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Overstock.com Webcast Regarding August 11 Lawsuit  
August 12, 2005

Operator: Good morning and welcome to Overstock.com's special conference call regarding the lawsuit that was filed on their behalf yesterday in the Superior Court of California. My name is Philip and I will be your conference moderator. Dr. Patrick Byrne, Overstock.com President and CEO, will be today's speaker. A web-based slide presentation will be used during the call and is available for download or viewing over the internet on the company website, [www.shareholder.com/overstock](http://www.shareholder.com/overstock).

If you are listening via telephone and want to view the presentation via the internet, please select the "no audio, slides only" option. If you select the regular webcast, you may experience up to a 25 second delay. For assistance at any time during the call, please press "star, zero."

This call is being recorded and will be available for replay beginning today at 1:30 pm Eastern time through 11:59 pm Eastern time Friday, August 19th. The replay can be accessed by dialing 888-203-1112 and entering the access code of 419-9807. The webcast will also be available for replay via the company's website. I will now turn the call over to Dr. Byrne. Please go ahead, sir.

Dr. Byrne: Thank you, Philip. Good morning.

I want to first state that with this, I'm getting out of the business of dealing with shorts, fighting shorts, talking about shorts. I'm going to hand the baton over to a group of very qualified lawyers.

I'm not planning on being in this job forever and you know I want to operate a certain way while I'm in it. And now I want to get something off my chest and in the record, in a form others can make use of it. Because I think there are others in the same situation.

I believe Overstock has been damaged and our damage model supports a number in the high hundreds of millions of dollars, perhaps more. We filed a lawsuit to recover those damages from Messieurs Rucker, Cohodes, Don Vickrey, Carr Bettis and others. I do think the trail leads farther, much farther. And I think that many more of the names of the people who come up are going to be highly recognizable.

I also want to say I'm a value guy to my toes and I could not be more indifferent to my stock price. I agree that CEO's who spend time worrying about shorts or obsessing about shorts are fools. And that most of the CEO's who tangle with shorts are crooks. I think shorting plays a healthy role in a normal market.

But I'm going to describe a set of events and I think that the reasonable listener is going to say, "You know, if that's really what's going on, you're right to do something about it." As a matter of fact, yesterday one of our major institutional owners visited us. I wasn't even prepared. He dropped in and before I could even say anything he said, "I love that you're standing up to this crowd. It is out of control but they're getting away with what they're doing and we can't believe that regulators aren't doing something. And it's time we go to the regulators." That, from one of our top institutions. So I don't buy that everybody's out there saying, "Oh, you're just supposed to keep taking this." And he did not even know the story I'm going to tell you.

I hope -- The listeners may remember "The Predator's Ball" of the 1990's - 1980's, "Bungalow 9," and all that. I'm calling this story that I'm going to tell you, "The Miscreants Ball."

Now, this is a picture of our market participant volume. This is a picture of our volume in the marketplace since we went public, as reported by the market participants. Fair enough. You see it going up to about 30 million there, that spike.

This is interesting. This shows -- standby just a moment. Oh, by the way, the market participant volume is as is Autex reported it, which is a voluntary reporting system by BD's.

This picture shows the volume that actually takes place in the marketplace. And as you can see, there is, oh for the first six or seven months after we went public, these numbers line up. But then there is a divergence. That's pretty odd and we've shown this to some smart people, including the NASD, who cannot really explain it.

I don't pretend to be an expert, but there are two explanations, two hypotheses I can suggest.

One is -- and again, I'm not claiming anything for certain, I'm just...

One explanation is, if somebody wanted to create froth and spoof, spoofing in our stock and a whole bunch of phony volume that wasn't really -- unreal volume -- how they could do that was to use a broker-dealer....

And by the way, these numbers don't necessarily have to line up. Again, it's the difference between what's electronically reported and captured in a market, and what's voluntarily reported by broker/dealers. So the two don't have to line up and there normally is going to be some discrepancy.

But normally, broker/dealers reach for -- they want to claim more volume than they actually do. Or, if, you know, Goldman sells a million IBM to somebody at Morgan Stanley, both sides are going to claim the million and that's why you get double counting. But this is odd, because in some months you see that the amount of excess is actually over 100 percent of the amount that's reported. So what that seems to mean is that there are some broker/dealers who have volume who are not reporting it.

Well, one way that could happen is if, for example, a hedge fund had a couple offshore accounts and had a broker/dealer in the British Virgin Islands or something and just traded it back and forth among themselves to create volume. That's one way it could happen.

Another way it could happen, I think, is if there was somebody naked short. Most of these hedge funds are now set up with a master feeder account over both domestic and offshore. So, even if your money is in the domestic account, it flows through offshore and the accounting gets done offshore.

And each of those onshore and offshore accounts are going to have their own prime brokers and usually two or three.

So imagine there were somebody, hypothetically, who is naked short, and they've got, say Morgan Stanley -- and I really am just picking names out of thin air-- Morgan Stanley's saying, "Hey, look. We told you, you've got to cover that short. You've got to cover the short."

The guy says, "Sure, don't worry."

And [Morgan's saying] -- "you gotta cover those fails in your account."

The guy says, "Sure, don't worry." And he goes to a different fund offshore and sells short from that fund to cover the Morgan Stanley fails. So now he's just moved the fails to another fund, to another account at maybe at another prime brokerage.

And so, if for example, somebody -- people -- *were* getting serious about Reg SHO (which is what I'm starting to hear), and the brokers were starting to put that kind of pressure on their clients, the clients could just move the fail around among different accounts and through different prime brokerages. And if they also were doing that through, say, some BVI broker-dealer that would -- who didn't want the trading, didn't want to be associated with the trading or for it to be traceable to him -- you could be doing that trading without reporting it. And that's why you would get this 100 percent discrepancy.

So, for example, in January of this year (and I know, by the way, these slides are small if you see them on the screen, but you can download this -- when the call's over, you can download this PowerPoint and view this in more detail). There is, in January of this year, there is the widest gap. There is a 30 million share gap between what was reported by the BD's and the -- what was the marketplace volume. Thirty million shares, it's 28 versus 58 million.

That was, incidentally, the month that we went on the Reg SHO list for the first time, and our security traded what looked quite oddly to me in that month. It could just be a coincidence. And I am sincerely saying I'm just giving you two hypotheses.

I'm going to talk about Bob O'Brien for a bit. Bob O'Brien contacted me through a letter shortly after the October conference call where I asked David Rucker on the phone. I acknowledge that the guy sounded like he lined his hat with tinfoil. He sounded crazy. But he laid out this scheme (that I'm not going to go into again) that has to do with naked shorting between bad hedge funds and the offshore foreign exchanges and the Depository -- the DTCC. Without necessarily saying that the DTCC knows what's going on.

But he laid out this whole scheme, it sounded kind of crazy. And it included – (and if you want to understand it, of course, you can go to my blog or you can go to the transcript of that October conference call, October, 2004 and read about it). Well, part of his “conspiracy theory” so to speak is that there was a smokescreen produced by certain folks in the financial medium, stock research firms, paid message board posters and plaintiff's' attorneys that keep the public from seeing what was going on behind the curtain.

Well, I dismissed O'Brien. I did, but I remember that before I did -- or as I did -- he said, “Look, just watch for four things.” And he made these four predictions: that Herb Greenberg, *Barron's* -- now that I had gotten into it with David Rocker publicly he said that, “You're going to have hatchet jobs done on you by Herb Greenberg, *Barron's*, *Wall Street Journal*, Camelback, CamelHump, Liz McDonald of *Forbes*.” They'd call and they would do hatchet jobs, that Overstock would appear on numerous foreign exchanges, that we would show up on the Reg SHO Threshold list that started in January and that we'd be the target of federal investigation.

Well, those are four pretty strange predictions. They got made to me in, I think, the first few days of November.

And within three days, all the specific individuals he had named had called me, and within a week they were publishing hatchet jobs. I think Liz McDonald took a couple weeks.

We did appear, over the next couple months, on Stuttgart, Munich, Frankfurt, Berlin, Australia and Xetra.

And we appeared on the Reg SHO list on January 27th.

So those are -- that's pretty strange. The power of any theory is its ability to make predictions. It doesn't matter how wacky a theory sounds, if it makes predictions that are confirmed, you've got to pay attention to it.

Federal investigation. I'm only going to mention in passing that we did become the object of an FTC investigation, but I in no way associate that with this. Folks at the FTC were right. We *had* slipped a stitch in a couple ways and they were right to bring it to our attention. So I'm in no way associating that. And it is public that we had an FTC... I'm in no way associating that with this.

But, we did in February become the object of an informal inquiry from the SEC. I'm not supposed to know about that. But this rumor reached me virtually simultaneously from two different sources, one anonymous.

I figured that it turns out you don't have a duty to report an informal investigation. If that's true, you certainly don't have a duty to report a rumor of an informal investigation. But there was some 30 or 60 day informal investigation (I understand) of us by the SEC, sort of a fishing trip, and nothing ever came of it. We were never alerted to it.

So again, those are...The power -- you have to judge a theory, no matter how wacky, by its predictive power. And I'd say that had scored highly.

\_\_\_\_\_ I'm going to talk about, I'll call it "The Not Necessarily Miscreants' Ball." And in this... Those events I just described got me very interested in the relationship between certain -- well, it just got me interested in the hedge fund industry in general. And I want to talk about the hedge fund industry and some folks in it, and relationships, without specifically trying to say that any of these folks are bad. I want to talk about the relationships. In fact, I'm going to stipulate that I'm not saying these folks have done anything wrong or illegal at all.

So, here's a box I'm going to put some hedge fund folks. I've got to put all the miscreants in the box marked, "miscreant hedge funds." And there's their naked shorting thing going on beneath the line. And I'm stipulating that that line separates improper activity from people who are not engaged in any improper activity. But I just want to talk about some relationships.

These are the folks I'm going to talk about. Now David Rucker and Mark Cohodes you know. David Einhorn -- and Leon Black I've put in there just because he's a well-known financier hedge fund guy. Got nothing to say about him. Sort of putting him in as an example of a -- just somebody in a hedge fund. Not everybody in this game is crooked. So, I'm stipulating that I'm not saying anything about or alleging any illegal activity about folks above the line. So I put that line in there to sort of separate the bad guys from the acceptable guys.

David Einhorn runs a fund in New York called Greenlight Capital. Greenlight, I've been in Greenlight and they told me sort of the founding myth of Greenlight which is that David Einhorn was a Cornell guy who found some arb and traded it from his dorm room and that turned into Greenlight over time.

Rucker and Cohodes are, of course, partners.

\_\_\_\_\_ Tom Barton and Jim Caruthers are ex-Feshbach guys from the 1980's. Hopefully we all remember the days of the 1980's and Feshbach, a good honorable firm.

\_\_\_\_\_ Tom Barton is down in Texas now. Jim Caruthers is an interesting fellow. He's up at Eastborne Capital, north of San Francisco. Eastborne has an "e" at the end. That's funny because there's a fellow holding himself out in a nearby location by the name of Jim Karruthers, with a slightly different spelling, holding himself out as a private investigator from Eastborn Investigations, no "e" at the end (I know that couldn't be this Jim Caruthers, because that would be a felony for a person to hold himself out as a PI when he's not). And that PI has a very interesting relationship with a certain lawyer in Detroit who has some very odd practices that maybe we'll have time to get back to.

Other people that bear mentioning: Kevin Ingram. Kevin Ingram was a prominent fellow in the late 1990's in Wall Street. He left Wall Street, started a dot com. I think it was crashing. He got caught attempting to sell Stinger missiles or obtain Stinger missiles for some Pakistani ISI agents who turned out to be

undercover feds. In fact, he agreed to work on obtaining a nuclear trigger for them. So he went to the pen for a few years. He's out now and he's basically a gopher for some of these folks.

Then there's Milberg Weiss, which is a fine, upstanding law firm, good members of the bar in California, plaintiff's attorney firm. And you don't have to do much digging. And this is all in publicly available documents. But I think they're an amazing law firm because they're extraordinarily prescient in certain matters, in their law suits and -- they come in at very opportune times, generally within a few days after or before the filing of SEC investigations and certain articles from thestreet.com and Herb Greenberg and CBS Market Watch. So, very prescient and a law firm that's on the balls of the feet.

Now, David Rucker owns two offshore funds, runs two offshore funds, Helmsman and Compass. And through them, he owns a plurality stake in thestreet.com, which has graduated not only such journalistic luminaries as Jim Cramer, but Herb Greenberg, Jeff Matthews and Jessie Eisinger.

Now, Herb Greenberg, the followers of our story will recognize Herb as the guy who I think he's written about 35 negative articles in the last year on NFI (which was a David Rucker short and which he's publicly acknowledged being short), and I don't know how many articles on us. I finally wrote Herb and I said, "Herb, is this some subtle way of approaching me? It's okay if it is, but I'm just not into that." He just seemed obsessed with me.

Well, oddly enough, he stopped -- in February, more or less -- stopped writing about me. And the same week practically he stopped a blog was created by Jeff Matthews, who runs Ram Partners. And in my view, I think the assignment got passed from Herb to Jeff.

In fact, here's a nice indication of Jeff's work. It's actually surprisingly smooth. He -- Kathryn Huang, our Treasurer, remember, left, and I mentioned that on our last conference call. So this is a letter he wrote to her shortly afterwards, basically trying to recruit her. What's interesting to me is not only how smooth this is, but how I doubt it's his first, and it's actually quite sophisticated and it bears all the hallmarks of a good recruitment. And I hope you download the PowerPoint later and take a chance to read that more closely.

Then there's Camelback. Now, Camelback was described to me -- when they first wrote a nasty report -- I mean, I think they've written 58 now or something. But when they first started something negative on me, I got a call from a friend at a hedge fund in New York. (Yes, I have them. By the way, my brother runs a hedge fund, so I'm not down on hedge funds per se.)

But somebody called me and said, "Look. Don't worry about Camelback. This is who they are. This is how it works. We pay them \$25,000 a year and for \$25,000 they get to pick up the phone twice a year and order a hatchet job on whatever company you want to and they do it."

Now, I mentioned that once in a conference call and Don Vickrey of Camelback got irate with me and sent me a letter. It said, "No, the price is \$40,000 now."

So, well there's more to it than that, though. There's more to it than just -- what it turns out they do at Camelback is they -- you get to -- well, they do a number of interesting things. Not only will they take your order for a hatchet job, but they'll actually write the research and supply it to that requesting client beforehand. And now my understanding is that that's not a kosher thing for a research firm to do, to supply one of its clients research before others.

But they do more than that. In the case with David Rocker, what they've done -- and by the way, there's a guy named Don Vickrey at Camelback and he sits there and he talks three or four times a week to Herb Greenberg and to Rocker and in our case coordinated attacks on us. And in our case, he's a \_\_\_\_\_. He not only supplied the research on a prior basis to David Rocker, he supplied it while David. [Inaudible] ... so forth.

In addition, he, David Rocker was able to request [a lot] of these characters, I'm sure Herb as well because David has admitted talking to Herb a lot. But we've got some people who've been part of all this, by the way, who have given us full details on it. Out of that, Mr. Rocker was able to say we don't, "Okay, this is fine, it's ready to publish. Hold it off for a few days I need to build my position." And Camelback and Herb obliged them.

Jessie Eisinger, I'll get back to in a minute.

\_\_\_\_ Oh, by the way before we go on, there's something else Camelback seems to be doing, and that is in the past they've been running money out of Camelback under the name of Pinnacle Fund. Or even a fellow ... So, that's a little odd that people in a research firm would also be running money -- and there was actually a fellow at one desk answering one telephone Camelback Research and the other telephone on his desk Pinnacle. In fact, the positions (at least at one point) in that Pinnacle fund bore a curious resemblance to some of the companies that Camelback was covering.

I've turned this information, in case you're listening, folks at Camelback, I turned that information over to the state regulators back earlier this year. I noticed that about 10 days later you sold and hastily moved Pinnacle out of your offices. I hope -- I just wanted you to know where that came from.

Elizabeth McDonald at Forbes for all I know, she's fine. And I should emphasize that I don't know, I understand that there can be a very healthy relationship between shorts and reporters. Reporters are not -- the SEC is undermanned and reporters are in general not up to the task of the detailed forensic work that needs to be done to deconstruct a bad company. So I agree, there can be a healthy relationship and for all I know that's what Elizabeth McDonald is part of.

Carol Remond from Dow Jones, she's a French journalist, French immigrant here, works for Dow Jones. I'll get back to her in a minute.

Then there's Barron's. And Barron's, anybody on the Street understands Barron's more or less as just being a group of quislings for the hedge funds. There's one reporter that I respect, a guy name Jack Willabee. But from what I can tell the rest are just mouthpieces for the hedge funds.

So for example, there has been until recently an editor there named Cheryl Strauss, married name Cheryl Strauss-Einhorn, wife of David Einhorn. And if you trace the articles around, which I'm going to talk about in a minute, you'll see that both entered these very odd relationships.

Let me tell you a couple of interesting stories. Oh, actually before I do I'm going to go on with...there's a line connecting Jessie Eisinger and Carol Remond.

There's Elliot Spitzer. I'm not putting him up here, of course, because I think there's anything inappropriate about him. I just wanted to remind folks that he's a close friend of Jim Cramer. They went to law school together. And Elliot Spitzer put his family money with Cramer Berkowitz when he went into public service. According to *Wall Street Journal*, his major donors are the hedge funds. And in fact, there was a story last year that said there was a hedge fund fundraising dinner for Spitzer and the word on everybody's lips was, "Are we next?" from hedge funds.

And the signal was basically, "No, after the insurance companies we've got other plans." I have an idea who those other plans are, but not today.

So let me -- oh, one more. Kroll. Kroll has been investigating me for a number of months, trying to come up with dirt on me. The general \_\_\_\_\_ well, I had trouble nailing that down until I discovered the personal relationship between Jules Kroll and David Einhorn.

I'll just fill in a couple of more squares.

Well, the SEC, I've told you that there were pushed to start an informal investigation on me back in, I think it started in February.

The DOJ. Now the DOJ is \_\_\_\_\_ I think. It's a lot different than the SEC. It doesn't like the way... The way these folks work, if they have their druthers, is .... There are some hedge funds, believe it or not, who have very politically connected investors, say, from Texas and Chicago. And the basic pattern seems to be that Kroll develops dirt on a company and it gets turned into a white paper. And somebody, a politically connected investor with the hedge funds, calls up the SEC or the DOJ and says, "Hey, you know, listen, I was just having breakfast with George and Laura and they sends their regards. And by the way, I know a



guy on Wall Street who's come across something you really need to take a look at.”

And so then one of the hedge funds goes in -- sends somebody in with this white paper, and they try to get an investigation started. That's how the basic system works.

DOJ, my understanding is, and I don't know this for a fact, my understanding is, that was tried in May about me and that some people tried ... It turned out that I do travel to strange parts of the world, Saudi Arabia and Iran and places like that. And somebody just -- you know, it's very easy to get people's credit card records. And I'm open about it anyway. And they turned that into a white paper that said, “Byrne is tied up Al-Qaeda and terrorism and money laundering and you ought to look at this guy.” And it was essentially laughed, to my understanding, that that was just laughed out of the office at the Department of Justice.

So... and I think they are a much more independent command than I think for example the SEC is -- much more independent and immune from political pressure. So I don't mean to criticize anyone there.

A couple of stories I'd like to share before we move on.

One is -- you may have -- This has gotten fairly ugly in the last six months or so. So for example, there is a guy named David Patch, who is a strange guy. I mean, David Patch, you will find, has a “Voice Crying in the Wilderness” syndrome, where they've gotten... They're the only guys out there in wilderness crying and no one listens and they get strange.

But Patch started seeing pictures of his wife or himself posted on a message board and his wife's social security number and his own social security Number (sort of low-level thuggery) to show -- or a picture of his house, low-level thuggery- to show, “We're watching you.”

Same thing started happening with O'Brien. O'Brien worked with this woman, Mary Helburn, a lovely 69-year-old woman, who's actually our co-plaintiff. And Mary has a, takes care of a nephew who was in a motorcycle crash and had a head injury. And so there started to be messages posted from Mike Helburn, “Mike the Vegetable Helburn” with, “My thought for the day: grrrf.”

And Mary has a sister who passed away a few years ago, Leeann. And so there started to be postings from Leeann Helburn, you know, “Wish you were here Mary.” “Favorite activities,” you look at her profile it was, “rotting,” things like that. So, it got [to be] a little much.

So O'Brien did something he shouldn't have. And I told him he shouldn't have done this, or I thought he shouldn't have done this. O'Brien, now there has been this long public fight on the message boards that I don't have a position in, but the public fight was between O'Brien and these bashers, who seemed professionally, they seemed to have, making a living out of bashing. And it's because it's public I can say that O'Brien has been accusing, was accusing them publicly on his message boards of being paid for by Cohodes. Of course they're denying it. And that was back and forth on Yahoo.

So after they put these messages up about this woman Mary, O'Brien basically said, "Two can play at this game." And he posted Cohodes' home address.

Now that was a dumb thing to do, and he knows it was dumb, and actually apologized. And if you ever want to see a classy apology go and look at his website. It was not one of these apologies that says "Oh, I was wrong. But it's you guys [who] are the jerks." He wrote a really nice public apology.

\_\_\_\_\_ All that said, he didn't mention Cohodes' name. And yet, within a few minutes of him posting his address some folks on Yahoo immediately recognized it as Cohodes' address -- and that's a little bit odd -- but they immediately -- Because it didn't say "Cohodes" on it. But they immediately notified Yahoo that there was this kind of stuff going on and they cut off O'Brien.

That's interesting. But what's really interesting is an article got written about it. And the article got written by somebody who left out everything about the -- David Patch having pictures of himself, his wife, and the house posted up on the message board to imply, "We're watching you." The fact that a picture taken in the parking lot was posted up just to sort of send a message. They left out everything about Mary and what had been posted about her. And they just mentioned that, they just wrote it as if O'Brien had threatened Mark Cohodes, which was completely false.

And that article was published, where else, in Barron's.

I forget the author's name for the moment, but I'm sure if you dug you would quickly see that there was a relationship between him and Cheryl Strauss Einhorn, or that they knew each other.

Well at that point, things got very interesting. Jessie Eisinger was given the assignment to basically track down O'Brien. And I think it was more than that.

He actually, he found me at a conference I was in. And I refused to talk to him without a tape recorder on. Because I've dealt with the *Journal* before and they're just a bunch of dishonest reporters. Over and over and they'll play this trick, by the way, where they say you -- I mean -- I'll only talk to a *Wall Street Journal* reporter with a phone [tape recorder] on because they're such crooks -- with a tape recorder on. And literally I've had them do that and then afterwards say -- write me a little email that says, "Oh, my tape recorder turns out to have been broken, but don't worry, I took good notes." Well, they've done this once to a friend of mine and they did it once to me, so now I only talk to them with a tape recorder on.

But Jessie really wasn't doing an interview. He was there to show me he had obtained my banking record. He had obtained records of two wires I sent -- or a few wires, he didn't even have all the records -- but of some wires I had sent to this organization NCANS to pay for an ad in the *Washington Post* and stuff. Now, I've been public about that. I don't know why it was such a big deal. I've been public. Yes, I paid for that. I largely wrote the ad, I 50% or more wrote the ad. But it was really, as far as I could tell (I had two other folks that were

listening) was basically to tell me hey, we've got access to your wire information at O'Brien's.

Well, something else funny happened. My phone went dead, my phone went dead and a message came up in Spanish that said this has been diverted to some telephone company in Mexico and the line was out.

The same hour that happened, you see, they got a hold of O'Brien's cell phone records. They got a hold of O'Brien's cell phone records and they started calling everywhere O'Brien had called. And I know this sounds like a John Grisham novel, but bear with me. They started calling everywhere he had called.

So for example, there is a woman, who -- she is a psychiatrist who has a patients-only telephone number. That number started getting calls. Who was doing the calling? Jessie Eisinger from *The Wall Street Journal*.

Some lawyers O'Brien had called, and a guy they think is O'Brien's brother who has some alcoholic problems and is sort of easily set off. They were literally calling him six times an hour at one point. That was Jessie Eisinger of *The Wall Street Journal*.

Same with -- there's an elderly lady in Las Vegas that was just picking up the phone, Jessie Eisinger" hanging up over and over and over. Harassing her. Jessie eventually flew to Las Vegas and trespassed within a gated community and would not leave this woman's porch hoping, trying to get her to confirm that she was Bob O'Brien's mother, until the neighbors seized him and they called the police and the police arrested him and they cited him. And evidently he had a tantrum on the porch and was screaming, "This is bullshit. I'm a reporter for *The Wall Street Journal*." But the police cited him in this community in Las Vegas.

So, although *The Wall Street Journal* received a couple of dozen letters and they responded "oh, we're standing by the reporter," eventually it got a little too unseemly even for *The Wall Street Journal* to have a reporter running around with banking records (that could only have been feloniously obtained) and harassing 70-year old ladies. So somebody pulled the leash on Jessie after about three weeks of this.

And what was funny about that, literally the hour they pulled the leash on him, after three weeks of pursuing this story and calling and calling and calling people, after three weeks of that he stopped, in one hour, he stopped cold in one hour.

And the next hour Carol Remond started calling all the same people and doing the same thing, calling the mother, the elderly mother, brother, calling everybody who had been called from that cell phone. That's the kind of behavior we're up against.

And now, I just again think Jessie Eisinger was given an assignment by somebody in the hedge fund community to track down O'Brien, and then when he had his leash pulled it was passed to Carol Remond.

Of course these are personal opinions that I am forming, these are my beliefs. I don't know that for a fact. Just about everything I'm telling you is in fact

a matter of personal opinion, and I believe this stuff. I can't say it for certain, I should have that halo over this entire presentation with a couple of exceptions.

Now, what's the purpose of all this? I believe there's been a plan since we were in our teens to destroy our stock, drive it down to \$6 to \$10 and to –

See it at the bottom of the sheet there? It says, “bottom feeder.” There's a designated final owner who was to end up owning, who was to end up owning our company at the \$6 to \$10 range, and even a plan for how the company would then get whacked up among, if you could do a hostile takeover and take the product and how the company could be whacked up among a group of people who had participated, hedge funds who had participated, not necessarily any of the ones I'm showing you here.... I don't know. And here's the funny part. As this went on I started realizing that there was actually some more orchestration here being provided by what I'm calling here, “The Sith Lord” or the mastermind.

Now, can I tell you who that designated bottom feeder was who was supposed to end up with our company? Can I tell you? I can. But I'm not going to today.

The Sith Lord is, can I tell you who that is? Well, I could tell you it's a name that everybody on the phone, every single person on the phone would recognize this person's name. He's one of the master criminals from the 1980s, and he's back in business. But I'm not going to. I'll just call him the “mastermind” today.

So that's the system.

Now people may say, “Byrne, you're being paranoid” and whatever. But I, well, no, before I go on –

Short sellers. I do want to mention David Einhorn and David Rocker. David Einhorn is the guy who is of course obsessive about his [security] concerns. They literally told me in Greenlight how he's got six cell phones and swaps SIM cards and takes a different route to work. And when I was in Greenlight they were explaining how you can't even, I couldn't even go into this part of the office and see him. He's extremely shy and careful, won't be seen in public, have pictures taken, anything like that.

So if you ever seen this man in public, do not take his picture because he's evidently extremely concerned about it being known or on the Internet.

Then there's of course David Rocker, whose – I thought it would be interesting.

We'll leave those pictures up there. Okay.

Now a different line. The SEC promulgated Reg SHO....

And by the way, I can do without the phone calls saying, “Byrne, how can you be criticizing the SEC?” Don't you think I know that it's crazy to be up, do you think I don't know it's crazy to be out here criticizing the SEC? Yeah, I know that. I also know I'm a U.S. citizen. I've got a First Amendment right to criticize the government. I never signed that away. And these guys aren't doing their jobs.

Regulation SHO, if you go on the SEC.gov page and go under the FAQ's you'll see two interesting, well, you can find these two, this language in there. I'm going to read you, I've added emphasis to the line that says:

“The grandfathering” (at the bottom sentence of the first section), “grandfathering provisions of Regulation SHO were adopted because the commission was concerned about creating volatility where there were large preexisting open positions.”

So that, for that reason on January 3rd they grandfathered the -- when they set the thresholds -- they grandfathered the amount of failures to deliver that already existed.

So I've been saying “Okay, don't tell me...” -- I think that that shouldn't be the case. I think that they shouldn't grandfather it. But, “Go ahead and just tell us the size of the fails. Just tell us the size of the fails. I don't need to know who did it, what broker did it, what client did it. Just let the market work, be transparent, and show the size of the fails and then the market can operate. “

And their answer to that is, first of all, to say that, “Some investors have requested that the SRO's provide more detailed information, including the total number of fails and names of the customers and responsible brokers.”

Well, I don't really care about the names of the customers and broker dealers.

Well, they say, “The fail statistics of individual firms and customers is proprietary information and may reflect the firm's trading strategies. The release of this information could be used to engage an unlawful, upward manipulation of the price of the securities in order to squeeze the firm improperly.”

So, now this is why I feel like I'm missing something. I'm hearing, a year and a half ago, if you go back a year and a half ago, they were saying that this wasn't a problem. And they've gone from saying it's not a problem to saying well, “We've got to grandfather the problem and we can't tell you the full extent of the, we can't tell you the size of the number of fails because otherwise it would create volatility and reveal the trading strategy of ... the criminals who are doing the naked shorting.”

So, in the words of Wayne and Garth, “Squeeze me?” What am I missing here?”

Come on, you guys didn't become government regulators, I think, to do things like this. And I think that you've got to know that. You've got to look at this and you've got to know, folks at the SEC, this is not what you became a government regulator to do.

So now I'm going to go, given that set of facts, I'm going to go very briefly through a few of the slides I showed a week ago because I can -- I got feedback that nobody, well, some people didn't get what I'm talking about.

This is the short position.

These are the days to cover. Six and a half million short of buying.

Who knows what our legitimate volume is. It may be a fraction of what's been reported, if there is a bunch of spoofing going on. But there's a 14 day

days to cover the last I calculated. There are 18.7 million shares now issued and in the marketplace, 6.5 million short,

And naked short of .1 to whatever. You now know everything I do. I put guesses down of 1 to 5 million. I don't know if those first couple slides I showed you with discrepancies of 30 million between the reported volume and the marketplace volume affect this number or not. I've got no idea. And there is the reason I just showed you, that I can't find out: the SEC will not release that information or direct the SRO's to. So I have no idea how many shares of our company are trading. My reasonable guesses come to 25 to 30 million shares.

And then I showed this slide which shows what I own and my father owns, what other people in the Byrne family own. Now those are guesses and that's why I have brackets in there -- with the top 10 institutions owned, and what close friends or friends own. Or as I said, "People I took baths with."

Oh, I've gotta get back to that, the -- by the way, Carol Remond has something stuck in her craw about the fact... Most people, I think, understood that when I said, "those I took baths with" to mean, like, my cousins and brothers, whatever, girlfriends. She's calling around and saying that there's a, Byrne has a gay bathhouse cabal and that's where this has been organized. Something about the whole "bath" reference has steamed Carol. My theory is it's because she's French, but...

And so 300,000 shares are available -- in my mind to be -- available in the world and there's 7 to 12 million that are actually, that the world thinks they own.

I want to go back a bit because I forgot to tell you about Kroll, how I tracked down Kroll. I had the feeling -- I've been seeing things that suggested in a very mild way somebody was intercepting communications. Now I'm going to tell a story that -- I'm not sure that this part was Kroll, but ...

The way I tested that was I came up with one channel, Channel A I'll call it, and I put information down there that I was gay. And Channel B I put information down that I was a coke head.

Now my apologies to my gay friends, both within and without, outside the company, I don't mean to equate the two. I don't care. I'm a libertarian and I don't care at all. In fact I don't give a hoot if anyone thinks I'm gay, but I thought that by keeping, by putting that information down on one channel and putting the coke head information down the other channel, I would then know -- if it leaked into the world -- that those channels were compromised. I know there's no way that information- I know that if that ever appeared it could only have come from Channel A or Channel B. I didn't even mix the channels.

Sure enough, within a short time I started seeing on the message boards, "Oh, Byrne's gay," whatever. Again, nothing decisive, but it was enough to peak my interest. On the coke head thing (and by the way, I've never, with one exception, I've never even seen cocaine in my life so in case you're wondering, no, I'm not a coke head). My former professor, a thesis advisor of mine from Stanford, got a phone call from a private investigator posing as an investor saying that she was doing due diligence on Patrick Byrne, and wanted to know

about me, and did he know me well? And by the way had I, had Byrne been into coke when I was in Stanford? So again, nothing decisive, but something that tells me, that suggests that channel's compromised.

That's when I got eager to find out who was tracking -- well, I got eager to pin that down. When I found out that Jules Kroll and David Einhorn have (I believe) a relationship I tried to, you know....

Kroll is a large corporate investigation service, was bought for a couple billion dollars by Marsh Mac some years ago, bunch of retired brass really from the Bureau. So of course they won't tell you if they're investigating you.

So eventually what I did, I had some fun about six weeks ago. I just called them and said, "I'd like to come hire you." My thinking was that they couldn't let me hire them, they couldn't even sign an NDA with me if they were in fact investigating me. But they couldn't tell me I can't come in and see them because that would also confirm it.

So the head of the office called me back very quickly and he said, "Why do you want to talk to us? Is this about naked shorting because I've been reading about what you've been saying in the papers Mr. Byrne."

So I said, "No, no, no. This is about, I may need some..." I made something up. I said, "I'm going to Venezuela, I'm going to need some bodyguards."

Well, there's no way he could really say no. And he's a fine guy. I mean, I don't envy him.

So I went in to see him and he met me, brought a witness and my guess is he was taping it. He's a former prosecutor. And it was really kind of an odd meeting because I knew that they couldn't let me hire them and I also knew that they couldn't tell me that.

So I spent the meeting sort of building a little bit of rapport and then saying, "Oh, by the way, can we sign an NDA?"

And he says, "Oh, yeah, we can probably dig up an NDA somewhere around here, I could get someone to write one up. But could you first tell us a little bit more?"

And so I just sort of kept bringing up -- so I would let it pass, then I'd come back to it. And for an hour, the guys tap danced and both refused to discuss fees with me, or they kept saying, "Of course you could hire us, yeah we can get together a fee chart."

And I said, "Well, can't you just give us a simple--"

And he said, "No, no, no. Well yeah, we can draw something up, but we've got to..."

So basically for an hour they tap danced and refused to discuss fees or an NDA. So they're either the worst corporate salesmen in the world or I've confirmed that yeah, they in fact have been hired to investigate me.

So that's where we are. You may think I'm nuts. First of all-- You may think I'm nuts about all this. If you don't, and you -- about the shorting, the naked shorting, all this stuff- if you want to get your paper certificates, this is how you do it. First you call your broker. And if you're like most people you're going to call

your broker, and your broker will say, "Oh, it is going to take me six to eight weeks to get your paper certificates and you're going to have to pay \$25." And they're going to do everything they can to stall you because -- well, that's what they're going to do. So if that happens send a registered letter to them asking -- talk to their compliance officer, send it to them.

I've heard stories now of people stretching this out six months or a year. So send the compliance officer a registered letter. If you don't get a good answer, report it to your state regulators, securities regulator and/or you can contact this woman, she's our transfer agent, Therese Collins. I have not warned her, so I suspect she's going to be deluged with calls. This is her telephone number and her fax number.

If you believe the stuff I'm saying is a problem and that there -- if you don't -- if you think the stuff I'm saying is a problem, and you think that there is some risk, some settlement risk and you...

At the end of the day there's going to be people that have paper and them that don't, and those who have paper are going to get it by probably calling this transfer agent or sending her a fax and demanding the paper.

Now I got my paper when we did the stock buy in. We got our paper in two days. I had insisted before we did the buy in that I was only going to accept paper. I just, I'm just not believing in the system anymore.

So try it with your broker. If you don't get any luck there, talk to your state regulator which is very simple. If you need my help, I know a bunch of them at this point. And you can fax this woman and demand your certs in paper.

If you think I'm nuts about all this, just ignore -- just ignore me. Just don't do anything about it.

I suspect that what I've had to say is going to make some -- well, I suspect there's some unhappy people at this point. There are not shares to cover. There's a lawsuit filed. There are state regulators who've taken a very active interest in this. And maybe even there are other feds than the SEC who are turning into a willing audience. I don't know.

But I think there are going to be some people unhappy with what I've said. So if you have a problem with it -- well, first of all, as I said, I'm getting out of the game of talking about this stuff, discussing it, anything.

So if you -- there are a lot of people call me with tips and information, and they want to talk, or if you're another company in the same situation, call Brent Baker or Mark Griffin at the numbers I put up there.

Now Brent is a 14 year SEC guy who just retired a few months ago and is specialist in abusive shorting.

Mark Griffin, now... Every state has its own SEC. Mark Griffin was the head of the SEC -- so to speak -- of Nevada and then of Utah, and then the head of the group of SEC, of state chairmen called the North American State Securities Administrators Association.

If there's other folks who don't like what I've said and have a problem with it, just call my long-time friend and lawyer, Tullos Wells, Bracewell & Giuliani. Tullos has been my lawyer for about 10 years, and if you want to- if you've got a



beef with what I've said, call him over at Bracewell Giuliani. They've got what you need.

Now as of yesterday or the day before actually (I did not have time to amend this slide) I have a new set of lawyers led by John O'Quinn and Wes Christian and Adam Voyles. Now this is a funny group from Texas, good guys, nice big -- I like these guys, they're sort of guys out of a John Grisham novel, real smart, O'Quinn is a great big strapping Texas cowboy. He sued Texas, he sued big tobacco on behalf of Texas and won \$17 billion, pocketed a couple of it himself. And now he just funds lawsuits that he thinks has a social purpose. And we met. It was like two lost brothers meeting because we've come from very different directions to the same conclusion. That this stuff I'm talking about represents a real threat in America. It's a threat to entrepreneurs. It's a threat to mainstream America. We've got -- I think -- a group of parasites who have found a loophole that they can keep on using to just drain resources out of entrepreneurs in America and in the process, kill small companies.

I think we just got lucky. I think they were fishing on a pier and they hooked a nuclear submarine as it went flying by with us. But other companies aren't so lucky.

And how I really feel is like I walked down an alley and a bunch of thugs tried to roll me. And I've managed to fend them off so far and basically get away. I look back and there's a dozen other folks strewn on the ground who've been rolled by these guys. And it's just not in my blood to say, "oh well, I'm lucky, I'm going to walk away." You can't do that. You've got to do something -- I mean, we were the lucky ones, but we've got to do something about the other folks who were coming down the alley.

Now because this is my last time talking about it, I'm going to insert a few questions that I know are challenges people are going to make.

One is, "Why not take it to the authorities?" Well, to that I say, "The SEC, come on, look at those, the graph of "The Miscreants' Ball" and tell me the SEC is up to taking something like on. They're up to going after Martha Stewart on a good day. They're not up to taking on a web like that. They probably are afraid it might cause 'volatility.'"

But they're not the only game in town. As I said, there are state and fed, federal folks who are getting, I think, or have become quite interested in these hedge fund matters, albeit from different directions.

Now take the Elgendi case, you know -- and you can find this on the Internet -- that Elgendi, who was this guy who was paying off folks for -- federal agents -- for inside information. Elgendi liquidated his stock portfolio on September 10, 2001. His stock portfolio for himself and his children. Start digging into the hedge funds and you start coming across some very strange things going on.

You know who reads O'Brian's log? You can tell from the IP's, and they don't mask their IP's. Folks from the SEC read it of course, and I can understand

that. There are also a bunch of folks come from Kuwait and Saudi Arabia and the United Arab Emirates who read what's going on in this movement.

So now we turn to the question with which I opened. I truly do know that short sellers -- that CEOs who care about short sellers are generally crooks or ego maniacs or they're pride-driven (or these things that I, which I get accused of), or fools (which I'm sure I get accused of). And I agree that under normal circumstances it is a fool's errand to try to do anything about this, to wrangle with shorts.

But I've come to suspect that this party-line advice is actually just part of the ideology that they promulgate. They want CEOs -- they want to do this stuff and ask CEO's to lay back and think of England as they get rolled.

So I ask you, dear listener, consider that. I mean, with Kroll investigating me, the people trying to get the SEC to come after me, with folks trying to get the justice department to believe that I'm involved in money laundering, criminal... While David Rocker pays Camelback to publish whatever he supplies them as long as he -- as long as they hold it long enough for him to build his position, etc., etc. Is it really the smart thing to have done, to have said, "Oh no, I'm just going to sit on my hands and keep taking this"?

Maybe it's just my black Irish temper, I'm just not cut out to -- I can keep up making reasons of why I'm taking these guys on or why I've taken them on, but the truth is, I'm just not cut out to sit on my hands for this kind of stuff.

So I say to Rocker, to Cohodes and all the other miscreants, "Did I stutter? Did I stutter or did I say I was going to take this fight to you? Well now you know what I meant."

And lastly, to the man I've identified here as the Sith Lord of this stuff I just say, "You know who you are and I hope that this is worth it, because if the feds catch you again, this time they're going to bury you *under* the prison. And I'm going to enjoy helping."

Well at the very least I hope that the listener can understand why I've taken this admittedly unusual step. I don't plan on being in this job for the rest of my life and while I'm in it I want to do it my way. As I said, I'm now handing the baton to more capable lawyerly hands. Thank you.

Operator: That concludes today's conference call. Thank you for your participation. You may now disconnect.

END

PS As I said, the mere mention of someone's name in this call is not intended to imply participation in bad acts on anyone's part. Some of the mentions were truly intended simply to display connections. By way of non-exhaustive examples: of Leon Black I know little other than he is a well-known financier; of Tom Barton I know nothing other than he was at Feshbach, presumably knew Caruthers, and now lives in Texas (Mr. Barton has since assured me he does not short stocks or

have anything to do with these practices, and I take him at his word); Liz Macdonald is, I expect, a legitimate reporter trying to do her job; and Eliot Spitzer wants to be governor.