

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

U.S. COMMODITY FUTURES
TRADING COMMISSION

Plaintiff,

v.

FINANCIAL ROBOTICS, INC., a Texas
corporation, and MARK E. RICE,

Defendants.

Case No. 4:11-cv-02446

**CONSENT ORDER OF PERMANENT INJUNCTION, RESTITUTION, CIVIL
MONETARY PENALTY, AND OTHER EQUITABLE RELIEF
AGAINST DEFENDANT MARK E. RICE**

I. BACKGROUND

On June 29, 2011, Plaintiff U.S. Commodity Futures Trading Commission filed a Complaint for Permanent Injunction, Disgorgement, Restitution, Civil Monetary Penalties and Other Equitable Relief ("Complaint")(Docket #1) against Defendants Financial Robotics, Inc. ("FinRob") and Mark E. Rice ("Rice")(collectively, "Defendants") for violations of Sections 4b(a)(2)(A) and (C) of the Commodity Exchange Act ("CEA" or the "Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C)).

On June 30, 2011, the Court entered an Order Granting Plaintiff's *Ex Parte* Motion for Statutory Restraining Order, Expedited Discovery, Accounting, Order to Show Cause re Preliminary Injunction and Other Equitable Relief (Docket #6).

On July 22, 2011, Rice filed his Motion to Dismiss Under Rule 12(b)(5) Federal Rules of Civil Procedure and Original Answer Subject Thereto ("Answer") (Docket #20).

On August 8, 2011, the Court entered an Order of Preliminary Injunction and Other Equitable Relief Against Defendants (Docket #34).

On June 27, 2013, the Commission filed an Amended Complaint against Defendants (Docket #190).

II. CONSENTS AND AGREEMENTS

To effect settlement of this action without a trial on the merits or further judicial proceedings, Rice:

1. Consents to the entry of this Consent Order of Permanent Injunction, Restitution, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Mark E. Rice ("Consent Order");
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service upon him of the summons, Complaint and Amended Complaint;
4. Admits the jurisdiction of the Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), for those acts and omissions

occurring on or after June 18, 2008;

5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2006), and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009), for those acts and omissions occurring on or after June 18, 2008;

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. §13a-1(e) (2006);

7. Waives:

a. any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§148.1, *et seq.* (2011), relating to, or arising from this action;

b. any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from this proceeding;

c. any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order;

8. Waives any and all rights of appeal from this action;

9. Consents to the continued jurisdiction of this Court over him for the purposes of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if he now or in the future resides or operates outside the

jurisdiction of this Court;

10. Agrees that he will not oppose enforcement of this Consent Order on the grounds that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

11. Agrees that neither he nor any of his agents under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint, Amended Complaint (Docket #169-6) or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint, Amended Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Rice shall undertake all steps necessary to ensure that agents under his authority or control understand and comply with this agreement;

12. By consenting to the entry of this Consent Order, Rice neither admits nor denies the allegations of the Complaint, Amended Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which he admits. Further, Rice agrees and intends that the allegations contained in the Complaint, Amended Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against him; (b) any proceeding pursuant to Section 8a of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July

21, 2010), to be codified at 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2011); and/or (c) any proceeding to enforce the terms of this Consent Order.

13. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him whether inside or outside the United States; and

14. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Rice in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. The Court, being fully advised in the premises, finds that there is good cause for entry of this Consent Order and that there is no just reason for delay. The Court, therefore, directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (Supp. III 2009), as set forth herein.

THE COURT HEREBY FINDS:

A. FINDINGS OF FACT

1. The Parties

16. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

17. Defendant Financial Robotics, Inc. is a Texas corporation with its principal place of business at 2700 Post Oak Boulevard, Suite 2375, Houston, Texas 77056. FinRob was

engaged in the business of providing advice for profit on the trading of agreements, contracts or transactions in off-exchange foreign currency ("forex") that are margined or leveraged and soliciting and accepting funds to trade forex on behalf of others. FinRob has never been registered with the Commission in any capacity. FinRob is not a financial institution, registered broker dealer, insurance company, financial holding company or investment banking holding company, and is not an associated person of such entities. The forex transactions offered or conducted by Defendants neither resulted in delivery nor created an enforceable obligation to deliver between a seller and a buyer, that have the ability to deliver and accept delivery, respectively, in connection with their lines of business. The only known customer of FinRob, Robert P. Copeland ("Copeland"), is not an eligible contract participant. See Section 1a of the CEA, as amended by the CRA, to be codified at 7 U.S.C. § 1a (defining an "eligible contract participant," in relevant part, as an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction "to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual"). Rice founded and controlled FinRob, solicited funds to trade forex on behalf of FinRob, and managed client funds held by FinRob and FinRob's trading of those funds in forex.

18. Defendant Mark E. Rice is an individual with a last known residence in Sugar Land, Texas. He was engaged in the business of providing advice for profit on the trading of forex and soliciting and accepting funds to trade forex. Rice controlled and is the owner and manager of FinRob and Bison Holdings, Inc. ("Bison Holdings"), Commodity Futures and Options Services, Inc. ("CFOS"), Corporate Services, Inc. ("Corporate Services"), Deposit Capital, Inc. ("Deposit Capital"), InventBay Holdings, Inc. ("InventBay"), Lanxide Corporation ("Lanxide"), Nemaha, Inc. ("Nemaha"), Texana, Inc. ("Texana") and U232, Inc. ("U232")

(collectively, the "Rice Companies"). Rice has never been registered with the Commission in any capacity. Rice is not a financial institution, registered broker dealer, insurance company, financial holding company or investment banking holding company and is not an associated person of such entities.

2. Defendants' Fraudulent Solicitation

19. Commencing in September 2006, Defendants, acting directly or through their agents, employees or officers, solicited approximately \$10.4 million from at least one individual, Copeland, for the purported purpose of trading managed accounts operated and managed by Rice in connection with agreements, contracts or transactions in off-exchange forex that are margined or leveraged.

20. Rice held himself out as the owner and manager of FinRob at all relevant times including, but not limited to, when he solicited funds from Copeland.

21. Defendants solicited Copeland directly or through Defendants' agents, employees or officers, through face-to-face meetings, facsimile correspondence and telephone communications. Defendants used the instrumentalities of interstate commerce in their solicitations of Copeland.

22. In Rice's solicitations of Copeland, Rice told him that Defendants had developed automated forex software trading programs known as expert advisors ("EAs") that generated "phenomenal returns" (30% per month) in test situations in American and European markets and significant profits (10-15% per month) in actual trading.

23. Rice told Copeland that his investment with Defendants would be "risk free," as Rice would only invest a small percentage of Copeland's funds at a time. Rice also guaranteed that Copeland would not lose his principal investment, as he represented that Defendants

maintained an insurance policy that would protect Copeland's principal from loss.

24. Defendants, through the acts of and omissions of at least Rice, did not disclose to Copeland that they would transfer his funds to Rice controlled entities, including but not limited to the Rice Companies.

25. Defendants, through the acts and omissions of at least Rice, did not disclose to Copeland that they would use his funds to pay Defendants' business expenses and Rice's personal expenses.

26. In reliance on Rice's claims regarding Defendants' profitable trading history, Rice's claims that Copeland's investment would be "risk free" and insured against loss, Copeland decided to invest with Defendants.

27. Copeland did not invest his own assets with Defendants. Copeland invested funds with Defendants that he had fraudulently solicited from at least 125 individuals for investment in real estate financing and/or development activities. On April 20, 2009, Copeland pled guilty to one count of wire fraud, a felony, stemming from his fraudulent solicitations of real estate investors. Copeland is serving a 121 month sentence at the Federal Correctional Institution Williamsburg, Salters, South Carolina. *See United States v. Copeland*, No. 1:09-CR-00178-BBM (N.D. Ga. Sept. 22, 2009). Copeland was also subject to an enforcement action by the Securities and Exchange Commission. *See SEC v. Copeland*, No. 1:09-cv-00943 (N.D. Ga. April 9, 2009).

28. Rice initially instructed Copeland to open a trading account in Copeland's name with a registered futures commission merchant ("FCM") and deposit funds for investment into that account. In January 2007, Copeland opened a trading account at an FCM and wired approximately \$502,000 into the account. Rice controlled all of the forex trading in Copeland's

FCM accounts and provided at least one performance report to Copeland via e-mail. Between January 2007 and May 2007, Rice's trading of the funds in the accounts in off-exchange forex on a leveraged or margined basis resulted in overall losses of approximately \$101,000.

29. After only a few months of trading, Rice talked Copeland into giving him control of Copeland's funds by telling Copeland that significant losses could be avoided, if Copeland withdrew his funds from the FCM and deposited them directly with Defendants. Rice informed Copeland that Defendants were going to move all of their investments to England, as that market could provide greater returns than the American market. In reliance on Rice's promises of improved performance, Copeland withdrew his funds from the FCM and invested them directly with FinRob.

30. Rice directed Copeland to deposit his funds for investment into bank accounts held by FinRob, and another Rice-controlled entity, CFOS.

31. Between March 2007 and August 2008, Copeland complied with Rice's direction and wired approximately \$9.9 million to CFOS and FinRob bank accounts for investment in forex managed by Defendants. Most of the Copeland funds went into FinRob bank accounts.

32. As of June 18, 2008, Defendants maintained at least \$303,000 of Copeland's funds in bank and trading accounts that they controlled. Copeland wired approximately \$1.4 million to FinRob after June 18, 2008, bringing Copeland's post-June 18, 2008 total deposits with Defendants to at least \$1.7 million.

33. Between May 2007 and September 2008, FinRob, acting through Rice, and Rice deposited approximately \$5.75 million of the Copeland funds into leveraged forex trading accounts held in the name of CFOS, FinRob and Wertpatiere Kreditanstalt AG Trust at various FCMs and brokerage houses. Defendants, through Rice, deposited approximately \$408,000 of

the Copeland funds into FinRob forex trading accounts after June 18, 2008.

34. In those trading accounts, between October 2007 and January 2009, Defendants traded some of the Copeland funds and sustained net losses of approximately \$7.9 million – losing approximately \$2.15 million more of Copeland's funds than they had deposited due to a purported trading error. Defendants sustained trading losses of approximately \$382,509 in the FinRob trading accounts after June 18, 2008.

35. Copeland maintained his investors' funds with Defendants based on the positive returns Rice reported to Copeland, Rice's projections of continued profits and Rice's continued minimization of the risks associated with Copeland's investments. On a weekly basis, Rice engaged in telephone conversations with Copeland regarding the performance of Copeland's investment. In those phone conversations, Rice informed Copeland that his funds consistently generated returns between 5-9% per month and experienced no losses. From July 2007 to September 2008, Defendants wired approximately \$1.7 million to Copeland as purported earnings from their forex trading, despite sustaining significant trading losses during that time period. Defendants wired approximately \$100,000 of those purported earnings to Copeland after June 18, 2008.

36. As of September 2008, Defendants' trading of Copeland's funds had sustained at least \$2.8 million in net cumulative trading losses. Regardless, in September 2008, Defendants misrepresented to Copeland that his investment with Defendants realized earnings of approximately \$5 million and would further increase in value. At a September 2008 meeting in Houston, Texas, Rice talked Copeland out of liquidating his account based on Rice's claims of historic and future profitability. Rice showed Copeland an account statement reporting that Defendants' forex trading on behalf of Copeland was consistently profitable and had made

overall net profits of approximately \$5 million. Rice also told Copeland that his investment would make an additional \$5 million in overall net profits, if Copeland permitted Defendants to continue trading Copeland's funds until January 2009. In reliance on Rice's claims of past and continued profitability and minimization of risks, Copeland maintained his investors' funds with FinRob.

37. At the same September 2008 meeting, Copeland confided in Rice for the first time that he had misappropriated the funds that he invested with Defendants from his real estate investors. Shortly thereafter, Rice informed Copeland that all of his funds had been purportedly lost in trading. In February 2009, Rice notified Copeland that Defendants' trading had never been insured against loss.

38. Copeland demanded that Defendants return his principal investment. Since December 2008, Defendants have only returned approximately \$773,000 to Copeland, bringing the total amount of funds Defendants returned to Copeland since he initially invested with Defendants in March 2007 to approximately \$2.7 million. Defendants returned approximately \$873,000 of those funds post-June 18, 2008.

39. In deciding to trade with Defendants, Copeland relied upon Defendants' material misrepresentations and omissions concerning the risks associated with trading forex. Copeland maintained his funds and deposited additional funds with Defendants based on Defendants' misrepresentations concerning Defendants' purportedly profitable trading and the value of Copeland's investment with Defendants.

40. FinRob, acting through at least Rice, and Rice knowingly or recklessly made those material misrepresentations and omissions to induce Copeland to invest with them.

3. Defendants' Misappropriation of Funds

41. Defendants, through the acts and omissions of at least Rice, misappropriated Copeland's funds by transferring them to the Rice Companies and other Rice controlled third parties and using them to pay for business and personal expenses, without Copeland's knowledge or authorization.

42. Defendants, through the acts and omissions of at least Rice, transferred at least \$2.4 million of Copeland's funds to Rice-controlled companies, including but not limited to the Rice Companies. Defendants transferred at least \$576,000 of these funds after June 18, 2008.

43. The Rice Companies did not provide any apparent legitimate services nor have any legitimate interest or entitlement to Copeland's funds.

44. Defendants, through the acts and omissions of at least Rice, used at least \$1.3 million of the Copeland funds held by the Rice Companies to pay for, among other things, vacations, motorcycles and racehorses, to fund significant cash withdrawals, and to make payments on numerous credit cards held by various individuals and entities, including but not limited to Rice. Defendants expended at least \$404,000 of these funds for Defendants' business expenses and Rice's personal expenses after June 18, 2008.

45. Defendants never disclosed to Copeland that they transferred his funds to Rice-controlled companies and that they used his funds to pay Defendants' business expenses and Rice's personal expenses.

B. CONCLUSIONS OF LAW

1. Jurisdiction and Venue

46. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

47. The Commission has jurisdiction over the forex solicitations and transactions at issue in this action pursuant to Sections 6c and 2(c)(2)(C) of the Act, 7 U.S.C. § 13a-1, 2(c)(2)(C) (2006 and Supp. III 2009), for any such solicitations and transactions on or subsequent to June 18, 2008.

48. Venue properly lies with this Court pursuant to Section 6c(e) of the CEA, as amended by CRA, to be codified at 7 U.S.C. § 13a-1(e), because Defendants are found, inhabit, reside and/or transact business in the Southern District of Texas, and certain of the transactions, acts, practices, and courses of business alleged to have violated the CEA occurred, are occurring, and/or are about to occur within this District.

2. Violation of Sections 4b(a)(2)(A) and (C) of the Act, as Amended by the CRA: Fraud By Misrepresentation and Omission

49. As set forth above, from at least June 18, 2008, in or in connection with forex contracts, made or to be made, for or on behalf of, or with, other persons, FinRob, acting through at least Rice, and Rice cheated or defrauded or attempted to cheat or defraud at least one person, Copeland, and willfully deceived or attempted to deceive at least one person, Copeland, by, among other things, knowingly making material misrepresentations and omissions concerning, but not limited to, insurance against loss, guaranteed return of principal, profitable trading on behalf of Copeland, increase in value of Copeland's investment and the risks involved in trading forex, all in violation of Section 4b(a)(2)(A) and (C) of the CEA as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

50. **FinRob, acting through at least Rice, and Rice engaged in the acts and practices described above knowingly or with reckless disregard for the truth.**

51. **The foregoing fraudulent acts, misrepresentations, omissions and failures of Rice occurred within the scope of his employment or office with FinRob.**

52. **Each act of fraudulent solicitation and misrepresentation and omission of material fact 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)(A) and (C) of the CEA, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C).**

3. Violation of Sections 4b(a)(2)(A) and (C) of the Act, as Amended by the CRA: Fraud By Misappropriation

53. **As set forth above, from at least June 18, 2008, in or in connection with forex contracts, made or to be made, for or on behalf of, or with, other persons, FinRob, acting through at least Rice, and Rice cheated or defrauded or attempted to cheat or defraud at least one person, Copeland, and willfully deceived or attempted to deceive at least one person, Copeland, by, among other things, using funds solicited from Copeland to transfer to third parties under Rice's control and to pay for Defendants' business and personal expenses.**

54. **Defendants knowingly misappropriated funds in violation of Section 4b(a)(2)(A) and (C) of the CEA as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).**

55. **The foregoing misappropriation by Rice occurred within the scope of his employment or office with FinRob.**

56. **Each act of misappropriation 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)(A) and (C) of the CEA, as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(2)(A) and (C).**

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

57. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, Rice is permanently restrained, enjoined and prohibited from directly or indirectly cheating or defrauding, or attempting to cheat or defraud, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person in violation of Sections 4b(a)(2)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) and (C).

58. Rice is also permanently restrained, enjoined and prohibited from directly or indirectly:

a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);

b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2011)) ("commodity options"), swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (Supp. V 2011), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2012) ("swaps"), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for his own personal account or for any account in which he has a direct or indirect interest;

c. Having any commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts traded on his behalf;

d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts;

e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, security futures products, and/or forex contracts;

f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and/or

g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

59. Rice shall pay restitution in the amount of \$827,000 ("Restitution Obligation"), plus post-judgment interest. The Restitution Obligation shall be paid within thirty (30) days of the date of the entry of this Consent Order. If the Restitution Obligation is not paid in full within thirty (30) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and

shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

60. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Copeland's investors, and after the termination of the Receiver's duties, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall collect restitution payments from Rice and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

61. Rice shall make any Restitution Obligation payments under this Consent Order to the Monitor in the name "Financial Robotics Restitution Fund" and shall send such Restitution Obligation payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying defendant and the name and docket number of this proceeding. The paying defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

62. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Copeland's investors as identified by the U.S. District Court for the Northern District of Georgia, in its September 21, 2009 Amended Judgment in a Criminal Case, *United States v. Copeland*, No. 1:09-CR-00178-TCB (N.D. Ga. Sept. 21, 2009); or may defer distribution until such time as the

Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible investors is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth herein.

63. Rice shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify those customers, not previously identified, if any, to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Respecting any such customers, Rice shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

64. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Copeland's investors during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

65. The amounts payable to each such customer shall not limit the ability of any such customer from proving that a greater amount is owed from Rice or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any such customer that exists under state or common law.

66. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of Rice's

customers who suffered a loss, e.g., Copeland, is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order in this Court to obtain satisfaction of any portion of the restitution that has not been paid by Rice to ensure continued compliance with any provision of this Consent Order and to hold Rice in contempt for any violations of any provision of this Consent Order.

67. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Rice's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

68. To the extent this Court orders any other defendant in this action to pay restitution, Rice's Restitution Obligation will be deemed satisfied, on a dollar-for-dollar basis by such other defendant's payments in satisfaction of his restitution obligation pursuant to such other order of this Court.

B. Civil Monetary Penalty

69. Rice shall pay a civil monetary penalty in the amount of \$673,000 ("CMP Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of this Consent Order. If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2006).

70. Rice shall pay his CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the U.S.

Commodity Futures Trading Commission and sent to the address below:

**U.S. Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644**

If payment by electronic funds transfer is chosen, the paying defendant shall contact Linda Zurhorst or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The paying defendant shall accompany payment of the CMP Obligation with a cover letter that identifies the paying defendant and the name and docket number of this proceeding. The paying defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Provisions Related to Monetary Sanctions

71. **Partial Satisfaction:** Any acceptance by the Commission or the Monitor of partial payment of Rice's Restitution Obligation or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VI. MISCELLANEOUS PROVISIONS

72. **Notice:** All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

**Attention - Director of Enforcement
U.S. Commodity Futures Trading Commission
Division of Enforcement**

Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

All such notices to the Commission shall reference the name and docket number of this action.

Notice to the Monitor:

Vice President, Compliance
National Futures Association
200 West Madison Street
Chicago, IL 60606

Notice to Rice:

Geoffrey H. Bracken
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, TX 77002-5011

73. **Entire Agreement and Amendments:** This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

74. **Invalidation:** If any provision of this Consent Order or the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

75. **Waiver:** The failure of any party to this Consent Order or of any of Rice's customers at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or

continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

76. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Rice to modify or for relief from the terms of this Consent Order.

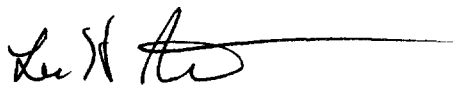
77. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Rice, upon his agents, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Rice.

78. **Counterparts and Facsimile Execution:** This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

79. Rice understands that the terms of the Consent Order are enforceable through contempt proceedings in this Court, and that, in any such proceedings he may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Consent Order for Civil Monetary Penalty, and Other Equitable Relief Against Mark E. Rice.*

IT IS SO ORDERED on this 13th day of July, 2013.

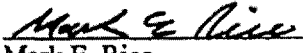


LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM BY:

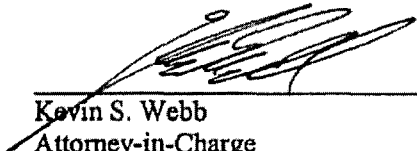
Defendant:

Plaintiff:



Mark E. Rice

Date: 9-26-13



Kevin S. Webb
Attorney-in-Charge
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581
202-418-5000
202-418-5538 (facsimile)
kwebb@cftc.gov

Date: 1/6/14

APPROVED AS TO FORM BY:

Receiver:

/s/ Kelly M. Crawford

Kelly M. Crawford

Receiver

Scheef & Stone, LLP

500 N. Akard Street, Suite 2700

Dallas, Texas 75201

Telephone: 214.706.4200

Telecopier: 214.706.4242

kelly.crawford@solidcounsel.com

Date: January 6, 2014