



New York State Bar Association

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TO: County Coordinators, Coaches, Attorney Advisors and Judges

DATE: January 11, 2010

RE: Mock Trial Case 2010 Correction Memo #2

TYPOS/OMISSIONS

Case Summary:

Page 36, Paragraph 8, line four. Change “May 2006” to “August 2006.”

Sheridan Holmes’ affidavit:

Page 47, Paragraph 11, add after the last line:

We also have proof in the form of a wiretap that I was able to obtain wherein the two principals at S&S Derivatives discussed how to cover up their illegal activities.

Fran Ashcott’s affidavit:

Page 49, Paragraph 1, line two. Change “Riverdale” to “Scarsdale.”

Page 50, Paragraph 11, should read (changes are in bold):

11. On October 15, 2008, after not hearing anything further from the SEC, I contacted the Investor Protection Bureau of the New York Attorney General’s Office to file a formal complaint. The matter was assigned to investigator/analyst Sheridan Holmes, who interviewed me several days later. **I showed Mr. Holmes several financial statements (a customer account journal, a monthly statement of account and a trading confirmation statement) that I had recently received from S&S Derivatives. These statements are very confusing and I could never get Shawn to explain this stuff to me.)** I told Mr./Ms. Holmes how Shawn had been evasive, how Sidney had failed to return my phone calls and why I was concerned about our account with S&S Derivatives.

Pat Nolan’s affidavit:

Page 51, paragraph 5, line one. Change “May 2006” to “August 2006.”

Page 52, paragraph 7, place the following line in between third and fourth sentences:

Mr./Ms. Miller and Sidney would meet together often to discuss company matters and on at least one day each month they would meet to go over client accounts.

Shawn Miller’s affidavit:

Page 55, paragraph 14, line one. Change “After graduating in May 2006,” to “In August 2006.”

Wiretap, EXHIBIT 3, the following has been added:
New York State Attorney General's Office
Investor Protection Bureau
S. Holmes, Senior Investigator/Analyst

Change "October 3, 2008" to "October 23, 2008."

Website information has been included on **EXHIBITS 7, 8, & 9**

Attached are edited versions. A third memo will be distributed that will include ALL (from both the first and second memos) final edited versions in one comprehensive packet.

ADDITIONAL ITEMS/QUESTIONS

Questions were raised regarding the ability of a team to get the co-conspirator's statement into evidence over a hearsay objection. To avoid possible problems once the competition begins, the following rule has been added.

Rule 402-b: STATEMENT OF A CO-CONSPIRATOR: A judge may admit hearsay evidence if it is a prior out-of-court statement offered against a party and is a statement by a co-conspirator of a party made during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered.

Example:

Jane and Jill are charged with conspiracy to sell illegal drugs. During that alleged conspiracy, Jill approached an undercover police officer and said: "We have two kilos for sale. How much are you willing to pay?" At Jane's trial, the prosecution may try to get the officer's testimony of Jill's out-of-court statement admitted into evidence as an admission against a co-conspirator's interest. The court will admit this statement as an exception to hearsay if the prosecution has demonstrated that Jill was a co-conspirator and this statement was made in the course and in furtherance of the conspiracy. However, even if the court admits the evidence, the statements alone cannot be used to establish the existence of the conspiracy.

Rule 402 should be renumbered 402-a.

Affidavit of Sheridan Holmes
Senior Investigator/Analyst

1. My name is Sheridan Holmes. I am a Senior Investigator/Analyst with the Investor Protection Bureau of the New York Attorney General's Office. My office is located at 120 Broadway in New York City.

2. I am 55 years old and have been employed as an investigator/analyst for the Attorney General's office since 1989. Prior to my current employment, I worked in the securities industry as a trader. I worked on the floor of the New York Stock Exchange for Coldman Machs, a prominent brokerage house and investment bank on Wall Street, for about ten years. I was let go in December 1987 following the stock market crash in October 1987. In 1988, I tried to find another job in the securities business, but the employment market was tight or the pay was not there. I even tried to get a job with the Securities & Exchange Commission that year. I was unceremoniously rejected. I was then hired by the Attorney General's office and have been there ever since. My job is to investigate allegedly illegal investment schemes and, if found, report them to the Attorney General, who decides whether to prosecute offenders under the New York Martin-Webb Act.

3. My office was contacted by a Fran Ashcott, alleging that s/he and his/her spouse had made a sizable investment with S&S Derivatives, LLC. S/he had become concerned about their investment because the firm was refusing to return his/her calls or give him/her more information about their account. S/he told me they had contacted the SEC, but that the SEC was not doing anything. I am not surprise because that organization is full of bungling incompetents. I understand the new SEC commissioner is cleaning house.

4. Derivatives trading is quite complicated, but very lucrative. In 2004, the derivatives market was approximately 220 trillion dollars. By the end of 2007, the outstanding positions had risen to 596 trillion dollars. The derivatives markets are the financial markets for trading derivatives. There are essentially two types of markets: exchange traded market and over-the-counter market. Looking at the books of S&S Derivatives, LLC, it appears that this firm participated for the most part in the over-the-counter derivatives market.

5. Derivatives are financial contracts, like forwards, futures, options and swaps. The price for the financial instruments are derived from something else. This something else is called the underlying and the price of the underlying on which the derivative is based could be that of an asset like a collateralized debt obligation (CDO) - securitized residential mortgage obligations for example, or it could be an index, such as exchange rates or interest rates. In reality, almost anything that can be securitized, rated and priced can serve as an underlying.

6. Derivatives investors typically earn returns by seeking to minimize risk when the value of the underlying investment changes, by hedging. This commonly includes short selling. With short selling, or "going short," the investor makes money if the asset declines in value and she sells the

asset at the contract price. So, when the investor goes to repurchase the asset at the lower value, she pockets the difference in the price. This is what S&S Derivatives was doing in the over-the-counter derivatives market in its first year or so of operation. When the worldwide economy started to tank in the second quarter of 2007, S&S Derivatives could no longer keep the promise to provide double-digit returns to its clients. So, the principals at S&S Derivatives started to manipulate the books to make it appear that its investors were receiving double-digit returns as promised in the firm's prospectus. As new clients were brought into the hedge fund, the new money was credited to the accounts of older clients to make it appear that said older accounts had earned the promised returns. The new money was simply deposited into a special business account at a bank and the money was moved among the different clients' accounts to create the impression of trading. A client who requested a redemption of her account would receive the money she had requested plus a printed confirmation of the "sale" of some or all of the securities in her account. All clients received 1099s showing interest, dividends and sales proceeds at the end of the year so that they could prepare their income tax returns. We believe that when the S&S clients received their monthly and annual statements, they in effect would simply receive false confirmations of trades. It would be practically impossible for a client to devise that his or her statement was false. Fran Ashcott became concerned because s/he realized that ten to fifteen percent return in this economy was not realistic.

7. To facilitate the fraud, S&S Derivatives needed someone on the inside of the derivative market maker who would prepare the phony trading slips. The auditors, having no reason to suspect that the trading confirmation documents were fake, would issue favorable reports after the audits. S&S Derivatives executed most of its trades with Dorgan Manly LLC, a medium size holding company, that had a very large derivatives unit. One of the account executives working in the Dorgan Manly derivatives unit was Bernie Madlock, a clearing agent, who I interviewed in December 2008. He told me that he executed all of the trades for S&S Derivatives and prepared the trade confirmation slips. He said, "I knew Shawn from our days working at Behman Brothers and s/he introduced me to Sidney at a Behman Brothers holiday party in 2005." Mr. Madlock told them that he was now working in the derivatives unit at Dorgan Manly, this unit was a clearing house for derivative trading. Admitting to the illegal trading scheme, Mr. Madlock said that Sidney would deliver to him, on a flashdrive, the trades s/he wanted for each of the accounts and that he, Mr. Madlock, would execute the trades and prepare the trading documents. According to Mr. Madlock, the scheme started in late 2006 and continued until this office began its investigation in October 2008. The flashdrive was the best medium for engaging in this type of illegal activity. Phone calls could be too lengthy and emails would have to be preserved under Sarbanes-Oxley. We would have called Mr. Madlock to testify about his part in this scheme. But in January 2009, before we could even get a written statement, he was the victim of a robbery that went bad and endured a vicious beating. He is now in a coma.

8. We believe that the principals at S&S Derivatives had always intended to resume legitimate trading activity and restore all of their clients' accounts. But with the weakening economy, investments slowed almost to a halt and there was not enough cash to pay out as more and more clients demanded redemption. Moreover, as a result of the pressures brought on by the inquiries

from Fran Ashcott, it became difficult and ultimately impossible for S&S Derivatives to reconcile its clients' accounts. If S&S Derivatives had been able to continue to bring in new clients, the illegal investment scheme could probably have worked for a long time. But with the downturn in the economy, new clients had become harder to recruit. To protect investors like Fran, there needs to be more transparency in the derivatives market. To accomplish this, derivatives should be traded on an exchange or through a clearing house, in my opinion.

9. Shawn Miller and Sidney Taylor, the principals at S&S Derivatives, LLC, were indicted under seal on February 5, 2009 on charges of securities fraud and conspiracy to commit securities fraud. They were arrested on February 6, 2009, provided the usual "perp walk," and booked at Riker's Island. They were arraigned on February 9, 2009 in Supreme Court, New York County. Each pleaded not guilty to all of the charges and they were released after each posted bail in the amount of five hundred thousand dollars.

10. Sidney Taylor went on trial first. Shawn Miller's attorneys were able to convince the court to grant him a severance because they believed Mr./Ms. Miller would be called testify against Mr./Ms. Taylor. I don't believe the prosecutors ever intended to call him/her to testify. S/he would only lie anyway. In any event, Sidney Taylor was convicted as charged on all counts. S/he remained on bail and surrendered his/her passport. Prior to sentencing, s/he jumped bail, managed to get out of the country and may be residing in the Middle East, probably Dubai. S/he is in the FBI's Top Twenty-Five Most Wanted and we are all looking for him/her.

11. Shawn Miller's claimed ignorance as to what was going on at S&S Derivatives is quite pathetic. S/he has earned millions of dollars during the short time this firm has been in business and s/he now claims that s/he did not know anything about the illegal activities taking place there. Unbelievable! Mr./Ms. Miller wants us to believe that s/he is not very knowledgeable about derivatives trading, played no part in preparing the monthly statements, and did not manipulate their clients' accounts to make it appear that legitimate trades had occurred. We have proof that Mr./Ms. Miller regularly reviewed the monthly statements. We also have proof in the form of a wiretap where the two principals at S&S Derivatives discussed how to cover-up their illegal activities. We also have proof in the form of a wiretap that I was able to obtain wherein the two principals at S&S Derivatives discussed how to cover up their illegal activities.

12. I worked on Wall Street as a trader for a long time. I have been a securities fraud investigator for more than ten years. There are many, many honest professionals in the financial industry. But I have seen way too many scoundrels in this industry whose sole purpose is to lie, cheat and steal their way to prosperity. I had a great job on Wall Street and lost it because of the greed and the excesses of people like that. These kinds of people were in charge of S&S Derivatives. We need to do all we can to rid ourselves of this plague. Of course, we should do this only after a fair trial.

VERSION #2

January 7, 2010

A handwritten signature in cursive script that reads "Sheridan Holmes". The signature is written in black ink on a light-colored background.

SHERIDAN HOLMES

Dated: New York, New York
December 18, 2009

Affidavit of Fran Ashcott
Investor

1. My name is Fran Ashcott. My spouse and I currently reside at 534 Clay Alley in New Rochelle, New York. Previously, we resided in a very nice neighborhood in Scarsdale until we were the victims of a scam perpetrated by Shawn Miller and Sidney Taylor which resulted in us losing all of our retirement savings.

2. In June 2004, I retired after working 30 years as an English professor at Bartmoor College. My spouse, a chemical engineer, had retired the previous December from his/her job at a mid-size industrial company. Over the course of our respective careers, my spouse and I had amassed a 2.5 million-dollar retirement nest egg. Our money was managed by Behman Brothers, a company that had provided modest, but stable, returns on our investments over the years.

3. In April 2005, during our yearly meeting with our account managers at Behman Brothers, my spouse and I were introduced to Shawn Miller, who six years earlier had been promoted to the position of junior associate. Shawn was now assigned our retirement account. Both my spouse and I instantly felt comfortable with Shawn, given his/her natural "people friendly" demeanor.

4. Shawn's management of our Behman Brothers' accounts had resulted in consistent returns on our investment. However, we had been hoping for the more profitable double-digit returns that many of our friends thought we should have been receiving.

5. In early December 2005, we met with Shawn to discuss our accounts. At that time, Shawn told us about a new company, S&S Derivatives, LLC, that s/he was planning to start in January 2006. Having known and worked with Shawn for the past eight months or so, we decided in March 2006 to take the risk and invest all of our retirement accounts with S&S Derivatives, LLC.

6. From March 2006 through the second quarter of 2008, our investments with S&S Derivatives, LLC, produced double-digit returns month after month. This occurred even in months experiencing significant stock market downturns. Of course, we were very happy.

7. In early summer 2008, I began to hear about an investment blog that focused primarily on hedge funds. I subsequently began to read this blog on a daily basis. Many of the blog comments warned its readers about investing in hedge funds or investment companies that paid double-digit returns to investors, month after month, despite the economic conditions. The comments also advised readers that they should demand more information from their account managers.

8. In July 2008, acting upon this advice, I contacted Shawn to inquire about the status of our account with S&S Derivatives, LLC. The information I specifically requested was information beyond the monthly statements that we had been receiving and background information on the firm's investment strategy. When I spoke with Shawn about these concerns, s/he was somewhat evasive, but assured me that our account was sound. For additional assurance, Shawn directed that I contact Sidney Taylor, a long-time friend of

Shawn, who in May 2006 had joined S&S Derivative, LLC, as a full time partner. Sidney apparently had been taking the lead on making the investments for S&S Derivatives and preparing the monthly client statements.

9. I attempted to contact Sidney five or six times over a two-week period in mid to late July 2008 to discuss our investment concerns. On each attempt, Pat Nolan, Sidney's executive assistant told me that Sidney was unavailable, but that Sidney would return my call soon.

10. Sidney never did return my calls. Becoming extremely frustrated, I then contacted the New York City Office of the Securities and Exchange Commission in late August 2008 and filed a formal complaint. I believe the SEC made a cursory inquiry into our complaint, but because of bureaucratic ineptness the investigation had stalled.

11. On October 15, 2008, after not hearing anything further from the SEC, I contacted the Investor Protection Bureau of the New York Attorney General's Office to file a formal complaint. The matter was assigned to investigator/analyst Sheridan Holmes, who interviewed me several days later. I showed Mr. Holmes several financial statements (a customer account journal, a monthly statement of account and a trading confirmation statement) that I had recently received from S&S Derivatives. These statements are very confusing and I could never get Shawn to explain this stuff to me. I told Mr./Ms. Holmes how Shawn had been evasive, how Sidney had failed to return my phone calls and why I was concerned about our account with S&S Derivatives.

12. My spouse and I were not trying to make trouble. We just wanted information about our money. So, when we learned in February 2009 that Shawn and Sidney had been indicted on securities fraud charges, we were devastated. Most likely, my spouse and I expected, we would lose our entire retirement savings because we had invested it all with S&S Derivatives. As anticipated, we are now destitute.

13. I know that there are many people who believe that my spouse and I are partly responsible for our current situation. They accuse us of being excessively greedy, reckless with our retirement savings and not deserving of empathy. Perhaps we should not have invested all of our money with S&S Derivatives, but that did not give Shawn and Sidney the right to do what they did to us.

14. It is difficult to believe that such a likeable person as Shawn could have been involved in this despicable scheme. Having never met Sidney or talked to him/her, but knowing that s/he was not respondent to our concerns, we believe that Sidney must have been the driving force behind this criminal endeavor. However, because Shawn and Sidney worked together so closely, it is impossible that s/he was not aware of what Sidney was doing.

Dated: New Rochelle, New York
November 21, 2009



FRAN ASHCOTT

Affidavit of Pat Nolan

Office Manager/Sidney Taylor's Assistant

1. My name is Pat Nolan. I reside at 2 Ponsie Drive, Yonkers, New York.
2. I graduated from Paulson High School in Far Rockaway, New York in 2001. Following my graduation, I attended one year at J. Jay School of Business, studying to be an administrative assistant. I received my business school certificate in May 2002.
3. After completing my studies at J. Jay School of Business, I was hired by Sidney Taylor in August 2002 as his/her administrative assistant at Terrill, Hynch, Fierce, Phenner & Smythe, the large Wall Street investment firm. I learned a lot through working at Terrill, which everyone knows is the largest brokerage house on "the Street." Sidney took a particular interest in my work and my career, often giving me opportunities to study different investment scenarios and discussing with me what s/he thought were the best opportunities for his/her clients. With Sidney's assistance and advice, I learned quickly about Wall Street and investments in general, and Sidney began to give me more responsibility beyond that of an administrative assistant. It wasn't long before I began to assist him/her in filling out monthly investment statements, and in other tasks that a secretarial employee wouldn't ordinarily do.
4. In August 2005, Sidney came to me and told me that s/he was leaving Terrill and was enrolling in the one-year accelerated executive MBA program at Columbia, and that after graduation in May 2006, s/he would be joining with his/her old friend, Shawn Miller, in forming a new firm to be called S&S Derivatives, LLC. Sidney asked me to keep this information a secret, and promised me that if I stuck it out at Terrill for another year, s/he would make sure that I had a great job at S&S. When I asked about the non-compete clause from the employment contract that we all had to sign at Terrill, Sidney told me not to worry about it and that it's really only enforced against key personnel. I was also informed that Mr. /Ms. Miller would be bringing some of his/her clients over from Behman Brothers and that the new venture would make a lot of money.
5. In August 2006, after Sidney had finished at Columbia and had joined S&S, s/he called me and made good on his/her promise. I joined S&S in October 2006 as the Office Manager and as Sidney's Executive Assistant. In addition to all the duties associated with those two titles, I continued to help Mr. /Ms. Taylor fill out the monthly investment statements. I got a big raise and was the first person in my family to earn a six-figure income. Before long, S&S was making big money and I began to receive annual bonuses of \$10,000 or more.
6. The one problem I had with working at S&S was that I didn't think Mr. /Ms. Miller really liked me. His/her assistant told me that Mr./Ms. Miller didn't really want to hire me, because s/he didn't think I had the right training and background for such a responsible position, and that Mr./Ms. Miller wanted to stop my annual bonuses. I'm glad Sidney never gave in to that! With everything I did for S&S, and for Sidney, I earned my salary and bonuses fair and square.

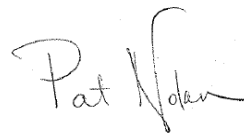
January 7, 2009

7. Other than that, I loved working at S&S because of the family atmosphere. Sidney and Mr. /Ms. Miller were old friends and you could see that they loved working together, making big money and realizing their childhood dreams. It seemed like they could hardly believe their good fortune. Mr./Ms. Miller and Sidney would meet together often to discuss company matters and on at least one day each month they would meet to go over client accounts. One day, in July 2007, as we were working on the monthly statements, I heard Sidney say to Mr./Ms. Miller, "Did you ever think this could be so easy?! If they only knew." Mr. /Ms. Miller replied, "Too easy I say. He is doing a great job." I asked Sidney about this conversation, and s/he told me, "Oh we were just talking about the Mets...I can't believe how well they're doing this year. It will never last." I didn't think anything more about this conversation until very recently, but now I'm certain that they weren't talking about any Mets, but about securities fraud going on at S&S right under my nose. I really believe the "he" Mr. /Ms. Miller claims s/he was talking about when s/he said "He is doing a great job" is Bernie Madlock, Mr. /Ms. Miller's and Sidney's accomplice, who worked at the trading firm Dorgan Manly, LLC. We sent trading requests to Mr. Madlock all of the time, but never by e-mail or regular mail. The requests were always on a flash drive. I even delivered the flash drive to Mr. Madlock on many occasions. I can't believe I didn't see what was going on, but I guess I just always see the good side of people. It never occurred to me that S&S was cheating innocent clients out of their hard-earned money.

8. I remember receiving a lot of calls in the summer of 2008 from one of our clients, Fran Ashcott, asking to speak with my boss. I guess Mr. /Ms. Ashcott called five or six times within a two week period. I was instructed by Sidney that s/he was not available to speak to Mr. /Ms. Ashcott. I kept telling Mr. /Ms. Ashcott that my boss would return the calls soon. I don't know if they ever did speak, but I did tell Sidney about each and every call in accordance with office protocol.

9. I was shocked upon learning that Sidney and Mr. /Ms. Miller were indicted on charges of securities fraud. I was heartbroken when Sidney was convicted, because I believe that if anyone is guilty of fraud and conspiracy, it's Mr. /Ms. Miller. I never did trust him/her and I'm certain that s/he is "knee-deep" in this scheme. It would be impossible for Mr. /Ms. Miller not to know what was going on. I think Shawn Miller should pay for his/her crimes, and my boss shouldn't be the scapegoat for any hanky-panky. I haven't seen or spoken to Sidney Taylor since s/he was convicted, but I hope s/he's doing OK wherever s/he is.

10. I know Mickey Pennman thinks that Sidney and I kept two sets of books for S&S, but I am aware of only one set of books. We are not liars! I know it looks bad, and I feel really bad for all of our clients who were cheated by Mr. /Ms. Miller, and that's why I went to the Attorney General's office and volunteered to testify in this case. All I want is for the truth to come out, and I'm sure that when it does, Shawn Miller will be spending a lot of time in the Big House.



PAT NOLAN

Dated: Yonkers, New York
December 22, 2009

Affidavit of Shawn Miller
Defendant

1. My name is Shawn Miller and I reside in an apartment at 259-12 Knox Terrace in New York City. It is a fairly upscale neighborhood in Lower Manhattan called SoHo. I bought this apartment in March 2007. It was expensive, but a great find nevertheless.

2. I have talked to my lawyers many times since the indictment, but I still don't understand why I am being prosecuted. I have not personally done anything wrong and certainly nothing illegal.

3. I don't know what went wrong with my best friend, Sidney Taylor. Sidney and I have been friends since grade school. We grew up together in the same neighborhood in Far Rockaway, New York and attended the same schools all the way through high school. We were on the same soccer, basketball and baseball teams. We were not very good in any sport, but we always had lots of fun playing. We hung out together all the time, going to movies, parties or whatever. You know how it is when kids get together. There is usually a misunderstanding or a fight breaking out. Sidney and I always were there to watch each other's back and protect each other. We were like brothers/sisters.

4. Our families did not have a lot of money when Sidney and I were in our formative years. Our parents were doing their level best to provide a comfortable livelihood, but in our working class neighborhood, life was sometimes economically tough. Sidney and I pledged to each other that we would do better. I remember a book Sidney and I had to read in the eleventh grade by and about a successful Wall Street stockbroker. This stockbroker started with nothing and in fact at one time was, along with his son, homeless. Sidney and I were fascinated by this story. We talked about it all of the time. Sidney repeatedly said, "If this person could do this, there is no reason why we can't do it too."

5. I remember in our senior year in high school, Sidney and I took all of the economic, business and marketing courses the school offered. We joined the Investing Club where we pretended to invest in real companies so that we could learn as much as we could about the financial markets and investments. I did OK on the SAT, scoring about 1250 (reading and math only); Sidney did exceptionally well, earning a score of 1580.

6. After graduating from high school in May 1995, I decided to attend Far Rockaway Community College. I pursued an Associate's Degree in Business Administration. Sidney earned a scholarship to attend Wharton School of the University of Pennsylvania. We both entered college in September 1995. I lived at home of course. We stayed in constant contact during our college years, talking at least once per week. When Sidney would come home during school breaks, we would hang out and talk about how successful we would be in the business world.

7. I graduated from FRCC in May 1997. My parents were encouraging me to go on to New York University to pursue a bachelor's degree, but by then I had had enough of school. I decided to look for work. In August 1997, I took a job in the mailroom at Behman Brothers, a large brokerage house and investment bank on Wall Street. I did not mind the low-level job because I got to meet a lot of brilliant people in the financial industry and I was able to learn much about how financial institutions operate literally from the "ground up."

8. You can say that I have always had an out-going personality. I have always been comfortable meeting and engaging people in conversation. I can talk to anybody about anything. A Behman manager, Ryan Williams, recognized my sunny disposition and after not even two years on the job, I was offered a position as a junior associate in May 1999. Prior to the appointment, I would have occasion to talk to Mr./Ms. Williams frequently during the work week as I delivered mail to his/her office or just in passing through the hallways. At Mr./Ms. Williams' suggestion, we also would have lunch together once a month or so. Mr./Ms. Williams came to believe that, in spite of my limited knowledge of the financial markets, I could nevertheless be a good stock salesperson.

9. Knowing that at some point in the future I would want my own securities' firm, I decided I should try to obtain several of the certifications from the National Association of Securities Dealers (NASD) so that I could obtain my license to trade securities in my own name. So, in January 2001, I started studying for the Series 6 exam (mutual funds/variable annuities) and the Series 7 exam (stockbroker). I had a lot of trouble with these two exams. Talk about difficult! After having failed both exams several times, I finally passed both in October 2004. What a relief! My sponsor, Ryan Williams, was probably happier and more relieved that I was.

10. Sidney graduated from Wharton in May 2001 and went to work right away for Terrill, Hynch, Fierce, Phenner & Smythe, the premier brokerage house on Wall Street. S/he started out in the firm's commercial finance unit and worked there for several years. S/he then moved over to the firm's hedge fund that traded in mortgage-back securities. Sidney took several of the securities examinations and passed them all without a hitch on the first try. I believe s/he took the following exams: Series 6, Series 7, Series 26 (investment company - mutual funds), Series 31 (Futures - managed funds exam) and Series 63 (uniform securities agent state law exam).

11. I got a call from Sidney in late July 2005 inviting me to lunch. We met for lunch on August 1, 2005 and discussed the possibility of going into business together. While Sidney was well compensated at Terrill, Hynch, s/he was not satisfied and was looking for more. The plan was for me to leave Behman Brothers and start an investment consulting firm. The firm would in fact be a hedge fund, called S&S Derivatives, LLC. Because Sidney had a DO NOT COMPETE clause in his/her employment contract, s/he was prohibited from working for any other business involved in the trading of securities in the tri-state area (New York/New Jersey/Connecticut) for a period of one year following the termination of his/her employment at Terrill, Hynch. I had no such prohibition.

12. Sidney left Terrill, Hynch in late August 2005. Because s/he could not work in the securities business for one year, s/he decided to go back to school for a Master's in Business Administration. S/he entered the one-year accelerated executive MBA program at Columbia University in September 2005. Sidney would join our newly-formed firm after his/her graduation in May 2006. My job, in the meantime, would be to bring over as many of my loyal Behman Brothers clients as possible and actively solicit new investment clients. Sidney would advise me on how to invest the clients' money until such time as s/he would join the firm.

13. In December 2005, I left Behman Brothers and on January 9, 2006, S&S Derivatives, LLC was launched. I was running the firm alone for about four months until Sidney graduated from the Columbia University in May 2006. During the four-month period, Sidney would tell me how and where to make the investments. I never questioned his/her instructions. S/he had learned all about derivative investments at Terrill, Hynch. Much more than I ever wanted or cared to know.

14. In August 2006, Sidney joined the firm as a full equity shareholder. Because I had developed an ability to bring in new clients, I took on that responsibility for the firm. Sidney had the superior technical knowledge acquired at two of the best business schools in the country and honed at the largest brokerage house on the Street. So, s/he took the lead on developing the investment strategy for the firm and preparing the monthly client statements. This was a perfect division of labor and we were earning sizeable returns for our clients in record time. The firm was doing exceptionally well.

15. For some reason the Securities and Exchange Commission contacted the firm in August 2008 and started asking questions about our investment strategies and business practices. I have since learned that one of our clients, Fran Ashcott, a nervous type, had contacted the SEC after reading on some financial blog about hedge funds that may be ripping off their clients with illegal investment schemes. I met Fran and his/her spouse when I was at Behman Brothers. We struck an accord and they moved their account, approximately 2.5 million dollars, to S&S Derivatives in March 2006, shortly after we opened. We were very cooperative with the SEC and after several visits from the SEC, the investigation must have been dropped because we never heard from the SEC again.

16. I did talk to Fran. Talk about greedy! S/he wasn't even happy with the double-digit returns we were delivering. S/he and his/her sorry spouse thought they were entitled to more. Fran had contacted me to ask about (1) the status of their account beyond the monthly statement and (2) the basis of the firm's investment strategy. I sought to reassure Fran that their account was sound and directed Fran to contact Sidney if s/he wanted more assurance. S/he seemed to feel that I was being evasive. I have since learned that Fran called Sidney five or six times over a two week period to discuss the matter. Each time, Sidney's executive assistant, Pat Nolan, told Fran that Sidney was unavailable, but that Sidney would call Fran soon. Pat worked primarily with Sidney, setting up his/her daily calendar, serving as office manager and assisting Sidney in getting out the monthly statements. I don't know why Sidney never returned Fran's calls.

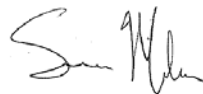
17. (a) The New York State Attorney General started hounding us. I believe Fran contacted the Investor Protection Bureau of the New York Attorney General's Office to file a formal complaint against us. Subsequently, Sheridan Holmes (IPB) contacted S&S. Mr./Ms. Holmes reviewed our books and reported that the returns were too uniform over too long a period of time.
- (b) Mr./Ms. Holmes asked me if I knew someone by the name of Bernie Madlock. I told Mr./Ms. Holmes that Mr. Madlock and I had worked at Behman Brothers at the same time. S/he wanted to know the last time I had any communication with Mr. Madlock. It may have been at a holiday party Behman Brothers threw in December 2005. Mr./Ms. Holmes then asked if Mr. Madlock was a friend of mine and if Mr. Madlock had been conducting illegal trading for S&S Derivatives. I responded that Mr. Madlock was a mere acquaintance and that I was unaware that he was conducting any trading for S&S at all. I further stated that in our setup Sidney was in charge of all of the trading activities and that I was in charge of client development.
- (c) Well, needless to say, this poor excuse of a securities fraud investigator did not believe anything I said. S/he became increasingly agitated and started making all kinds of outlandish accusations. I believe that Mr./Ms. Holmes could not make it in the investment business and is now taking his/her frustration out on legitimate investment advisers like me and Sidney. I could not believe it when Mr./Ms. Holmes reported to the Attorney General that s/he suspected a phony investment scheme was afoot and recommended that Sidney and I be arrested and prosecuted.
18. (a) As far as I know, no one had lost any money prior to the Attorney General investigation and if S&S Derivatives had been allowed to continue, no one would have lost money going forward. We promised our clients that they would receive ten percent or better return each year if they invested with us. Looking at the monthly reports that Sidney was generating, we appeared to be achieving those returns. We were a new firm. We had to promise and deliver great results in order to get business.
- (b) Part of the reason I'm in this mess rests with Pat Nolan. S/he never liked me. I believe s/he always thought I was trying to get him/her fired so that I could hire my old assistant at Behman Brothers. Totally false. Anyway, the investigator told me that Pat overheard Sidney and me talking in July 2007 about something being "too easy." Pat told the investigator that Sidney and I had a big laugh and that Pat now believes that the statements were about the alleged securities fraud scheme. Now, Mr./Ms. Holmes wants you to believe I was talking about this Bernie Madlock. Totally ridiculous.
- (c) I believe Pat is just protecting his/her own rear end. If Sidney was "cooking the books," Pat was knee-deep in it. I believe Sidney paid Pat a six figure salary plus \$10,000 annual bonuses. Why would you pay a glorified secretary that kind of money? Perhaps to buy silence?! S/he should be the one prosecuted, not me.

(d) If I remember correctly, Sidney and I were talking about the New York Mets. With Sidney and me being huge Mets fans and season ticket holders in fact, we were excited about how well the Mets were playing in April, May and most of June of 2007 and how easy the team was winning until late June. Why even Sidney's parents and my parents are lifelong season ticket holders of the Mets. The "he" I was talking about when I said "He is doing a great job" was pitcher John Maine who had a 9-4 record through the month of June 2007, which was totally unexpected. I'm sure I mentioned his name before Pat started eavesdropping on our private conversation.

19. I realize people might find it hard to believe that I did not know what Sidney and Pat were doing; but this is the truth. As I understand it, Sidney was supposed to invest our clients' money in the extremely lucrative derivatives market, like credit default swaps, forward contracts and futures contracts. Don't ask me about what this is all about. I really do not understand all of the ins and outs of derivatives investment. It is true that during the four-month period before Sidney came on board I was making the various investments for our clients. But Sidney was instructing me on exactly what to do. I was just following instructions and certainly no securities fraud was knowingly committed by me during that time period.

20. Now I am on trial for something I don't fully understand and for something I did not do. Although we were indicted together, Sidney went on trial first. My attorneys asked for and were granted a severance because I was expected to testify against Sidney. However, I was never called to testify against him/her. I could not believe it when Sidney was convicted of securities fraud and conspiracy to commit securities fraud. I did not attend Sidney's trial upon advice of counsel. My attorneys told me to stay away unless I was subpoenaed to testify. So, I don't know anything about what might have transpired at Sidney's trial, except that s/he was convicted. After the verdict, Sidney jumped bail and is living somewhere in the Middle East, probably Dubai. This whole thing is just crazy! Why should Sidney have to go to prison because Mr./Ms. Holmes wanted another notch in his/her belt?! From the beginning of the investigation, it was all a rush to judgment.

21. The forecasts in late 2006 were that the economy was entering into a recession the next year and that double-digit returns were probably not sustainable in the long run. But our monthly reports showed otherwise. Sidney was working his/her magic! I don't know what s/he was doing, but it was working.



Shawn Miller

Dated: New York, New York
December 12, 2009

**New York State Attorney General's Office
Investor Protection Bureau
S. Holmes, Senior Investigator/Analyst**

Wiretap – October 23, 2008

Shawn: This thing is a disaster!

Sidney: We're screwed....that's for sure. I've never seen a train wreck like this in my life.

Shawn: He started out doing such a good job....but you know, we're going to have to find someone else. He's just not delivering the goods any more.

Sidney: There's no way to save this situation. Right now, it's every man for himself. Just blow the whole thing up and start over.

Shawn: The press has been all over this. Every day there's a new story.

Sidney: The bigwigs are going to have to clean house, or they'll have egg all over their faces.

- Dow Jones Industrial Average Index
- (\$INDU)

9,781.28 ▲+97.87 +1.01%

Open: 9,683.71 High: 9,799.72 Low: 9,679.18

Previous Close: 9,683.41 Volume: 181,255,223

Eastern Time



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American League 

Select favorite team

Standings as of Jun 15 2007

East	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
Boston	42	24	.636	-	-	-	5-5	W1	21-12	21-12	6/15 v SF, W 10-2	6/16 v SF, 3:55P
New York	33	32	.508	8.5	89	-	9-1	L1	18-14	15-18	6/15 v NYM, L 0-2	6/16 v NYM, 1:05P
Toronto	32	34	.485	10.0	87	-	5-5	W2	19-15	13-19	6/15 v WSH, W 7-2	6/16 v WSH, 1:07P
Tampa Bay	29	36	.446	12.5	85	-	5-5	L3	17-19	12-17	6/15 @ COL, L 2-12	6/16 @ COL, 8:05P
Baltimore	29	38	.433	13.5	83	-	2-8	L6	16-17	13-21	6/15 v ARI, L 3-7	6/16 v ARI, 7:05P

Central	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
Cleveland	39	27	.591	-	-	-	4-6	L1	21-9	18-18	6/15 v ATL, L 4-5	6/16 v ATL, 3:55P
Detroit	38	28	.576	1.0	96	-	6-4	W1	18-14	20-14	6/15 @ PHI, W 12-8	6/16 @ PHI, 7:05P
Minnesota	33	32	.508	5.5	92	-	5-5	L1	19-17	14-15	6/15 v MIL, L 3-11	6/16 v MIL, 7:10P
Chicago	27	36	.429	10.5	88	-	1-9	L4	14-16	13-20	6/15 @ PIT, L 2-4	6/16 @ PIT, 7:05P
Kansas City	27	41	.397	13.0	83	-	6-4	W2	14-23	13-18	6/15 v FLA, W 6-2	6/16 v FLA, 7:10P


West	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
Los Angeles	42	26	.618	-	-	-	6-4	L1	24-9	18-17	6/15 @ LAD, L 1-2	6/16 @ LAD, 3:55P
Oakland	37	29	.561	4.0	92	-	8-2	W3	19-15	18-14	6/15 v STL, W 14-3	6/16 v STL, 9:05P
Seattle	35	29	.547	5.0	92	-	6-4	L3	17-13	18-16	6/15 @ HOU, L 1-5	6/16 @ HOU, 7:05P
Texas	25	42	.373	16.5	79	-	5-5	W2	14-18	11-24	6/15 @ CIN, W 7-6	6/16 @ CIN, 7:10P

National League 


East	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
New York	37	28	.569	-	-	-	2-8	W1	17-16	20-12	6/15 @ NYY, W 2-0	6/16 @ NYY, 1:05P
Atlanta	36	32	.529	2.5	94	-	3-7	W1	18-16	18-16	6/15 @ CLE, W 5-4	6/16 @ CLE, 3:55P
Philadelphia	35	32	.522	3.0	94	-	7-3	L1	18-16	17-16	6/15 v DET, L 8-12	6/16 v DET, 7:05P
Florida	32	36	.471	6.5	90	-	4-6	L3	14-19	18-17	6/15 @ KC, L 2-6	6/16 @ KC, 7:10P
Washington	29	38	.433	9.0	88	-	6-4	L1	14-19	15-19	6/15 @ TOR, L 2-7	6/16 @ TOR, 1:07P

Central	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
Milwaukee	37	30	.552	-	-	-	5-5	W3	22-12	15-18	6/15 @ MIN, W 11-3	6/16 @ MIN, 7:10P
Chicago	31	35	.470	5.5	91	-	7-3	W3	15-18	16-17	6/15 v SD, W 4-1	6/16 v SD, 1:05P

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American League  Standings as of

East	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Tampa Bay	97	65	.599	-	-	-	6-4	W1	57-24	40-41	9/28 @ DET, W 8-7	10/2 v CWS, W 6-4
w-Boston	95	67	.586	2.0	E	-	6-4	W1	56-25	39-42	9/28 v NYY, W 4-3	10/1 @ LAA, W 4-1
New York	89	73	.549	8.0	E	-	8-2	L1	48-33	41-40	9/28 @ BOS, L 3-4	-
Toronto	86	76	.531	11.0	E	-	5-5	W1	47-34	39-42	9/28 @ BAL, W 10-1	-
Baltimore	68	93	.422	28.5	E	-	1-9	L1	37-43	31-50	9/28 v TOR, L 1-10	-
Central	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Chicago	89	74	.546	-	-	-	4-6	W3	54-28	35-46	9/30 v MIN, W 1-0	10/2 @ TB, L 4-6
Minnesota	88	75	.540	1.0	E	-	5-5	L1	53-28	35-47	9/30 @ CWS, L 0-1	-
Cleveland	81	81	.500	7.5	E	-	6-4	L1	45-36	36-45	9/28 @ CWS, L 1-5	-
Kansas City	75	87	.463	13.5	E	-	7-3	L1	38-43	37-44	9/28 @ MIN, L 0-6	-
Detroit	74	88	.457	14.5	E	-	3-7	L2	40-41	34-47	9/29 @ CWS, L 2-8	-
West	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Los Angeles	100	62	.617	-	-	-	7-3	W1	50-31	50-31	9/28 v TEX, W 7-0	10/1 v BOS, L 1-4
Texas	79	83	.488	21.0	E	-	4-6	L1	40-41	39-42	9/28 @ LAA, L 0-7	-
Oakland	75	86	.466	24.5	E	-	4-6	L5	43-38	32-48	9/28 @ SEA, L 3-4	-
Seattle	61	101	.377	39.0	E	-	4-6	W3	35-46	26-55	9/28 v OAK, W 4-3	-

National League 

East	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Philadelphia	92	70	.568	-	-	-	7-3	W3	48-33	44-37	9/28 v WSH, W 8-3	10/1 v MIL, W 3-1
New York	89	73	.549	3.0	E	-	4-6	L1	48-33	41-40	9/28 v FLA, L 2-4	-
Florida	84	77	.522	7.5	E	-	5-5	W1	45-36	39-41	9/28 @ NYM, W 4-2	-
Atlanta	72	90	.444	20.0	E	-	5-5	L1	43-38	29-52	9/28 @ HOU, L 1-3	-
Washington	59	102	.366	32.5	E	-	1-9	L4	34-46	25-56	9/28 @ PHI, L 3-8	-
Central	W	L	PCT	GB	E#	WCGB	L10	STRK	HOME	ROAD	LAST GAME	NEXT GAME
y-Chicago	97	64	.602	-	-	-	5-5	L1	55-26	42-38	9/28 @ MIL, L 1-3	10/1 v LAD, L 2-7
w-Milwaukee	90	72	.556	7.5	E	-	6-4	W1	49-32	41-40	9/28 v CHC, W 3-1	10/1 @ PHI, L 1-3