

In The Matter Of:

License of:

Jay R. Rice

Hearing Volume 4

May 24, 2001

Rocky Mountain Reporting Service, Inc.

Certified Shorthand Reporters

10 Exchange Place

528 Newhouse Building

Salt Lake City, UT 84111

(801) 531-0256 FAX: (801) 531-0263

*Original File 524DOPL.V1, 293 Pages
Min-U-Script® File ID: 2898966378*

Word Index included with this Min-U-Script®

[1] BEFORE THE DIVISION OF SECURITIES
 [2] OF THE DEPARTMENT OF COMMERCE
 [3] OF THE STATE OF UTAH
 [4]
 [5]
 [6] IN THE MATTER OF THE)
 LICENSE OF:) CASE NO. SD-00-0105
 [7]
 Jay R. Rice,)
 [8] (CRD #1832274) as a)
 as a broker dealer agent) VOLUME IV
 [9] Respondent.) TRANSCRIPT OF PROCEEDINGS
 [10]
 [11]
 [12]
 [13]
 [14]
 [15] Be it remembered that on the 24th day of May
 [16] 2001 the following deposition was reported by Sharon A.
 [17] Merritt, Certified Shorthand Reporter in the State of
 [18] Utah and the State of California, at the Heber M. Wells
 [19] Building, 160 East 300 South, Salt Lake City, Utah.
 [20]
 [21]
 [22]
 [23]
 [24]
 [25]

[1] APPEARANCES:
 [2]
 [3]
 [4] For the Attorney WAYNE KLEIN
 General's Office: Assistant Attorney General
 [5] Utah Attorney General's Office
 Heber Wells Building
 [6] 160 East 300 South, Fifth Floor
 Salt Lake City, Utah 84111
 [7]
 [8]
 [9] For the Respondent: MARK J. GRIFFIN, Attorney at Law
 Woodbury & Kesler, P.C.
 [10] 265 East 100 South, Suite 300
 Salt Lake City, Utah 84110
 [11]
 [12]
 [13]
 [14]
 [15]
 [16]
 [17]
 [18]
 [19]
 [20]
 [21]
 [22]
 [23]
 [24]
 [25]

[1] INDEX OF WITNESSES
 [2]
 [3] Jay Rice
 [4] Cross-Examination by Mr. Griffin Page 523
 [5]
 [6] William Dennis Ferguson
 [7] Direct Examination by Mr. Klein Page 578
 [8]
 [9] Jeffrey Wayne Gorringer
 [10] Direct Examination by Mr. Klein Page 652
 [11] Cross-Examination by Mr. Griffin Page 693
 [12]
 [13] Sheila Thomas
 [14] Direct Examination by Mr. Klein Page 713
 [15] Voir Dire Examination by Mr. Griffin Page 716
 [16] Direct Examination by Mr. Klein (cont'g) Page 716
 [17] Voir Dire Examination by Mr. Griffin Page 731
 [18] Direct Examination by Mr. Klein (cont'g) Page 733
 [19] Voir Dire Examination by Mr. Griffin Page 737
 [20] Direct Examination by Mr. Klein (cont'g) Page 738
 [21] Cross-Examination by Mr. Griffin Page 764
 [22] Redirect Examination by Mr. Klein Page 804
 [23] Recross-Examination by Mr. Griffin Page 807
 [24]
 [25]

[1] INDEX OF EXHIBITS
 [2]
 [3] For the Respondent: Marked Received
 [4] Exhibit 20 - Form U-5 564 576
 [5]
 [6] For the Division:
 [7] Exhibit 11 - Time and sales information 717
 [8] Exhibit 14 - Division of Securities' records 717
 [9] Exhibit 23 - Document 618
 [10] Exhibit 26 - Profit and loss calculations 728
 [11] Exhibit 39 - Trade data 738
 [12] Exhibit 42 - Document 594
 [13] Exhibit 43 - Document 741
 [14] Exhibit 51 - Printout from CRD 744
 [15] Exhibit 52 - Margin call documents 642
 [16] Exhibit 54 - Document 745
 [17] Exhibit 55 - Letter 746
 [18] Exhibit 56 - Work sheet 748
 [19] Exhibit 58 - Charts 749
 [20] Exhibit 59 - Charts 754/756
 [21] Exhibit 60 - Document 758
 [22] Exhibit 61 - Trades through 450 account 760
 [23] Exhibit 62 - Portion of trades 761
 [24] Exhibit 63 - Document 763
 [25] Exhibit 64 - Document 764

[1] May 4, 2001; 9:07 a.m.

[2]

[3] **THE JUDGE:** On the record.

[4] This is the time and place set for resumption
[5] of the hearing in the Matter of the License of Jay R.
[6] Rice. Respective counsel as previously noted are
[7] present representing the parties.

[8] Mr. Griffin, is there any procedural matter
[9] we need to address before we commence your
[10] cross-examination of Mr. Rice?

[11] **MR. GRIFFIN:** There is, Your Honor. In
[12] order to accommodate telephone testimony, in order to
[13] accommodate the state's case, we have skipped a couple
[14] of witnesses. I think I put something on the record
[15] yesterday. We have gone into a couple of witnesses
[16] that the state has called without my cross-examination
[17] of Mr. Rice.

[18] Yesterday in conference with counsel we
[19] agreed that I would attempt to conduct a brief
[20] cross-examination of Mr. Rice, because his testimony
[21] covers a day and-a-half on direct, in an hour
[22] and-a-half. But I want to make it clear that I'm not
[23] waiving my right to cross-examine Mr. Rice at a later
[24] time on the issues. I haven't decided whether or not
[25] we'll just go into direct or I will resume

[1] **CROSS-EXAMINATION BY MR. GRIFFIN**

[2] **MR. GRIFFIN:** Q. Good morning, Mr. Rice.

[3] **A:** Good morning.

[4] **Q:** I want to go over several lines of testimony
[5] that you had on direct examination, starting with the
[6] client account forms. You'll find one of these is
[7] Exhibit 6. Will you go there now? This is the
[8] Division's Exhibit 6 in the blue binder.

[9] **A:** Okay.

[10] **Q:** Can you identify that document for us?

[11] **A:** If I've got the right one here, it is
[12] Corresponding Customer's Option Approval Form?

[13] **Q:** Yes. And the firm, please.

[14] **A:** J.W. Genesis Clearing Corp.

[15] **Q:** What was the purpose of this document?

[16] **A:** This was internal type document. Meaning
[17] that it was for the internal use of — strictly for our
[18] clearing operation, which was J.W. Genesis.

[19] **Q:** So who in the ordinary course of your
[20] business would see this form?

[21] **A:** Only us and them.

[22] **Q:** Customers didn't see this form, did they?

[23] **A:** No.

[24] **Q:** And you filled these out, it was your
[25] testimony on direct; is that correct?

[1] cross-examination, but I want to make that clear on the
[2] record.

[3] **THE JUDGE:** Is it your preference to derive
[4] a time distinction between cross-examination of him
[5] based on the direct and any direct testimony you would
[6] offer?

[7] **MR. GRIFFIN:** Yes. And if we resume
[8] cross-examination at a later time on those issues that
[9] we wish to cover on cross, I just want to be free to do
[10] things that are associated with cross-examination.

[11] **THE JUDGE:** That's fine. And as the time
[12] develops today if you see the need to conduct
[13] subsequent cross-examination of him, we'll just
[14] anticipate that.

[15] Mr. Rice. Excuse me. Mr. Klein.

[16] **MR. KLEIN:** And what I anticipate — I
[17] mentioned to Mr. Griffin that I expect that I'm
[18] going — I'm going to hold any questions I might have,
[19] follow-up questions, based on Mr. Griffin's questions
[20] of Mr. Rice, hold those until he is finished with Mr.
[21] Rice.

[22] **THE JUDGE:** Understood.

[23] Mr. Rice, if you'd take the witness stand
[24] again, and please recall you're still under oath.

[25] Mr. Griffin.

[1] **A:** Yes, they were either — they were always
[2] signed by me, but they could have been filled out by a
[3] sales assistant, after which I would sign them.

[4] **Q:** All right. You caused these to be sent to
[5] your clearing firm, J.W. Genesis, at the time?

[6] **A:** Yes. As you can see at the top there, they
[7] were usually FAX'd. And then I think the originals
[8] would follow-up. We'd always follow up with the
[9] original being sent to them.

[10] **Q:** Calling your attention now to the boxes in
[11] the middle of the page. The checked boxes. I'll refer
[12] to them as such. Do you see the box that says,
[13] "Uncovered"?

[14] **A:** Yes.

[15] **Q:** See, "Several boxes," there next to,
[16] "Uncovered"?

[17] **A:** Yes.

[18] **Q:** Okay. What is your understanding of what the
[19] term, "Uncovered," means?

[20] **A:** Well, it's when you sell an option or a stock
[21] and you don't have coverage on it with a similar option
[22] or stock that is at a — you know, a different price or
[23] whatever. I mean you could — I mean it comes in
[24] various forms. An uncovered option can be selling an
[25] option. Usually it's referred to as a call option.

[1] Q: Well, first of all, you can have uncovered
[2] short sales of equities, correct, without regard to
[3] options?
[4] A: That's right. Yes.
[5] Q: And one of these boxes deals with that, is
[6] that correct?
[7] A: This is strictly dealing with options.
[8] Q: Okay. So tell me what your understanding is
[9] of an uncovered call.
[10] A: Uncovered call would be one that you would
[11] sell, usually a call position, and not have a security,
[12] meaning a — the underlying stock in the account at the
[13] time. Or possession of it.
[14] Q: Okay. And when you say sell a call you mean
[15] that your customer is obligating him or herself to have
[16] the stock pulled out of their account by the person who
[17] purchased call, is that correct?
[18] A: That's right.
[19] Q: At any time that contract's in force?
[20] A: Yeah, normally, I mean it has to be in the
[21] money, but you're right, that could be called —
[22] Q: At any time?
[23] A: — away, that's correct.
[24] Q: And the contract for the option has a fixed
[25] price that that person who's exercising the option has

[1] to pay for that call, is that correct?
[2] A: That's right.
[3] Q: Okay. So if you sell a call or if your
[4] customer sells a call and that customer does not have
[5] the stock in that customer's account, what's the risk
[6] associated with it?
[7] A: Well, there's unlimited risk.
[8] Q: There's unlimited risk?
[9] A: That's correct.
[10] Q: Is there another term that agents commonly
[11] use, representatives commonly use in referring to
[12] uncovered options?
[13] A: Well, if you're meaning "naked," that's what
[14] it's commonly referred to, as being naked.
[15] Q: And you used that term in your direct
[16] testimony, right?
[17] A: Yes.
[18] Q: Okay. Is the term "naked option" and
[19] "uncovered option" in your mind the same thing?
[20] A: Correct.
[21] Q: And on what is your understanding based?
[22] A: Well, years of experience, mainly from doing
[23] options. And from, you know, testing. As I've
[24] testified before, I'm a Series 4 Registered, which is a
[25] principal options principal.

[1] Q: Okay. We talked about the financial risk
[2] associated with an uncovered or naked call. What is
[3] the risk associated with an uncovered or naked put?
[4] A: Well, you don't have unlimited risk. That's
[5] one of the differences. Because, obviously, on a put
[6] you are selling an instrument that is just like it
[7] says. It can be put to you. Means that if called
[8] away, the security is put to you at the price that you
[9] sold it at.
[10] Q: Okay. So if I obligate myself by writing a
[11] put for a stock of XYZ Corp and the put is at a
[12] hundred, what's my exposure if somebody puts that stock
[13] to me?
[14] A: Well, if the stock goes to zero, your risk is
[15] a hundred dollars less the premium that you sold the
[16] put for.
[17] Q: So the risk on a naked put rises in magnitude
[18] to where the stock price is, is that right?
[19] A: That's right.
[20] Q: But it is limited?
[21] A: To the hundred dollars. You can't go below
[22] zero.
[23] Q: Now, out of all the strategies that there are
[24] in trading options aren't these the riskiest
[25] strategies?

[1] A: That's correct.
[2] Q: Even though the put strategy is less risky
[3] than the naked call, even though the naked put is less
[4] risky, according to your testimony, there's still a lot
[5] of speculation there?
[6] A: Yes, I — yeah. There's some that probably
[7] would choose to differ with me on that, but —
[8] Q: Okay.
[9] A: — you know, I've done it all.
[10] Q: In your dealing with broker dealers —
[11] A: Um-hum. (affirmatively).
[12] Q: — the people with whom you place trades as a
[13] registered representative, as an agent/representative
[14] of the broker/dealer have you ever heard the broker
[15] dealers equate the term "uncovered" to mean a naked
[16] option contract?
[17] A: Would you repeat that again?
[18] Q: I'm sorry. Let me rephrase. Have you ever
[19] heard broker/dealers use those two terms to mean the
[20] same thing, "naked" and "uncovered?"
[21] A: Oh, yes, all the time.
[22] Q: Have you ever known them to refer to an
[23] "option spread" as an "uncovered option?"
[24] A: No, I've never — never heard that in the
[25] industry.

[1] Q: How long is your experience in the
 [2] marketplace?
 [3] A: Well, I've done options extensively since
 [4] 1976, three years after they really started to —
 [5] really were invented, when they were able to be traded
 [6] on the OTC. But the clearing firm that — the options
 [7] clearing firm wasn't even in — you know, instituted
 [8] till '73.
 [9] Q: In your work with J.W. Genesis you made it
 [10] clear to them, did you not, that you were doing option
 [11] spreads?
 [12] A: Oh, yes, uh-huh.
 [13] Q: Okay. And this form here that you testify
 [14] you sent to J.W. Genesis you didn't check that box.
 [15] Why do you think that they didn't come back to you and
 [16] ask you to check that box?
 [17] A: (pause).
 [18] Q: If you know.
 [19] A: One more time.
 [20] Q: Let me rephrase. I'll strike that question.
 [21] A: Okay.
 [22] Q: J.W. Genesis knew that you were doing
 [23] spreads.
 [24] A: Correct, uh-huh.
 [25] Q: But you didn't check this box. Would J.W.

[1] or not you're doing uncovered calls, right? Is that
 [2] correct?
 [3] A: Right, other forms, you bet, yeah.
 [4] Q: You haven't received any comments from other
 [5] broker/dealers when you're doing spreads that you were
 [6] doing uncovered options, did you?
 [7] A: No.
 [8] Q: And your testimony is that option spreads the
 [9] way that you did them were not uncovered or naked,
 [10] correct?
 [11] A: No.
 [12] Q: Why not?
 [13] A: Well, like I've testified, I believe they are
 [14] risky. They're probably suitable for extremely,
 [15] extremely sophisticated people with — people that can
 [16] handle it. You know, that have that — I don't want to
 [17] go and say that they maybe have a lot of capital, but I
 [18] mean it's more of a mentality type of, you know,
 [19] situation where they're very comfortable, you know.
 [20] Q: Okay. So that's the reason that you didn't
 [21] engage in those strategies or have your customers
 [22] engage in those strategies?
 [23] A: That's right.
 [24] Q: I think the question that I want to ask is
 [25] why didn't you view option spreads as naked? Tell us

[1] Genesis have expected you to check that box doing
 [2] option spreads?
 [3] A: Now, are you —
 [4] Q: Meaning uncovered?
 [5] A: If they thought that a spread was uncovered?
 [6] Q: Well, doing option spreads the way that you
 [7] did them in the customer accounts, do you know whether
 [8] or not J.W. Genesis would have required you to check
 [9] that box indicating that you were doing uncovered
 [10] options?
 [11] A: If they thought they were uncovered, yes,
 [12] they would make us fill in these boxes where it says,
 [13] "Uncovered."
 [14] Q: Did J.W. Genesis or Fiserv ever say that you
 [15] should check that box?
 [16] A: No.
 [17] Q: How many other firms have you done options
 [18] contracts with?
 [19] A: Well, on a limited basis I did them since
 [20] I've been registered. Since '88. But —
 [21] Q: I'm sorry.
 [22] A: I was just going to say extensively
 [23] since '97, as I testified.
 [24] Q: You filled out other forms like this which we
 [25] don't have in evidence which are indicators of whether

[1] why.
 [2] A: They just have never been. I mean I — this
 [3] hearing now is — when we read that NASD map you
 [4] will — that's the first time I've ever seen anyone
 [5] ever closely refer to them as —
 [6] Q: Okay. We'll get to that in a minute.
 [7] A: Okay.
 [8] Q: In an option spread the way that you
 [9] conducted them and the way that you testified on
 [10] direct, the customer's exposure is limited; is that not
 [11] correct?
 [12] A: That's right.
 [13] Q: Why is that?
 [14] A: Well, because as the — as it — the name
 [15] suggests, you are covered. You have a ceiling, so to
 [16] speak, on the top of it, with the spread.
 [17] Q: Okay. So if I have an option spread where my
 [18] long position is a hundred and the lower position that
 [19] we talked about is 95, what's my exposure?
 [20] A: Well, it's five points.
 [21] Q: Five dollars?
 [22] A: Right. Less the amount of credit you've
 [23] received for selling the lower.
 [24] Q: Yes, because the money comes into the account
 [25] to offset the amount of money exposure?

[1] A: That's right.
[2] Q: I get paid when I write —
[3] A: You've got the purchase of the higher one and
[4] the sell of the lower one. And it depends. Sometimes
[5] that won't be necessarily a net credit.
[6] Q: Yes.
[7] A: It could be a net debit.
[8] Q: Okay.
[9] A: If it is a credit, you usually subtract that
[10] from that spread.
[11] Q: Giving my example of an option spread and
[12] what's involved, the closer that those two become, the
[13] high and the low, the less my financial exposure;
[14] right? And the reverse is true, the wider, the greater
[15] my financial exposure; right?
[16] A: That's correct.
[17] Q: So you couldn't say that in an option
[18] strategy the option strategy was highly risky unless
[19] you knew, essentially, what that spread was?
[20] A: That's correct. And also the number of
[21] contracts that you've done, so on.
[22] Q: From your exposure — well, strike that. In
[23] filling out these forms, essentially, as I recall —
[24] and I haven't looked through them. You're welcome to
[25] look through them. You didn't check any, "Uncovered,"

[1] boxes; is that right?
[2] A: Not to my recollection.
[3] Q: And the reason that you didn't do that is
[4] that you didn't believe your option spreads at the time
[5] you did these forms were uncovered?
[6] A: Yeah, we did not plan on doing any of those
[7] with clients, any type of what we felt were uncovered
[8] and what the clearing firm felt were uncovered.
[9] Q: Okay. In all the time that you were doing
[10] this actively from 1997 until the present day did
[11] anybody who was a compliance officer at a broker/dealer
[12] firm or any regulatory authority question what you were
[13] doing on these forms, meaning Exhibit 6?
[14] A: The only time that — and the first time was
[15] when we had our audit by the state approximately a year
[16] ago.
[17] Q: The State of Utah?
[18] A: Over a year ago. They suggested — they
[19] asked me if I had done any naked, which I, you know,
[20] very vehemently denied.
[21] Q: Okay. Based on your understanding, did they
[22] tell you at that time that these forms were incorrect?
[23] A: No.
[24] Q: Did you have an exit interview or discussion
[25] with them after their audit?

[1] A: Yeah, I believe Kent got a letter, which I
[2] received a copy of.
[3] Q: In that letter did it mention this?
[4] A: I can't remember this being mentioned in
[5] particular about these boxes, no, being marked
[6] improperly.
[7] Q: And you understood the purpose of this form
[8] would be to inform Fiserv you were doing uncovered
[9] options, according to the definition that you have for
[10] "uncovered?"
[11] A: That's correct.
[12] Q: And theirs is the same as yours?
[13] A: (pause).
[14] Q: Based on your experience?
[15] A: The clearing firm has the same definition as
[16] me, correct.
[17] Q: Let's turn to State's Exhibit 21. Or
[18] Division's Exhibit 21. Let me have you look at those
[19] documents. Now, Exhibit 21, like Division's Exhibit 6,
[20] is a compilation of several documents, up at the top
[21] indicated to be Corresponding Customer Option Approval
[22] Forms; is that correct?
[23] A: Yes.
[24] Q: It's a different form than those we find
[25] under the Division's Exhibit 6, correct?

[1] A: Yes, slightly different.
[2] Q: Who utilized this form?
[3] A: Well, as I've mentioned before, during our
[4] time of coming on board — fairly close to the early
[5] period when we came on board I guess J.W. Genesis made
[6] a deal with Fiserv as far as a merger or an acquisition
[7] or whatever and Fiserv took over J.W. and some of our
[8] forms started to change.
[9] Q: Okay. So the takeover produced new forms.
[10] That's the reason the forms differ?
[11] A: Yes.
[12] Q: But it is similar in many respects, and
[13] certainly is similar in the handling of the designation
[14] of trading in uncovered securities; correct?
[15] A: Yes.
[16] Q: The checked box format reads essentially the
[17] same as the previous document?
[18] A: That's correct.
[19] Q: Okay. With the change of form did your
[20] definition of "uncovered" ever change?
[21] A: No.
[22] Q: To your knowledge, did Fiserv have a
[23] different definition of "uncovered?"
[24] A: Never. No.
[25] Q: You still were not checking this box —

[1] **A:** No.

[2] **Q:** — saying that your customers were engaging
[3] in uncovered transactions.

[4] **A:** That's absolutely correct.

[5] **Q:** And you were still doing option spreads the
[6] way that you've described here today?

[7] **A:** Yes. On occasion. It wasn't a regular type
[8] of a strategy that we employed.

[9] **Q:** Meaning that you didn't always do option
[10] spreads. Sometimes you did call writing, covered call
[11] writing and other strategies?

[12] **A:** Yeah. Our main thrust — and again depending
[13] on market conditions, stock that we were purchasing and
[14] so on. There's a lot of things that were in — you
[15] know, came into play on our strategies. But over-all
[16] the strategy was straight-out option buying.

[17] **Q:** Did the management in Boca Raton change after
[18] the purchase of J.W. Genesis?

[19] **A:** No. As far as I know, it remained under the
[20] same, you know, people. There wasn't anything
[21] significant. On the trading desk there might be one or
[22] two people, but it stayed pretty constant continually.

[23] **Q:** Okay. When you first set up this clearing
[24] arrangement you had extensive talks with Mr. Dennis
[25] Ferguson about all of this, how they cleared option

[1] upon us to do and just all the particulars.

[2] **Q:** Did you tell Mr. Ferguson and the traders
[3] that occasionally you engage in option spreads?

[4] **A:** That probably came up. Like I said, it
[5] wasn't a big part of our business, but, you know, we
[6] talked about all different things regarding options, so
[7] I'm sure it came up.

[8] **Q:** Okay. In those conversations do you have any
[9] recollection that Mr. Ferguson or anyone at Fiserv
[10] referred to those types of transactions as uncovered?

[11] **A:** No, never.

[12] **Q:** Would it have surprised you?

[13] **A:** If he would have said that?

[14] **Q:** If he would have said that.

[15] **A:** Yeah, I would have been very surprised
[16] because it would have been the first time in 25 years
[17] of doing options that I'd heard it.

[18] **Q:** Mr. Rice, listen carefully to this question.
[19] What would have happened had you checked that,
[20] "Uncovered," option box in connection with your
[21] accounts? Do you have enough experience to tell me how
[22] Fiserv or J.W. Genesis would have reacted to that?

[23] **A:** We probably would have been called by —
[24] **MR. KLEIN:** Judge, I think this calls for
[25] speculation. He can testify about what he knows or

[1] trades, what was required of you?

[2] **A:** Yes. Whenever you make an arrangement like
[3] that, obviously, it's made with the broker/dealer, but
[4] as a broker and — you want to know, you know, how they
[5] handle things. You want to make sure your trades are
[6] handled efficiently. What their policies are. And so
[7] on. How they basically handle things. As far as
[8] trades.

[9] **Q:** All right. Yesterday you testified that Mr.
[10] Sweat negotiated the terms of the arrangement with
[11] Fiserv?

[12] **A:** That's correct.

[13] **Q:** But you had extensive instruction from Mr.
[14] Ferguson and from other people at Fiserv on the actual
[15] procedures and implementation of how you go about —

[16] **A:** Yes, yes. We had a number of discussions
[17] before Kent made the contractual arrangement.

[18] **Q:** So you knew about these forms?

[19] **A:** Yes. You know, I can't say that I really
[20] knew about these beforehand. We definitely knew
[21] before, you know, opening up any option accounts — you
[22] know, this could have come to us later after, you know,
[23] our discussions, but we definitely talked about, you
[24] know, what they did, what their — you know, what their
[25] — what we relied upon them to do and what they relied

[1] perhaps discussions he had. But I think for him to
[2] speculate about what might have happened is
[3] inappropriate unless it's based on actual discussions
[4] he had.

[5] **MR. GRIFFIN:** I think my question was
[6] phrased in the witness' expectation what the witness
[7] would have expected to happen based on his experience,
[8] and I think he can testify about that.

[9] **THE JUDGE:** What he would have expected to
[10] do — what Fiserv would have done, as opposed to what
[11] he would have done; is that correct?

[12] **MR. GRIFFIN:** Correct.

[13] **THE JUDGE:** Go ahead.

[14] **MR. RICE:** I'd probably gotten a call from
[15] the Compliance Department of Fiserv. You know, like I
[16] said. They watched these things. We relied upon their
[17] compliance, their oversight.

[18] **MR. GRIFFIN:** Q. Their compliance was
[19] pretty good, wasn't it?

[20] **A:** It was. Better than what I had seen.

[21] **Q:** Okay. Now I want you to look at the
[22] Division's Exhibit 66. It's not in the book. It's
[23] separate.

[24] **A:** Oh. Over here? Oh, here it is.

[25] **Q:** Exhibit 66 is the rule from the NASD manual

[1] numbered 2860 on options, is that correct?
[2] A: Yes.
[3] Q: Do you recall reviewing this rule with Mr.
[4] Klein on your direct testimony?
[5] A: That's correct.
[6] Q: Now, as I recall — well, my recollection is
[7] Mr. Klein first showed you the exhibits Division's
[8] Exhibit 6 and Division's Exhibit 21, the ones that
[9] we've just gone over, and then asked you to review a
[10] copy of this rule in Exhibit 66. Do you recall that
[11] line of testimony?
[12] A: Yes.
[13] Q: I want to go there now.
[14] A: Okay.
[15] Q: I want you to look at Exhibit 66. Just
[16] briefly for the introduction. Okay?
[17] A: Right. First page?
[18] Q: Yes, first page. Actually, let's look at
[19] subsection B.2. Where it says, "Definitions."
[20] A: Okay.
[21] Q: Can you read just that first sentence that
[22] follows?
[23] A: "The following terms shall, unless the
[24] context otherwise requires, have the stated meanings."
[25] Q: Okay. So is it fair to say that the NASD is

[1] defining these terms for purposes of this rule?
[2] A: That's what it sounds like, yes.
[3] Q: Now, I want you to go to a section that you
[4] reviewed with Mr. Klein, 4716 of Exhibit 66. Actually,
[5] it's not — I'm sorry, it's page 4716. Down at the
[6] bottom there is an inset paragraph. The word next to
[7] it is, "Uncovered." Can you read just the first
[8] sentence that follows the, "Uncovered," dash.
[9] A: Okay. Why?
[10] Q: Right. Did I say why? Why.
[11] A: "Uncovered - the term 'uncovered' in respect
[12] of a short position in an option contract means the
[13] short position is not covered. For purposes" —
[14] Q: No, no, just the first sentence.
[15] A: Okay.
[16] Q: So it's a little circular. You've got to
[17] know what's covered to find out what "uncovered" means
[18] for this rule. Right?
[19] A: Yes.
[20] Q: Let's go to the definition of what
[21] "uncovered" means.
[22] A: Okay.
[23] Q: Let's look at paragraph zero — and we find
[24] that on page 4713. It's about the middle of the page,
[25] Mr. Rice.

[1] A: "Covered - the term 'covered' in respect of a
[2] short position" —
[3] Q: Well —
[4] A: Is that what you mean?
[5] Q: Yes. I'll direct you —
[6] A: Oh, okay, sorry.
[7] Q: — down a little bit farther.
[8] A: Okay.
[9] Q: Okay. Because I don't —
[10] A: Okay.
[11] Q: To the language that Mr. Klein went over with
[12] you —
[13] A: Okay.
[14] Q: — yesterday. It lays out an initial
[15] definition, but about four lines down on the right-hand
[16] side there is the word, "or," following a comma.
[17] Meaning that this also.
[18] A: Oh, okay.
[19] Q: This also would mean "covered." Can you go
[20] ahead and read —
[21] A: "Or the writer holds in the same account" —
[22] Q: Right.
[23] A: — "as the short position on a unit-for-unit
[24] basis a long position either in the underlying security
[25] or in an option contract of the same class of options

[1] where the exercise price of the option contract in such
[2] long position is equal to or less than the exercise
[3] price of the option contract in such a short position."
[4] Q: Okay. Stop there. That's good. So
[5] according to this rule, this term as defined for this
[6] rule, according to this rule, then, it is possible to
[7] regard a spread position as an uncovered options
[8] contract, according to the NASD rule. Correct?
[9] A: I —
[10] Q: You look puzzled yesterday and you're a
[11] little puzzled today. I can see that.
[12] A: I'm still puzzled.
[13] Q: Okay. And then I think Mr. Klein resumed
[14] asking you questions about these forms, and we'll come
[15] to that in a minute. But this was the first time, was
[16] it not, that you heard this definition?
[17] A: Definitely.
[18] Q: Okay. And it, essentially, refers to a
[19] specific type of spread; does it not? Not all spreads
[20] would be uncovered, according to this, the —
[21] A: Right.
[22] Q: — the definitions in this rule.
[23] A: Correct.
[24] Q: Okay. But your testimony is that the firm
[25] clearly wanted to know whether or not these

[1] transactions were uncovered?
[2] **A:** That's right.
[3] **Q:** According to your definition of what you
[4] understood the firm wanted?
[5] **A:** That's right.
[6] **Q:** Okay. And you clearly understood your
[7] spreads were not regarded by the broker/dealer
[8] requiring you to fill out this form as uncovered, is
[9] that correct?
[10] **A:** Never. Never did they even suggest it.
[11] **Q:** So if you're right and Mr. Klein's right,
[12] then the firm's wrong in requiring you to fill out this
[13] form; right?
[14] **A:** That's correct.
[15] **Q:** Okay. Now I want you to turn to Exhibit 22
[16] to see what the firm's definition is. Exhibit 22 is a
[17] compilation, also, although it's a slim compilation, of
[18] documents entitled, "Client Option Agreement and
[19] Approval." Do you recognize that document?
[20] **A:** Yes.
[21] **Q:** I want you to tell me a little bit about this
[22] document because it doesn't appear as it does when you
[23] use it with customers, does it? The form.
[24] **A:** No.
[25] **Q:** This is a Xeroxed copy, right?

[1] text where it says, "High risk," that would all be in
[2] red?
[3] **A:** That would be in red, exactly. C.1., C.2.
[4] **Q:** Right.
[5] **A:** Also 3.C.
[6] **Q:** 3.C. What about 5.C.
[7] **A:** 5.C.
[8] **Q:** Okay.
[9] **A:** Yeah.
[10] **Q:** Good.
[11] **A:** And then, like I said, the box down below
[12] that says, "High risk option account," that would need
[13] to be signed a second time. So they're not only signed
[14] up above there where they have signed it, but they
[15] would need to sign again in that box.
[16] **Q:** Okay.
[17] **A:** And read that statement.
[18] **Q:** This form is utilized by a lot of
[19] broker/dealer firms?
[20] **A:** Yes. I've seen this used by several.
[21] **Q:** So this is a standardized form. This really
[22] isn't something that Fiserv has generally come up with,
[23] right?
[24] **A:** No, Fiserv didn't suggest or recommend any
[25] option. We actually wanted to use this form, and they

[1] **A:** That's right. And it's also put in — it's
[2] also shrunken, meaning —
[3] **Q:** It's a little bit larger?
[4] **A:** Yeah, the real form is legal size.
[5] **Q:** So the typed print is not that small?
[6] **A:** That's right, this has been shrunken all the
[7] way down.
[8] **Q:** What other distinguishing factors are there
[9] about the form which aren't apparent from the Xerox
[10] copy which the State has put into evidence? What other
[11] distinguishing features?
[12] **A:** Well, it's in, I think, quad- —
[13] quadruplicate form.
[14] **Q:** Okay. That's one distinction. Is it black
[15] and white?
[16] **A:** No, it has colors.
[17] **Q:** Where are the colors?
[18] **A:** Well, red, as I think Mr. Kinney testified,
[19] is wherever it says, "High risk," the box down below,
[20] if you're to — if a client and a — were to approve an
[21] option agreement for any high risk, all those high risk
[22] areas where, again —
[23] **Q:** Let me go through that with you.
[24] **A:** Okay.
[25] **Q:** So under paragraph 1.C. in the body of the

[1] allowed us to use this form.
[2] **Q:** Okay.
[3] **A:** Or they didn't really care all that much, as
[4] long as the other form with them was filled
[5] appropriately.
[6] **Q:** Okay. And certainly, of course, Mr. Sweat,
[7] who was the principal of your broker/dealer firm, saw
[8] this form?
[9] **A:** Oh, yes, definitely.
[10] **Q:** He'd get copies of all of this?
[11] **A:** Yes. These were immediately FAX'd and
[12] sent — originals to him for his signature, as well.
[13] **Q:** Okay. On this form Mr. Klein, I believe,
[14] directed your attention to paragraph 1.C. after he had
[15] reviewed with you the NASD rule, and I believe his
[16] direct examination asked you why you didn't check that.
[17] The NASD required it. And you looked a little
[18] confused.
[19] **A:** Yes.
[20] **Q:** Okay. Did you check a box on this form on
[21] the first page of this exhibit which does indicate and
[22] communicate what types of transactions you were doing?
[23] **A:** Yes. You mean — right. These boxes here,
[24] yes, all pertain to different, you know, strategies and
[25] whatnot we were using.

[1] Q: We'll get to that in a minute.
[2] A: Okay.
[3] Q: I want you to focus on that paragraph that
[4] Mr. Klein directed your attention to, paragraph C.
[5] A: Okay.
[6] Q: Do you see where it says, "Uncovered put
[7] writing?"
[8] A: Yes.
[9] Q: I want you to read the language after the
[10] dash in that sentence, which is — let me get this for
[11] the record. It's paragraph 1.C., sub-paragraph one.
[12] Titled, "Uncovered put writing."
[13] A: "Requires use of margins. If assigned, the
[14] client must purchase the underlying stock at the strike
[15] price, which may be substantially above the current
[16] market price. Substantial monetary risk."
[17] Q: "Substantial," is not unlimited monetary
[18] risk; is it?
[19] A: Correct.
[20] Q: Okay. And doesn't this definition comport
[21] almost exactly to what you define an uncovered
[22] transaction as?
[23] A: Uncovered put transaction, correct.
[24] Q: An uncovered put transaction. That
[25] definition right there doesn't include the language as

[1] defined in the rule of the NASD for the rule of the
[2] NASD does it?
[3] A: Doesn't sound like it, no.
[4] Q: Let's go to the next paragraph on, "Uncovered
[5] call writing."
[6] A: Want me to read that?
[7] Q: Yes, that's sub-paragraph two right below,
[8] and I want you to read the language after the dash.
[9] A: Okay. "Requires use of margin. If assigned
[10] client, must purchase stock in the open market at
[11] prevailing market price to satisfy delivery. Unlimited
[12] monetary risk."
[13] Q: "Unlimited monetary risk." In your use of
[14] spreads, the way that you did them, do they involve
[15] unlimited monetary risk?
[16] A: No, not at all.
[17] Q: Okay. Does that definition comport exactly
[18] with what you said about your understanding of what
[19] naked options are and what uncovered options are?
[20] A: Exactly.
[21] Q: Now, let's examine language a little bit
[22] farther down in that form. In paragraph that is Roman
[23] numeral IV. Indicating spreads.
[24] A: Okay. You want me to read that?
[25] Q: Yes, why don't we read that in pieces,

[1] though. The paragraph is entitled, "Spreads - Stock
[2] Options Index." Then it's followed by sub-paragraph A.
[3] Next to the words, "moderate risk," what do you read?
[4] A: It says, "None. Refer to 4.B.," it looks
[5] like.
[6] Q: The next paragraph, right?
[7] A: Right.
[8] Q: So what the form is saying, and this is
[9] partly used in your disclosure to the customer, is that
[10] really when you do spreads there's no moderate risk
[11] involved. It's speculative risk, right?
[12] A: Yes.
[13] Q: That's how you'd interpret that?
[14] A: That's right.
[15] Q: Let's read the paragraph on speculative risk
[16] following the dash, which is sub-paragraph 4.B.
[17] A: Okay. "Requires the use of margin. If the
[18] long position is closed out leaving only a short
[19] position, the investment becomes high risk due to the
[20] unlimited financial risk assumed."
[21] Q: Okay. Can you explain that? That's a little
[22] convoluted, but what happens if you do an option
[23] spread, which is speculative risk — what happens to an
[24] option spread if you close the long position?
[25] A: Well, it leaves you naked with the short

[1] position.
[2] Q: You'd be uncovered?
[3] A: That's correct. Becomes uncovered.
[4] Q: You didn't do that?
[5] A: No.
[6] Q: Is it safe to say that whatever the meaning
[7] of the term "uncovered" is for the definition purposes
[8] of the NASD rule, your understanding of the use of the
[9] term "uncovered," according to the plain language of
[10] this form, is not the same as what Mr. Klein suggested
[11] to you?
[12] A: Not at all.
[13] MR. KLEIN: Objection, Your Honor. I think
[14] he's characterizing my question as interpreting a
[15] question to him, and he's the one that testified what
[16] the rule says.
[17] MR. GRIFFIN: I think that's exactly what my
[18] question was, and it was exactly Mr. Klein's suggestion
[19] he should have checked that box, and I am just going
[20] over in cross trying to make it plain what this
[21] witness' understanding was.
[22] THE JUDGE: Clearly the witness can testify
[23] whether he felt he should have checked it and what its
[24] meaning was to him. I'll allow that.
[25] MR. GRIFFIN: Q. It was clear to you

[1] that every time on these forms where the term
 [2] "uncovered" is used on these forms, meaning Exhibit 22
 [3] — where the term "uncovered" was used that this form
 [4] was wanting to know whether or not you were doing
 [5] uncovered options in the sense you just defined them?
 [6] **A:** That's right.
 [7] **Q:** In your testimony today. Okay. Let's look
 [8] at — let's see. (pause). Well, strike that. When
 [9] you filled out this form — given what your testimony
 [10] is today, at the time that you filled it out you
 [11] believed that the representations that you made on here
 [12] were accurate?
 [13] **A:** And that's referring to Exhibit 22, right?
 [14] **Q:** 22.
 [15] **A:** The option agreement?
 [16] **Q:** Right.
 [17] **A:** Yes.
 [18] **Q:** If you filled them out the way that was
 [19] suggested, checking the, "Uncovered call writing," when
 [20] you weren't proposing to do that, would that have been
 [21] misleading?
 [22] **A:** Very much so.
 [23] **Q:** And if you checked, "Uncovered," using this
 [24] form and checked, "Uncovered," in the earlier exhibits,
 [25] indicating to your broker/dealer that you were doing

[1] **A:** Well, he does.
 [2] **Q:** Meaning the broker/dealer?
 [3] **A:** Right.
 [4] **Q:** Principal?
 [5] **A:** Yeah, the broker really can't contact —
 [6] really has no — I mean he's not a member of the NASD.
 [7] **Q:** At larger firms this would be the
 [8] responsibility of a Compliance Department, correct?
 [9] **A:** I would think so.
 [10] **Q:** And in your experience with Mr. Sweat and
 [11] Intermountain Financial Services, who was in charge of
 [12] tracking the approval?
 [13] **A:** He was.
 [14] **Q:** How did you — well, excuse me. Strike that.
 [15] So you looked to Mr. Sweat for your approval both from
 [16] the NASD and from the State of Utah, is that correct?
 [17] **A:** There's no question.
 [18] **Q:** Okay.
 [19] **A:** It has to be done.
 [20] **Q:** At the time your U-4 was filed indicating
 [21] your affiliation with Intermountain who filed it? With
 [22] the central registration repository?
 [23] **A:** As I said, I believe it went to Kent, and
 [24] Kent would have filed it.
 [25] **Q:** Does the securities division when you're

[1] uncovered transactions, that would be misleading;
 [2] wouldn't it?
 [3] **A:** Yes, it would be misleading.
 [4] **Q:** Okay. I would like to now clear up another
 [5] matter regarding the dispute over when you were
 [6] licensed with the division.
 [7] **A:** Okay.
 [8] **Q:** In your experience, who is in charge of
 [9] filing the Form U-4?
 [10] **A:** The broker/dealer.
 [11] **Q:** Has that ever been different in the time that
 [12] you've been a licensed agent for broker/dealers?
 [13] **A:** No.
 [14] **Q:** Okay. Do you sign the U-4?
 [15] **A:** Yes.
 [16] **Q:** Okay. What happens to the U-4 after you sign
 [17] it?
 [18] **A:** I believe it's given to the principal of the
 [19] B/D who is the appropriate signatory for the company.
 [20] Usually the compliance guy or the head principal, I
 [21] believe. And he signs it, and then he takes care of it
 [22] from there. I really don't know what happens to it
 [23] from there.
 [24] **Q:** Who tracks the approval of the transfer or
 [25] the initial license that you're getting?

[1] approved issue you a certificate of licensure similar
 [2] to other professions?
 [3] **A:** Which division?
 [4] **Q:** Do they give you a —
 [5] **A:** The NASD?
 [6] **Q:** No, the state.
 [7] **A:** The state? No, not that I know of.
 [8] **Q:** All right. I want to know how you find out
 [9] whether or not you're licensed.
 [10] **A:** Well, obviously, that's a very anxious time
 [11] in your life. You're basically —
 [12] **Q:** Well, that's not —
 [13] **A:** Okay.
 [14] **Q:** I want to know how you generally find out.
 [15] **A:** Okay. Well, I — you find out by calling
 [16] your B/D probably three times a day, if not more.
 [17] **Q:** Okay. And did you do that here?
 [18] **A:** Oh, yes.
 [19] **Q:** You called Mr. Sweat —
 [20] **A:** Oh.
 [21] **Q:** — three times a day?
 [22] **A:** Like I said, it was to the point of being
 [23] very obnoxious.
 [24] **Q:** And did the approval eventually come?
 [25] **A:** Yes.

[1] Q: Okay. Do you recall when that was?
 [2] A: Well, I don't recall right now the exact
 [3] date, but I know that we just, you know, held the phone
 [4] on a constant basis and waited for that approval.
 [5] Q: Was it in November?
 [6] A: Again, it could have been. I'm —
 [7] Q: Could it have been — in October would you
 [8] have had this conversation with Mr. Sweat?
 [9] A: It could have been. I just know that it came
 [10] eventually and —
 [11] Q: Okay. Do you have a clear recollection of
 [12] Mr. Sweat telling you that you were approved with the
 [13] NASD and with the State of Utah?
 [14] A: Oh, there's no question.
 [15] Q: Did you conduct any trading as an agent
 [16] before that date?
 [17] A: No, absolutely not.
 [18] Q: Okay. How long did you pester Mr. Sweat for
 [19] your agent approval?
 [20] A: Since the day the U-4 was turned over to him,
 [21] which I think was the latter part of the very end of
 [22] September.
 [23] Q: Okay. If I told you that your CRD printout
 [24] reflected a date of October 4th, would that be around
 [25] the time that you would have expected it to have been

[1] MR. KLEIN: No.
 [2] THE JUDGE: The deposition of Kent Sweat
 [3] taken May 16th, 2001, is hereby published.
 [4] Go ahead.
 [5] MR. GRIFFIN: Q. Mr. Rice, can you turn
 [6] to page 102 of Mr. Kent Sweat's deposition taken on May
 [7] 16th, 2001. Excuse me. I'm sorry. I've given you the
 [8] wrong page. Page 106. Okay. Are you there?
 [9] A: Yes.
 [10] Q: Okay. I realize it's a little awkward, and
 [11] it will be brief, but I'm going to take the role of
 [12] myself in this deposition. This was a portion of Mr.
 [13] Sweat's testimony during the cross-examination. And
 [14] I'm asking the questions. I want you to read the
 [15] answers. Can you see clearly the answers?
 [16] A: Yes.
 [17] Q: All right. Starting at line 21. "Question:
 [18] Mr. Klein talked to you about the timing of the agent's
 [19] license and approval for Utah and for the NASD?"
 [20] A: "Yes."
 [21] Q: "And you have a distinct recollection — you
 [22] had a conversation with the NASD in which they said you
 [23] were approved in Utah and/or that Mr. Rice was approved
 [24] in Utah and with the NASD?"
 [25] A: "Yes."

[1] submitted?
 [2] A: That could have been. I believe it was
 [3] signed — the 29th of September is sticking in my mind,
 [4] but, you know, that's beside the point, you know.
 [5] Q: At the time that you began your activities in
 [6] trading did you believe that you were approved in Utah?
 [7] A: Oh, definitely, yes.
 [8] Q: And with the NASD?
 [9] A: Yes.
 [10] Q: You attended the deposition of Mr. Sweat?
 [11] A: Yes.
 [12] Q: Do you recall his testimony on this point?
 [13] A: Yeah, I think I, you know, remember.
 [14] Q: Let's go to that. I've placed in front of
 [15] you the deposition.
 [16] MR. KLEIN: Judge, do you have it?
 [17] THE JUDGE: I do not have it, no.
 [18] MR. GRIFFIN: I thought we published this.
 [19] THE JUDGE: I know the discussion came up,
 [20] but I don't know it has been. That's probably why I
 [21] don't have it.
 [22] MR. GRIFFIN: If it wasn't, then — I
 [23] thought it was. I would return the favor to Mr. Klein
 [24] and publish the deposition now.
 [25] THE JUDGE: Any objection?

[1] Q: "That was a telephone conversation, according
 [2] to your recollection, because it was hard to access the
 [3] Internet and find out that information?"
 [4] A: "Uh-huh. Plus it was all new and try as I
 [5] might to get one of those classes to learn how it
 [6] worked it was hard to use. But I think I could have
 [7] used it but I was having a hard time connecting.
 [8] Whether it was my computer or their system or whatever.
 [9] But I know for a fact that I contacted them."
 [10] Q: "Question: And you conveyed that approval to
 [11] Mr. Rice?"
 [12] A: "Yes."
 [13] Q: "Question: Mr. Rice was calling you every
 [14] single day to get that approval, correct?"
 [15] A: "That's correct."
 [16] Q: "And he didn't trade before then, did he?"
 [17] A: "He didn't."
 [18] Q: "But once you gave him the approval he
 [19] traded?"
 [20] A: "That's my understanding. And it was correct
 [21] to say that he was calling me every day. He could have
 [22] called me 100 times until he had that approval. Until
 [23] I thought he had that approval I wouldn't let him do
 [24] it."
 [25] Q: "About how long — about how long did he call

[1] between the time you would have submitted the U-4?"
[2] A: "I don't know how long it was."
[3] Q: "How long was he pestering you to find this
[4] out?"
[5] A: "It was a while."
[6] Q: "A week?"
[7] A: "Probably. And in the meantime the NASD
[8] called and had questions, and I answered questions and
[9] talked to them many times during that period."
[10] Q: "And as you sit here today your best
[11] recollection is that your testimony is that you talked
[12] with somebody in the Washington, D.C., office of the
[13] NASD?"
[14] A: "In the Washington, D.C. Office, that general
[15] area, yeah."
[16] Q: "Back east?"
[17] A: "Definitely. The number is (301) 590-6500."
[18] Q: "Is there any possibility you could have been
[19] mistaken in your recollection on this point?"
[20] A: "No. I might have made a mistake or
[21] something, but that's definitely how I did it."
[22] Q: "And you first learned about the problem with
[23] Mr. Rice's approval when you spoke to the state?"
[24] A: "Right."
[25] Q: "After the March 2000 problem?"

[1] Q: Now, this is important. Did you receive any
[2] notice from Fiserv that you were not approved in the
[3] State of Utah until the Division told you — or until
[4] the Division told Mr. Sweat after March 2000?
[5] A: That's correct.
[6] Q: And you knew that right away after they told
[7] him, is that correct?
[8] A: I knew that they were —
[9] Q: Mr. Sweat conveyed that to you, didn't he?
[10] A: That's correct, yeah. I mean it was in one
[11] of his correspondence with them after the audit, but it
[12] was fairly recent, you know. I'm not sure, you know.
[13] It was in the last two or three months or whatever.
[14] But it took both of us by surprise, that's for sure.
[15] Mainly Kent, because Kent was the one, you know,
[16] getting the approval.
[17] Q: At the time that these events were occurring
[18] is it true that the NASD was switching over to an
[19] Internet-based CRD system?
[20] A: Yes, that's correct.
[21] Q: And do you know if there were problems with
[22] that system, being able to access it during the
[23] transition time?
[24] A: Yes, there was.
[25] Q: What was the previous broker/dealer you were

[1] A: "That's the first time I'd learned of it —
[2] heard of it."
[3] Q: "So inbetween the time you actually approved
[4] according to the NASD machine and the time that you
[5] thought he was approved you didn't go back into the
[6] system to double check on that or anything?"
[7] A: "No."
[8] Q: "In your experience, in your position as a
[9] principal of a broker/dealer, is the broker/dealer's
[10] responsibility to convey to the agent that they have
[11] been approved?"
[12] A: "Yes."
[13] Q: "So you were acting in accordance with that
[14] generally recognized principle?"
[15] A: "Correct."
[16] Q: Mr. Rice, does this testimony from Mr. Sweat
[17] agree with your recollection of the events regarding
[18] when you were approved?
[19] A: Yes, except for perhaps his recollection of
[20] the — you know, the week or so, you know. I mean it
[21] was, you know, four — or three — two, three, four,
[22] weeks.
[23] Q: But with that distinction it comports with
[24] your recollection?
[25] A: Yeah, correct.

[1] with before Intermountain Financial Services?
[2] A: Well, I guess immediately after I was
[3] still — with our application — my license was with
[4] Breakout Stocks Corporation.
[5] Q: Breakout Stocks Corporation was not a
[6] broker/dealer?
[7] A: No, that's why I say it was an application.
[8] But my license was —
[9] Q: Before that. Before that.
[10] A: Network Capital. We actually were dual
[11] licensed when Breakout Stocks applied for application.
[12] To be a member you have to do a license. If your prior
[13] broker approves that to a licensing, which they
[14] typically approve.
[15] Q: Showing you now what is going to be marked
[16] as —
[17] THE JUDGE: 20.
[18] (Respondent's Exhibit 20 marked.)
[19] MR. GRIFFIN: Q. Respondent's 20. And I
[20] will represent to you, Mr. Rice, that I printed this
[21] off this morning from my access to the Internet off the
[22] Division's web site. Off the security Division's web
[23] site. Do you recognize this document? This form, I
[24] should say?
[25] A: Yes.

[1] Q: What is this form?
[2] A: This is referred to as a U-5.
[3] Q: Okay. At the time that you left — you say
[4] Network —
[5] A: Network Capital.
[6] Q: Did you fill out or sign a U-5?
[7] A: Yes.
[8] Q: Okay. I want to be specific about this. Who
[9] did this?
[10] A: In answering your question, you mean who
[11] fills this out?
[12] Q: Yes.
[13] A: I believe it's — the broker doesn't have a
[14] whole lot to do with it, as I remember.
[15] Q: Okay.
[16] A: It's, basically, the preceding B/D.
[17] Q: The B/D does it. Whereas, the U-4 you sign,
[18] you hand it to the B/D. In a termination situation
[19] it's the B/D that fills out this form, is that not
[20] correct?
[21] A: Yeah, that's my recollection.
[22] Q: Okay. Because sometimes you don't leave on
[23] good terms with the broker/dealers, is that correct?
[24] A: Yes, exactly.
[25] Q: Sometimes there are disagreements. Members

[1] of the NASD are required to file this form —
[2] A: Yes.
[3] Q: — correct?
[4] A: Yes.
[5] Q: Now I want to go to the issue of the payment
[6] of customer debits. Let's see. In March of 2000 there
[7] was a serious problem with some of your customer
[8] accounts. What was the problem and how did it come to
[9] your attention?
[10] A: Well, the — first of all, the market was in
[11] a — March 10th we believe as — you know, as traders,
[12] that, you know, that was the start of the bear market.
[13] Extreme volatility set in with the market at that time.
[14] Continued, you know, very extreme volatility throughout
[15] the rest of the month, basically.
[16] Q: And extreme volatility, depending on which
[17] way it's going, is bad for an options strategy;
[18] correct? It can be?
[19] A: It can be.
[20] Q: It can be.
[21] A: (nodding head affirmatively).
[22] Q: There was a problem about March 17th with
[23] your customer accounts. What was the problem and how
[24] did you find out about it?
[25] A: Well, we found out that some of our accounts

[1] didn't have adequate exposure or margin capabilities to
[2] do covered spreads or option spreads.
[3] Q: How did you find out about that?
[4] A: Came down to me from the Risk Manager at
[5] Fiserv.
[6] Q: When? And who?
[7] A: On that day. It was either 16th or 17th.
[8] The day or two before option expiration.
[9] Q: Who is the Risk Manager?
[10] A: Craig. I can't remember.
[11] Q: Marchetti?
[12] A: Marchetti, yes.
[13] Q: So on the 16th or the 17th you received a
[14] telephone call from Mr. Marchetti?
[15] A: Yes.
[16] Q: What did he say?
[17] A: He was — he was pretty hysterical. He was
[18] pretty upset.
[19] Q: And what else did he say? That tells me how
[20] he was, what his attitude was.
[21] A: Okay.
[22] Q: What did he say?
[23] A: He said that, as I mentioned, there was some
[24] spreads in clients' accounts and with the volatility of
[25] the market it had moved against them, causing some

[1] damage to — obviously, to equity is what we refer to
[2] it as.
[3] Q: To equity? Explain that.
[4] A: Equity in a client's account. You know,
[5] their equity. Whether that be, you know, just the
[6] amount they own in an account.
[7] Q: Okay. Another time we'll go back and we'll
[8] talk about how the problem occurred, but for now I want
[9] to focus on Fiserv's position on March 17th with
[10] respect to net debit balances in customer accounts. Do
[11] you recall March 17th?
[12] A: Oh, yes. Yeah, it's very vivid in my mind.
[13] Q: Did Mr. Sweat call you on March 17th and talk
[14] to you about this?
[15] A: I believe — yes, I'm sure we had a
[16] conversation that day. It took place that day is what
[17] I mean to say.
[18] Q: In your conversation what did Mr. Sweat say?
[19] A: Well, Mr. Sweat — we had the same
[20] conversation, basically, I had with Craig.
[21] Q: Okay. You were present at the time that Mr.
[22] Sweat gave his deposition. I want you to turn to page
[23] 103. We'll go through this again. I'll read the
[24] question. You read the answer. For Mr. Sweat.
[25] "Question: You were contacted correctly by

[1] Fiserv with regard to these — we'll call them margin
[2] calls, that debit balance?"
[3] THE JUDGE: What page are you on?
[4] MR. GRIFFIN: Oh, I'm sorry. 102. Did I say
[5] 103?
[6] THE JUDGE: You said 103.
[7] MR. GRIFFIN: 102, line three.
[8] THE JUDGE: Thank you.
[9] MR. RICE: Am I supposed to answer in Kent's
[10] place again?
[11] MR. GRIFFIN: Q. Yes.
[12] A: "Yes."
[13] Q: "When?"
[14] A: "I think it was Friday probably. If that was
[15] the 17th, it was probably Friday."
[16] Q: "What kind of money was involved?"
[17] A: "Over 300,000."
[18] Q: "300,000?"
[19] A: "Well, that they wanted paid."
[20] Q: "They wanted it paid?"
[21] A: "Yes."
[22] Q: "But they sent out so-called margin calls to
[23] customers, correct?"
[24] A: "Uh-huh."
[25] Q: "Did they think the customers were going to

[1] A: "They said I would be if, yes, I didn't do
[2] it."
[3] Q: "And they were adamant about that?"
[4] A: "They were."
[5] Q: "They didn't offer to send Jay the commission
[6] checks or you the commission checks in the transaction?
[7] They just kept the money, didn't they?"
[8] A: "Yeah."
[9] Q: "And they demanded money in addition to
[10] that?"
[11] A: "That's right."
[12] Q: "And you shared this with Jay?"
[13] A: "Yes."
[14] Q: "And Jay —"
[15] A: "I also checked with Mr. King and he said,
[16] 'Yeah, you've got to pay them.'"
[17] Q: "Okay. At this time Fiserv didn't instruct
[18] you to put the money into the customer accounts, did
[19] they?"
[20] A: "No."
[21] Q: "They just wanted the money?"
[22] A: "They just wanted the money."
[23] Q: "A couple of points I wanted to clear up from
[24] this. A couple of terms that were raised. What is,
[25] "net capital," for a broker/dealer firm?"

[1] pay it?"
[2] A: "No."
[3] Q: "What did they do?"
[4] A: "Who?"
[5] Q: "To recover the 350,000."
[6] A: "They told me to get it from Jay. The first
[7] thing they said to me is, 'Jay Rice owes us \$300,000.'"
[8] Q: "Really?"
[9] A: "Uh-huh."
[10] Q: "Did they get it from Jay?"
[11] A: "They kept commissions that were there. Jay
[12] sent them \$100,000 and Jay sent another 40,000 and I
[13] sent 40,000. I loaned him 40,000."
[14] Q: "What did Fiserv tell you would happen to
[15] you — or would happen if you and Jay didn't come up
[16] with the 300,000?"
[17] A: "I'd be out of business."
[18] Q: "Pretty substantial threat?"
[19] A: "Yes." "Yeah."
[20] Q: "It's only one, 'Yeah.'" "Did they threaten to
[21] turn you over to the NASD?"
[22] A: "They just said that that will happen. I
[23] don't know if they threatened me or not, but they said
[24] that would happen."
[25] Q: "They said you were out of net capital?"

[1] A: Well, it's the amount of — well, it's a —
[2] really a compilation of several things, but it,
[3] basically, is the equity they need to remain in their
[4] company in order to be in compliance with NASD rules.
[5] Q: The amount of money that needs to be in
[6] compliance with the NASD rules. If you don't comply,
[7] what happens to your broker/dealer firm?
[8] A: You are out of net capital and, therefore,
[9] you're in violation and, therefore, you better make it
[10] come into compliance fairly quick or you'll be out of
[11] business. They'll shut you down.
[12] Q: If you know, how do you come into compliance
[13] by bringing up your net capital?
[14] A: You deposit funds.
[15] Q: You deposit funds.
[16] A: (nodding head affirmatively).
[17] Q: All right. Second point that I wanted to
[18] clear up. Mr. Sweat testified that he also checked
[19] with Mr. King and he said, "Yeah, you've got to pay
[20] them." Who is Mr. King?
[21] A: That is Kent Sweat's attorney.
[22] Q: Legal counsel to Intermountain Financial,
[23] correct?
[24] A: That's correct.
[25] Q: In addition to Mr. Sweat you have by your

[1] contact with Mr. Marchetti firsthand knowledge of
[2] Fiserv's position on the issue of the \$350,000 in net
[3] debit balances, is that right?
[4] **A:** That's correct.
[5] **Q:** You had those conversations, too?
[6] **A:** Yes.
[7] **Q:** Was their attitude similar to how Mr. Sweat
[8] describes it?
[9] **A:** Exactly.
[10] **Q:** So your testimony comports with his on this
[11] point, correct?
[12] **A:** Yes.
[13] **Q:** Did you have an agreement with any customer
[14] to share in any customer losses?
[15] **A:** No.
[16] **Q:** How much money did you come up with
[17] out-of-pocket to satisfy this demand by Fiserv?
[18] **A:** Well, out-of-pocket, besides the commissions
[19] that were retained —
[20] **Q:** It's a bad question. Let me rephrase it.
[21] Understanding the facts. In the aggregate, how much
[22] money can you approximately tell us was from you or
[23] under your control that Fiserv retained or that you
[24] gave them?
[25] **A:** Besides the 40,000 that Kent says that he

[1] loaned to me there was an additional \$310,000 that I
[2] came up with. Whether it came from commissions, loans
[3] from banks, selling property. Various forms.
[4] **Q:** And Mr. Sweat's position that the \$40,000
[5] that came directly from him is actually a loan from
[6] you, correct?
[7] **A:** The — would you say that again?
[8] **Q:** Mr. Sweat's position on the \$40,000 that he
[9] paid, that's a loan from him to you?
[10] **A:** That's correct. That's what I meant to say.
[11] **Q:** Is that your understanding, as well?
[12] **A:** That's basically. I mean it was to be paid
[13] back in commissions.
[14] **Q:** So all of this landed at your door, correct?
[15] **A:** Yes.
[16] **Q:** Mr. Rice, did you in connection with this pay
[17] money to a customer —
[18] **A:** No.
[19] **Q:** — in your estimation?
[20] **A:** Did I pay in this — no.
[21] **Q:** Okay.
[22] Reserving again the right to continue
[23] cross-examination, as we've only gone over a portion of
[24] what I expect to cover, I think that I will secede my
[25] time to a continuation of the State's case with a right

[1] reserved to call Mr. Rice for cross-examination at a
[2] later time.
[3] **THE JUDGE:** That's understood. We'll be in
[4] recess till 10:30.
[5] (break at 10:19 a.m.)
[6] (reconvened at 10:38 a.m.)
[7] **THE JUDGE:** Back on the record after a
[8] recess approximately 15 minutes.
[9] Mr. Griffin.
[10] **MR. GRIFFIN:** I neglected during my cross of
[11] Mr. Rice to offer into evidence Form U-5 marked as
[12] Respondent's Exhibit 20.
[13] **THE JUDGE:** Any objection?
[14] **MR. KLEIN:** I would note that while the
[15] witness identified the document there was no reference
[16] in the record to it. I have some questions about
[17] relevance. But that is the province of Your Honor to
[18] determine its relevance, so I will acquiesce in its —
[19] I have no objection to its admission.
[20] **THE JUDGE:** Mr. Griffin. Just tell me. I
[21] certainly have no problem with receiving it in
[22] evidence, but in terms of any consideration I give it
[23] why was it being offered?
[24] **MR. GRIFFIN:** It was being offered for the
[25] purpose of establishing the witness is familiar with

[1] the form, that this form is the type used by
[2] broker/dealers to send in Notices of Termination to the
[3] CRD system, and for nothing more I think it's necessary
[4] in the context of the record to have a copy of the form
[5] entered in.
[6] Also, we could take judicial notice of the
[7] fact that it's out there. It's available. It's a
[8] uniform form. But I would like a copy entered into the
[9] record for consistency purposes.
[10] **THE JUDGE:** It is received.
[11] (Respondent's Exhibit 20 received.)
[12] Mr. Griffin, as I understand, you've
[13] concluded at this point your cross-examination of Mr.
[14] Rice subject to potential further cross-examination
[15] subsequently.
[16] **MR. GRIFFIN:** Correct, for today I've
[17] concluded the issues I wanted to cover on cross with
[18] Mr. Rice.
[19] **THE JUDGE:** Mr. Klein, your next witness.
[20] **MR. KLEIN:** Dennis Ferguson. We need to
[21] contact him by telephone.
[22] **THE JUDGE:** Thank you.
[23] (pause).
[24] **THE JUDGE:** Mr. Ferguson, this is Steve
[25] Eklund, the Administrative Law Judge for the Department

[1] of Commerce. Can you hear me?
 [2] **MR. FERGUSON:** Yes, sir.
 [3] **THE JUDGE:** Let me just identify before you
 [4] begin your testimony that you're being called here on
 [5] behalf of the Division of Securities, and Mr. Wayne
 [6] Klein will be initially directing questions to you.
 [7] After Mr. Klein has concluded his questions
 [8] Mark Griffin, who represents Jay Rice, may have a few
 [9] for you. Perhaps I will, also.
 [10] At any point during the process, since you're
 [11] testifying by telephone, if you have any difficulty
 [12] hearing any of us, just let us know.
 [13] **MR. FERGUSON:** Okay, sir.
 [14] **WILLIAM DENNIS FERGUSON,**
 [15] after being first duly sworn,
 [16] testified as follows:
 [17] **THE JUDGE:** Mr. Klein, go ahead.
 [18] **MR. GRIFFIN:** Your Honor, can I just ask
 [19] if Mr. Ferguson is present with any of the other
 [20] intended witnesses to this proceeding, which —
 [21] **THE JUDGE:** Mr. Ferguson, is there anyone
 [22] else with you now?
 [23] **MR. FERGUSON:** No, there is not.
 [24] **MR. GRIFFIN:** And the record should reflect,
 [25] for Mr. Ferguson's purposes, that the respondent, Jay

[1] **A:** Fiserv is a clearing firm for introduced
 [2] broker/dealers.
 [3] **Q:** What is your position at the firm?
 [4] **A:** My position is Executive Vice-President,
 [5] Director of Marketing and Sales.
 [6] **Q:** Do you have other people that work underneath
 [7] you?
 [8] **A:** Yes, I do.
 [9] **Q:** And you have responsibility for what types of
 [10] employees?
 [11] **A:** I have responsibility for principally
 [12] Operations and Customer Service employees.
 [13] **Q:** Does Operations include the trading desk?
 [14] **A:** Yes, it does.
 [15] **Q:** Are you familiar generally with the firm's
 [16] record keeping requirements?
 [17] **A:** Somewhat.
 [18] **Q:** What is the role of a clearing firm?
 [19] **A:** A clearing firm enters into a contractual
 [20] relationship with an NASD member broker/dealer to
 [21] provide specific clerical functions for that
 [22] broker/dealer. It's a relationship that is — the
 [23] terms of which are spelled out specifically in a
 [24] clearing agreement and also in a letter to clients
 [25] mandated by the New York Stock Exchange, which happens

[1] Rice, is present.
 [2] **THE JUDGE:** Understood. Go ahead, Mr.
 [3] Klein.
 [4] **DIRECT EXAMINATION BY MR. KLEIN**
 [5] **MR. KLEIN:** Q. Mr. Ferguson, good
 [6] afternoon, I guess, for you.
 [7] **A:** Yes, it is.
 [8] **Q:** In fact, I'm stealing your lunch time.
 [9] **A:** That's okay. I can afford it.
 [10] **Q:** Well, we'll take your word for it. I
 [11] appreciate your time. Do you have with you the
 [12] exhibits that we sent to you?
 [13] **A:** Yes, I do.
 [14] **Q:** Okay. And we'll be referring to them by
 [15] number rather than by the label on them, so hopefully
 [16] you'll find that easier.
 [17] **A:** Okay.
 [18] **Q:** We have a court reporter here, so would you
 [19] give your full name and spell your last name, please?
 [20] **A:** My name is William Dennis Ferguson.
 [21] F-e-r-g-u-s-o-n.
 [22] **Q:** And you're employed by whom, Mr. Ferguson?
 [23] **A:** I'm employed by Fiserv, F-i-s-e-r-v,
 [24] Correspondent Services.
 [25] **Q:** And what does Fiserv do?

[1] to be called a Rule 382 letter.
 [2] **Q:** You indicated that you performed clerical
 [3] services. Does that include trade execution services?
 [4] **A:** Yes.
 [5] **Q:** Now, you said that the services are provided
 [6] for an NASD member broker/dealer?
 [7] **A:** Correct.
 [8] **Q:** Is that NASD member broker/dealer sometimes
 [9] called an introducing broker?
 [10] **A:** Yes.
 [11] **Q:** How does an introducing broker differ from a
 [12] clearing broker?
 [13] **A:** An introducing broker differs from a clearing
 [14] broker. I assume you mean by, "clearing broker," a
 [15] clearing firm.
 [16] **Q:** Correct.
 [17] **A:** Okay. Well, a clearing firm is also an NASD
 [18] member, so in that case there's a similarity.
 [19] Generally, the clearing firms do not have a — retail
 [20] sales forces or deal directly with members of the
 [21] public, which is the difference between a — a
 [22] distinction between that of an introducing firm, which
 [23] is generally a retail oriented organization who
 [24] solicits securities transactions from members of the
 [25] public.

[1] Q: Okay. So is it fair to say that the
[2] introducing broker is the one with the retail
[3] customers, but the firm may not be a member of the
[4] exchanges and, therefore, you provide an intermediary
[5] between the broker/dealer and the exchanges?
[6] A: That's correct.
[7] Q: Is the introducing broker/dealer sometimes
[8] also called "correspondent?"
[9] A: Yes.
[10] Q: Because — I mean in what way are they a
[11] correspondent?
[12] A: Well, the term "introducing firm,"
[13] "correspondent," "ID," which is an abbreviation for
[14] introducing broker, are all vernaculars that are used
[15] in the industry or the relationship I described
[16] earlier.
[17] Q: Are you aware of Mr. Jay Rice? Who he is?
[18] A: I am aware of who he is.
[19] Q: Do you know which firm he works for?
[20] A: Currently, no.
[21] Q: Are you aware of Intermountain Financial
[22] Services?
[23] A: Yes, I am.
[24] Q: Is Intermountain Financial Services a
[25] correspondent of Fiserv?

[1] A: I believe they still are.
[2] Q: So Intermountain is the introducing broker
[3] and Fiserv is the clearing broker?
[4] A: Correct.
[5] Q: So when you have your — the relationship
[6] that Fiserv has, is it correct to say that your
[7] relationship is with the introducing broker/dealer
[8] firm, not with Intermountain's customers?
[9] A: That's correct. Generally speaking, that's
[10] correct.
[11] Q: And are the customers of Intermountain
[12] Financial Services your customers?
[13] A: They're — from a legal sense they are a
[14] retail customer. A member of the public is a customer
[15] of the clearing firm for only a very specific purpose,
[16] and that purpose is as outlined in the Securities Act,
[17] which is the Security Investor Protection Act, which
[18] states that they are customers of the clearing firm for
[19] purposes of a financial protection of the assets that
[20] are held by the clearing firm.
[21] In other words, if a clearing firm is holding
[22] a thousand dollars cash and a hundred shares of General
[23] Motors securities for the customer, we are challenged
[24] to protect the custody of that asset. Not to — not to
[25] infer that we're responsible for market fluctuation or

[1] anything like that. But once we hold an asset,
[2] whatever asset it is, we're responsible for making sure
[3] that we properly custody that asset.
[4] Q: But for other purposes, besides that
[5] exception, are the retail customers your customers?
[6] A: No.
[7] Q: So do retail clients of Intermountain call up
[8] Fiserv and place trades?
[9] A: Say that again?
[10] Q: So would retail customers, clients of
[11] Intermountain Financial Services, call up Fiserv and
[12] ask for trades in their account?
[13] A: Generally no.
[14] Q: And if they did, what would you do?
[15] A: Well, we would refer them to their
[16] introducing firm. If they did call. It could be an
[17] instance where a customer calls because of an emergency
[18] at the introducing firm where there's a power outage or
[19] whatever, you know.
[20] But generally speaking, the methodology and
[21] the contractual relationship states that the customers
[22] will call the introducing firm. The introducing firm
[23] is responsible for their customers and responsible for
[24] relaying or forwarding security transactions for
[25] execution and clearing to us.

[1] Q: At Intermountain Financial Services did
[2] Fiserv do clearing for all of — let me back up. Did
[3] Fiserv do all of the clearing functions for
[4] Intermountain Financial Services?
[5] A: Well, Fiserv provided clearing services for
[6] Intermountain, but I believe Intermountain had an
[7] additional clearing relationship, which we call dual
[8] clearing, where you have more than one. In this case
[9] two. Hence, dual clearing. Where they dual cleared
[10] with another introducing firm. The name of which I
[11] don't recall.
[12] Q: Then do you know which trades were sent to
[13] Fiserv and which trades were sent to the other firm?
[14] A: Well, not really. The only trades I know
[15] that were sent to Fiserv were the ones that we
[16] received.
[17] Q: Okay. Did Fiserv receive trades from Jay
[18] Rice?
[19] A: I believe so.
[20] Q: Do you know if Fiserv got trades from any
[21] other brokers at Intermountain?
[22] A: I don't recall, but we may have.
[23] Q: I want to talk about the process of trades
[24] being transmitted from, say, Jay Rice or his office to
[25] Fiserv. Can you describe what you understand the

[1] process to be?

[2] **A:** The process for Jay Rice?

[3] **Q:** Yes.

[4] **A:** Yes. There's only really two methodologies
[5] or means or mediums of transmission of orders and
[6] information. Some broker/dealers have Internet or
[7] frame relay communication links to our facility. You
[8] know, via the computer terminal. A personal computer.

[9] And then others — or another menu would be
[10] that you could telephone the transit orders to us over
[11] the voice line.

[12] **Q:** Do you know whether Intermountain or Jay Rice
[13] had the capability to submit the orders the first way,
[14] via the computer?

[15] **A:** I don't recall. He may have, and I don't
[16] recall.

[17] **Q:** Do you know if Mr. Rice telephoned orders
[18] to —

[19] **A:** Yes, I do.

[20] **Q:** And did he telephone orders in?

[21] **A:** Yes, he did.

[22] **Q:** And would all those calls go to one person at
[23] Fiserv or might it go to any of several people?

[24] **A:** It may have gone to any of several people.
[25] It could have gone to anyone on my liaison desk, as

[1] handled by a supervisor. There were — I think
[2] there's — there were three supervisors. Andrea
[3] Matthews. Perhaps Peter Cunnion, C-u-n-n-i-o-n. And
[4] perhaps Don Exner. That's E-x-n-e-r. And then they
[5] were — the other individual who was very active in
[6] this pre-approval process was Craig, last name
[7] Marchetti, M-a-r-c-h-e-t-t-i.

[8] **Q:** Thank you. If you would look at Exhibit 21.

[9] **A:** Okay.

[10] **Q:** Does it say, "Correspondent Customer's Option
[11] Approval Form"?

[12] **A:** Yes, it does.

[13] **Q:** Is this a form used by the introducing
[14] brokers when doing options trading for their retail
[15] customers?

[16] **A:** This is the form that Fiserv Correspondent
[17] Services requires that the introducing firm send to
[18] Fiserv indicating the introducing firm's approval of
[19] the customer for various option strategies.

[20] **Q:** Let me make sure I understand that. So this
[21] is a form required by Fiserv, correct?

[22] **A:** Correct.

[23] **Q:** But it was to be filled out by the
[24] introducing broker?

[25] **A:** Correct.

[1] it's called, which answers the telephone, and that desk
[2] is generally staffed from — anywhere from eight to 12
[3] people, depending on the requirements.

[4] **Q:** So beginning in late 1999 when Fiserv opened
[5] a relationship — or became the clearing firm for
[6] Intermountain Mr. Rice could call in orders to anyone
[7] on the liaison desk?

[8] **A:** That's correct.

[9] **Q:** Did those procedures ever change at Fiserv?

[10] **A:** Well, he continued to call in to the trading
[11] desk, but the procedure changed only to the extent that
[12] we restricted which people on the trading desk could
[13] approve a transaction prior to being submitted into the
[14] system for execution.

[15] **Q:** When did that change occur?

[16] **A:** You know, I don't have a specific date, but I
[17] probably want to say it was around January.

[18] **Q:** Of which year?

[19] **A:** That would be 2000.

[20] **Q:** Okay. And so after that date any calls from
[21] Mr. Rice would be directed to only specific
[22] individuals?

[23] **A:** That's what the plan was, yes.

[24] **Q:** Which individuals would those be?

[25] **A:** Well, if I recall properly, they had to be

[1] **Q:** Or, I'm sorry, introducing broker/dealer.

[2] **A:** Correct.

[3] **Q:** And what kind of information is on this form
[4] that Fiserv wanted to see?

[5] **A:** The information they wanted to see is that
[6] the customer was approved by the introducing firm to
[7] enter into specific types of option strategies.

[8] **Q:** How would you know whether the client had
[9] been approved by the introducing broker firm for
[10] specific strategies?

[11] **A:** Well, on this particular document, Exhibit
[12] 21, about a third of the way down the page it says,
[13] "Types of strategies," and then there's boxes there
[14] which indicate the strategies that the introducing firm
[15] has approved the client to become involved with.

[16] And then it is — at the bottom is signed by
[17] the various licensed personnel at that firm.

[18] **Q:** Okay. Then going back to those boxes that
[19] you talked about, if a box was not checked, does that
[20] mean that Fiserv would make sure that no trade of that
[21] type could be conducted?

[22] **A:** Well — the question is to make sure, you
[23] know — the purpose of this as required by the OCC
[24] is —

[25] **Q:** What does, "OCC," mean?

[1] **A:** Option Clearing Corp., which is the
 [2] regulatory body governing option transactions in the
 [3] securities industry.
 [4] **Q:** Okay.
 [5] **A:** Okay. Then they have a host of rules. And
 [6] I'm not pleased — I'm not saying this in an
 [7] authoritative manner, so I'm not quoting a rule to you
 [8] or anything, but the OCC requires that we annotate on
 [9] the electronic record that we keep of different
 [10] customers what levels of strategies they have been
 [11] pre-approved to enter into.
 [12] Now, your question was do we — I think you
 [13] used the words, "make sure," that they don't do one of
 [14] the other strategies. The answer is no. We attempt to
 [15] keep the orders in line with what the strategies have
 [16] been approved for.
 [17] **Q:** Who has primary responsibility to make sure
 [18] that options trading is consistent with the approvals
 [19] indicated on this form?
 [20] **A:** The introducing broker/dealer.
 [21] **Q:** And in that case that would be who?
 [22] **A:** It would be Intermountain Securities.
 [23] **Q:** Okay. Turn to Exhibit 22, if you would.
 [24] **A:** Okay, sir.
 [25] **Q:** Would you please explain the purpose of this

[1] document?
 [2] **A:** I'm not familiar with this document. It
 [3] looks to be a — well, it's an option approval —
 [4] client Option Agreement and Approval. This is a form
 [5] that is used in the industry by many firms to collect
 [6] the data necessary to — you know, to make a
 [7] suitability determination for their customers. This is
 [8] not a Fiserv form that is required by Fiserv.
 [9] **Q:** Is this a document that Fiserv requires to be
 [10] on file before trading is done in a customer account?
 [11] **A:** Not required to be on file at Fiserv.
 [12] **Q:** Does Fiserv get copies of these documents?
 [13] **A:** They may.
 [14] **Q:** If I can get you to turn to Exhibit 38.
 [15] **A:** Yes.
 [16] **Q:** And the second page under, "Activity."
 [17] **A:** Yes.
 [18] **Q:** On April 7th, can you tell me what that entry
 [19] shows?
 [20] **A:** April 7th under, "Activity," it says,
 [21] "Received," meaning — again, this is a Fiserv
 [22] Statement of Account.
 [23] **Q:** Okay.
 [24] **A:** So Fiserv received a deposit of funds
 [25] recorded as of — that's what the, "AO," is — as of

[1] 4/6 in the amount of \$100,000.
 [2] **Q:** So as of April 6th that account was treated
 [3] as having a hundred thousand dollars worth of
 [4] purchasing ability?
 [5] **A:** Well, I'm not going to say that.
 [6] **Q:** Oh.
 [7] **A:** I don't know what — it just means that the
 [8] account received a hundred thousand dollars.
 [9] **Q:** Okay. Was the money received in the account
 [10] on the 7th or on the 6th?
 [11] **A:** Well, the money was received physically into
 [12] the firm on the 7th, and it was posted on the 7th to
 [13] reflect as if it were — it had been received on the
 [14] 6th. So that's why they have that as of the day
 [15] before.
 [16] **Q:** Okay. And if you can turn, please, to
 [17] Exhibit 42.
 [18] **A:** Yes.
 [19] **Q:** Do you recognize the form that is represented
 [20] on Exhibit 42?
 [21] **A:** Yes.
 [22] **Q:** Is that a form created by Fiserv?
 [23] **A:** Yes, it is.
 [24] **Q:** Would this be created by somebody under your
 [25] direction, that you supervise?

[1] **A:** The form may not have been created by someone
 [2] under my —
 [3] **Q:** I'm sorry. Would the form be filled out by
 [4] people that are under your direction?
 [5] **A:** Yes, it could be.
 [6] **Q:** Have you looked at this particular form?
 [7] **MR. GRIFFIN:** I'm sorry. I need to clarify
 [8] what —
 [9] **MR. KLEIN:** I'm sorry. Exhibit 42.
 [10] **MR. GRIFFIN:** Exhibit 24.
 [11] **MR. FERGUSON:** Could you restate that for me?
 [12] **MR. KLEIN:** Q. Have you looked at this
 [13] document previous?
 [14] **A:** Exhibit Number 42?
 [15] **Q:** Yes.
 [16] **A:** I looked at this particular paper I'm holding
 [17] in my hand?
 [18] **Q:** Right.
 [19] **A:** I'm looking at it right now.
 [20] **Q:** Okay. What is this particular document?
 [21] What does it indicate?
 [22] **A:** Well, this document indicates that Fiserv
 [23] received instructions from the introducing
 [24] broker/dealer to open an account for — what it looks
 [25] like is Poulson Trust and that particular account

[1] number.
[2] Q: Okay.
[3] A: And that they — that, evidently, there was a
[4] request by the broker/dealer to have this particular
[5] account execute transactions on a margin account, which
[6] means, as you may know, that assets are placed and
[7] Fiserv is asked to lend money to the customer. The
[8] collateral being a security. A stock, or a bond. And
[9] we lend money as a matter of practice to customers who
[10] post collateral, being the securities.
[11] Q: Is it Fiserv's policy if you're opening a
[12] margin agreement for the trust, that the trust has to
[13] specifically allow for margin trading?
[14] A: Yes, it does.
[15] Q: And so is it Fiserv's policy that margin
[16] trading should not occur in a trust unless there is a
[17] document on file showing that the trust has margin
[18] authority?
[19] A: That is correct.
[20] Q: Does this document indicate that as of
[21] February 18th Fiserv did not have any such document on
[22] file?
[23] A: Yes, it does.
[24] Q: This is signed by a Rae Chelzelen or —
[25] A: Yes.

[1] Q: Yes.
[2] A: Page three.
[3] Q: The next to the last entry on page three.
[4] A: Um-hum. (affirmatively).
[5] Q: Does that indicate that on February 18th that
[6] options were sold — call options were sold from a
[7] margin account?
[8] A: I'm sorry, yeah. I'm sorry. I was looking
[9] at the wrong page. The margin activity actually
[10] commenced on the 14th of February.
[11] Q: Okay.
[12] A: Which is the first item in the account.
[13] Q: All right.
[14] A: Because it says, "Opening balance margin
[15] account, zero." Then it shows — the first entry
[16] under, "Activity," is February 14th, "Received ten
[17] calls," meaning they must have been transferred in from
[18] either cash accounts or delivered into the firm from
[19] another dealer.
[20] Q: Now, is that opening of the margin account
[21] and the receiving the ten calls something that Fiserv
[22] would have done on its own or only on instruction from
[23] the introducing broker?
[24] A: We only do it on instruction from the
[25] introducing broker.

[1] Q: Is she an employee of Fiserv?
[2] A: Yes, she is.
[3] MR. KLEIN: Your Honor, move admission of
[4] Exhibit 42.
[5] THE JUDGE: Any objection?
[6] MR. GRIFFIN: None.
[7] THE JUDGE: As identified it is received.
[8] (Exhibit 42 received.)
[9] MR. KLEIN: It was previously admitted
[10] conditionally.
[11] THE JUDGE: Understood.
[12] MR. KLEIN: Q. If you'll turn, please,
[13] to Exhibit 44.
[14] A: Yes.
[15] Q: Now, can you tell, based on Exhibit 44, when
[16] margin trading first occurred in this account? Or at
[17] least for this monthly statement?
[18] A: I would say — (pause).
[19] Q: Are you looking at page three?
[20] A: No.
[21] Q: Oh.
[22] A: Hold on a second here. We're on Exhibit
[23] Number 44?
[24] Q: Correct.
[25] A: Okay. I'm on page three?

[1] Q: I want to talk about discretionary trade. In
[2] the industry is it standard to mark discretionary
[3] trades as discretionary?
[4] A: Yes, it is.
[5] Q: Do you know if the NASD rules require that?
[6] A: I believe they do.
[7] Q: Do Fiserv's trade tickets have boxes that
[8] allow them to be marked as discretionary trades?
[9] A: If they don't — if the particular order form
[10] — order memorandum as they're known — if the
[11] particular order memorandum we have doesn't have a box
[12] that specifically says, "Discretionary," which many of
[13] them have in the past done — indicated, then the word
[14] "Discretionary" is written on the ticket and entered
[15] into the system so that it prints on the confirmation
[16] that the trade was discretionary.
[17] Q: Okay. If a correspondent, an introducing
[18] broker or one of his agents tells Fiserv that a trade
[19] is discretionary, is that noted on your system?
[20] A: Yes, it is.
[21] Q: Would it be noted on the trade ticket?
[22] A: It should be.
[23] Q: Would it then be coded on the computer record
[24] of the transactions?
[25] A: Yes, it should.

[1] Q: Is there any way that Fiserv has of knowing
[2] if a trade is discretionary other than information you
[3] get from the broker?

[4] A: No.

[5] Q: To your knowledge, did anyone at Fiserv ever
[6] tell Mr. Rice that Fiserv did not want to know if a
[7] trade was discretionary?

[8] A: Please repeat the question.

[9] Q: To your knowledge, did anyone at Fiserv ever
[10] tell Mr. Rice that Fiserv did not want to know whether
[11] his trades were discretionary?

[12] A: I do not know that.

[13] Q: Would it seem odd to you if somebody at
[14] Fiserv would tell an introducing broker that Fiserv did
[15] not want to know if trades were discretionary?

[16] MR. GRIFFIN: Your Honor, I object to that
[17] question. Calls for speculation. And given the fact
[18] that we're on a phone conversation here, it's more
[19] difficult to handle this type of testimony, but I think
[20] that clearly calls for speculation.

[21] THE JUDGE: Well, I don't see how the mode
[22] of testifying affects the admissibility of the
[23] evidence, but I think the question does need to be
[24] rephrased. And let me see if I can capture it, Mr.
[25] Klein.

[1] Mr. Ferguson, would Fiserv always desire to
[2] know if a trade is discretionary?

[3] MR. FERGUSON: No.

[4] THE JUDGE: Well, let me rephrase. You said
[5] the only way Fiserv would know if discretionary
[6] authority is occurring is if the introducing broker
[7] alerts you to that, is that correct?

[8] MR. FERGUSON: Yes, sir.

[9] THE JUDGE: Would it matter to Fiserv
[10] whether you had that knowledge in any given transaction
[11] where it was taking place?

[12] MR. FERGUSON: No.

[13] MR. KLEIN: Q. Because you simply don't
[14] care?

[15] A: Well, the requirement — if I may.

[16] Q: Please.

[17] A: The requirement to annotate on an order
[18] memorandum that a trade is discretionary is the
[19] responsibility of the introducing firm. It's not the
[20] responsibility of the clearing firm. We simply — when
[21] we receive an order from an introducing firm we —
[22] under the terms of our clearing agreement we have to
[23] assume that the order is genuine, that it is accurate,
[24] and that it reflects exactly what the desires and
[25] wishes of the customer were.

[1] So if there are stipulations to an order or
[2] conditions to an order, we only accept the information
[3] as given to us by the introducing broker/dealer and
[4] assume that he told us all the information that is
[5] necessary for us to properly annotate these
[6] transactions.

[7] Q: Okay.

[8] THE JUDGE: Let me rephrase it, Mr. Klein.
[9] I just want to pick up with one more.

[10] Mr. Ferguson, I believe you testified it is
[11] an industry standard for the broker to identify a
[12] discretionary trade as being discretionary if, in fact,
[13] it is.

[14] MR. FERGUSON: That's a requirement.

[15] THE JUDGE: Given that requirement, would
[16] anyone at Fiserv instruct a broker that they need not
[17] make that designation, if that is the case?

[18] MR. FERGUSON: No.

[19] THE JUDGE: Thank you.

[20] MR. FERGUSON: I cannot believe that would
[21] have happened.

[22] MR. GRIFFIN: Your Honor, I'll object to the
[23] question as you phrased it because that calls for
[24] speculation.

[25] THE JUDGE: I'm not saying that they did or

[1] did not provide the instruction, Mr. Griffin. That was
[2] not the point of my question. And I was not assuming
[3] that the instruction was ever given. I was asking the
[4] witness given the industry standard should an
[5] instruction like that ever be given, and I think he
[6] indicated it should not.

[7] MR. GRIFFIN: Okay.

[8] THE JUDGE: Thank you.

[9] MR. KLEIN: Q. Mr. Ferguson, as I
[10] understand it, then, Mr. Rice would telephone orders in
[11] to Fiserv to be executed; correct?

[12] A: That is — as I testified earlier, there's
[13] two methodologies. One is via telephone. One is via
[14] electronic means, Internet for frame relay. So he
[15] communicated the orders via one of those technologies,
[16] but —

[17] Q: And let's focus now on the telephone orders.

[18] A: That's what the majority, I believe, of his
[19] were.

[20] Q: Let's focus on those. So let's just assume
[21] for purposes of our discussion that they did not
[22] transmit orders over the computer equipment. Okay?

[23] A: Yes, sir.

[24] Q: So if an order was called in over the
[25] telephone, would Fiserv create a trade ticket?

[1] A: Well, we would create a — we would
 [2] transcribe the information that is telephoned to us
 [3] onto a — onto a piece of paper.
 [4] Q: Okay. What do you call that piece of paper?
 [5] A: Well, that piece of paper could be an order
 [6] ticket. I mean it could be a plain piece of paper. It
 [7] could be one of anything. The point I'm trying to
 [8] make, I guess, is that the requirement for an order
 [9] memorandum, which is the original transcribing of the
 [10] customer's order from the customer to the broker, is
 [11] the document which initiates the — initiates the trade
 [12] and the trade entry process.
 [13] The fact that — keep in mind that, again, if
 [14] it were electronically, I wouldn't write anything
 [15] because it would have been transmitted electronically.
 [16] If it's phoned in, yes, we transcribe that onto a piece
 [17] of paper.
 [18] It so happens that we hand to you a document
 [19] that we call a trade ticket, but it's for our internal
 [20] purposes only. It does not necessarily follow a
 [21] prescribed format or is it mandated to have a
 [22] particular format.
 [23] Q: But you are required to put it in writing?
 [24] To create an order memorandum?
 [25] A: No, the order memorandum — the original

[1] memoranda that Mr. Rice used?
 [2] A: Not to my knowledge.
 [3] Q: To your knowledge, did anybody at Fiserv tell
 [4] Mr. Rice that the order memoranda that he created
 [5] should not include a notation as to whether a trade was
 [6] discretionary?
 [7] A: No one at Fiserv should have said to Mr. Rice
 [8] that he not indicate "Discretionary" on his order
 [9] memorandum.
 [10] Q: I want to move to talking about trade orders
 [11] and aggregating trade orders. Is it fair to say that a
 [12] broker could call in to Fiserv and could identify a
 [13] particular customer account and order a trade into that
 [14] customer account?
 [15] A: Yes.
 [16] Q: And in that case, if the trade were executed,
 [17] the securities would be placed in the customer account?
 [18] A: Correct.
 [19] Q: Did all trades have to indicate the account
 [20] number of a customer?
 [21] A: Yes.
 [22] Q: Were brokers allowed to aggregate trades for
 [23] multiple customers into, say, a block trade?
 [24] A: Yes.
 [25] Q: How would that occur?

[1] order memorandum is created by the introducing broker
 [2] and is required to be recorded and maintained by them.
 [3] Q: Okay.
 [4] A: We are just simply required to accurately
 [5] take the information from the introducing broker and
 [6] enter it into the system. If we are — if we were able
 [7] to sit there and live-type onto a machine, then fine,
 [8] you know. So better for it. But we happen — our
 [9] method happens to be that we write it down on a piece
 [10] of paper.
 [11] Q: Now, you mentioned that the introducing
 [12] broker needs to create an order memorandum?
 [13] A: Correct.
 [14] Q: If the introducing broker creates an order
 [15] memorandum, is that document sent to Fiserv?
 [16] A: No.
 [17] Q: Does Fiserv require that the introducing
 [18] broker FAX to you a copy of that written memorandum
 [19] before you'll do a trade?
 [20] A: No.
 [21] Q: Fiserv will do a trade just based on a phone
 [22] call?
 [23] A: That's correct.
 [24] Q: To your knowledge, did anyone at Fiserv —
 [25] well, let me back up. Have you ever seen the order

[1] A: That would occur by an introducing firm —
 [2] and this is strictly telephonically, I might add —
 [3] would telephonically communicate with our liaison desk
 [4] or the actual trading desk, which is a separate
 [5] function. They would call the liaison desk and
 [6] indicate that they wish to execute an order which was
 [7] an aggregate of several orders for different clients in
 [8] the same particular security issue. If I may give an
 [9] example.
 [10] Q: Please.
 [11] A: An introducing broker/dealer may call up and
 [12] say, "Buy 10,000 shares of IBM," and it is a — that
 [13] 10,000 shares in the parlance of the securities
 [14] industry is generally considered a, quote, "block
 [15] trade" because it's 10,000 shares.
 [16] And they may ask us to execute that trade in
 [17] what is known as their average price account, which is
 [18] a device that captures multiple executions of that
 [19] 10,000-share trade.
 [20] In today's marketplace — and I say, "today,"
 [21] particularly with decimalization, which is not an issue
 [22] here. In today's marketplace it is very common for a
 [23] block trade or an aggregate order of trades to get
 [24] executed at many different prices for that security.
 [25] In the example I gave of 10,000 shares of IBM

[1] it would not be uncommon to receive ten separate
[2] executions from the market maker or exchange, wherever
[3] that order was directed, at ten different prices. The
[4] — generally, the objective of the introducing broker
[5] was to do the purchase as one aggregate so as to be
[6] able to average out the price for the ten customers.

[7] In this example, assuming he had ten
[8] underlying customers, each one in a thousand shares of
[9] IBM, so instead of putting a trade in each account or
[10] in various accounts at various prices, which would lend
[11] one to think that one account is getting a better price
[12] than the other, they would simply average those prices
[13] and then place that 1,000 shares, in the example I
[14] gave, into the ten accounts at the same price or the
[15] average price of all those executions.

[16] Q: That's helpful. Thank you. Do you know the
[17] account number of your average price account?

[18] A: No, I do not.

[19] Q: Okay. Then do I understand the process
[20] correctly that the order would then be placed into the
[21] average price account for execution?

[22] A: Okay.

[23] Q: I mean — let me start over.

[24] A: Yeah.

[25] Q: So the introducing broker calls up and says,

[1] "I want to do a block trade." And then that block
[2] trade is executed. And is that order placed and is it
[3] executed into your average price account?

[4] A: Well, may I just correct your — in one area,
[5] okay?

[6] Q: Please. Correct anything I say wrong.

[7] A: Okay. I'm just trying to explain the
[8] logistics here, okay? And I hope I don't get too
[9] detailed.

[10] In reality, what happens is there's two
[11] circumstances that would involve the two terms we're
[12] using here, "block trade" and "average price." It's
[13] possible that a person calls in and says, "I wish to
[14] buy 10,000 shares of IBM," in the example I'm using,
[15] and not request an execution expressed back to them in
[16] the term of an average price. And it may be for
[17] whatever reason the introducing firm or introducing
[18] broker desires. He may want 10 or 15 or 20 different
[19] prices.

[20] So in that case the individual calls in and
[21] says, "I have a," quote, "block trade" and I want to
[22] buy 10,000 shares of IBM." We execute the trade in
[23] a — what happens to be a block trade account, but
[24] that's not germane. And we would simply report back
[25] the ten prices, or whatever it was, to him.

[1] Now, the second term, "average price,"
[2] involves where that same person would call up and say,
[3] "I have a block trade," which is 10,000 shares, or
[4] options, so many contracts, whatever, "and I want to
[5] put them in — I want them — when you report the
[6] prices back to me I want the prices to have been
[7] averaged out to one price, one common price, the
[8] average price."

[9] So in order for us to logistically facilitate
[10] that request an internal device is used called the
[11] average price account, and that average price account
[12] is noted when we submit the order to the exchange to be
[13] executed, so that when the reports come back at varying
[14] times and with the varying prices those prices are
[15] automatically routed to that average price account,
[16] collected or gathered, and the calculation performed
[17] which creates the average price.

[18] Q: Okay. And so, then, when this trade has been
[19] completed — the 10,000 shares of IBM, for example?

[20] A: Right.

[21] Q: And the execution is all in one account?

[22] A: Correct.

[23] Q: At some later point I think you indicated it
[24] would then be allocated out or transferred to the
[25] individual customers?

[1] A: Correct.

[2] Q: And do I understand you correctly that it
[3] could be transferred out at the individual execution
[4] prices or at the average price? It can be done either
[5] way?

[6] A: Well, it could, but then that would have —
[7] that would have been in contradiction of the intent of
[8] why you put it in the average price account, if you did
[9] it at varying prices.

[10] Q: Who makes the decision whether or not it's
[11] going to be — the price is going to be averaged or
[12] you're going to give customers the field prices?

[13] A: The introducing broker/dealer.

[14] Q: Does Fiserv ever presume to make that
[15] decision for the introducing broker?

[16] A: They should not.

[17] Q: When you transfer securities from the block
[18] trading account or average price account to the
[19] customer accounts is that treated as purchase and sale
[20] or is it simply an allocation of the existing
[21] transaction?

[22] A: Allocation of existing transaction.

[23] Q: We talked about when Mr. Rice initially
[24] starting in late '99 could call in orders to the
[25] trading desk or the, I guess, liaison desk?

[1] A: Correct.
[2] Q: If he called in orders and identified — let
[3] me back up. When Mr. Rice called in orders would he
[4] identify in advance whether the order was for a
[5] particular customer account or, alternatively, whether
[6] it was for the block trading account?
[7] A: Yes.
[8] Q: So if it was a block trade, he would tell you
[9] that?
[10] A: Yes.
[11] Q: When he called up and said he was going to do
[12] a block trade, would Fiserv know how many customers
[13] were in the block?
[14] A: Prior to January?
[15] Q: Sure.
[16] A: Yes — I'm sorry. Scratch that. The answer
[17] to your question is no.
[18] Q: So for a block trade prior to January Fiserv
[19] would not know how many customers were in that block?
[20] A: Generally, no.
[21] Q: Would Fiserv know the identity of those
[22] customers before the trade was executed?
[23] A: Possibly.
[24] Q: How would they know that?
[25] A: Well, if they were told by the introducing

[1] recollection is that the process evolved to where Mr.
[2] Rice would send in — actually, FAX a document, a piece
[3] of paper, which would indicate the accounts that he
[4] anticipated having security transactions placed
[5] through, and that that document was checked by Mr.
[6] Marchetti particularly — primarily Mr. Marchetti. In
[7] his absence someone was designated by him, but
[8] primarily by Mr. Marchetti.
[9] And then he, Mr. Marchetti, would approve the
[10] — an anticipated trade in the amount of money only
[11] that — to make sure that it would not exceed the
[12] amount of equity in the customer's account.
[13] Q: And I'll come back to that in a minute. Do
[14] you have a copy of what is marked Exhibit 74?
[15] A: 74?
[16] Q: Yes. Money line.
[17] A: I go to 65.
[18] Q: They were FAX'd this morning.
[19] A: Oh. (pause).
[20] Q: And if you don't, we'll go —
[21] A: I have a 73.
[22] Q: Okay.
[23] A: Getting close. No. To 73.
[24] Q: Do you know what a money line is?
[25] A: Yes.

[1] broker.
[2] Q: But was it possible for him before January to
[3] enter a block trade without telling Fiserv the identity
[4] of the customers who would be getting those trades
[5] after it was filled?
[6] A: I think it's possible.
[7] Q: Okay. What changed in January?
[8] A: My recollection is that because of the
[9] strategies — the option strategies that Mr. Rice was
[10] using and the credit concerns that we had as a result
[11] of his securities activities we wanted to make sure
[12] that our firm was not at risk financially, did not have
[13] a financial exposure by his doing security trades in an
[14] account without sufficient equity. So we asked that he
[15] telephone his trades to — I believe. One of my
[16] supervisors or Mr. Marchetti, I imagine. And have his
[17] trades checked to make sure that there was sufficient
[18] equity or money in those particular accounts prior to
[19] his entering the trades.
[20] Q: So after January do you know what the process
[21] was by which Mr. Rice would tell you which accounts the
[22] block trade was for?
[23] A: Well, keep in mind that I supervised the
[24] liaison desk and the operation, so I'm not there all
[25] day every day to see exactly what happens. But my

[1] Q: You indicated Mr. Rice would tell Fiserv —
[2] identify the accounts into which he might be putting
[3] the block trades —
[4] A: Right.
[5] Q: — on a list. Do you know if he would use
[6] the money line for that?
[7] A: Yeah, I think he did. I think what he did is
[8] either use the exact money line or a replica or, you
[9] know, a reproduction. And what, as I recall, was a —
[10] like he — if I may, it was like an Excel spread sheet
[11] type of arrangement.
[12] Q: Okay.
[13] A: And transmit that, which contained all the
[14] customers' names and equity positions or information
[15] that would indicate the equity position in those
[16] accounts.
[17] Q: And when he sent the money line would he tell
[18] you, "I'm going to put X number of options," or, "X
[19] number of shares into this account and X number of
[20] shares into this account"?
[21] A: I think — my recollection is that what he
[22] would say is, "Here's ten accounts." He would indicate
[23] like by an asterisk or some sort of notation alongside
[24] it. Ten accounts. That were generally his — you
[25] know, let's say ten out of 50. And I don't know what

[1] the number is. But let's just say ten out of 50.
[2] If there were 50 names on a sheet of paper
[3] with equity on ten of those names, he might put it —
[4] in some sort of an asterisk or arrow or check mark next
[5] to ten of those names, as an example, and then — and
[6] indicate that he was going to do \$50,000 worth of
[7] transactions. Where there was a \$50,000 requirement.
[8] And then Craig would look at the aggregate of
[9] those ten accounts to make sure that the equity in
[10] those individual accounts added up in aggregate to an
[11] amount of money equal to or greater than \$50,000.
[12] Q: Okay. Now, I want to be sure that I'm
[13] getting each — that I'm understanding this for each
[14] step along the way. So the money line would come in
[15] with asterisks in the column identifying, in your
[16] example, ten accounts. Then you indicated Mr.
[17] Marchetti would do a financial analysis. Now, is it
[18] correct, then, that Mr. Marchetti would first decide
[19] the value of the block trade that Mr. Rice wanted to
[20] do?
[21] A: Yes.
[22] Q: And then are you saying that he would look at
[23] each of the accounts that had asterisks by them and add
[24] up the equity in those accounts, correct? Was that
[25] correct?

[1] A: Yes.
[2] Q: And then make sure that the aggregate of the
[3] equity in those accounts was greater than the value of
[4] the block trade Mr. Rice wanted to place?
[5] A: Yes.
[6] Q: In this analysis did Mr. Marchetti look at
[7] the value of any individual account to see whether or
[8] not — for example, if there were ten of them, that
[9] each individual account could support a tenth of it?
[10] A: (pause).
[11] Q: I've lost you, haven't I?
[12] A: No, no, no. I follow you. Yeah.
[13] Q: Okay.
[14] A: (pause). No. Not — to the best of my
[15] knowledge, no, he would not do that.
[16] Q: Let's say we had ten accounts with asterisks
[17] and one of the accounts had \$110,000 and the other nine
[18] accounts each had \$10,000 each. Then we'd have
[19] \$200,000 worth of equity, right?
[20] A: Right.
[21] Q: And let's say he wanted to place a \$200,000
[22] trade.
[23] A: Right.
[24] Q: Would Mr. Marchetti let the trade go through?
[25] A: Yes.

[1] Q: Would Mr. Marchetti look at it and say,
[2] "Wait. If we divide this — since I have ten check
[3] marks, if I divide this \$200,000 trade into ten,
[4] there's only one account with a \$20,000 equity?"
[5] A: I don't believe he did that.
[6] Q: Why not?
[7] A: Because I think I testified in an aggregate
[8] is what he was concerned about.
[9] Q: Why was he concerned about the aggregate?
[10] A: He was concerned about the aggregate because
[11] that would have been our firm's potential exposure.
[12] Q: Then is it correct that so long as Fiserv
[13] knew that there was enough money in these accounts to
[14] cover it, then Fiserv was not going to be net in the
[15] hole?
[16] A: Correct.
[17] Q: Was it possible, going back to my \$200,000
[18] example, that when the trades came through that they
[19] wouldn't be divided equally among ten, but it could be
[20] 90 accounts in one — 90 contracts in one account and
[21] one contract in each of the other nine accounts?
[22] A: Correct.
[23] Q: Did Fiserv know at the time that a trade was
[24] placed how the trades were going to be allocated?
[25] A: No, they did not.

[1] Q: (pause).
[2] A: I'm go to change the answer to, "Generally
[3] no."
[4] Q: Why are you changing that?
[5] A: You said did Fiserv ever know, and they may
[6] have known upon occasion, but generally no.
[7] Q: Okay. Talking about block trades, after a
[8] block trade is called in and Mr. Rice has sent you the
[9] money line with the asterisks and then the block trade
[10] is filled, at some point that block trade is then going
[11] to be spread out among some client accounts; correct?
[12] A: Correct.
[13] Q: How would Fiserv know how to divide up that
[14] block trade into the individual accounts?
[15] A: Well, in the case at hand Mr. Rice or someone
[16] from his — from Intermountain transmitted an
[17] additional sheet which contained the information we
[18] needed, which would have been the specific ten accounts
[19] that are going to be allocated to trades in the
[20] quantities indicated, and also included a commission,
[21] if any, on that sheet. And that's how we knew.
[22] Q: Is that Exhibit 57?
[23] A: Let me see. (pause). Yes, that looks like
[24] that. Yes.
[25] Q: So this is the form that would normally be

Page 617

Page 619

[1] used by Mr. Rice after the trade to identify how the
[2] trade should be allocated and how much commission he
[3] should be paid on each?

[4] **A:** That's correct.

[5] **Q:** When would you receive this form, Exhibit 57,
[6] in relation to when the trade was executed?

[7] **A:** Well, generally after the trade was executed.

[8] **Q:** And how much delay might there be?

[9] **A:** I could not speak to that, but it would have
[10] to be before — I think our policy is before four
[11] o'clock eastern time. And I think generally it
[12] followed shortly thereafter or, you know, by the end of
[13] the trading day.

[14] **Q:** But if a block trade were placed at ten
[15] o'clock in the morning, so long as he had this
[16] information to you by four o'clock close, you were
[17] okay?

[18] **A:** For purposes of generating our necessary
[19] documentation the answer is yes, but we — we generally
[20] require the information, you know, immediately or
[21] shortly after the execution.

[22] **Q:** If you'd also look at Exhibit 23.

[23] **A:** (pause).

[24] **Q:** You're a numbers guy, so we figure you should
[25] be good at this.

[1] **Q:** Why not? What did Fiserv care about?

[2] **A:** Fiserv — our only concern is that we had —
[3] you know, that the accounts where trades were being
[4] placed with sufficient financial resources, equity, in
[5] the account to cover the amount of corpus necessary to
[6] satisfy that particular trade.

[7] **Q:** So was it possible for Mr. Rice to tell
[8] Fiserv to allocate a portion of a block trade to a
[9] customer account that had not been identified earlier
[10] in the day?

[11] **A:** Yes, that's possible.

[12] **Q:** When Mr. Rice would send you these accounts
[13] for every stock account form and instruct Fiserv how to
[14] allocate the block trade, did sometimes those
[15] allocations to particular customer accounts involve
[16] allocating a position to a customer account where there
[17] was not enough equity in that account?

[18] **A:** It's possible that happened. I can't recall
[19] an incident specifically.

[20] **Q:** Okay. Now I want to talk about equity
[21] requirements for options. Now, there's a difference
[22] between buying options and selling options, right?

[23] **A:** Right.

[24] **Q:** And you have to have patience with a country
[25] boy like me. What kind of equity does Fiserv require

Page 618

Page 620

[1] **A:** Exhibit 23, I have it.

[2] **Q:** Is that another example of a form that would
[3] indicate the same information?

[4] **A:** It looks like it.

[5] **MR. KLEIN:** Judge, I move admission of
[6] Exhibit 23.

[7] **THE JUDGE:** Any objection?

[8] **MR. GRIFFIN:** One moment. (pause). No
[9] objection.

[10] **THE JUDGE:** As identified it is received.
[11] (Exhibit 23 received.)

[12] **MR. KLEIN:** Q. When Rice would send in
[13] this account for every stock account form identifying
[14] the customers to whom the block trade should be
[15] allocated did someone at Fiserv cross-check that
[16] against the money line to see if it was going into the
[17] same accounts that had been identified before the
[18] trade?

[19] **A:** I don't believe so.

[20] **Q:** Would Fiserv care about that?

[21] **A:** (pause). Care —

[22] **Q:** Would Fiserv care about whether or not the
[23] trades were actually placed into different accounts
[24] than had been identified before the trade was placed?

[25] **A:** No.

[1] in a customer account in order to purchase options?

[2] **A:** Requirement on a general basis or requirement
[3] specifically for Mr. Rice's account?

[4] **Q:** Were they different?

[5] **A:** Yes.

[6] **Q:** Okay. Let's talk about a general basis.

[7] **A:** On a general basis the equity required to buy
[8] options in a customer's account, there is not — there
[9] is no equity requirement.

[10] **Q:** Do you require there be enough money to cover
[11] the purchase price?

[12] **A:** On a general basis, Fiserv does not
[13] require — there can be enough money to cover the
[14] purchase price.

[15] **Q:** Was the answer different for Mr. Rice?

[16] **A:** Yes.

[17] **Q:** How?

[18] **A:** Well, as I mentioned earlier, starting in
[19] January we required that there be equity in the account
[20] to cover the transaction that he placed into that
[21] account, so options settle, there is a trade date and a
[22] settlement date.

[23] If a trade is executed on Monday and an
[24] option — the trade settles the next day, that's T plus
[25] one, as we say in the industry. Trade plus one. And

[1] the customer is responsible to have paid — or caused
[2] to be — monies to be in the account to pay for their
[3] transaction.
[4] Q: So for customers at firms other than
[5] Intermountain the broker could call in, place a trade,
[6] and so long as the customer had the money in the next
[7] day Fiserv was happy?
[8] A: Correct.
[9] Q: But for Mr. Rice you required the money COD?
[10] A: Correct. No. Not COD. Cash on the same
[11] day.
[12] Q: Money in the account?
[13] A: Right.
[14] Q: Now, again focusing on buying options, when a
[15] customer is buying options how much of the customer's
[16] money is at risk?
[17] A: The amount of money at risk — market risk is
[18] only the amount of money that he places for the
[19] premium, which is the price of the option.
[20] Q: So a customer buying an option pays a fee to
[21] purchase the option, correct?
[22] A: Correct.
[23] Q: And the purchase price for that option is the
[24] only money at risk?
[25] A: Correct.

[1] Q: Is this analysis different for selling
[2] options?
[3] A: Yes.
[4] Q: If a customer is selling options, is the
[5] customer expending any money?
[6] A: Generally no.
[7] Q: Does the customer earn any money?
[8] A: Yes.
[9] Q: How?
[10] A: Pardon me?
[11] Q: How?
[12] A: Oh. He receives that premium into his
[13] account, which is the price — if you will, the price
[14] of the option.
[15] Q: So every option has a price, and if you're
[16] buying it, you pay that purchase price, and if you're
[17] selling it, you receive the purchase price?
[18] A: That's correct. And that purchase price is
[19] called premium.
[20] Q: And if I'm selling an option, is it correct
[21] to say that I am obligating myself to sell the
[22] particular stock underlying that option at the price
[23] specified in that option up to the expiration date?
[24] A: If you — that is correct. If you sell a
[25] call option. Which means you are giving someone the

[1] right to purchase from you the underlying stock at the
[2] indicated price, known as the strike price, for a
[3] specific period of time, which is called the expiration
[4] date. And for that you will receive a premium, which
[5] is what you're calling the price of that option.
[6] Q: And by receiving that premium am I exposing
[7] myself to any risk?
[8] A: Yes.
[9] Q: What kind of risk?
[10] A: In the case of a call option you're exposing
[11] yourself to risk market fluctuations if the — in the
[12] case of a writing or selling or call option — selling
[13] is called writing an option. If you write or sell a
[14] call option, your risk is the market value of that
[15] option above the strike price at any given time.
[16] Example: If you said that you write an
[17] option on IBM at a hundred, and the expiration date is
[18] December, and this is May, and sometime between now and
[19] the third week of December the market price of IBM
[20] exceeds 100, which is the strike price, the price
[21] you're willing to sell that stock at — if that stock
[22] goes to, let's say, 125, and that customer will call
[23] that option from you, and you have to deliver the stock
[24] at a hundred. And so, therefore, you lose the 25
[25] points in my example.

[1] Q: Okay. Let's talk about that example. So in
[2] that example, if I own IBM stock and write a call at a
[3] hundred and then the price goes to 125, then come the
[4] point that the option is exercised —
[5] A: "Expires."
[6] Q: "Expires." Thank you. I have to deliver my
[7] stock to the buyer, is that correct?
[8] A: Correct.
[9] Q: What if I don't own IBM stock?
[10] A: That strategy is known as being naked in that
[11] you do not own the underlying stock. So if you are
[12] naked, you then have to go into the open market,
[13] purchase the stock in the example at 125, deliver the
[14] stock to that customer who called you, or exercised his
[15] option, and the difference between a hundred and 125 is
[16] that 25 points, which means in our example you would
[17] have lost \$2,500.
[18] Q: What if instead of being IBM it was an
[19] Internet stock and it went from a hundred dollars to
[20] \$500?
[21] A: Better for him, bad for you.
[22] Q: Why?
[23] A: You'd have a 400-point loss.
[24] Q: I'd have a —
[25] A: You buy the stock at 500 and only get a

[1] hundred for it.
[2] Q: But that is my investment experience. I buy
[3] high and sell low. Are there capital requirements for
[4] writing or selling options?
[5] A: Yes.
[6] Q: Do most firms in the industry have capital
[7] requirements?
[8] A: All firms have capital requirements.
[9] Q: And who sets these capital requirements?
[10] A: The firm.
[11] Q: Does Fiserv have a house minimum call capital
[12] requirement for selling uncovered options?
[13] A: Yes, it does.
[14] Q: What is that minimum capital requirement?
[15] A: Well, the phrase is that we require a minimum
[16] equity in the customer's account. That equity for
[17] Fiserv for writing uncovered or naked options is
[18] \$25,000.
[19] Now, there happens to be a formula for what
[20] is known as the requirement. The requirement on
[21] writing naked options is set by the OCC, which is that
[22] Option Clearing Corp. I referred to earlier, which is a
[23] regulatory body of the option market industry.
[24] Q: Okay.
[25] A: The formula — not to get more minutia, but

[1] important.
[2] Q: I know.
[3] A: So the strike price — I mean the premium on
[4] that — on that particular option is going to be some
[5] number which the market — you know, meaning the demand
[6] between buyers and sellers — that relationship is
[7] going to create a demand. Those people willing to buy
[8] them and those people willing to sell them.
[9] That demand and supply is going to create a
[10] number. That number is very hard to determine other
[11] than we know that it's a function of the difference
[12] between the current market value, which in our case is
[13] 100, the strike price, which in our example happens to
[14] be the same, 100, and the expiration, which is your
[15] time, or time premium. What's the value of 30 days,
[16] you know, in this letter scenario we're drawing.
[17] Q: Okay.
[18] A: So just for fun — and also the volatility of
[19] the stock.
[20] Q: Okay.
[21] A: Which is, you know, a whole bunch of
[22] different factors. Okay? Well, let's just for fun in
[23] the example say that it's five dollars. Okay?
[24] Q: Okay.
[25] A: The premium is five dollars. So in my

[1] the formula is the market price — this 30 percent of
[2] the market price of the underlying stock plus or minus
[3] the difference between the present market value and the
[4] strike price. Because, as you know, IBM could be
[5] selling for less than a hundred or more than a hundred
[6] at the time you write this option.
[7] Q: Okay.
[8] A: So it's plus or minus that difference. 30
[9] percent of the underlying security, plus or minus the
[10] difference between the strike price and the market
[11] price, less the premium received.
[12] Q: Can you give me an example using IBM?
[13] A: You want to do numbers?
[14] Q: Sure.
[15] A: Let me get a piece of paper. Okay. Let's
[16] say the price — let's say the stock is selling at 100.
[17] Okay?
[18] Q: Okay.
[19] A: And let's just say that the option is for
[20] 100. All right? That's the strike price. And let's
[21] say the expiration date is May. Let's see, let me look
[22] at my calendar. Okay. Let's use — no. We can't do
[23] that. Let's say it's June, because May is gone. The
[24] expiration date is the third Friday of June, okay?
[25] This is just incidental. It's not incidental, but it's

[1] example our house requirement — because irrespective
[2] of all of the results of this calculation, our house
[3] requirement is \$25,000. Okay? So you have to have
[4] \$25,000 in the account and just set that — forget
[5] that. Just set that aside. It's got to be there.
[6] Okay? So we've got to have \$25,000, plus 30 percent of
[7] the market value, which in this case is \$30. Okay?
[8] Everything's done on a hundred per a hundred shares.
[9] Let's just do it on —
[10] Q: Okay.
[11] A: You know, to keep the numbers small; okay?
[12] Q: Right.
[13] A: So in this case it would be 30 percent of the
[14] market value, which is \$30.
[15] Q: Okay.
[16] A: Plus or minus the difference between the
[17] market value and the strike price. And in this case we
[18] said the market value was a hundred and the strike
[19] price was a hundred, so they are the same. So there is
[20] no adjustment for the plus or minus part.
[21] Q: Okay.
[22] A: Less the premium received, which in this case
[23] is five dollars, because you're going — we're writing
[24] the calls. We're going to receive that five dollars.
[25] So my requirement is the \$30 less the five dollars, or

[1] \$25.
[2] Q: And we're talking about a hundred shares?
[3] A: Yeah, but I didn't do it in terms of a
[4] hundred. I did it in terms of one.
[5] Q: Okay.
[6] A: If you do it in a hundred, just multiply all
[7] this by a hundred.
[8] Q: But is a normal contract for a hundred
[9] shares?
[10] A: Yes.
[11] Q: So if I bought one — I am sorry. If I sold
[12] one call, then I'm going to have a house minimum of
[13] 25,000 plus \$2500?
[14] A: Correct.
[15] Q: So a total net equity requirement from Fiserv
[16] of \$27,500?
[17] A: Correct.
[18] Q: Then do I understand you correctly that no
[19] calls should be sold in an account unless there is at
[20] least \$25,000 net equity in that account?
[21] A: Correct.
[22] Q: Is that true even if the broker has a spread?
[23] A: There's still a — there is still a formula,
[24] and the formula becomes very complex.
[25] Q: Okay. Let me interrupt you.

[1] A: I really don't want to get into the
[2] complexity.
[3] Q: I don't either.
[4] A: Suffice it to say, there is still a
[5] requirement.
[6] Q: Does the house minimum of \$25,000 still
[7] apply?
[8] A: The house minimum of \$25,000 applies in most
[9] cases when doing spreads, but, again, for the point at
[10] hand here — or the case at hand a house minimum was
[11] required in all cases.
[12] Q: Okay. Then let me see if I can state this
[13] one correctly. Is it true that no uncovered options
[14] selling can occur in an account with less than 25,000
[15] in equity?
[16] A: Well, that's correct.
[17] Q: Okay. Did Mr. Rice do uncovered option
[18] selling?
[19] A: I believe he did. I think he did. I can't
[20] point to a specific example.
[21] Q: Do you have any reason to believe that Mr.
[22] Rice would have known of Fiserv's house minimum net
[23] equity requirement?
[24] A: Yes.
[25] Q: And what do you believe that he knew?

[1] A: I believe he knew what our house requirements
[2] were.
[3] Q: And why is it that you believe that?
[4] A: Well, all the correspondents are appraised of
[5] what the requirements are. Of the house requirements.
[6] Q: When are they appraised of that?
[7] A: They are appraised at the time that they
[8] enter into our relationship and they're appraised on
[9] periodic bases, if you will, if there's any change in
[10] those requirements.
[11] But more importantly, the — if one of those
[12] earlier exhibits indicated — there are — in each firm
[13] there are — there is a senior registered option
[14] principal, which is a licensed person by the OCC, that
[15] has taken a test and is made aware of all the
[16] requirements and the fact that there are house
[17] requirements exist. And, also, there's a compliance
[18] registered option principal, whichever one — you know,
[19] which the introducing firm knows or should know that
[20] the clearing firm has requirements, and they should be
[21] conversant in them.
[22] So the data and the information is put out
[23] there for our introducing firms, and if they choose to
[24] be — involve themselves in any particular investment
[25] strategy, be it options or municipals or equities or

[1] whatever, because there are specific licensed people
[2] required at their station, those people are required to
[3] know what the various house and regulatory requirements
[4] are.
[5] Q: Did something happen in March of 2000 to
[6] cause losses in the accounts of Mr. Rice's customers?
[7] A: Yes.
[8] Q: Do you know what that was?
[9] A: Yes, generally speaking, yes.
[10] Q: Can you recount for us what you understand
[11] happened?
[12] A: Well, from what I understand — and the
[13] reason I'm saying, "From what I understand," because I
[14] was out of town at the time. I believe it was the
[15] Thursday before the expiration day in the month of
[16] March, if I'm correct. And please help me on that.
[17] Q: Right.
[18] A: I think it was the Thursday before the
[19] Friday — all options expire on the third Friday of
[20] each month. Not all of them, but option expiration
[21] days are always the third Friday of each month. And
[22] generally a cycle of an option will run for three
[23] months. Okay?
[24] Q: Okay.
[25] A: So they vary. But let's just say three

[1] months. On a given Thursday, which I believe was
[2] March, when I was not here, Mr. Rice entered some
[3] option strategies where he wrote options in various
[4] customer accounts, and in many cases he thought he
[5] covered — or was covered. I'm going to use the word,
[6] "covered." He thought he was protected because he
[7] entered into a spread — you used that word earlier —
[8] a spread strategy.

[9] But the spread strategy he happened to invoke
[10] or use, utilize, had a high house and regulatory
[11] requirement on those options. As it turned out, the
[12] strategy that he employed by writing and buying the
[13] combination of various options on a given stock — the
[14] option strategy he employed or he deployed would have
[15] led someone to believe that he anticipated — or the
[16] customer, I assume. I don't know if they were
[17] discretionary or not. When I say, "he," I'm talking
[18] about Intermountain. The broker and the customers of
[19] that broker. So I don't know who initiated these
[20] trades.

[21] Q: Okay.

[22] A: I have to assume under my contractual
[23] relationship that it was the customer that instituted
[24] these trades.

[25] Q: Right.

[1] Q: Okay.

[2] A: In fact, what happened is the underlying
[3] stock increased in value significantly, greater than
[4] the strike price of the calls, which ended up that the
[5] result was that on expiration day, which was Friday,
[6] those options expired, but they had a value greater
[7] than the premium he received, so — that he received
[8] for it, so that he was — his customer was in a loss
[9] position.

[10] Q: Okay. Now, let's say in a hypothetical that
[11] on this spread he had bought calls at a price of a
[12] hundred and sold calls at a price of 85.

[13] A: Right.

[14] Q: Would that be a spread?

[15] A: Yes.

[16] Q: In that case where he has long calls at a
[17] price of a hundred and short calls at a price of 85, is
[18] he covered?

[19] A: To the extent of the 15-point difference,
[20] which means he limited his potential unlimited loss to
[21] 15 points.

[22] Q: Okay. Was his short option sell a covered
[23] option?

[24] A: No. I don't know the technical term for it,
[25] so I'm going to bow out of this one. As you can see,

[1] A: So I'm just saying the person who decided
[2] that — or who caused Rice to lay on these trades, the
[3] strategy was that the market value of the underlying
[4] security was going to go down in value. Okay?

[5] Q: All right.

[6] A: And because he thought the value of the
[7] security was going to go down that meant that he wrote
[8] some options that created the incident. The premium
[9] from the options he wrote would be credited on the
[10] customer's account, and by the end of the next day,
[11] because — since this was Thursday, the next day was
[12] expiration and these options expired.

[13] At the end of the next day those options
[14] would expire worthless, with no value, meaning the
[15] market value was less than the strike price, and there
[16] was a call involved, so no one's going to pay more for
[17] the stock when they can buy it for less than the
[18] market.

[19] So, consequently, the options expired
[20] worthless. Or would expire worthless, and they did
[21] expire worthless. And he would be able to retain that
[22] premium for those — for those options he wrote.

[23] Q: Okay.

[24] A: In fact, what happened is that — and I'm
[25] speaking very generally here.

[1] options can get very, very complicated. And
[2] particularly the strategy, okay? But that is not
[3] called a covered option. It's not called a covered
[4] write. It's a spread.

[5] Q: And a spread does not mean covered?

[6] A: That's correct. In many cases, no.

[7] Q: And so, then, the market —

[8] A: Excuse me. The only time — I mean if I can
[9] keep it simple?

[10] Q: Yes.

[11] A: The only time he would be covered is if he
[12] wrote that 85, you said, and bought the 80.

[13] Q: Oh. So if the long position was at a lower
[14] price than the short position?

[15] A: Then he'd be covered. Then there would be —
[16] actually, there would be no requirement.

[17] Q: Okay. Because —

[18] A: I didn't want to get into that earlier.

[19] Q: Because that would be a covered option?

[20] A: It's what they call a — well, it's what they
[21] call a qualified spread. And so he's qualified that.
[22] It's the same as if he had written a covered call.

[23] MR. KLEIN: Your Honor, I've got about 15
[24] minutes more with this witness. Do we want to finish
[25] mine and then break for lunch or keep going for cross?

[1] THE JUDGE: No, my anticipation is give you
[2] the 15 minutes. We've been at this a while and I'm
[3] concerned about the complexity — hold on, Mr.
[4] Ferguson, just one second.
[5] MR. FERGUSON: Your Honor, may I make a
[6] comment, please?
[7] THE JUDGE: I'll get to you in one second.
[8] MR. FERGUSON: Thank you.
[9] THE JUDGE: I'm concerned about the
[10] complexity of the testimony and breaking it now. But I
[11] am also concerned about the length of time we've been
[12] going with respect to the court reporter. So I'll give
[13] you 15 more minutes to finish this.
[14] But, Mr. Ferguson, what did you have?
[15] MR. FERGUSON: I'm sorry, Your Honor. I
[16] didn't mean to interrupt.
[17] THE JUDGE: That's fine.
[18] MR. FERGUSON: Sir, I just want to say I'm
[19] on the east coast and it's currently ten minutes after
[20] two.
[21] THE JUDGE: Right.
[22] MR. FERGUSON: And I have a very pressing
[23] engagement that I have to be at, where I have to leave
[24] my office at approximately ten minutes to four eastern
[25] time.

[1] THE JUDGE: So, essentially, you have about
[2] another hour and 45 minutes?
[3] MR. FERGUSON: Yes, sir.
[4] MR. KLEIN: How about if I hurry and we do a
[5] half hour lunch?
[6] THE JUDGE: We can handle it any way you
[7] like, as long as we can accommodate this witness and
[8] the cross-examination of him.
[9] MR. KLEIN: And if we didn't finish the
[10] cross, we'll finish it up —
[11] THE JUDGE: When we resume.
[12] MR. KLEIN: Okay.
[13] THE JUDGE: Go ahead, Mr. Klein.
[14] MR. KLEIN: Okay. I'm going to try and
[15] finish up.
[16] THE JUDGE: But don't speak any faster
[17] because the court reporter will have my head, if not
[18] yours. Go ahead.
[19] MR. KLEIN: Q. So the market had moved
[20] against some of the positions for Mr. Rice's customers,
[21] correct? In March?
[22] A: Say again?
[23] Q: Mr. Ferguson?
[24] A: Yes.
[25] Q: So in March of 2000 the market had moved

[1] against some of the positions that Mr. Rice had taken?
[2] A: Yes.
[3] Q: Now, were these positions in individual
[4] accounts or were they done as block trade, do you know?
[5] A: Well, I think it was a combination of both.
[6] Q: And if there were block trades, were they
[7] then transferred into customer accounts?
[8] A: Yes, that's how it was discovered.
[9] Q: That's how what was discovered?
[10] A: The discovery was made that he was selling
[11] calls instead of buying. Selling options instead of
[12] buying options. His strategy had always been sales.
[13] Generally had been that he bought options, which
[14] required only, you know, the limited equity or money in
[15] the account.
[16] Now he had written options, albeit spread
[17] situations in some cases. But he had written options.
[18] And the individual who was entering the
[19] trades into the system after they had been executed
[20] noted that there was — that they were selling, and
[21] that's what caused, if you will, the proverbial bells
[22] and whistles to go off.
[23] Q: Is that because when he went to allocate it
[24] to the accounts — transfer the block trades into the
[25] individual accounts there wasn't enough money?

[1] A: Yes.
[2] Q: So when there's not enough money in the
[3] account what do you do? What does Fiserv do?
[4] A: Well, in this case we talk about the bells
[5] and whistles. The staff on the liaison desk
[6] immediately reviewed what activity had taken place that
[7] particular day. And I'll say this is around four
[8] o'clock on that Thursday.
[9] And Craig Marchetti, who is my risk
[10] management person I've been alluding to during this
[11] testimony, reviewed the accounts where Intermountain —
[12] Rice through Intermountain had placed trades in a
[13] number of customer accounts, both individually and
[14] through the average price account, that day, and came
[15] to the conclusion that there was a tremendous market
[16] risk and exposure due to the fact that there, A, was
[17] insufficient equity in the customer's account and, B,
[18] that the market value of the underlying security had
[19] gone up significantly.
[20] Q: So did it result in deficits in the customer
[21] accounts?
[22] A: Correct.
[23] Q: If there are negative balances in the
[24] customer accounts, does that put Fiserv at any risk?
[25] A: Potentially.

[1] Q: Why?
[2] A: Because Fiserv as the clearing agent has
[3] cleared or settled all of these transactions. We
[4] guarantee those transactions to the wholesale
[5] marketplaces, be it the New York Stock Exchange,
[6] Chicago Board of Trade. Wherever the transactions are
[7] executed we guarantee those. So we are — we are the
[8] person that is required to perform in settling those
[9] transactions.
[10] Q: So if those negative balances in the customer
[11] accounts remain, then Fiserv has to make it up?
[12] A: Unless we can get it from the introducing
[13] broker, who is responsible to us.
[14] Q: In this situation did Fiserv try and get it
[15] from the customers?
[16] A: In this situation Fiserv first tells the
[17] introducing broker/dealer, you know, "You entered these
[18] trades into the system. We need the money." Fiserv in
[19] conjunction with the introducing broker/dealer
[20] generally — and I think as was the case at hand — you
[21] know, sold whatever equity, meaning stocks in the
[22] account, remained in order to create enough money to
[23] cover the deficits.
[24] Q: Do you have Exhibit 52?
[25] A: Yes, sir.

[1] to satisfy any shortfall or nonperformance from
[2] customers that create shortfalls in their accounts. So
[3] I immediately turned to Intermountain Securities, the
[4] introducing broker/dealer, and demanded the amount of
[5] money, which was the aggregate of the deficits in these
[6] various accounts.
[7] Q: And did you get money?
[8] A: Yes, I did.
[9] Q: Did Fiserv also take money out of the deposit
[10] that Intermountain had made?
[11] A: Yes.
[12] Q: Did Fiserv withhold commissions that were
[13] payable?
[14] A: Yes.
[15] Q: And that money that you received and withheld
[16] and deducted, where was that money — where did that
[17] money eventually get placed?
[18] A: Well, it was placed — the trail, if you
[19] will — it would be placed in a holding account. Some
[20] type of air account or general ledger account for
[21] purposes of our accounting. And then when the sum of
[22] the total deficits was received, we simply allocated
[23] the money out to the various accounts that had the
[24] deficits to reduce the deficit to zero.
[25] Q: So is it correct to say that Fiserv's deficit

[1] Q: Do you recognize these documents?
[2] A: Yes.
[3] Q: What are they?
[4] A: These documents are a standard what we call
[5] margin call.
[6] Q: And were these issued by Fiserv on customers
[7] of Mr. Rice?
[8] A: Yes.
[9] MR. KLEIN: Your Honor, I move admission of
[10] Exhibit 52.
[11] THE JUDGE: Any objection?
[12] MR. GRIFFIN: No objection.
[13] THE JUDGE: As identified is received.
[14] (Exhibit 52 received.)
[15] MR. KLEIN: Q. Then when these margin
[16] calls were issued asking customers to send in money did
[17] the customers send in money?
[18] A: My recollection is that the amount of money
[19] received from the customers was very nominal. Less
[20] than an aggregate — less than ten or \$15,000.
[21] Q: Do these customer deficits still exist?
[22] A: No.
[23] Q: How has it been resolved?
[24] A: The money — as I mentioned a few moments
[25] ago, we at Fiserv look to the introducing broker/dealer

[1] was eliminated by eliminating the customer deficits?
[2] A: Correct.
[3] Q: And this money then came to Fiserv and was
[4] then applied to those customer deficits?
[5] A: Correct.
[6] MR. KLEIN: Your Honor, I am finished with
[7] this witness, so do you want to suggest to him what our
[8] plan is?
[9] THE JUDGE: Well, before I do that — we'll
[10] stay on the record for this. Mr. Griffin, if we took a
[11] one-half hour break, which would give you about
[12] slightly in excess of an hour with this witness until
[13] he would be unavailable, would that be acceptable for
[14] today, understanding that if you're not able to
[15] complete this with him today, we'll resume at our
[16] resumption of the hearing?
[17] MR. KLEIN: Or perhaps the other question is
[18] do we just wait and cross-examine him later?
[19] THE JUDGE: Or do you want to cross-examine
[20] him all at once, if not today, when we resume after
[21] today?
[22] MR. GRIFFIN: A moment, Your Honor.
[23] THE JUDGE: Certainly.
[24] Hold with us, Mr. Ferguson.
[25] MR. FERGUSON: Yes, sir.

[1] (pause).
 [2] **MR. GRIFFIN:** Your Honor, we would prefer
 [3] the latter suggestion. I think that we're probably
 [4] going to go more than an hour on cross-examination.
 [5] And, Mr. Ferguson, you're on the line. I
 [6] apologize that we might have to get you back on cross
 [7] at another time. But I think it's important for the
 [8] consistency of the testimony to do your
 [9] cross-examination at a later date and not do this
 [10] today. And that's out of deference, sir, to your
 [11] obligation that you have on the east coast, and I'm
 [12] aware of that, and I appreciate your being here.
 [13] I would just ask that Mr. Ferguson be
 [14] instructed not to talk to other people about this case
 [15] in the meantime, and also that counsel not talk to the
 [16] witness during the meantime.
 [17] **THE JUDGE:** Mr. Ferguson, let me explain the
 [18] gist of what Mr. Griffin is suggesting. You would not
 [19] have been aware of this. But at the beginning of this
 [20] proceeding I inquired of counsel if they wanted to
 [21] exclude witnesses, and that's a legal process to ensure
 [22] that one witness' testimony is not influenced by the
 [23] ability to review their testimony or that of the
 [24] testimony of another witness.
 [25] As I recall, there was no — well, there was

[1] an understanding that that motion was, essentially,
 [2] granted. And the point of that motion, then, as it
 [3] applies now to you, Mr. Ferguson, is because we are
 [4] separating your direct from your cross-examination,
 [5] there will be a passage of time before we can complete
 [6] your cross-examination.
 [7] For that reason, until you are called by Mr.
 [8] Griffin for that purpose you would be instructed to,
 [9] one, discuss nothing of this testimony with anyone
 [10] else. And I'll keep it just that broad. I can't see a
 [11] reason why you would discuss this testimony with
 [12] anyone, particularly any other witness who may be
 [13] called in this proceeding. Certainly there will be no
 [14] reason whatsoever for you to discuss this testimony
 [15] with Mr. Klein.
 [16] Is that a broad enough instruction for your
 [17] purposes, Mr. Griffin?
 [18] **MR. GRIFFIN:** Yes, it is, Your Honor. This
 [19] is a difficult item for us to go. I mean to go along
 [20] with. I'm concerned about Mr. Ferguson's availability
 [21] for future testimony.
 [22] **THE JUDGE:** Let me just generally touch on
 [23] that.
 [24] **MR. GRIFFIN:** All right.
 [25] **THE JUDGE:** Mr. Ferguson, we have not yet

[1] identified when we might be able to resume this
 [2] hearing. We expect it could take an additional one
 [3] and-a-half days after today, but we cannot get back to
 [4] it tomorrow. And depending on counsel's schedule and
 [5] mine, we may not be able to catch it until sometime
 [6] next week, if then. It might be a matter that we
 [7] couldn't get back to you for perhaps two weeks.
 [8] Sometime within the next two weeks, depending on
 [9] everyone's schedule.
 [10] Let me ask you, within the next two weeks
 [11] from today do you have any blocks of time when you
 [12] would not be available?
 [13] **MR. FERGUSON:** Yes.
 [14] **THE JUDGE:** What would that be?
 [15] **MR. FERGUSON:** It would be the afternoon of
 [16] June 6th. All of June 7th. All of June 8th. I
 [17] believe that's the next two weeks.
 [18] **THE JUDGE:** Thank you. We will work around
 [19] that.
 [20] **MR. GRIFFIN:** Your Honor, one final thing.
 [21] If, as we anticipate, we will be allowed to
 [22] cross-examine, I have no problem with that. If for
 [23] some unforeseen reason Mr. Ferguson is not available to
 [24] this forum for cross-examination, I think we would be
 [25] entitled to have our motion granted to strike his

[1] testimony. And I just wanted to mention I intend to do
 [2] that if for some reason we are not allowed to
 [3] cross-examine.
 [4] **THE JUDGE:** Well, let me respond before you
 [5] do, Mr. Klein. It seems to me that the only barrier to
 [6] his availability is finding the time to take the
 [7] testimony. I cannot envision any likelihood that Mr.
 [8] Ferguson would be unwilling to testify, assuming we
 [9] could find a convenient time to take it.
 [10] **MR. GRIFFIN:** I understand that.
 [11] **THE JUDGE:** But on the very slim chance that
 [12] we are unable to produce him for cross-examination
 [13] purposes, I'll address your motion at that time.
 [14] **MR. KLEIN:** And if I may address one other
 [15] issue.
 [16] Mr. Ferguson, given the Judge's broad
 [17] instruction, I want to raise the question whether or
 [18] not you feel the need to discuss this with your legal
 [19] counsel. I mean the firm's General Counsel is aware of
 [20] this, right?
 [21] **MR. FERGUSON:** Correct.
 [22] **MR. KLEIN:** Is there some reason you think
 [23] you would need to talk to him or do you think that
 [24] you're going to be able to abide by the Judge's
 [25] instruction not to talk to anybody about this case?

[1] **MR. FERGUSON:** Oh, I think my obligation as
 [2] an employee of Fiserv is to inform my General Counsel
 [3] that I participated today and that I may have a need to
 [4] participate in the future.
 [5] **THE JUDGE:** If that's all it goes to — and
 [6] I'll ask you for a response, Mr. Griffin. If it's
 [7] simply putting your General Counsel on notice that your
 [8] testimony has been interrupted, that you're still
 [9] expected to be subject to cross-examination, that will
 [10] be scheduled and you would notify him when that takes
 [11] place, I have no problem with any of that. I'm saying
 [12] that I would not expect that you would discuss the
 [13] substance of your testimony with anyone, including your
 [14] General Counsel.
 [15] **MR. FERGUSON:** Yes, sir.
 [16] **MR. GRIFFIN:** What I was going to say is
 [17] after consultation with my client and leaving open the
 [18] speculative possibility that such a motion would not be
 [19] grant, we've changed our mind. We need to take
 [20] whatever —
 [21] **THE JUDGE:** Well, let me help you, Mr.
 [22] Griffin. I didn't mean to make it speculative.
 [23] Mr. Klein, I'll just ask this question: If
 [24] Mr. Ferguson could not be made available —
 [25] **MR. KLEIN:** I understand there would have to

[1] back to you.
 [2] We are in recess.
 [3] **MR. KLEIN:** Thanks, Mr. Ferguson.
 [4] **MR. FERGUSON:** Thank you.
 [5] **MR. GRIFFIN:** Thank you, Mr. Ferguson.
 [6] **MR. FERGUSON:** Thank you.
 [7] **MR. GRIFFIN:** Can we take an hour?
 [8] **THE JUDGE:** Certainly.
 [9] **MR. GRIFFIN:** 15 minutes?
 [10] **THE JUDGE:** 1:30 will be fine.
 [11] (break at 12:25 p.m.)
 [12] (reconvened at 1:36 p.m.)
 [13] **THE JUDGE:** On the record after a recess of
 [14] a little over an hour.
 [15] Mr. Klein, your next witness.
 [16] **MR. KLEIN:** The Division calls Jeff Goringe.
 [17] **THE JUDGE:** Would you raise your right hand,
 [18] please.
 [19] JEFFREY WAYNE GORRINGE,
 [20] after being first duly sworn,
 [21] testified as follows:
 [22] **THE JUDGE:** Please be seated.
 [23] Mr. Klein.
 [24] **DIRECT EXAMINATION BY MR. KLEIN**
 [25] **MR. KLEIN:** Q. Mr. Goringe, thank you

[1] be very compelling reasons to argue against Mr.
 [2] Griffin's motion.
 [3] **THE JUDGE:** Yes, and I would accept the
 [4] argument on that basis. But I can tell you right now
 [5] that it would be an exceptional case where I would
 [6] allow his testimony to stand without cross-examination.
 [7] **MR. GRIFFIN:** All right.
 [8] **THE JUDGE:** Mr. Ferguson, what we will do
 [9] here is, then, interrupt your testimony at this time,
 [10] subject to the instructions I've given you with respect
 [11] to any contact you may have with legal counsel. And,
 [12] again, you are not to discuss the substance of your
 [13] testimony on direct examination with anyone. And I
 [14] will rely on Mr. Griffin and Mr. Klein and myself to
 [15] coordinate a time with your availability to bring you
 [16] back in for cross-examination. Any questions before we
 [17] conclude this, Mr. Ferguson?
 [18] **MR. FERGUSON:** No, sir.
 [19] **THE JUDGE:** We do appreciate your time and
 [20] your forbearance with us, and we will give you timely
 [21] notice as soon as we can. It could be sometime later
 [22] today. Or at least tomorrow when that will be.
 [23] **MR. FERGUSON:** Yes, sir.
 [24] **THE JUDGE:** At this point your testimony
 [25] will be held subject to those conditions, and we'll get

[1] for coming in. Would you please give your name for the
 [2] record and spell the last name?
 [3] **A:** It's Jeffrey Wayne Goringe. J-e-f-f-r-e-y,
 [4] is the first name, because that gets confused. Last
 [5] name is G-o-r-r-i-n-g-e.
 [6] **Q:** And part of that confusion on the first name
 [7] is mine, because your CRD record shows it as
 [8] J-e-f-f-e-r-y and that's how I have it listed in my
 [9] witness list, but I'm wrong and your mother was right.
 [10] **A:** (nodding head affirmatively). Correct.
 [11] **Q:** Okay. And where do you work, Mr. Goringe?
 [12] **A:** I work at Brighton Title Company.
 [13] **Q:** And what do you do there?
 [14] **A:** I'm a half owner and an escrow officer.
 [15] **Q:** Do you know Mr. Rice?
 [16] **A:** Yes, I do.
 [17] **Q:** How do you know Mr. Rice?
 [18] **A:** I've known Mr. Rice since about 19 — roughly
 [19] the early '80s.
 [20] **Q:** Have you ever worked with Mr. Rice in the
 [21] securities business?
 [22] **A:** Yes.
 [23] **Q:** When?
 [24] **A:** In March of 2000.
 [25] **Q:** And how did that come about?

[1] A: A friend of mine, Rick Bjornson, was
[2] entertaining the idea of going to work for Jay, and I
[3] was kind of prodding him along, looking for a different
[4] career for myself, and figured out that I was talking
[5] him into doing something that I wanted to do myself, so
[6] that's — I went in the business.

[7] Q: But how is it that you ended up in the
[8] business with Mr. Rice as opposed to somewhere else?

[9] A: Rick had talked to Jay. And he had talked to
[10] Jay back in I want to say November of '99. And he said
[11] to me, he says, "I know you're trading a lot of options
[12] and working the market pretty hard. You ought to talk
[13] to Jay. He's doing a lot of the same strategies you
[14] are from what I understand, but I don't know a lot
[15] because I'm not in the business."

[16] And at that time he was — he was pretty
[17] disgruntled about his own situation and had said to me,
[18] "Jay, you know, said, 'Why don't you come up here and
[19] be a broker with me.'" And he said, "But you ought to
[20] go talk to Jay." So I went and talked to Jay about
[21] investing money, not about becoming a broker at that
[22] time.

[23] Q: Let me go back. You said at the time you
[24] were buying a lot of options. Was this buying options
[25] for others?

[1] A: No, just for me.

[2] Q: So you were investing your own money and
[3] buying options as part of your investments?

[4] A: Yes.

[5] Q: And did Mr. Bjornson tell you that —
[6] indicate why he thought Mr. Rice would be a better to
[7] talk to than other brokers?

[8] A: Other than his personal history with Mr.
[9] Rice, no.

[10] Q: So did you go in and talk to Mr. Rice?

[11] A: Yes.

[12] Q: When was that?

[13] A: I first went and talked to him approximately
[14] the first week of December in '99.

[15] Q: And tell me about that conversation.

[16] A: When I went in there — I called him on the
[17] phone and set up an appointment. A day or so later we
[18] went in.

[19] Q: When you say, "we" —

[20] A: I went in. I went in. I'm talking, "we,"
[21] because my dad and I have a partnership that we trade
[22] out of together.

[23] I went in and talked to Jay, and we discussed
[24] about putting about \$20,000 with Jay.

[25] Q: Are we talking about \$20,000 of your money

[1] that you would have Jay invest for you?

[2] A: Correct. And he gave me his strategies and
[3] they all sounded good, and he showed me his track
[4] record and that looked very — very good.

[5] Q: Speaking of the track record, if you'll turn
[6] to Exhibit 24 in that black binder.

[7] MR. GRIFFIN: What exhibit?

[8] MR. KLEIN: 24.

[9] Q: Now, ignoring the first page there, does this
[10] document look like the one you were referring to?

[11] A: Yes. It was the track record that he showed
[12] me that he said he'd been — he'd been trading options
[13] for people since 1997 and that if I went with him, I
[14] would have about 13,000 percent return, or whatever it
[15] was on the page at that time.

[16] Q: Did he tell you that — the document he
[17] showed you, did it indicate something like a 13,000
[18] percent return?

[19] A: Yes. I can't remember exactly, but it was
[20] something close to that.

[21] Q: Did he tell you that that was a typo and it
[22] really was only 1300 percent?

[23] A: No. It was represented as 13,000.

[24] Q: Because you saw it or did he actually say
[25] that out loud?

[1] A: I don't remember.

[2] Q: Did he give you a copy of this document?

[3] A: Yes.

[4] Q: Was it the entire document? Portions of it?

[5] A: It was just like the last six months.

[6] Q: Was there any other discussion during your
[7] visit there?

[8] A: At that point, no. We didn't talk about
[9] going to work for him. It was primarily investing.

[10] Q: And had you made a decision at that point to
[11] invest 20,000 with him?

[12] A: Yes.

[13] Q: And when did you open — so did you open a
[14] trading account with Mr. Rice?

[15] A: Yes.

[16] Q: And how much money did you put into that
[17] account?

[18] A: 20,000.

[19] Q: So did Mr. Rice start trading on that account
[20] for you?

[21] A: Yes.

[22] Q: Then explain how you went from that to the
[23] point that you eventually began to work with him.

[24] A: Well, at that point in time, as I said, Rick
[25] was struggling in his career and he kept saying, you

[1] know, "I don't know whether to make the switch or not,"
[2] and I kept talking him into going that direction.
[3] Said, "Hey, you know, I'll bring you my accounts,"
[4] etcetera. "You can," you know — "it's a good thing."
[5] And like I said earlier, I realized at that time that I
[6] was talking him into doing something that I really
[7] wanted to do and had been doing for three or four years
[8] prior. And so —

[9] **Q:** But when you'd been doing it it was just
[10] trading your own account?

[11] **A:** Just my own account. And he said — he said,
[12] "Well, why don't we create a partnership and get our
[13] Series 7 license and go over there and trade with Jay."
[14] And I thought about it for about a week and talked it
[15] over with my dad and — who was my partner in the title
[16] company, and decided that would be a good way to go.

[17] **Q:** Because it would be something you were
[18] interested in? Because you thought it would be
[19] profitable?

[20] **A:** Oh, we thought — you know, we thought it
[21] would be profitable. I mean we were told we could make
[22] a hundred grand a month. Not immediately, but over
[23] time. Once we built these accounts up and we had such
[24] a good system that was going forward and we had history
[25] on our side (indicating) that it would be not

[1] started what paperwork are you —

[2] **A:** That was for our license that had to be
[3] filed.

[4] **Q:** Was that the application to become registered
[5] as a broker?

[6] **A:** Yes.

[7] **Q:** Do you know what that's called?

[8] **A:** A U-4, I believe.

[9] **Q:** Okay. So where did you get the Form U-4?

[10] **A:** From Jay.

[11] **Q:** So Mr. Rice gives you a Form U-4, you filled
[12] it out, and that was then submitted to begin the
[13] process of you getting licensed?

[14] **A:** Yes.

[15] **Q:** Do you know when that was submitted?

[16] **A:** I want to say the last part of January.

[17] **Q:** So somewhere around the end of January you
[18] submit your U-4?

[19] **A:** Yes.

[20] **Q:** Were there other things you needed to do
[21] before you could become licensed?

[22] **A:** (pause).

[23] **Q:** Did you have to take any examinations, for
[24] example?

[25] **A:** We had to pass the Series 7 and the Series

[1] unfeasible to make six digits a month.

[2] **Q:** So your customers would make a hundred
[3] thousand a month?

[4] **A:** No, we personally would make a hundred
[5] thousand a month in commission.

[6] **Q:** So did you decide to go through with this and
[7] get your license?

[8] **A:** Yes.

[9] **Q:** At the time you made this decision was the
[10] plan that you were going to get your license and work
[11] with Mr. Rice?

[12] **A:** Yes.

[13] **Q:** So before you started making plans to take
[14] the examination had you already, essentially, agreed
[15] with Mr. Rice that you would be doing your business
[16] with him?

[17] **A:** Yes.

[18] **Q:** And what were those discussions?

[19] **A:** Basically, at the time we decided we had some
[20] paperwork we had to fill out and we gave back to him.
[21] And Jay said, "Now, if you want to get going, you know,
[22] bring some customers in here and let's trade those
[23] accounts and get them really beefed up for you before
[24] you start."

[25] **Q:** So when you're talking about paperwork to get

[1] 63.

[2] **Q:** So at the time you submitted your U-4 at the
[3] end of January had you taken either of those exams?

[4] **A:** No. We did not take the exams until the
[5] first part of March.

[6] **Q:** So what did you do between the end of January
[7] and the first part of March?

[8] **A:** Studied.

[9] **Q:** Studied for the exam?

[10] **A:** For the exams. We were spending eight to 12
[11] hours a day just studying and taking practice tests for
[12] the exam.

[13] **Q:** And then I think you also said that Mr. Rice
[14] — do I understand it correctly that he said, "During
[15] this time period before your license some of the people
[16] that might be your customers, we should start trading
[17] their accounts now"?

[18] **A:** Yes.

[19] **Q:** And for what purpose?

[20] **A:** For the purpose of getting the accounts built
[21] up real strong. You know, turn that \$20,000 into a
[22] \$40,000 account as fast as we possibly could, because
[23] the market was very, very strong.

[24] **Q:** So you spent, essentially, February studying
[25] for the exams?

[1] A: Yes.
[2] Q: Do you know when you took the Series 7 exam?
[3] A: I believe it was March 1st.
[4] Q: Is that the same time you took the Series 63?
[5] A: No.
[6] Q: Do you know when you took that?
[7] A: Took it March 7th.
[8] Q: Do you know at what point you became
[9] registered by the NASD?
[10] A: I don't.
[11] Q: Do you know at what point you became
[12] registered by the state?
[13] A: I don't.
[14] Q: Could you have been registered by the State
[15] of Utah before you had taken the Series 63 exam?
[16] A: No.
[17] Q: So you weren't registered with the State of
[18] Utah at least until March 7th?
[19] A: Yes.
[20] Q: And could have been registered with the NASD
[21] before you had taken the Series 7 exam?
[22] A: No.
[23] Q: And you had taken that exam, you think,
[24] around March 1st?
[25] A: Yes.

[1] Q: Is it your understanding that you need to be
[2] registered just with the NASD or do you need to be
[3] registered with both the NASD and the state?
[4] A: No, you have to be licensed in both, with the
[5] NASD and the state.
[6] Q: Yet was there some point at which you became
[7] licensed with the State of Utah?
[8] A: Yes.
[9] Q: When was that?
[10] A: After I passed the test.
[11] Q: How did you find out that you were licensed?
[12] A: I didn't know. I assumed by passing the test
[13] I was licensed.
[14] Q: You assumed that as soon as you passed the
[15] test that licensing was automatic?
[16] A: Well, I knew I had to take a piece of paper
[17] back to the office and they had to file it. At that
[18] point it became effective. We had to prove that we
[19] passed the test.
[20] Q: Did anybody tell you that the state, for
[21] example, gets to make its own decision as to who
[22] they're going to license and not license and that may
[23] take some time?
[24] A: No.
[25] Q: Who explained to you the process of taking

[1] examinations and — taking the examinations?
[2] A: We were told by Jay — "we," Rick and I —
[3] that he had to go study for the test and pay the fees
[4] and take the test.
[5] Q: And you said Mr. Rice gave you the U-4 form
[6] to fill out?
[7] A: Yes.
[8] Q: When you filled it out what did you do with
[9] it?
[10] A: Gave it back to him.
[11] Q: To Mr. Rice?
[12] A: Yeah.
[13] Q: When you took the Series 7 examination on
[14] March 1st did Mr. Rice know that you were taking that
[15] exam?
[16] A: Yes.
[17] Q: Did he know you'd been studying in June?
[18] A: In January?
[19] Q: I'm sorry, in January. January and February?
[20] A: February, yes.
[21] Q: After you passed the examination did you go
[22] in and inform him?
[23] A: Yes.
[24] Q: And how soon after you passed the examination
[25] did you inform him?

[1] A: We took the test down in Provo or Orem, and I
[2] think Rick called him from the cell phone immediately
[3] after.
[4] Q: Did you find out immediately whether or not
[5] you'd passed?
[6] A: Yes.
[7] Q: You mentioned a piece of paper. Did the
[8] testing center give you a piece of paper verifying —
[9] A: Yes.
[10] Q: What did you do with that piece of paper?
[11] A: The next day we went into Jay's office. I
[12] took it in, and I believe I gave him a photocopy of it.
[13] Q: During February when you were studying for
[14] the examination did you also watch what the market was
[15] doing?
[16] A: Um-hum, I did.
[17] Q: At this time was Mr. Rice trading your
[18] account?
[19] A: Yes.
[20] Q: And did you watch how the activity — the
[21] purchases and sells in your account?
[22] A: Yes.
[23] Q: And what did you find?
[24] A: Well, you know, I have real-time quotes in my
[25] office and was watching both the Fiserv trades that Jay

Page 665

[1] was making in my account, plus what was going on in
[2] those options in the market.
[3] Q: Let's make sure that that's clear. So you're
[4] saying you had two different screens?
[5] A: Yes. Two different computers.
[6] Q: So one computer is showing real-time market
[7] activity, what the stock and options markets are doing;
[8] correct?
[9] A: Yes.
[10] Q: And then you had another screen that you
[11] could observe the trading in your account with Mr.
[12] Rice?
[13] A: Yes.
[14] Q: How was that?
[15] A: Well, Fiserv has an Internet — has Internet
[16] access to your account and you can go in there and look
[17] at all the trade tickets and you could look — they had
[18] a report that shows you all the activity in your
[19] account, what was purchased, how many contracts,
[20] whether it was stock, etcetera.
[21] Q: So rather than waiting for your confirms or
[22] your monthly reports you could look on through the
[23] Internet, watch what was happening in your account?
[24] A: Yes.
[25] Q: Do you know Claude and Ramona McKinney?

Page 666

[1] A: Yes.
[2] Q: How do you know them?
[3] A: I've known them for about eight, nine years.
[4] Ramona is an employee of mine.
[5] Q: And did they become your — or did they
[6] become customers of yours?
[7] A: Yes.
[8] Q: When?
[9] A: When we were studying for the test. They
[10] knew we had traded the market, and her brother was
[11] doing quite well in the stock market, and she says,
[12] "Claude and I are very, very conservative and we've
[13] never gotten into it, but we probably ought to do
[14] something like that."
[15] Q: And so did you start trading for them in
[16] February?
[17] A: No.
[18] Q: Did they wait until after you passed the
[19] examinations to start doing options trading?
[20] A: No.
[21] Q: When did they open their account?
[22] A: Well, the latter part of February they filled
[23] out the paperwork and I took it over to Jay.
[24] Q: So at some point in late February they decide
[25] that they are willing to start buying securities?

Page 667

[1] A: Yes.
[2] Q: And at the time they opened their account who
[3] did they expect was going to be managing their account
[4] at that point?
[5] A: Jay.
[6] Q: And then was the expectation at some point
[7] when you were licensed you would begin managing the
[8] account?
[9] A: Yes.
[10] Q: Did they understand that — was it their goal
[11] to do options trading or stocks?
[12] A: Their goal was they were going to do options.
[13] Q: How is it that they decided to do options
[14] trading, do you know?
[15] A: I gave them a handbook or the little brown
[16] book on options. They took that home. Claude read it,
[17] had numerous questions about it, and at that point in
[18] time they decided they would go ahead and try it.
[19] Q: And did they understand their trading was
[20] going to be done by Mr. Rice?
[21] A: Yes.
[22] Q: Did they have any expectations about Mr.
[23] Rice's abilities?
[24] A: Well, I had told them that one of the things
[25] I had talked about with Jay was the fact that, you

Page 668

[1] know, we live to play at — not every options trade was
[2] good. And she would go to zero. Especially in the
[3] last few days prior to expiration. But we never risked
[4] everything at any one time, and that would not happen
[5] in our account.
[6] Q: So while there may be a number of purchases,
[7] none of the individual purchases would be risking the
[8] entire value of the account?
[9] A: Correct.
[10] Q: Did the McKinneys believe that Mr. — do you
[11] know what the McKinneys understood about Mr. Rice's
[12] experience?
[13] A: Yeah, they — I had showed them the track
[14] record that I had. Said that seemed to be working
[15] pretty well and I thought it was good for them to do.
[16] Q: And did the track record that you showed them
[17] include the cumulative total returns?
[18] A: Yes.
[19] Q: And what number was that?
[20] A: It was approximately 13,000 percent.
[21] Q: Did Mr. or Mrs. McKinney seem to be impressed
[22] with that?
[23] A: Absolutely.
[24] Q: Do you think that was a factor in their
[25] deciding to allow Mr. Rice to do options trading?

[1] A: Yes.
[2] MR. GRIFFIN: Calls for speculation, and
[3] I'll object. The question probably should be
[4] rephrased.
[5] THE JUDGE: I don't see how this witness can
[6] answer the question.
[7] MR. KLEIN: Q. Did they say anything to
[8] you indicating that the results of the track record
[9] influenced their decision about investing with Mr.
[10] Rice?
[11] A: They were very impressed with the number at
[12] the bottom of the page.
[13] Q: So at some point, probably in late February,
[14] they decided to open an options trading account to be
[15] managed by Mr. Rice?
[16] A: Yes.
[17] Q: Can you describe for us the process by which
[18] they then opened the account, if you know?
[19] A: Well, at that point I called Jay when they
[20] were interested, and he said, "Come over and get the
[21] paperwork." And I went over and got the paperwork.
[22] Q: What kind of paperwork are you talking about?
[23] A: The forms necessary to open up an account.
[24] Q: Turn, if you would, to Exhibit 49. Do you
[25] have that?

[1] A: Yes.
[2] Q: Was that one of the documents — or looking
[3] at the second page, do you recognize those signatures?
[4] A: Yes, that's Claude and Ramona's signature.
[5] Q: Is this one of the forms that you picked up
[6] from Mr. Rice and —
[7] A: Yes.
[8] Q: — took —
[9] A: Um-hum, yes.
[10] Q: Look at Exhibit 50. Is this another one of
[11] the forms?
[12] A: Yes.
[13] Q: And if you'll look at Exhibit — okay. Going
[14] back, looking at Exhibit 50. What is Exhibit 50?
[15] A: 50 is part of the application to open up the
[16] account.
[17] Q: And do you know what other documents that you
[18] took to have them fill out?
[19] A: There was three or four of them.
[20] Q: And was this one of them?
[21] A: Yes.
[22] Q: Okay. If you'd look at Exhibit 22.
[23] A: Which exhibit?
[24] Q: 22. And the second page of that exhibit.
[25] The next page.

[1] A: Okay.
[2] Q: Is that another one of those forms?
[3] A: Yes.
[4] Q: So were there just these three forms or were
[5] there more?
[6] A: I don't recall.
[7] Q: Okay. And the forms you picked up, were they
[8] blank?
[9] A: Yes.
[10] Q: So you took the forms and did what with them?
[11] A: I went back to the office and gave them to
[12] Ramona.
[13] Q: And then did she take them home?
[14] A: I don't really recall what she did with them
[15] at that point in time.
[16] Q: So you don't recall whether or not they were
[17] filled out in your office or whether they filled them
[18] out somewhere else?
[19] A: I don't. They could have very easily been
[20] filled out in my office, but I just don't remember
[21] where we did it or —
[22] Q: Okay. Did you then see the forms again?
[23] A: Yes.
[24] Q: When?
[25] A: Well, they gave them back to me at some

[1] point, and I took them over to Jay, and I gave them an
[2] envelope with Fiserv's address on for them to send
[3] their check in to.
[4] Q: For these account forms you took them to Mr.
[5] Rice and separately you gave to the McKinneys an
[6] envelope, and what was the purpose of that envelope?
[7] A: That if they were going to open an account,
[8] they needed to send the check directly in to Fiserv.
[9] Q: Looking at Exhibit 22, did you fill out any
[10] of the information on this form?
[11] A: No.
[12] Q: Do you recall whether or not you gave the
[13] McKinneys any instructions on how to fill this out?
[14] A: The only instructions that I gave to the
[15] McKinneys were on C, the high risk. We would not do
[16] any — there would not be any uncovered positions, no
[17] uncovered calls, no uncovered puts, nothing that would
[18] put them in a risk — a high risk position.
[19] Q: Okay. And look at Exhibit 50. Is any of the
[20] writing on that form yours?
[21] A: Yes.
[22] Q: Which portions?
[23] A: The date and my signature.
[24] Q: Okay. Did you give the McKinneys any
[25] instructions about filling out this form?

[1] A: No.
[2] Q: And look back at Exhibit 49. Did you give
[3] the McKinneys any instructions on this form?
[4] A: I explained that the only way Jay traded was
[5] on a discretionary basis, and that was what this form
[6] represented, that he would have full control of the
[7] trades.
[8] Q: So after the forms were filled out by the
[9] McKinneys the forms came back to you?
[10] A: Yes.
[11] Q: What did you do with those forms?
[12] A: I took them over to Jay's office.
[13] Q: Do you recall when?
[14] A: I don't know exactly, no. I was studying for
[15] the test at that point.
[16] Q: The Exhibit 49, do you see what date is on
[17] Exhibit 49?
[18] A: 2/29.
[19] Q: And on Exhibit 22 — sorry. Make you do both
[20] books. Do you see what that they signed it?
[21] A: 2/29.
[22] Q: Do you believe that's when they signed it?
[23] A: Yes.
[24] Q: So you took the forms to Mr. Rice's office?
[25] A: Yes.

[1] says, "Officer/ROP." Do you see that?
[2] A: Yes.
[3] Q: Do you recognize that signature?
[4] A: That's Jay's signature.
[5] Q: Okay. Did he have you sign any other
[6] documents? Or was this the only document?
[7] A: I think this was the only one. I'm not
[8] exactly sure.
[9] Q: Okay. Looking back at Exhibit 49, do you
[10] recall whether or not you had signed this Discretionary
[11] Trading Agreement?
[12] A: I didn't.
[13] Q: Looking at the signature page on that
[14] Discretionary Trading Agreement, underneath Mr. Rice's
[15] signature do you see there's some markings over the A
[16] and the S?
[17] A: Yes.
[18] Q: Is it possible you signed this form and later
[19] on your signature was whited out and Mr. Rice put his
[20] signature on there?
[21] A: I don't know.
[22] Q: Did Mr. Rice ever talk to you about whiting
[23] out your signature and adding his signature on this
[24] form?
[25] A: No.

[1] Q: And handed them to him?
[2] A: Don't recall if I handed them to him or
[3] Marianne handed them.
[4] Q: Do you have any recollection of him signing
[5] these documents?
[6] A: No.
[7] Q: If I look at Exhibit 50, you identified your
[8] signature is on there?
[9] A: Yes.
[10] Q: And did you sign that?
[11] A: Yes.
[12] Q: When?
[13] A: On 3/2.
[14] Q: Do you recall the circumstances of your
[15] signing this document?
[16] A: Yeah, the next morning after we had passed
[17] the Series 7, when Rick had talked to Jay on the phone
[18] he said he'd like to meet with us in the morning, and
[19] we went over there that next morning, and we were
[20] sitting at his desk and he handed it to me and he said,
[21] "Now that you're licensed, here, sign this."
[22] Q: Was Mr. Rice's signature already on the form?
[23] A: I believe so, yes.
[24] Q: In fact, let me back up. To the right of
[25] your signature is another signature over the line that

[1] Q: Are you sure?
[2] A: I don't recall ever —
[3] Q: Is that something that if it had happened,
[4] you would have remembered?
[5] A: Yes.
[6] Q: So looking back at Exhibit 50, you had signed
[7] this on March 2nd?
[8] A: Yes.
[9] Q: The day after you'd passed the Series 7 exam?
[10] A: Yes.
[11] Q: But you had not yet passed the Series 63?
[12] A: Right. We didn't take that until the next
[13] week.
[14] Q: Did you realize that you were not licensed in
[15] Utah to sell securities?
[16] A: No, I — I realized because I hadn't taken
[17] the test yet, but —
[18] Q: So why did you sign this?
[19] A: He handed it to me and said, "You've passed
[20] the Series 7. Sign this registered rep."
[21] Q: So then you passed the Series 7 on March 7th,
[22] is that what you said?
[23] A: Series 7?
[24] Q: I'm sorry, Series 63 on March 7th?
[25] A: Yes.

[1] Q: Then when you passed that did you begin
[2] working with Mr. Rice?
[3] A: We started the following Thursday, which was
[4] like a — two days after that.
[5] Q: Okay.
[6] A: Which would have been about the 9th.
[7] Q: All right. So tell me about that day.
[8] A: Well, I was told that he had had the
[9] computers up and running and they were ready for us to
[10] get there, and I spent the next two days — computers
[11] weren't up and running. They weren't tied in to the
[12] right system, and I spent most of the next two days
[13] getting the computers going.
[14] Q: Did you do any trading on those days?
[15] A: No.
[16] Q: Okay. So the next day would have been the
[17] following Monday?
[18] A: Yes.
[19] Q: Do you know what day that was?
[20] A: 13th.
[21] Q: Okay. So Monday, April 13th, you report for
[22] work?
[23] A: Correct.
[24] Q: Do you start doing trading?
[25] A: No. We were supposed to have a sales meeting

[1] at 6:30 in the morning. An hour before the market
[2] opened. And Rick and I both pulled up about 6:20, and
[3] nobody showed up. And we sat out in the parking lot,
[4] and nobody showed up — nobody showed up.
[5] And just before 7:30 Jay pulled in and — all
[6] in a panic and said, "The futures are down. We're
[7] getting our butt kicked. All bets are off." So we
[8] didn't have a sales meeting.
[9] Q: Did he indicate what he meant by, "All bets
[10] are off"?
[11] A: No.
[12] Q: So this is about 7:30 in the morning, right?
[13] A: Yes.
[14] Q: What time did the market open?
[15] A: 7:30.
[16] Q: So now it's 7:30 Monday morning the 13th.
[17] You go in. Do you start doing trading for clients?
[18] A: No.
[19] Q: What did you do?
[20] A: Rick and I just kind of sat there. We didn't
[21] know what to do. And a little while — hour or so
[22] after he came out and said, "Here's a Wade Cook list.
[23] Start calling these people. We've got a seminar coming
[24] up. Nobody ever calls this list."
[25] So I looked at Rick and I said, you know,

[1] "We're supposed to have a sales meeting this morning.
[2] I'm going to go in there and ask some questions. I
[3] mean we don't have a clue what to do."
[4] Q: And did you?
[5] A: Yes.
[6] Q: And what did you ask?
[7] A: I just went in there and asked him if it was
[8] okay if I stood behind him and observed what he did.
[9] Q: And what did he say?
[10] A: Said, "Yes."
[11] Q: And what did you observe?
[12] A: I observed him making block trades. Well,
[13] that morning it was kind of — he said, "All bets are
[14] off," and he kinda' just watched the market and watched
[15] the market. And I asked some questions. And by the
[16] afternoon he was rapidly trading. Buying blocks of
[17] options.
[18] Q: Now, tell me the process of buying blocks of
[19] options that you observed.
[20] A: He would go — he had a series of stock
[21] symbols on his screen and he was watching them and
[22] pulling up charts and printing off charts, and he would
[23] say, "This one needs to be bought," and he'd pick up
[24] the phone and call Fiserv and buy a block of 50, 75 or
[25] a hundred options and write it down in his daytimer.

[1] Q: When he called Fiserv did he tell them the
[2] accounts to which the trades would be placed?
[3] A: No.
[4] Q: And he wrote in his — what did he write in
[5] his daytimer?
[6] A: He wrote the option symbol, the amount of —
[7] the number of contracts he purchased and what he
[8] purchased it at.
[9] Q: And you say you observed this happening
[10] several times that day?
[11] A: That day and throughout the week.
[12] Q: Okay. Now, you mentioned he gave you a list
[13] of people to call and something about a seminar. What
[14] seminar?
[15] A: He had a seminar going on down in Provo and
[16] he gave us a list of Wade Cook people that had been to
[17] the Wade Cook seminars.
[18] Q: What kind of seminar was it that Mr. Rice was
[19] having in Provo?
[20] A: An options trading seminar.
[21] Q: Did you call people on the list and invite
[22] them to the seminars?
[23] A: Yes, we did.
[24] Q: Did you go to the seminar?
[25] A: Yes, I did.

Page 681

[1] Q: At the seminar did Mr. Rice talk about his
[2] track record?
[3] A: Yes.
[4] Q: Did he offer to let people at the seminar see
[5] it?
[6] A: They could come up to the front and see it,
[7] but they couldn't have a copy of it.
[8] Q: Did some people come up and see it?
[9] A: Yes.
[10] Q: Did you hear any of their comments after they
[11] saw the track record?
[12] A: No, because by the time the seminar got
[13] through I was pretty — pretty upset, and I had pretty
[14] much decided that I wasn't going to stay there.
[15] Q: The seminar was what day of the week, do you
[16] remember?
[17] A: I want to say it was a Wednesday. But I
[18] don't know for sure.
[19] Q: Turn to Exhibit 13. And the next to the last
[20] page of that exhibit.
[21] MR. GRIFFIN: I'm sorry. Exhibit?
[22] MR. KLEIN: 13.
[23] MR. GRIFFIN: 13.
[24] MR. KLEIN: Q. Had you seen this
[25] document before?

Page 682

[1] A: Yes.
[2] Q: Where had you seen it?
[3] A: In their office.
[4] Q: Does this help you remember which day the
[5] seminar was?
[6] A: March 14th. So that was Tuesday night.
[7] Q: So did you go back to work the next day?
[8] A: Yes.
[9] Q: And anything happen differently on Wednesday?
[10] A: Well, the market was pretty violent, and I
[11] was — I didn't feel comfortable with what was
[12] transpiring with the track record because I had been
[13] told that this was — if I had put money in in 1997, my
[14] accounts would have escalated this percentage. And yet
[15] what I realized was not everybody was getting those
[16] trades and that track record was inaccurate.
[17] Q: On that Wednesday did you have any customers
[18] call you and express any concerns?
[19] A: Mike Olsen on I believe it was Wednesday
[20] night called me and said that Jay had created a spread
[21] in his account which he could see on the Internet which
[22] had risked more money than he had given him and he
[23] wasn't comfortable in being in that position.
[24] Q: So the customer also had Internet access to
[25] see his account, went and looked and saw that a spread

Page 683

[1] had been placed?
[2] A: Yes.
[3] Q: Do you know if Mr. Rice had done spreads
[4] before?
[5] A: He had not done any spreads before that I
[6] know of in my account.
[7] Q: Okay. But on Wednesday night one customer
[8] calls and complains to you about a spread in his
[9] account?
[10] A: Yes.
[11] Q: Do you know if Mr. Rice was doing spreads in
[12] other accounts?
[13] A: Yes, he was.
[14] Q: How do you know that?
[15] A: Because he had a spread in my brother's
[16] account and a spread in another account that we were —
[17] had brought in.
[18] Q: Do you know if he was doing it for many or
[19] most of his options accounts?
[20] A: He was doing it for most of the option
[21] accounts. He was trying to recover positions that had
[22] gone bad in the market.
[23] Q: So this Mike Olsen complained to you, saying
[24] he was uncomfortable that the spread had put his
[25] account at greater risk than equity in the account?

Page 684

[1] A: Yes.
[2] Q: Did you convey that conversation to Mr. Rice?
[3] A: Yeah, the next morning I went in and I said
[4] Mike Olsen was a real heater. That he was —
[5] MR. GRIFFIN: I am sorry. I didn't hear
[6] that.
[7] MR. GORRINGE: He was a heater. He was
[8] upset. That he had risked more money than he had given
[9] to him to manage, and that he wanted that trade changed
[10] immediately.
[11] MR. KLEIN: Q. And did Mr. Rice respond?
[12] A: He got very angry.
[13] Q: What did he say?
[14] A: Told me that Mike Olsen didn't know what he
[15] was talking about and that he wasn't going to talk to
[16] him but I needed to call him back up and we would
[17] change that trade, but when he missed out and everybody
[18] else made huge money on that thing he was going to be
[19] sorry.
[20] Q: Did you call Mr. Olsen back?
[21] A: I did.
[22] Q: Did you convey that to him?
[23] A: Yes.
[24] Q: What did Mr. Olsen decide?
[25] A: Change the trade.

[1] Q: "Change the trade," meaning?
 [2] A: Or not change the trade. "Get me out of that
 [3] position."
 [4] Q: So did he get out of that position?
 [5] A: Yes. We sold one-half and bought the other
 [6] half back to —
 [7] Q: And when you say, "we," did you —
 [8] A: I did that because Jay wouldn't do it.
 [9] Q: And so —
 [10] A: Jay told me, "Here, you take care of this.
 [11] I'm not bothering with him any more."
 [12] Q: And so how did you take care of it?
 [13] A: I went in and got the tickets, filled out the
 [14] tickets and called Fiserv. That was the only trade I
 [15] called Fiserv on that I recall.
 [16] Q: So you called Fiserv, the clearing firm, and
 [17] told them the information they needed to reverse to
 [18] offset those trades?
 [19] A: Yes.
 [20] Q: When you observed Mr. Rice calling Fiserv and
 [21] entering block trades was it your understanding at some
 [22] point after those trades were executed that the block
 [23] trade would be allocated to individual customers?
 [24] A: I didn't understand exactly what — you know,
 [25] how the process went. And as I was standing there

[1] observing I would ask, and he'd say, "Well, I make the
 [2] trades and when I get a minute I allocate them based on
 [3] how much money is available in their cash account."
 [4] Q: So he told you that the way he decided which
 [5] accounts to place the block trades in was based on how
 [6] much money was in the account?
 [7] A: Yes.
 [8] Q: Do you know how he communicated to Fiserv
 [9] that information?
 [10] A: A ticket on the trade was written up and
 [11] given to Marianne and she would fill out a sheet
 [12] allocating the contracts.
 [13] Q: Turn to Exhibit 57, if you would. Are these
 [14] the documents you were talking about?
 [15] A: Yes.
 [16] Q: So these would be filled out by whom?
 [17] A: Marianne, the secretary.
 [18] Q: Based on what information?
 [19] A: The trade ticket. And then he would give her
 [20] the information as to which accounts to fill these out
 [21] on.
 [22] Q: When you say, "trade ticket," this would be
 [23] the ticket that Mr. Rice would create when he placed
 [24] the trade?
 [25] A: With Fiserv.

[1] Q: And so did these trade tickets have the
 [2] customer information on them or was the trade ticket
 [3] for the block trade?
 [4] A: For the block trade.
 [5] Q: So he'd give her the ticket for the block
 [6] trade, saying, "This is the block trade that was done,"
 [7] and then ask her to fill out this form?
 [8] A: Yes.
 [9] MR. GRIFFIN: Objection, Your Honor. We've
 [10] had quite a few leading questions, but I'm going to ask
 [11] that Mr. Klein observe the convention of not leading
 [12] the witness at this time.
 [13] THE JUDGE: It was a leading question. If
 [14] you can avoid it, please. Rephrase the question.
 [15] MR. KLEIN: I apologize, Your Honor.
 [16] Counsel.
 [17] Q: Exhibit 57, you testified that Marianne, the
 [18] secretary, would fill it out; correct?
 [19] A: Yes.
 [20] Q: Do you know what the source of her
 [21] information was to fill out this form?
 [22] A: He would give her the trade ticket and — I
 [23] believe it was a note, or just — with the names on it
 [24] and how many contracts each individual account would
 [25] get.

[1] Q: And by, "trade ticket," do you mean the trade
 [2] ticket for the block trade?
 [3] A: Yes.
 [4] Q: So this was Thursday, March 16th?
 [5] A: Yes.
 [6] Q: Did you come back to work on Friday, the
 [7] 17th?
 [8] A: I did.
 [9] Q: What happened that day?
 [10] A: We went in, and still we had no meeting. We
 [11] don't know really what we were doing. And Jay called
 [12] us in his office and said, "I've got tickets to the
 [13] NCAA tournament. It's going to be a really hectic day.
 [14] Why don't you and Rick go to the games."
 [15] Q: Did you go?
 [16] A: Yes.
 [17] Q: And how long did that take?
 [18] A: Better part of the afternoon.
 [19] Q: Did you return to the office afterwards?
 [20] A: We did.
 [21] Q: When?
 [22] A: After the second game or close to the end of
 [23] the second game I walked out and I called back to the
 [24] office, talked to John. I said, "John, what's the
 [25] market doing?"

[1] Q: Who's John?
[2] A: John Vonlunen. He was another broker there.
[3] Because when we left the market was way down. He said,
[4] "No, it turned around and went all the way up."
[5] Q: Was that good?
[6] A: It was horrible.
[7] Q: Why?
[8] A: Because all the spread positions were now in
[9] huge trouble because they had to be closed out. And he
[10] had purchased a lot of put plays throughout the day.
[11] And puts are betting that the market continues to go
[12] down, and the market turned and went way up. Or went
[13] all the way back up.
[14] Q: So you got that information on the telephone
[15] at the basketball game?
[16] A: Yes.
[17] Q: Then what did you do?
[18] A: I went down to Rick and I says, "We need to
[19] go back to the office because every one of our
[20] customers' money has got to be gone."
[21] Q: So did you go back to the office?
[22] A: We did.
[23] Q: And what happened then?
[24] A: As we walked in Jay was walking out, and we
[25] walked in and we started talking to John.

[1] A: She was filling out these tickets.
[2] (indicating).
[3] Q: "These," do you mean Exhibit 57?
[4] A: Yes.
[5] Q: And what time was this?
[6] A: Approximately four, 4:30.
[7] Q: What time does the market close?
[8] A: Two o'clock.
[9] Q: Two o'clock our time?
[10] A: Yes.
[11] Q: So the market had been closed for at least
[12] two hours. And is it correct that at four o'clock,
[13] 4:30 the secretary is still filling out these forms?
[14] A: Yes.
[15] Q: What would she do with them after they were
[16] filled out?
[17] A: FAX them to Fiserv.
[18] Q: And did you observe her filling them out?
[19] A: Yes.
[20] Q: Do you know how long it took her to finish
[21] the process?
[22] A: I want to say we left at about 5:15, 5:30.
[23] Q: Did you offer to help her?
[24] A: Yes.
[25] Q: And did you help?

[1] Q: And I'm sorry. When he was walking out he
[2] was leaving somewhere?
[3] A: He was leaving the office for the day.
[4] Q: How did you know that?
[5] A: I guess I didn't know it. He just said, "I'm
[6] gone," something to that affect.
[7] Q: Okay.
[8] A: And we talked to John. And Marianne was
[9] sitting out there very frustrated because she was
[10] supposed to go somewhere with her husband and —
[11] MR. GRIFFIN: Objection. That's
[12] nonresponsive and calls for speculation.
[13] THE JUDGE: Well, actually, it's
[14] nonresponsive because he is volunteering something
[15] beyond the question.
[16] And try to make it specific, Mr. Klein, in
[17] terms of what you're seeking.
[18] MR. KLEIN: Q. When you went back into
[19] the office did you stay in the office for a while?
[20] A: Yes.
[21] Q: And what did you do? Did you do any work in
[22] the office that afternoon?
[23] A: I walked over to Marianne and asked Marianne
[24] if I could help her.
[25] Q: And what was she doing?

[1] A: Yes.
[2] Q: So what did you do?
[3] A: She brought me over a stack of papers and
[4] said, "Here's what you do," and I started filling them
[5] out for her.
[6] Q: And what information did you use to identify
[7] the customers?
[8] A: I don't recall exactly, but I had the ticket
[9] and we filled out a trade ticket for the customer, and
[10] this. (indicating).
[11] Q: So based on the block trade that had been
[12] done — and there was a trade taken for the block
[13] trade, right?
[14] A: Yes.
[15] Q: Isn't that what you said?
[16] A: Yes.
[17] Q: So are you saying you would create another
[18] trade ticket for each individual customer's portion of
[19] the block?
[20] A: Yes, I believe that's the way he did it.
[21] MR. KLEIN: Your Honor, I have no more
[22] questions for this witness.
[23] THE JUDGE: Any cross-examination, Mr.
[24] Griffin?
[25] MR. GRIFFIN: Sure.

CROSS-EXAMINATION BY MR. GRIFFIN

- [1] **MR. GRIFFIN:** Q. Mr. Gorringer, my name
[2] is Mark Griffin. I represent Jay Rice. Is it fair to
[3] say, Mr. Gorringer, that you and Mr. Rice aren't on good
[4] terms?
[5] **A:** After I left Jay called me and accused me of
[6] turning him in to the state.
[7] **Q:** Maybe I didn't ask the question right. Is it
[8] fair to say that you and Mr. Rice are not on good terms
[9] right now?
[10] **A:** I feel we're on okay terms.
[11] **Q:** Okay. You went over your background. You
[12] mentioned that you'd been a — you mentioned your
[13] current business, which is the title business. What
[14] else have you done in your employment career?
[15] **A:** I was in the car business for approximately
[16] ten years.
[17] **Q:** Selling cars?
[18] **A:** Yes.
[19] **Q:** New cars?
[20] **A:** New cars, used cars.
[21] **Q:** I'm not sure about your initial testimony.
[22] You said somebody had told you to go talk to Jay Rice.
[23] Isn't it true you worked for Mr. Rice before?
[24] **A:** Yes.
[25]

- [1] **Q:** So you knew him?
[2] **A:** Yes.
[3] **Q:** When you were trading your own account can
[4] you describe for us what option strategies you were
[5] engaged in?
[6] **A:** Primarily buying calls.
[7] **Q:** Okay. Did you do any spreads?
[8] **A:** No.
[9] **Q:** Did you do any uncovered calls?
[10] **A:** No.
[11] **Q:** Any uncovered puts?
[12] **A:** No.
[13] **Q:** Do you know what those things are?
[14] **A:** Yes.
[15] **Q:** About your license, do you know who Kent
[16] Sweat is?
[17] **A:** Yes.
[18] **Q:** Who is he?
[19] **A:** He's the broker/dealer at Intermountain
[20] Financial.
[21] **Q:** Did Kent handle a lot of the transactions
[22] with respect to your getting licensed in the state?
[23] **A:** I don't know. My interaction was with Jay.
[24] **Q:** Okay. So you don't know whether or not Mr.
[25] Sweat was intimately involved in and dealing with that

- [1] U-4 processing and submitting for the broker/dealer?
[2] **A:** No.
[3] **Q:** No. And you don't know what conversations
[4] might have taken place between Mr. Rice and Mr. Sweat
[5] with regard to your license?
[6] **A:** No.
[7] **Q:** So it's possible that Mr. Sweat could have
[8] told Mr. Rice that you were licensed, is that not
[9] correct?
[10] **A:** Yes.
[11] **Q:** You've testified on direct that you passed
[12] your examination, and you gave a photocopy of the paper
[13] to that, but I wasn't sure at that point what exam you
[14] were talking about.
[15] **A:** Series 7.
[16] **Q:** Series 7? What about the Series 63?
[17] **A:** I don't recall.
[18] **Q:** The McKinnys. You testified that you met
[19] with them and talked to them about options trading
[20] strategy. Is that right?
[21] **A:** Yes.
[22] **Q:** Okay. Initially this is contact with Mrs.
[23] McKinney?
[24] **A:** Yes.
[25] **Q:** Can you describe for me how that came up?

- [1] You're working with Mrs. McKinney in your business, is
[2] that correct, at that time?
[3] **A:** Yes.
[4] **Q:** Okay. How did that discussion start? I
[5] believe that you testified on direct that Mrs. McKinney
[6] said something about being conservative, but I want to
[7] know how it started, that you started talking to the
[8] McKinnys about an option trading strategy.
[9] **A:** I don't recall how it actually started.
[10] Other than she knew that we were studying for the test
[11] and that we had been — Jay had been trading our
[12] account.
[13] **Q:** Did she express interest in finding out more
[14] about it or did you feel like you could get her to
[15] invest?
[16] **A:** I don't recall.
[17] **Q:** Isn't it fair to state at this time you
[18] needed customers? You were going into that business,
[19] isn't that correct?
[20] **A:** Yes.
[21] **Q:** So my question to you, Mr. Gorringer, is did
[22] you solicit her? Did you ask her to become a customer?
[23] **A:** Yes.
[24] **Q:** Okay. And that took place in the initial
[25] conversations?

[1] A: No.
[2] Q: Did you show her what you were doing in your
[3] option strategy?
[4] A: Yes.
[5] Q: How long previous to your initial
[6] conversation about Mr. Rice did she know about your
[7] option trading?
[8] A: Will you explain? I don't understand what.
[9] Q: Previous to your conversation about what Mr.
[10] Rice was doing did she know that you were trading in
[11] options?
[12] A: Yes.
[13] Q: Was your option trading strategy profitable?
[14] A: Yes.
[15] Q: Did you tell her that?
[16] A: Yes.
[17] Q: Do you think that was a factor in her
[18] decision to invest money with you?
[19] A: I don't know.
[20] Q: How profitable was it, Mr. Gorringer?
[21] A: It was profitable. It wasn't hugely
[22] successful. It was around seven, eight percent.
[23] Q: 70 percent?
[24] A: Seven, eight percent.
[25] Q: Seven?

[1] time and that it could go to zero at expiration date.
[2] Q: Okay. That talks about buying options,
[3] correct?
[4] A: Yes.
[5] Q: Did you explain about selling options, too?
[6] A: We talked about in an option strategy when
[7] you sold an option that you primarily only wanted to
[8] sell under a covered position, which means you own the
[9] stock.
[10] Q: So you talked to them about the risks
[11] associated with options trading. You talk to them
[12] about spread transactions?
[13] A: No.
[14] Q: Do you know about spread transactions?
[15] A: I didn't at the time, no.
[16] Q: You'd been studying for over a month for your
[17] Series 7 examination. Are you telling me that wasn't
[18] covered?
[19] A: No. We went through spreads in the text. I
[20] had never experienced one. I had never done one myself
[21] or traded one myself.
[22] Q: But you knew about them?
[23] A: Because of the test.
[24] Q: Yes. Did you explain to the McKinneys about
[25] spreads? You knew about them. Right?

[1] A: Seven to eight percent.
[2] Q: Oh, seven to eight percent. At the time —
[3] oh, what was the time, to the best of your
[4] recollection, that the McKinneys' account was first
[5] traded?
[6] A: McKinneys' account didn't start — was not
[7] traded until probably the week of — it was probably
[8] that options week of 13th, 14th because their money got
[9] lost at Fiserv.
[10] Q: By that time you had a license?
[11] A: Yes.
[12] Q: You understand now that you were approved by
[13] that time with both the NASD and the State of Utah?
[14] A: Yes.
[15] Q: Okay. Going back to what Mrs. McKinney said
[16] about they were conservative investors, didn't that
[17] give you some pause when they made that representation
[18] to you?
[19] A: Yes.
[20] Q: Did you talk about that at all?
[21] A: Yes.
[22] Q: What did you tell them about the risks that
[23] would be involved in option trading?
[24] A: That options were unlike equities. You were,
[25] basically, risking your money for a short period of

[1] A: I knew about them, but, no, I did not explain
[2] that to them.
[3] Q: Why not?
[4] A: Don't know.
[5] Q: Do you still have Exhibit 22 in front of you?
[6] A: It is the second page of Exhibit 22. Yes.
[7] Q: Okay. Can you see the column that's marked
[8] IV? In about the middle of the page. It's Roman
[9] numeral number IV, Mr. Gorringer, I'm sorry. Where it
[10] says, "Spreads"? Do you see where that's initialed?
[11] A: Okay. Wait a second. (looking at exhibit).
[12] I don't know where you're referring to.
[13] Q: Oh, I'm sorry. Let me approach and show you.
[14] Second page. "Spreads."
[15] A: I'm sorry. Okay. Right here.
[16] Q: That's all right. It's confusing. It's a
[17] hard document to read. The form was bigger, of course,
[18] when you gave it to the McKinneys. It was a larger
[19] form than you have in that exhibit, correct?
[20] A: Yes.
[21] Q: Okay. Do you see where they have initialed
[22] that —
[23] A: Yes.
[24] Q: — next to, "Spreads"? Would you read that
[25] language, please?

[1] A: "Moderate risk. Speculative risk requires
[2] the use of margin. If the long position is closed out
[3] leaving only a short position, the investment becomes
[4] high risk due to the unlimited financial risk assumed."
[5] Q: Right. Does that seem to comport with your
[6] idea that the McKinnys were conservative investors?
[7] A: Yes.
[8] Q: It does?
[9] A: Yes.
[10] Q: Well, doesn't it say, "speculative risk"?
[11] Doesn't it mention the, "unlimited financial risk
[12] assumed"?
[13] A: That is correct.
[14] Q: So that's not a conservative strategy, is it?
[15] A: It is not.
[16] Q: But they signed it?
[17] A: Yes.
[18] Q: And your testimony on direct was you
[19] instructed these people how to fill this out.
[20] A: I don't recall them filling it out. I don't
[21] remember how they filled it out. I gave them the
[22] paperwork. They asked questions. But I did not fill
[23] this out with them.
[24] Q: Okay.
[25] A: I don't recall how — I remember taking it to

[1] Jay, but I don't recall whether I was with them or I
[2] wasn't with them.
[3] Q: Okay. So your testimony here today is that
[4] you didn't spend any time talking with them about the
[5] risk of spreads?
[6] A: No.
[7] Q: Exhibit 49, which you have in front of you in
[8] the black binder. You testified that you gave them
[9] this document, as well, and that you correctly
[10] explained that this was a discretionary trading?
[11] A: Yes.
[12] Q: So they understood that clearly?
[13] A: Yes.
[14] Q: I want to take you back to that morning —
[15] you said on the following Monday, I think you were
[16] referring to April 13th, you were to report for work
[17] and go through a — what did you say it was? A sales
[18] meeting or office meeting?
[19] A: I believe it was March 13th.
[20] Q: Okay. March 13th. And Mr. Rice was busy
[21] when you arrived at 7:30, correct?
[22] A: Yes.
[23] Q: You could tell that because he was on the
[24] phone?
[25] A: No, he was watching the TV.

[1] Q: Okay. So what do you mean, "the TV"?
[2] A: He had the stock quotes up here and watching
[3] the TV.
[4] Q: At the same time?
[5] A: Trying to figure out what the market was
[6] going to do.
[7] Q: Now you know markets move a lot, don't you?
[8] A: Yes.
[9] Q: On occasion they can move quite a bit, is
[10] that correct?
[11] A: Yes.
[12] Q: Okay. On that day what was the market doing?
[13] A: Going down.
[14] Q: Okay. That's a thing that requires
[15] attention, doesn't it?
[16] A: Yes.
[17] Q: Okay. So you didn't feel slighted that Mr.
[18] Rice didn't show up on time for your meeting?
[19] A: Yes, we did.
[20] Q: You felt slighted?
[21] A: Absolutely.
[22] Q: Wasn't his duty to the customers first?
[23] A: But the meeting was supposed to be before the
[24] market opened.
[25] Q: You understand things happen before markets

[1] open, correct? That there are trades that happen after
[2] hours. There are other market indicators that occur
[3] after hours. Don't you understand that?
[4] A: Yes.
[5] Q: That there are market indicators?
[6] A: Yes.
[7] Q: Isn't it true that you probably know yourself
[8] of brokers who get up very early in the morning and
[9] study market indicators before the market opens?
[10] A: Yes.
[11] Q: Do you know if Mr. Rice is one of those?
[12] A: No.
[13] Q: Okay. You testified, also, that you stood
[14] behind Mr. Rice on that day, on Monday, March 13th?
[15] March 13th. I misstated that. It was March 13th,
[16] wasn't it? On Monday, March 13th. You testified you
[17] stood behind him and observed what he was doing. And
[18] it appeared that the pace of what he was doing was very
[19] unusual, was it not?
[20] A: I didn't know what was usual and unusual
[21] because that was pretty much our first day.
[22] Q: Okay. Well, is it safe to say that he was
[23] extremely busy and concerned about what was happening
[24] in the marketplace?
[25] A: Yes.

[1] Q: Okay. About what time did you observe him?
 [2] A: 8:30.
 [3] Q: About 8:30. So from 7:30 when he arrived
 [4] until 8:30 you weren't observing him?
 [5] A: Kind of sitting there trying to figure out
 [6] what we were going to do. We didn't know what we were
 [7] going to do.
 [8] Q: So you wouldn't know whether or not Mr. Rice
 [9] was on a phone call with the clearing firm, Fiserv, for
 [10] an entire hour before you started observing him?
 [11] A: No.
 [12] Q: So it's possible he could have talked to
 [13] Fiserv extensively during that period of time?
 [14] A: Yes.
 [15] Q: Okay. It's also possible, is it not, that he
 [16] was on the telephone before you even saw him at 7:30?
 [17] A: Yes.
 [18] Q: Have you known Mr. Rice to use a cell phone
 [19] and call in and ask for quotes and ask for other
 [20] information and compare things even when he's out of
 [21] the office?
 [22] A: No.
 [23] Q: You testified that you used trade tickets to
 [24] make the allocations, is that it? If I understood your
 [25] testimony correctly, you used block trade tickets, you

[1] Q: From what you saw at the end of the day as
 [2] opposed to what it was on the 13th, was it even busier
 [3] than the 13th?
 [4] A: Is the 17th Friday?
 [5] Q: I'm not certain. It's the day you testified
 [6] you went to the NCAA tournament.
 [7] A: That Friday, that day when we went to the
 [8] games, yeah, there was a lot more trades done that day.
 [9] Q: Okay. When Mr. Rice talked to you about
 [10] becoming a broker did he say anything about the need
 [11] for customers to be suitable for options trading?
 [12] A: No. Not that I recall.
 [13] Q: Did you get anything from your seminars —
 [14] A: Yes.
 [15] Q: — on suitability?
 [16] A: Yes.
 [17] Q: Was that before or after you went to the
 [18] McKinneys and asked them to become customers?
 [19] A: I don't recall. I don't recall where I was
 [20] at in the study at that point.
 [21] Q: Okay. It is possible, is it not, you had
 [22] already gone over suitability in your learning before
 [23] you talked to the McKinneys?
 [24] A: It is possible, yes.
 [25] Q: So you could have known about it?

[1] make allocations to the customer accounts?
 [2] A: I helped Marianne that one night. Friday
 [3] night.
 [4] Q: Right. But didn't you say you used the block
 [5] trade tickets to do that?
 [6] A: Yes.
 [7] Q: Were there block trade tickets?
 [8] A: (pause).
 [9] Q: Do you know?
 [10] A: Yes, there were block trade tickets.
 [11] MR. GRIFFIN: The record should reflect the
 [12] witness paused on that reply.
 [13] MR. KLEIN: He was thinking.
 [14] THE JUDGE: Didn't seem to be an undue
 [15] hesitation.
 [16] MR. GRIFFIN: Q. Did you know from your
 [17] experience if this was a normal situation on the 17th?
 [18] A: I don't understand your question.
 [19] Q: Well, the 17th was a busy day. Is that fair
 [20] to say?
 [21] A: Yes.
 [22] Q: Okay. Was it more busy than you had observed
 [23] before?
 [24] A: I hadn't been there before. That was the
 [25] first week.

[1] A: Yes.
 [2] Q: Was it your opinion that the trades for the
 [3] McKinneys — or that the McKinneys were — excuse me.
 [4] Strike that.
 [5] Did it appear to you that options trading was
 [6] a suitable strategy for the McKinneys?
 [7] A: No, I don't believe it was a suitable
 [8] strategy for the McKinneys.
 [9] Q: Well, you solicited them, correct?
 [10] A: Yes.
 [11] Q: So what happened between the time that you
 [12] solicited them and your conclusion now? At the time
 [13] that you —
 [14] A: I don't recall my thought at that time.
 [15] Q: Didn't even think about it?
 [16] A: I was studying for a test. I — and they
 [17] expressed interest.
 [18] Q: Okay. Let me have you turn to — in the
 [19] smaller blue book there is an exhibit there. That is a
 [20] smaller book of exhibits. Yes. It's underneath what
 [21] you have. And it's Exhibit 15. Do you have that in
 [22] front of you?
 [23] A: Yes.
 [24] Q: Does that look familiar to you?
 [25] A: (looking at exhibit). No.

Page 709

[1] Q: If I represented to you, Mr. Gorringer, that
[2] this sheet was used and sent to Fiserv allocating
[3] beforehand trades or indicating beforehand, would you
[4] have known about this at all?
[5] A: No.
[6] Q: Your testimony on direct was that you didn't
[7] observe Mr. Rice allocating the trades beforehand,
[8] correct?
[9] A: Yes.
[10] Q: We are talking about the day you observed
[11] him.
[12] A: Yes.
[13] Q: Which was March 13th, is that correct?
[14] A: (nodding head affirmatively).
[15] Q: Okay. Now, if Mr. Rice had used something
[16] like Exhibit 15, sent this in, talked to the traders,
[17] isn't that an allocation? Wouldn't that be an
[18] allocation?
[19] A: It would be.
[20] Q: Okay. One final line, Mr. Gorringer. You
[21] opened your own account with Mr. Rice, correct?
[22] A: Yes.
[23] Q: And your returns from that account
[24] contributed to your wanting to do this, is that right?
[25] A: (pause).

Page 710

[1] Q: What was your account doing?
[2] A: When?
[3] Q: After you opened it. How did it go? What
[4] was happening in your account?
[5] A: It got opened late. I don't believe there
[6] was much activity in it. The first couple trades,
[7] actually, I believe lost money. It went down, I would
[8] say, approximately six or \$7,000. And then January was
[9] good. It had turned around and gone positive for about
[10] 20 percent. It was up like \$4,000.
[11] Q: That's pretty good, isn't it?
[12] A: Yes.
[13] Q: And did that contribute to your talk with the
[14] McKinneys?
[15] A: No.
[16] Q: Did you talk to them about how much money you
[17] made in that account in January?
[18] A: I don't recall specifically talking to them
[19] about that account, specifically in general. I know at
[20] the time I showed them the Internet. Showed them the
[21] account.
[22] Q: You did show them the account?
[23] A: Yes.
[24] Q: Okay. When you say at that time what time
[25] are we talking about? Are we talking about after the

Page 711

[1] January returns?
[2] A: I'm confused what time you're asking me the
[3] question.
[4] Q: Okay. Well, let's say did you show them the
[5] losses?
[6] A: Yes.
[7] Q: Okay. Did you show them the profits in
[8] January?
[9] A: Yes.
[10] Q: In February did you look at it? Did you look
[11] at returns as late as February?
[12] A: Yes.
[13] Q: And by February what was the account doing?
[14] A: It was about — it was up about 20 percent.
[15] Q: Did they seem impressed by that?
[16] A: Yes.
[17] Q: About how many times did you come to Mr.
[18] Rice's office before you became interested in becoming
[19] licensed?
[20] A: I went to his office once, talked to him
[21] about trading. I believe we talked — I went to his
[22] office one more time to talk to him about working
[23] there.
[24] Q: Do you ever recall stating to the McKinneys
[25] that how just after a few months of investing with Mr.

Page 712

[1] Rice you had close to three times the amount of money
[2] that you started out with?
[3] A: No.
[4] Q: Never set that?
[5] A: No.
[6] Q: Do you know what the source of the McKinneys'
[7] money was for making this investment?
[8] A: No.
[9] Q: So you didn't know it was from their IRA?
[10] A: No.
[11] Q: We're done.
[12] THE JUDGE: Any redirect?
[13] MR. KLEIN: No, Your Honor.
[14] THE JUDGE: I have no questions for this
[15] witness. This is —
[16] MR. KLEIN: He's not subject to be called by
[17] us, Your Honor.
[18] THE JUDGE: Mr. Griffin, do you anticipate
[19] any further testimony from this witness at any later
[20] stage?
[21] MR. GRIFFIN: Your Honor, we reserve the
[22] right to call him in our portion of the case, and I
[23] don't know at this point whether or not we'll need to,
[24] but we'll make appropriate notice.
[25] THE JUDGE: So understood.

[1] Mr. Gorringer, you're free to leave. Thank
[2] you.
[3] Mr. Klein, your next witness.
[4] MR. KLEIN: You want to take a break first
[5] or go on?
[6] THE JUDGE: Let's take a break. We'll be in
[7] recess until ten after three.
[8] (break at 2:59 p.m.)
[9] (reconvened at 3:15 p.m.)
[10] THE JUDGE: Mr. Klein, your next witness.
[11] MR. KLEIN: Division calls Sheila Thomas.
[12] THE JUDGE: Would you raise your right hand,
[13] please.
[14] SHEILA THOMAS,
[15] after being first duly sworn,
[16] testified as follows:
[17] THE JUDGE: Please be seated.
[18] Mr. Klein.
[19] DIRECT EXAMINATION BY MR. KLEIN
[20] MR. KLEIN: Q. Miss Thomas, your name?
[21] A: Sheila Thomas. S-h-e-i-l-a. T-h-o-m-a-s.
[22] Q: And where are you employed, Miss Thomas?
[23] A: I've been with the Division of Securities,
[24] Department of Commerce.
[25] Q: Have been?

[1] some — like their advertising file and other items.
[2] Q: And you have been present during these
[3] proceedings the last several days, correct?
[4] A: That's correct.
[5] Q: Turn, if you would, to Exhibit 11. Would you
[6] describe what these documents are in Exhibit 11?
[7] Generally, not individually.
[8] A: (looking at exhibit). These look like — I
[9] submitted a request to Fiserv Correspondent Services
[10] for some time and sales information, and these appear
[11] to be copies of trade tickets and any other
[12] correspondence — or trade memorandum that was attached
[13] to those tickets.
[14] Q: These documents came, then, from Fiserv to
[15] you?
[16] A: Correct.
[17] Q: And they are in response to your request?
[18] A: Correct.
[19] Q: And your request was for what?
[20] A: Time and sales information for the
[21] Intermountain office and for a period of about six
[22] months.
[23] Q: And you specified the time period?
[24] A: I did.
[25] MR. KLEIN: Judge, I move admission of

[1] A: Have been for the last year and a-half.
[2] Q: Still?
[3] A: Still.
[4] Q: Okay.
[5] A: Hopefully, after this, too.
[6] Q: And what are your responsibilities at the
[7] Division?
[8] A: My title is Securities Examiner. I do audits
[9] of broker/dealers and investment advisors, and I also
[10] license investment advisors and broker/dealers and
[11] their agents.
[12] Q: Have you done an examination of Mr. Rice's
[13] office?
[14] A: Yes.
[15] Q: When?
[16] A: The fieldwork was started on March 22nd, 23rd
[17] and 24th of the year 2000. There were occasions after
[18] that there was one or two additional days that I was in
[19] the office, and the rest has been by requesting
[20] documents either over the phone or through the mail.
[21] Q: What prompted you to do that field audit?
[22] A: I was assigned the audit — well, it pretty
[23] much started as a request from my supervisor, George
[24] Robinson, to get some documents regarding — some basic
[25] documents that broker/dealers are required to have in

[1] Exhibit 11.
[2] THE JUDGE: Any objection?
[3] MR. GRIFFIN: I have just one voir dire
[4] question.
[5] VOIR DIRE EXAMINATION BY MR. GRIFFIN
[6] MR. GRIFFIN: Q. Are these all the
[7] records that you got? Do you know?
[8] A: Offhand I would say probably not because what
[9] I received was a large box that was probably about this
[10] big. I would say 24 inches by 12. (indicating).
[11] Q: Okay. So this is a selection?
[12] A: It's a selection of documents.
[13] MR. GRIFFIN: No objection.
[14] THE JUDGE: Go ahead.
[15] DIRECT EXAMINATION BY MR. KLEIN (continuing)
[16] MR. KLEIN: Q. Do you know how you
[17] decided to make this selection?
[18] A: This selection — the top ticket is dated
[19] October 26 of 1999. And it looks like the last ticket
[20] is dated November 17th, 1999.
[21] Q: So you believe all of those are within that
[22] time frame?
[23] A: Just flipping through them, it looks like it
[24] goes from that October to that November date. And the
[25] reason I would have chosen that is these tickets

[1] were —
 [2] Q: That's fine.
 [3] THE JUDGE: It is received.
 [4] (Exhibit 11 received.)
 [5] MR. KLEIN: Q. Turning, if you would, to
 [6] Exhibit 14. Do you recognize this document?
 [7] A: Yes. The top document —
 [8] Q: Well, wait a minute. Go ahead.
 [9] A: These are printouts that I obtained from the
 [10] Utah Department of Commerce, Division of Securities.
 [11] The printout from the Internet.
 [12] Q: Are these records of the Division of
 [13] Securities?
 [14] A: They're the records of the Utah Division of
 [15] Corporations.
 [16] Q: Utah Division of Corporations?
 [17] A: Well, they're — the printout is of
 [18] information that's contained on the records of the Utah
 [19] Division of Corporations. I printed them out. Once it
 [20] became a printout it becomes a record of the Utah
 [21] Division of Securities.
 [22] MR. KLEIN: Okay. Your Honor, I move for
 [23] admission of Exhibit 14.
 [24] MR. GRIFFIN: No objection.
 [25] THE JUDGE: As identified it's received.

[1] A: Yes.
 [2] Q: Tell me the process, then, that you used for
 [3] the information that is on this chart.
 [4] A: The process used to determine the opening
 [5] account balance is just merely lifting that information
 [6] off the statement.
 [7] The deposit of funds is — and withdrawals
 [8] are netted, as well as the securities deposits and
 [9] withdrawals for that particular statement are netted.
 [10] The account balance is just simply a data
 [11] entry off the statement.
 [12] The percentage gain or loss is a calculation
 [13] trying to determine taking the ending balance,
 [14] subtracting the beginning balance, plus or minus the
 [15] withdrawals, divided by the beginning balance, plus or
 [16] minus the withdrawals.
 [17] Q: The first column, "Customer Name," that came
 [18] off the account form?
 [19] A: Correct.
 [20] Q: The next column?
 [21] A: It came off the statement.
 [22] Q: Yes. The next column. So, "Account Number,"
 [23] came off the statement?
 [24] A: Correct.
 [25] Q: And the opening account balance?

[1] (Exhibit 14 marked.)
 [2] MR. KLEIN: Q. Turn, please, to Exhibit
 [3] 23. Never mind. We've already talked about that.
 [4] Exhibit 26, please. Do you recognize this
 [5] document?
 [6] A: Yes.
 [7] Q: Did you create it?
 [8] A: Yes.
 [9] Q: Would you tell us how you created it?
 [10] A: It is a profit and loss calculation for 19
 [11] accounts for the time period of November 27th through
 [12] December 31st, 1999. Based on customer statements of
 [13] Intermountain Financial.
 [14] Q: So is this information that is taken from the
 [15] customer account statements?
 [16] A: Correct.
 [17] Q: How did you pick the November 27th and
 [18] December 31st dates?
 [19] A: That is the time period that is shown on
 [20] those particular statements. Also, I wanted to analyze
 [21] that particular section to look at that in connection
 [22] with the track record.
 [23] Q: So these dates were picked because — are
 [24] these the same dates as the dates on Fiserv's monthly
 [25] statements?

[1] A: Yes.
 [2] Q: The deposits?
 [3] A: Yes.
 [4] Q: And the withdrawals?
 [5] A: Yes.
 [6] Q: And the December 31 account balance?
 [7] A: Yes.
 [8] Q: The percentage gain and loss?
 [9] A: That's a calculation.
 [10] Q: Was that on the statements?
 [11] A: No.
 [12] Q: That's a calculation. Who created that
 [13] calculation?
 [14] A: I did.
 [15] Q: And —
 [16] A: I entered it into a spreadsheet.
 [17] Q: And is that done by taking the third column,
 [18] adding the next column, subtracting the next, and then
 [19] calculating the difference? I probably didn't explain
 [20] that very well.
 [21] A: Let me try. Taking the December — the
 [22] ending balance, which is 12/31 account balance, plus or
 [23] minus — minus the opening balance, plus or minus the
 [24] funds, plus or minus the securities, because, for
 [25] instance, on the securities there's only one amount

[1] that's a minus, so that would be subtracted. Taking
[2] all that, dividing by opening balance, plus or minus
[3] the funds and securities.

[4] **Q:** And you use that to determine a percentage
[5] gain or loss?

[6] **A:** Right. You're trying to take out — you're
[7] trying to identify the increase in the opening balance
[8] from the beginning period to the ending period,
[9] removing the affects of any additions or withdrawals
[10] from the account that occurred.

[11] **Q:** Okay. And looking at the 19 accounts on this
[12] list, how did these 19 accounts do?

[13] **A:** Some did better than others.

[14] **Q:** What's the range?

[15] **A:** It goes from negative to positive. So a
[16] negative meaning the account decreased and a positive
[17] means the account increased.

[18] **Q:** The 19 customers listed here, are they all
[19] customers of Mr. Rice?

[20] **A:** Yes.

[21] **Q:** Or were they at this time?

[22] **A:** Yes.

[23] **Q:** Do you know if Mr. Rice had more than 19
[24] customers?

[25] **A:** Yes.

[1] **Q:** How did you select these 19?

[2] **A:** This analysis was prepared sometime after I
[3] had been in the office for the field audit. I had
[4] become familiar with some of the names and some of the
[5] activities in certain amounts — or certain of these
[6] accounts, as well as some of these accounts were
[7] selected because they were open at that time period.
[8] There was some accounts that were opened later, like in
[9] January and February.

[10] **Q:** But why only 19?

[11] **A:** At this time, when I did the field audit I
[12] had requested from Mr. Rice copies of January through
[13] April statements. Then I had requested statements from
[14] Intermountain for May and June. And I had not
[15] requested — or gotten access to the November and
[16] December statements.

[17] So at this time I needed to go back and
[18] request additional statements. I chose to request some
[19] statements from Fiserv. And at that time through this
[20] process they were really annoyed with me and I chose to
[21] limit it to 20 counts.

[22] **THE JUDGE:** Just so I can clarify, Mr.
[23] Klein.

[24] Miss Thomas, could I assume that Mr. Rice had
[25] more than 19 open accounts for customers during this

[1] time? For this month.

[2] **MS. THOMAS:** Probably. When I was there in
[3] March I counted — he had a lateral file — two-drawer
[4] lateral file that sat behind Marianne, and I did a
[5] physical count of the top drawer, which was the active
[6] files, and a physical count of the files that were in
[7] the bottom drawer, which were inactive files.

[8] And the number of active files in April — or
[9] March, that time period, was probably about 180 files.
[10] So I would project backwards that, yeah, there was
[11] probably more than 19 counts.

[12] **THE JUDGE:** But you do not know how many
[13] active accounts he had during this time period for this
[14] month?

[15] **MS. THOMAS:** Not exactly. I could estimate
[16] it probably.

[17] **THE JUDGE:** Mr. Klein.

[18] **MR. KLEIN:** Q. These 19 accounts you've
[19] selected, are these options accounts?

[20] **A:** (pause).

[21] **Q:** Were they selected based on customers who
[22] were trading options as opposed to stocks?

[23] **A:** Yes. I believe there is options in each one
[24] of these accounts.

[25] **Q:** You've got 19 calculations here. Did you do

[1] a calculation on a larger number of accounts and then
[2] select only these 19?

[3] **A:** Yes. The calculations for that were done
[4] based on the January, February and March statements,
[5] and about 98 accounts were selected then.

[6] **Q:** What I'm trying to understand is for how many
[7] accounts did you do a calculation of December profits
[8] and losses?

[9] **A:** I only did 19.

[10] **Q:** So what I want to make sure is that this
[11] isn't something, for example, where you did an analysis
[12] of 50 accounts and then just took out of that analysis
[13] of 50 19 of them that you thought showed some
[14] particular point?

[15] **A:** No. I only did 19.

[16] **Q:** And the highest return on here is — the
[17] highest gain is what?

[18] **A:** 367.91 percent.

[19] **Q:** Did any of these customers make 1,116
[20] percent?

[21] **A:** No.

[22] **Q:** How many of them made over 112 percent?

[23] **A:** Two.

[24] **MR. KLEIN:** Your Honor, I move for admission
[25] of Exhibit 26.

[1] THE JUDGE: Mr. Klein —
 [2] MR. GRIFFIN: "Mr. Griffin."
 [3] THE JUDGE: I know, but I'm going to ask a
 [4] question of Mr. Klein.
 [5] MR. GRIFFIN: I'm sorry.
 [6] THE JUDGE: I'm sorry.
 [7] MR. GRIFFIN: I got used to it.
 [8] THE JUDGE: I'm sure you did.
 [9] I don't know that there's going to be an
 [10] objection, but before I hear one, if I do, what are you
 [11] offering it for?
 [12] MR. KLEIN: I am offering this to show that
 [13] for this random selection of Mr. Rice's options
 [14] customers that his options customers had returns
 [15] ranging from a negative 78 percent to a positive 367
 [16] percent.
 [17] Also showing for this random selection the
 [18] returns varied widely, and that these returns were
 [19] nowhere near the 1,116 percent shown on Mr. Rice's
 [20] track record.
 [21] THE JUDGE: Mr. Griffin.
 [22] MR. GRIFFIN: Well, maybe it's the way I was
 [23] hearing the answers, but I didn't hear "random
 [24] selection" used. I think I would have focused on that.
 [25] I heard that there was a request of Fiserv.

[1] Fiserv sent a certain number of accounts. A certain
 [2] number of accounts were sent. This doesn't purport to
 [3] be a document that shows all of the accounts Mr. Rice
 [4] was trading in at this time. Therefore, it is
 [5] selective. I don't know what relevance that is.
 [6] So my objection is on relevance grounds. If
 [7] it's being used to show something with respect to the
 [8] track record, I think it ought to be more comprehensive
 [9] than this.
 [10] MR. KLEIN: May I?
 [11] THE JUDGE: Let me ask, Mr. Klein. Your
 [12] understanding of the track record, is it meant to
 [13] represent all open accounts.
 [14] MR. KLEIN: My understanding of Mr. Rice's
 [15] position was the track record represented all of the
 [16] trading that was done in client accounts.
 [17] THE JUDGE: And these 19 active accounts for
 [18] this month are not all-inclusive of the active accounts
 [19] for the month?
 [20] MR. KLEIN: Correct. If I may add, Your
 [21] Honor, Mr. Griffin and Mr. Rice have had this
 [22] information for over a month, and given we are going to
 [23] be resuming the hearing in several weeks, to the extent
 [24] that an analysis of more accounts than this will show a
 [25] different result, he's welcome to do it, but I think

[1] that it's appropriate for us to show this selection of
 [2] accounts where we identified the accounts without
 [3] knowing the result and did the calculation for each one
 [4] of those accounts and show here the random results of
 [5] those — or the results of the analysis of those
 [6] accounts.
 [7] THE JUDGE: Mr. Griffin, it is only a
 [8] sample, and it is an incomplete sample, of whatever
 [9] active accounts were present for this month. With
 [10] those limitations, it goes to the weight rather than
 [11] the admissibility. I think it is relevant for the
 [12] purpose which it is offered.
 [13] But I do recognize it is not an exhaustive
 [14] list of whatever open accounts existed that month. And
 [15] yet it also appears to me that it is not a pre-selected
 [16] list because Ms. Thomas indicated that these are all
 [17] the accounts that she got. Apparently, she did not ask
 [18] for all of them, but she didn't get all of them. The
 [19] only ones she's got, from the understanding of Miss
 [20] Thomas, are the ones that are here.
 [21] Is that correct?
 [22] MS. THOMAS: Um-hum. (nodding head
 [23] affirmatively).
 [24] THE JUDGE: So there hasn't been any
 [25] preferential selection of accounts other than what they

[1] had available to them. So for those circumstances I
 [2] think it's admissible, and I would receive it.
 [3] (Exhibit 26 received.)
 [4] MR. KLEIN: Q. Turning, Miss Thomas, to
 [5] Exhibit 29. Do you recognize that letter?
 [6] A: Yes.
 [7] Q: Tell me where you've seen that letter before.
 [8] A: It is a response to a request that I sent to
 [9] First American, a former broker/dealer of Mr. Rice.
 [10] Q: Would you read what it says on the last
 [11] sentence of number seven?
 [12] A: "There were no advertising materials."
 [13] Q: The second sentence.
 [14] A: Oh, I'm sorry. The second sentence — tell
 [15] me again. I'm sorry.
 [16] Q: The second sentence of paragraph seven.
 [17] A: "Mr. Rice did run unapproved ads during his
 [18] employment here, which was one of the reasons for his
 [19] termination."
 [20] Q: Did First American send you — why did First
 [21] American send you this letter?
 [22] A: I requested — I sent them a copy of the
 [23] track record and also asked them about — while Mr.
 [24] Rice was employed with them if he had advertising —
 [25] had done any advertising and whether or not that

[1] advertising had been approved.

[2] **Q:** When you asked — strike that. Is First
[3] American a broker/dealer?

[4] **A:** Yes.

[5] **Q:** Do you know if First American is registered
[6] in Utah?

[7] **A:** Yes.

[8] **Q:** Are broker/dealers required to respond to
[9] requests for information from the Division?

[10] **A:** Yes.

[11] **Q:** Are there sanctions if the information from
[12] the broker/dealer is inaccurate?

[13] **A:** Yes, they — under the professional conduct
[14] or dishonest or unethical business practices in the
[15] rules if they fail to respond to a reasonable request
[16] from the Division, they can be sanctioned for that.

[17] If the Division receives information that's
[18] incorrect in response to their — to our questions or
[19] is materially defective, we would take a dim view of
[20] it. And although I've not really seen it — I may be
[21] confusing it with the Construction Trades Contractors
[22] Act where there was a specific clause that would talk
[23] about materially false information. But it would be a
[24] serious matter in regards to the licensee.

[25] Secondly, if I could not — they are also

[1] here to testify, it's not for me to speculate whether
[2] the representations made in this exhibit are accurate
[3] or not. There's no way to assess that.

[4] Yes, they can only be submitted under penalty
[5] of action if they were inaccurate, but that doesn't
[6] necessarily mean that they are accurate.

[7] You're asking me to receive it for the
[8] purposes of what First America believes was the reason
[9] for the termination of Mr. Rice. For that limited
[10] basis, since it's not going to prove the truth of the
[11] matter asserted, in terms of whether any advertising
[12] that is the subject of this proceeding was inaccurate,
[13] it might escape concerns regarding the hearsay rule.

[14] But I have to ask what relevance does that have? What
[15] relevance does the belief that First America has
[16] regarding the accuracy of advertisements in that
[17] setting have to do with matters before me?

[18] **MR. KLEIN:** I think it suggests that is the
[19] reason that First American terminated Mr. Rice, that he
[20] was on knowledge that advertising materials needed to
[21] go through a review process by the broker/dealer before
[22] being used.

[23] **MR. GRIFFIN:** Well, then I have a little bit
[24] of voir dire to do of this witness.

[25] **VOIR DIRE EXAMINATION BY MR. GRIFFIN**

[1] required to abide by NASD. If they are a member of the
[2] NASD, they are required to abide by the NASD conduct
[3] rules.

[4] **Q:** If a firm were to send you information that
[5] was false, what would be your recommendation to your
[6] supervisors?

[7] **A:** I would recommend that we take a serious look
[8] at either taking a licensee action or, depending on the
[9] seriousness of the nature, enforcement action.

[10] **MR. KLEIN:** Your Honor, I move for admission
[11] of Exhibit 29.

[12] **THE JUDGE:** What purpose is it offered?

[13] **MR. KLEIN:** For purposes that First
[14] American's view — that it is First American's view
[15] that the information in paragraph seven is accurate.

[16] **THE JUDGE:** Mr. Griffin.

[17] **MR. GRIFFIN:** Let me understand this
[18] correctly. He's offering it for the purpose that the
[19] Division thinks that the information is accurate
[20] because the broker/dealer is subject to penalties? Is
[21] that an exception to the hearsay rule? I don't know
[22] about that. It is hearsay. It's a representation of a
[23] Chief Compliance Officer from a past firm. And I don't
[24] think it's relevant.

[25] **THE JUDGE:** Well, since Mr. Osborn is not

[1] **MR. GRIFFIN:** Q. Miss Thomas, this
[2] letter is directed to you; is that correct?

[3] **A:** That's correct.

[4] **Q:** Has the date of February 7th, 2001?

[5] **A:** That's correct.

[6] **Q:** Is there a cc to Mr. Rice on this letter?

[7] **A:** I don't normally require cc's when I'm
[8] requesting information from the Division.

[9] **Q:** No, I asked you looking at the letter is
[10] there a cc on it?

[11] **A:** No.

[12] **Q:** Okay. Well, how is it possible that this
[13] letter could possibly have informed Mr. Rice about his
[14] responsibility to advertise beforehand? How does this
[15] letter apprise Mr. Rice of that? Does it?

[16] **A:** No.

[17] **MR. GRIFFIN:** Again, same objection.
[18] Relevance.

[19] **THE JUDGE:** I think what you're driving at,
[20] Mr. Klein, is to what extent First America directly
[21] notified Mr. Rice of the reasons for his termination.

[22] **MR. KLEIN:** And I realize that that is not
[23] established in this document, and I recognize that's
[24] going to go to the weight that the Court will give it,
[25] but I think it creates an inference that if those are

[1] the reasons First American gave for terminating him.
 [2] That he may have known of them himself.
 [3] **MR. GRIFFIN:** And then I would make an
 [4] objection that its prejudice outweighs its probative
 [5] value. If we're only talking about creates an
 [6] inference.
 [7] **THE JUDGE:** It is so indirect as to whatever
 [8] knowledge Mr. Rice may have had from First America as
 [9] to why he was terminated that I don't find that its
 [10] relevance is sufficient to admit it.
 [11] **DIRECT EXAMINATION BY MR. KLEIN (continuing)**
 [12] **MR. KLEIN:** Q. Miss Thomas, turning to
 [13] Exhibit 39, please.
 [14] **MR. GRIFFIN:** What exhibit?
 [15] **MR. KLEIN:** 39.
 [16] **MR. GRIFFIN:** 39?
 [17] **MS. THOMAS:** (looking at exhibit).
 [18] **MR. KLEIN:** Q. Do you recognize this
 [19] document?
 [20] **A:** Yes.
 [21] **Q:** Did you create it?
 [22] **A:** Yes.
 [23] **Q:** Tell me what this document is intended to
 [24] show.
 [25] **A:** It's a selection of trade data that I used to

[1] sort for information on a particular stock, California
 [2] Micro Devices.
 [3] **Q:** So this is information taken from another
 [4] source of information?
 [5] **A:** Yes.
 [6] **Q:** What is the other source of information?
 [7] **A:** I requested a data download from Fiserv.
 [8] **Q:** Tell me what a "data download," is.
 [9] **A:** It's an electronic computer file. Typically
 [10] we request them in a common computer format. And once
 [11] I receive the raw data can convert it into a
 [12] spreadsheet, which I can manipulate. It's like a
 [13] database.
 [14] **Q:** What were the parameters or the extent of the
 [15] information, the data download, you got from Fiserv?
 [16] **A:** It was all trades done from November 1999
 [17] through April — no, I'm sorry. May of 2000.
 [18] **Q:** And in what format did you receive this data?
 [19] **A:** It came on a compact disk.
 [20] **Q:** So is it fair to say that Fiserv gave you a
 [21] CD containing a record of all trades between those
 [22] dates?
 [23] **A:** For the Intermountain office. They selected
 [24] the raw data from their computers and pulled it on —
 [25] and, basically, burned it onto a CD ROM.

[1] **Q:** And from a CD ROM did you extract this
 [2] information?
 [3] **A:** Yeah. I downloaded it. Or opened the file
 [4] into a spreadsheet program and from there I can sort it
 [5] by — sort like the fields. I can sort by trade date
 [6] or choose particular fields so that the data is ordered
 [7] in a certain way.
 [8] **Q:** And how did you sort this particular chart?
 [9] **A:** Into extract — I first extracted the
 [10] California Micro Devices. Sorted by trade date. And
 [11] then by trade ID.
 [12] **Q:** Okay. So is this a list of all transactions
 [13] by Mr. Rice in California Micro Devices?
 [14] **A:** I believe so.
 [15] **Q:** And, then, are these all of his trades in
 [16] California Micro Devices?
 [17] **A:** I believe so. I'd have to double check, but
 [18] I know it is — I would assume that it is, yes.
 [19] **Q:** And when was the first customer of Mr. Rice,
 [20] according to your chart, to buy California Micro
 [21] Devices?
 [22] **A:** F.C.S. Brown P.
 [23] **Q:** Let me back up. The purchases on this list
 [24] here, are they sorted chronologically?
 [25] **A:** They're sorted by date first.

[1] **Q:** And so the ones at the top are earliest and
 [2] the ones at the bottom are latest?
 [3] **A:** Yeah, by trade date.
 [4] **Q:** You were here during the testimony of Mr.
 [5] Rice and Mr. Reese regarding California Micro Devices,
 [6] correct?
 [7] **A:** Correct.
 [8] **Q:** Do you see Mr. Reese's name on this chart?
 [9] **A:** Yes.
 [10] **Q:** Do you see the names of other customers of
 [11] Mr. Rice on this chart?
 [12] **A:** Yes.
 [13] **Q:** Does your chart tell the date that the trade
 [14] occurred?
 [15] **A:** In the, "Trade Date," column.
 [16] **Q:** Does it tell the number of shares?
 [17] **A:** In the column for the shares, yes.
 [18] **Q:** Is there some way to tell whether somebody's
 [19] buying it or selling it?
 [20] **A:** Yes, there's a column that identifies — for
 [21] the record of that particular trade, whether it's a buy
 [22] or a sell.
 [23] **MR. KLEIN:** Your Honor, I move admission of
 [24] Exhibit 39.
 [25] **MR. GRIFFIN:** Just with a brief voir dire.

VOIR DIRE EXAMINATION BY MR. GRIFFIN

MR. GRIFFIN: Q. What's the program that you used?

A: Quatro Pro.

Q: Quatro Pro?

A: Yes.

Q: You received training in Quatro Pro?

A: Yes. Created work sheets in Quatro Pro.

Q: And when you downloaded the data from — or you got the CD ROM, I think your testimony was, were they using the same software?

A: I believe it was an ASCII 2, comma, the limited text file.

Q: Did it translate well or did you have to make adjustments?

A: Not at all really.

Q: How much training have you received in Quatro Pro?

A: I have used Lotus since 1986 and Quatro Pro since 1993. When I came to work for the Division of Occupational and Professional Licensing they converted from Lotus to Quatro Pro. They sent me to a Salt Lake Community College quarter. I took a quarter in it.

Q: Had you done this type of analysis before you received the CD?

A: The account activity can be — when you access it on the Internet you can pull it up and it automatically sorts it by date. You can swipe the date range for the transactions. You can print it out as it is. Or you can download it.

Q: Have you limited the information that is on this chart?

A: Yes.

Q: Is the source data for this chart the same as the source data we talked about before? With Exhibit 39? Was this from a CD ROM?

A: No, the source data is the same in that it's Fiserv, not in that it was using a different tool to access the information.

Q: This information, is it Fiserv's actual trading data?

A: Yes.

Q: And it is maintained on a CD ROM or on an on-line form?

A: It's on an on-line form, so it probably connects to their main frame computer.

Q: And is this on-line information that anybody can get?

A: The correspondents are provided access through the Internet.

A: A lot.

MR. GRIFFIN: No objection.

THE JUDGE: As identified it's received. (Exhibit 39 received.)

DIRECT EXAMINATION BY MR. KLEIN (continuing)

MR. KLEIN: Q. If you'd turn, please, to Exhibit 43. Do you recognize this document?

A: Yes.

Q: Did you create it?

A: Yes.

Q: Is this the same kind of document we were discussing with Exhibit 39?

A: No.

Q: Tell me how this document was created.

A: This is a document that can be printed from the I Networks Registered Rep On-line Internet program that's provided by Fiserv to their correspondents.

Q: You've lost me. What do you mean by, "I Networks"?

A: At the top of the page. The name of the particular program that Fiserv uses to provide information to their correspondents over the Internet is called I Networks Registered Rep.

Q: So is this a printout of that information or has it been sorted?

Q: And the correspondent being who?

A: The introducing broker. In this case it was Intermountain.

Q: So Intermountain can access the on-line trading records of Fiserv?

A: Correct.

Q: All of Fiserv's on-line trading records?

A: The trading records for their office. The — in this particular case it was Intermountain's L.B.S. is their office and their trade data.

Q: Well, how did you get access to the on-line trade data relating to Intermountain?

A: I requested access through Kent Sweat.

Q: And how did he give you that access?

A: He gave me a password.

Q: So you used that password. And so what did you do with that password?

A: I accessed this information on this particular account.

Q: With that password can you then look at all of Fiserv's trading records relating to Intermountain?

A: No, I can only access the records that relate to Intermountain because that's the scope of this audit.

Q: Okay. How did you then use that data to

[1] create this chart?
 [2] **A:** I used one of their reporting functions in
 [3] the I Networks system. They have a menu item that you
 [4] can go in and access the reports.
 [5] **Q:** What were you looking for here?
 [6] **A:** This is information for the account 67281702,
 [7] and this is, I believe, the Poulson Trust Fund.
 [8] **Q:** Is this a record of all transactions in the
 [9] Poulson account?
 [10] **A:** It's a record from January 2000 to — January
 [11] 1st, 2000, to February 25th, 2000.
 [12] **MR. GRIFFIN:** I'm sorry. What were the
 [13] dates again?
 [14] **MS. THOMAS:** January 1st, 2000. It's the
 [15] top left hand box. Trait date. To page three, the
 [16] bottom left hand box, February 25, 2000.
 [17] **MR. GRIFFIN:** I see that.
 [18] **MR. KLEIN:** Your Honor, I move admission of
 [19] this exhibit.
 [20] **MR. GRIFFIN:** No objection.
 [21] **THE JUDGE:** As identified it is received.
 [22] (Exhibit 43 received.)
 [23] **MR. KLEIN:** Q. Looking still at this
 [24] exhibit, Miss Thomas, does this show whether there are
 [25] any options trades in this account before — I'm sorry,

[1] during January of 2000?
 [2] **A:** Yes.
 [3] **Q:** Which ones?
 [4] **A:** Which option trades? Or —
 [5] **Q:** Well, how many?
 [6] **A:** (pause).
 [7] **Q:** How would I tell?
 [8] **A:** You would tell by looking at the symbols and
 [9] in description one where the symbol is the five letter
 [10] digits. Or excuse me, the five letters. And in
 [11] Description One it begins the description with a call,
 [12] colon, and then the name of the security.
 [13] **Q:** So based on this information did it appear to
 [14] you that options trades occurred before February 2nd of
 [15] 2000?
 [16] **A:** Yes.
 [17] **Q:** Based on this information, can you tell
 [18] whether there were any margin trades before February
 [19] 18th of 2000?
 [20] **A:** (looking at exhibit). Yes.
 [21] **Q:** And how do you know that?
 [22] **A:** In the column under, "Account Type."
 [23] **Q:** Okay.
 [24] **A:** It designates whether or not it's a cash
 [25] account out of the fund account or out of the margin

[1] account.
 [2] **Q:** And where is the first margin trade that you
 [3] see?
 [4] **A:** Trade date, February 14th, 2000.
 [5] **Q:** And were there other margin trades between
 [6] then and February 18th?
 [7] **A:** A second one February 14th in Mercury
 [8] Interactive Corp. And a third one on February 17th,
 [9] 2000, another call in Mercury Interactive Corp.
 [10] **Q:** Any on the 18th?
 [11] **A:** No calls, but there was — it was a journal
 [12] entry from the margin account, "Swept to the Courtland
 [13] general money market."
 [14] **Q:** Thank you. Turn to Exhibit 51, please. You
 [15] recognize this document?
 [16] **A:** Yes.
 [17] **Q:** Did you create it?
 [18] **A:** Yes.
 [19] **Q:** What is it?
 [20] **A:** It's a printout from the CRD, which is the
 [21] Central Registration Depository. That is the Internet
 [22] program that is used by the NASD in connection with the
 [23] states. We designate the CRD to handle licensing of
 [24] broker/dealers.
 [25] **Q:** And what does this document show?

[1] **A:** It's a registration summary of Jeff Gorringer.
 [2] Jeffrey Gorringer.
 [3] **Q:** Does it show when he filed his U-4?
 [4] **A:** Yes.
 [5] **Q:** When was that?
 [6] **A:** February 8th.
 [7] **Q:** Does it show when he was approved by the
 [8] NASD?
 [9] **A:** March 2nd, 2000.
 [10] **Q:** Does it show when he was approved by the
 [11] State of Utah?
 [12] **A:** March 7th, 2000.
 [13] **MR. KLEIN:** Your Honor, I move admission of
 [14] Exhibit 51.
 [15] **THE JUDGE:** Any objection?
 [16] **MR. GRIFFIN:** No.
 [17] **THE JUDGE:** As identified is received.
 [18] (Exhibit 51 received.)
 [19] **MR. KLEIN:** Q. Will you turn, please, to
 [20] Exhibit 54. You have that?
 [21] **A:** Yes.
 [22] **Q:** Can you tell me what the source of this
 [23] document was? Or have you seen it before?
 [24] **A:** Yes.
 [25] **Q:** Can you tell me the source?

[1] **A:** I requested some information from Fiserv
[2] regarding the funds that were submitted by
[3] Intermountain to Fiserv for the debit balances and how
[4] it was journaled out.
[5] **MR. KLEIN:** I move admission of Exhibit 54.
[6] **MR. GRIFFIN:** No objection.
[7] **THE JUDGE:** As identified it is received.
[8] (Exhibit 54 received.)
[9] **MR. KLEIN:** Q. Turn, please, to Exhibit
[10] 55. Have you seen this letter before?
[11] **A:** Yes.
[12] **Q:** Where did you get it?
[13] **A:** In my requesting documents from Fiserv
[14] regarding the debit balances they indicated that they
[15] had already answered questions about how the debit
[16] balance — the money that came in from Intermountain to
[17] Fiserv had been handled in response to inquiries by the
[18] SEC, and they included this as part of their response
[19] to my inquiries about the same matter.
[20] **Q:** Did they intend for this to answer your
[21] inquiry?
[22] **A:** Yes.
[23] **MR. KLEIN:** Your Honor, I move admission of
[24] Exhibit 55.
[25] **THE JUDGE:** Any objection?

[1] **Q:** I'm sorry. You say, "response letter." What
[2] response letter?
[3] **A:** A response letter from Fiserv.
[4] **Q:** In response to what?
[5] **A:** To my questions about the — how the debit
[6] balances were journaled out. A hundred thousand
[7] dollars was received by Fiserv by Intermountain
[8] Financial and I wanted to know how — once it was
[9] received by Fiserv how that money was distributed. So
[10] I requested Fiserv to give me information on that.
[11] **Q:** So is it a fair summary to say you were
[12] asking Fiserv to tell you how the hundred thousand
[13] dollars that they received that we talked about earlier
[14] was spent?
[15] **A:** Right.
[16] **Q:** Okay. And in response what did they tell
[17] you?
[18] **A:** They printed out Exhibit 54, along with
[19] additional individual account printouts from what they
[20] call their SIS system. And from that I took — I
[21] identified each one of those — I looked at them and
[22] wanted to total them up, so I created this work sheet.
[23] **Q:** Okay.
[24] Your Honor, I move for a mission of Exhibit
[25] 56.

[1] **MR. GRIFFIN:** None.
[2] **THE JUDGE:** As identified it is received.
[3] (Exhibit 55 received.)
[4] **MR. KLEIN:** Q. Looking at the bottom, at
[5] the first page of Exhibit 55, can you read the last
[6] sentence down there on that page?
[7] **A:** The very last sentence?
[8] **Q:** Yes, on the first page.
[9] **A:** "It was my understanding pursuant to
[10] communication with Dennis Ferguson that these funds
[11] were to be used to offset the potential losses in the
[12] various customer accounts."
[13] **Q:** And then go on with the next sentence.
[14] **A:** "Thus, these funds were considered the
[15] payment toward unsecured debts and at no time were
[16] considered being owed to Intermountain" — "IFS" —
[17] "Intermountain Finance Services by Fiserv."
[18] **Q:** If you'll turn, please, to Exhibit 56. Have
[19] you seen this document before?
[20] **A:** Yes.
[21] **Q:** Did you create it?
[22] **A:** Yes.
[23] **Q:** What was your source data for this?
[24] **A:** Attached to Exhibit — well, as part of the
[25] response letter, additional printouts similar to —

[1] **MR. GRIFFIN:** No objection.
[2] **THE JUDGE:** As identified it's received.
[3] (Exhibit 56 received.)
[4] **MR. KLEIN:** Q. If you'll turn, please,
[5] to Exhibit 58. Do you recognize the documents in
[6] Exhibit 58?
[7] **A:** Yes.
[8] **Q:** Did you create them?
[9] **A:** Yes.
[10] **Q:** From what data source did you create this?
[11] **A:** The same compact discs, data download that I
[12] received from Fiserv.
[13] **Q:** This came from the Fiserv CD?
[14] **A:** Right.
[15] **Q:** How did you sort these charts?
[16] **A:** These charts were sorted by account number,
[17] trade date and trade ID.
[18] **Q:** And what were you looking for?
[19] **A:** These particular sections were accounts of
[20] related parties to Mr. Rice. Specifically, his
[21] individual account, his wife's account, trades that
[22] went through the J.A.R. Investment account. It looks
[23] like the IRA accounts. Scott Rice account and Robert
[24] Rice.
[25] **MR. KLEIN:** Your Honor, I move admission of

[1] Exhibit 58.
 [2] **THE JUDGE:** Any objection?
 [3] **MR. GRIFFIN:** I object to the font size, but
 [4] other than that I have no objection.
 [5] **MR. KLEIN:** Would you prefer to have pages
 [6] flipping over the top?
 [7] **MR. GRIFFIN:** I am advancing in age. It's
 [8] difficult for me to see print that size. But I just —
 [9] **MR. KLEIN:** I'd be happy to provide you
 [10] full-sized pages, if you'd like.
 [11] **MR. GRIFFIN:** Thank you.
 [12] **THE JUDGE:** As identified it's received.
 [13] (Exhibit 58 received.)
 [14] **MR. KLEIN:** Q. Based on these charts did
 [15] you identify any instances in which Mr. Rice or any of
 [16] his affiliates or family members participated in block
 [17] trades with other customers?
 [18] **A:** Yes. I got to looking at the OS accounts and
 [19] inquired into what the OS accounts were and found out
 [20] that the 450 account was the — was not a customer
 [21] account number.
 [22] **Q:** Okay. We're going to —
 [23] **A:** I'm sorry.
 [24] **Q:** When you're talking about OS account — for
 [25] example, turn to the second page of that exhibit. When

[1] you say, "OS account," which column are you talking
 [2] about? Where is that?
 [3] **A:** (pause).
 [4] **Q:** Is that the one about two-thirds of the way
 [5] over?
 [6] **A:** Yeah, it's 16, two-thirds of the way over.
 [7] **MR. GRIFFIN:** What page are we looking at?
 [8] **MR. KLEIN:** The second page of Exhibit 58.
 [9] **Q:** And these are trades in the Anita Rice
 [10] account. Is that correct?
 [11] **A:** That's correct.
 [12] **Q:** And so how would you tell if Anita Rice's
 [13] trades were part of block trades?
 [14] **A:** The OS account is the offsetting account.
 [15] It's like a debit/credit situation in accounting. They
 [16] have an offsetting account. And this is the internal
 [17] account that Fiserv uses to run block trades through.
 [18] **Q:** And do you see on this page any block trades
 [19] that included Anita Rice?
 [20] **A:** Yes.
 [21] **Q:** And how would I find those?
 [22] **A:** You would look for an account number that
 [23] ends in 450. Starts with 930000450.
 [24] **Q:** Thank you. Turn, please, to Exhibit 59. Do
 [25] you recognize this document?

[1] **A:** Yes.
 [2] **Q:** And there are two pages of this document.
 [3] Are the two pages related or are they separate charts?
 [4] **A:** They're separate charts.
 [5] **Q:** Okay. Then let's focus on the first page for
 [6] now. Did you create this chart?
 [7] **A:** Yes.
 [8] **Q:** What was your source data for this chart?
 [9] **A:** A CD ROM download from Fiserv. Same one
 [10] we've been discussing.
 [11] **Q:** Okay. Now, how is this information sorted
 [12] from that CD ROM?
 [13] **A:** In this particular instance I sorted by — I
 [14] was sorting for security, so I would sort by the Q
 [15] symbol, the trade date and trade ID number.
 [16] **Q:** So does this chart show trade in only one
 [17] security?
 [18] **A:** Yes, it's calls for A.D.C.
 [19] Telecommunications. They're short symbol is TLQBO.
 [20] **Q:** Mine says, "TLQBU."
 [21] **A:** Oh, the second page is TLQBU. The first page
 [22] is TLQBUs.
 [23] **MR. KLEIN:** You've got to love this.
 [24] **MS. THOMAS:** Oh, sorry.
 [25] **MR. KLEIN:** Q. So this chart shows TLQBU

[1] trades done by Mr. Rice's customers, is that correct?
 [2] **A:** They were done through Mr. Rice's office,
 [3] yes.
 [4] **Q:** Okay.
 [5] **A:** I don't know whether or not from this record
 [6] they were done by his customers or not.
 [7] **Q:** For what time period are we talking?
 [8] **A:** April — or excuse me. February 16th, 2000,
 [9] trade date. And February 17, 2000, trade date.
 [10] **MR. KLEIN:** Your Honor, I move for the
 [11] admission of Exhibit 59.
 [12] **THE JUDGE:** Any objection?
 [13] **MR. GRIFFIN:** Just relevance.
 [14] **THE JUDGE:** Why is it being offered?
 [15] **MR. KLEIN:** On account — I'll keep going.
 [16] **MR. GRIFFIN:** Sorry.
 [17] **MR. KLEIN:** That's fine.
 [18] **Q:** Do you see in the middle of the page a column
 [19] with some CXLs on them?
 [20] **A:** Yes.
 [21] **Q:** What does that mean?
 [22] **A:** It says sell/cancellation. Instead of just a
 [23] regular — that particular trade was cancelled.
 [24] **Q:** And if I look over at the, "Price," column, I
 [25] count ten trades done at 37.5. Do you see those?

[1] A: Yes.
[2] Q: And if I look back, I have five sells and
[3] five sell/cancels?
[4] A: Yes.
[5] Q: So what does that mean?
[6] A: Means that that particular trade was
[7] cancelled out.
[8] Q: Okay. So if we ignore those, then on
[9] February 16th we had four trades done before that;
[10] correct?
[11] A: Correct.
[12] Q: And who are those four trades by?
[13] A: Two for Robert Rice and two for Anita Rice.
[14] Q: And were they buying or selling?
[15] A: They were selling calls.
[16] Q: Okay. So Robert Rice and Anita Rice are
[17] selling calls. What price did they get?
[18] A: Six dollars.
[19] Q: Now, then we ignore all the sells that were
[20] then cancelled, and were there more customers who sold
[21] calls that day?
[22] A: Yes.
[23] Q: How many?
[24] A: Six for the 16th. Trade date 16th.
[25] Q: Okay. And what price did they get?

[1] mostly located on the top?
[2] A: Yes.
[3] Q: And do you see any family members or
[4] relatives among the buys?
[5] A: Yes.
[6] Q: Where?
[7] A: Towards the top.
[8] Q: Who?
[9] A: Anita Rice and Robert Rice.
[10] Q: So they're buying options, correct?
[11] A: Correct.
[12] Q: And what price were they able to get it for?
[13] A: Anita was 2.6875, or two and 11/16ths. And
[14] Robert was 2.375, or two and three-eighths.
[15] Q: So for all the buys that day what was the
[16] lowest price of all the buys that day?
[17] A: 2.375, or two and three-eighths.
[18] Q: And who got that price?
[19] A: Robert.
[20] Q: What was the next lowest buying price?
[21] A: 2.6875, or two and 11/16ths.
[22] Q: And who got that price?
[23] A: Anita Rice.
[24] Q: Okay. Go down and look at the sells. Are
[25] they mostly at the bottom of the page?

[1] A: Five dollars.
[2] Q: So Robert Rice and Anita Rice sell their
[3] calls on February 16th and get six dollars?
[4] A: Yes.
[5] Q: And these other customers sell it and get
[6] what price?
[7] A: Five dollars.
[8] MR. KLEIN: Your Honor, there's my
[9] relevance.
[10] THE JUDGE: Any further objection?
[11] MR. GRIFFIN: No.
[12] THE JUDGE: As identified it is received.
[13] (Exhibit 59 received.)
[14] MR. KLEIN: Q. If you turn to the second
[15] page of that exhibit. And you said these were a
[16] different option, correct?
[17] A: Yes.
[18] Q: For what days does this chart show?
[19] A: February 15th, 2000, trade date. And that's
[20] all.
[21] Q: And if we look over in the middle, are all of
[22] these buys?
[23] A: Some of them are buys. Some of them are
[24] sells.
[25] Q: Okay. If we look at the buys, are the buys

[1] A: Yes.
[2] Q: What was the highest selling price for the
[3] day?
[4] A: 6.5, or six and-a-half.
[5] Q: And who got that price?
[6] A: Anita Rice.
[7] Q: Did anybody else get that price?
[8] A: No.
[9] MR. KLEIN: Your Honor, I move — or I
[10] already have 59? I do.
[11] THE JUDGE: The first page is in. I'm
[12] assuming you're now moving for the second?
[13] MR. KLEIN: Yes, I am.
[14] THE JUDGE: Any objection?
[15] MR. GRIFFIN: You're moving the second page?
[16] THE JUDGE: Yes.
[17] MR. GRIFFIN: Of the exhibit? No.
[18] THE JUDGE: As identified it is received.
[19] (Exhibit 59 received.)
[20] MR. KLEIN: Q. Exhibit 60. You
[21] recognize this document?
[22] A: Yes.
[23] Q: Do you know what was the source data for this
[24] document?
[25] A: Source data is from customer account

[1] statements.
[2] **Q:** Have you verified the information on this
[3] document?
[4] **A:** Yes.
[5] **Q:** How did you verify it?
[6] **A:** From the account statements I checked the
[7] year-to-date purchases, the year-to-date commissions,
[8] the opening account balances for each of the months,
[9] the funds deposited in withdrawn — and withdrawn for
[10] each month. And the calculations for the percentage
[11] gain or loss.
[12] **Q:** Is this similar to the analysis in Exhibit 26
[13] that we talked about previously?
[14] **A:** Yes, same format.
[15] **Q:** And for what months does this chart show the
[16] results?
[17] **A:** Shows the results starting with an opening
[18] balance of January 1st, 2000, and going through two
[19] statements, with an ending balance of February 25th,
[20] 2000.
[21] **MR. GRIFFIN:** We're on Exhibit 60?
[22] **MR. KLEIN:** Yes.
[23] Your Honor, I move admission of Exhibit 60.
[24] **MR. GRIFFIN:** No objection.
[25] **THE JUDGE:** It is received.

[1] (Exhibit 60 received.)
[2] **MR. KLEIN:** Q. Looking at the last
[3] column of Exhibit 60, what does that column show?
[4] **A:** Percentage gain or loss.
[5] **Q:** For when? What period?
[6] **A:** From January 29th, 2000, to February 25th,
[7] 2000.
[8] **Q:** And of the 28 accounts listed on this chart
[9] how many of those accounts had a gain that month?
[10] **A:** (pause).
[11] **Q:** Well, I am sorry. Identify for me the
[12] account that had gains that month.
[13] **A:** Alan Brown.
[14] **Q:** How much did he make?
[15] **A:** 49.98 percent.
[16] **Q:** Okay.
[17] **A:** Robin Howell at 11.68 percent.
[18] **Q:** Okay.
[19] **A:** Anita Rice at 193.81 percent. Robert Rice at
[20] 361.17 percent.
[21] **Q:** How about number 20?
[22] **A:** Ryan Ogden is .04 percent.
[23] **Q:** So these five accounts made money that month.
[24] How did the others do?
[25] **A:** They all had losses.

[1] **Q:** And what was the greatest gain? Whose
[2] account had the greatest gain that month?
[3] **A:** Robert Rice.
[4] **Q:** Whose account had the second greatest gain
[5] that month?
[6] **A:** Anita Rice.
[7] **Q:** Turn, please, to Exhibit 61. Did you create
[8] this document?
[9] **A:** Yes.
[10] **Q:** What was your data source for this document?
[11] **A:** Fiserv, data download.
[12] **Q:** And what did you sort for with this document?
[13] **A:** I sorted for the offsetting accounts. I —
[14] **Q:** What were you looking for?
[15] **A:** I was looking for all transactions that went
[16] through the average price account.
[17] **Q:** Is this an accurate reflection of all trades
[18] that went through the 450 account?
[19] **A:** I believe so, because there was 1972.
[20] **Q:** And during the last couple days of hearing
[21] are there other names that have been used for the 450
[22] account?
[23] **A:** The J.W.C.C. average price account. The
[24] block trade account.
[25] **Q:** So is this a list of all the block trades?

[1] **A:** For that time period that I received the
[2] download I believe it is.
[3] **Q:** And what is that time period?
[4] **A:** That was from November 1999 through May of
[5] 2000.
[6] **MR. KLEIN:** Your Honor, I move for the
[7] admission of Exhibit 61.
[8] **THE JUDGE:** Any objection?
[9] **MR. GRIFFIN:** No objection.
[10] **THE JUDGE:** It is received as identified.
[11] (Exhibit 61 received.)
[12] **MR. KLEIN:** Q. Miss Thomas, what is
[13] Exhibit 62?
[14] **A:** It's a section — a portion of the trades
[15] that went through the average price account that had
[16] prices other than standard decimal to fraction
[17] equivalents that —
[18] **Q:** Is this a subset of Exhibit 61?
[19] **A:** Yes.
[20] **Q:** So how did you pull out of — how did you
[21] determine to create this subset? What criteria did you
[22] use?
[23] **A:** Taking the 1972 transactions I sorted that
[24] section by price so that it sorted out — sorted by
[25] price, and then prices entered, and then by trade date.

[1] So it sorted out transactions that were less than the
[2] standard fraction of decimal.
[3] Q: And how many are on this list?
[4] A: 297 transactions.
[5] Q: What does that mean? What does that 297
[6] mean?
[7] A: 297 customer accounts were affected by a
[8] block trade where a transaction was something other
[9] than a standard fraction to decimal linked to 11/16ths.
[10] So it means that these trades received an average
[11] price.
[12] MR. KLEIN: Your Honor, I move admission of
[13] Exhibit 62.
[14] THE JUDGE: Any objection?
[15] MR. KLEIN: None.
[16] THE JUDGE: As identified it is received.
[17] (Exhibit 62 received.)
[18] MR. KLEIN: Q. Turn, please, to Exhibit
[19] 63, Miss Thomas.
[20] A: Okay.
[21] Q: You recall that earlier we talked about the
[22] other pages in this document except for the first page?
[23] A: Yes.
[24] Q: Do you know who created this first page?
[25] A: I did.

[1] 4,000.
[2] MR. KLEIN: Your Honor, I move admission of
[3] the first page of Exhibit 63.
[4] THE JUDGE: Any objection?
[5] MR. GRIFFIN: No, Your Honor.
[6] THE JUDGE: The rest of the exhibit has
[7] already been received. The first page already as
[8] identified.
[9] (Exhibit 63 received.)
[10] MR. KLEIN: Q. Turn, please, to Exhibit
[11] 64. Looking at the first page of this exhibit, did you
[12] create this document?
[13] A: Yes.
[14] Q: How did you create this document? What's the
[15] source material?
[16] A: The CD ROM data download from Fiserv.
[17] Q: Okay. How did you sort it?
[18] A: This looks like a sort for the applied
[19] materials, calls, sorted by trade date and trade ID
[20] number.
[21] MR. KLEIN: Your Honor, I'd move the
[22] admission of page one of Exhibit 64.
[23] MR. GRIFFIN: No objection.
[24] THE JUDGE: As identified it is received, as
[25] has been the rest of this exhibit.

[1] Q: And what did you create it from?
[2] A: I was looking at the time and sales
[3] information on the trade tickets that I received from
[4] Fiserv.
[5] Q: The data on this chart is taken from what
[6] other record?
[7] A: Well, it's taken both from the data download
[8] that I got on the CD ROM as well as the trade tickets
[9] that I requested from Fiserv. The big box of tickets.
[10] Q: And what does it show, in general?
[11] A: In general? The top portion of the document
[12] shows the data download from the CD ROM, and then after
[13] that first block in the bold on the left-hand side
[14] Correll Corp block purchase.
[15] Q: You remember there was previous testimony
[16] about 4,000 block trades of Correll?
[17] A: Yes.
[18] Q: So in brief what does this show? Does this
[19] relate to those?
[20] A: Yes, it shows that — the two blocks of 4,000
[21] and the detail about them.
[22] Q: And does it show what price? What does it
[23] show regarding price?
[24] A: Well, it shows the different fields or
[25] executions that it took to fill the two orders for

[1] (Exhibit 64 received.)
[2] MR. KLEIN: Your Honor, I tender the
[3] witness.
[4] THE JUDGE: Any cross-examination, Mr.
[5] Griffin?
[6] MR. GRIFFIN: Yes. Can I have a moment,
[7] Your Honor?
[8] THE JUDGE: Certainly.
[9] (pause)
[10] CROSS-EXAMINATION BY MR. GRIFFIN
[11] MR. GRIFFIN: Q. I want to understand
[12] this Exhibit 26 that we started with because I'm not
[13] quite sure that I caught all of the information that
[14] you gave. Your testimony was that you received
[15] information from Fiserv that you requested. Did you
[16] only request this information in Exhibit 26 on these
[17] particular customer accounts?
[18] A: I requested the customer statements from
[19] Fiserv.
[20] Q: And your testimony is they only gave you 19
[21] customer statements? They were irritated, so you went
[22] away?
[23] A: Yeah.
[24] Q: You didn't pursue it?
[25] A: (pause).

[1] Q: These are the same category of people that
[2] you earlier testified have to respond to you, is that
[3] right, when you make requests?
[4] A: The clearing firms — we are regulated by —
[5] more so by the SEC. They do license in the State of
[6] Utah.
[7] Q: Yes, they are a licensee. Oh, come on. They
[8] are a licensee. Utah has suspended the broker/dealer
[9] license of clearing firms before based in New York,
[10] haven't they?
[11] A: I've been with the Division about a year
[12] and-a-half. That's possible.
[13] Q: You could have gotten this information from
[14] them?
[15] A: Yes.
[16] Q: Their being irritated wasn't a deterrent to
[17] you, was it?
[18] A: There was also a time constraint, too, in
[19] preparing the information. Time and resource, too.
[20] Spending the resources. I do have to be aware of that.
[21] Q: If this hadn't shown what you wanted it to
[22] show, would you have gone after more information?
[23] A: (pause).
[24] Q: What were you trying to show?
[25] A: I was taking a sample of accounts to compare

[1] the percentage gained or loss for the time period of
[2] November to December to see if it approximated the
[3] profit or loss as compared to the track record. If the
[4] track record tells me that for the same balances I
[5] would get 1100 percent increase in the account, I would
[6] have — taking a beginning balance of, say, a hundred
[7] dollars, I would have a phenomenal increase in the
[8] ending balance.
[9] Q: Okay. Well, let's go back to your —
[10] A: So even if I took —
[11] Q: Let's go back to your sample.
[12] A: Okay.
[13] Q: You're familiar with sampling techniques,
[14] with random sampling techniques; right?
[15] A: Um-hum. (affirmatively).
[16] Q: Have you ever heard of anybody scientifically
[17] that relied on somebody else to supply them about only
[18] part of the documents and consider that a random
[19] sample? It's not very scientific, is it?
[20] A: I selected the names that I requested from
[21] them. From — I —
[22] Q: You selected the names?
[23] A: I selected the names and account numbers.
[24] Q: Well, what did these accounts that you
[25] selected trade in? Could these have been stock

[1] accounts, too?
[2] A: Yes. Stock and options.
[3] Q: And I understood your testimony on direct it
[4] pertained to a track record, is that right? What track
[5] record are we talking about?
[6] A: The track record that was used by Mr. Rice.
[7] Q: Which pertained exclusively to options, did
[8] it not?
[9] A: I believe there was some stock symbols on
[10] there, as well.
[11] Q: All right. We did talk about First American
[12] with respect to a certain exhibit that wasn't entered.
[13] Did the person who wrote this letter tell you that
[14] there is an existing lawsuit between Mr. Rice and that
[15] broker/dealer firm?
[16] A: I don't recall him specifically saying
[17] anything. I don't recall — does it say in the letter?
[18] Q: Would it surprise you that in July of 1999
[19] Mr. Rice filed a million dollar arbitration against
[20] that firm?
[21] A: I — (pause). He has the right to file in
[22] this country.
[23] Q: Yes, but would it surprise you to learn that
[24] now?
[25] A: (pause).

[1] Q: Did you —
[2] A: I had heard rumors that he — I don't know
[3] the specifics, but I do know that he filed against
[4] former broker/dealers.
[5] Q: Well, let's talk about that. You've got a
[6] year and-a-half experience with the Securities
[7] Division. You're aware that disputes arise between
[8] broker/dealers and their agents, is that correct?
[9] A: Yes.
[10] Q: Frequently?
[11] A: Yes.
[12] Q: It's a source of millions and millions of
[13] dollars of arbitrations in this country, right?
[14] A: Um-hum. (affirmatively).
[15] Q: And you were here for Mr. Klein's opening
[16] statement wherein he talked about brokers disciplining
[17] their representatives, is that right?
[18] A: Yes.
[19] Q: Do you have enough knowledge and experience
[20] in auditing broker/dealers to understand that some of
[21] that discipline is not necessarily discipline, but just
[22] self-interested financial dealing?
[23] A: I would say — I don't know what percentage,
[24] but I would say that that's possible.
[25] Q: Are you aware that when a broker terminates a

[1] connection with a broker/dealer voluntarily that
 [2] frequently the broker/dealer tries to impede the
 [3] migration of accounts in that broker/dealer to follow
 [4] the rep?
 [5] **A:** I wouldn't know the frequency of it, but I
 [6] understand that that can happen.
 [7] **Q:** Do you regard that as an honest practice?
 [8] **A:** And it's fraught with problems, and if it is
 [9] done maliciously, that could be a dishonest and
 [10] unethical business practice.
 [11] **Q:** So beyond the letter that came to you at your
 [12] request you didn't look to see what the history between
 [13] my client and the broker/dealer was? So you just
 [14] accepted at face value what was contained in that
 [15] letter?
 [16] **A:** No, I didn't look into the history of those
 [17] two and their relationship.
 [18] **Q:** You didn't cover their internal audits of Mr.
 [19] Rice? Perhaps they had glowing reports about his
 [20] behavior up until the time that he left. That's a
 [21] possibility?
 [22] **A:** If that was the case, they might have sent
 [23] that information, as well.
 [24] **Q:** You did testify a little bit about
 [25] advertising. I want to clean that up. Did you examine

[1] check. They have money. The Courtland — the fund
 [2] account is tied up with a — if you see towards the
 [3] bottom, fourth from the bottom, "Swept to Courtland
 [4] general money market fund"? It's a money market fund.
 [5] **Q:** Where was that?
 [6] **A:** Fourth from the bottom. Fourth line from the
 [7] bottom.
 [8] **Q:** I'm sorry. I didn't hear correct.
 [9] **A:** It's a journal entry for \$4,172.85. And over
 [10] in the description it says, "Swept to general" — or,
 [11] "Courtland general money market fund." If you look at
 [12] the customer statements, it would say, "Courtland money
 [13] market fund." And then that is different from the
 [14] account type that's designated there by margin.
 [15] **Q:** Okay. If I understand you correctly, this
 [16] data — and this was derived from the CD that you
 [17] received from Fiserv?
 [18] **A:** (shaking head negatively).
 [19] **Q:** What was this derived from?
 [20] **A:** This was derived from — if you look at the
 [21] top of the document, it says, "I Networks Registered
 [22] Rep." This is the on-line —
 [23] **Q:** This is what came through Kent Sweat. Okay.
 [24] How can you tell if a particular transaction is —
 [25] well, I think you've answered that. You said the

[1] the advertising file at that broker/dealer firm or did
 [2] you just rely on the letter to come to your conclusion?
 [3] **A:** I did not physically go there and examine the
 [4] file, no.
 [5] **Q:** Why would you take the word of the
 [6] broker/dealer?
 [7] **A:** I take — I look at people and — (pause).
 [8] **Q:** I'll withdraw the question. Can you turn to
 [9] Exhibit 43? I think it was your testimony on direct
 [10] that somehow from Exhibit 43 you detected margin
 [11] trades.
 [12] **A:** Yes.
 [13] **Q:** How did you do that?
 [14] **A:** Starting from the left-hand side, third
 [15] column, "Account Type."
 [16] **Q:** Okay.
 [17] **A:** Cash account versus fund account versus
 [18] margin account.
 [19] **Q:** Okay. Cash account versus fund account.
 [20] Describe for me again — as Mr. Klein is want to say,
 [21] I'm a little dense on this.
 [22] **A:** That's fine.
 [23] **Q:** Describe for me the difference between the
 [24] three.
 [25] **A:** A cash account is cash — customer deposits a

[1] account type. You just look down. If it says,
 [2] "Margin," it's margin; right?
 [3] **A:** Yeah. And I would be able to confirm that
 [4] out by taking a look at the customer account statement.
 [5] **Q:** Okay. So you're taking Fiserv's word for it,
 [6] and they have to be right? Is it possible that they
 [7] could be wrong in the designation of margin on a
 [8] particular trade?
 [9] **A:** It's possible that Fiserv could make a
 [10] mistake.
 [11] **Q:** Is it possible that the transaction might
 [12] designate, "Margin," in the third column over and not
 [13] be a margin transaction?
 [14] **A:** It's possible, but in this case I would say
 [15] we could confirm that out by looking at the account
 [16] statement.
 [17] **Q:** The account statements. Did you look at the
 [18] account statements?
 [19] **A:** I have looked at the account statements for
 [20] the Poulson Trust Fund.
 [21] **Q:** Did you verify the account statements for
 [22] each one of these to make sure? Because you have to
 [23] look at the account statements to know if the
 [24] transaction was a margin transaction.
 [25] **A:** At the time that I downloaded this, if there

[1] had been a mistake in a transaction, there was enough
[2] time between the time of the transaction, since this
[3] occurred in January of 2000, that I would presume that
[4] if there were any mistakes in the margin account, that
[5] that would have been reconciled by now by Fiserv.
[6] Q: Would you agree with me that if I engage in a
[7] transaction and I have a margin account that's not
[8] always margin, that requires margin?
[9] A: I'm sorry. I don't understand your question.
[10] Q: If I have a margin account, I may not be
[11] utilizing margin in conducting my transactions. That's
[12] probably the simplest way I can put it. Is that right?
[13] A: Are you saying that the customer is not
[14] controlling the margin or —
[15] Q: No, I might be approved for margin, but a
[16] particular transaction I might do in my margin account
[17] might be well covered and not even worried about
[18] margin. I may not have borrowed money, in other words.
[19] No?
[20] A: I'm sorry. I don't understand your question.
[21] Q: It's fair to say, though, this third column
[22] over just designates the type of account and not
[23] necessarily that a transaction involved a margin
[24] transaction?
[25] A: It went through the margin account.

[1] Q: It went through the margin account?
[2] A: Right. That transaction — I believe that
[3] this statement is saying that this transaction went
[4] through the margin account.
[5] Q: Okay. Let's look at Exhibit 58. You know,
[6] this looks like a readout on a heart machine or
[7] something if you stand up this high. How can you see
[8] that? You talked about — let's see. On the second
[9] page of the Exhibit 58 you talked about block trades in
[10] Anita Rice's account, did you not?
[11] A: Yes.
[12] Q: Okay. How many block trades are we talking
[13] about?
[14] A: There are three transactions.
[15] Q: Three. Again, this is the font size, but I
[16] only see two and —
[17] A: Do you just want to know how many is on the
[18] first page? There's one on the second page, as well.
[19] Q: Oh, on the second page, as well.
[20] A: Yeah.
[21] Q: Okay. Yes, I do see that.
[22] A: So there is the J.D.S. Union A Phase. The
[23] Applied Materials. And the Silicon Storage Tech, Inc.
[24] Q: Okay. Now, looking at this document, can you
[25] tell who was involved in the block trade?

[1] A: This document — I would take a look for the
[2] trade ticket on the — on this particular case the
[3] 16th, and using that in combination with the trade ID
[4] on the very right-hand side I would be able to identify
[5] the trade ticket.
[6] Q: Yes, I think I asked you did you do that?
[7] Did you look at what was involved? Can you tell —
[8] A: Not from this particular record.
[9] Q: Okay.
[10] A: This is a —
[11] Q: If I suggested to you that —
[12] A: This particular page —
[13] Q: It could be that Anita Rice on those
[14] particular block trades was involved with other family
[15] members. Do you know that or do you know whether or
[16] not the block trade was with other customers of Jay
[17] Rice?
[18] A: (pause).
[19] Q: Go ahead and answer that. Do you know?
[20] A: Not off the top of my head, but I could use
[21] the offsetting accounts to identify those transactions.
[22] Q: All that we know from this document is that
[23] Anita Rice engaged in three block trades, right?
[24] A: Right.
[25] Q: But we don't know who else was in the block

[1] trade, correct?
[2] A: From this document, no, but from the whole
[3] entire trading transactions I can, yes.
[4] Q: Do you know if it was Mr. Rice's practice to
[5] segregate related to family member accounts in block
[6] trading from his regular customers?
[7] A: He has stated that that is his practice. I
[8] have seen trade tickets where that has not happened.
[9] Q: Is that the exception or the rule?
[10] A: He has stated that was his rule.
[11] Q: He stated it, but you've looked at those
[12] block trades. You should know. Is it?
[13] A: I have seen block transactions that include
[14] family members.
[15] Q: Yes, but isn't it true that the vast majority
[16] do not include family members?
[17] A: For the time period that I examined I would
[18] say there have been some, but not all of them. I don't
[19] know if it's the vast majority.
[20] Q: We need to clarify one thing. We're talking
[21] block orders here, and when Mr. Rice placed block
[22] orders with family members in it those block orders
[23] generally had family members in them; is that correct?
[24] In other words, a block order was generally placed that
[25] had Anita Rice, maybe some other family members in it,

[1] as opposed to co-mingling between family members and
[2] non-family members?
[3] **A:** That's possible.
[4] **Q:** Okay. What's the exception that you were
[5] talking about?
[6] **A:** The Applied Materials.
[7] **Q:** Okay.
[8] **A:** On the 17th.
[9] **Q:** Let's go back to your earlier example. You
[10] said that's possible, that's speculative. Haven't you
[11] seen block trades that actually only involved his
[12] family members?
[13] **A:** Yes.
[14] **Q:** Okay. You said that you had seen family
[15] members involved in block trades co-mingling other
[16] accounts. Is that true?
[17] **A:** (pause).
[18] **Q:** That family members would be in a block trade
[19] with other non-family members.
[20] **A:** Yes.
[21] **Q:** Okay. You've seen that?
[22] **A:** Yes.
[23] **Q:** Okay. What accounts?
[24] **A:** You mean co-mingling in accounts or in the
[25] block trade?

[1] for this particular period? From —
[2] **A:** These are all Anita Rice's trades. Some of
[3] them may have been designated. When they did the trade
[4] ticket, would have her individual trade ticket. But if
[5] she did, you know, a block — when you say a block
[6] trade —
[7] **Q:** Right.
[8] **A:** — I'm not sure what you mean.
[9] **Q:** Well, this document indicates, does it not,
[10] the use of the OS account, and you've designated the
[11] average account, if I'm using the term correctly, that
[12] Fiserv used?
[13] **A:** Yeah, that's the term that they used.
[14] **Q:** So you testified for every entry in this
[15] particular column, meaning the OS account, OSK column,
[16] we see three trades that Anita Rice has done which came
[17] through that average account, indicating to you that
[18] those were block trades?
[19] **A:** Correct.
[20] **Q:** And my question to you is do we know who else
[21] was involved, by your examination, in those three
[22] particular trades? Were they family members or
[23] non-family members?
[24] **A:** In the Applied Materials they were non-family
[25] members. So the other ones could have been family

[1] **Q:** No, I'm sorry. Who is the member of those
[2] accounts? Who is the family member of those accounts
[3] that were co-mingled, so to speak, in a block trade?
[4] **A:** Robert Rice.
[5] **Q:** You saw Robert Rice in there?
[6] **A:** Um-hum. (affirmatively).
[7] **Q:** Okay. Any others?
[8] **A:** I think the J.A.R. Investment.
[9] **Q:** Have you ever seen Anita Rice co-mingled in a
[10] block trade with non-family members?
[11] **A:** Well, the Applied Materials.
[12] **Q:** This Applied Materials we're talking about?
[13] **A:** Yes.
[14] **Q:** So what your testimony is is that these were
[15] co-mingled block trades, is that right?
[16] **A:** Her name was in with the other block trades,
[17] yes.
[18] **Q:** But were they family members or were they
[19] non-family members?
[20] **A:** Non-family members.
[21] **Q:** In that block trade?
[22] **A:** Yeah.
[23] **Q:** So you found three examples of it?
[24] **A:** Yeah.
[25] **Q:** Are these all of Anita Rice's block trades

[1] members in the block trade.
[2] **Q:** So these three — okay. Applied Materials.
[3] Where are we looking in Applied Materials?
[4] **A:** The Applied Materials is trade date March
[5] 17th.
[6] **Q:** March 17th. Okay. So the other two would
[7] follow what Mr. Rice said was his normal pattern of not
[8] co-mingling, is that right?
[9] **A:** Yes.
[10] **Q:** Okay. If an account of a family member is
[11] only with family members and not co-mingled with
[12] non-family members, is there any possibility that
[13] family members could be given a preference in averaging
[14] the trades or allocating the trades?
[15] **A:** When you say accounts I'm thinking —
[16] **Q:** I'm sorry if I'm misusing the term.
[17] **A:** Are you talking about block trades?
[18] **Q:** I'm actually talking about the average
[19] account.
[20] **A:** Okay.
[21] **Q:** The average account. Let me rephrase the
[22] question. If a block trade goes through and there are
[23] only family members in that block trade, is there any
[24] possibility that that block trade or any participant in
[25] that block trade can get preference over somebody who's

[1] not a family member?
[2] **A:** One family member could get preference — it
[3] is possible one family member could get preference over
[4] another family member in that example, but not if it's
[5] a separate block trade than non-family members.
[6] **Q:** You were in a meeting recently in which Mr.
[7] Rice told you it was his practice to not co-mingle
[8] accounts —
[9] **A:** Yes.
[10] **Q:** — between affiliates of his family and
[11] non-affiliates. And you heard him explain, did you
[12] not, that it was prohibited in his past experience; is
[13] that right?
[14] **A:** Um-hum. (nodding head affirmatively).
[15] **Q:** Did you ever check that out?
[16] **A:** Yes.
[17] **Q:** Was it?
[18] **A:** I've not been able to find it, no.
[19] **Q:** You look at compliance manuals of other
[20] firms?
[21] **A:** When I do an audit of other firms, yes.
[22] **Q:** No, I mean in this particular search. Did
[23] you just go back to one of these firms that he worked
[24] for before and see if there was something in there
[25] about not co-mingling?

[1] **A:** No, I did not examine the compliance manuals
[2] of his former broker/dealers. I did look for it on the
[3] NASD and in our Utah code.
[4] **Q:** You think it's a good practice?
[5] **A:** To co-mingle?
[6] **Q:** No. To segregate family members. Because it
[7] sure would be easy, wouldn't it, to allocate block
[8] trades favorable to family members if they were
[9] co-mingled?
[10] **A:** I think it would be just as easy to — if
[11] you're doing a block trade and not identifying the
[12] customers. If you do several block trades without
[13] identifying the customers.
[14] **Q:** That's not my question. My question was
[15] wouldn't it be easy if you co-mingled block trades if
[16] you had family members and non-family members in the
[17] same block trade?
[18] **A:** To get preference?
[19] **Q:** Yes, to prefer one over the other?
[20] **A:** I suppose.
[21] **Q:** Let's go to Exhibit 59. Again, I was lost in
[22] the blur of the fine print on this, but I believe that
[23] you walked through with Mr. Klein some rather sharp
[24] conclusions that you had about what was going on on
[25] this exhibit. I want you to go through it slowly now

[1] for my benefit —
[2] **A:** Um-hum. (affirmatively).
[3] **Q:** — and tell me what you think that this
[4] Exhibit 59 shows.
[5] **A:** (pause).
[6] **Q:** Just —
[7] **A:** Oh, I as waiting for your question.
[8] **Q:** No. My question is just walk me through your
[9] earlier testimony, and I want to find out what this
[10] document shows.
[11] **A:** Well, the sells and the sells/cancel — they
[12] cancel each other out. It appears that the 37
[13] and-a-half price was an error, so that particular
[14] cancellation, that particular trade was cancelled
[15] because of —
[16] **Q:** Do you know why?
[17] **A:** No. Well, actually, I do. Probably because
[18] most of these other transactions are at five and six
[19] dollars, which is a normal — it appears to be that's
[20] the normal range for that particular option that's
[21] trading, and 37 and-a-half is more than five or six
[22] times the price.
[23] **Q:** Wouldn't that be kind of an error that
[24] somebody might catch up the line? Maybe Fiserv?
[25] You're aware Fiserv cancelled trades a lot?

[1] **A:** I'm aware they cancelled trades. I can't say
[2] for sure whether it's a lot or not.
[3] **Q:** Okay. These are all in the same security,
[4] right? One's at six dollars, then we've got these
[5] thirty-seven fifty transactions, then down here at
[6] five. That's considerably out of line, isn't it?
[7] Okay. So the cancelled trades cancel out. What next?
[8] **A:** Well, we have two trades at six dollars for
[9] Robert Rice at the top.
[10] **Q:** Yes.
[11] **A:** We have two trades for Anita Rice for six
[12] dollars.
[13] **Q:** Okay.
[14] **A:** And then down below the trade cancellations
[15] we have trades for the other folks at five dollars, and
[16] that ends the trade date February 16th. So when you're
[17] selling the call the premium that's coming in at six
[18] dollars is higher than the premium at five dollars.
[19] **Q:** Okay. Now, let me ask you a question: Do
[20] you know if these were block trades?
[21] **A:** The block trades for the five dollars per
[22] share — or per option are through the block trade
[23] account.
[24] **Q:** How can you tell that?
[25] **A:** The 450 account.

[1] Q: So all of the five dollars per share ones
[2] went through a block trade?
[3] A: Yes.
[4] Q: I'm sorry. I said five dollars per share.
[5] Five dollars per contract?
[6] A: Yes.
[7] Q: Okay. What about the ones up above?
[8] A: They were specific identification.
[9] Q: So they weren't block trades at all?
[10] A: No.
[11] Q: Well, then, what are you saying about these
[12] trades? Maybe I just didn't understand your testimony.
[13] But I got the impression you were trying to say that
[14] Mr. Rice preferred in the transaction these investors,
[15] meaning his family, over these investors. Is that what
[16] you're trying to say by use of this document?
[17] A: They received a better premium than the other
[18] transactions. Not necessarily through the block
[19] transaction.
[20] Q: Well, did you pull the trade tickets? Did
[21] you look when the trades were placed?
[22] A: (pause).
[23] Q: Does this sheet show us when these trades
[24] were placed?
[25] A: It doesn't show the time and sales

[1] meantime the price goes up. He can decide to either
[2] designate it to his family members or designate it out
[3] to customers. That's a possibility.
[4] Q: So what you're saying is —
[5] A: So he could watch the option, how it went
[6] through the block trade, and then decide how to
[7] allocate it out.
[8] Q: That would be pretty easy to prove by those
[9] tickets, wouldn't it? At least we'd have a better
[10] inference than what we've got here just on the price.
[11] A: You asked me if that was a possibility.
[12] Q: Yes, but you didn't do that. We're just
[13] talking about price here.
[14] A: Right, but you asked me if that was a
[15] possibility.
[16] Q: Okay. You heard outlined today — oh, I'm
[17] sorry. I'll strike that. Well, you heard Mr. Ferguson
[18] testify today, did you not, that in January he began a
[19] process of reviewing the accounts for the block trade
[20] and that his Risk Manager, Mr. Marchetti, also reviewed
[21] those. They talked about the block trades before they
[22] happened?
[23] A: Um-hum. (affirmatively).
[24] Q: These trades are in February, aren't they?
[25] A: That's correct.

[1] information, no.
[2] Q: You heard testimony today about how wide the
[3] market can swing in a day?
[4] A: Yes.
[5] Q: You didn't pull the trade tickets?
[6] A: The trade tickets are there, yes.
[7] Q: What do the trade tickets show?
[8] A: I don't know.
[9] Q: Let me ask you this: Is it fair to try to
[10] draw the type of inference that was suggested, that Mr.
[11] Rice preferred his family members over the block trade
[12] that was placed for other non-family members simply by
[13] looking at the price at which the contracts were
[14] executed?
[15] A: Well, if he had a choice in it.
[16] Q: If he had a choice? How do you have a choice
[17] when you place separate tickets? You've got experience
[18] as an auditor. How do you have a choice? Let me give
[19] you a hypothetical, then. Let's say the trades —
[20] A: The block trade first.
[21] Q: Okay.
[22] A: He doesn't designate an account to which it
[23] goes to.
[24] Q: Okay.
[25] A: The block trade goes through. And in the

[1] Q: What would that tell you?
[2] A: (pause).
[3] Q: Won't that indicate that Mr. Rice had split
[4] had the block trade to Fiserv and they looked at those
[5] accounts and the block trade went through?
[6] A: As far as which — they were watching the
[7] block trades and they were watching to see if the
[8] accounts that he intended to trade options in — or the
[9] particular option that he was wanting to do in the
[10] block trade had equity. If those accounts had equity
[11] in the account. Not whether or not the price that he
[12] was — the option that he traded was going to family
[13] members or non-family members.
[14] Q: Wouldn't the account designate that?
[15] A: The account would, but they don't know the
[16] name — on the trade ticket it has either the block
[17] trade account on it or an account number. It doesn't
[18] have the account name.
[19] Q: So what your testimony is is that it's
[20] possible for Mr. Rice to have submitted a money line
[21] allocation of block trades and then just go a different
[22] way. Just put all family members in there, is that
[23] right, using their different equity, I guess, to figure
[24] out the margin. Is that your theory?
[25] A: It's possible.

[1] Q: Isn't it true we can't really tell from this
[2] document anything about Mr. Rice's intentions to prefer
[3] a family member over a non-family member? All that
[4] this document talks about is price.
[5] A: We can't infer his intentions and what he was
[6] thinking, no, but we can refer the results. (sic).
[7] Q: You can infer the results. The results are
[8] right here. Correct?
[9] A: Um-hum. (affirmatively).
[10] Q: You recall Mr. Ferguson's testimony earlier?
[11] A: (nodding head affirmatively).
[12] Q: About how soon after the allocations were
[13] submitted. It was prompt, wasn't it?
[14] A: (pause). I may have missed that portion.
[15] Q: I just wanted to know if you'd ever checked
[16] on that, whether or not those allocations were
[17] submitted promptly.
[18] A: What do you consider, "promptly"? I mean the
[19] time frame that you consider to be, "promptly."
[20] Q: Promptly. Well —
[21] A: Meaning if it was like within —
[22] Q: Within 30 minutes. Did he ever check it at
[23] all to find out when those allocations came in after
[24] the execution of the trade?
[25] A: They said that some came in right directly

[1] after and some came in after the market closed.
[2] Q: Okay. Well, but you didn't compare the
[3] execution to the receipt of the allocation?
[4] A: I couldn't. The documents — when I was
[5] asking for time and sales information I asked for it
[6] from Fiserv as well as from Intermountain, and the
[7] documents from Intermountain did not have time stamps
[8] on them, so I could not.
[9] Q: But Fiserv executed the trade, right? Fiserv
[10] is the execution document we ought to be concerned
[11] about. Don't they have a time on them?
[12] A: They have time stamps on them, yes, and the
[13] communications between Fiserv and Intermountain have
[14] been both right after — according to Fiserv's
[15] testimony, either shortly after or sometimes after the
[16] market —
[17] Q: Have you had an opportunity to look at
[18] Respondent's Exhibits 4 and 5?
[19] A: These look like documents that were maybe a
[20] part of the records at Mr. Rice's office.
[21] Q: Well, yes, I just wanted to know if you had
[22] an opportunity to look at them.
[23] A: Not in detail — great detail.
[24] Q: Not in great detail is a, "Yes," in my book;
[25] correct? Have you had an opportunity to look at them?

[1] A: I've had an opportunity to look at them, yes.
[2] Q: Okay. Did you look at them?
[3] A: (pause).
[4] Q: Did you see them?
[5] A: This is the first time I've seen it.
[6] Q: This is the first time you've seen it?
[7] A: Yeah. I had an opportunity to look at it as
[8] far as it being a part of the Respondent's exhibits,
[9] but I have not had time to evaluate them, and so this
[10] is the first time I've seen them.
[11] Q: Then my question is bad. I apologize. This
[12] is the first time you've seen this document?
[13] A: Yes.
[14] Q: Did you ever conduct an analysis before you
[15] made your Exhibit 59, which implies that Mr. Rice
[16] favored family members, to see if he actually did give
[17] his — if the information that is contained in the
[18] trading records would show that the block trade or
[19] other trades done for his account and for his wife's
[20] account would benefit more from being involved with
[21] block allocations with other clients?
[22] A: Did I do that analysis? No. I don't — I
[23] didn't do a "what if" analysis on what would have been
[24] more profitable for them.
[25] Q: Is it your testimony here today, based on

[1] your opinion and your experience with the Securities
[2] Division, that Mr. Rice preferred his family members,
[3] particularly Anita Rice, over other customers? Can you
[4] conclude that today sitting here?
[5] A: I can conclude that, yes, in some
[6] transactions that he did. His family members were
[7] preferred.
[8] Q: In some transactions he preferred them.
[9] A: Um-hum. (affirmatively).
[10] Q: Over others?
[11] A: Um-hum. (affirmatively).
[12] Q: But all that you've testified to is that they
[13] got a better price on some transactions. All that
[14] you've testified to with respect to the productivity in
[15] the accounts is that for a particular month in February
[16] 25th — and I'm looking at Exhibit 60 — his family
[17] members in that month seemed to do better than other
[18] non-family members, is that correct, using your 28
[19] accounts that you sampled?
[20] A: Um-hum. (affirmatively).
[21] Q: What about the month before? You didn't go
[22] into that in your testimony, but, fortunately, you
[23] provided it here. Who did well in that month?
[24] A: Well, the top two are Scott Swain and Matt
[25] Buckley.

[1] Q: Are either one of those family members?
 [2] A: No.
 [3] Q: Okay. What did Anita Rice's account do?
 [4] A: 48 percent.
 [5] Q: Okay. And Mr. Buckley did 180 percent,
 [6] right?
 [7] A: Correct.
 [8] Q: Well, isn't it fair to say that if you can
 [9] conclude that for the February transactions that Mr. —
 [10] there's some inference that he favored family members,
 [11] that in the earlier month, the month before, you have
 [12] to draw the same inference that he didn't favor family
 [13] members; isn't that right?
 [14] A: Yes.
 [15] Q: Isn't it misleading to only talk about one
 [16] particular month in the range of all the trading
 [17] documents that you've done? Isn't it misleading to
 [18] suggest that Mr. Rice preferred family members based on
 [19] one particular month and not a sample of months?
 [20] A: I was answering the questions as they were
 [21] asked.
 [22] Q: And I understand that. And I understand
 [23] that. And you were the creator of this document —
 [24] A: Yes.
 [25] Q: — right?

[1] Q: Why wouldn't Mr. Rice have done it — well,
 [2] strike that. Do you have any reason to believe in the
 [3] previous month Mr. Rice preferred family members?
 [4] Let's deal with that one first. In January.
 [5] A: No.
 [6] Q: You can't conclude that?
 [7] A: No.
 [8] Q: Okay. Will you go this far with me: That at
 [9] least the results of January seem to indicate that he
 [10] did not prefer family members?
 [11] A: Yes.
 [12] Q: So your conclusion that he preferred family
 [13] members is based in isolation on that one column in
 [14] that one month and simply by the percentage in the
 [15] account?
 [16] A: Limited to this document, yes.
 [17] Q: Okay. You didn't review trade tickets to
 [18] analyze it?
 [19] A: I reviewed statements. (nodding head
 [20] affirmatively) had.
 [21] Q: You reviewed statements?
 [22] A: (nodding head affirmatively).
 [23] Q: No trade tickets. You didn't review
 [24] allocations of block trades to reach this conclusion.
 [25] This is strictly done on the statements?

[1] A: Yes.
 [2] Q: Let me ask you again. Is it a balanced
 [3] conclusion and a fair conclusion that you think that
 [4] based on this document, document Number 60, that Mr.
 [5] Rice preferred family members? Do you think he did?
 [6] A: (pause).
 [7] Q: Looking at all of the data now, not just one
 [8] month. Looking at all of the data, can you conclude
 [9] from that data that he did?
 [10] A: Are you limiting me to these two months of
 [11] data or the whole data of the six months that I've
 [12] looked at?
 [13] Q: I'm dealing with the document that is in the
 [14] exhibit, and I have no idea what is beyond that.
 [15] A: Okay.
 [16] Q: I'm saying from this document —
 [17] A: Yes.
 [18] Q: — what conclusions would you reach?
 [19] A: In answer to your question, yes. If you are
 [20] just limiting it to these two months, yes.
 [21] Q: Even though Anita Rice did not do nearly as
 [22] well as anyone else in the previous month and she did
 [23] well in the following month, you can conclude that
 [24] there is a preference?
 [25] A: That there is some preference, yes.

[1] A: Yes.
 [2] Q: Well, wouldn't it be a good idea —
 [3] A: As a result of transactions on those
 [4] statements.
 [5] Q: I understand. Wouldn't it be a good idea to
 [6] analyze those statements to see if it were possible
 [7] that he could shift? Review the actual trade data, not
 [8] just the trade statements, and conclude from a
 [9] percentage that one was preferred over the other?
 [10] A: Yes.
 [11] Q: Okay. Let me give you a hypothetical. If I
 [12] have the same broker/dealer as Mr. Klein and I look at
 [13] his account statement, I see he's doing very well and
 [14] his percentage gained for a month is good and we have
 [15] the same rep that serves us, and yet what I had in my
 [16] account tanked, is there a basis for you to conclude
 [17] from that that the representative prefers Mr. Klein?
 [18] A: No.
 [19] Q: You gave me an example of a possibility where
 [20] there might be a preference, and I think that was if
 [21] the block trade had occurred — did you say later? Go
 [22] through that again.
 [23] A: Okay.
 [24] Q: The possibility where a preference might
 [25] occur in a block trade where you've got non-family

[1] members in the block trade, you have other direct
[2] execution and individual trade tickets for family
[3] member accounts, such as are on the exhibit that we
[4] just reviewed. I think it's 59. Yes. Exhibit 59.

[5] Tell me again your example of how it would be possible.

[6] **A:** How would it be possible if he wanted to
[7] favor someone using a block trade?

[8] **Q:** Okay. Yes.

[9] **A:** Starts early in the morning, executes a block
[10] trade without identifying the customers. In the
[11] meantime, a couple hours, you know, if they don't
[12] demand — if Fiserv can handle not getting the specific
[13] identification until either later in the day or after
[14] the market closes, he can watch — and this is
[15] hypothetical — he could watch the market in the
[16] morning with that block trade, see how it did.

[17] If in the meantime two hours later under the
[18] volatility the option price increased, two hours later
[19] he could submit a specific trade and then later
[20] identify the non-family members in the earlier morning
[21] trade. That's how he could favor a family member.

[22] **Q:** Oh, I see. So let me get this straight. Mr.
[23] Rice could simply call up Fiserv and say, you know,
[24] "Why don't you take that averaged account and put it
[25] in my family member's name. I want to allocate the

[1] that point that he's getting ready to make that second
[2] order is when he could decide, "Whether or not I'm
[3] going to allocate that one out to my customers or I'm
[4] going to allocate that block trade out to my family
[5] members."

[6] **Q:** Doesn't that involve cancellation of the
[7] second trade in order to do that?

[8] **A:** Not if he's ordering — the first order is a
[9] hundred and the second order is a hundred. There's no
[10] cancellation. I mean he's decided he wants to buy a
[11] hundred calls for the first block. Watches the price
[12] go up. Wants to buy a second block of a hundred. And
[13] before he enters it — before he decides to order it he
[14] can decide who he wants to designate, because he has
[15] discretionary authority.

[16] **Q:** Do you know if that ever happened?

[17] **A:** No. I don't know what he was thinking. I do
[18] know that he, according to Jeff — I mean his testimony
[19] that he would order block trades calls in the morning.

[20] **Q:** Jeff's testimony? Jeff who?

[21] **A:** Gorringer.

[22] **Q:** Jeff testified about a few days in March.
[23] Talking about transactions —

[24] **A:** I also examined two months worth of Mr.
[25] Rice's daytimer.

[1] block trade to my family members"?

[2] **A:** No.

[3] **Q:** No?

[4] **A:** He would — you missed my example. You could
[5] call up in the morning and say, "I want to do a hundred
[6] calls in Applied Materials." Buy it in the morning. A
[7] couple hours later you see that the price has gone up.

[8] "I want to buy another hundred calls. And put it in
[9] this account." Number whatever. A specific
[10] identification of an account. Which is — could be a
[11] family member.

[12] And in the meantime decide that the first
[13] block didn't — was bought at five dollars and the
[14] second trade when you bought a hundred calls you
[15] specifically identified as the family member, you could
[16] decide at the point you're making that transaction
[17] because you've already known what the executional price
[18] of that block trade is.

[19] **Q:** I think that that might work, but I've got
[20] one problem with it. The trade tickets that are
[21] submitted in the individual trades have to be
[22] identified for individual accounts. They're not
[23] averaged. They're not undesignated. Those are
[24] designated.

[25] **A:** Right, that's the second one. Because at

[1] **Q:** Okay.

[2] **A:** Where he ordered them in the morning, and
[3] that corresponded to trade tickets that were ordered
[4] early in the morning.

[5] **Q:** Sitting here today you cannot say that
[6] anything like that ever occurred?

[7] **A:** You asked me for a hypothetical example, as
[8] far as how —

[9] **Q:** Yes.

[10] **A:** — could this happen.

[11] **Q:** And I'm asking another question right now.
[12] Sitting here today you can't say that occurred?

[13] **A:** (pause).

[14] **MR. GRIFFIN:** I'm sorry. While the witness
[15] is thinking about that answer, I'm sorry I've gone over
[16] time, but I think we can conclude here. I'm almost
[17] done.

[18] **Q:** Go ahead.

[19] **A:** It's possible that it happened in this A.D.C.
[20] Telecommunications.

[21] **Q:** That's not what I asked. And you need to
[22] listen carefully to the question. Sitting here today,
[23] you can't say that it did. Conclusively say that it
[24] did?

[25] **A:** No.

[1] Q: Okay. When did you first tell Mr. Rice about
[2] this theory? When do we first see this document which
[3] you present in which you explain some of this theory?
[4] A: Today.
[5] Q: Today? We haven't had this document before
[6] us before?
[7] A: Not that I recall. I mean you had it in the
[8] exhibits.
[9] Q: In exhibits. But this theory about so-called
[10] cherry picking, preferring family members over another,
[11] we had an earlier discussion about this.
[12] A: Yes.
[13] Q: Sat down with my client, me.
[14] A: Yeah.
[15] Q: It was a while ago.
[16] A: Yeah.
[17] Q: Since then did you do any kind of research to
[18] back up this theory? Did you go pull trade tickets?
[19] Did you look at the block trades? Did you try and
[20] reinforce this theory which is based on a difference in
[21] price on a particular day? Did you do anything after
[22] our meeting?
[23] A: Yes, there was some work done as far as
[24] looking at the trades.
[25] Q: Did you find anything to help you out? To

[1] Q: Do you know?
[2] A: I don't have a date on it. I don't recall
[3] specifically.
[4] Q: Okay. But you feel that somehow this
[5] indicates preference, as well?
[6] A: I used it to recall which trade I looked at,
[7] which was the SSUBJ, because I couldn't remember the
[8] name of the stock. The Silicon Storage Tech, Inc.
[9] Q: Okay. We talked about the Silicon Storage
[10] Tech, Inc., didn't we —
[11] A: A little bit.
[12] Q: — in our meeting?
[13] A: No.
[14] Q: No?
[15] A: I mean we talked about having packets
[16] available. The specific one —
[17] Q: Okay. Let me ask you this question: You
[18] reviewed Mr. Rice's trades. These are boxes full of
[19] stuff. Do you have any idea how many trades Mr. Rice
[20] executed in the course of a month?
[21] A: The activity in options varied over the six
[22] months. It increased during the time period of
[23] January, February and March, so there wasn't an average
[24] — I mean an average would be about four to 500
[25] trades. I mean that's the actual transactions.

[1] prove that out?
[2] A: I thought so.
[3] Q: Why didn't you present it? What was it? Let
[4] me ask that first.
[5] A: Well, I thought the information that was in
[6] the exhibits was enough.
[7] Q: What was it?
[8] A: These examples that I have of the A.D.C.
[9] Q: No. I'm sorry. What was the evidence that
[10] you found to support your theory that Mr. Rice
[11] preferred customers other than what you have here
[12] today? To what you just referenced. You said yes,
[13] found some other stuff. What was it?
[14] A: Well, I looked at the SSUBJs, which is —
[15] let's see. (pause). The Silicon Storage Tech.
[16] Q: What does that show us and what are you
[17] looking at?
[18] A: I'm looking at Exhibit 59. Or excuse me, 58.
[19] That's the other block trade that came out of Anita
[20] Rice's — with Anita Rice, as well as the other block
[21] trades.
[22] Q: Okay. The other block trade. So your
[23] testimony is that you generated this document since our
[24] meeting?
[25] A: (pause).

[1] Q: Would it surprise you that some months were
[2] as high as 700 trades?
[3] A: No.
[4] Q: Okay.
[5] A: That would fit with the increased activity.
[6] Q: And there were block trades in there. There
[7] were individual account trades in everything else. Did
[8] you in all of that — other than the examples that you
[9] presented in these two documents here today, which you
[10] think imply that, is there any other thing in the
[11] spectrum of trade tickets and other documents that you
[12] looked at to imply that Mr. Rice preferred family
[13] members?
[14] A: No.
[15] Q: Thank you. Nothing further.
[16] MR. KLEIN: One narrow topic. A handful of
[17] very quick questions.
[18] THE JUDGE: I'll give you ten minutes.
[19] MR. KLEIN: If I take all of it — I won't.
[20] REDIRECT EXAMINATION BY MR. KLEIN
[21] MR. KLEIN: Q. Turn, please, to Exhibit
[22] 74, which are the money lines. And they may be up on
[23] the counter.
[24] Are you guys sharing those or did you find
[25] it?

[1] Do you have those?
[2] A: Yes.
[3] Q: Turn to Exhibit A, the second page.
[4] A: Okay.
[5] Q: Do you see about halfway down J.A.R.
[6] Investment?
[7] A: Yes.
[8] Q: On the far right in the margin do you see
[9] something next to that J.A.R. Investment?
[10] A: An asterisk.
[11] MR. GRIFFIN: I'm sorry. Which exhibit?
[12] MR. KLEIN: Exhibit 74. The money lines.
[13] MR. GRIFFIN: You know what?
[14] MR. KLEIN: You're in my ten minutes.
[15] MR. GRIFFIN: I'm sorry. I'm sorry.
[16] MR. KLEIN: I'll do it right here.
[17] MR. GRIFFIN: Okay.
[18] MR. KLEIN: Q. Do you remember the
[19] testimony about what these money lines were used for?
[20] A: They — from — my understanding is that they
[21] were FAX'd to Fiserv in the morning, indicating that
[22] these —
[23] Q: Miss Thomas, do you remember the testimony
[24] about what this was used for?
[25] A: Yes.

[1] Q: Okay. So in Exhibit A J.A.R. Investment,
[2] does that have an asterisk?
[3] A: Yes.
[4] Q: If you look at Exhibit B on the second page,
[5] do you see any family members with asterisks there?
[6] A: Yes.
[7] Q: Which ones?
[8] A: Anita Rice, J.A.R. Investment and Robert
[9] Rice.
[10] Q: Exhibit C. Do you see any there with
[11] asterisks?
[12] A: J.A.R. Investment.
[13] Q: And the next page?
[14] A: Anita Rice.
[15] Q: Okay. Exhibit D. The second page. Which is
[16] actually named page one. Toward the bottom.
[17] A: Yes. J.A.R. Investment.
[18] Q: Exhibit E, on the fourth page, toward the
[19] bottom.
[20] A: Yes, Anita Rice.
[21] Q: Page five, a third of the way down.
[22] A: Yes, Robert Rice.
[23] MR. KLEIN: I'm done, Your Honor. There are
[24] others, but I'm not going to go through them.
[25] Any cross, Mr. Griffin?

[1] MR. GRIFFIN: Yes.
[2] RE-CROSS-EXAMINATION BY MR. GRIFFIN
[3] MR. GRIFFIN: Q. You also recall the
[4] testimony about this document indicating that there
[5] might be multiple block trades —
[6] A: Yes.
[7] Q: — indicated by these? This is an
[8] allocation. There was follow-up discussion as to how
[9] the block trades were to be done and who would be in
[10] the block trade, is that right?
[11] A: Yes.
[12] Q: Okay. No further questions.
[13] MR. KLEIN: I'm within my ten minutes. I
[14] did it in three.
[15] THE JUDGE: I'm impressed.
[16] MR. KLEIN: But I have lied on my other two
[17] time limits, saying the hearing would be done in three
[18] days and that I'd be finished by today.
[19] THE JUDGE: Three o'clock, as I recall, was
[20] the discussion, but that's neither here nor quite then
[21] and there.
[22] This hearing will be in recess until counsel
[23] for the Court can identify the period of time that we
[24] are going to resume. And I'll anticipate getting
[25] contact from counsel, as I've indicated, no later than

[1] a week from tomorrow in terms of when that will be.
[2] And then counsel can coordinate the availability of
[3] witnesses once you know which days we're going to be
[4] dealing with.
[5] Mr. Klein, anything further at this point?
[6] On the record.
[7] MR. KLEIN: Don't invite me.
[8] THE JUDGE: Mr. Griffin.
[9] MR. GRIFFIN: Nothing further.
[10] THE JUDGE: This hearing is in recess.
[11] (concluded at 5:33 p.m.)
[12]
[13]
[14]
[15]
[16]
[17]
[18]
[19]
[20]
[21]
[22]
[23]
[24]
[25]

[1] REPORTER'S CERTIFICATE
[2] STATE OF UTAH)
) ss
[3] COUNTY OF SALT LAKE)
[4] This is to certify that the foregoing was
[5] taken by me, Sharon A. Merritt, a Certified Shorthand
[6] Reporter in the State of Utah and the State of
[7] California.
[8] That the foregoing was reported by me in
[9] Stenotype and thereafter caused by me to be transcribed
[10] into typewriting, and that a full, true and correct
[11] transcription of so taken and transcribed is set forth
[12] in the foregoing pages.
[13] I further certify that the original was
[14] delivered to J. Steven Eklund and a copy was delivered
[15] to Wayne Klein.
[16] I further certify that I am not of kin or
[17] otherwise associated with any of the parties to said
[18] cause of action and that I am not interested in the
[19] event thereof.
[20] Witness my hand and official seal at Salt
[21] Lake City, Utah, this 20th day of August 2001.
[22]
[23]
[24] My Commission Expires: _____
[25] March 3, 2003 SHARON A. MERRITT, CSR, RPR, CM