, you would have  
11 traded.

12 MR. KLOTZ: Object to the form.

13 A. Yes.

14 Q. And it is the case, though, however,  
15 that your compliance manual provides -- withdrawn.

16 The compliance manual in 2002, until  
17 whenever it was revised, provides that if you are  
18 in possession of material nonpublic information,  
19 you need to notify the general counsel, correct?

20 MR. KLOTZ: Object to the form.

21 A. I think the answer to that would be, if  
22 you're trading in the opposite side of a  
23 transaction, in that case it would not be  
24 material.

25 Q. My question was simply whether the

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2 A. What was true?

3 Q. It is the case that it was you and  
4 S.A.C. that got Spyro Contogouris involved in  
5 trading securities.

6 MR. KLOTZ: Object to the form.

7 A. I -- I have -- I don't know if that's  
8 true.

9 Q. Okay.

10 Well, you did -- you did involve  
11 Mr. Contogouris in your Hanover Compressor trades,  
12 right?

13 MR. KLOTZ: Object to the form.

14 A. What -- what is the question you're  
15 looking to ask?

16 Q. I have a simple question. I said, You  
17 did involve Mr. Contogouris in your Hanover  
18 Compressor trades, right?

19 MR. KLOTZ: Object to the form.

20 A. That's correct.

21 Q. Okay.

22 Did you tell Mr. Watsa that?

23 A. I did not mention that.

24 Q. Okay.

25 Did you tell Mr. Watsa that you had paid

1

2 a lot of money shorting Hanover Compressor with  
3 S.A.C.?

4 MR. KLOTZ: Object to the form.

5 A. I never said that.

6 Q. Did you know that?

7 A. No idea.

8 Q. What was it -- why was it that you asked  
9 your general counsel to look into giving  
10 Mr. Contogouris a -- a ongoing relationship with  
11 S.A.C.?

12 A. It was probably -- I had guys working  
13 under me and they -- they probably wanted to have  
14 some type of relationship with him.

15 Q. Okay.

16 That would have been Mr. Behrens?

17 A. Could be.

18 Q. And Mr. Perry?

19 A. Possible.

20 Q. Okay.

21 And what work did they tell you he was  
22 doing?

23 A. I have no idea.

24 Q. What kind of position did you envision  
25 for Mr. Contogouris?

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2 Compressor?

3 A. I don't -- I don't remember. I don't  
4 remember.

5 Q. Okay.

6 So -- but you would have found out; is  
7 that right?

8 A. I don't remember.

9 MR. KLOTZ: Object to the form.

10 Q. You just said that it would be something  
11 that would concern you. If Mr. Contogouris was  
12 presented to you as a consultant, you probably  
13 would have found out what he was a consultant on,  
14 right?

15 A. You're asking me whether I did something  
16 or not. I don't remember.

17 Q. Okay.

18 Do you think you would have recommended  
19 Mr. Contogouris for an ongoing relationship  
20 without knowing what it was he had done for your  
21 guys?

22 MR. KLOTZ: Object to the form.

23 A. It's possible.

24 Q. Do you think -- well, it's possible. Is  
25 it likely?



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2           A.    Well, you know, if it's one of them --  
3 it's one of those, like, all right, you guys take  
4 care of it. You know, I may pass it on to  
5 somebody else and let them do the work.

6           Q.    Okay.

7                    But you were the one who proposed to  
8 Mr. Nussbaum that Mr. Contogouris be considered  
9 for an ongoing relationship, right?

10           MR. KLOTZ: Object to the form.

11           A.    I don't -- I was told in e-mail that I  
12 told my general counsel to handle it.

13                    Okay. That doesn't necessarily mean --  
14 can you rephrase your question again?

15           Q.    I just wanted to know whether that was  
16 true.

17                    So your testimony is you don't know  
18 whether or not you actually told Mr. Nussbaum to  
19 consider hiring Mr. Contogouris on an ongoing  
20 basis.

21           MR. KLOTZ: Object to the form.

22           A.    I -- according to the e-mails that -- or  
23 conversations I had with counsel, it's unclear  
24 that I was -- I was -- I asked my counsel to  
25 handle it.

1

2 Q. Okay.

3 Well, you wouldn't have asked him to  
4 consider or handle a potential relationship with  
5 Mr. Contogouris if you were unhappy or concerned  
6 with the work he had already done for you, right?

7 A. Well, I think the answer is: It was  
8 something I didn't want to deal with.

9 Q. Okay.

10 So you would have -- did you at least  
11 understand that he had worked on Hanover  
12 Compressor?

13 A. I knew that part.

14 Q. Okay.

15 Did you understand that he had worked as  
16 a consultant at Hanover Compressor?

17 A. I understood that part.

18 Q. Okay.

19 And then did you understand what exactly  
20 he had done?

21 A. Not really.

22 Q. So that -- that would then concern you,  
23 when they presented this person to you and said  
24 this guy had helped. You didn't ask, "How did he  
25 help?"

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2 A. I was not made aware of that.

3 (Document bearing Bates Numbers SAC  
4 0035192 through SAC 0035204 was marked Cohen  
5 Exhibit 2 for identification, as of this  
6 date.)

7 Q. Sir, I marked as Exhibit 2 a document  
8 bearing Bates Numbers SAC 0035192 to 204.

9 (Discussion off the record.)

10 Q. Do you recognize the front page of this  
11 document?

12 A. Yes.

13 Q. What is this document?

14 A. It looks like a code of ethics and  
15 conduct.

16 Q. Okay.

17 Now, only a portion of that document has  
18 been produced in this case. That portion purports  
19 to be a portion regarding legal issues regarding  
20 trading practices. It's on page 8.

21 Do you see that?

22 A. Yes.

23 Q. Okay.

24 On page 8, in bold, it says, "Important.

25 Practices described below may involve serious

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2 criminal violations of law as well as firm policy.  
3 Any employee who engages in any activity described  
4 below will be subject to immediate disciplinary  
5 action, including suspension or discharge from the  
6 firm."

7 Has that ever happened?

8 A. I was reading the thing. Go ahead. Try  
9 it again.

10 Q. Has that ever happened?

11 MR. KLOTZ: Object to the form.

12 A. What ever happened?

13 Q. Has an employee ever been discharged or  
14 suspended from the firm as a result of a violation  
15 of this -- these policies?

16 A. I don't believe so.

17 Q. Okay.

18 If you look at page 9, the first full  
19 paragraph is a discussion about what is material  
20 information.

21 A. On page 9.

22 Q. Page 9, first full paragraph.

23 A. I -- okay.

24 Q. You see the second sentence,  
25 "Information is deemed material if a reasonable

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2 investor would consider it important in  
3 determining whether to buy, sell, hold, or vote a  
4 security."

5 Do you see that?

6 A. Uh-huh.

7 Q. Do you agree with that?

8 MR. KLOTZ: Object to the form.

9 A. I think what you're doing is taking  
10 things out of context.

11 Q. Okay.

12 Well, put them in context for me.

13 MR. KLOTZ: Object to the form.

14 It's not his job to put it in context.

15 It's his job to answer your questions. Ask a  
16 question.

17 MR. BOWE: I did. He said it needs to  
18 be put in context.

19 A. Well, generally, you know, we -- like I  
20 mentioned previous that, you know, the issues such  
21 as -- of these are sometimes judgment calls.

22 Q. My question is, is the statement that's  
23 in your compliance manual correct or not?

24 I will read it again. "It is  
25 irrelevant" -- I'm sorry.

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"Information is deemed material if a reasonable investor would consider it important in determining whether to buy, sell, hold, or vote a security."

6

A. I mean, it can be.

7

Q. But not always.

8

A. There -- I mean, I've mentioned instances when I would actually disagree. And that line taken out of context, I think these questions are much more complex than -- than a couple sentences.

9

10

11

12

Q. Okay.

13

But it's your compliance manual.

14

A. Uh-huh.

15

16

Q. So I'm just reading the compliance manual.

17

18

What other context is necessary in your compliance manual to answer my question?

19

20

A. See, the answer to that is, you know, this -- this -- this manual is here to -- you know, to drive behavior of our employees.

21

22

Q. And your behavior, right?

23

24

A. And my behavior, absolutely. And it's my belief that, well, these are generally good

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2 things to, you know, have your employees do. I  
3 think I mentioned a couple instances when that's  
4 not always -- you know, if you were to take  
5 literally what was said, and based on counsel,  
6 that, you know, you would come to a different  
7 conclusion.

8 Q. Okay.

9 So you believe that there are situations  
10 when you could come to the conclusion that  
11 information that a reasonable investor would  
12 consider important in determining whether to buy,  
13 sell, hold, or vote a security, there are  
14 circumstances in your view as the head of S.A.C.  
15 where that -- such information would not be  
16 material.

17 MR. KLOTZ: Object to the form.

18 A. I think the idea of material nonpublic  
19 information is a -- is really a judgment call.

20 Q. Okay.

21 A. Okay.

22 And -- and it's not always clear how  
23 someone -- even though in general I would agree  
24 with the statement, there are times when a  
25 situation is more complex than that.

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2 Q. Okay.

3 So I just -- I want to make sure I  
4 understand what you're saying.

5 So you're saying there are situations  
6 when information that a reasonable investor would  
7 consider important in determining whether to buy,  
8 sell, hold, or vote a security would not be  
9 considered material.

10 MR. KLOTZ: Object to the form.

11 A. What I'm saying is that when -- when --  
12 in how I look at the world in -- and since we're  
13 talking about transacting -- because in  
14 transacting is what we're talking about in --  
15 in -- in this sentence, you know, whether one is  
16 trading on material nonpublic information or not,  
17 it's my view that, you know, this is a judgment  
18 call and -- and that sentence alone doesn't  
19 necessarily govern every situation and -- and, you  
20 know, I've mentioned a few today where, if you  
21 took the literal sentence, it would not  
22 necessarily reflect the way I felt about those  
23 situations.

24 Q. Okay.

25 Let me be clear. The sentence doesn't



1

2 say anything about transacting, right?

3 A. Uh-huh. What does it say?

4 Q. I just read it a few times. You can

5 read it and tell me if it says anything about

6 transactions.

7 (The witness read.)

8 A. Well, in a situation you're talking

9 about that we're here today about, we're talking

10 about a sell recommendation. I don't think in

11 that case it would be material that a person is

12 buying a stock when there's a sell recommendation

13 coming out. I don't find that material.

14 Q. You don't find the information material?

15 A. That's right.

16 Q. To whom?

17 A. To the buyer.

18 Q. Okay.

19 But this doesn't talk about the buyer,

20 right? This talks about to a reasonable investor.

21 A. Well, an investor has two choices. He

22 can buy or he can sell.

23 Q. All right.

24 So it might be material to someone who

25 is selling, not material to someone who is buying?

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2 A. I think that's right.

3 Q. Okay.

4 Is that your way of conflating  
5 materiality with reliance?

6 A. I don't know what you're talking about.

7 MR. KLOTZ: Object to the form.

8 A. I have no idea what you just said.

9 Q. You think materiality depends on who is  
10 actually doing the transactions; is that right?

11 MR. KLOTZ: Object to the form.

12 A. It's my belief that the idea of material  
13 nonpublic informing could be interpreted  
14 differently, depending on which side of the  
15 transaction you're on.

16 Q. Okay.

17 So there could be -- as you understand  
18 it and your view as the person who's the head of  
19 S.A.C., there are instances when a reasonable  
20 investor might consider -- would consider  
21 information important but wouldn't be -- that you  
22 wouldn't consider that information material.

23 MR. KLOTZ: Object to the form.

24 A. I think that's a judgment call whether  
25 you consider something material, important. If

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2 I'm a buyer of stock and I think there's a sell  
3 recommendation, it's conceivable that I may not --  
4 that one -- I may consider it important, but I'm  
5 on the other side or not important because I'm a  
6 buyer of stock and it's irrelevant.

7 Because it's a judgment call with the  
8 individual and because the rules are so ambiguous,  
9 the way my counsel explains it to me, it really is  
10 a judgment call.

11 Q. When you say your counsel explains to  
12 you that the rules are ambiguous, how are the  
13 rules ambiguous?

14 A. Well, you know, we're having this  
15 conversation for about three hours about what's  
16 material and whatnot. It's pretty clear that you  
17 and I have a different view on it.

18 Q. Okay. What's ambiguous about it to you?

19 A. Well, there, you know, in this  
20 situation -- this is a perfect situation to  
21 discuss that because here you're telling me you  
22 think a sell recommendation is -- is material.  
23 This is -- this is what you're telling me. Okay?  
24 This is your supposition.

25 And it's my view to a buyer that it is

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2 not material. And if it is material, it's not  
3 relevant. Okay? It might be material to somebody  
4 else, but because he's on the other side of the  
5 transaction, it's not material to him or he views  
6 it as important to someone who is a seller and  
7 some -- but to someone who is buying stock, you  
8 know, it's -- you know, given what I've explained  
9 about how I have been told to interpret the laws  
10 as far as what they're trying to do to protect  
11 investors, if you're a buyer on a -- knowing  
12 there's a sell recommendation, you're hurting no  
13 one.

14 Q. So your view is materiality can depend  
15 on who is looking at the information.

16 A. I think --

17 MR. KLOTZ: Object to the form.

18 A. I think that same person could come to  
19 different conclusions.

20 Q. Okay.

21 Your point, though, is that you'd come  
22 to a different conclusion depending on what side  
23 of the trade you wanted to be on?

24 A. Not necessarily. You know, I mean, I  
25 can argue that someone else could think that a --

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2 being short in front of a sell recommendation is a  
3 nonevent because it's not going to move the stock,  
4 and somebody else would think, you know, that's  
5 trading on material nonpublic information  
6 regardless if it moves the stock or not. These  
7 are judgment calls.

8 Q. Now, did you ask -- you did not ask  
9 counsel about this theory before trading in the  
10 stock in 2003, right? Your group?

11 MR. KLOTZ: Object to the form.

12 A. I mean, the answer is that I'm always  
13 learning and evolving as far as things that are  
14 complicated, and I think the -- I think this --  
15 this discussion on material nonpublic information  
16 is complex.

17 Q. Okay.

18 You think it's complex whether or not  
19 information about upcoming brokerage research  
20 reports that you think will have an impact on the  
21 price is somehow complex and ambiguous?

22 MR. KLOTZ: Object to the form.

23 A. I know it can be and it depends on  
24 factors such as I've explained, whether you're on  
25 the buy or sell side.

1

2 Q. Okay.

3 Any other factors, except for what side  
4 of the trade you're going to be on?

5 MR. KLOTZ: Object to the form.

6 A. Could be a judgment on whether this is a  
7 market-moving event or not.

8 Q. Okay.

9 Now, in the e-mail you saw from your  
10 group, they indicated that they believed the  
11 prices would be impacted by the Gwynn report, for  
12 example, right?

13 MR. KLOTZ: Object to the form.

14 A. I mean, the e-mails that I saw, I don't  
15 remember reading that the other day.

16 Q. Okay. And I'll go through those.

17 Now, look at page 10. Item 2,  
18 "Employees in possession of material nonpublic  
19 information are prohibited from tipping,  
20 transmitting, or otherwise disclosing such  
21 information to another person."

22 Is that S.A.C. policy?

23 MR. KLOTZ: Object to the form.

24 A. I'm reading it here, so it's in the  
25 compliance manual.

1

2 Q. Okay.

3 Well, as the head of S.A.C., before I  
4 showed it to you, did you know that was the rule?

5 MR. KLOTZ: Object to the form.

6 A. I would never have passed material  
7 nonpublic information to -- or tip somebody.  
8 That's not -- that's something that I think is  
9 pretty clear.

10 Q. Okay.

11 You're not allowed to pass it along even  
12 inside the firm, right?

13 A. That I'm -- I'm not clear about. You  
14 know, that's a discussion that needs -- you know,  
15 I'm not clear that that sentence says that.

16 Q. Well, whether that sentence says that or  
17 not, is that the policy that you follow at S.A.C.?

18 MR. KLOTZ: Object to the form.

19 A. I could see a situation where there's  
20 material nonpublic information being shared by  
21 other people, and those people come to conclusions  
22 such as this, the situation that we're talking  
23 about, where either, one, it's not material or,  
24 two, if it is, it's not relevant to -- because  
25 they're on the other side of the transaction.

1

2 Q. So it's not the case at S.A.C. if you  
3 have material nonpublic information, the only  
4 person you're supposed to communicate it to is the  
5 general counsel?

6 MR. KLOTZ: Object to the form.

7 A. That would be my preference, okay?  
8 And -- but I could see situations like we just  
9 discussed where, you know, there may be no need to  
10 discuss it with counsel because of the situation  
11 we just talked about or other situations.

12 Q. Well, you said there may be no need  
13 because the person who possesses the information  
14 might decide it doesn't matter?

15 A. No.

16 MR. KLOTZ: Object to the form.

17 A. We train our people to -- you know, to  
18 be very thoughtful about this. And my preference  
19 would be they go to compliance or go to general  
20 counsel. But I could see situations where they  
21 would make decisions because they understand that,  
22 you know -- or they have enough experience to know  
23 that what they were doing is okay.

24 Q. Okay.

25 So it's -- it's okay by you, at S.A.C.,



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2 that people who might be in possession of material  
3 nonpublic information, they can make some of their  
4 own decisions at times?

5 MR. KLOTZ: Object to the form.

6 A. The answer is my preference -- strong  
7 preference would be that they go to counsel, but  
8 if they're unsure. Okay? But if they're acting  
9 on material nonpublic information and trading on  
10 things they should not be trading on, I would not  
11 support that at all.

12 Q. Okay.

13 But you just wrapped the conclusion in  
14 there.

15 I mean, who -- do they -- it's your  
16 preference, but is it the rule that they have to  
17 go to general counsel?

18 A. The answer is we encourage --

19 MR. KLOTZ: Objection.

20 You got to give me time to get my  
21 objection in.

22 THE WITNESS: All right. We're getting  
23 late and I'm losing it.

24 MR. KLOTZ: Why don't we take a break  
25 after his answer this question?

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THE WITNESS: No. Keep going. Let's

3

go.

4

MR. KLOTZ: Object to the form.

5

And, now, if you remember the question,

6

answer it. Or if not, then we can have it

7

read back.

8

THE WITNESS: Can you have it read back,

9

please?

10

(The record was read back.)

11

A. I can think of many situations that

12

are -- where there's material nonpublic

13

information where people have had that experience

14

and know what to do in that situation.

15

Q. Including yourself?

16

A. Yes.

17

Q. So there are times when you come into

18

possession of material nonpublic information and

19

you don't tell the -- the general counsel, right?

20

MR. KLOTZ: Object to the form.

21

A. That's correct.

22

Q. Because you think you don't have to.

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A. Because I know how to conduct myself in

24

the situation.

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Q. Okay.

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Now, with respect to this -- this part about paragraph 2, it says, "Employees in possession of material nonpublic information are prohibited from tipping, transmitting, or otherwise disclosing such information to another person or entity."

So I'm clear, as the head of S.A.C., you say that doesn't apply to people internally talking to each other.

MR. KLOTZ: Object to the form.

A. I think these are rigid interpretations and these are guidelines. These are rigid interpretations. I view these things as guidelines. Okay? And then because it's such a complex issue, you need to look at it on a judgment basis and on an individual basis.

Q. Okay.

So if you look at page 11, in the middle of the page where it says in bold, "Any employee who believes that he or she may be in possession of material nonpublic information should," the third bullet, "not communicate the information to anyone else inside or outside the firm other than the general counsel or his designee."

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2           That's not a rule. That's a guideline.

3           MR. KLOTZ: Object to the form.

4           A. I would say it's a strong guideline.

5           Q. But not a rule.

6           A. I would say --

7           MR. KLOTZ: Object to the form.

8           A. I would say there -- there are times  
9 when people know how to -- know how to act in  
10 certain situations.

11          Q. Okay.

12                   Then when it says at the top of the  
13 first paragraph on that page 11, second sentence,  
14 in italics, "Thus any violation of the firm's  
15 policy on the improper use or misappropriation of  
16 proprietary, confidential, or inside information  
17 is and will be considered extremely serious and  
18 will result in sanctions, including the  
19 possibility of suspension or discharge from the  
20 firm."

21                   As I understand your testimony, one  
22 cannot follow these rules that are set forth in  
23 this policy manual and not be sanctioned or  
24 punished, right?

25           MR. KLOTZ: Object to the form.

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2           A.    These rules are guidelines, and I can't  
3 think of a situation where if someone did a  
4 serious -- made a serious violation, you know,  
5 that they had -- you know, those situations would  
6 be discussed by senior management and outside  
7 counsel.

8           Q.    It doesn't say "serious." It says any  
9 violation will result in sanctions. That's not  
10 true, right?

11           MR. KLOTZ: I object to your  
12 interrupting Mr. Cohen in the middle of his  
13 answer.

14           MR. BOWE: I'm sorry. I thought you  
15 were done.

16           MR. KLOTZ: Are you done or were you  
17 continuing to give the answer to the previous  
18 question?

19           THE WITNESS: You're going to have to  
20 repeat the previous question.

21           MR. KLOTZ: Read back the question and  
22 his partial answer.

23                   (The record was read back.)

24           Q.    I'm sorry. So were you done with your  
25 answer?

1

2 A. I'm not done.

3 Q. Okay.

4 A. I view these as guidelines, strong  
5 guidelines, deterrents, and -- but there are  
6 situations that don't require the -- the  
7 involvement of general counsel or outside counsel  
8 in making a decision.

9 Q. Okay.

10 This wasn't talking about decisions.  
11 This was talking about violations. And it doesn't  
12 mention serious violations. It says any violation  
13 will result in sanctions.

14 My simple question is, according to your  
15 testimony, that statement in the policy manual is  
16 not true.

17 MR. KLOTZ: Object to the form.

18 A. I view these as guidelines. My  
19 interpretation of guidelines are that they are  
20 subject to interpretation.

21 Q. Okay.

22 So you could violate what's called here  
23 the firm's policy, which is set forth in this  
24 policy manual, and not be sanctioned, correct?

25 MR. KLOTZ: Object to the form.

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2           A.    That's against -- you're being very  
3 conceptual.

4           Q.    Well, I'm reading your policy manual.  
5 It says, "Any violation will result in sanctions."

6                    What you hear from you is: You can  
7 violate this policy manual and not be sanctioned.

8                    MR. KLOTZ: Object to the form.

9           Q.    Do I have your testimony right?

10          A.    I don't believe so.

11          Q.    Okay.

12                    How am I wrong?

13          A.    Because these are guidelines, I can  
14 think of situations where one would be in  
15 possession of material nonpublic information, act  
16 correctly, and not have to involve compliance or  
17 general counsel in that decision.

18                    THE VIDEOGRAPHER: Excuse me, Counsel.

19                    I got to change.

20                    MR. BOWE: Okay. We'll take a break.

21                    THE VIDEOGRAPHER: We're going off the  
22 record. The time is -- the time is 2:55 p.m.  
23 This is the end of Tape Number 3.

24                    (A recess was taken.)

25                    THE VIDEOGRAPHER: We are back on the

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2 record. The time is 3:05 p.m. This is the  
3 beginning of Tape Number 4.

4 Q. Mr. Cohen, your answer before to my  
5 question was that you --

6 THE VIDEOGRAPHER: Your microphone, sir?

7 MR. BOWE: Sorry.

8 Q. When I asked you whether that clause was  
9 accurate or not, you said you could think of  
10 situations where someone operated entirely  
11 properly and would not be sanctioned, which I  
12 don't think was responsive, respectively, so I'm  
13 going to ask the question again.

14 A. Which paragraph?

15 Q. Okay.

16 Page 11.

17 A. Okay.

18 Q. Top paragraph. Okay.

19 Now, when we're reading our statements  
20 of policies and code of ethics, that's the name of  
21 this document, right?

22 A. Uh-huh.

23 Q. And the document says that if you're in  
24 possession of material nonpublic information,  
25 you're prohibited from passing it on to any other



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2 person, including people inside the firm, right?

3 We established that, right? That's what  
4 it says?

5 A. Let me read it again. First paragraph?

6 Q. No. We can start again.

7 So on page 10, paragraph 2, the  
8 statement of policies says, "Employees in  
9 possession of material nonpublic information are  
10 prohibited from tipping, transmitting, or  
11 otherwise disclosing such information to another  
12 person or entity."

13 Do you see that?

14 A. Uh-huh.

15 Q. Okay.

16 And you just looked at the cover. This  
17 is, in fact, S.A.C.'s statement of policies,  
18 right?

19 A. No. I'm just looking at something.

20 Q. What are you looking at?

21 A. Looking at -- just thinking about the  
22 front page and the sentence -- the -- the  
23 paragraph code of ethics and conduct.

24 Q. Okay.

25 And then on page 11, it clarifies that

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2 even further in bold and in all caps -- not --  
3 "All employees who believe that he or she may be  
4 in possession of material nonpublic information  
5 should," third bullet point -- "not communicate  
6 the information to anyone else inside or outside  
7 the firm other than the general counsel or his  
8 designee," right?

9 So those are the policies, right?

10 MR. KLOTZ: Object to the form.

11 Q. According to the policy manual, right?

12 MR. KLOTZ: Object to the form.

13 A. That -- you know, when I'm looking at  
14 this, these are policies, but they're also a code  
15 of ethic and conduct. The way I interpret "code  
16 of ethic and conduct" is that those are general  
17 guidelines. That's what I think a code of ethics  
18 and conduct is.

19 And so while the vast majority of times  
20 that's exactly what I want an employee to do and  
21 to act, there may be times when there is no need  
22 for him to do this.

23 Q. Okay.

24 So then the statement on page 9, just  
25 before paragraph 2 on page 10 that says, "As a

1  
2 result, the following restrictions must be  
3 strictly adhered to," is not true.

4 MR. KLOTZ: Object to the form.

5 A. When I think of a code of ethics and  
6 conduct, I -- that -- those -- that -- that phrase  
7 to me is general guidelines.

8 Q. Okay.

9 So -- but my question was different,  
10 sir. My question is about page 9 where it says,  
11 "As a result, the following restrictions must be  
12 strictly adhered to," your point is that's not  
13 true.

14 MR. KLOTZ: Object to the form.

15 A. My -- my point is that these are general  
16 guidelines.

17 Q. Right. So if they're general  
18 guidelines, you're saying they may or may not have  
19 to be adhered to. This says they must be strictly  
20 adhered to. Those are inconsistent, right?

21 MR. KLOTZ: Object to the form.

22 A. I view this -- this material as  
23 deterrents and guidelines for our employees.

24 Q. Okay. I understand.

25 A. I can think of many situations when I

1  
2 would want them to do this, but I can think of  
3 situations -- so if you're asking me is it a  
4 hundred percent, I would say the vast majority of  
5 the time, yes, but there are situations when,  
6 because of the experience of the employee or --  
7 that he knows how to operate in a particular  
8 situation, that there is no need to go to counsel  
9 unless he's unsure of -- on how to act in that  
10 situation.

11 Q. Okay, sir.

12 My question is simply: In light of what  
13 you said, the statement at the beginning of the  
14 last paragraph on page 9, that the following  
15 restrictions must be strictly adhered to is simply  
16 not true at S.A.C.

17 MR. KLOTZ: Object to the form.

18 A. My view is that he's adhering to what I  
19 wanted. Okay? That he's acting in conduct,  
20 that -- that would make sense to me.

21 Q. Who?

22 A. And since -- the -- any employee that --  
23 that has a situation in which we're talking about.  
24 And since this is a code of ethics and conduct,  
25 and ethics, in general, can be interpreted and

1  
2 conduct, if it's consistent with what I would  
3 expect out of an employee, would be consistent  
4 with this manual.

5           So, therefore, to pull a paragraph out  
6 of this manual I think is taking things out of  
7 context and -- and I think the point is to conduct  
8 themselves in a way that the firm would want them  
9 to -- to act.

10           Q. Are you finished?

11           A. I think so.

12           Q. Okay.

13           My question is: The statement here, the  
14 instruction that says, "The following restrictions  
15 must be strictly adhered to," and then, number 2  
16 is, "you can't pass on to anyone material  
17 nonpublic information," your statement is that  
18 does not have to be strictly adhered to?

19           MR. KLOTZ: Object to the form.

20           A. My statement is that if the person is  
21 conducting himself in an appropriate way and has  
22 the experience to know what to do in a particular  
23 situation, he does not have to always go to  
24 general counsel or compliance, even though there  
25 are times, and most the time, which he will.

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2 Q. Finished?

3 A. I think so.

4 Q. Yes?

5 A. Yes.

6 Q. Okay.

7 I wasn't talk about the provision about  
8 going to general counsel. I'm talking about one  
9 before that.

10 A. That's my interpretation of this manual.

11 Q. Okay.

12 You keep giving me your interpretation  
13 and I'm going to keep asking the question until I  
14 get an answer to my question.

15 This says that the following  
16 restrictions, which include the restriction on not  
17 passing on material nonpublic information, must be  
18 strictly adhered to.

19 That is inconsistent with what you've  
20 just described as what your policy is, correct?

21 A. You know, when you take a paragraph out  
22 of context, I really take objection and -- because  
23 I look at this as a manual. Okay? And it's a  
24 manual of guidelines.

25 Q. Okay.

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2           And this guideline is that the following  
3 restriction must be strictly adhered to.

4           So it doesn't have to be strictly  
5 adhered to. It can be adhered to sometimes and  
6 sometimes if you've got good judgment doesn't need  
7 to be adhered to, right?

8           MR. KLOTZ: Object to the form.

9           A. The vast majority of time it is adhered  
10 to, but there are times when I can think of  
11 situations when it doesn't have to be.

12          Q. Okay.

13           But this doesn't say the vast amount of  
14 times, most of the time, some of the time. It  
15 says strictly adhered to. The fact of the matter  
16 is that language is not consistent with the  
17 practice inside S.A.C. as you described it, right?

18          MR. KLOTZ: Objection to the form.

19          A. In my mind, we're talking about  
20 judgment.

21          Q. So you don't have to strictly adhere to  
22 it. You can adhere to it in your judgment; is  
23 that fair?

24          MR. KLOTZ: Object to the form.

25          A. In my view, employees adhere and

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2 sometimes strictly adhere to this, but because of  
3 their experience and their ability and their  
4 judgment, they might -- I'm not saying they  
5 would -- but they might, because of their  
6 experiences -- and they've been in that situation  
7 before. They know how to act.

8 Q. And, therefore, not strictly adhere to  
9 this restriction, correct?

10 MR. KLOTZ: Object to the form.

11 A. Because they know how to act, they are  
12 adhering to the desire and the -- the intent of  
13 what the organization wants, and that's what this  
14 manual is there for.

15 Q. Well, the manual says you must strictly  
16 not communicate that information to other people.  
17 You're saying maybe you can, maybe you can't. I  
18 want to know which one is the policy at the  
19 firm --

20 MR. KLOTZ: Object to the form.

21 Q. -- the one you are articulated or the  
22 one that appears in writing in this manual?

23 MR. KLOTZ: Object to the form.

24 A. I'm not going to change my statement.

25 Q. I want to know which one is the policy.



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2 A. And I'm not going to change my

3 statement.

4 Q. You don't have to change your statement.

5 A. Okay.

6 Q. Which one is the policy?

7 A. I'm going to say it again. We can be

8 here all night if you want.

9 Q. Well, you can answer my question.

10 A. Okay. I'm answering your question.

11 Q. No. I want to know which one's the

12 policy.

13 A. Okay. I'm answering your question the

14 way I want to answer it.

15 Q. But it's nonresponsive, sir.

16 A. Okay. I'm answering it because I

17 believe that the intent of this is to have the

18 employee act in a certain way. There may be a

19 time -- and I can think of times -- when he uses

20 his own judgment because he knows how to act in a

21 situation.

22 Q. Okay.

23 The intent of this is to tell the

24 employee that they have to strictly adhere to a

25 prohibition on passing on material information,

1  
2 right?

3 MR. KLOTZ: Object to the form.

4 Q. That's the intent. The intent that  
5 you're pointing to is an intent that appears in  
6 words on a piece of paper, right?

7 MR. KLOTZ: Object to the form.

8 A. Let me rephrase what I'm going to say.  
9 There are times when I might not go to  
10 compliance or general counsel because I know how  
11 to act in a situation.

12 Q. So is your testimony now that everyone  
13 else in the firm must strictly comply or strictly  
14 adhere to that restriction, but that you're saying  
15 sometimes you don't have to?

16 A. My --

17 MR. KLOTZ: Object to the form.

18 A. My view of the person who knows how to  
19 act in a particular situation -- and these  
20 situations come up over and over again -- there is  
21 no need to go to compliance or -- or general  
22 counsel on every situation.

23 Q. But must you, in every situation,  
24 refrain from passing on material information to  
25 people inside or outside the firm?

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2 MR. KLOTZ: Object to the form.

3 A. I would not support passing material  
4 nonpublic information outside the firm.

5 I can come up with situations when we  
6 could be -- you know, there's some -- somebody  
7 telling somebody else about this, but they should  
8 know how to act.

9 Q. Okay.

10 So, internally, there are times when you  
11 would sanction the passing on from one portfolio  
12 manager, for example, to another portfolio manager  
13 material nonpublic information.

14 MR. KLOTZ: Object to the form.

15 A. Well, we just went through a situation  
16 today where we've talked about your interpretation  
17 and my interpretation of a material nonpublic  
18 information. And it was my belief that if they  
19 were acting on the other side of that sell  
20 recommendation, they would be perfectly okay in  
21 doing so.

22 Q. I think that was nonresponsive, sir, and  
23 I move to strike it.

24 But let me ask you: If they had shorted  
25 securities under the same set of facts, you would

1  
2 agree with me that that would be inappropriate,  
3 right?

4 A. It would be inappropriate if there was  
5 going to be a -- what we would consider a  
6 material -- a significant move in the stock. I  
7 can think of situations when it would not impact  
8 the stock and, therefore, would not be considered  
9 material nonpublic information.

10 Q. Okay.

11 Does it have to significantly impact the  
12 stock?

13 MR. KLOTZ: Object to the form.

14 Q. Is that your standard?

15 A. That's a hard interpretation, but I can  
16 think of situations where -- that that's a  
17 judgment call. And that judgment call would be  
18 that that -- there was the -- you know -- I can --  
19 I can think of situations where a sell -- a  
20 recommendation could be coming out on a stock, buy  
21 or sell, and, theoretically, it will not affect  
22 the stock and, therefore, in my mind would not be  
23 material nonpublic information.

24 The vast majority of the time, I would  
25 suggest and I would expect my employees not to

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2 trade on that, to restrict themselves.

3 MR. KLOTZ: We're at 3:20 and I want to  
4 take a break until 4:00.

5 MR. BOWE: Sure. Let me just ask one  
6 more question.

7 MR. KLOTZ: Sure.

8 Q. Mr. Cohen, at the last break did you  
9 talk to counsel about your testimony?

10 A. No. No.

11 Q. Sure?

12 A. I'm trying to remember. I just asked  
13 how I was doing.

14 Q. Okay.

15 There was no discussion about this  
16 manual?

17 A. No.

18 Q. All right. You need to take a break  
19 now?

20 MR. KLOTZ: Uh-huh.

21 MR. BOWE: And I'm happy to accommodate  
22 that.

23 MR. KLOTZ: We'll reconvene at 4:00.

24 THE VIDEOGRAPHER: We're going off the  
25 record. The time is 3:19 p.m. We're off the

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record.

(A recess was taken.)

THE VIDEOGRAPHER: We are back on the record. The time is 4:01 p.m.

Q. Mr. Cohen, directing your attention back to page 9 of the statement of policies of S.A.C.

According to the policy, another source of conduct that has to be -- or restriction is that must be strictly adhered to is 4, and that is, "Employees may not solicit, recommend, influence, or effect transactions in any security, commodity interest or any account, whether personal or firm, while in possession of material nonpublic information related to such interest."

Do you see that?

A. Uh-huh.

Q. You have to answer yes or no.

A. Yes. Sorry. Yes.

Q. Okay.

Now, that language -- that restriction that needs to be strictly adhered to, according to your policy manual, doesn't include any of the qualifications that you talked about at length this morning; is that right?

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MR. KLOTZ: Object to the form.

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A. Well, the way I would answer that is I'm the owner of the firm and this is my firm, and so it's my belief that these paragraphs are there as deterrents and they are there for employees to -- for the vast majority of times.

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But there are times when it would be entirely appropriate for the employee not to go through these procedures because they have experience in the particular situation and they know how to handle themselves, and in no circumstances would I want people to not handle themselves in a way that I think would be appropriate.

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Q. You say -- your answer is, "I'm the owner the firm and this is my firm," that is to say, you set the policy at the firm, right?

19

20

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A. I would say that the policy is set by a number of people, by my compliance people, my legal people, and -- and the business people.

22

23

24

Q. Okay. But it's your firm and you're the owner the firm, and if you say you want it one way, that's the way it goes, right?

25

A. The answer is I -- I've always been

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2 Q. Okay.

3 But the point is you have to go along  
4 with it, fair?

5 MR. KLOTZ: Object to the form.

6 A. The answer is: It's -- unless -- if I  
7 voice, you know, extreme disapproval or  
8 disapproval -- if I'm mildly disapproving, there  
9 are times I'll say, "All right. Let's go ahead  
10 and do it."

11 Q. But you're the one who always has to say  
12 yea or nay.

13 A. Not always. If it's not an important  
14 decision, I don't have to.

15 Q. Okay.

16 But on importance decisions that rise to  
17 your level, you're the one who has the final  
18 decision making, right?

19 A. I always have the right to overturn any  
20 decision or any thought that I think is  
21 inappropriate for firm.

22 Q. And no one has a right to overturn you  
23 at the firm?

24 A. No one has the right to overturn me.

25 Q. Now, getting back to my question



1  
2 regarding page 9 and page 10 of your policy  
3 manual, is it -- is it your testimony that because  
4 it's your firm, what you're telling me is that the  
5 literal terms of this compliance manual don't  
6 actually apply at S.A.C.?

7 MR. KLOTZ: Object to the form.

8 A. When I look at this manual, I see  
9 guidelines. It's a code of ethics. It's a code  
10 of conduct. It's what we want our people to do.

11 Just like in any situation, you don't  
12 want your employees to act like robots. There are  
13 times when it's important because decisions have  
14 to be made that, you know, there are times when  
15 people have enough experience and have been in the  
16 situation before that there's really no need  
17 because they're carrying the intent of what this  
18 manual wants them to do.

19 Q. There's no need for what? To following  
20 the manual?

21 A. No. There's no need to go to general  
22 counsel or go to compliance because they know  
23 they've been in the situation before. They show  
24 good judgment and they know how to act.

25 Q. Okay.

1

2

But that's not what this section -- this section doesn't talk about going to compliance or general counsel.

5

A. Yeah. My view --

6

Q. The section -- let me finish my question.

8

The section I'm referring to is the one that says, "The following restrictions must be strictly adhered to," and number 4 says, "employees may not solicit, recommend, influence, or effect transactions in a security or commodity interest for any account, whether personal or firm, while in possession of material nonpublic information related to such interests," correct?

16

Doesn't talk about going to the general counsel.

18

A. Where are you reading this?

19

Q. Section 4 on page 10.

20

A. Okay.

21

(The witness read.)

22

23

MR. KLOTZ: And you have to listen to his question because his question is: Did he read it correctly?

24

25

You may need to hear it back.

1

2

THE WITNESS: Please.

3

(The record was read back.)

4

5

A. Well, I've explained previous that I can think of instances when employees may transact for

6

an account while in the possession of material

7

nonpublic information and -- and so I stand on my

8

testimony there.

9

Q. Okay. But that testimony is not

10

entirely consistent with what I just read to you,

11

correct?

12

MR. KLOTZ: Object to the form.

13

A. I don't know if I agree with that.

14

Q. Why would you disagree with it?

15

A. Because my view is that this is a manual

16

that -- that is a deterrent and -- and a code of

17

conduct. In any code of conduct my view of

18

conduct is what intention do we want -- what do we

19

want our employees to do and act in particular

20

situations? And my view is that's what conduct

21

is.

22

And so because of the nature of the

23

business we're in, you can't always get approval.

24

You have to make a decision and judgment.

25

And -- now in the majority of cases when

1

2 you're in a situation like that, I would -- I  
3 would prefer and -- my -- it would be my strong  
4 preference. But I can think -- if you're asking  
5 absolutes, which is what you're asking, I can tell  
6 you situations where that may not be the case.

7 Q. Okay.

8 So it's not true that the -- the  
9 following restrictions must strictly adhered to.

10 A. No, it is true.

11 Q. So under no circumstances can someone  
12 trade on material nonpublic information.

13 A. See, we don't operate our firm in  
14 absolutes. So there are times when the intent of  
15 that -- of that paragraph is being -- and the  
16 conduct is being upheld by the person who is  
17 making the decision.

18 Q. Okay.

19 So where would I look for the intent?  
20 The language of this document?

21 MR. KLOTZ: Object to the form.

22 A. You know something? I -- you know, that  
23 I -- when we talk about conduct, you're talking  
24 about what people -- in your situation in your  
25 discussion, you're talking about what people would

1

2 do with material nonpublic information and  
3 where -- and what should they do, what policies  
4 they should adhere to.

5 In my view -- let me put it a little  
6 different. If I can get 98, 99 percent compliance  
7 on -- and if they every once in a while there's a  
8 decision made because someone knows how to make  
9 that decision, to make it a hundred percent, I am  
10 really satisfied that the firm is conducting  
11 itself in appropriate way.

12 Q. So my question is simply: Does this  
13 have to be strictly adhered to or not?

14 MR. KLOTZ: Objection to the form.

15 A. And my answer to you is: As long as the  
16 intent is to adhere to the -- the policies and  
17 intent of how we want our employees to act, I  
18 believe that paragraph's been -- is being effected  
19 correctly.

20 Q. Okay.

21 Well, if I looked at the paragraph for  
22 the intent, is it fair to say the intent is that  
23 employees would not solicit, recommend, influence,  
24 or effect transactions in a security or commodity  
25 interest for any account, whether personal or

1

2 firm, while in possession of material nonpublic  
3 information? Is that the intent?

4 A. Well, you know something? It's  
5 interesting because we just talked about over the  
6 last six --

7 THE VIDEOGRAPHER: Excuse me. I think  
8 you knocked your microphone down. I can't  
9 hear you.

10 THE WITNESS: Oh, I'm sorry. This thing  
11 keeps falling off. Can you hear me now?

12 THE VIDEOGRAPHER: Yeah.

13 A. We have talked about transactions that  
14 compliance and general counsel are very  
15 comfortable with where we were in possession of  
16 material -- potentially material nonpublic  
17 information, either rumor, and they acted totally  
18 appropriately.

19 Q. Are you done?

20 A. Yup.

21 Q. Okay.

22 My question was: The intent that you  
23 say is to be fulfilled, is the intent found in  
24 paragraph 4?

25 A. Well, you know, you and I have a

1  
2 different point of view, that intent -- when I  
3 think of a code of conduct and I think of ethics,  
4 I think about intent, what we want our employees  
5 to act like. That's what in my mind a code of  
6 conduct and ethics is. Ethics is not something --  
7 it's -- that's a -- ethics are interpretation.

8           Your ethics may be totally different  
9 than mine. So it reflects my compliance, my  
10 general counsel, my outside counsel, and my senior  
11 management's view on how people should act. And  
12 if someone is acting in that way, I believe  
13 they're adhering to this policy.

14           Q.    Okay.

15                   And if I look to find out what it is you  
16 think -- how it is you think people should act,  
17 and I look at paragraph 4, it says, unequivocally  
18 that if I have material nonpublic information, I  
19 can't trade, right?

20           A.    Well --

21                   MR. KLOTZ: Object to the form.

22                   You can go ahead and answer.

23           A.    Well, we just discussed situations where  
24 they have.

25           Q.    I understand there are certainly

1

2 situations where that's happened, sir. You've  
3 testified to that.

4 My question is: Is there anything in  
5 paragraph 4 that expresses any intent other than  
6 that you cannot trade while in possession of  
7 material nonpublic information?

8 A. See, the way --

9 MR. KLOTZ: Object to the form.

10 A. The way I look at this is that you're  
11 taking one paragraph out of context. Okay?

12 And that this is a guideline.  
13 Guidelines are always subject to interpretation.

14 Q. All right, sir. I go back to my  
15 question. I'm taking paragraph 4. Is there  
16 anything in paragraph 4 that expresses any intent  
17 other than not to trade while in possession of  
18 material nonpublic information?

19 MR. KLOTZ: Object to the form.

20 A. And my view is that I'm going to answer  
21 you again the same way, that you're taking this  
22 out of context, and I know what the intent of --  
23 of -- and because of my outside counsel and  
24 general and my -- my belief and judgment that  
25 they -- they provide sound policies that my firm



1  
2 follows.

3 Q. Okay.

4 Are their policies reflected in  
5 paragraph 4?

6 MR. KLOTZ: Object to the form.

7 A. I'm going to say it again. That taking  
8 a paragraph out of context, to me there are  
9 situations that people act, and while the vast  
10 majority of the times we expect them to -- to --  
11 to ask for guidance and advice from our compliance  
12 or counsel, there could be times when they act  
13 because they know and they've been in that  
14 situation before, and they know -- they've gone to  
15 counsel previous and they know what the response  
16 is.

17 Q. I understand that, sir. You've  
18 testified to that.

19 My question is: Is any of that outlined  
20 in paragraph 4?

21 MR. KLOTZ: Object to the form.

22 A. To me all these paragraphs are not  
23 absolutes. They're interpretations.

24 Q. Where in paragraph 4 is there any  
25 ambiguity as to the right of somebody to trade

1

2 while in possession of material nonpublic  
3 information?

4 MR. KLOTZ: Object to the form.

5 A. I'm going to say this again.

6 These are guidelines. There are no  
7 absolutes in my business. Interpretation is  
8 important. And I can think of situations where  
9 someone would act -- and we've explained some  
10 today. I feel that they've made the -- an  
11 absolute right decision and they -- and while they  
12 may have chosen to go to counsel and go -- and go  
13 to compliance, they would be certainly showing  
14 good judgment in acting on -- on acting in those  
15 situations.

16 Q. Okay.

17 Sir, I'll tell you what, you can keep  
18 giving me the same answer and I'm going to keep  
19 asking the same question.

20 A. Then we'll stay here the whole freaking  
21 night. I don't care.

22 Q. That's fine, sir.

23 A. Let's go.

24 MR. KLOTZ: We're only staying here till

25 6:00. We'll keep going until 6:00.

1

2 Q. Where in paragraph 4, sir, does it say  
3 anything other than that when in possession of  
4 material nonpublic information, you cannot trade?

5 A. I'm going to say it again.

6 Q. Go ahead.

7 A. These are guidelines. Every paragraph  
8 in this manual is a guideline.

9 Q. Where in paragraph 4, sir, does it say  
10 anything other than you cannot trade on material  
11 nonpublic information?

12 A. I don't look at these -- I don't look at  
13 this document paragraph by paragraph. These are  
14 guidelines I'm for behavior.

15 Q. Where in paragraph 4, sir, does it say  
16 anything other than you cannot trade on material  
17 nonpublic information -- you cannot trade while in  
18 possession of material nonpublic information?

19 A. I'm going to say it again.

20 I view this document as a series of  
21 paragraphs where it's a code of conduct and a code  
22 of ethics. There's always -- in any -- in any --  
23 there are all -- there are -- we've gone through  
24 situations where, if you were literal, but -- if  
25 you were literal, if you read that paragraph, if

1  
2 you were literal -- but when my employees show  
3 sound judgment -- and understand the situation.  
4 My view is that -- my view is, you know, that  
5 they're doing the right thing and they're acting  
6 appropriately.

7 Q. Where in paragraph 4, sir, does it say  
8 anything other than literally you cannot trade  
9 while in possession of material nonpublic  
10 information?

11 THE WITNESS: May I have some water,  
12 please?

13 MR. KLOTZ: Sure. If you want to  
14 shorten your answer and just say "same  
15 answer," feel free to do that.

16 A. Yeah. Same answer.

17 Q. It's correct, is it not, sir --  
18 withdrawn.

19 I take it, sir, that if I keep asking  
20 you the same question, you'll continue to not  
21 answer it; is that right?

22 MR. KLOTZ: Object to the form.

23 A. I'll answer it every time.

24 Q. Okay.

25 You'll answer it the same way?

1

2 A. I'll answer it the same way.

3 Q. Okay.

4 Can you point to me to any language in  
5 paragraph 4 that provides for anything other than  
6 you not trading while in possession of material  
7 nonpublic information?

8 A. And I'm going to give you the same  
9 answer.

10 Q. So that is you cannot -- you can't point  
11 me to any such language?

12 MR. KLOTZ: Object to the form.

13 A. I'm going to give you the same answer  
14 that I did previous, that there are always times  
15 when -- and I've explained times in this  
16 deposition, where people -- as long as they show  
17 sound and good judgment, they can -- you know,  
18 they're following the -- the behavior and ethics  
19 rules that apply in this document.

20 Q. Okay.

21 So would you agree with me, sir, that  
22 paragraph 4 does not say, "Employees may not  
23 solicit, recommend, influence, or effect  
24 transactions in a security or commodity interest  
25 for any account, whether personal or firm, while

1

2 in possession of material nonpublic information  
3 related to such interest unless they're otherwise  
4 exercising sound judgment"?

5 Does it say that?

6 A. It does not say that.

7 Q. Okay.

8 It doesn't say any of the stuff that you  
9 just talked about in terms of what might happen  
10 and why, right?

11 MR. KLOTZ: Object to the form.

12 A. I'll give you the same answer.

13 Q. That is, it doesn't say any of that.

14 A. Doesn't say what?

15 Q. It doesn't say that you can do anything,  
16 while in possession -- withdrawn.

17 Doesn't say that you have any judgment  
18 with respect to trading on -- while in possession  
19 of material nonpublic information, does it?

20 A. My view is that this manual is a -- is a  
21 code of behavior and ethics.

22 Q. I just want to know if paragraph 4  
23 refers to judgment.

24 A. Say that again?

25 Q. Does paragraph 4 mention judgment?

1

2           A.    Paragraph 4 literally doesn't mention  
3 judgment.

4           Q.    Okay.

5                   Does it implicitly mention judgment?

6           A.    Out of context, it doesn't mention  
7 judgment.

8           Q.    Okay.

9                   Now, paragraph 11, it indicates on the  
10 second full paragraph, it is also the --

11          A.    What page?

12          Q.    Page 11.

13                   Well, withdrawn for a second.

14                   On page 11, under the bold, we talked  
15 about not communicating information to anyone  
16 else. But the second bullet point under the bold  
17 letters, all caps, indicates that you should not  
18 purchase or sell affected security or securities  
19 on behalf of the firm, the employee, or others if  
20 you may be in possession of material nonpublic  
21 information, right?

22                   MR. KLOTZ: It literally says "if you  
23 believe that you may be."

24          Q.    Right?

25          A.    Can you restate your question?

1

2 Q. Sure.

3 It says, "Any employee who believes that  
4 he or she may be in possession of material  
5 nonpublic information should," bullet point 2,  
6 "not purchase or sell the effected security or  
7 securities on behalf of the firm, the employee, or  
8 others."

9 Do you see that?

10 A. I see that.

11 Q. Once again, that doesn't have any  
12 exception into it, does it?

13 A. Yeah, it does.

14 Q. Okay.

15 Where?

16 A. Right above it.

17 Q. Where is that?

18 A. "Report the matter immediately to the  
19 general counsel."

20 If a person has been in that situation  
21 before, then, the way I read this is that he's got  
22 the experience to know how to act and act  
23 appropriately in a similar situation.

24 Q. Okay.

25 So your interpretation of this paragraph



1  
2 with the three bullet points is that an employee  
3 who believes they're in possession of material  
4 nonpublic information could purchase or sell  
5 securities?

6 A. Yes.

7 MR. KLOTZ: Object to the form.

8 Q. And they could do that under what  
9 circumstances?

10 A. Some of the circumstances that we  
11 discussed today.

12 Q. Okay.

13 Even circumstances where they don't go  
14 to the general counsel.

15 A. If they've -- if they've been in that  
16 situation before and they understand how to act  
17 and follow the general intentions of -- of -- of  
18 what my general counsel, my compliance wants, yes.

19 Q. Okay.

20 Where does it say that in this  
21 paragraph?

22 A. It says right here, "Report the matter  
23 immediately to the general counsel."

24 Q. Okay.

25 My question was, sometimes you don't

1

2 even have to go to the general counsel?

3 And you said yes.

4 So I want to know where does it say  
5 here --

6 A. It says right here that -- if the way  
7 that I interpret that is if the person has gone to  
8 the general counsel previous and understands how  
9 to act in a same situation and especially the  
10 way -- some of the things we discussed today, in  
11 my mind, he understands the intent and -- and  
12 desire of the firm and -- and understands what the  
13 general counsel is going to say.

14 Q. Okay.

15 So you interpret the words, "Report the  
16 matter immediately to the general counsel," as  
17 unless you've already talked to the general  
18 counsel about something similar?

19 A. In my mind --

20 MR. KLOTZ: Object to the form.

21 A. In my mind there are certain procedures  
22 that are done in my business over and over and  
23 over again.

24 In those instances where the person  
25 understands and has been in that situation before

1

2 and general counsel has opined or compliance has  
3 opined that it's okay, then I think it's perfectly  
4 acceptable to act in those situations as long as  
5 the judgment is that this is a similar situation.

6 Q. Okay.

7 So you would then say that you'd have to  
8 at some point in the past have gotten an opinion  
9 from general counsel that those particular  
10 circumstances would be okay.

11 MR. KLOTZ: Object to the form.

12 A. It would be my intent and desire that  
13 they understand and show good judgment. Part of  
14 that good judgment would be going to general  
15 counsel and affirming that this is an acceptable  
16 situation.

17 Q. But it's not required.

18 MR. KLOTZ: Object to the form.

19 A. It's my expectation that -- that they go  
20 to general counsel and compliance if they've never  
21 been involved in that situation before so they can  
22 understand how to act in that situation.

23 Q. And if they don't, can they trade?

24 MR. KLOTZ: Object to the form.

25 A. If they're making a judgment call in

1

2 their own hands and haven't discussed ever with  
3 compliance and/or general counsel, I could be  
4 uncomfortable with that.

5 Q. Okay.

6 What about the e-mails you saw  
7 concerning the Gwynn report and the Forbes report?  
8 Did anyone go to general counsel about those?

9 A. I have no idea.

10 Q. You're not aware of anyone going to  
11 general counsel.

12 A. I have no idea.

13 Q. You were on those e-mails. You didn't  
14 go to general counsel.

15 A. I don't remember the e-mails.

16 Q. You saw the e-mails last week, right?

17 A. I don't remember if we went to general  
18 counsel or if someone went to general counsel. I  
19 don't remember the e-mails.

20 Q. Okay.

21 You see the e-mails yesterday?

22 A. Yes.

23 Q. Okay.

24 Now, you don't have any recollection of  
25 anyone going to general counsel, right?

1

2 A. I personally have no knowledge.

3 Q. Okay. You didn't go to general counsel  
4 as far as you know.

5 A. I don't remember.

6 Q. As far as you know, you have no facts  
7 that indicate you went to general counsel.

8 MR. KLOTZ: Objection to the form.

9 A. I have no memory of going to general  
10 counsel or not.

11 Q. Okay.

12 Did you see any e-mails that indicated  
13 you went to general counsel?

14 A. I -- no.

15 Q. Did you see any e-mails where you told  
16 any of the people on the e-mails concerning the  
17 Gwynn report where you said, "Stop. Let's go to  
18 general counsel"?

19 A. I wasn't handling that particular  
20 situation. So, you know, it just wasn't something  
21 I was involved in.

22 Q. Okay.

23 But you're the head of the firm. It  
24 doesn't matter whether you're involved in it or  
25 not. You have an obligational interest --

1

2           A.    Yeah, but do you know how many  
3 situations there are in a day?

4           Q.    Let me finish my question, sir.

5                    You had the obligation as the head of  
6 the firm when you get an e-mail like that to act,  
7 do you not?

8           MR. KLOTZ:  Object to the form.

9           A.    If I'm not involved in the situation, I  
10 expect my employees to do the right thing.  
11 They're trained to do the right thing.

12          Q.    So as the head of the firm, the head of  
13 that account -- they were trading in your account,  
14 right?

15          A.    That's correct.

16          Q.    Okay.

17                    You get those e-mails.  Your testimony  
18 is you didn't have an obligation under the  
19 policy -- on your own policies to ensure that they  
20 had done what they needed to do to effect the  
21 trade?

22          MR. KLOTZ:  Object to the form.

23          A.    If I was aware of the e-mail and had any  
24 question about some of the issues that you're  
25 talking about, it's my policy -- it's my -- it's

1

2 my behavior to go to compliance or in-house  
3 counsel to get an answer.

4 Q. Okay.

5 Would you go or would you tell them to  
6 go?

7 A. I might tell them to go.

8 Q. Okay.

9 There's no e-mails where you did that,  
10 right?

11 A. None that I'm aware of.

12 Q. Okay.

13 You didn't see any responses to any of  
14 the several e-mails where they talked about the  
15 Gwynn report coming out or the Forbes report  
16 coming out where you said, "Hey, go run this by  
17 compliance"?

18 A. Say that again?

19 Q. You didn't see any e-mails in response  
20 to the several that you saw yesterday referencing  
21 the upcoming Gwynn report where you replied and  
22 said, "Hey, before you do anything, run this by  
23 general counsel"?

24 A. Because I wasn't involved in the  
25 situation, it wasn't a -- I don't remember the

1  
2 e-mail. So it would be impossible for me to  
3 reply.

4 Q. I'm not asking you why you didn't reply,  
5 sir.

6 I'm just asking, as you sit here today,  
7 you're not aware of any e-mails or messages that  
8 you sent to any of those people telling them --

9 A. That is correct.

10 Q. -- "Go get an opinion from general  
11 counsel," right?

12 A. That is correct.

13 Q. And there's no e-mail from you to them  
14 that says, "Hey, I've had this experience in the  
15 past. This is all right."

16 A. I don't believe so.

17 Q. Okay.

18 And there's no e-mails from them to you  
19 indicating that they had already cleared this with  
20 the general counsel, right?

21 A. They wouldn't have to send me an e-mail.

22 Q. Okay.

23 But in their e-mails they don't indicate  
24 to you when you're reading it that this has  
25 already been cleared by general counsel, right?



1

2           A.    I have no idea what they've done.  
3 That's a supposition.  I don't know if it's true  
4 or not true.

5           Q.    Exactly.

6                    From their e-mails, you have no idea  
7 whether they got approval from general counsel,  
8 right?

9           A.    That is correct.

10          Q.    And they don't send e-mails to you about  
11 this upcoming report and say, "I've had this exact  
12 same situation in the past and general counsel  
13 said it was okay."

14                    You haven't seen any messages like that,  
15 have you?

16          A.    I don't believe so.

17          Q.    Okay.

18                    So at the time, as far as you know as  
19 the head of the firm, when you look at these  
20 e-mails, there's no indication that anyone has  
21 approved either this particular transaction for  
22 them or a similar transaction for them in the  
23 past, right?

24                    MR. KLOTZ:  Object to the form.

25          A.    That I have no idea.  Could be true.  I

1  
2 don't know.

3 Q. I didn't ask you whether it was true. I  
4 asked you from the e-mails that you've seen that  
5 you've received, there is no indication that  
6 anyone from compliance or legal has okayed  
7 continuing transactions while they were in  
8 possession of that information about the Gwynn  
9 report or previously told them that type of  
10 transaction would be okay. There's nothing in an  
11 e-mail that indicates that, right?

12 A. I have not personally seen one.

13 Q. Okay.

14 No one has shown you one, right?

15 A. No one has shown me one.

16 Q. And you're not aware of one, right?

17 A. I am not aware of one.

18 Q. Okay.

19 So given the complete lack of evidence  
20 that either continuing to transact in that  
21 security had been approved by the general counsel  
22 or had previously been approved by the general  
23 counsel, is it still your testimony that it was  
24 okay for them to continue to transact in that  
25 security?

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2 A. Absolutely.

3 Q. Okay. And you say that's consistent  
4 with the policy manual.

5 A. It's consistent with my intent.

6 Q. Okay.

7 But you weren't the one trading, sir.  
8 You said you weren't even involved, right?

9 A. Yeah. But you're asking me -- what's  
10 your question?

11 Q. Okay.

12 You're saying it's consistent with your  
13 intent as to how you want your employees to act;  
14 is that right?

15 A. My employees did everything appropriate.

16 Q. Okay.

17 My question is: When you said,  
18 "consistent with my intent," you meant that  
19 behavior, continuing to trade in that, even though  
20 they didn't have approval of general counsel,  
21 didn't have any indication general counsel that it  
22 would be okay, was consistent with your intent,  
23 right?

24 A. It's my belief that what they did was  
25 totally appropriate.

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2 Q. I'm asking you, when you said,  
3 "consistent with my intent" -- I just want to make  
4 sure I understand what you're saying.

5 Contrary to the policy manual, you said  
6 it's your intent that it was okay for them to  
7 continue trading in those transactions even though  
8 they had not cleared it with the general counsel  
9 or ever indicated that they had heard from the  
10 general counsel that such transactions were okay.

11 MR. KLOTZ: Object to the form.

12 A. Okay. It's my belief that the people  
13 involved trading this were experienced portfolio  
14 managers.

15 This wasn't a very complicated  
16 situation. It's actually a very simple situation.  
17 Buying stock, either thinking, by rumor -- and I  
18 don't know the facts. I don't know what really  
19 was true or not true. In either case, it's sort  
20 of a nonevent because they were on the other side  
21 of the transaction, and, therefore, because of my  
22 explanations previous, they conducted themselves  
23 totally above board and did the right thing.

24 Q. Did anyone show you that Mr. Pohly had  
25 shorted securities on the same day he sent the

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2 e-mail about the Forbes story coming out and the  
3 Gwynn report coming out?

4 MR. KLOTZ: Object to the form. Among  
5 other things, Pohly sent no such e-mail.

6 But go ahead and answer on the  
7 hypothetical that he's given you.

8 A. No. The transaction that you're talking  
9 about, when was that -- when was that taking  
10 place?

11 Q. On January 9.

12 A. 2003?

13 Q. Yeah.

14 A. I'm not aware of that transaction.

15 Q. So when you say it would be okay for  
16 members of your firm -- of your group back then to  
17 buy, knowing that a report is going to come out  
18 that's going to drive the price down, do you have  
19 the same answer if they are selling and shorting?

20 A. It really comes down to where they heard  
21 that. If they heard a rumor, I think it would be  
22 totally appropriate.

23 Q. If they heard it from the reporter that  
24 he was coming out with a negative story --

25 A. I wasn't -- I wasn't on that phone call.

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2 So that's a supposition. I have no idea what was  
3 in that conversation.

4 Q. What if they sent you an e-mail that  
5 said the reporter told me he is coming out with a  
6 negative story? It is it your testimony it would  
7 be okay for them to short?

8 MR. KLOTZ: Object to the form.

9 A. If the story was not coming out in a  
10 relatively short period of time, I would say there  
11 was ambiguity on that. I think it might be okay.

12 Q. What if it was coming out in the next  
13 few days?

14 A. That I don't know -- I mean, if they  
15 knew that, I would -- I would say -- trying to  
16 think of -- if the reporter told them that they're  
17 coming out with a negative story -- that's what  
18 you're saying?

19 Q. Yup.

20 A. Now, is that a hypothetical or is that  
21 true?

22 Q. Doesn't matter, sir.

23 What's the answer to the question?

24 A. I think the answer is I would want them  
25 not to trade on that.

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2 harming anyone. I think that was your language.

3 You've talked at length.

4 How does that impact on putting a stock  
5 on the restricted list?

6 MR. KLOTZ: Object to the form.

7 MS. BARNHOUSE: Objection. Form.

8 A. I mean, it's common procedure in the  
9 firm for employees to ask to put a stock on the  
10 restricted list.

11 Q. Under what circumstances?

12 A. When they -- when they -- when they  
13 believe they're in possession of material  
14 nonpublic information.

15 Q. How long has that been the policy?

16 A. Since I've been in business.

17 Q. Okay.

18 Is there anything in this policy manual  
19 that I have from 2002 that talks about that?

20 MR. KLOTZ: Object to the form.

21 A. I -- it could be in here. I -- I know  
22 that's the policy.

23 Q. Okay.

24 Is -- is -- it's not in the sections  
25 that I've handed you as an exhibit.

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2           Is there some other portion of this  
3 manual that hasn't been produced where it talks  
4 about putting things on the restricted list?

5           A.    I haven't reviewed the whole document,  
6 so I --

7           Q.    I'll tell you what. Take a second and  
8 go through as much as you want. Maybe I'm missing  
9 it. Let me know, the document that was produced,  
10 does it outline when things are going to be put on  
11 the restricted list, when you're supposed to ask  
12 to be put on the restricted list, and look at the  
13 table of contents to --

14          A.    So what's your point?

15          Q.    I have a question, not a point, sir.

16          A.    What's your question?

17          Q.    My question is: Does that exhibit talk  
18 about what you just described as a procedure to  
19 put things on a restricted list?

20          A.    I don't see anything here about a  
21 restricted list.

22          Q.    Okay.

23                But it was your policy back in '02 and  
24 '03 that if an employee came into possession of  
25 material nonpublic information, they were supposed



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2 to request that it be put on a restricted list?

3 A. No. What I would expect them is to talk  
4 to general counsel and discuss whether it should  
5 be on the restricted list.

6 Q. Okay.

7 And when would it -- when should it be  
8 put on the restricted list?

9 A. When -- I mean, they're either in  
10 possession of material nonpublic information or  
11 they're -- they're -- they want to transact in a  
12 way that's -- in the -- in their -- whatever  
13 material nonpublic information they have, if they  
14 want to transact in the direction of what that  
15 material nonpublic information -- the way I  
16 think -- the way it should work is that the person  
17 would go to counsel and explain the situation.

18 It would be my hope that in that  
19 conversation they come to the conclusion whether  
20 it should be on the restricted list or not,  
21 unless -- unless -- now there's always situations  
22 where, you know, nothing's a hundred percent.

23 And in this situation where -- where  
24 employees, portfolio managers are buying stock in  
25 front and they have the experience and the good

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2 judgment to know that it's acceptable, then I  
3 don't have a problem with that.

4 Q. But what's the point of having a  
5 restricted list if you're just going to rely on  
6 the portfolio managers to trade in the right  
7 direction as you believe they're entitled to do?

8 A. Well, it's a judgment call. I mean,  
9 there are times when -- in every -- in situations  
10 where employees make judgments calls. If they're  
11 unsure about how to handle the situation, they  
12 better go to compliance or general counsel.

13 If they have the experience and they  
14 know and they've been in the situation before, it  
15 wouldn't be an automatic.

16 Q. Okay.

17 So because it's not in here, I haven't  
18 had a chance to go through the rules on when  
19 something gets on a restricted list, how it gets  
20 on there, what it means when it gets on there.

21 So let me explore that a little bit with  
22 you.

23 Okay.

24 Back in '02 and '03, what was the  
25 criteria for putting a stock on the restricted

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2 list?

3 A. I don't remember.

4 Q. What was the criteria today for putting  
5 it on the restricted list?

6 A. I mean --

7 MR. KLOTZ: Object to the form.

8 A. It would be, you know, if you're in  
9 possession of material nonpublic information and  
10 if you're unsure, you would go to counsel. It's  
11 not an automatic.

12 Q. Unsure about what?

13 A. Unsure whether the stock should be  
14 restricted or not. You would go -- you would --  
15 you would go to counsel to ask, unless you have  
16 been in that situation before and you would make  
17 the call.

18 Q. Okay.

19 If -- you started your answer by saying  
20 it would go on the restricted list if you were in  
21 possession of material nonpublic information,  
22 unless you were unsure.

23 Unless you were unsure about that?

24 A. Whether it should be on a restricted  
25 list or not.

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2 Q. Okay.

3 Does all material nonpublic information  
4 warrant being put on the restricted list?

5 MR. KLOTZ: Object to the form.

6 A. We've talked about situations today  
7 where actually it's not case.

8 Q. Are you referring to the situations  
9 where you're going to trade in the opposite  
10 direction?

11 A. Or you're going to trade in the opposite  
12 direction.

13 Q. Okay.

14 But isn't the point of the restricted  
15 list -- let me withdraw that.

16 When something gets put on the  
17 restricted list, what is the impact of that?

18 A. The impact of that is the firm cannot  
19 trade in those securities.

20 Q. In any direction?

21 A. In any direction.

22 Q. Anyone?

23 A. Anyone.

24 Q. So there's no qualification in the  
25 restricted list on what direction you're trading,

1  
2 right?

3 MR. KLOTZ: Object to the form.

4 A. Well, you know, if you object to that,  
5 you could easily go to counsel and you could have  
6 it taken off restricted, if he agrees, within five  
7 minutes.

8 Q. Okay.

9 Why -- why do you put it -- why is there  
10 a resisted list? Why can't a portfolio manager  
11 just say, "I'm not going to trade it"? Why is it  
12 put on a restricted list?

13 MR. KLOTZ: Object to the form.

14 A. Because he's one portfolio manager, and  
15 I have 60 portfolio managers.

16 Q. What if they don't know?

17 A. That's not the way we want to operate.

18 Q. All right.

19 So your point is when the firm is in  
20 possession of that material nonpublic information,  
21 the firm possesses it, right?

22 MR. KLOTZ: Object to the form.

23 A. I'm not totally sure about that answer.

24 Q. Okay.

25 So why then can't it just stay in the

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brain of the one portfolio manager? Why does it have to be put on the restricted list?

A. Because that's the way we do business.

Q. Is that the way you did business in 2002?

A. That's the way I hope we did business.

Q. 2003?

A. I would assume so.

Q. Okay.

And the reason that's important, is it not, because you can't guarantee once someone's in possession of that information that they're not going to go out and execute it in the direction that you would say is inappropriate, right?

MR. KLOTZ: Object to the form.

A. Well, I mean, mistakes can be made. I mean, people, you know, if the firm's in -- in -- but I'm not entirely sure -- I mean, there could be situations where certain people know and other people don't and it might be okay, but I'm not a hundred percent sure. I think these are legal questions that I would go to my counsel to ask.

Q. Okay.

So based on your 30 years of experience

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2 and the many years you've run S.A.C., you don't  
3 know the answer to that question?

4 MR. KLOTZ: Object to the form.

5 A. Because it's complex.

6 Q. Now, what was to prevent -- withdrawn.

7 When you say everyone acted  
8 appropriately with respect to the trading in '03  
9 at or around the time of the Gwynn report, you're  
10 looking at that from after the fact of the  
11 trading, right?

12 A. Well, I don't remember trading.

13 Q. Okay.

14 A. So looking at -- looking at documents  
15 at -- you know, over the last week or two.

16 Q. And that doesn't tell you -- withdrawn.

17 It could just as easily have been that,  
18 in retrospect, they shorted the stock and that  
19 would have been inappropriate, right?

20 MR. KLOTZ: Object to the form.

21 A. In that -- in this situation --

22 Q. Uh-huh.

23 A. -- with the facts that you're  
24 presenting, if they shorted the stock knowing that  
25 report was coming out, I would find that

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2 inappropriate.

3 Q. Okay. And, of course, at the time -- at  
4 the -- at that time you had no way of knowing  
5 whether all the recipients on those e-mails that  
6 expressed the expectation of that report coming  
7 out were going to trade in any particular way, did  
8 you?

9 MR. KLOTZ: Object to the form.

10 A. I am -- I -- I could have an expectation  
11 depending on what the positions of the firm was.  
12 It's possible.

13 Q. Okay. But you don't know who else in  
14 the firm they're telling that to, right?

15 MR. KLOTZ: Object to the form.

16 A. Who's telling that to?

17 Q. The people who -- there are e-mails that  
18 indicate to you that there were people in your  
19 group who had an expectation that a -- a report  
20 from Morgan Keegan was coming out and that a  
21 Forbes story was coming out.

22 You've seen those e-mails, right?

23 A. If you understand it correctly, the  
24 Forbes story were -- were -- were -- the way I  
25 understand it, that was Rob Pohly and, I think,



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2 Glenn Shapiro. They were not in my group.

3 Q. Okay.

4 Did they communicate to your group?

5 A. I believe there was an e-mail, but I'm  
6 not sure if it came to my group.

7 Q. Okay.

8 So why were they communicating that to  
9 your group?

10 A. Because, in general, it wouldn't  
11 surprise me that portfolio -- other portfolio --  
12 because I run the main account and the people in  
13 my account are helping me in that main account,  
14 that it -- it would not surprise me to have other  
15 portfolio managers sending me their thoughts on  
16 particular stocks.

17 Q. Okay. You raise a good question.

18 The Cohen account at that point in  
19 time -- in the e-mails we got, it just says "Cohen  
20 account."

21 A. Uh-huh.

22 Q. Who else is -- who else is in that group  
23 chain at that time?

24 A. I mean, I -- I can't remember who was in  
25 the account at that time. I do know that around

1  
2 that time in the stock, there was Evan Behrens,  
3 there was Jeff Perry, but I'm not really sure who  
4 was in the account. We move people around a lot.

5 Q. Well, give me an idea how many portfolio  
6 managers there would have been in your account at  
7 that time?

8 MR. KLOTZ: Object to the form.

9 A. Usually, I sectorize the account, and so  
10 there could easily be different people running  
11 different parts of the account.

12 Q. I just wanted to know how many.

13 A. It really various.

14 Q. Dozens?

15 A. Analysts and portfolio managers or just  
16 portfolio?

17 Q. Let's just talk about people who can put  
18 out trades.

19 A. I would say no more than 10, maybe 15,  
20 max, depending on the year.

21 Q. And that would include everyone in the  
22 Cohen account?

23 MR. KLOTZ: Object to the form.

24 You mean just portfolio managers?

25 MR. BOWE: Uh-huh.

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MR. KLOTZ: So the question is: Does the ten to 15 include every portfolio manager in the Cohen account?

A. It depends on the year. I can -- I think in 2000. Later on there might have been more who could have put on trades.

Q. Okay.

And the reason I ask that question wasn't clear was: You had said you -- I think you said you sectorized it.

A. Uh-huh.

Q. I've seen "Cohen internal." I've seen "Cohen financials." I've seen -- I'm just trying -- and I've seen "Cohen account."

How do those differ?

A. Well, Cohen financial, I think, is self-explanatory. It's the -- the set -- the -- it's the financial section of the Cohen account.

Cohen internal, I don't know what that is.

Q. When you say the Cohen financial is self-explanatory, I apologize, but what do you mean by that?

A. I said the Cohen financial is -- you say

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2 Cohen financial or Cohen internal?

3 Q. I said Cohen -- Cohen internal, you said  
4 you don't know what that is.

5 A. Right.

6 Q. Cohen financial you said is  
7 self-explanatory. That's the financial section of  
8 the Cohen account. So financial is financial.

9 So just bear with me. What is in that  
10 banks and insurance companies?

11 A. I would say banks, insurance companies,  
12 any security that -- that would be involved with  
13 the financial system or, you know, financial  
14 technology or something related to financials.

15 Q. Okay.

16 And is every one of the ones in the  
17 Cohen account an account that -- that's your  
18 account?

19 A. That's my account.

20 MR. BOWE: Now, okay, we have to change  
21 the tape. So let's take a break.

22 THE VIDEOGRAPHER: We're going off the  
23 record. The time is 5:03 p.m. This is the  
24 end of Tape Number 4.

25 (A recess was taken.)

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THE VIDEOGRAPHER: We are back on the record. The time is 5:18 p.m. This is the beginning of Tape Number 5.

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Q. Mr. Cohen, at the break did you talk to counsel about your testimony?

6

7

A. Once again, I asked how I was doing.

8

Q. Okay.

9

Did you look at any documents?

10

A. No.

11

Q. Did you look at any documents at any breaks that we've had?

12

13

A. No.

14

Q. Now, one of the reasons why you have a requirement that if someone comes into possession of nonpublic -- material nonpublic information, they not tell anyone else and they notify the general counsel is to ensure that other people in the firm don't trade on it, right?

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A. Yes. I think that's correct.

21

Q. Okay.

22

Now, isn't another reason why you have a restricted list is because your firm understands that it is against SEC rules to trade, period, while in possession of material nonpublic

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2 information?

3 MR. KLOTZ: Object to the form.

4 A. I think we've been through this all day  
5 today that each case in -- if you want to talk in  
6 absolutes, you know, the reality is that each --  
7 each case is slightly different.

8 And I've talked about situations where I  
9 think it would be perfectly appropriate to -- to  
10 not restrict the stock and allow someone to trade  
11 on it.

12 Q. Okay.

13 I thought what went on a restricted list  
14 is when you were in possession of material  
15 nonpublic information.

16 A. When -- I mean, it might -- it might go  
17 on a restricted list. I mean, most of the time it  
18 probably would. I would say more times than not,  
19 but I -- you know, once again, this is a judgment  
20 call and either the portfolio manager will make  
21 that judgment call based on his experiences in  
22 similar situations or he will go to counsel and  
23 counsel together with the portfolio manager will  
24 discuss it, maybe even with compliance, and come  
25 up with a decision whether it should be on the

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2 restricted list or, you know, allowing anybody to  
3 trade -- trade or transact in it.

4 Q. Okay.

5 What I'm trying to do -- I know you've  
6 testified, but we haven't testified about it in  
7 the context of the restricted list, which I don't  
8 really understand the purpose of the restricted  
9 list in light of what you've testified about, and  
10 that's what I'm trying to understand.

11 A. Uh-huh.

12 Q. If -- if it's permitted for a  
13 portfolio -- if -- withdrawn.

14 If the restricted list's purpose is to  
15 make sure that while the firm is in possession of  
16 material nonpublic information, no one in the firm  
17 is trading in that security at least in a  
18 direction of that information, as you put it, how  
19 is that served by allowing one portfolio manager  
20 in his judgment to decide not to put it on the  
21 restricted list because he's going to trade in the  
22 opposite direction?

23 MR. KLOTZ: Object to the form.

24 A. Well, once again, I think, you know, in  
25 general, I can think of many instances when, in

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2 possession of material nonpublic information, you  
3 would immediately restrict yourself.

4 Q. Give me some examples.

5 A. The CEO of a company tells you that he's  
6 taking over XYZ tomorrow. I would expect that to  
7 be on the restricted list.

8 Q. Any other examples?

9 A. Somebody in a -- in a public company  
10 tells you that what they're earnings are going to  
11 be when they report in two weeks. I would want  
12 that immediately restricted.

13 Q. Why?

14 A. Because that person is in possession of  
15 material nonpublic information and, essentially,  
16 the company brought him over the wall, and I would  
17 expect that to be restricted.

18 Q. Why couldn't you just ignore it and  
19 trade in the opposite direction?

20 MR. KLOTZ: Object to the form.

21 A. See, I think those are judgment calls  
22 and, to me, it's highly, highly unlikely that  
23 someone would go on the other direction and -- and  
24 a analyst sell recommendation, while potentially  
25 market moving, in my mind doesn't rise to the same



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2 severity as -- or importance as knowing the  
3 quarterly earnings given to you by a person at  
4 another company.

5 Q. Well, that really depends on what the  
6 earnings are going to be and what the report's  
7 going to say, right?

8 A. Well, I think these are two totally  
9 different situations, and I think you're confusing  
10 the two.

11 Q. How am I confusing the two?

12 A. Because I just said that I can't think  
13 of any reason why -- in possession of knowing the  
14 earnings of a company that's been given to you by  
15 a company insider where I wouldn't restrict the  
16 stock.

17 Q. And is that because you think that all  
18 such information would always move the market?

19 A. I wouldn't want to be in a position to  
20 make that judgment call.

21 Q. Why not?

22 A. Because I think that -- that's too tough  
23 a call to make.

24 Q. Okay.

25 Now, an analyst report can also move the

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2 market, right?

3 A. Theoretically.

4 Q. In fact, the John Gwynn's initial report  
5 moved the market dramatically, did it not?

6 A. I don't remember how much it moved.

7 Q. But you know it moved dramatically,  
8 don't you?

9 A. I was told.

10 Q. Okay.

11 And more dramatically than many earnings  
12 releases by companies, right?

13 MS. BARNHOUSE: Objection. Form.

14 A. Because I don't know, you know, how much  
15 it moved, I can't answer that.

16 Q. Well, lots of earnings releases by  
17 companies don't move the stock very much at all,  
18 right?

19 A. That's true.

20 Q. If they're on -- if they're consistent  
21 with street expectations, you don't see very much  
22 movement, right?

23 A. Potentially, yes.

24 Q. Okay.

25 So is it your testimony that whether

1  
2 something ends up on the restricted list or not is  
3 sort of subject to all the same questions of  
4 judgment that determine whether or not someone has  
5 to tell the general counsel or can on their own  
6 trade in the security?

7 A. I mean, I --

8 MR. KLOTZ: Object to the form.

9 A. I've testified that in the vast majority  
10 of cases you would probably have to go to  
11 compliance or general counsel to opine on whether  
12 you can trade on it.

13 But I can think of situations where --  
14 because they've been in the situation before --  
15 but they have to show good judgment.

16 Q. Can you think of instances where you  
17 came into possession of information that  
18 potentially was material or nonpublic and you  
19 didn't put it on the restricted list?

20 A. I'm always running into the compliance  
21 and legal departments. So I can't think of any  
22 off the top of my head, but I'm sure there are  
23 instances.

24 Q. Okay.

25 You're sure there are instances where

1  
2 you are in possession of material nonpublic  
3 information and you don't put it on the restricted  
4 list.

5 MR. KLOTZ: Object to the form.

6 A. I can't think of any off the top of my  
7 head.

8 Q. In September 2008, did you learn that  
9 the Fed was going to back stop commercial paper?

10 A. I -- I don't even remember that.

11 Q. Do you remember being told that the Fed  
12 was going to announce that it was going to back  
13 stop commercial paper before that announcement was  
14 made?

15 A. I don't remember that.

16 Q. Do you know anything called the  
17 Commercial Paper Funding Facility?

18 A. Vaguely.

19 Q. And you remember that was the Fed coming  
20 in to back stop the purchase and transfer of  
21 commercial paper?

22 A. I'm not a credit person. So I'm not  
23 sure what that is.

24 Q. Was a person named Mark Tishfield a  
25 credit person at that time?

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2 Q. Mr. Cohen, you said that you knew Rob  
3 Pohly was an experienced portfolio manager.

4 A. That's correct.

5 Q. What did you mean by that when you said  
6 it?

7 A. He was -- he was one of my better  
8 portfolio managers and a very responsible  
9 individual.

10 Q. And how long had he been at your firm?

11 A. I don't remember. I mean, I don't know  
12 when he arrived at my firm.

13 Q. Okay.

14 At the time that you were trading in  
15 Fairfax securities at the end of 2002 and  
16 beginning of 2003, how long about had he been at  
17 your firm?

18 A. I don't remember.

19 Q. Had he been there years?

20 A. I -- I couldn't give you an exact date.  
21 My guess is he showed up 2000, 1999, 2001?

22 Q. And when did he leave?

23 A. He left a -- he -- maybe three to five  
24 years ago.

25 Q. Okay.

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2           Why did he leave?

3           A.    Because he wanted to set up his own  
4 firm.

5           Q.    Okay.

6                    Did he set up his own firm?

7           A.    Yes, he did.

8           Q.    Did you invest in that firm?

9           A.    I don't believe so.

10          Q.    Okay.

11                    So at the time of late 2002, beginning  
12 of 2003, would it be fair to say Mr. Pohly was  
13 familiar with the policies and procedures at  
14 S.A.C.?

15          A.    I can't speak for -- I can't speak for  
16 Rob Pohly.

17          Q.    Well, did you supervise him?

18                    MR. KLOTZ: Object to the form.

19          A.    I don't believe I was his supervisor.

20          Q.    Do you think he understood your  
21 intention with respect to when trading could and  
22 couldn't be done?

23          A.    I believed he was a very smart and  
24 person of high integrity and, therefore, I think  
25 he would -- my opinion is he would act very

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2 appropriately.

3 Q. Okay.

4 But my question was a little bit  
5 different. My question was: You've talked quite  
6 a bit today about the compliance manual says one  
7 thing but that it needs to be understood in  
8 context, and in the context of sort of what your  
9 intent was.

10 And my question is: Would you -- would  
11 it be your expectation that Mr. Pohly, based on  
12 the amount of time he had spent at the firm by  
13 late 2002, early 2003, understood what your  
14 intention was with respect to when people could  
15 trade and when they couldn't trade in securities?

16 A. I -- I have a high regard for Rob Pohly.  
17 He's an outstanding individual and a very ethical  
18 and conducts himself always in an proper way. So  
19 the answer is yes.

20 Q. Okay.

21 Well, he might be an upstanding  
22 individual and have absolutely no idea about what  
23 you intended for trading.

24 So my question is: Did he -- was it  
25 your understanding, based on your view, that by

1

2 2003 Mr. Pohly had a good understanding of sort of  
3 what trading was okay by you and what wasn't okay  
4 by you?

5 MR. KLOTZ: Object to the form.

6 A. We had our -- we had our policies. We  
7 had training. Rob was an outstanding individual,  
8 came from a very good firm. I don't remember ever  
9 Rob not handling himself in the appropriate way,  
10 and so, you know, my view is he would be operating  
11 and -- with -- with the intent that I had of how I  
12 wanted the firm run.

13 Q. Okay.

14 And you would understand that he would  
15 have a good understanding of how you wanted the  
16 firm run by 2003, right?

17 A. I believe that.

18 Q. Okay.

19 Now, Mr. Pohly was never disciplined by  
20 S.A.C., was he?

21 A. I don't think so.

22 Q. Okay.

23 Was he ever -- was he ever reprimanded  
24 or given additional instruction for any reason  
25 relating to his trading?



1

2 A. None that I'm aware of.

3 Q. What about Glenn Shapiro?

4 A. Glenn Shapiro, just a very proper,  
5 straightforward, great analyst.

6 Q. Did he also, you think, by 2003 have a  
7 solid understanding of what you believed was  
8 appropriate and inappropriate behavior with  
9 respect to trading at S.A.C.?

10 MR. KLOTZ: Object to the form.

11 A. My belief is Glenn was a very cautious  
12 individual, was part of that team that operated in  
13 a very outstanding way, and I have a high regard  
14 for him.

15 Q. I didn't ask whether you had a high  
16 regard for him.

17 What I asked was whether you thought by  
18 2003 he had a solid understanding of what you  
19 believed was appropriate/inappropriate behavior  
20 with respect to trading at S.A.C.

21 MR. KLOTZ: Object to the form.

22 A. Well, my memory doesn't serve me back  
23 eight years on Glenn Shapiro at 2003. My  
24 experiences with him, in general, was that this  
25 was a person who did things by the book.

1

2 Q. When you say "by the book," you mean by  
3 the written policy manual or by what you've  
4 described outside the manual?

5 MR. KLOTZ: Object to the form.

6 A. What I described as really my intent,  
7 how I want my employees to operate.

8 Q. Okay.

9 And how long had he been at the firm by  
10 2003?

11 A. I don't remember.

12 Q. Had he been there years?

13 A. I have no idea. I mean, he's working  
14 for a guy who probably came between 1999 and, say,  
15 2001. He wasn't there before that.

16 Q. What about Andy Cohen?

17 A. Just he's a very good guy.

18 Q. Now, did Andy Cohen -- how long had he  
19 been at your firm in 2003?

20 A. My guess is two to three years, maybe --  
21 no, actually, maybe longer. It could have been  
22 four or five.

23 Q. Okay.

24 And what was his position?

25 A. When?

1

2 Q. 2003, beginning of 2003.

3 A. I believe he was working for the Cohen  
4 account.

5 Q. Okay. In what capacity? Portfolio  
6 manager, analyst?

7 A. Analyst.

8 Q. Okay.

9 Now, do you think at that point in time  
10 he had a solid understanding as to what your  
11 intent -- Mr. Cohen's intent with respect to when  
12 it was appropriate and inappropriate to trade in  
13 securities at S.A.C.?

14 A. I think Andy was a very cautious  
15 analyst. As an analyst, he didn't -- he didn't  
16 actually transact. All he did was do the -- the  
17 work.

18 Q. Okay.

19 But he would have been under the same  
20 obligation as any every other employee there to  
21 raise any issues that he believed might run afoul  
22 of the policies at S.A.C. concerning trading,  
23 right?

24 A. If he was aware of them.

25 Q. And so my question isn't whether he was

1

2 cautious or friendly or anything.

3           What I want to know is: By 2003 did he  
4 have a handle as to what you believe was  
5 appropriate and inappropriate for trading at  
6 S.A.C.?

7           MR. KLOTZ: Object to the form.

8           A. I think so.

9           Andy's very smart individual, very  
10 cautious individual, and -- and a person of high  
11 integrity.

12          Q. Okay.

13           Whether he's cautious, whether he has  
14 high integrity, I understand that.

15           I want to know whether he understood the  
16 types of things you were describing earlier as the  
17 context in which you needed to understand --

18          A. I believe that.

19          Q. Okay.

20           So he wouldn't do anything or watch  
21 anything that he didn't understand you thought was  
22 okay.

23           MR. KLOTZ: Object to the form.

24          A. It's my belief that Andy -- I've known  
25 Andy for a long time and -- I think he operates in

1  
2 a very -- with high integrity and -- and I think  
3 he's a -- a good, able, smart, and operates and  
4 knows how to operate within the context of what I  
5 want.

6 Q. Okay.

7 What was the address for -- withdrawn.

8 Can you tell me anyone else who was in  
9 the Cohen account in January 2003?

10 A. Well, I found out, I think, yesterday --  
11 I mean, we met twice, so -- you know, it was  
12 yesterday -- might have been a week ago -- that  
13 Larry Sapanski was in the account, that Forrest  
14 Fontana was in the account.

15 Q. Anyone else you remember?

16 A. There were other people. It's not  
17 coming to my mind right now.

18 Q. Okay.

19 Who was in the group "trading -  
20 financial services"?

21 A. That would have been Larry Sapanski and  
22 Forrest Fontana.

23 Q. Okay.

24 Is that separate than the Cohen account?

25 A. I believe they were still in the Cohen

1

2 account.

3 Q. They were in two different accounts?

4 A. No. I think if they were in the Cohen  
5 account, it might have had a portfolio within the  
6 account, but it's still part of the -- the overall  
7 Cohen account.

8 Q. Okay. So "trading - financial," I  
9 understood you said you had Cohen account,  
10 financial. I understood that.

11 Did you have a Cohen account trading?  
12 Was there a different address for other people who  
13 were in trading?

14 A. No. It was -- it was broken up by  
15 sectors.

16 Q. Okay.

17 What about Mr. Sapanski? How long had  
18 he been there by January 2003?

19 A. My guess he was probably there five to  
20 seven years.

21 Q. Okay.

22 And what was his position? Portfolio  
23 manager?

24 A. Portfolio manager.

25 Q. So certainly had a view -- a solid

1

2 understanding of what you thought was appropriate  
3 and inappropriate for trading at S.A.C., right?

4 MR. KLOTZ: Object to the form.

5 A. I've always felt Larry conducted  
6 himself, and I had a lot of faith in his ability  
7 and his judgment.

8 Q. Okay.

9 I didn't ask your views as to how he  
10 conducted himself or whether you had faith in him.

11 My question is whether or not you  
12 believed in 2003 he had a solid understanding of  
13 what you would and wouldn't approve of in terms of  
14 trading.

15 MR. KLOTZ: Object to the form.

16 A. Yes, I did.

17 Q. And is the same for Mr. Fontana?

18 MR. KLOTZ: Object to the form.

19 A. Yes, I do.

20 Q. How long had Mr. Fontana been there?

21 A. I would guess, I -- I don't remember.

22 Two, three years. But I thought he was a very  
23 solid analyst.

24 Q. Okay.

25 Did he also by that point in time have,

1

2 in your view, a solid understanding of what you  
3 would have viewed as appropriate and inappropriate  
4 trading?

5 MR. KLOTZ: Object to the form.

6 A. Operating in proximity of me, I would  
7 expect that.

8 Q. What do you mean?

9 A. He's in my account.

10 Q. When you say -- well, when you say  
11 operating in proximity, do you mean he's in your  
12 account or he sits next to you on the floor?

13 A. You know, the -- my people in my  
14 account, the portfolio managers, all sat fairly  
15 close to each other. The analysts would always  
16 come and talk to the portfolio managers.

17 Q. And so based on -- you meant in  
18 proximity, meaning he's physically near you?

19 A. He would be -- in meetings, he would --  
20 he would hear me, every -- you know, if he came by  
21 the account, if he -- he might have been doing  
22 work in his office, but he was certainly someone  
23 who I thought did a very good job with Larry  
24 Sapanski in running the financial account.

25 Q. Okay.



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And so Mr. Fontana, based on his exposure to you in meetings and in -- with respect to trading and everything, he would have had a solid understanding at the time in '03, beginning of '03, as to what type of trading activity you thought was appropriate and inappropriate, right?

MR. KLOTZ: Object to the form.

A. Assuming he was there for enough time. I would say if he was only there a few months, you know, maybe -- you know, he would -- he would certainly being trained in what we want.

But I -- since I don't remember how many years, but he was certainly a good analyst and an upstanding -- in fact, I think he was a selectman up in Massachusetts. So certainly someone who I think demonstrates high integrity.

Q. Because he's a selectman, you think he has high integrity?

A. I think so.

Q. Well, how long had he been there by 2003?

A. I don't remember.

Q. How long did he stay with S.A.C.?

A. He became a portfolio manager and then

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he left maybe two to four years later.

Q. Okay.

How long had he been at S.A.C. before he was a portfolio manager?

A. I can't -- I don't know the answer to that.

Q. Would that have been longer than months?

A. Absolutely.

Q. Would it have been like at least a year?

A. Probably.

Q. Okay.

Because the e-mails we have from '03 list him as a portfolio manager. Would that indicate that he had been there for more than a year?

A. I'm not sure. Since I haven't seen the e-mails, I really don't know how to answer that. He had a portfolio. I don't remember if he was running the financials with Larry or Larry was in charge of it. That I'm not clear on.

Q. Okay.

But his title on January 9, 2003, according to his e-mail, is portfolio manager.

A. Okay.

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2

I can't respond to that because I -- you know, I haven't seen the e-mail. If that's the case, then he must have been a portfolio manager.

3

4

5

Q. Okay.

6

If he had been a portfolio manager, he would have been there for at least a year?

7

8

A. I don't know the answer to that.

9

10

Q. He didn't come in as a portfolio manager, did he?

11

A. I believe he came in as an analyst.

12

Q. Okay.

13

And he worked with Mr. Sapanski?

14

15

A. I believe he came in to work with Sapanski, but he might have come in as a portfolio manager. I know they worked together at some point. I just don't remember what was what.

16

17

18

MR. KLOTZ: I'm out of time.

19

MR. BOWE: Okey-doke.

20

21

THE VIDEOGRAPHER: We are going off the record. The time is 5:56 p.m. This is the end of Tape Number 5.

22

23

(Time noted: 5:56 P.M.)

24

25

1 talks about, among other things, going out to meet  
2 with various journalists and media sources to  
3 basically introduce you to them.

4           Do you recall that recommendation from  
5 Sard?

6           A       That would be something that I'm sure  
7 they recommended me to do.

8           Q       Okay. And one of the reasons outlined  
9 in that memo for doing so is to dispel "certain  
10 myths" about you. Do you recall that being a topic  
11 of discussion with your media people?

12          A       Absolutely.

13          Q       Okay. What myths were you attempting  
14 to dispel by going out and meeting journalists and  
15 media people?

16          A       Well, just that the press was making  
17 statements that I was reclusive, secretive; and we  
18 just felt that it was wrong.

19          Q       Well, there were also -- also rumors  
20 and myths, if you will, as your media people  
21 characterize them, about your firm engaging in  
22 inappropriate conduct, right?

23          A       Well, I don't know. That's a  
24 speculative question. I don't know what's going  
25 through journalists' heads. Other than -- it was

1 important, I think, for journalists to meet me.

2 Q Okay. But my question was, were the  
3 myths, as you described them, that you were  
4 concerned about addressing, rumors and views in the  
5 marketplace that potentially you had engaged in  
6 improper conduct?

7 A The answer is, you know, I suspect  
8 people -- there are rumors and what we wanted to do  
9 was dispel any notion of that.

10 Q What rumors?

11 A The rumors you just stated, that people  
12 weren't sure how we conducted our business.

13 Q Okay. And you then give -- as part of  
14 that process ultimately you gave an interview with  
15 Vanity Fair, right?

16 A That's correct.

17 Q And in that story, the author talks  
18 about, although he doesn't quote you, but he  
19 indicates that you had -- you were weary of being  
20 dogged of allegations about insider trading for  
21 years; is that true?

22 A Well, that was his opinion.

23 Q Well, is that true, though? Is that  
24 something that you've had to deal with for years?

25 MR. KLOTZ: Object to the form.

1                   THE WITNESS: I mean, I think the  
2                   answer to that is, I've become pretty  
3                   desensitized to, you know, that type of talk.

4 BY MR. BOWE:

5                   Q           But that was the type of talk that you  
6                   had to deal with over the years; is that right?

7                   A           It's the talk that, you know, whether I  
8                   had to deal with it or not, you know, that's  
9                   certainly other people's opinions or some people's  
10                  opinions, and I accept it for what it is.

11                  Q           So you were aware of those?

12                  A           I certainly was aware of it.

13                  Q           Okay. And you also complained in that  
14                  story about being linked to a whole series of  
15                  articles that started to appear in the fall of '09  
16                  about the FBI and the Department of Justice  
17                  investigations into insider trader.

18                                Do you recall that, telling the  
19                  reporter that?

20                  A           I don't recall exactly what was said in  
21                  the article about that.

22                  Q           You recall expressing to him that you  
23                  were upset that your name had been linked in many of  
24                  the stories talking about the Department of Justice  
25                  arrests and investigation in '09 and 2010 into

1 Q Now, how long had that story -- how  
2 long had people who were involved at S.A.C. been  
3 working with the New York Times story before it came  
4 out?

5 MR. KLOTZ: Object to the form.

6 THE WITNESS: I have no idea.

7 BY MR. BOWE:

8 Q Now, the story indicates that, in the  
9 context of talking about why it was a relentlessly  
10 competitive environment, the point that's then drawn  
11 from that is that because it's so competitive  
12 there's little incentive for the people who are  
13 working there to cooperate with each other. You  
14 would disagree with that, right?

15 A I would disagree with that strongly.

16 Q And so any indication in the story that  
17 there was a disincentive for people to share  
18 information at S.A.C. you would disagree with?

19 A The answer is people have the right, if  
20 they've done analysis on something, they don't have  
21 to share it with other people in the firm, but they  
22 do have to share it with my account or my sector  
23 heads.

24 Q Okay. That was going to be my next  
25 area, but before I get there, it also repeats sort

1 of the oft-repeated characterization of S.A.C. as an  
2 eat what you kill type of place.

3           You've heard that before, right?

4           A        I've heard it, but I'm not responsible  
5 for people's quotes or what they say about it.

6           Q        Okay. And what do you understand that  
7 to refer to?

8           A        Well, it means that people, the way I  
9 understand it, is that if whatever P&L they  
10 generate, they get paid on it. And not relevant to  
11 what other people are doing.

12          Q        Right. And is that a correct  
13 understanding of how S.A.C. works?

14          A        I think, you know, I think it's a harsh  
15 statement on just people getting paid incentives. I  
16 get paid incentives as a hedge fund manager and I  
17 pay my people incentives. So actually it's very  
18 consistent with how the hedge fund industry actually  
19 works.

20          Q        Okay. But if somebody -- people there,  
21 their compensation is gauged predominantly on  
22 whether or not they have brought in profits or not,  
23 right?

24          A        That's where probably the majority of  
25 their incentives -- incentive fees -- they would get



1 paid based on their own profits and in addition they  
2 could get paid based on upsizing -- upstreaming  
3 ideas to the, either main account or to the sector  
4 head accounts where they would get tagged on  
5 potential ideas.

6 Q Okay. And typically, the bulk of the  
7 compensation that's paid to portfolio managers and  
8 analysts at S.A.C. are based on incentives, not  
9 based on salary, right?

10 A I typically pay small salaries.

11 Q So small salaries, big upside if you  
12 produce?

13 A That is correct.

14 Q And then if you produce, you can get  
15 more money to manage and produce even more and make  
16 more money?

17 A It's conceivable, but it really depends  
18 on the other characteristics of the portfolio.  
19 They're running the volatility of their portfolios,  
20 sort of their -- the space that they're in, how much  
21 risk do we want to take --

22 Q Right.

23 A -- as a firm.

24 Q But the typical career path, the idea  
25 that someone is how they're going to advance is

1 that, and typically based on our risk limits it  
2 would be highly improbable that that could happen in  
3 that short period of time.

4 Q Okay. Now, when Mr. Shapiro was  
5 testifying about trading he indicated that there's  
6 also limits on concentration that they could put on  
7 in their position; is that true?

8 A That's correct.

9 Q All right. Explain to me what that  
10 means.

11 A What that is, is they can only be a  
12 certain amount of their capital in any one stock.

13 Q Okay. And is there a typical limit  
14 that's --

15 A It's usually 10 percent of buying  
16 power.

17 Q Okay. And is there a limit at the firm  
18 level?

19 A No.

20 Q So how do you figure out or gauge  
21 whether or not across all the portfolios whether you  
22 end up being too concentrated in a particular stock?

23 A We measure the positions versus the  
24 average liquidity in a name on a particular day, and  
25 we like to keep it within a certain range of

1 liquidity. Now, these are rules that we have put  
2 in, you know, have evolved over the last, you know,  
3 three, four, five years.

4 Q Okay. Would these rules have been in  
5 place in 2005, 2006?

6 A They would have been different rules  
7 then.

8 Q Okay. How so?

9 A The limits were a little bit larger.

10 Q Okay. So what were the range of limits  
11 back in '05 and '06?

12 A It could have been -- instead of being  
13 -- allowing a portfolio manager to be 20 percent at  
14 long or short, it could have been 40, 50 percent in  
15 that long or short.

16 Q Okay. So if Mr. Shapiro said that if  
17 somebody got to 10 percent, you would never stand  
18 for that; that wouldn't apply back in '05 and '06?

19 A It probably -- the limits were a little  
20 looser then.

21 Q You mentioned -- so people who worked  
22 there can be compensated based on the profit in  
23 their own portfolio, whatever amount of money you've  
24 given them to manage, then you also mentioned that  
25 they have an obligation to pass up to your account

1 their work product and their ideas. Did I  
2 understand that correctly?

3 A The way it really works is that they  
4 write -- they write a portfolio review every two  
5 weeks and then they're obligated to pass some of  
6 their ideas up to us.

7 Q Okay. And they're obligated to pass  
8 up, what, their two best longs and their two best  
9 shorts?

10 A It could be. Or it could be something  
11 they're working on, some new idea, maybe maintenance  
12 on an existing idea.

13 Q And you described that to investors as  
14 a hub and spoke strategy, right?

15 A That is the term we use, yes.

16 Q And you describe to investors who are  
17 potentially going to give you money the fact that  
18 you have -- you personally, the Cohen account, only  
19 manages, I think, 15 percent of the fund today?

20 A That is correct.

21 Q How much was it in '05 and '06?

22 A I don't have the percentage. It was  
23 probably 25 percent.

24 Q But although you don't manage -- say at  
25 that time you didn't manage 75 percent of the fund,

1 one of the attractions, one of the things you  
2 pitched to investors was that through this hub and  
3 spoke model, ideas were required to be passed up to  
4 your account and therefore good ideas could be  
5 leveraged across the entire fund, right?

6 A That is correct.

7 Q So when -- how are the ideas passed --  
8 well, first of all, how is it that people understand  
9 they're supposed to do this?

10 A That's an expectation when they come  
11 into the firm.

12 Q Okay. I looked at some of your  
13 marketing materials and it says to investors that  
14 this is a requirement.

15 Is it described to them as a  
16 requirement?

17 A The answer is, it's -- I call it an  
18 expectation, because a requirement means it has to  
19 be fulfilled. And we're probably a little bit  
20 looser, depending on the individual and depending on  
21 my -- if it's a space I care about or not.

22 Q Okay. And what do you mean by a space  
23 you care about or not?

24 A Well, there are certain spaces that  
25 just don't interest me that much.

1 Q Okay. Like what?

2 A It could be, at that time it could have  
3 been -- it could have been insurance.

4 Q It could have been anything. Do you  
5 remember in '05, '06?

6 A I don't, but, I mean, typically, I  
7 probably did less in financials than I would in,  
8 say, retail or energy.

9 Q But you had groups at S.A.C. who  
10 focused on financials, right?

11 A That is correct.

12 Q And they gave you their ideas, did they  
13 not?

14 A They -- they wrote their portfolio  
15 reviews, and if I asked for ideas, they would send  
16 them.

17 Q Okay. And you actually had in the  
18 Cohen group people who did financials, right?

19 A At some point, yes. At some point I  
20 did. But I wouldn't say consistently throughout the  
21 period.

22 Q Okay. Now, what is the incentive for  
23 somebody who sends something upstream, as you said,  
24 an idea?

25 A Well, first, he's being a team player,

1 which matters to us. Second, he can get paid on the  
2 idea. And so he certainly has an incentive to, you  
3 know, if the idea works, he certainly can make more  
4 money. And, you know; and three, we ask and then we  
5 expect people to do it.

6 Q Okay. So how does he get -- how does  
7 he know whether he's going to get -- you say it's an  
8 incentive for him, so presumably if you adopt the  
9 idea and it does well, he gets -- do they understand  
10 a particular amount they're going to get or it's  
11 just they'll get something? How does that work?

12 A It's evolved over the years, and today  
13 it's probably 4 percent of what the profit on a  
14 particular position, maybe offset by hedges.

15 Q Okay. What would it have been in '05  
16 and '06?

17 A I don't remember. It could have been  
18 the same, I just -- it's a policy that's evolved.

19 Q Okay. And how do you keep track of  
20 that?

21 A Typically, in '05, '06, it would have  
22 been somebody assigned that role in my account and  
23 he would tag the people based on figuring out who  
24 was most helpful as far as a particular idea.

25 Q Okay. And so is there a person who is

1 sort of the keeper of the ideas that tracks that?

2 Is there is a spreadsheet?

3 A There would be somebody, but I'm not  
4 sure who it was in '05 and '06.

5 Q And is that a person who is also  
6 portfolio manager and analyst or is it somebody who  
7 wears a completely different hat?

8 A It could have been a portfolio manager,  
9 it could have been administrative.

10 Q Now, you mentioned before that they  
11 might upstream something to the main account or to  
12 the sector heads. What does that mean?

13 A Well, sector heads, what I did in 2009  
14 was to, because we have 100 portfolio managers and  
15 probably 150 analysts on top of that, and it was  
16 just too many people for me to talk to, so what I  
17 wanted to do was make my life a lot easier and also,  
18 you know, put our best people in those particular  
19 verticals and sectors to be able to talk to people  
20 who are experts, and they're both doing the same  
21 sort of sector, so therefore they're doing the same  
22 type of analysis in a particular group, so you get a  
23 two-way conversation going on, and I just thought it  
24 was a much more efficient structure. Typically  
25 consultants will tell you never to have more than 10



1 points of contacts, and I certainly had a lot more  
2 than that.

3 Q Okay. That was something that didn't  
4 exist in '05, '06 -- '03 to '06, right?

5 A Well, what we did was -- that is  
6 correct. At different points along the way we might  
7 have had people either in the Cohen account, being a  
8 PM or sort of a sub-PM in the account, or there  
9 would be -- at other times there would be what I  
10 would call conduits, people who would talk to the  
11 people. And then if they thought it was a  
12 reasonable idea they might pass it to me to put in  
13 the Cohen account.

14 Q So you mentioned -- so at that point in  
15 time there only would have been -- they would have  
16 been upstreaming any ideas they have to somebody  
17 under your umbrella of the Cohen account?

18 MR. KLOTZ: Object to the form.

19 THE WITNESS: That's correct.

20 BY MR. BOWE:

21 Q Is the Cohen account also what you  
22 described as the main account?

23 A That is correct.

24 Q Is it also referred to as the house  
25 account?

1           A           We never referred to it as that.

2           Q           Is there some reason no one ever refers  
3 to it as the house account?

4           A           It's just the way it works.

5           Q           There's nothing that -- there's nothing  
6 else that's called the house account?

7           A           Well, there's a firm account.

8           Q           Okay.

9           A           And typically used a lot less and it's  
10 just -- you know, if we wanted to size something up  
11 or, you know, maybe bigger than how I want it  
12 expressed in a typical Cohen account, and that would  
13 be paid on a much -- what I would call a one-off  
14 situation.

15          Q           Okay. So let me ask the question this  
16 way so I can understand this. So the firm  
17 account -- we're talking about what you're referring  
18 to as accounts, so I'm not sure I understand what  
19 you're referring to as accounts. This is  
20 basically -- it's all the same capital that's under  
21 the S.A.C. umbrella it's just different sort of  
22 accounting buckets?

23          A           Exactly.

24          Q           So why would you then put some -- you  
25 say I would put something in a one off basis in a

1 firm account, if I wanted to size it up more than I  
2 would have it in the Cohen account.

3 Why would any of that matter?

4 A More probably for my own personal  
5 portfolio construction, I just wanted to see my -- I  
6 didn't want to be that maybe -- if we size something  
7 up maybe bigger than what we would normally would do  
8 I didn't want to see it that way and I would treat  
9 it differently.

10 Q Okay. So were all the same people  
11 working on it the same people who are in the Cohen  
12 account?

13 A Excuse me?

14 Q Are all the same people who were  
15 working on that responsible for it still the people  
16 who are in your Cohen account?

17 A Or it -- that's one way of doing it, or  
18 that I'm working with a particular portfolio manager  
19 or analyst in the firm and sizing it up because it  
20 might be a longer term situation, something we would  
21 want to hold on for a long time.

22 Q Okay. When you said -- when I asked  
23 you was there something else that you called the  
24 house account, you said there's the firm account?

25 A That's right.

1 Q Is the firm account like an existing  
2 account?

3 A Yes.

4 Q All right. And so there isn't sort of  
5 an idea one account, idea two account, you just  
6 refer to those as the firm account, there is the  
7 firm account that you put these one-off ideas into?

8 A That's correct.

9 Q Is that sometimes referred to as the  
10 house account?

11 A I've never heard that term used.

12 Q Now, whose capital goes into the firm  
13 account?

14 A It will be the firm's capital.

15 Q Okay. But as I understand it, you have  
16 100 -- for every \$100 you have that you're managing,  
17 all of that money -- some money of that might be in  
18 cash, but the rest of it that's being managed is  
19 being allocated throughout the portfolio managers;  
20 is that right?

21 A That's correct.

22 Q So when you have a one off opportunity  
23 on the firm account, who -- from whose account and  
24 managed money is that going to be?

25 A That would be a totally separate

1 London, that would be a little tougher.

2 Q Right. Now, another way you do it is  
3 you have as a regular matter, you hold calls on  
4 Sunday nights, right?

5 A That's correct.

6 Q How long have you done that?

7 A I've been doing that since I started  
8 the firm.

9 Q Okay. And describe for me that  
10 process.

11 A That process is where I will -- I get  
12 people's writeups typically over the weekend, and if  
13 it's something that I want to ask them about, or  
14 somebody who in general I have a high regard for, I  
15 would want to speak to them on Sunday night to talk  
16 about, you know, whatever ideas or thoughts on their  
17 sectors I think are relevant.

18 Q So is there a regular -- do you go  
19 through a regular list of all of your portfolio  
20 managers on Sunday night?

21 A I typically don't -- I can't get to all  
22 of them. So I'll talk to, you know -- it will move  
23 around, but I'll talk to various people.

24 Q You probably talk to -- you start at  
25 the top, the guys who are the biggest -- biggest

1 know how it was set up at that time, where it  
2 suggested that they were aware of this Gwynn report  
3 coming out.

4 Q Okay. Now, did you ever authorize  
5 payments to Morgan Keegan -- excuse me -- for work  
6 John Gwynn did?

7 A I never authorized, no.

8 Q Are there people in your account who  
9 have done that?

10 A I have no idea, and I doubt it.

11 Q Okay. Do you -- what types of -- let  
12 me withdraw it. Let's back up a bit.

13 Why would you be making payments to  
14 Morgan Keegan?

15 MR. KLOTZ: Object to the form.

16 MR. CURRIE: Form.

17 THE WITNESS: The only thing that I  
18 would know that we would do with Morgan  
19 Keegan, they're a broker-dealer, and so it is  
20 conceivable we were paying them commissions.

21 BY MR. BOWE:

22 Q And when you say "paying them  
23 commissions," what do you mean?

24 A Meaning that when we would execute an  
25 order, we would execute through Morgan Keegan, and

1 they would earn a commission.

2 Q Are there times you execute orders  
3 through a fund simply to pay them commissions?

4 MR. KLOTZ: Object to the form.

5 MR. CURRIE: Object to the form.

6 THE WITNESS: It certainly is possible.

7 I mean, if -- if we're getting research from  
8 them and we're not paying them what they think  
9 they ought to get -- I mean, there's always  
10 conversations. Brokers always want to get  
11 paid more money for their services.

12 BY MR. BOWE:

13 Q Okay. When you say they're providing  
14 research and they're not happy with the  
15 compensation, what do you mean "their compensation"?

16 A I know the head of my trading desk has  
17 many meetings where if there's a concern from the  
18 other side that they're not being fairly compensated  
19 for the services that they provide, and it could be  
20 corporate access, it could be research, it could  
21 be -- and so, you know, that's -- that's something  
22 that -- it happens every once in a while, sure.

23 Q What do you mean by "corporate access"?

24 A Excuse me?

25 Q Sure.

1           A           Corporate access is typically when, you  
2 know, we try to get meetings when a broker holds a  
3 conference or they're bringing in a particular  
4 company for dinner or something that hopefully one  
5 of our people will have the ability to be at the  
6 dinner, to be at the conference and meet with the  
7 company.

8           Q           Okay. And when you said "research,"  
9 you mean what?

10          A           Research might be their, you know, the  
11 research that a particular broker-dealer sends out  
12 to their clients or it could be corporate access.

13          Q           Is there anything else that you would  
14 be paying them commissions for?

15          A           We pay prime broker, you know, for  
16 clearing our trades and settling our trades.

17          Q           Did you ever use Morgan Keegan as a  
18 prime broker?

19          A           I don't believe so.

20          Q           So if you were paying commissions to  
21 Morgan Keegan, it would have been for corporate  
22 access or for research?

23          A           Most likely.

24          Q           Okay. Now, with respect to research,  
25 why would you be paying them an amount of money for



1 research if your client and every client gets the  
2 research?

3 A Well, first, if your client -- first, I  
4 don't know -- I assume -- I don't know if every  
5 client gets the research we get. Okay? I assume  
6 they do. I'm not sure how they distribute at Morgan  
7 Keegan, and -- but if we're happy with our  
8 relationship -- it also has -- my trading desk  
9 manager decides what's the appropriate commission to  
10 pay to the firm on a yearly base.

11 Q No, I understand that, and we'll get to  
12 sort of who decides and whatnot. What I'm trying to  
13 understand is why is it even -- maybe it's not  
14 complicated but why is it really an issue?

15 A Because --

16 Q Let me just finish my question. Why is  
17 there someone who has to decide how much money  
18 someone gets for research, whereas a layman might  
19 think, look, Morgan Keegan puts out a report, the  
20 report goes out, you get it, everyone gets it; why  
21 does someone want to call you up and say you haven't  
22 sent me enough money?

23 A Because that's the way broker-dealers  
24 typically work. And however they -- I mean, our  
25 analysts and portfolio managers could be talking to

1 their analysts, and if we call them for something,  
2 if they're responsive to us, there will be another  
3 form of research that, you know, we would pay for.

4 Q Okay. So in other words, you can call  
5 the analyst up on the phone and ask him questions?

6 A Absolutely.

7 Q And depending on how responsive he was  
8 to you, he would expect to get, hopefully, better  
9 commissions, fair?

10 A Well, I think the answer is we have a  
11 broker vote at the end of the year, and certainly,  
12 you know, that's another tool that's used to decide  
13 who is most helpful and who is most, you know,  
14 responsive to our needs.

15 Q When you said "a broker vote," what do  
16 you mean?

17 A Typically, we'll vote -- how responsive  
18 each firm is with which set, with S.A.C. It comes  
19 from our portfolio managers, their are perceptions of  
20 how well they're being serviced and they get a  
21 corporate access, that type of stuff.

22 Q Okay. So before you said there's a guy  
23 on the trading desk who handles this. Is this in  
24 addition to that?

25 A He would include that in his

1 decision-making.

2 Q Okay. So the ultimate decision-maker  
3 is the guy on the trading desk?

4 A That's correct.

5 Q Okay. And you have an internal sort of  
6 straw poll, if you will, as to who's most responsive  
7 and provides the best service?

8 A That's correct.

9 Q And then the head of trading, does he  
10 talk to you and other people in management when he's  
11 going to whack up these issues?

12 A He doesn't talk to me, but he will  
13 discuss it with management and consult with the  
14 portfolio mangers to make sure he's making a correct  
15 decision.

16 Q Okay. So getting back to my original  
17 question, then it is the case that when you have a  
18 research analyst at a firm, that he understands that  
19 there is a potential upside in the form of  
20 commissions to pick up the phone and talk to S.A.C.,  
21 right?

22 MR. KLOTZ: Object to the form.

23 MR. CURRIE: Object to form.

24 THE WITNESS: I mean, the answer is, it  
25 could if the -- if we're not that -- if we

1 find the analyst particularly not that helpful  
2 or useful or we don't like his work or it  
3 turns out, you know, he makes poor  
4 recommendations, I mean, certainly we would  
5 probably not want to pay him.

6 BY MR. BOWE:

7 Q You wouldn't want to pay him if you  
8 called him and he never returned your call?

9 A Absolutely not.

10 Q Right.

11 A Yeah.

12 Q And the fact of the matter is that he  
13 has more of an incentive to call you back than he  
14 would if I called him, fair?

15 A Unless you pay him enough money. The  
16 answer is, yes.

17 Q Right. And just to sort of get through  
18 the sort of pedestrian point I'm trying to get to,  
19 and that incentive is because he understands that as  
20 you will be making a decision about how much  
21 commissions to send to his firm, fair?

22 A That's fair.

23 Q Now, how does it work, though, in terms  
24 of -- so how does he, like the portfolio managers at  
25 your firm who send an idea to you and someone tracks

1 it, what's this analyst's incentive -- withdrawn.

2 Start a new question.

3 A broker-dealer has analysts, numerous  
4 analysts, some might be more responsive to S.A.C.  
5 than others or a better service to S.A.C. than  
6 others. How do you let their boss know on whose  
7 behalf or because of whom you're sending  
8 commissions?

9 MR. KLOTZ: Object to the form.

10 THE WITNESS: I wouldn't do it.

11 Typically, it would be -- I mean, portfolio  
12 mangers may complain to their particular  
13 salesmen. It could be brought to my senior  
14 management's attention and there could be  
15 conversations with other firms, my trading  
16 desk guy may call his counterpart to let him  
17 know that there's a complaint.

18 BY MR. BOWE:

19 Q Okay. My point, though, I wasn't  
20 talking so much about the complaint side, although  
21 that's helpful to me, but on the side where a guy  
22 does a good job, where you find value in him and you  
23 decide you're going to send commissions over there,  
24 how does he get credit for that? Do you have to  
25 indicate that it's because of this guy or on his

1    behalf or something like that?

2                   MR. KLOTZ: Object to the form.

3                   THE WITNESS: I don't believe it works  
4                   that way. I think it's more of a general  
5                   sense of, you know, how the firm itself is  
6                   responsive to our needs, not necessarily one  
7                   particular situation.

8 BY MR. BOWE:

9                   Q           I've seen spreadsheets of Morgan Keegan  
10                   that reflect commissions paid from S.A.C. to Morgan  
11                   Keegan. They come from different accounts. How  
12                   does that get -- why is that tracked like from whose  
13                   account it's coming?

14                   A           Because it's a cost of doing business  
15                   and the cost is being allocated. If a trade is done  
16                   at Morgan Keegan, they executed the order, they  
17                   would attach a commission to that, which would then  
18                   be part of cost of the trade, which would then be  
19                   charged to the particular trader.

20                   Q           Okay. Now, do you execute trades at  
21                   broker dealers like a Morgan Keegan that you -- and  
22                   have a commission associated with it that you could  
23                   otherwise trade like in an electronic exchange for a  
24                   far less or zero commission?

25                   A           Today that's true.

1 Q Okay. When wasn't it true?

2 A The electronic exchanges have been  
3 developing over the last five or ten years; and  
4 typically today, much more of our business is  
5 executed on the electronic exchanges.

6 Q Okay.

7 A And actually we can pay the brokers  
8 that way, too.

9 Q How so?

10 A We can pay them based on using their  
11 algorithms.

12 Q What do you mean?

13 A They have an algorithm. They have  
14 their own electronic execution platforms, and we  
15 just input it -- we can give them -- we have their  
16 algorithms on our desk that we can then execute;  
17 then they charge us a fee.

18 Q Okay. When you say "their algorithms,"  
19 you mean for what, for like a trading strategy?

20 A No, just to execute an order.

21 Q Okay. But you can also use electronic  
22 exchanges that you don't have to pay any commission  
23 on, right?

24 A I'm not sure exactly how that works.

25 Q You understand that there are

1 electronic exchanges that have far less of a cost  
2 associated with executing a transaction, right?

3 A Yes. If you execute through a broker,  
4 it's typically more expensive than executing  
5 yourself on electronic exchange.

6 Q But nevertheless, you choose, from time  
7 to time, to execute with a broker at a higher  
8 expense because it's your way of compensating that  
9 broker for services?

10 A That's correct.

11 Q Do you know if -- now, you talked about  
12 having a vote at the end of the year. How does that  
13 impact commissions throughout the year?

14 A It certainly -- it's a way of when you  
15 have a discussion with a firm, if they're going to  
16 complain about the amount of money they've been  
17 paid, it's an input that is used to justify what we  
18 did, what we didn't.

19 Q Are you ever involved in those  
20 discussions?

21 A Almost never.

22 Q There was a time when you were?

23 A It was something that I passed on to  
24 other people.

25 Q Okay. When did you pass it on?



1 to do that?

2 A The answer is, I believe that most of  
3 the money that he was making was his traditional  
4 style of technical analysis.

5 Q Okay. My question was, did you  
6 understand he was trying to move from being a trader  
7 to an investor?

8 A He was trying to hire people and trying  
9 to do that. But he was small enough where I felt he  
10 could still generate enough profits in his  
11 traditional style that, you know, I'd earn an  
12 adequate return.

13 Q How did you -- how did you come to  
14 understand he was trying to trade -- he was trying  
15 to move from a trader to an investor?

16 A You know, you'd hear about him hiring  
17 people and trying to hire analysts.

18 Q Who did you hear that from?

19 A I don't remember.

20 Q You heard it from him?

21 A It could have been that he -- if he met  
22 with me, and we met every once in a while, not very  
23 often -- not very often at all. He might -- he  
24 might mention it, but more of I probably heard it  
25 from just the grapevine.

1 VIDEO OPERATOR: We have to change the  
2 tape.

3 MR. BOWE: Let's take a break to change  
4 the tape.

5 VIDEO OPERATOR: The time is  
6 approximately 11:36 a.m.

7 This ends tape one in the videotape  
8 deposition of Steven Cohen.

9 We are now off the record.

10 (Brief recess.)

11 VIDEO OPERATOR: The time is  
12 approximately 11:54 a.m.

13 This begins tape two in the videotape  
14 deposition of Steven Cohen.

15 We are back on the record.

16 BY MR. BOWE:

17 Q Mr. Cohen, are you familiar with the  
18 term "edge"?

19 A Yes, I am.

20 Q That's a word that you use at S.A.C.,  
21 correct?

22 A I hate that word.

23 Q What's that word mean?

24 A It just means that somebody believes  
25 that in a particular situation, stock, that the word

1 suggests that somehow their expectations are  
2 different than either investors' expectations or  
3 Wall Street's expectations.

4 Q They think they know something everyone  
5 else doesn't, right?

6 A You know, I think that's an over -- I  
7 think that's an incorrect characterization of the  
8 word.

9 Q I didn't mean to make it nefarious, but  
10 it's basically someone who's, as you said before, be  
11 consistent with someone who has a high conviction on  
12 something, right?

13 A Perhaps, yeah.

14 Q And so -- and so someone who's done the  
15 research and has information and done the analysis  
16 and thought something through and thinks that they  
17 know something the market hasn't taken into account,  
18 that will allow them to make a profit on a trade,  
19 right?

20 A Well, or -- yes. Their work suggests  
21 that what they think is possible might be different,  
22 or the risk reward may make it worth it to, you  
23 know, to buy the stock or sell the stock.

24 Q Now, when you talked to -- what other  
25 funds do you talk to about investments?

1           A           I personally talk to very few funds.

2           Q           What about your team?

3           A           My team today is actually very small,  
4 so I'm not sure what they do.

5           Q           Okay. Well, back in 2002 through 2006,  
6 your group, at that point in time did you talk to  
7 other funds?

8           A           I talked to -- I've always talked to  
9 very few funds.

10          Q           Which funds then -- which funds did you  
11 typically talk to?

12          A           I might talk to my friend, Jay Goldman,  
13 he's someone I might talk to. I might talk to --

14          Q           What fund is he at?

15          A           Jay Goldman Associates. Who else do I  
16 talk to? I might talk to -- I mean, I might -- it's  
17 not something I did a lot. I mean, very few funds.  
18 I talked to a friend of mine, Ken Ginsberg, who is  
19 an old friend of mine from high school. And then  
20 very rarely would I talk to somebody in other firms,  
21 but it certainly happened.

22          Q           Okay. Since it happened so rarely, can  
23 you tell me what funds?

24          A           Well, I mean, Adam Sender, I mean there  
25 were times in my career where I've spoken to him.

1 Q Okay. What other funds?

2 A You know, there might have been a few  
3 communications with Dan Loeb in my career.  
4 Certainly Kingdon, I can remember talking to  
5 somebody over there.

6 Q What was that?

7 A Kingdon. We spoke to people over at  
8 Galleon. Now, can you -- is the question who I have  
9 spoken to over the last 25 years?

10 Q I'm asking you -- you said there were  
11 very few funds that you talked to, so I'm just  
12 asking which ones did you talk to. That was my  
13 question.

14 A I would say that that was a fair list  
15 of people that I might have talked to over the  
16 years.

17 Q Okay. And so that list I have is about  
18 six.

19 A Okay.

20 Q Is that about right?

21 A I mean, it could have been more.

22 Q Can you remember any others that you  
23 would typically talk to?

24 A Well, see, that's where my confusion  
25 is, when you say "typically talk to," I'm not sure

1 actually Sunday, probably the biggest day.

2 Q Okay. And it's your testimony that  
3 you're basically -- your main source of information,  
4 then, is not from the outside it's from your own  
5 people who are bringing in information from the  
6 outside?

7 A You're absolutely correct.

8 Q Okay. And that you -- your answer  
9 would be you're typically not talking to people  
10 outside the fund?

11 A That is not the way I conduct my day.

12 Q So you would not have many phone calls  
13 with Adam Sender during the trading day?

14 A I mean, if I had, you know, --  
15 depending -- I invested with Adam Sender probably in  
16 the late '90s, maybe 2000, somewhere in there. As  
17 the years went on, I spoke to him less and less.

18 Q Okay. So you're not going to have, if  
19 we get phone records from EXIS or from S.A.C. we  
20 shouldn't expect to see how many calls in a year  
21 with him?

22 A If two, one.

23 Q Two all year?

24 A Three. I mean, not a lot.

25 Q Now --

1           A           Most of the conversations that I had  
2 with Adam Sender, you know, were -- most of them was  
3 when he needed to raise money.

4           Q           How many of those conversations did you  
5 have?

6           A           He always seemed like he needed money,  
7 so, I mean, it happened once every two years, once  
8 every year. Something -- he'd always encourage me  
9 to invest in his fund.

10          Q           Okay. Now, there's people who you have  
11 on at the Cohen group who also talked to EXIS?

12          A           I'm not aware of that.

13          Q           Your testimony is you never became  
14 aware of any communications between traders at EXIS  
15 and your people in the Cohen group?

16          A           That's correct.

17          Q           Have you ever been to EXIS?

18          A           Never.

19          Q           When Adam Sender was at EXIS, did he  
20 ever come to S.A.C.?

21          A           I don't remember.

22          Q           Did anyone else from S.A.C. ever visit  
23 EXIS?

24          A           It's conceivable my person who followed  
25 my outside investments might have done a diligence

1 call, due diligence call -- call or went over to the  
2 offices. I'm not sure.

3 Q Okay. The people who follow your  
4 outside investments are whom?

5 A It varied during the years.

6 Q Was it ever anyone from the Cohen  
7 group?

8 A No.

9 Q And who did those people who were  
10 monitoring your outside investments report to?

11 A Usually the senior management. That  
12 could be general counsel. It could be compliance.  
13 It could be, you know, in the period of time we were  
14 talking about, Brian Cohn.

15 Q Who is Brian Cohn?

16 A He was the CEO of my company.

17 Q And so he would have been monitoring  
18 outside performance?

19 A He would have been monitoring outside  
20 performance and/or getting reports from people who  
21 do due diligence saying they're outside investments.

22 Q And what would he be monitoring at  
23 these outside funds?

24 A Generally, typically what any investor  
25 would want to see. You know, is there a place? Is



1 it real? Sort of what their strategies are. How  
2 has it changed? Who have they hired? Just general  
3 due diligence that any fund would do just trying to  
4 understand, you know, how Adam's business was  
5 changing.

6 Q Why of all the places -- I take it you  
7 probably get requests to invest in lots of funds,  
8 right?

9 A Less than you would think.

10 Q How many typically in 2003, 2004?

11 A I don't remember.

12 Q More than a dozen?

13 A I don't remember.

14 Q You can't tell me whether it's more  
15 than five, more than six?

16 A I really can't, no.

17 Q Okay. So you weren't impressed with  
18 Adam Sender's investing, yet you decided to invest  
19 with him. Is that because you couldn't find anyone  
20 else who you were more comfortable investing with?

21 MR. KLOTZ: Object to the form.

22 MR. SCHLESINGER: Objection.

23 THE WITNESS: The way I looked at Adam  
24 Sender was that it was my belief that the way  
25 he was running his money that his trading

1 style would cushion any bad investing  
2 decisions, and therefore, I had adequate  
3 profit cushion, based on my perception of how  
4 he traded, that the risk of losing money was  
5 less than I would -- would be less -- would be  
6 minimal.

7 BY MR. BOWE:

8 Q What about the chances of making money?

9 A Well, the answer is, Adam was certainly  
10 a moneymaker, and -- when he worked for me, and so  
11 as long as he didn't grow the business too large, my  
12 feeling was it would be a good investment.

13 Q Did you express this to Mr. Cohn?

14 A Sure.

15 Q Okay. And did he understand what the  
16 expectation was?

17 A I believe so.

18 Q Okay. And EXIS represented to you  
19 that, in fact, they were going to follow what you  
20 called the trading strategy, right?

21 A I understood -- well, I thought I  
22 understood what -- how he conducted his business.

23 Q Okay. And is that how he expressed  
24 that he was going to conduct his business?

25 A What was that?

1 Q As trading strategy?

2 A Generally, as a trading strategy.

3 Q Okay. Not as a -- a value strategy,  
4 right?

5 A There's no way I would ever consider  
6 Adam a value investor.

7 Q Okay. Now, you understood that while  
8 you had money invested with him he suffered  
9 substantial losses on a very large position in RIM,  
10 right?

11 A That is correct.

12 Q And that was a position that he bought  
13 as a value position, was going to hold and thought  
14 it was going to go down, right?

15 A I didn't get into that level of detail  
16 with Adam. I mean, actually, I heard about his RIM  
17 losses not directly, probably, but indirectly.

18 Q From whom?

19 A I don't remember who.

20 Q Someone outside the firm?

21 A There were -- there was talk in the  
22 marketplace that he had suffered a big loss.

23 Q And how would you hear that talk?

24 A Typically people talk about when  
25 someone is doing poorly, or maybe he was talking. I

1 something. Or it might have come from my due  
2 diligence -- just from the reports. I just  
3 don't remember.

4 BY MR. BOWE:

5 Q Okay. It might have come from all  
6 those people who have their ears to the ground, but  
7 just so I'm clear, you're not suggesting that you  
8 had anything more than you described before, and  
9 that is minimal interaction with the market?

10 A That's correct.

11 Q Now, you decided to continue investing  
12 with Mr. Sender even though he suffered those  
13 substantial losses in RIM, right?

14 A I don't remember how exactly we handled  
15 it. I believe he came to me at some point and  
16 suggested that he made a mistake -- actually, I  
17 think we might have pulled money from him and then  
18 he came back and he said he was going to set up a  
19 special strategy where he'd go back to his roots and  
20 I can invest in that. And so when that happened,  
21 how that happened, what years it happened are  
22 unclear to me today.

23 Q Okay. Do you recall that you were  
24 originally in a fund called the Differential Fund  
25 and you got moved into a fund called the Walrus

1 Fund?

2 A That's probably what I'm talking about.

3 Q And you recall, the transfer happened  
4 in '04?

5 A I don't know what year it happened, but  
6 I'll assume that your characterization is correct.

7 Q Okay. And one of the things you  
8 discussed with him in those -- in those  
9 communications about whether you would stay in under  
10 those circumstances was the fact that he was going  
11 to go back to -- he was going to get away from what  
12 he did with RIM and go back to being a trader,  
13 right?

14 A That's correct.

15 Q And that gave you comfort, right?

16 A Yes.

17 Q Now, you understand that in '05 he went  
18 back to taking a very large position in a particular  
19 stock, right?

20 MR. SCHLESINGER: Objection.

21 THE WITNESS: I'm not -- you know, I  
22 know about Fairfax because we've been talking  
23 about it, but I don't know if that's the stock  
24 you're talking about.

25

1 BY MR. BOWE:

2 Q Okay. Well, by '05, by the end of '05  
3 he had 35 percent of his portfolio in Fairfax.

4 MR. SCHLESINGER: Objection.

5 THE WITNESS: Okay.

6 BY MR. BOWE:

7 Q You understood that, right?

8 A I didn't -- I mean, if you asked me, I  
9 didn't know it was that big.

10 Q Are you surprised that it was that big?

11 A I think it's a very large number.

12 Q And you're aware, however, that he  
13 provided statements to S.A.C. where he showed those  
14 positions, are you not?

15 MR. KLOTZ: Objection to form.

16 THE WITNESS: I'm not sure if that's  
17 true. He probably would have gotten a return  
18 statement. I'm not sure it would have  
19 stated --

20 BY MR. BOWE:

21 Q Did he provide you -- I'm sorry, finish  
22 up.

23 A I'm not sure he would have provided  
24 position by position transparency.

25 Q He provided you with year end financial

1 Q Okay. But it would be inconsistent  
2 with what you had originally talked to him about  
3 when you agreed to continue investing with him to  
4 have 35 percent of the Walrus Fund in Fairfax?

5 A If he had 35 percent of the Walrus Fund  
6 in Fairfax, that would be inconsistent.

7 Q Okay. And it's your testimony that he  
8 never came to you at any point and said, I know I  
9 told you that I was just going to be a trader, but  
10 I'm going to go and take another flyer on a  
11 particular position and really load up on it; he  
12 never told you anything like that?

13 MR. SCHLESINGER: Objection.

14 THE WITNESS: He never told me anything  
15 like that.

16 BY MR. BOWE:

17 Q He never told anyone at S.A.C. that?

18 A Not that I'm aware.

19 Q So if he went and did that, he did that  
20 -- basically he had misrepresented what he was going  
21 to do S.A.C.?

22 MR. SCHLESINGER: Objection.

23 THE WITNESS: That would have been a  
24 surprise to me.

25

1 BY MR. BOWE:

2 Q It would be inconsistent of what he  
3 told you he was going to do?

4 A It would be inconsistent.

5 Q Now, would you normally expect if a  
6 portfolio manager who you entrusted money to was  
7 going to make a dramatic change in their strategy  
8 like that, that they told you they were going to do,  
9 that they would let you know about that?

10 A It would certainly be -- that would be  
11 a red flag to me.

12 Q Well, if you were going to make such a  
13 change, you would let your investors know, right?

14 A If I were going to -- I mean, we're  
15 speculating now. I can think of reasons why -- let  
16 me state it personally as an investor in EXIS, in  
17 the Walrus Fund, that to have 35 percent of Fairfax  
18 would be not what I had hoped -- hoped for him to  
19 do.

20 Q Right. And not what he told you he was  
21 going to do?

22 A That's right.

23 Q And if he was going to do something  
24 other than what he told you he was going to do, as  
25 an investor in the Walrus Fund, you would have



1 BY MR. BOWE:

2 Q Sir, when would you get -- you said you  
3 might have gotten quarterly reports from him. When  
4 would they typically come?

5 A The only reason I said that is because  
6 we send quarterly reports to my investors.

7 Q And do you ever have an investor call  
8 and ask you what the results were?

9 A Investors do call on a monthly basis.

10 Q They don't always wait for the  
11 financials, right?

12 A Absolutely.

13 Q Now, in the beginning of '06, you had  
14 dinner with Mr. Sender, right?

15 A I had dinner with Adam Sender at some  
16 point. I mean, I don't know if it was the beginning  
17 of '06.

18 Q Okay. And during that meeting, you  
19 recall he wanted to talk about Fairfax?

20 A That -- the only thing I remember, I  
21 don't remember him actually bringing -- I knew he  
22 brought it up at some point. I had no interest in  
23 it and -- but my guess is that dinner was more about  
24 trying to persuade me to keep money in the fund or  
25 whatever. I mean, I'm not sure why I actually took

1 the dinner date other than I just knew him.

2 Q Okay. And Mr. Heller was at that  
3 dinner, right?

4 A I don't remember for sure.

5 Q Okay. Do you have any -- do you have  
6 any recollection whatsoever that he was at a dinner  
7 with you and Mr. Sender?

8 A You know, in retrospect, I heard about  
9 it, but I don't remember if I -- I'm not sure I  
10 would have remembered if my memory was jogged.

11 Q Okay. Now, your recollection is that  
12 you met with him and the discussion was he wanted  
13 you to keep your money in the fund, right?

14 A I'm not sure -- I don't remember the  
15 discussion.

16 Q Okay. The -- when you said you recall  
17 he wanted to talk to you about Fairfax and you  
18 weren't interested. You didn't tell him to shut up  
19 and don't say anything, did you?

20 A I didn't -- I mean, I didn't want to  
21 talk about Fairfax.

22 Q Did you tell him, hey, stop, I don't  
23 want to talk about it?

24 A I don't remember.

25 Q A guy who's running a fund that you

1 have an investment in comes in and he has 35 percent  
2 of his fund in a stock and he says I want to tell  
3 you about this stock, you'd hear him out, right?

4 MR. KLOTZ: Object to the form.

5 THE WITNESS: Not necessarily.

6 BY MR. BOWE:

7 Q You'd tell him, look, I don't want to  
8 hear about that, let's talk about baseball?

9 A I mean, first -- I don't know how big  
10 his fund was. Second, it wasn't a name I cared  
11 about.

12 Q Do you recall telling him, stop, shut  
13 up, I don't want to hear about it?

14 A I don't remember.

15 Q You don't remember what happened at  
16 that dinner other than he wanted to talk to you  
17 about Fairfax, and you weren't interested in  
18 Fairfax?

19 A That's your characterization. I'm not  
20 sure when he might have mentioned Fairfax.

21 Q Okay. Do you recall him mentioning  
22 Fairfax in the context of trying to get you to keep  
23 your money in the fund?

24 A I don't remember. I do not remember.

25 Q Okay. Do you recall that in '05 he had

1 BY MR. BOWE:

2 Q Okay. That wasn't my question. You  
3 had a dinner with him and you had some other time  
4 when he wanted to talk to you about Fairfax and you  
5 got a Bloomberg. We know those things, right?

6 MR. KLOTZ: Objection.

7 MR. SCHLESINGER: Objection.

8 MR. KLOTZ: You're misstating what he  
9 testified, and I'm going to put it on the  
10 record. Mr. Cohen was quite clear that he is  
11 not certain whether Fairfax came up at a  
12 dinner or on some other occasion. You're now  
13 trying to characterize it as two different  
14 times when it came up. He was quite clear it  
15 was only once. He just couldn't place it.

16 BY MR. BOWE:

17 Q Mr. Cohen, you had an instance where  
18 you had an in-person meeting with Mr. Sender,  
19 correct, where he wanted to talk about Fairfax,  
20 right?

21 A I don't know what the meeting was  
22 about. We had dinner.

23 Q You did testify that there was a time  
24 when he wanted to talk to you about Fairfax; is that  
25 not your testimony?

1           A           There was a time somewhere that he  
2 wanted to talk. I'm not sure it was at the dinner.

3           Q           It might have been -- you might have  
4 had a different meeting with him, sometime other  
5 than the dinner?

6           A           No. No. We didn't have meetings like  
7 that.

8           Q           So if it wasn't at the dinner and he  
9 wanted to talk to you about this, was it on the  
10 phone he wanted to talk to you about?

11          A           Well, you know, counsel has shown me  
12 either one or two Bloomborgs where he tried to talk  
13 to me on it.

14          Q           Okay. So is there anything --

15          A           When I say "talk," he tried to  
16 communicate through e-mail, Bloomberg, whatever you  
17 call it.

18          Q           Okay. When -- when -- well, you  
19 wouldn't dispute any testimony that he tried to talk  
20 to you at the dinner, would you?

21          A           I just don't remember.

22          Q           You don't remember one way or the  
23 other?

24          A           That's right.

25          Q           And you don't remember whether at

1 exact investment.

2 Q Do you recall it was over \$200 million?

3 A It could have been.

4 Q Did you talk to Roberto Mignone more  
5 often than you did Mr. Sender?

6 A I almost never spoke to Roberto  
7 Mignone.

8 Q When did you talk to Roberto Mignone.

9 A Maybe once in a while we would have  
10 dinner. Maybe once a year, once every two years. I  
11 invested with Roberto when he started his fund. I  
12 was one of his original investors. As the years  
13 went by, communication, which wasn't -- we rarely  
14 talked to begin with. The years went by, it became  
15 almost non-existent.

16 Q And you invested in his fund at the end  
17 of '05, right?

18 A Yeah, but I think we were invested  
19 before that with him, in some manner.

20 Q He was managing money for you before  
21 then, right?

22 A Yeah, probably a managed account. Yes.

23 Q And then he opened up his own fund,  
24 right?

25 A Well, he had his own fund, and we were

1 a managed account. I believe what happened was  
2 we -- he wanted us to, instead of having a managed  
3 account, just invest in his own fund.

4 Q And did you do that?

5 A Yes.

6 Q Now, and your testimony is you didn't  
7 talk to him very often, right?

8 A Almost never.

9 Q Okay. If you had a quarter of a  
10 billion dollars invested in a fund, would that be a  
11 fund where people would be monitoring?

12 A I would certainly have people -- we  
13 would be getting results from him.

14 Q And with respect to both Mr. Mignone  
15 and Mr. Sender you were paying them management fees  
16 and success fees, right?

17 A Typical hedge fund fees.

18 Q And what are those?

19 A It could run 1 to 2 percent assets on  
20 the management and then incentive fees. I think  
21 Adam actually I paid -- Adam was more of a trader.  
22 We probably paid him more than Roberto, who was more  
23 of a traditional investor.

24 Q Okay. And you paid Adam up to  
25 50 percent, right?

1           A           I believe so.

2           Q           That's 50 percent of profit, right?

3           A           That's correct.

4           Q           And why -- why did he get more?

5           Because he was a trader?

6           A           Typically, the hope was that, you know,  
7           he moved his money around, therefore, he wasn't  
8           going to run a lot of money and therefore it could  
9           earn a higher return.

10          Q           When you say "he wasn't going to run a  
11          lot of money," you mean he was going to have a  
12          smaller fund?

13          A           Typically, that's correct.

14          Q           Because he would be more nimble?

15          A           That's correct.

16          Q           Now, did you respect Roberto Mignone's  
17          opinion with respect to investing?

18          A           I think Roberto was one of the great  
19          investors that I've seen.

20          Q           So if Mr. Mignone had a view about a  
21          particular stock or something he wanted to share  
22          with you, that would be something you would listen  
23          to, right?

24          A           I would put more weight on it, yes.

25          Q           You wouldn't tell him you're not



1 interested in hearing his views, right?

2 A If he wanted to talk about something, I  
3 would listen.

4 Q Have you ever been involved in  
5 conversations with Mr. Mignone of that nature where  
6 he says he wants to talk to you about a particular  
7 stock?

8 A He was very closed in that regard, so  
9 we would have dinner maybe once a year and, you  
10 know, he might have talked about one or two  
11 situations, but Roberto was pretty tight-lipped.

12 Q Would there be any reason why in the  
13 summer of '06 Mr. Sender, who was managing your  
14 money, would have been out there telling the  
15 marketplace his views as to Fairfax?

16 MR. SCHLESINGER: Objection.

17 THE WITNESS: I have no idea why he  
18 would be doing that.

19 BY MR. BOWE:

20 Q You can't think about any ideas about  
21 that?

22 A You're asking me to speculate what's  
23 going on in his mind. I have no idea.

24 Q I'm asking you as someone who manages  
25 money, who knows the markets, was it irrational for

1 so why don't we take a --

2 MR. KLOTZ: A lunch break.

3 VIDEO OPERATOR: The time is  
4 approximately 1:14 p.m.

5 This ends tape 2 in the videotape  
6 deposition of Steven Cohen.

7 We're now off the record.

8 (Lunch recess.)

9 VIDEO OPERATOR: The time is  
10 approximately 1:58 p.m.

11 This begins tape 3 in the videotape  
12 deposition of Steven Cohen.

13 We are back on the record.

14 BY MR. BOWE:

15 Q Mr. Cohen, you mentioned the rates that  
16 Mr. Sender and Mr. Bridger charged for their  
17 management. During this period, what was the  
18 typical rate that S.A.C. charged for management?

19 A It would have been -- in that period it  
20 would have been 3 and 50.

21 Q So it was a 3 percent management fee of  
22 all the assets under management and a 50 percent  
23 clip of profit, correct?

24 A That is correct.

25 Q Now, describe for me briefly the

1 shows either meetings or reminders to call or  
2 appointments for lunch with Mr. Contogouris, and the  
3 names associated with these are either Jane Corcoran  
4 or Peter Nussbaum. Do you have any reason -- and  
5 they go from April '03 through, I think, October of  
6 '03.

7 Do you know what it was that  
8 Mr. Contogouris was meeting people at S.A.C. about  
9 during the course of those many months?

10 MR. KLOTZ: Object to the form.

11 THE WITNESS: The only knowledge I have  
12 is that Peter Nussbaum was the guy that, you  
13 know, you handle this situation with Spyro;  
14 and outside of that I just gave it to him and  
15 you do what you want.

16 BY MR. BOWE:

17 Q And a lot of these meetings appear to  
18 be in New York. Is that -- was the office in New  
19 York at 540 --

20 A Yes, we have an office at 540, yes.

21 Q 540 what?

22 A Madison.

23 Q On the eighth floor, is that one of  
24 your floors?

25 A We have offices on the eighth floor.

1 Q Do you have any reason to understand  
2 why Mr. Contogouris would be visiting 540 Madison in  
3 '03?

4 A Well, I know today 540 Madison was the  
5 offices of Sigma, okay, and so I assume it was Sigma  
6 then, also.

7 Q Did Mr. Nussbaum have an office at  
8 Sigma?

9 A He -- I believe he didn't.

10 Q Okay. Did any legal -- was there any  
11 legal in Sigma?

12 A I don't believe there were legal people  
13 on that floor.

14 Q Okay. And you don't know who Jane  
15 Corcoran is?

16 A I don't know who she is.

17 Q Was there any other -- was there any  
18 other group that was at 540 Madison other than Sigma  
19 during the period covered by the complaint?

20 A I don't believe so.

21 (Outlook appointment document,  
22 SAC0000319, was marked Cohen-4 for  
23 identification.)

24 BY MR. BOWE:

25 Q I put in front of you a -- as Exhibit 4

1 Q Because he doesn't say here that he  
2 talked to you, he says he has you calling?

3 A Okay. I never spoke to him and I never  
4 called him.

5 Q Okay. Now, -- so if he talked to  
6 Mr. Jeff Perry about this at the time and told him  
7 you were calling, he would be lying to Mr. Perry,  
8 too?

9 A That's what it looks like.

10 Q Do you know whether anyone at S.A.C.  
11 was calling him during this time?

12 A I was told through counsel that there  
13 was another analyst/ -- no, he wasn't running a  
14 portfolio manager; an analyst who might have been  
15 talking to him.

16 Q Who is that?

17 A A guy name Richard Maraviglia.

18 Q Did he work for you?

19 A He worked in my -- Intrinsic, so  
20 essentially he was an analyst for me.

21 Q Did he report to you?

22 A He didn't report directly to me.

23 Q Do you know -- you don't have any  
24 information about whether he -- you personally  
25 didn't talk to him about any communications with Mr.

1           A           No, I don't.

2           Q           Would there be any reason why, when you  
3 said he worked at Intrinsic -- what was Intrinsic in  
4 2006?

5           A           Intrinsic was a division of S.A.C. and  
6 essentially it was me and a guy named Matt Grossman  
7 who was running that division.

8           Q           And what was the idea behind Intrinsic?

9           A           Essentially that we would have a group  
10 of analysts that would work solely for us as opposed  
11 to relying on portfolio managers and analysts in the  
12 firm to ferret out ideas.

13          Q           Okay. So C.R. Intrinsic was your  
14 own -- your own analysts?

15          A           That's right.

16          Q           Did it -- did it have its own funds?

17          A           It was allocated funds from S.A.C.  
18 Capital.

19          Q           Okay. And then who made the investment  
20 decisions on that, you?

21          A           It was me and Matt Grossman. Well,  
22 that's not true. There were other people who had  
23 the ability to invest.

24          Q           Okay. Was it in the same office?

25          A           It was in the same office, and some

1 Q What accounted for that?

2 A Well, certainly performance, and  
3 certainly a big -- we actually, I think in 2005 also  
4 raised a new fund.

5 Q If you look at the next page, what's  
6 it's title?

7 A Overview/Edge.

8 Q That's the word you said you hated,  
9 right?

10 A I hate that word.

11 Q Why is it in your marketing material?

12 A That's a good question. It's a word  
13 that's evolved over the last five years and probably  
14 it's -- it doesn't really -- I think it denotes, you  
15 know -- it doesn't really explain our investment  
16 process very well.

17 Q So why did you put it in your marketing  
18 material?

19 A Well, it's there, and like I said, it  
20 was not a word that I will use today.

21 Q Okay. But you would use it in 2008?

22 A According to this document, it's there.

23 Q Okay. Why were you comfortable using  
24 it in 2008 and not today?

25 A Well, the answer is these documents

1 were formed by some of my people either in marketing  
2 or, you know, in the management staff, and obviously  
3 that's what they decided to use.

4 Q You reviewed these, though, right?

5 A I definitely saw this.

6 Q You didn't tell them to take out edge?

7 A I did not.

8 Q Okay. And they picked edge because  
9 that's what they thought was an appropriate overview  
10 of your firm, right?

11 A Well, I think it's a simplification of  
12 sort of how we go about our process.

13 Q Right. And the simplification -- one  
14 word simplification of what characterizes S.A.C. was  
15 edge, that's what they picked?

16 A Well, you know, it's certainly one word  
17 to use.

18 Q It's a word that the people who wanted  
19 to describe your fund to third-parties so they would  
20 give you money chose, right?

21 A That's what they chose, yes.

22 Q Is that still in your marketing  
23 material, as we sit here today, in 2011?

24 A I doubt it.

25 Q Is that because at some point you said



1 Q Why is cross team communication on top?

2 A I can't answer for that other than in  
3 general we prefer a firm that's collegial and there  
4 are some sectors -- and most sectors today that  
5 actually will talk amongst themselves.

6 Q Is it up there because cross team  
7 communication goes through the Cohen account?

8 A It's actually not -- I mean -- no, it  
9 would be up there just to suggest some of the ways  
10 that the firm benefits from the breadth and the  
11 depth of the talent.

12 Q Turn to page 9. This is  
13 strategies-global long/short equities. This is one  
14 of the strategies you're describing for investors,  
15 right?

16 A That's correct.

17 Q What does it say under the second  
18 section, on top of the second section?

19 A It says, Are you referring to S.A.C.'s  
20 edge?

21 Q Yep.

22 A Okay.

23 Q So once again, you chose to describe  
24 your advantage is your edge, right?

25 A This is a marketing document and

1 marketing people love to be very concise in how --  
2 so people get a message.

3 Q I understand. And the message you  
4 chose to present to investors was that your  
5 characteristic was edge?

6 A Well, you know, as you read down you  
7 start to understand what that means.

8 Q Okay. But the answer to my question  
9 is, yes, we did, right?

10 A That what?

11 Q That you did choose to use the word  
12 edge as you described it to investors?

13 A We chose to use the word edge.

14 Q All right. So if you look at the third  
15 arrow under S.A.C.'s edge, Research analysts have  
16 extensive contact with corporate management,  
17 vendors, consultants of other industry participants.  
18 Correct?

19 A That is correct.

20 Q And the point of this is that you're  
21 getting a lot of information from the outside,  
22 right?

23 A There's no doubt that we are doing  
24 significant research.

25 Q Then if you skip one, it says, Position

1                   What does that mean?

2           A           It means that the portfolio turns over  
3 on a regular basis.

4           Q           What does it mean that it's high  
5 portfolio turnover?

6           A           It's a term used. I mean, high is  
7 probably relative. To what I don't know.

8           Q           You have no idea?

9           A           No.

10          Q           If you turn to page 17, under  
11 investment research, it talks about use of outside  
12 sources.

13                   Do you see that?

14          A           Yes.

15          Q           Then it says -- skip one. Typical flow  
16 of an investment idea for inception to a trading  
17 position. It talks in the first paragraph about  
18 portfolio managers and their ideas being presented,  
19 analysts -- respected portfolio managers and the  
20 ideas they have the best probable -- probability  
21 adjusted risk to return ratios are selected for  
22 inclusion in the applicable portfolios. Then it  
23 says, Each portfolio group is further responsible  
24 for sharing high conviction ideas with Steve Cohen  
25 and his investment team in a hub and spoke trading

1 structure where Steve Cohen and his team are the hub  
2 of receiving information from the various spokes of  
3 investment managers. Steve Cohen and his team will  
4 then decide whether to include the idea in his  
5 portfolio as well.

6 That's an accurate description,  
7 correct?

8 A Yeah, I would say that's fairly  
9 accurate. It makes sense.

10 Q Look at the last page, 22. This is  
11 under the section, Business Continuity. If you look  
12 at the top box on page 22, the second-to-last  
13 paragraph, it says, In addition, S.A.C. has full  
14 trade details for all activity by executing broker  
15 and by prime broker.

16 What does that mean full trade details  
17 for all activity by executing broker and prime  
18 broker?

19 A We were keeping our own records of all  
20 activity -- all transactions done by either an  
21 executing broker, which would be someone who would  
22 execute the order, or the prime broker where the  
23 trades would be settled and where our cash would be.

24 Q Okay. So you maintained there should  
25 be no records at your executing broker or your prime

IN THE SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY

FAIRFAX FINANCIAL )  
HOLDINGS LTD., *et al.* )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SAC CAPITAL MANAGEMENT )  
LLC, *et al.* )  
 )  
Defendants. )  
\_\_\_\_\_ )

DOCKET NO. MRS-L-2032-06

Errata to the Deposition of Steven A. Cohen


April 29, 2011.

I wish to make the following changes for the following reasons:

<u>Page</u>	<u>Line</u>	<u>Change</u>	<u>Reason</u>
442	1	Insert "be" after "could"	Transcription error
442	1	"other" to "others"	Transcription error
476	2	"was" to "were"	Misstatement
501	1	delete "a"	Transcription error
514	23	"believes" to "believed"	Transcription error
530	5	"a liquid" to "an illiquid"	Transcription error
530	12	"a liquid" to "illiquid"	Transcription error

Date: 7/11/11

Signature: \_\_\_\_\_



SUBSCRIBED AND SWORN TO BEFORE ME.

THIS 11<sup>th</sup> DAY OF July, 2011

Mavelyn Blanco  
Notary Public

MAVELYN BLANCO  
NOTARY PUBLIC  
MY COMMISSION EXPIRES NOV. 30, 2012