

III.

The Commission finds the following:

A. Summary

In August 2005, EMF held a large long futures position in the September 2005 10-year U.S. Treasury Note Futures Contract (the "September Contract") traded on the Chicago Board of Trade (the "CBOT")² and a large long position in the underlying cheapest-to-deliver security on the September Contract ("CTD"). The September Contract was set to expire on September 30 with trading ending on September 21 and the delivery month commencing on September 1.

Because EMF held a significantly large long position in the September Contract, the CBOT contacted EMF about its intentions and market positions in August. In its communications with the CBOT surveillance staff, EMF concealed and misrepresented material information about its positions and financing. Specifically, EMF misrepresented the size of its cash position in the CTD and failed to disclose its large position in the CTD in the repurchase ("repo") market. EMF also failed to disclose that EMF was financing its large long position in the CTD through a repo financing mechanism known as General Collateral Financing ("GCF"), which made those notes unavailable to market participants. Accordingly, EMF withheld from the CBOT information concerning its position and control of up to \$11.9 billion of the CTD at the same time that it held the large long futures position.

Two days before the delivery period opened, and only after receiving a written request for the information from the CBOT, EMF disclosed its full position in the CTD. In response, the CBOT directed EMF not to increase its position in the September Contract and stated its expectation that EMF would take no action that could reasonably be expected to limit or constrain the freely available supply of the CTD. Over the course of the next several weeks, EMF complied with the CBOT's directives. There was an orderly liquidation of the September Contract.

EMF's concealment of material facts and false statements or misrepresentations to the CBOT violated Section 9(a)(4) of the Act.

EMF had an inadequate system of supervision and internal controls to both detect and deter violations of the Act and Regulations or possible wrongdoing by its officers, employees, or agents, and reasonably oversee the handling of EMF's business as a registrant. EMF did not have appropriate oversight procedures in place to manage and control the large concentrated positions taken by its traders. EMF did not have any policies and procedures or other controls in place to oversee communications with regulators to ensure that full, complete and truthful information was provided in a timely fashion. By such failures, EMF failed to diligently supervise the handling by its partners, officers, employees and agents of EMF's commodity interest business in violation of Commission Regulation 166.3.

² The CBOT is now part of the CME Group Inc.

B. Respondent

EMF Financial Products, LLC is a relative value fixed income hedge fund operator based in New York City. EMF has been registered with the Commission as a Commodity Pool Operator and a Commodity Trading Advisor since August 1998. During the time period discussed in this order, EMF operated and/or managed three separate hedge funds.

C. Facts

1. The Treasury Note Futures Market: The September Contract

The September Contract was traded on the CBOT. The terms of the contract permitted a short to deliver any one of several underlying U.S. Treasury Notes (the "Deliverable Basket"). Typically, one U.S. Treasury Note ("Treasury Note") in the Deliverable Basket becomes the CTD based principally on coupon rates and times to maturity. The 4.375% Treasury Note of August 2012 ("8/12 Note or CTD") became the CTD on the September Contract.

The last trading day for the September Contract was September 21, 2005. Shorts were able to deliver on the September Contract on any day during the delivery month (i.e. from September 1, 2005 through September 30, 2005). As early as August 30, 2005, a short could provide notification of its delivery intentions, and be in position to make delivery on September 1, 2005.

2. The Treasury Note Markets: Cash and Repo Markets

To satisfy delivery obligations on the September Contract, shorts could procure the deliverable Treasury Notes in the cash market or the repo market. In the cash market, the Treasury Notes are bought and sold outright. The repo market is an over-the-counter market that functions as a collateralized borrowing market. A repo consists of a sale of Treasury Notes for cash and the simultaneous execution of an agreement to repurchase the same Treasury Notes at a future date. The party who sells the Treasury Note is known as the "Note Lender." The counterparty to this transaction, the "Note Borrower," obtains the Treasury Notes in exchange for cash and is deemed to have engaged in a "reverse repo." The position created by this reverse repo is often referred to as a "long financing" position.

Parties to a repo can specify the Treasury Note used to collateralize the loan (i.e. a special collateral repo), or they may agree to accept any of a variety of Treasury and other related securities (i.e. a general collateral repo). The term of a repo can either be overnight or for any period specified by the parties.

Market participants also may have access to financing through General Collateral Finance ("GCF"), which places the financed notes in escrow, meaning the notes are "boxed" or are not made available to the general market. Typically, when a Treasury Note is in high demand and in limited supply, meaning it is trading "special," it is more expensive to finance the Treasury Note through the GCF, rather than finance the Treasury Note in the special collateral repo markets.

Commencing in December 2004 and throughout 2005, the repo markets began to experience a marked increase in fails, meaning that counterparties on repo transactions were failing to return the Treasury Notes from whom they borrowed the notes. The fails were occurring at or around the time of the expiration of Treasury Note futures contracts.

As to the September Contract, during the last week of August 2005, the 8/12 Note began to trade special in the repo market and fails started to occur. On August 29, 2005, the fails on the 8/12 Note reached a notional value of \$33.5 billion. The fails continued into the month of September 2005 and peaked at a notional value of \$129.8 billion, which was an unprecedented level of fails for a single Treasury Note.

3. EMF's Large Futures, Cash and Repo Positions Prior to September 2005

As of August 19, 2005, EMF held a long futures position of 190,149 September Contracts, which had a face value of approximately \$19 billion of Treasury Notes. As of that same day, EMF's combined cash and repo position in the CTD was \$12.9 billion. EMF added to its long futures position until August 31, 2005 when its position peaked at 194,737 contracts. On August 25, 2005, EMF's combined cash and repo position peaked at \$14.9 billion.

Prior to August 22, 2005, EMF financed its repo position by re-lending the CTD in the overnight and/or term repo market. As a result, the CTD was available for re-lending in the repo market. However, during the ten day period of August 22, 2005 through August 31, 2005, just prior to the delivery period on the September Contract, rather than finance the position in the overnight or term repo markets, EMF used the more expensive GCF to finance some of its position.

As a result, during this ten day period between \$4.6 billion and \$11.9 billion of the CTD was "boxed," meaning it was not available to the repo market in the days before the Delivery Month of the September Contract. During this ten day period, the GCF rate EMF used to finance its position was significantly higher than the financing rates available in the special collateral market for the CTD.

4. EMF Misrepresents and Fails to Disclose Material Information to the CBOT

In August and September 2005, to ensure an orderly liquidation of the expiring September Contract, the CBOT conducted market surveillance. The CBOT's surveillance included contacting the holders of large long and short positions on the September Contract to determine the market participants' intentions, meaning did they intend to maintain or increase their futures positions and to take or make delivery on their positions. The CBOT also sought information about non-futures positions, i.e., cash and repo positions in the underlying CTD and other deliverable notes on the September Contract. Non-futures position data is typically available to the CBOT only from the market participants themselves.

Because EMF held a large long position in the September Contract, the CBOT's Market Surveillance Department contacted EMF on August 19, 2005, to request information. The CBOT informed EMF that the CBOT was aware of EMF's large long position in the September Contract and it would be monitoring the expiration and delivery process on the September Contract.

The CBOT also asked EMF during the August 19th call about its 8/12 Note position. EMF stated that it owned a "small amount of the 8/12... approximately \$200 million." EMF made no other disclosures concerning its positions in the 8/12 Note. In fact, on that date, EMF's cash position was \$2.2 billion and had not been below \$1.3 billion during the month prior to August 19, 2005. In addition, EMF's repo position on August 19, 2005 was \$10.7 billion and had been above \$10 billion since August 6, 2005.

The CBOT asked EMF for its estimate of the float of the CTD, i.e., how much of the CTD did EMF believe would be readily available in the market for delivery by the shorts on the September Contract. EMF estimated to the CBOT that the float on the CTD was between \$5 to \$7.5 billion. However, beginning the next business day (August 22) and through the end of the following week when it next spoke to the CBOT, EMF boxed between \$4.7 billion to \$11.9 billion of the CTD by using GCF. EMF failed to correct its prior representation to the CBOT regarding the float.

The CBOT contacted EMF again on August 26, 2005. At the start of that day, EMF held a long position of 192,162 September Contracts, which had increased from August 19, 2005. The CBOT informed EMF that it would receive a written request for information on its positions and intentions for delivery because it had increased and maintained a large long position in the September Contract.

During the August 26, 2005 call, EMF misstated the size of its repo position in the 8/12 Note and did not disclose that by that date its repo position in 8/12 Note was \$12.7 billion. During this call, EMF did inform the CBOT that it had "boxed" deliverable securities. However, EMF did not disclose that, as of August 26th, it had boxed \$11.9 billion of the CTD through the GCF. Accordingly, the CBOT was not aware that \$11.9 billion of the CTD was unavailable to the general market. In addition, EMF did not correct its prior misstatement regarding the float of the CTD.

After its call with EMF, the CBOT delivered its letter to EMF that same day, which requested information regarding EMF's position, trading strategy, hedging information, valuation of the contract, how it intended to manage its position through expiration and its cash and repo/reverse repo positions in the deliverable notes.

On Monday, August 29, 2005, the CBOT received EMF's response. For the first time, EMF disclosed that it had an 8/12 Note cash position of \$1.8 billion and an 8/12 Note repo position of \$11.5 billion for a combined total position of \$13.3 billion of the CTD. However, EMF did not disclose in its letter the magnitude of its position that it had financed using GCF, which totaled \$11.9 billion of the CTD. On the next day, August 30, 2005, the CBOT questioned EMF regarding EMF's written response. EMF informed the CBOT that it had boxed between \$10 to \$12 billion of the CTD for several days.

On August 31, 2005, given EMF's failure to disclose the magnitude of EMF's combined cash and repo positions, the CBOT's Business Conduct Committee ("BCC") took the extraordinary step of issuing a letter with specific directives concerning EMF's market participation. In conjunction with the letter, on August 31, 2005, CBOT Staff verbally notified EMF that it would have to significantly reduce or liquidate its cash and repo positions.

In the August 31, 2005 letter, the BCC directed EMF not to increase its September Contract position and stated its expectation that EMF would not take any action that would constrain the freely available supply of the CTD and other deliverable notes. The BCC further stated that “[g]iven EMF’s position, the [BCC] believes that the firm’s conduct will have a substantial impact on whether or not the September futures contract expires in an orderly and economic fashion. The [BCC] expects that EMF is prepared to participate, and will fully participate, in the market at economic levels and that its actions will support an orderly expiration of the September futures contract.”

The CBOT closely monitored EMF and had daily contact with EMF during the delivery month. Immediately after receiving the August 31, 2005 BCC letter, EMF stopped using the GCF to finance its position and began reducing its cash and repo position, but maintained its long futures position. On September 8, 2005, the BCC issued another cautioning letter to EMF to ensure an orderly liquidation of the September Contract. On or about September 12, 2005, EMF began reducing its long September Contract position and further reduced its substantial repo positions.

By the contract expiration, EMF had liquidated the majority of its September Contract position and took delivery of approximately 1,091 contracts. Overall, a total of 34,085 September Contracts went to delivery and only the CTD was delivered.

5. EMF Had An Inadequate System of Supervision, Internal Controls, Policies and Procedures to Detect and Deter Violations of the Act and Regulations

EMF had an inadequate system of supervision and internal controls to both detect and deter violations of the Act and Regulations or possible wrongdoing by its officers, employees, or agents and to reasonably oversee the handling of EMF’s business as a registrant. EMF did not have appropriate oversight procedures in place to monitor trading and manage and control the large concentrated positions taken by its traders in the commodity futures markets and related commodities and repo markets. EMF also did not have any policies and procedures or other controls in place to oversee communications with regulators by its officers, employees and agents and to ensure that any communications or information provided by its officers, employees and agents was complete and truthful.

D. Legal Discussion

1. By Concealing Material Facts And Making False Statements Or Representations To The CBOT, EMF Violated Section 9(a)(4) of the Act

Section 9(a)(4) of the Act makes it unlawful for any person:

willfully to falsify, conceal or cover up by any trick scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade,

or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.

CEA §9(a)(4), 7 U.S.C. § 13(a)(4) (2006).

As set forth above, on and between August 19, 2005 and August 26, 2005, EMF concealed material facts and/or made false statements or misrepresentations to the CBOT concerning: (1) the size of EMF's cash position in the CTD; (2) the existence and magnitude of EMF's repo position in the CTD; (3) EMF's use of the GCF, which from August 22, 2005 through August 31, 2005, made between \$4.7 billion and \$11.9 billion of the CTD unavailable to the market for re-lending; and, (4) EMF's estimate of the float of the Deliverable Basket on the September Contract. Further, EMF continued to conceal material facts and did not correct its false statements and misrepresentations prior to its August 29, 2005 letter to the CBOT.

Therefore, EMF violated Section 9(a)(4) during its conversations with the CBOT by willfully concealing material facts and making false statements to the CBOT.

2. EMF Violated Commission Regulation 166.3 Because It Had An Inadequate System of Supervision, Internal Controls, Policies and Procedures to Detect and Deter Violations of the Act and Regulations

Regulation 166.3 requires that every Commission registrant (except associated persons who have no supervisory duties) diligently supervise the handling by its partners, employees and agents of all activities relating to its business as a registrant. Regulation 166.3 imposes on registrants an affirmative duty to supervise their employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance programs. "The duty to supervise ... include[s] the broader goals of detection and deterrence of possible wrongdoing by a [registrant's] agents." *Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 33,444 (CFTC Dec. 14, 1989).

In order to prove a violation of Regulation 166.3, it must be demonstrated that either: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992); *Bunch v. First Commodity Corp. of Boston*, [1990-1992 Transfer binder] Comm. Fut. L. Rep. (CCH) ¶ 25,352 at 39,168-69 (CFTC Aug. 5, 1992). A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *In the Matter of Interactive Brokers LLC*, [2006-2008 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,592 (CFTC July 17, 2007) (quoting *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997)).

Under Regulation 166.3, there is a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents." *Samson Refining Co. v. Drexel Burnham Lambert, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,596 at 36,566 (CFTC Feb. 16, 1990) (quoting *Lobb v. J.T. McKerr & Co.*, ¶ 24,568 at 36,444). A registrant also must ensure that these procedures are diligently administered. *In re GNP Commodities*,

Inc., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered), *aff'd in part and rev'd in part sub nom. Monieson v. CFTC*, 996 F. 2d 852 (7th Cir. 1993). Evidence of violations that “should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly” is probative of a failure to supervise. *Paragon Futures*, ¶ 25,266 at 38,850.

EMF had an inadequate system of supervision and internal controls to both detect and deter violations of the Act and Regulations or wrongdoing and to reasonably oversee EMF’s handling of its business as a registrant. EMF did not have appropriate oversight procedures in place to monitor trading and manage and control the large concentrated positions taken by its traders in the commodity futures markets and related commodities and repo markets. EMF also did not have any policies and procedures or other controls in place to oversee communications with regulators by its officers, employees and agents and to ensure that any communications or information provided by its officers, employees and agents was complete and truthful. As a result, EMF failed to provide critical information to the CBOT in hindrance of its regulatory surveillance responsibilities.

By such failures, EMF failed to diligently supervise the handling by its partners, officers, employees and agents of EMF’s commodity interest business in violation of Commission Regulation 166.3.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondents violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006) and Commission Regulation 166.3, 17 C.F.R. § 166.3 (2008).

V.

OFFER OF SETTLEMENT

EMF has submitted the Offer in which it, without admitting or denying the findings herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order;
- C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission’s staff in consideration of the Offer; any and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or Part 148 of the Regulations, 17 C.F.R.

§§ 148.1, et seq. (2008), relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Act, 1996 HR 3 136, Pub. L. 104-121, §§ 23 1-232, 110 Stat. 862-63 (Mar. 29, 1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this proceeding; and 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;

- D. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented; and,
- E. Consents, solely on the basis of the Offer, to entry of this Order that:
1. makes findings by the Commission that EMF violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4), and Regulation 166.3, 17 C.F.R. § 166.3;
 2. orders EMF and its successors and assigns to cease and desist from violating Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4), and Regulation 166.3, 17 C.F.R. § 166.3;
 3. orders EMF to pay a civil monetary penalty in the amount of four million dollars (\$4,000,000.00) within ten (10) days of the date of the entry of this Order;
 4. restricts EMF's registrations as a CPO and CTA for a period of three years from the date of this Order by requiring EMF and its successors and assigns to each comply with the undertakings consented to in the Offer and set forth below in Part VI of this Order; and; and
 5. orders EMF and its successors and assigns to each comply with the undertakings consented to in the Offer and set forth below in Part VI of this Order.

Upon consideration, the Commission has determined to accept EMF's Offer.

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

1. EMF and its successors and assigns shall cease and desist from violating 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4), and Commission Regulation 166.3, 17 C.F.R. § 166.3.
2. EMF shall pay a civil monetary penalty in the amount of four million dollars (\$4,000,000.00), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. Post-judgment interest shall accrue beginning eleven (11) days after the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. EMF shall pay this civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the

payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-6569

If payment by electronic transfer is chosen, EMF shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. EMF shall accompany payment of the civil penalty with a cover letter that identifies EMF and the name and docket number of this proceeding. EMF shall simultaneously submit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. §9a(2)(2006), if this amount is not paid in full within fifteen (15) days of the due date, EMF shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and

3. EMF's registration as a commodity trading advisor and a commodity pool operator shall be restricted insofar as EMF complies with the undertakings set forth below for a period of three years from the date of this Order:

- a. **Reporting Requirements.** If EMF's gross futures position equals or exceeds either 50% of the established position accountability limits, as set by the CBOT, in an expiring month for any futures contract for Treasury securities ("Treasury Note Futures"), at any time during the period of twenty business days prior to the delivery month through to the last delivery day of the expiring futures month, EMF shall report such positions to the Director, Division of Market Oversight ("DMO") and Director, Division of Enforcement ("DOE"), in a form acceptable to DMO and DOE, as well as its positions in the deliverable securities on the expiring futures contract in all markets, including the cash and repurchase markets, each business day until the last delivery day of the expiring futures month. EMF shall promptly make available to the DMO and/or the DOE any information or documents requested relating to EMF's positions. DMO or DOE will transmit such position reports and other information to the CBOT, as permitted under the Act and Regulations. Further, if EMF's reporting requirement reaches the levels set forth above, EMF agrees that the CBOT can require that EMF reduce or liquidate its Treasury Note Futures positions to the levels set forth above. This

reporting requirement in no way limits EMF's requirements to comply with any provision under the Act and Regulations or the rules of the CBOT or CME.

- b. **Risk Management Committee.** EMF shall establish and/or maintain a risk management committee that shall on at least a monthly basis and more frequently as market conditions require monitor and approve EMF's trading positions in Treasury Note futures and securities deliverable on the futures contract, including positions in deliverable securities in the repurchase markets, in accordance with the policies and procedures set forth pursuant to subsections c and d below.
- c. **Internal Controls, Policy and Procedures:** EMF shall design and implement a system of internal controls, policies and procedures to deter, detect, discipline and correct potential wrongdoing and violations of the Act and Commission Regulations, including the type of conduct found by the Commission in this matter to be violative of the Act, and are reasonably designed to provide diligent supervision in accordance with Commission Regulation 166.3.
- d. **Report:** EMF shall submit a report to the Commission's Division of Enforcement within 120 days of the issuance of this Commission Order. The report shall include the steps taken to comply and the results of its compliance with subparts b and c of these undertakings, including a detailed description of the internal controls, policies and procedures formulated and implemented.
- e. **Disclosure of Order.**
 - i. EMF shall distribute a copy of this Order to all existing and subsequent employees, principals and officers and have each employee, principal and officer sign a statement affirming that he/she has read and reviewed the Order.
 - ii. EMF shall distribute a copy of this Order to all its current investors as well as investors in EMF's investment pools during the January 1, 2005 to December 31, 2005 time-period.
 - iii. EMF shall provide the following disclosure in its disclosure document to existing and prospective clients:

EMF FINANCIAL PRODUCTS, LLC ("EMF") WAS SUBJECT TO AN INVESTIGATION BY THE U.S. COMMODITY FUTURES TRADING COMMISSION ("CFTC") RELATED TO ITS TRADING OF THE SEPTEMBER 2005 10-YEAR U.S. TREASURY NOTE FUTURES CONTRACT AND THE RELATED REPURCHASE AGREEMENT ("REPO") AND CASH TREASURY NOTE MARKETS. EMF ENTERED INTO

A SETTLEMENT WITH THE CFTC WITHOUT ADMITTING OR DENYING THE FINDINGS, FOR VIOLATIONS OF SECTION 9(A)(4) OF THE COMMODITY EXCHANGE ACT (I.E. FALSE STATEMENTS TO A BOARD OF TRADE) AND COMMISSION REGULATION 166.3 (I.E. FAILURE TO SUPERVISE). EMF PAID A \$4,000,000 CIVIL MONETARY PENALTY RELATED TO THIS CONDUCT. IN ADDITION, EMF'S REGISTRATION AS A COMMODITY POOL OPERATOR AND COMMODITY TRADING ADVISOR IS RESTRICTED FOR THREE YEARS AND EMF MUST COMPLY WITH UNDERTAKINGS PURSUANT TO THAT RESTRICTION AND THE SETTLEMENT. A COMPLETE COPY OF THE SETTLEMENT ORDER IS LOCATED AT [HTTP://WWW.CFTC.GOV](http://www.cftc.gov).

4. Respondent agrees that neither it, nor any of its agents, employees, or representatives under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without factual basis; provided, however, that nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. Respondent shall undertake all steps necessary to assure that all of the agents, employees and representatives under its authority or control understand and comply with this agreement.

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

By the Commission.



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: November 13, 2009