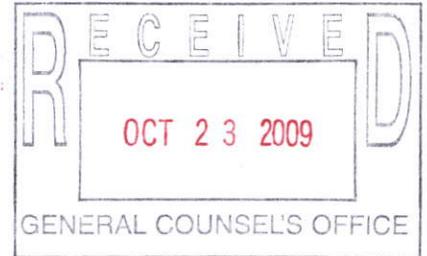


**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE**

In the Matter of: )  
)  
COMMODITY FUTURES & )  
OPTIONS SERVICE, INC. )  
(NFA ID # 210781), )  
)  
HAL L. SWANSON )  
(NFA ID# 52467), )  
)  
BRYAN L. WRIGHT )  
(NFA ID 3 331395), )  
)  
Respondents. )

NFA Case No. 09-BCC-039



**COMPLAINT**

**ANSWER OF RESPONDENT HAL L. SWANSON**

As of this date 10/23/09 I have no information that Commodity Futures & Options Service, Inc.(CF&O) or Bryan L.Wright will or will not respond to this complaint. I can not speak for the ownership of CF&O, but I feel it is in my best interests to answer this complaint as best I can from my own perspective.

First, I must state that I was president of CF&O and that the definition for "corporate president" or "president" is not clearly defined in general business practices and has a wide range of interpretation. I have looked throughout the Rules of the National Futures Association (NFA) and there is no definition for the title of "president". During the NFA Audit of July 13, 2009, unlike previous NFA Audits, I was not asked what my duties or responsibilities were as president of CF&O.

I was a "principal" of CF&O which is clearly defined by the NFA, so my answers here will fall within those responsibilities as a "principal" of CF&O.

**ALLEGATIONS**

## JURISDICTION

1. 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.

ANSWER: Admitted.

2. At all times relevant to this Complaint, Swanson was the president and an Associated Person (AP) of CF&O and an NFA Associate.

ANSWER: Admitted with clarification. Swanson was a principal, AP, and president of CF&O at all times relevant to this Complaint.

3. At all times relevant to this Complaint, Wright was the chief operating officer ('COO') and an AP of CF&O and an NFA Associate.

ANSWER: Admitted.

## 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.

ANSWER: Admitted

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.

ANSWER: Admitted with clarification. Swanson had a branch office for World Trading Group. Swanson was never accused of using deceptive and misleading promotional material as a branch office of World Trading Group. Swanson was never accused of using any deceptive and misleading promotional material with any of the several firms

Swanson had worked for before or after having a branch office for World Trading Group.

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.

ANSWER: Admitted with clarification. Victor Guerrero was a principal of CF&O and president of CFOS/FX, and he was responsible for CF&O's forex operations.

Swanson was aware that Brazos Partners, Vincent Nolan, Pablo Bonjour, and Bryan L. Wright were known owners of CF&O. United Benefit, and "two other individuals as principals" were unknown to Swanson. Swanson was a principal with no direct or indirect ownership interest in CF&O.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation. Swanson was aware that Financial Robotics briefly shared office space with CF&O along with several other companies sharing space with CF&O. Financial Robotics moved out of the CF&O office space to some unknown location. Robert Copeland is an individual that Swanson first became aware of when Copeland was listed within the NFA Audit summation dated August 21, 2009. Swanson had no knowledge that 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.

ANSWER: Swanson denies he failed to adequately supervise CF&O's operations as per his defined duties and responsibilities. Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation that CF&O had in fact received capital from suspicious sources and failed to list certain persons and entities as principals.

#### **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.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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.

ANSWER: Admitted.

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.

ANSWER: Admitted

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.

ANSWER: Admitted.

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).

ANSWER: Admitted.

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.

ANSWER: Admitted.

### 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 paragraph 16.

ANSWER: Swanson realleges his responses to paragraphs 1 through 16 as if set forth in full here.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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. ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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."

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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&O's operations, including anything about its financial books and records.

ANSWER: Denied with clarification. Swanson as a principal of CF&O had supervisory responsibilities that covered marketing and research. Also, Swanson had responsibilities in supervising daily operations of the CF&O's Associated Persons who were not principals or owners of CF&O. Swanson interacted with CF&O's clients, and maintained CF&O's relationship with its futures clearing firms (FCM). During the NFA Audit of July 13, 2009 Swanson was not asked what his duties or responsibilities were as a principal or as president of CF&O. All financial recordkeeping, compliance with NFA capital requirements, and business arrangements of CF&O from 2002 to 2009 were strictly and closely held by the ownership of CF&O without any discussion or consultation with Swanson.

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.

ANSWER: Admitted with clarification. Swanson accepted the position as president of CF&O from Rice in 2002. Swanson believed Rice represented Brazos Partners, which Swanson believed was the owner of CF&O in 2002. Swanson lacks information sufficient

to admit or deny allegations regarding the NFA attempts to obtain more information about Brazos Partners and United Benefit from Wright.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

## **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.

ANSWER: Swanson realleges his responses to paragraphs 1 through 8 and 11 and 12 as if set forth in full here.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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 coincidentally 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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

36. Wright claimed the value of the stock in InventBay.com at sale was \$.06 per share and that GF&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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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.

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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

40. By reason of the foregoing acts and omissions, CF&O is charged with violations of NFA Financial Requirements Sections 5(a) and (c).

ANSWER: Admitted that CF&O is charged with violations of NFA Financial Requirements Sections 5(a) and (c). Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

### COUNT III

#### **VIOLEATION 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.

ANSWER: Swanson realleges his responses to paragraphs 1 through 8 and 13 through 15 as if set forth in full here.

42. 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.

ANSWER: Swanson lacks information sufficient to admit or deny allegations regarding the findings of NFA investigation.

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 identified of the persons who owned the firm which he was purportedly responsible for overseeing.

ANSWER: Denied with clarification. Swanson was asked very few brief questions by NFA auditor Brandon Tasco. Swanson was not asked what his role and responsibilities were as a principal or as president of CF&O. Swanson was not asked by Tasco or any other auditor about CF&O's operational practices. Swanson clearly stated that when he was hired by CF&O that he believed Rice represented Brazos Partners.

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.

ANSWER: Denied with clarification. Swanson was not asked what his role and responsibilities were as a principal or as president of CF&O. Swanson was not asked by Tasco or any other auditor about CF&O's operational practices. Swanson can not speak

for Wright regarding the *all in encompassing* statement “blatant disregard for any of the supervisory duties” –Swanson believes that is an inaccurate generalization.

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).

ANSWER: Admitted with clarification. Admitted that 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). Swanson denies any charges or violations of NFA Compliance Rules 2-9(a) and 2-36(e), as made applicable to Swanson by NFA Compliance Rule 2-39(a).

Any allegation not specifically admitted herein is hereby denied.

WHEREFORE, Hal L. Swanson respectfully request that the Complaint against Swanson be dismissed and removed from NFA COMPLAINT Case No. 09-BCC-039 in its entirety.

Dated October 23, 2009

Respectfully submitted,

Hal L. Swanson  
(NFA ID# 52467)