FILED

NATIONAL FUTURES ASSOCIATION BEFORE THE BUSINESS CONDUCT COMMITTEE

SEP 3 0 2009

NATIONAL FUTURES ASSOCIATION

In the Matter of:) LEGAL DOCKETING
COMMODITY FUTURES & OPTIONS SERVICE, INC. (NFA ID #210781),)))) NFA Case No. 09-BCC-039
HAL L. SWANSON (NFA ID #52467),)))
BRYAN L. WRIGHT (NFA ID #331395),))
Respondents.)

COMPLAINT

Having reviewed the investigative report submitted by the Compliance

Department of National Futures Association ("NFA"), and having found reason to

believe that NFA Requirements are being, have been or are about to be violated and
that the matter should be adjudicated, NFA's Business Conduct Committee ("BCC")

issues this Complaint against Commodity Futures & Options Service, Inc. ("CF&O"), Hal

L. Swanson ("Swanson") and Bryan L. Wright ("Wright").

ALLEGATIONS

JURISDICTION

 At all times relevant to this Complaint, CF&O was an independent introducing broker ("IB") NFA Member located in Houston, Texas and has been an NFA Member since April 1988.

- 2. At all times relevant to this Complaint, Swanson was the president and an associated person ("AP") of CF&O and an NFA Associate.
- At all times relevant to this Complaint, Wright was the chief operating officer ("COO") and an AP of CF&O and an NFA Associate.

BACKGROUND

- 4. CF&O was previously charged in a 2006 BCC disciplinary Complaint for failing to develop and implement an adequate anti-money laundering ("AML") program. A hearing was held in that case after which an NFA Hearing Panel found that CF&O had committed the AML violations alleged in the Complaint and fined the firm \$5,000.
- 5. Swanson has previously worked for several firms, including World Trading Group ("WTG"), which is a Disciplined Firm that was permanently barred from NFA in 1992 for using deceptive and misleading promotional material.
- 6. NFA's registration records indicate that CF&O had five owners who each had an ownership interest of 10% or more Brazos Partners, United Benefit, Vincent Nolan, Pablo Bonjour and Wright. In addition to these entities and persons, as well as Swanson, CF&O listed two other individuals as principals.
- 7. In early summer 2009, NFA received information that the Securities and Exchange Commission had filed a complaint against Robert Copeland ("Copeland") for allegedly operating a \$35 million Ponzi scheme. NFA also received information that CF&O and a firm with which it shared office space, viz., Financial Robotics, had allegedly received money from Copeland.

8. As a result of this information, NFA commenced an investigation of CF&O and its connections with Financial Robotics and Copeland. As alleged, herein, NFA's investigation determined that CF&O had, in fact, received capital from suspicious sources and failed to list certain persons and entities as principals. NFA also found deficiencies with CF&O's recordkeeping and its compliance with NFA capital requirements. In addition, NFA found that CF&O, Wright and Swanson failed to adequately supervise CF&O's operations.

APPLICABLE RULES

- 9. NFA Compliance Rule 2-10 provides, in pertinent part, that each Member shall maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under Commodity Futures Trading Commission ("CFTC") Regulations 1.18 and 1.32 through 1.37 for the period required under CFTC Regulation 1.31.
- 10. NFA Registration Rule 208(a) provides, in pertinent part, that an applicant for registration as an IB must list with NFA, at the time it files its application, all individuals that are principals of the applicant. Further, within twenty days after an individual becomes a principal of an IB applicant or registrant, the IB must list such individual with NFA as a principal.
- 11. NFA Financial Requirements Section 5(a) provides, in pertinent part, that

 Member IBs that are not operating pursuant to a guarantee agreement must

 maintain Adjusted Net Capital ("ANC") equal to or in excess of the greatest of:

\$45,000;

For Member IBs with less than \$1,000,000 in ANC, \$6,000 per office operated by the IB (including the main office); or

For Member IBs with less than \$1,000,000 in ANC, \$3,000 for each AP sponsored by the IB.

- 12. NFA Financial Requirements Section 5(c) provides, in pertinent part, that a Member IB that is required to file any document with or give any notice to the CFTC under CFTC Regulation 1.12 [Maintenance of minimum financial requirements by futures commission merchants and IBs], or 1.17 [Minimum financial requirements for futures commission merchants and IBs] shall also file one copy of such document with or give such notice to NFA at its Chicago office no later than the date such document or notice is due to be filed with or given to the CFTC.
- 13. NFA Compliance Rule 2-9(a) provides, in pertinent part, that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member.
- 14. NFA Compliance Rule 2-39(a) provides, in pertinent part, that NFA Members and their Associates who solicit customers, introduce customers to a counterparty, or manage accounts on behalf of customers in connection with forex transactions shall comply with certain of the provisions of NFA Compliance Rule 2-36, including 2-36(e).
- 15. NFA Compliance Rule 2-36(e) provides that each Forex Dealer Members

 ("FDMs") shall diligently supervise its employees and agents in the conduct of
 their forex activities for and on behalf of the FDM. Each Associate of an FDM
 who has supervisory duties shall diligently exercise such duties in the conduct of
 that Associate's forex activities for or on behalf of the FDM.

COUNT I

VIOLATIONS OF NFA COMPLIANCE RULE 2-10 AND NFA REGISTRATION RULE 208: FAILURE TO KEEP ACCURATE FINANCIAL RECORDS AND MAINTAIN RECORDS THAT PROPERLY IDENTIFIED THE SOURCES OF CF&O'S CAPITAL; AND FAILURE TO LIST FINANCIAL ROBOTICS, ROBERT COPELAND AND MARK RICE AS PRINCIPALS OF CF&O.

- 16. The allegations contained in paragraphs 1 through 10 are realleged as paragraph16.
- 17. As NFA was interested in learning about CF&O's connections with Financial Robotics, with which it shared offices, NFA asked Wright about Financial Robotics and its relationship with CF&O.
- 18. Wright initially told NFA that he was the only individual at CF&O affiliated with Financial Robotics, that he was part of the original group which formed Financial Robotics for the purpose of developing automated trading systems, and that Financial Robotics ceased operations in late 2008.
- 19. Wright also represented that he was merely a "technical assistant" at Financial Robotics. However, a May 23, 2007 resolution from Financial Robotics' Board of Directors which NFA obtained appointed Wright to "execute substantially all agreements and additional documents required to perform all banking and financial activities" on behalf of Financial Robotics, duties seemingly far more substantial than what a "technical assistant" might be expected to perform.

 Moreover, minutes from Financial Robotics' March 26, 2007 Board of Directors' meeting listed Wright as the vice president, secretary and treasurer of the firm.

- 20. NFA pressed Wright to produce more records and information (e.g., bank statements, cash records) about Financial Robotics. Wright then began to change his story. Contrary to Wright's initial representations that he was a founder of Financial Robotics, he claimed that he really was just a consultant for the firm. In addition, Wright claimed that he did not have access to Financial Robotics' books and records, including its bank accounts, and would not be able to provide them to NFA, which was different from his prior representations. Wright also claimed for the first time that he had resigned from Financial Robotics and provided NFA with what purported to be his resignation letter from December 2008.
- 21. NFA sought to determine if Financial Robotics and/or other individuals and entities should have been listed as principals and owners of CF&O. Therefore, NFA requested certain records from CF&O for January 2007 through May 2009, including CF&O's bank statements and cash records, net capital computations and other financial records, including the ledger of all capital contributions into CF&O. NFA also asked CF&O for other records, including its articles of incorporation and stock ledgers identifying all owners of the firm. Over the course of several days, CF&O provided NFA with some, but not all, of the requested records and the records it did produce, such as the accounting records for CF&O's capital accounts, were incomplete.
- 22. When NFA questioned Wright about the records, he asserted that CF&O did not maintain any records relating to its ownership, except for a ledger that reflected capital contributions into the firm. The ledger, which Wright provided to NFA,

- listed CF&O's capital contributions from January 31, 2001 through April 14, 2009, but was missing a substantial amount of information and reflected many of the capital sources as "unknown."
- 23. Based upon NFA's review of CF&O's records, it appears that Brazos Partners, one of the entities CF&O listed as an owner and principal, contributed almost \$420,000 to CF&O; that Financial Robotics contributed over \$225,000 to CF&O; and that Copeland contributed approximately \$700,000 to CF&O. In addition, unknown sources contributed approximately \$750,000 to CF&O.
- 24. Based on this information, NFA sought to ensure that anyone indirectly owning 10% or more of CF&O was properly listed as a principal. Therefore, NFA questioned Swanson about who owned CF&O and for more details about the underlying owners of Brazos Partners and another one of CF&O's listed principals, United Benefit. However, Swanson was unable to answer NFA's questions on either issue despite his role as CF&O's president. Swanson also claimed he did not know about other aspects of CF&S's operations, including anything about its financial books and records.
- 25. When NFA attempted to obtain more information about Brazos Partners and United Benefit from Wright, he claimed that an individual named Mark Rice ("Rice") had solicited them to contribute capital to CF&O. CF&O's records indicate that Rice owned 9% of CF&O. (Apparently, Rice and Wright had previously worked together at an internet consulting company in the late 1990s.) In addition, Swanson represented that he accepted the position as president of CF&O from Rice in 2002. Swanson also indicated that he believed Rice

- represented Brazos Partners, which Swanson said was the owner of CF&O in 2002.
- 26. NFA also asked Wright about the contributions from "unknown sources." Wright told NFA that whenever the firm needed capital he would tell Rice and then, without explanation from Rice or apparently any questioning from Wright, funds would be deposited into CF&O's account.
- 27. In addition to representing that Rice procured capital from Brazos Partners and United Benefit, Wright claimed Rice also obtained funds from Copeland and acted as the representative for all three (i.e., Brazos Partners, United Benefit and Copeland) when dealing with CF&O.
- 28. NFA attempted to contact Rice on numerous occasions to learn more about his dealings on behalf of Brazos Partners, United Benefit and Copeland, but NFA has been unable to speak to Rice and he has failed to return NFA's calls. In addition, NFA requested Wright to provide ownership records for Brazos Partners and United Benefit, but he has failed to do so.
- 29. NFA reviewed CF&O's annual certified financial statements and noted that since 2002, CF&O never had a profitable year, with net losses from 2002 through 2008 totaling over \$1.1 million. It appears, therefore, that the suspicious capital contributions arranged by Rice from unknown sources kept CF&O afloat during this time.
- 30. CF&O's records concerning capital contributions to the firm were incomplete and its sources of capital were in some instances unknown. As such, NFA was

- unable to determine whether CF&O listed all persons who contributed 10% or more of the capital to the firm as principals.
- 31. Despite CF&O's deficient records, it is clear that CF&O, at the very least, should have listed Copeland and Financial Robotics as principals because they each contributed more than 10% of the firm's capital, and should have listed Rice as a principal because he exercised controlling influence over the firm's operations, including procuring capital for the firm from Copeland and other questionable sources as well as unknown sources.
- 32. By reason of the foregoing acts and omissions, CF&O is charged with violations of NFA Compliance Rule 2-10 and Registration Rule 208.

COUNT II

VIOLATION OF NFA FINANCIAL REQUIREMENTS SECTIONS 5(a) AND (c): FAILURE TO MAINTAIN THE REQUIRED MINIMUM ANC AND FILE TELEGRAPHIC NOTICE WHEN IT KNEW OR SHOULD HAVE KNOWN IT WAS UNDER ITS NET CAPITAL REQUIREMENT.

- 33. The allegations contained in paragraphs 1 through 8 and 11 and 12 are realleged as paragraph 33.
- 34. NFA's review of CF&O's financial records revealed that CF&O incorrectly reflected certain non-current assets as current. This resulted in an overstatement of the firm's ANC when, in reality, CF&O was actually undercapitalized since January 2009.
- 35. In addition, the classification of one asset was especially suspicious.

 Specifically, for the period January through April 2009, CF&O reflected \$60,000 in securities as a current asset. The asset represented one million shares of stock in InventBay.com, which coincidently was a company that occupied the

- same office space as CF&O. In addition, the company that sold the InventBay.com shares to CF&O, Corporate Services, was also located in the same office space and owned by an individual affiliated with Financial Robotics, viz., Matthew Skaggs.
- 36. Wright claimed the value of the stock in InventBay.com at sale was \$.06 per share and that CF&O was able to get the one million shares at a discount from Corporate Services for just \$.03 per share. However, NFA's research indicated the InventBay.com stock traded at \$.005 a share so the one million shares were essentially only worth about \$5,000. However, CF&O not only overpaid for the securities at \$30,000, but also overvalued them on its books at \$60,000. In addition, given the size of the equity holding (i.e., one million shares) compared to the average daily trading volume, which was less than 18,000 shares, NFA determined the shares would not be readily marketable and that CF&O could not treat them as a current asset of the firm.
- 37. Furthermore, CF&O apparently sold the securities back to Corporate Services in May for \$60,000 and instead of receiving cash from "selling" the securities, CF&O simply reflected the \$60,000 transaction as a current receivable. Because this receivable was unsecured, CF&O should not have reflected it as a current asset.
- 38. Additionally, beginning in January 2009 and continuing through May, CF&O consolidated its financial records with Southcoast Investment Group ("SIG"), an affiliated broker-dealer and member of FINRA. Although CF&O's consolidated records included SIG's checking account balance as an asset during this time,

CF&O failed to reflect any of SIG's liabilities in its financial records, including a fine levied by the Commonwealth of Pennsylvania against SIG for just under \$10,000 for using a third party marketer to send an unsolicited e-mail to a prospective investor in violation of state securities laws. Because of these adjustments, CF&O was under its net capital requirement by amounts ranging from about \$28,500 to over \$50,000 from January through May 2009. On July 21, 2009, CF&O filed telegraphic notice, indicating that it was below its net capital requirement during that period. However, this notice was late and should have been filed as early as January 2009 when CF&O first knew or should have known that it was below its net capital requirement.

- 39. Given that CF&O was woefully undercapitalized for almost the first half of 2009, NFA had concerns about CF&O's existing capital position. Therefore, NFA instructed CF&O to complete a pro-forma net capital computation as of July 22, 2009. Based on this computation, NFA noted that the firm's liabilities exceeded assets by more than \$8,000. Furthermore, when the firm's \$45,000 net capital requirement was factored in, CF&O was actually under its net capital requirement by over \$53,000. When NFA informed Wright of this, he replied that the "ownership of CF&O" had indicated it would not contribute any additional funds to the firm to bring it into capital compliance. As a result, CF&O ceased operations in late July 2009 and is no longer introducing customer accounts.
- 40. By reason of the foregoing acts and omissions, CF&O is charged with violations of NFA Financial Requirements Sections 5(a) and (c).

COUNT III

VIOLATION OF NFA COMPLIANCE RULES 2-9(a) AND 2-36(e): FAILURE TO ADEQUATELY SUPERVISE CF&O'S OPERATIONS

- 41. The allegations contained in paragraphs 1 through 8 and 13 through 15 are realleged as paragraph 41.
- Wright was the CF&O's COO and the individual responsible for preparing CF&O's financial records and submitting required financial statements to NFA. In addition, Wright acknowledged that since 2003, he handled all corporate records for the firm. Wright was also the individual who was in contact with Rice regarding the capitalization of the firm. Instead of acting responsibly as the firm's COO, Wright accepted capital for CF&O without any regard as to the source of funds even when they came from dubious parties such as Copeland and sometimes without even obtaining the name of the source.
- 43. Swanson, as the firm's president, was no better at obtaining essential information than Wright. Swanson was not sure whom Rice represented when he was hired by Rice as president of CF&O. Swanson also apparently considered himself CF&O's president in name only since he did not attempt to familiarize himself with the firm's operations, including the firm's capital position or the identity of the persons who owned the firm which he was purportedly responsible for overseeing.
- 44. Both Wright and Swanson demonstrated a blatant disregard for any of the supervisory duties that should have been an essential part of their responsibilities as COO and president of CF&O.

45. By reason of the foregoing acts and omissions, CF&O, Wright and Swanson are charged with violations of NFA Compliance Rules 2-9(a) and 2-36(e), as made applicable to the respondents by NFA Compliance Rule 2-39(a).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association 300 South Riverside Plaza, Suite 1800 Chicago, Illinois 60606 Attn: Legal Department-Docketing

E-Mail: Docketing@nfa.futures.org

Facsimile: 312-781-1672

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted as a result of or in con-

nection with the issuance of this Complaint, NFA may impose one or more of the

following penalties:

(a) expulsion or suspension for a specified period from NFA membership;

(b) bar or suspension for a specified period from association with an NFA

Member;

(c) censure or reprimand;

(d) a monetary fine not to exceed \$250,000 for each violation found; and

(e) order to cease and desist or any other fitting penalty or remedial action not

inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification

from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respon-

dents in this matter who apply for registration in any new capacity, including as an

associated person with a new sponsor, may be denied registration based on the

pendency of this proceeding.

Pursuant to the provisions of CFTC Regulation 1.63 penalties imposed in

connection with this Complaint may temporarily or permanently render Respondents

who are individuals ineligible to serve on disciplinary committees, arbitration panels and

governing boards of a self-regulatory organization, as that term is defined in CFTC

Regulation 1.63.

NATIONAL FUTURES ASSOCIATION

BUSINESS CONDUCT COMMITTEE

Dated:

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Chairpersor

m/rvh/Commodity Futures & Options Complaints

14

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on September 30, 2009, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Commodity Futures & Options Service, Inc. 2700 Post Oak Boulevard Suite 2375 Houston, TX 77056 Attn: Bryan Wright, COO

Bryan L. Wright 22019 Willow Shadows Drive Tomball, TX 77375 Hal L. Swanson 1305 Marshall Street Apt. 2 Houston, TX 77006

Nancy Miskovich-Paschen

Subscribed and sworn to before me on this 30th day of September 2009.

Notary Public

OFFICIAL SEAL
JUDITH JENKS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES MAY 27, 2012