

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of

Robbins Futures, Inc. and
Joel Robbins,

Respondents.

: CFTC Docket No. 03-05
:
: ORDER MAKING FINDINGS AND
: IMPOSING REMEDIAL SANCTIONS AS
: TO RESPONDENTS ROBBINS FUTURES,
: INC. AND JOEL ROBBINS
:
: Respondents. :
:

I.

On December 30, 2002, the Commodity Futures Trading Commission ("Commission") filed a Complaint and Notice of Hearing ("Complaint") against Robbins Futures, Inc. (RFI) and Joel Robbins ("Robbins"). The Complaint charges that RFI and Robbins violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2002) and that Robbins is liable for the violations of RFI as a controlling person by virtue of Section 13(b) of the Commodity Exchange Act, as amended ("the Act"), 7 U.S.C. § 13c(b) (2001).

II.

In order to dispose of the allegations and issues in the Complaint, RFI and Robbins have submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Without admitting or denying the allegations or findings herein, RFI and Robbins acknowledge service of this Order Making Findings and Imposing Remedial Sanctions ("Order") and consent to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ RFI and Robbins do not consent to the use of the Offer or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. RFI and Robbins also do not consent to the use of the Offer or the findings in the Order by any other person or entity in this or any other proceeding.

III.

The Commission finds that:

A. SUMMARY

Between January 1999 and August 2001 (“the relevant time period”), Andrew Duncan (“Duncan”), an individual located in Toronto, Canada, and doing business as The Aurum Society (“Aurum”), used four commodity interest accounts at RFI (“the Aurum accounts”) to engage in a commodity pool fraud that defrauded both United States and Canadian citizens.² Duncan deposited nearly \$2.5 million in customer funds into the accounts and lost approximately \$1.35 million trading.

During the relevant time period, RFI and Robbins failed to supervise the RFI employees’ handling of the Aurum accounts as well as three managed commodity interest accounts over which Duncan had power of attorney (“the managed accounts”). As a result of inadequate compliance procedures and lack of proper training for key staff, RFI failed to respond to warning signs that Duncan was acting as an unregistered commodity pool operator and engaging in commodity pool fraud through the accounts at RFI.

Robbins had overall responsibility for RFI during the relevant time period and failed to ensure that RFI had adequate compliance procedures and that RFI’s employees were properly trained. In addition, Robbins had day-to-day management of RFI during most of the relevant time period and directly supervised the employees whose conduct contributed most immediately to the supervision failure at RFI.³

B. RESPONDENTS

Robbins Futures, Inc., is a registered futures commission merchant (“FCM”) located at President’s Plaza, 8700 W. Bryn Mawr Ste. 760-S, Chicago, Illinois 60631-3507.

Joel Robbins is the president of RFI and Robbins Trading Company (“RTC”), a guaranteed introducing broker of RFI. Robbins was registered with the Commission as a floor broker from January 1, 1982 until March 31, 1983. He has been registered as an associated person (“AP”) of RTC since September 27, 1984, and as an AP of RFI since November 3, 1987. He has been a principal of both RFI and RTC since April 1, 1984.

² On August 30, 2001, the Commission filed a complaint against Duncan and Aurum in U.S. District Court for the Northern District of Illinois. (Case Number 01 C 6802) The complaint alleged, *inter alia*, that Duncan had acted as an unregistered commodity pool operator and an unregistered commodity trading advisor and had engaged in commodity pool fraud. On April 3, 2002, the court granted the Commission’s Motion for Default Judgment, entered a permanent injunction and granted other ancillary relief, including \$3,456,555 in restitution and a civil monetary penalty of \$360,000.

³ Until late 2000, RFI had a General Counsel and Compliance Manager who shared day-to-day management of the firm with Robbins.

C. FACTS

1. RFI's Relationship With Andrew Duncan and The Aurum Society

In late 1998 Duncan met Ryan Spritz ("Spritz"), RTC's Director of Broker Services, at a futures trading seminar where Spritz was soliciting accounts for RFI. In January 1999, Duncan opened the first of what would eventually be four corporate accounts at RFI in the name of Aurum. RFI account documents identified Aurum as a Cayman Island corporation and Duncan as the sole shareholder. In addition to the Aurum accounts, Duncan eventually had power of attorney over three managed accounts at RFI that were owned by other individuals or entities. Spritz was the AP on the Aurum accounts as well as Duncan's managed accounts.

2. RFI's Wire Handling Procedures

During the relevant time period, RFI customers who wired funds for their commodity trading accounts at RFI wired the funds to the bank where RFI maintained its customer segregation accounts. When the bank received a wire transfer of funds for an RFI customer, a bank employee called RFI to notify RFI that the funds had been received. The bank employee provided RFI the information contained in the incoming wire advice, including, if available, the name of the accountholder at the bank that was sending the funds ("the remitter").⁴ The RFI employee who received the call from the bank recorded the information on what RFI referred to as a "wire memo." Although the RFI employee generally recorded all the information the bank provided, the only information that RFI used in processing the wires was the amount of the wire and the identity of the account at RFI that was to receive the funds. Significantly, RFI had no procedure for reviewing the information to identify the remitter and whether the remitter was also the RFI accountholder.

The absence of a procedure to identify the remitter on wires left RFI vulnerable to the possibility that third parties, individuals other than the accountholder, could wire funds into RFI accounts without RFI's knowledge. Between March 2000 and May 2001, there were 19 instances where some individual or entity other than the accountholder wired funds to the Aurum accounts. These wires totaled nearly \$2 million. In addition, there were 15 instances where some individual or entity other than the accountholder wired funds into the three accounts Duncan managed. These wires totaled approximately \$430,000. Because RFI did not attempt to verify that the remitter of the wire was also the RFI accountholder, RFI failed to detect that these funds were coming from someone other than the accountholder.

3. RFI's Check Handling Procedures

During this period, RFI did not accept for deposit personal checks that were from someone other than the accountholder nor would it accept a third party check endorsed to

⁴ The remitter could be an individual or an entity such as a corporation. In rare instances the wire advice might simply identify the FCM or bank that was sending the wire.

RFI by the accountholder. However, RFI had no procedures for identifying situations in which less obvious forms of deposit, such as cashier's checks and money orders, might be from someone other than the accountholder.

RFI routed all account-related mail, including personal checks, cashier's checks and money orders for customer accounts, to the AP handling the account. If the funds were for an existing account, the AP routed the check to RFI's back office and Mark Martin ("Martin"), RFI's Treasurer, for processing. If the funds were to open a new account, the AP sent the check with the account papers to the Compliance Department and the Compliance Department sent the check to Martin after the Compliance Manager, Pamela Spritz, reviewed the account papers. Neither Martin nor Pamela Spritz scrutinized checks unless they were obviously from a non-accountholder. Instead, they reviewed all checks, including cashier's checks and money orders, solely to determine to which account they should be credited.

The absence of any review of cashier's checks and money orders to determine if they might be from someone other than the accountholder left RFI vulnerable to the possibility that cashier's checks and money orders containing third party funds could be deposited into customer accounts without detection. On or about October 18, 2000, Spritz received nine cashier's checks and three postal money orders totaling \$30,965 from an individual named Roland Landry ("Landry") with a cover letter instructing him to deposit the checks and money orders into the Aurum accounts. Landry was not the accountholder and was not identified anywhere in the account documentation; however, based upon conversations he had with Duncan, Spritz believed Landry was Duncan's employee. The checks and money orders were all dated October 13, 2000. The nine checks came from three different banks and seven different locations. Four of the checks came from four different locations of one bank and four other checks came from at least two different locations of a second bank. Between October 2000 and April 2001, Landry sent six more cashier's checks and money orders totaling \$21,000 with cover letters instructing Spritz to deposit the funds into the Aurum accounts.

4. Deposit and Withdrawal Activity In the Aurum Accounts

On August 31, 2000, RFI received a \$200,000 wire transfer for the Aurum accounts from an overseas bank; on or about September 5, 2000, Duncan instructed RFI to wire \$210,000 from the Aurum accounts to an Aurum account at the Bank of Bermuda ("BOB"). Similarly, on December 1, 2000, RFI received a \$120,000 wire transfer for the Aurum accounts from a third party; on or about December 4, 2000, Duncan instructed RFI to wire \$120,000 from the Aurum accounts to the BOB. Finally, on January 16, 2001, RFI received a \$500,000 wire transfer for the Aurum accounts from an overseas bank; on or about January 25, 2001, Duncan instructed RFI to wire \$360,000 from the Aurum accounts to the BOB. RFI had no procedure to review the overall wire activity in accounts for this type of deposit and withdrawal activity and no one at RFI asked Duncan about the transactions or made any other inquiry about the activity.

5. RFI Received Telephone Inquiries About Duncan

In or around April 2001, Spritz began to receive telephone inquiries about Duncan and Aurum from three different individuals. First, between April 2001 and June 2001, one of Duncan's managed account clients made multiple calls to Spritz seeking information about the performance in the Aurum accounts. Spritz repeatedly told the caller he could not disclose confidential information regarding other accountholder's accounts, but that everything was fine. Duncan had previously attempted to transfer funds from an Aurum account to the managed accountholder's account to reimburse the accountholder for losses incurred as a result of Duncan's trading for the account and Spritz understood that the caller and Duncan had an agreement to pay the accountholder's losses from profits in the Aurum accounts. Consequently, Spritz did not find the calls suspicious and did not report them to anyone at RFI.

Next, in or around April 2001, Spritz received a telephone call from a woman who inquired about opening an account at RFI to be managed by Duncan. The caller did not open an account, but called back several weeks later and claimed Duncan had stolen funds that she and other individuals had given him to invest. Spritz believed the caller sounded confused, but reported the call to Robbins who told him to ask Duncan about it. When Spritz asked Duncan about the call, Duncan told him that the caller was "nuts." Because Spritz felt the caller had sounded confused when he talked to her, he accepted Duncan's explanation and RFI conducted no further inquiry.

Finally, in or around June 2001, Spritz had the first of a series of telephone calls about Duncan from an individual who told Spritz he was a certified public accountant and that the woman who had called Spritz in April was his client. He wanted to know whether Duncan had opened an account at a second FCM.⁵ Spritz had previously spoken with Duncan, who advised him that the accountant would call and that Spritz could tell him whether the account had been opened. Spritz advised the accountant that the account had not been opened.⁶ The accountant called back several weeks later and asked Spritz how much money Duncan had in the Aurum accounts. Spritz called Duncan and asked him if he wanted the information disclosed. Duncan told Spritz he was trying to stall the accountant until he could deposit his funds in the account and did not want the accountant to know the account balance. Spritz did not inquire why Duncan wanted to stall the accountant, but, in accordance with Duncan's directions, refused to disclose the information. Once again, Spritz did not find the telephone calls suspicious and did not immediately report them to his superiors.

On August 17, 2001, the accountant faxed Spritz an RFI account statement for an Aurum account for June 6, 2001 that showed a balance of over \$11 million in the account. In fact, the account statement was fictitious and by June 6, 2001 there were no

⁵ Duncan was in the process of opening an account at a second FCM that he represented to Spritz and RFI he was going to fund with \$50 million. The account was going to be too large for RFI and Spritz and RFI were assisting Duncan in opening the account at the second FCM.

⁶ The account was never funded.

funds in the account. Upon receiving the fictitious account statement, RFI called the National Futures Association ("NFA") to advise it of the situation and NFA contacted the Commission.

6. RFI and Robbins Failed to Supervise RFI's Employees Handling of the Aurum Accounts and Duncan's Managed Accounts

As a result of inadequate compliance procedures and a lack of proper training for key staff, RFI failed to recognize and respond to a series of warning signals that, taken as a whole, indicated that Duncan was engaged in illegal and fraudulent pool activity. RFI's failure to recognize and respond to these warning signals was a failure to supervise.

RFI Failed To Ensure That It Knew The Source Of Funds In The Aurum Accounts And Duncan's Managed Accounts

RFI failed to ensure that it knew the source of funds coming into the Aurum accounts and Duncan's managed accounts. The ability to determine if funds in customer accounts are coming from someone other than the accountholder is a necessary part of an adequate supervisory system. RFI's procedures for determining the source of funds received through wire transfer, cashier's check or money orders were inadequate to meet its supervisory responsibilities. The problems with RFI's compliance procedures for handling of the wire transfers, cashier's checks and money orders might have been avoided if its staff had been properly trained. However, key RFI personnel failed to recognize problems in the firm's procedures even when they were confronted with obvious warning signals in the wire and check activity connected to the Aurum accounts and Duncan's managed accounts.

RFI could easily have detected the third party wires coming into the Aurum accounts and Duncan's managed accounts. The bank provided RFI the identity of the remitter when it called to advise that the funds had been received. Moreover, the name of the remitter was actually written on the majority of the wire memos the RFI employees prepared. Twelve of the wire memos for the Aurum accounts and thirteen of the wire memos for Duncan's managed accounts contained the name of the remitter. In each instance, the remitter was someone other than the accountholder. Accordingly, had the RFI employees who took the notification calls and prepared the wire memos been instructed to determine the identity of the remitter before accepting a wire transfer, they could easily have done so and the fact that the funds were from third parties could have been discovered. The identity of the remitter was also on monthly account statements RFI received from the bank. However, the only person at RFI who reviewed the statements was Robbins and he did not review the detailed wire transaction information. RFI missed these signs of probable pool activity because it failed to understand and respond to available information.

The cashier's checks and money orders from Landry provided another opportunity for RFI to detect Duncan's fraudulent activity. Once again, the failure to do so can be traced to a lack of proper training. As stated previously, the twelve cashier's checks and money orders that Spritz received from Landry on October 18, 2000, all bore

the same date. The cashier's checks were from three different banks and seven different locations. Four of the checks came from four different locations of one bank and four other checks came from at least two different locations of a second bank. There is no apparent reason why an account holder would go to different locations of the same bank on the same day and obtain a cashier's check at each location just to deposit them all simultaneously into the same account. Similarly, there is no apparent reason why someone would obtain three money orders from the post office on the same day. The most likely explanation is that these were pooled funds. Nevertheless, Spritz found nothing suspicious in these circumstances and accepted the checks without bringing the checks or the letters to the attention of his superiors. Spritz's inability to recognize that these checks and letters were suspicious evidences his lack of proper training.

RFI Failed to Respond to Suspicious Deposit and Withdrawal Patterns in the Aurum Accounts

RFI also failed to detect suspicious deposit and withdrawal patterns in the four corporate Aurum accounts. A deposit followed by a prompt withdrawal of funds, with no apparent business purpose, is suspicious activity that requires an appropriate inquiry. As described above, on at least three occasions such suspicious deposit and withdrawal activity occurred in the Aurum accounts. However, RFI had no procedure to review accounts for this type of wire activity and failed to detect the suspicious activity.

RFI Failed to Respond Appropriately to Phone Calls About Duncan

The telephone inquiries Spritz received regarding Duncan and Aurum were suspicious and should have alerted him to Duncan's illegal pool activity. Once again, Spritz's lack of proper training led to an inadequate and inappropriate response.

First, the repeated calls from Duncan's managed account client seeking information about the performance in the Aurum accounts should have prompted an inquiry from Spritz on why the caller was interested in the performance of accounts in which he had no disclosed financial interest. Spritz's belief that the caller expected to be reimbursed for previous losses from profits in the Aurum account was an inadequate reason for neglecting to investigate the calls. Moreover, Duncan was consistently losing money in the Aurum accounts during this period and if Spritz thought the caller believed he was going to be reimbursed from profits in the Aurum accounts, he should not have told the caller that everything was fine. Regardless of what he believed to be the caller's motive for the repeated inquiries, Spritz should have reported the calls to his superiors. Significantly, at the time these calls were occurring, there was already substantial third party wire activity in the Aurum accounts and the checks and money orders from Landry had been received. In addition, the suspicious deposit and withdrawal activity had already occurred. Careful review of the account activity would have revealed the obvious warning signs of fraudulent pool activity.

RFI's response to the second caller was also inadequate. The caller may have sounded confused and may have had difficulty explaining herself to Spritz, nevertheless, the information was sufficiently suspicious to warrant an inquiry by RFI. Asking Duncan

about the allegations was unlikely to result in the discovery of improper or fraudulent activity by Duncan. There were other, more appropriate, actions RFI could have undertaken. RFI could have conducted a review of the activity in those accounts. As stated above, there was already significant suspicious activity in the Aurum accounts by this time. In addition, RFI could have attempted to learn more about the caller's allegations from the caller.

Finally, the conversations Spritz had with the accountant, especially in light of the previous telephone calls, should have resulted in an immediate inquiry. Questions about whether an account had been opened at another FCM and how much money was in the accounts at RFI, coupled with requests by Duncan to stall the accountant regarding information about the amount of money in the Aurum accounts, were red flags that should have been thoroughly investigated. However, Spritz failed to promptly report the calls to his superiors.

These phone calls, occurring over a period of nearly five months, were the culminating events in a continuing series of suspicious circumstances surrounding the Aurum accounts and Duncan's managed accounts. They required a prompt and vigorous response; however, RFI failed to respond until August 2001, when it received the fictitious statement from the accountant.

Robbins' Failure to Supervise

Robbins failed to ensure that RFI had adequate compliance procedures and that its employees were properly trained. Moreover, he personally supervised and had regular contact with the specific employees who contributed to the supervisory failure.

D. LEGAL DISCUSSION

1. RFI and Robbins Failed to Supervise

Commission Regulation 166.3 imposes on each registrant (except an AP who has no supervisory duties) an affirmative duty to "diligently supervise the handling by its ... employees and agents ... of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its ... employees and agents ... relating to its business as a Commission registrant." A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. In re Collins, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997); In re First National Trading Corp. ("FNTC"), [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,142 at 41,786 (CFTC July 20, 1994), *aff'd without op.*, Pick v. CFTC, No 95-3761 (6th Cir. Oct. 24, 1996); In re GNP Commodities, Inc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 n.11 (CFTC August 11, 1992) *aff'd in part and rev'd in part sub nom. Monieson v. CFTC*, 996 F. 2d 852 (7th Cir. 1993); In re Paragon Futures Assoc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC April 1, 1992).

For a registrant to fulfill its duty under Regulation 166.3, it must have both an adequate program of supervision and ensure that the program is followed. In re GNP, ¶ 25,360 at 39,219. A showing that a registrant lacks an adequate supervisory system can be sufficient to establish a violation of Regulation 166.3. In re FNTC, ¶ 26,142 at 41,786. The lack of an adequate supervisory system can be established by showing that the registrant failed to develop proper procedures for the detection of wrongdoing. CFTC v. Trinity Financial Group Inc., [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,179 at 45,635 (S. D. Fla. 1997), *aff'd in relevant part, vacated in part and remanded sub nom. Sidoti v. CFTC*, 178 F.3d 1132 (11th Cir. 1999). RFI lacked an adequate supervisory system.

Robbins failed to ensure RFI had adequate compliance procedures and training. The “existence of basic flaws in the overall design of [an FCM’s] compliance system” can be a basis for finding that the president of the firm violated Regulation 166.3. In re FNTC, ¶ 26,142 at 41,786. In GNP, the Commission affirmed that the chairman of the board had violated Regulation 166.3, stating that the respondent had “exercised close control over the firm.” In re GNP, ¶ 25,360 at 39,220. Moreover, in addition to failing to ensure that RFI had adequate compliance procedures and training, Robbins’ failure to reasonably exercise his direct supervisory responsibility over the RFI employees involved contributed to the breakdown in compliance at the firm.

2. Robbins was a Controlling Person of RFI

Section 13(b) of the Act provides: “Any person who, directly or indirectly, controls any person who has violated any ... regulations ... issued pursuant to this Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.”

Robbins controlled RFI. He was the president and day-to-day manager of the firm and was responsible for overseeing the firm. FNTC, ¶ 26,142 at 41,786 (chief executive officer of FCM held to be controlling person); In re GNP, ¶ 25,360 at 39,219 (chairman of the board of FCM held to be controlling person).

Robbins failed to ensure that RFI had an adequate compliance and supervisory system. A controlling person does not act in good faith when he fails to maintain a reasonably adequate system of internal supervision and control or does not enforce such a system with reasonable diligence. Monieson v. CFTC, 996 F. 2d 852, 858 (7th Cir. 1993)(citation omitted).

IV.

OFFER OF SETTLEMENT

RFI and Robbins have submitted an Offer of Settlement in which they acknowledge service of the Order and admit the jurisdiction of the Commission with

respect to the matters set forth in the Order, and waive: (1) a hearing and all post-hearing procedures, (2) judicial review by any court, (3) any objection to the staff's participation in the Commission's consideration of the Offer, (4) all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-232, 110 Stat. 862-63, and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2002), relating to, or arising from this action, and (5) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

RFI and Robbins stipulate that the record basis on which the Order is entered consists of the Order and the findings in the Order consented to in the Offer. RFI and Robbins consent to the Commission's issuance of this Order, which makes findings as set forth herein and orders that RFI and Robbins: (1) cease and desist from violating the provisions of the Commission Regulations they have been found to have violated; and (2) pay a civil monetary penalty of \$120,000.00.

V.

FINDING OF VIOLATIONS

Solely on the basis of RFI and Robbins's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that RFI and Robbins violated Commission Regulation 166.3 and that Robbins is liable for RFI's violations as a controlling person pursuant to Section 13(b) of the Act.

VI.

ORDER

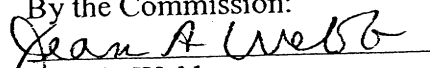
Accordingly, **IT IS HEREBY ORDERED THAT:**

- A. RFI and Robbins shall cease and desist from violating Commission Regulation 166.3.
- B. RFI and Robbins shall pay, jointly and severally, a civil monetary penalty in the amount of \$120,000.00 (ONE HUNDRED AND TWENTY THOUSAND DOLLARS) by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Denese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies RFI and Robbins and the name and docket number of this proceeding within thirty (30) days of entry of this Order.
- C. Neither RFI and Robbins nor any of their agents or employees under their authority or control, shall take any action or make any public statements denying,

directly or indirectly, any finding in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect RFI and Robbins's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

The provisions of this Order shall be effective on this date.

By the Commission:



Jean A. Webb

Secretary to the Commission
Commodity Futures Trading Commission

Dated: May 30, 2003 .