

06 CV 1692

U.S. Commodity Futures Trading Commission,

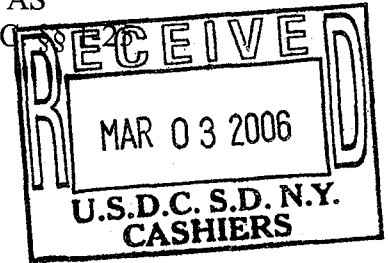
Plaintiff,

v.

Falco & Stevens, Inc.  
Vyacheslav Nass

Defendants.

COMPLAINT FOR INJUNCTIVE  
AND OTHER EQUITABLE  
RELIEF AND FOR PENALTIES  
UNDER THE COMMODITY  
EXCHANGE ACT, AS  
AMENDED, 7 U.S.C.



Plaintiff U.S. Commodity Futures Trading Commission, by and through its attorneys,  
hereby alleges as follow:

I.

SUMMARY

1. From at least August 2005 to the present (“relevant period”), Falco & Stevens, Inc. (“F&S”) and Vyacheslav Nass (“Nass”) (collectively “Defendants”) have fraudulently solicited and misappropriated funds from customers on the pretext that the funds would be used for foreign currency transactions. The promised transactions in fact involve illegal off-exchange foreign currency futures contracts.

2. F&S, through its employees, fraudulently solicits unsophisticated customers by promising to trade foreign currency contracts when in fact no contracts are traded, exaggerating the profit potential of the purported contracts, and lying about the firm’s track record of trading foreign currency.

3. F&S, through its employees, sends prospective customers F&S's fraudulent promotional materials, encouraging customers to trade foreign currency by promising profits from, and minimizing the risks of, foreign currency trading.

4. Instead of trading customer funds, Defendants F&S and Nass misappropriate the funds by transferring those funds to overseas bank accounts.

5. Through the conduct described above, Defendants F&S and Nass have violated Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002), and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004).

6. Through the conduct described above, F&S also has violated Section 4b(a)(2)(i) and (iii) of the Act, and Commission Regulation 1.1(b)(1) and (3), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

7. Through the conduct described above, F&S violated Section 4(a) of the Act, 7 U.S.C. § 6(a) (2004).

8. Defendant Nass is liable as a controlling person for the violations by Defendant F&S of Sections 4(a) and 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2)(i) and (iii) (2002) and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2004).

9. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

10. Accordingly, pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2002), Plaintiff U.S. Commodity Futures Trading Commission (the "Commission") brings this action to enjoin the unlawful acts and practices of Defendants F&S and Nass, and to compel their

compliance with the provisions of the Act and Regulations thereunder. In addition, the Plaintiff seeks civil penalties, a permanent trading prohibition, an accounting and such other equitable relief as the Court may deem necessary or appropriate.

## II.

### JURISDICTION AND VENUE

11. The Commodity Exchange Act, as amended, 7 U.S.C. § 1 et. seq. (2002) (the “Act”), prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of such futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder. In addition, Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B) (2002), confers upon the Commission jurisdiction over certain retail transactions in foreign currency for future delivery, including the transactions alleged in this complaint.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

### III.

#### THE PARTIES

##### A. Plaintiff

13. The U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq. (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2004).

##### B. Defendants

14. Falco & Stevens, Inc. ("F&S") was incorporated in New York on April 8, 2005, and maintains office space at 45 West 34<sup>th</sup> Street, Suite 304, New York, New York. Its promotional literature also lists a purported office location at 250 West 26<sup>th</sup> Street, New York, New York. F&S has never been registered with the Commission in any capacity. In addition, F&S is not an appropriate counterparty for foreign currency futures transactions.

15. Vyacheslav Nass ("Nass") maintains an address in Brooklyn, New York. Nass is F&S's President and sole signatory on F&S's bank account. Nass has never been registered with the Commission in any capacity.

### IV.

#### STATUTORY BACKGROUND

16. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2002), provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, and is "offered to, or entered into with, a person that is *not* an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is" a regulated entity, as defined therein (emphasis added).

Section 2(c)(2)(B)(i)-(ii) of the Act was enacted by Congress as part of the Commodity Futures Modernization Act of 2000 (“CFMA”), Section 2(5), Pub. L. No. 106-554, 114 Stat. 2763 (2000), in an effort “to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated.”

17. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2004), defines an “eligible contract participant” as, *inter-alia*, an individual who has total assets exceeding: (a) \$10 million; or (b) \$5 million and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred by the individual.

18. Section 2(c)(2)(B) of the Act, 7 U.S.C. § 2(c)(2)(B)(ii)(I) through (VI) (2004), provides in pertinent part that the Commission shall have jurisdiction over an agreement, contract, or transaction in foreign currency unless the counterparty, or the person offering to be the counterparty, of the person is a financial institution, a broker or dealer or an associated person of a broker or dealer, a futures commission merchant (“FCM”) or a certain kind of affiliated person of an FCM, an insurance company or a regulated subsidiary of an insurance company, a financial holding company, or an investment bank holding company.

19. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2004), provides that, unless exempted by the Commission, it shall be unlawful for any person to offer to enter into, enter into, to execute, to confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions have not been conducted on or subject to the rules of a board of trade which has

been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; and (b) such contracts have not been executed or consummated by or through such contract market.

20. Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002), provides, in pertinent part, it is unlawful for any person in or in connection with any sale of any futures contract of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person (i) to cheat or defraud or attempt to cheat or defraud such other person or (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract.

21. Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004), provides in relevant part that for any foreign currency transaction within the Commission's jurisdiction, it shall be unlawful for any person directly or indirectly, in or in connection with any account, agreement, contract or transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

22. Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), provides that the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent or other person.

23. Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), provides that any person who, directly or indirectly, controls any person who has violated any provision of the Act may be held

liable for such violation in any action brought by the Commission to the same extent as the controlled person, provided that the controlling person knowingly induced the violations or failed to act in good faith with respect to them.

## V.

### FACTS

#### A. Defendant's Operation

24. Defendants maintain a website called falcostevens.com to solicit customers to engage in foreign currency transactions that are, in fact, commodity futures contracts.

25. F&S, through its employees, solicits prospective customers to open managed customer foreign currency ("forex") trading accounts through F&S's "Managed Trading Account" program, and promise customers profitable returns on their investments.

26. Defendant F&S maintains an account at Bank of America ("BOA") into which customer funds are deposited for the purported purpose of trading forex contracts. From at least August 2005 to the present, customer funds were deposited into that BOA bank account.

27. F&S, through its employees, provides their customers with a fraudulent F&S track record reflecting purported profits from 1999 to 2005.

28. F&S, through its employees, provides their customers with advertising materials, including a brochure.

#### B. Evidence of Solicitation Fraud

29. In soliciting prospective customers to trade forex futures contracts, F&S, through its employees, makes the following misrepresentations of material facts:

- (a) Funds deposited by customers will be used for forex trading;
- (b) F&S's seven-year track record has annual returns of 13.78 in 1999, 27.41% in 2000, 23.16% in 2001, 34.56% in 2002, 33.38% in 2003, 40.39% in 2004 and

32.32% in 2005 (despite the fact that F&S wasn't incorporated until April 2005, and did not open the bank account until August 2005 and no trading was ever done on behalf of customers at any time);

- (c) The track record has been audited by KPMG, LLP (New York) (although the track record was bogus);
- (d) Leveraged positions are expertly coupled with stop-loss orders to ensure protection from market, political and economic risk (although, since no customer funds were traded, F&S's stop-loss policy did not really exist); and
- (e) F&S customers would reap profits ranging from 2% to 5% per month.

**C. Evidence of Misappropriation of Customer Funds**

30. The customer funds received by F&S were deposited into F&S's bank account.

31. Defendants F&S and Nass did not trade the customer funds.

32. Instead, Defendants F&S and Nass diverted customer funds totaling more than \$4.3 million and transferred those funds to overseas bank accounts in the names of various foreign companies.

33. Defendant F&S knew when it solicited customers through its employees that the customer funds entrusted to F&S would be diverted to overseas bank accounts of foreign companies, and not used for trading foreign currency contracts, as represented to the customers.

34. To date, none of the \$4.3 million in customer funds have been returned to customers.

**D. The Purported Foreign Currency Transactions Were Illegal Off-Exchange Futures Contracts**

35. The foreign currency contracts that defendants purported to offer and sell were actually foreign currency futures contracts.

36. Defendant F&S offered, and maintained an office in the United States for the purpose of conducting business in, foreign currency futures without conducting those



transactions on or subject to the rules of a board of trade that has been designated by the Commission as a contract market, or on a facility registered as a derivatives transaction execution facility.

37. F&S was not an appropriate counterparty under the Act for the offered transactions as alleged herein.

38. Most, if not all, the customers solicited by F&S were retail customers, not eligible contract participants.

**E. Nass is a Controlling Person**

39. Defendant Nass had the power and ability to control F&S's business.

40. Nass's residential address is listed as the address for F&S in its April 2005 incorporation papers filed with the New York Department of State, and Nass registered the falcostevens.com website and was responsible for obtaining a business telephone number for F&S from Verizon in July 2005.

41. Defendant Nass opened the F&S BOA account in or about August 2005, into which customer funds were deposited, and is listed on the bank applications and agreements as President of F&S.

42. Nass is the sole signatory for the F&S BOA bank account and signed all checks drawn against that account.

43. Nass, as sole signatory for the F&S bank account, was responsible for all movements of funds in and out of the account, including the transfers of those funds to accounts outside the U.S.

44. Nass knowingly induced the wrongful acts and practices of F&S and its employees that violated the Act and Regulations, or failed to act in good faith with respect to those acts and practices.

## **VI.**

### **VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS**

#### **COUNT I**

##### **Fraud in the Sale of Futures Contracts**

45. Paragraphs 1 through 44 are re-alleged and incorporated herein.

46. During the relevant time period, Defendants F&S and Nass cheated or defrauded or attempted to cheat or defraud customers or prospective customers of F&S and willfully deceived or attempted to deceive customers or prospective customers in violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2004), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004).

47. During the relevant time period, Nass, as the President of F&S, directly or indirectly, controlled F&S and its employees, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), Nass is liable for the violations described in this Count I to the same extent as F&S.

48. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), F&S is liable for any violations of Section 4b(a)(2)(i) and (iii), 7 U.S.C. § 6b(a)(2)(i) and (iii) (2002), and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004) of the Act by its officers, directors, managers, employees, and agents, in that all such violations were within the scope of their office or employment with F&S.

49. Each material misrepresentation or omission made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2004) and Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2005).

## **COUNT II**

### **Sale of Illegal Off-Exchange Futures Contracts**

50. Paragraphs 1 through 49 are re-alleged and incorporated herein.

51. During the relevant period, F&S offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts were not executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002).

52. During the relevant period, Nass, as the President of F&S, directly or indirectly controlled F&S and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), Nass is liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), described in this Count II to the same extent as F&S.

## VII.

### RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2004), and pursuant to the Court's own equitable powers:

A. Find that Defendants violated Sections 4(a) and 4b(a)(2)(C)(i) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2)(C)(i) and (iii) (2004), and Commission Regulation 1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004);

B. Enter an *ex parte* statutory restraining order and an order of preliminary and permanent injunction restraining and enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;
2. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;
3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated,

including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of any of the Defendants for the amounts indicated in this complaint; and

C. Enter a statutory restraining order and orders of preliminary and permanent injunctions prohibiting Defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Sections 4(a) and 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6(a) and 6b(a)(2)(i) and (iii) (2002), and Regulation

1.1(b)(1) and (3), 17 C.F.R. § 1.1(b)(1) and (3) (2004); and

2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, or for themselves as well, whether by power of attorney or otherwise.

D. Enter an *ex parte* statutory restraining order and orders of preliminary and permanent injunctions directing Defendants to take such steps as are necessary to transfer possession of all assets including the repatriation to the territory of the United States all funds and assets of F&S customers described herein which are held by Defendants or are under their direct or indirect control, jointly or singly, and deposit such funds with the Monitor, the Natural Futures Association, or otherwise as the Court may order, and provide the Commission and the Court with a written description of the funds and assets so repatriated;

E. Enter an order of permanent injunction directing Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits

derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;

F. Enter an order of permanent injunction directing Defendants to make full restitution to every customer whose funds were received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

G. Enter an order of permanent injunction assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$130,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act and Commission Regulations;

H. Enter an *ex parte* statutory restraining order and orders of preliminary and permanent injunctions directing that Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other

disbursements of money and property of any kind, from, but not limited to, April 2005 through and including the date of such accounting;

I. Enter an order of permanent injunction requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2000);

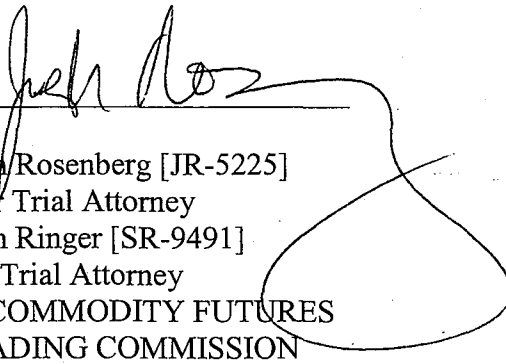
J. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: MARCH 1, 2006

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF  
COMMODITY FUTURES TRADING  
COMMISSION

Stephen J. Obie  
Regional Counsel / Associate Director

By:   
Joseph Rosenberg [JR-5225]  
Senior Trial Attorney  
Steven Ringer [SR-9491]  
Chief Trial Attorney  
U.S. COMMODITY FUTURES  
TRADING COMMISSION

140 Broadway, 19<sup>th</sup> Floor  
New York, New York 10005  
(646) 746-9765  
(646) 746-9940 (facsimile)  
jrosenberg@CFTC.gov