

AUG 13 2010

SALT LAKE COUNTY

By _____ Deputy Clerk

CHARLENE BARLOW, Bar No. 0212
Assistant Attorney General
MARK L. SHURTLEFF, Bar No. 4666
Utah Attorney General
5272 South College Drive, #200
Murray, Utah 84123
Telephone: (801) 281-1221
Facsimile: (801) 281-1224

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, :
 :
 Plaintiff, : **AFFIDAVIT OF PROBABLE CAUSE**
 :
 vs. :
 :
 ROGER EDWARD TAYLOR : Case No: 101905754
 DOB: April 23, 1968 :
 :
 RICHARD THOMAS SMITH : Case No: _____
 DOB: September 25, 1967 :
 :
 Defendants. : Judge _____

STATE OF UTAH)
 :ss
 COUNTY OF SALT LAKE)

I, JOSEPH GATTON, being first duly sworn upon oath, depose and state as follows:

1. I am currently employed under contract as a Securities Examiner for the Utah Department of Commerce, Division of Securities. Previously, I worked for the Division of Securities as an intern during fall 2006, and as a contracted investigator from July

2007 through September 2008. I graduated from the University of Utah with a bachelor's degree in Sociology during spring 2008. I am currently investigating possible violations of securities fraud statutes and related criminal code violations by ROGER EDWARD TAYLOR and RICHARD THOMAS SMITH.

2. The facts set forth in this affidavit are based upon the results of an investigation during which I have collected and reviewed records from witnesses and other sources. I have received information from Annette Donnell, Earl Knight, Pat Knight, Kelsie Mortensen, Wayne Mortensen, Albert Wirth, and others.

PARTIES

3. ROGER EDWARD TAYLOR ("TAYLOR"), at all pertinent times, resided in Utah and his last known address was 1360 Summerwood Circle, Santa Clara, Utah 84765.
4. RICHARD THOMAS SMITH ("SMITH"), at all pertinent times, resided in Utah County, Utah and his last known address was 443 North 750 East, Orem, Utah 84097.
5. United States Bankruptcy Court records reveal SMITH filed for Chapter 7 Bankruptcy protection in January 2000.
6. TAYLOR has taken and passed the Series 63, Uniform Securities Agent State Law Examination and the Series 65, Uniform Investment Advisor Examination. Taylor was licensed as an investment advisor representative from approximately January 1, 2003, until December 29, 2005.

7. FFCF Investors, LLC (“FFCF”), is a Utah Limited Liability Company, registered with the Utah Department of Commerce, Division of Corporations and Commercial Code, on January 23, 2006. TAYLOR is listed as Manger of FFCF. SMITH is listed as the Registered Agent of FFCF. FFCF’s registration expired on May 3, 2007. FFCF has not made any registrations with the Utah Division of Securities, nor does FFCF hold any securities licenses. R. Wayne Klein was appointed as receiver over FFCF Investors, LLC, on March 18, 2009.
8. Ascendus Capital Management, LLC (“Ascendus”), is a Utah Limited Liability Company, registered with the Utah Department of Commerce, Division of Corporations and Commercial Code, on January 21, 2003. From January 21, 2003, until August 25, 2008, TAYLOR was listed as the Manager of Ascendus. From May 26, 2006, until August 25, 2008, SMITH was listed as a Member and the Registered Agent of Ascendus. Ascendus’ registration expired on May 6, 2009. Ascendus was licensed as an investment advisor with the Utah Division of Securities from April 2003 until December 2005. R. Wayne Klein was appointed as receiver over Ascendus Capital Management, LLC, on March 18, 2009.
9. LBS Advisors Inc. (“LBS”) is a California Corporation filed with the California Secretary of State on November 29, 2004. LBS’ address is listed as 110 Newport Center Drive, Ste. 200, Newport Beach, California. LBS’ status, as of April 23, 2010, is suspended. LBS’ Agent for Service of Process is Richard Schmitz.

BACKGROUND

10. TAYLOR and SMITH operated Ascendus from early 2003 until late 2005. Ascendus clients were told funds given to Ascendus would be used by TAYLOR to trade equity options. Funds of Ascendus investors were custodied through Great Eastern (the introducing broker) and Pension (the clearing broker). Investors received statements from both Ascendus and Great Eastern/Pension. Statements from Ascendus indicated investor account balances were increasing in almost all months during Ascendus operations, but statements from Great Eastern/Pension show declining account balances during the same period. Several investors were told the differences between Ascendus and Pension account statements were the result of “carryovers” or “open positions” which represented profit to the investor.
11. Beginning in late 2005 or early 2006 and continuing through at least 2007, TAYLOR and SMITH approached several Ascendus investors, as well as other individuals, and asked them to invest in a new LLC called FFCF Investors. FFCF was purported to be “investing in the Franklin Forbes Composite Fund...which in turn is organized for the purpose of investing in Lyxor AM, an asset management company organized under French law and a wholly-owned subsidiary of Société Générale, a French banking company.” (FFCF Investors, LLC, Operating Agreement). Société Générale has disclaimed any relationship with FFCF, its principals and related entities. Prospective FFCF investors were told FFCF was a safe investment. Ascendus investors were told

their account balance as reported in their Ascendus statements would be moved over to the new investment, when in fact, bank records indicate lower amounts were transferred in several instances. FFCF investor funds were pooled and sent to a company in California called LBS Advisors, Inc. (formerly known as Franklin Forbs Advisors, Inc.) LBS purportedly invested funds with GJB Enterprises, a California entity, which is now in receivership. The GJB receiver's website indicates LBS invested over \$11 million with GJB Enterprises. FFCF investors were not given any managerial control over FFCF or LBS.

12. In July 2008 several investors received a letter from TAYLOR. TAYLOR wrote that SMITH was in control of FFCF and overpaid certain investors to the detriment of others. TAYLOR wrote he was not managing or operating FFCF, but TAYLOR planned to "complete the investigation and reconcile all of the accounts."
13. During or about August 2008 SMITH signed a 3-page letter which was mailed to investors of FFCF. The letter states Smith deceived investors and TAYLOR.
14. Interest in a limited liability company is defined as a security according to the Utah Uniform Securities Act §61-1-13. Further, FFCF pooled several investors' money to be invested in LBS. Investors expected to make a profit on their money of about 12% annually. Investors were not told, and did not otherwise believe they had managerial responsibilities and none of the same were exercised. This arrangement meets the definition of an investment contract. An investment contract is defined as a security

according to the Utah Uniform Securities Act §61-1-13.

15. Prior to accepting investor funds, TAYLOR and SMITH directly or indirectly misrepresented material facts in discussions with investors including, but not limited to:
- a. FFCF was investing in a subsidiary of Société Générale, when in fact the money was invested in a firm unaffiliated with Société Générale;
 - b. Investor funds were “backed up,” secured, or insured by Société Générale when, in fact, Société Générale disclaims any relationship with FFCF;
 - c. The FFCF investment was safe because the pool of money was so large;
 - d. Some FFCF statements indicate they were prepared by a CPA;
 - e. Separate and conflicting statements indicating investors could withdraw funds by providing any where from one week to 40-days notice;
 - f. Ascendus investors were told their account balance as reported in their Ascendus statements would be transferred to FFCF, when in fact, bank records indicate account balances were lower than Ascendus statements indicated and these lower amounts were transferred to FFCF accounts;
 - g. FFCF needed to raise \$25 million to meet the investment minimum of a third-party firm, when in fact FFCF’s initial investment with LBS was only \$5.1 million and the contract signed by FFCF indicates a required minimum of \$250,000;
 - h. The investment carried little or no risk; and,

i. Investors were told or given documents indicating that a CPA had looked at or audited the books of FFCF; however, the named CPA has done no auditing work of any kind for FFCF, Investors, LLC.

16. TAYLOR and SMITH provided investors with several written documents prior to accepting investor funds. These documents contained misleading statements and failed to fully disclose certain facts about the investment.

17. Prior to accepting investor funds, TAYLOR and SMITH directly or indirectly omitted material facts in discussions with investors including, but not limited to:

- a. FFCF invested less than \$25,000,000 with LBS Advisors in California;
- b. FFCF and its principals did not have a relationship with Société Générale;
- c. TAYLOR's securities license lapsed in 2005 when Ascendus ceased operations;
- d. SMITH filed for Chapter 7 Bankruptcy protection in January 2000;
- e. Newton Taylor had signatory authority to a Far West Bank Account into which some investors in FFCF transferred money;
- f. Newton Taylor may have had access to investors' funds;
- g. Newton Taylor was charged in 1989 with one count unlawful use of a financial card/ATM (a second degree felony) and pled guilty the same year;
- h. Newton Taylor was charged in 1994 with one count pattern of unlawful activity, seven counts communications fraud, 12 counts theft by deception (all second degree felonies) and pled no contest to one count of communications fraud,

amended from a first degree felony to a second degree felony on March 26, 1996;

- i. LBS and its principals had no relationship with Société Générale;
- j. Risks of the FFCF investment; and
- k. Investor funds paid to FFCF were placed into a bank account over which TAYLOR had no control.

COUNT 1
SECURITIES FRAUD, a second degree felony
(SMITH)

- 18. Annette Donnell (“Donnell”) contacted, or was contacted by, TAYLOR via telephone and email, during 2003, to discuss the possibility of TAYLOR managing Donnell’s investment portfolio.
- 19. During or about May 2003, Donnell traveled to Utah and met with SMITH to discuss a possible investment with TAYLOR. During the period from 2003 through 2006 Annette had contact with SMITH via email. Donnell believed TAYLOR was managing Donnell’s account, based on email messages from SMITH.
- 20. Donnell received statements from Ascendus indicating her account was increasing in value and Donnell paid “commissions” to Ascendus based on the purported monthly gains. During the period from approximately June 6, 2003, and June 13, 2006, Donnell invested a total of approximately \$845,163.39. During the same period, Donnell paid about \$158,518.52 to Ascendus in “commissions” on purported gains in Donnell’s account and took withdrawals totaling approximately \$752,483.60.

21. During late 2005 or early 2006 Smith telephoned Donnell and told her about a new investment opportunity, called FFCF. During January 2006, Smith flew to San Diego and met with Donnell at her home to tell her about FFCF. Smith said the options market was not doing very well. Smith said the proposed FFCF investment:
- a. Yielded a higher interest rate than Donnell's investment with Ascendus;
 - b. Was a hedge fund investment;
 - c. Paid interest quarterly;
 - d. Funds were backed up by Société Générale;
 - e. Charged a "commission" rate of 3%; and
 - f. Was safer than Donnell's investment with Ascendus.
22. Based on conversations with SMITH, Donnell understood TAYLOR was going to manage the new FFCF investment as he had the Ascendus investment. Donnell had no managerial responsibilities or abilities with regard to FFCF.
23. During the meeting at Donnell's San Diego home, SMITH gave to Donnell marketing material for FFCF. Smith made handwritten notes on the last page of this document. The FFCF marketing material contains statements including, but not limited to:
- a. In Partnership with "Societe Generale;"
 - b. For HEDGE FUNDS FRANKLIN FORBES offers... TRANSPARANCY...
DIVERSIFICATION... LIQUIDITY – WEEKLY REDEMPTIONS

- c. FRANKLIN FORBES Optimizes the Manager Selection Process to Optimize Profits;
- d. The world's natural resources are getting more scarce – FFRAF owns these resources and will benefit its shareholders in a Big Way;
- e. FFECF is a safe and Highly Liquid Short Term Bond Fund that is Leveraged to enhance the Cash Returns;
- f. FFECF offers clients a high return, short term investment that is almost like cash fund; and
- g. FRANKLIN FORBES gives you the Optimal Portfolio...Hedged Growth... Inflation Protection... Enhanced Liquidity...

24. Donnell received a copy of FFCF's subscription agreement via regular mail during the end of January or beginning of February 2006. SMITH instructed Donnell to complete the subscription agreement and a transfer of funds form. SMITH instructed Donnell to request transfer of Donnell's "total balance" from the broker-dealer used by Ascendus to an account held at Far West Bank in Orem, Utah, in order to execute Donnell's investment with FFCF. The transfer form is dated February 14, 2006. Donnell read and signed the subscription agreement and wrote in the date February 14, 2006.

25. The FFCF Subscription Agreement contains the following statements:

- a. The company has been organized for the purpose of acquiring a limited partnership interest in **Franklin Forbes Fund, L.P.** ...

- b. ...Subscriber tenders this Subscription Agreement, together with his, her or its check, made payable to the Company in the amount set forth opposite the Subscriber's signature on the signature page hereof (the "**Purchase Price**");
- c. Purchase Price: \$1,486,791.44;
- d. The company is newly-formed;
- e. The securities are speculative investment involving high amount of risk;
- f. The investor can bear the economic risk of illiquid investment;
- g. ...capable of evaluating the merits and risks of investing in the securities;
- h. The investor has had an opportunity to conduct a full and fair examination of:
1. the Operating Agreement for the Company dated as of January 23, 2006;
 2. an Introduction Summary of the Fund;
 3. a Marketing Presentation for the Fund;
 4. the Confidential Offeree Questionnaire for the Fund;
 5. the Agreement of Limited Partnership for the Fund; and
 6. the Private Offering Memorandum for the Fund.
- i. This Subscription Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants or other agreements except as stated or referred to herein; and
- j. Affirms profit, loss, and results of ownership have not been represented, guaranteed, or warranted to the Investor;

26. During the end of January or beginning of February 2006, Donnell also received an operating agreement for FFCE via mail to Donnell's San Diego home. The operating agreement contains the following statements:
- a. "The Company is organized for the principal purpose of investing in Franklin Forbes Composite Fund or any successor thereto (the "FFCF Fund"), which in turn is organized for the purpose of investing in Lyxor AM, an asset management company organized under French law and a wholly-owned subsidiary of Banque Société Générale, a French banking company. Any capital contributed to the Company shall be invested in the FFCE Fund and in no other investment. The Manager has no authority to invest the funds of the Company in any other way, but may maintain a working account for Company expenses;"
 - b. Any Member shall be entitled to withdraw...by giving the Manger at least forty (40) days written notice...;
 - c. "The sole initial Manager of the Company shall be Roger E. Taylor;" and
 - d. "Compensation. The Company may pay reasonable compensation to the Manager for such Person's services hereunder. The Manager may retain and pay reasonable compensation to employees and outside professionals..."
27. Bank records indicate \$332,037.10 was wired, on or about February 15, 2006, from a broker-dealer used by Ascendus, to a Concilium Trading Company, LLC, bank account held at Far West Bank. This account was controlled by SMITH and Newton Taylor.

This transfer reduced Donnell's account held at the broker-dealer used by Ascendus to a zero balance. Donnell's Ascendus statement indicated Donnell's account balance had grown to \$948,043.35 as of January 31, 2006.

28. Prior to the investment SMITH failed to provide some of the information in paragraph 17 of this affidavit.

COUNT 2
SECURITIES FRAUD, a second degree felony
(SMITH)

29. Donnell received a copy of a letter on Franklin Forbes Advisers, Inc. letterhead, during April 2006, attached to an email sent by SMITH. The letter contains the following statements: ...Franklin Forbes Composite Fund (FFCF), a best of breed alternative investment fund listed on the Luxembourg stock-exchange, in partnership with Societe Generale (SG) the 2nd largest bank in Europe... Working with SG provides an EIGHT-year track record, with two years of average leveraged returns in excess of 40% per year (at 400% participation), although past performance is no guarantee of future results. At the investor's option, and with a minimum \$2 million investment, Franklin Forbes will structure a capital guaranteed note for the investor with SG, JP Morgan, or Deutsche Bank providing the guarantee; and The unique managed account structure provides our investors monthly liquidity...

30. During or about May 2006, SMITH sent Donnell a first quarter statement. This document states Donnell's FFCF account balance is \$1,486,791.44 as of May 31, 2006

and indicates it has been prepared by "Hans B Andersen CPA."

31. Donnell invested an additional \$1,000 on or about July 14, 2006, and an additional \$400,000 on or about July 17, 2006. Donnell said this \$401,000 represented equity in her primary residence, a fact Donnell disclosed to SMITH in email correspondence, prior to investing.
32. Bank records reveal Donnell's \$401,000 was deposited into an FFCF Investors bank account held at Far West Bank, controlled by SMITH. Bank records also reveal Donnell's funds were used to make Ponzi payments to other investors in FFCF, including, but not limited to: Wirth, Wayne Mortensen, and others. Donnell was not told her money would be used to make payments to other FFCF investors
33. Prior to the investment, SMITH failed to provide some of the information in paragraph 17 of this affidavit.
34. Donnell suspected there was a problem with her investment during or about July 2008 when Donnell received an email from SMITH's wife explaining SMITH had attempted suicide. Donnell said she requested her money back from SMITH's wife and TAYLOR in summer 2008.
35. Donnell said she requested money back directly from Jason Buck at LBS, but he informed Donnell that LBS dealt only with TAYLOR on matters regarding the investment. On or about July 16, 2008, Donnell requested TAYLOR "withdraw all funds" from FFCF. Despite Donnell's requests, Donnell's investment principal has not been

returned to her.

36. Donnell transferred her Ascendus balance of \$332,037.10 to FFCF and invested an additional \$401,000 in FFCF. Donnell received withdrawals from FFCF totaling \$247,259.71. Donnell is still owed \$485,777.39 in principal alone.

COUNT 3
SECURITIES FRAUD, a second degree felony
(TAYLOR)

37. Earl Knight met an individual at a seminar in Phoenix, Arizona during January 2007. During February 2007, this individual sent, to Knight, information about LBS via email and then referred Knight to TAYLOR to further discuss an investment with LBS.
38. Knight spoke to TAYLOR over the telephone in early February 2007. TAYLOR said because Knight was not a "qualified investor," Knight could invest in LBS, but had to do so through FFCF.
39. On or about February 13, 2007, Taylor sent, to Knight, an email in which TAYLOR wrote Knight's money will begin working for Knight the next business day following Knight's wire. The email had several documents attached, including FFCF's offeree questionnaire, subscription agreement and operating agreement which states, in part:

The Company is organized for the principal purpose of investing in Franklin Forbes Composite Fund or any successor thereto (the "FFCF Fund"), which in turn is organized for the purpose of investing in Lyxor AM, an asset management company organized under French law and a wholly-owned subsidiary of Banque Société Générale, a French banking company. Any capital contributed to the Company shall be invested in the FFCF Fund

and in no other investment. The Manager has no authority to invest the funds of the Company in any other way, but may maintain a working account for Company expenses.

40. On or about March 16, 2007 Knight's spouse went to Chase Bank in Phoenix, Arizona, and requested a wire transfer of \$332,309.26 from Knight's bank account to FFCF's account at Far West Bank in Ephraim, Utah. Knight told TAYLOR the investment funds were being withdrawn from an IRA account. Knight said he did not authorize TAYLOR to use Knight's funds for any purpose other than investing in LBS.
41. Prior to the investment TAYLOR failed to provide some of the information in paragraph 17 of this affidavit.
42. Bank records reveal Knight's money was deposited, on or about March 16, 2007, into an FFCF bank account held at Far West Bank in Orem, Utah, controlled by SMITH. Bank records also reveal Knight's investment monies were used to pay: two individuals a total of approximately \$282,000; Ascendus Capital Management DBA Superwire, Inc. approximately \$25,000; and a company called Extream TV, LLC, approximately \$25,000. The two individuals have been identified by FFCF's receiver as investors in FFCF.
43. On or about March 19, 2007, TAYLOR wrote in an email to Knight, "I just got confirmation about 20 minutes ago you are in. Everything is taken care of...You will make your first dollars with us tomorrow."

44. Knight stopped receiving statements sometime in 2008. Shortly after statements stopped arriving, Knight received a letter from SMITH. SMITH's letter indicated certain FFCF investors had been overpaid to the detriment of other investors. Knight then requested the return of his funds several times during telephone conversations with, and emails to, TAYLOR. Knight invested a total of \$332,309.76 and has not received any interest payments or return of his principal, despite requests made to TAYLOR.

COUNT 4

ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT, a second degree felony (TAYLOR)

45. Knight was 66 years old at the time he invested in FFCF. TAYLOR had a business relationship with Knight as described by FFCF's operating agreement, subscription agreement, offeree questionnaire and further clarified orally by TAYLOR. TAYLOR deceptively obtained and used Knight's funds with the intent to temporarily or permanently deprive Knight of the use, benefit, or possession of his property.

COUNT 5

SECURITIES FRAUD, a second degree felony (SMITH)

46. Kelsie Mortensen first met SMITH during 2003 when Mortensen engaged Ascendus to manage \$900,000 of Mortensen's funds.

47. During November or December 2005, a meeting was held at the Mortensen home in Mapleton, Utah. SMITH gave a presentation to Mortensen and several other individuals.

SMITH said he had a new investment which would solve Ascendus' recent problem of diminished earnings. The proposed investment [FFCF] was going to pool investor money and loan the funds out to businesses in order to generate a profit and the investment was safe because the pool of money was so large. Smith said investors would begin receiving interest payments in January 2006.

48. One or two months after the December 2005 meeting, SMITH met with Mortensen at Mortensen's home in Mapleton, Utah. SMITH orally confirmed Mortensen's account balance was over \$1.2 million. SMITH said Mortensen's full account value of over \$1.2 million would be transferred to a holding company utilized by FFCF.
49. On or about February 15, 2006, Mortensen signed page 5 of a document entitled FFCF Investors, LLC Subscription Agreement, which listed a purchase price of \$1,211,641.30.
50. Prior to the investment SMITH failed to provide some of the information in paragraph 17 of this affidavit.
51. According to February 2006 statements, provided by the broker-dealer used by Ascendus, the Mortensen account was worth approximately \$800,000 as of January 31, 2006. According to bank records, approximately \$800,031.98 was transferred to FFCF's bank account on or about January 31, 2006.
52. Mortensen contacted SMITH during June and July 2007 and requested to withdraw \$750,000. Mortensen also asked for statements for her FFCF investment. SMITH did not fulfill Mortensen's request to withdraw.

53. Mortensen contacted TAYLOR to request withdrawal of Mortensen's funds. During November 2007, TAYLOR provided Mortensen with the requested withdrawal of \$750,000.

54. Mortensen invested \$800,031.98 with FFCF. Mortensen withdrew a total of approximately \$772,210 from FFCF. Mortensen is still owed approximately \$27,820 in principal alone.

COUNT 6
SECURITIES FRAUD, a second degree felony
(TAYLOR and SMITH)

55. During or about September 2003 Albert Wirth met TAYLOR at a seminar in Las Vegas, Nevada. During the seminar TAYLOR invited Wirth to come to Utah to meet with TAYLOR in order to discuss investment opportunities.

56. On or about October 2, 2003, Wirth met with TAYLOR in a hotel in Salt Lake City, Utah. At this meeting, TAYLOR introduced Wirth to TAYLOR's "assistant," SMITH. Based on TAYLOR's representations during the meeting and subsequent telephone conversations, Wirth engaged Ascendus to manage Wirth's money. By May 2005 Wirth had entrusted to Ascendus approximately \$3,942,816.89 of Wirth's funds. Wirth took approximately \$1,318,759.15 in withdrawals from Ascendus and paid to Ascendus approximately \$382,086.20 for "commissions."

57. Wirth said TAYLOR emailed Wirth during or about December 2005 and told Wirth about a new investment opportunity called FFCF. TAYLOR said the new investment

was very lucrative and, if Wirth invested, Wirth could just relax and collect money.

58. On or about February 1, 2006, TAYLOR sent an email to Wirth, with carbon copy sent to SMITH, stating, in part, the following:

- I am going 16 hours a day right now moving all my clients over to this new product;
- It has severely outperformed your portfolio, the market and my other clients portfolios over the past 9 years...paid out 1% per month...as well as grew some 20+%;
- I need to get you where you are wealthy in two areas, 1) income, 2) net worth. We can do that with this product...;
- This product will not accept anyone with less than 25 million to put in;
- We need to double your portfolio in the next 3-4 years and do that every 3-4 and we need to get you up to 40-50-60,000 a month that doesn't change...that you can actually budget...That is where I can take you; and
- This product will do that for you will [*sic*] decreasing your risk significantly, you can even get a principle [*sic*] guarantee on all your money.

59. During or about February 2006, Wirth met in-person with TAYLOR at the Four Seasons hotel in Las Vegas, Nevada, to further discuss an investment in FFCF. SMITH was also present at the meeting. TAYLOR said the FFCF investment paid 12-14% interest annually, was "guaranteed" and "secured" by Société Générale, was "totally safe," and had no risk, or very low risk. SMITH did not clarify or correct any of TAYLOR's statements.

60. During the Las Vegas meeting, TAYLOR said Wirth's account had approximately \$845,000 in "open positions." TAYLOR had previously represented to Wirth that these open positions were unsettled trades, which would translate to pure profit if and when Wirth transferred his account from Ascendus. TAYLOR said Wirth's Ascendus account balance was over \$3 million, including the open positions. Wirth agreed to invest in FFCF.

61. Wirth received FFCF's operating agreement during January or February 2006 from TAYLOR or SMITH. The operating agreement contains the following statements:

- a. The Company is organized for the principal purpose of investing in Franklin Forbes Composite Fund or any successor thereto (the "FFCF Fund"), which in turn is organized for the purpose of investing in Lyxor AM, an asset management company organized under French law and a wholly-owned subsidiary of Banque Société Générale, a French banking company. Any capital contributed to the Company shall be invested in the FFCF Fund and in no other investment. The Manager has no authority to invest the funds of the Company in any other way, but may maintain a working account for Company expenses.
- b. Any Member shall be entitled to withdraw...by giving the Manger at least forty (40) days written notice...;
- c. "The sole initial Manager of the Company shall be Roger E. Taylor;" and
- d. "Compensation. The Company may pay reasonable compensation to the Manager

for such Person's services hereunder. The Manager may retain and pay reasonable compensation to employees and outside professionals..."

62. On or about February 3, 2006, Wirth signed an FFCE subscription agreement. The subscription contains the following statements:

- K. The company has been organized for the purpose of acquiring a limited partnership interest in **Franklin Forbes Fund, L.P.** ...
- L. ...Subscriber tenders this Subscription Agreement, together with his, her or its check, made payable to the Company in the amount set forth opposite the Subscriber's signature on the signature page hereof (the "**Purchase Price**");
- M. Purchase Price: \$3,675,466.43;
- N. The company is newly-formed;
- O. The securities are speculative investment involving high amount of risk;
- P. The investor can bear the economic risk of illiquid investment;
- Q. ...capable of evaluating the merits and risks of investing in the securities;
- R. The investor has had an opportunity to conduct a full and fair examination of:
 - g. the Operating Agreement for the Company dated as of January 23, 2006;
 - h. an Introduction Summary of the Fund;
 - i. a Marketing Presentation for the Fund;
 - j. The Confidential Offeree Questionnaire for the Fund;
 - k. the Agreement of Limited Partnership for the Fund; and
 - l. the Private Offering Memorandum for the Fund.

- S. This Subscription Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants or other agreements except as stated or referred to herein; and
- T. Affirms profit, loss, and results of ownership have not been represented, guaranteed, or warranted to the Investor.

63. In February 2006, SMITH faxed a wire request form to Wirth to complete the transfer of Wirth's funds to FFCF. Wirth completed the wire request form and returned it to SMITH to complete the transfer of Wirth's funds.

64. Bank records reveal \$1,382,545.85 was transferred, on or about February 10, 2006, from Wirth's account at a broker-dealer used by Ascendus to a Concillium Trading Company, LLC, bank account held at Far West Bank in Orem, Utah, controlled by SMITH and Newton Taylor.

65. On or about February 22, 2006, TAYLOR wrote to Wirth in an email, "Your Money is held in SG bank under the name of the LLC, FFCF Investors... You own a portion of the LLC and an accounting firm here in US, Utah, will take the SG statement and generate your statement..."

66. Marketing materials were attached to the February 22 email regarding the FFCF investment. The marketing materials contain the following statements:

- A. "In Partnership with Societe Generale;"
- B. For HEDGE FUNDS FRANKLIN FORBES offers... TRANSPARANCY...
DIVERSIFICATION... LIQUIDITY – WEEKLY REDEMPTIONS

- C. With this normal distribution – it will take 3 standard deviations before FRANKLIN FORBES will lose money;
- D. FRANKLIN FORBES Optimizes the Manager Selection Process to Optimize Profits;
- E. The world's natural resources are getting more scarce – FFRAF owns these resources and will benefit its shareholders in a Big Way;
- F. FFECF is a safe and Highly Liquid Short Term Bond Fund that is Leveraged to enhance the Cash Returns;
- G. FFECF offers clients a high return, short term investment that is almost like cash fund;
- H. FRANKLIN FORBES gives you the Optimal Portfolio...Hedged Growth... Inflation Protection... Enhanced Liquidity...

- 66. Bank records reveal \$464,414.62 was transferred from Wirth's IRA account at a broker-dealer used by Ascendus to FFCF's bank account at Far West Bank in Orem, Utah, on or about February 28, 2006.
- 67. Prior to Wirth's investment TAYLOR and SMITH failed to provide some of the information in paragraph 17 of this affidavit.
- 68. During September 2006, TAYLOR called Wirth and recommended Wirth transfer his funds from FFCF to LBS. Wirth traveled to California and met with several principals of LBS. On or about April 26, 2007, TAYLOR executed a notarized document assigning, from FFCF, \$3,357,755.38 to the Albert J. Wirth Trust and \$494,993.54 to Wirth's

individual retirement account. The same day TAYLOR executed another notarized document assigning, from FFCF, and additional \$2,278.33 to Wirth's individual retirement account.

69. During 2009 Wirth requested to withdraw all of his funds invested with LBS. As of January 19, 2010 Wirth had not received the return of his investment funds.
70. Wirth transferred approximately \$1,846,960.47 to FFCF. Wirth took withdrawals and interest payments totaling \$417,217.41 from FFCF and \$855,991.64 from LBS. Wirth is still owed approximately \$573,751.42 in principal alone.

COUNT 7
PATTERN OF UNLAWFUL ACTIVITY, a second degree felony
(SMITH)

71. Beginning on or about October 11, 2006, SMITH engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. 76-10-1603. SMITH: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1, 4, and 5 above, in which SMITH participated as principal, or used or invested, directly or indirectly, any part of that income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or establishment or operation of, any enterprise; (2) through a pattern of unlawful activity acquired or maintained, directly or indirectly, any interest in or control of any enterprise; or (3) was employed by, or associated with any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity. The unlawful activity included

three or more violations of securities fraud. This is a violation constitutes a second degree felony as prescribed by Utah Code Ann. 76-10-1603.5.

SUMMARY

Based on my review of the evidence there is probable cause to believe that ROGER

EDWARD TAYLOR committed the crimes of:

SECURITIES FRAUD
a second degree felony, 2 counts

ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT
a second degree felony, 1 count

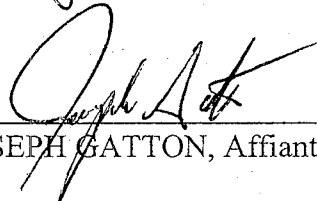
Based on my review of the evidence there is probable cause to believe that RICHARD

THOMAS SMITH committed the crimes of:

SECURITIES FRAUD
a second degree felony, 4 counts

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

DATED this 13 day of August, 2010.



JOSEPH GATTON, Affiant

SUBSCRIBED AND SWORN before me this 13 day of _____

JUDGE, THIRD DISTRICT COURT

