

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2451 / December 1, 2005**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 27170 / December 1, 2005**

**ADMINISTRATIVE PROCEEDING**  
**FILE NO. 3-12114**

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<b>In the Matter of</b>	:	<b>ORDER INSTITUTING ADMINISTRATIVE</b>
	:	<b>AND CEASE-AND-DESIST PROCEEDINGS,</b>
	:	<b>MAKING FINDINGS, AND IMPOSING</b>
<b>American Express</b>	:	<b>REMEDIAL SANCTIONS AND A CEASE-</b>
<b>Financial Corporation</b>	:	<b>AND-DESIST ORDER PURSUANT TO</b>
<b>(now known as Ameriprise</b>	:	<b>SECTIONS 203(e) AND 203(k) OF THE</b>
<b>Financial, Inc.),</b>	:	<b>INVESTMENT ADVISERS ACT OF 1940</b>
	:	<b>AND SECTIONS 9(b) AND 9(f) OF THE</b>
<b>Respondent.</b>	:	<b>INVESTMENT COMPANY ACT OF 1940</b>
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**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against American Express Financial Corporation (now known as Ameriprise Financial, Inc.) (“AEFC” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e)

and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the Investment Company Act (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

#### **Respondent**

1. AEFC<sup>2</sup>, now known as Ameriprise Financial, Inc., is a Delaware corporation with headquarters located in Minneapolis, MN. AEFC has been registered with the Commission as an investment adviser since 1979. Prior to September 30, 2005, AEFC was wholly-owned by American Express Company. On October 3, 2005, AEFC became a publicly-traded company listed on the New York Stock Exchange as AMP. AEFC serves as the investment adviser to its proprietary funds, the American Express Funds (“AXP Funds”).

#### **Background**

2. This matter arises from AEFC’s failure to adequately disclose certain material facts to shareholders in the AXP Funds for which it acts as an investment adviser. Specifically, AEFC did not adequately disclose to shareholders in the AXP Funds market timing activities that were inconsistent with the disclosures in the AXP Funds’ prospectuses.

3. After changing the AXP Funds’ prospectus disclosures, AEFC acted contrary to these prospectus disclosures when it allowed certain shareholders to market time the mutual funds that it advised. From at least January 1, 2002 to August 31, 2002, AEFC allowed certain identified market timers to continue to market time, contrary to the AXP Funds’ new prospectus disclosures that indicated that the AXP Funds prohibited market timing. From May 2002 to October 2003, AEFC also allowed one identified market timer to market time variable annuity products contrary to the variable annuity products’ prospectus disclosures. Finally, from January 1, 2002 to September 30, 2003, AEFC failed to implement procedures to detect and prevent market timing in 401(k) plans for employees of AEFC and related companies or disclose that there were no such procedures in place to prevent a number of past and present employees of AEFC and related companies from market timing various AXP Funds through their 401(k) retirement plans contrary to prospectus disclosures.

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> As used herein, the name “AEFC” refers to American Express Financial Corporation and all predecessor and successor entities, including Ameriprise Financial, Inc.

### **Improper Market Timing**

4. “Market timing” or “timing” refers to (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can harm other mutual fund shareholders because it can dilute the value of their shares if the market timer is exploiting pricing inefficiencies, disrupt the management of the mutual fund’s investment portfolio or cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

5. In January 2002, AEFC changed the disclosures in the AXP Funds’ prospectuses to explicitly prohibit market timing. AEFC filed registration statements with the Commission that incorporated these new prospectuses. The AXP Funds’ prospectuses stated:

The Fund does not permit market timing. Do not invest in the Fund if you are a market timer.

Excessive trading (market timing) or other abusive short-term trading practices may disrupt portfolio management strategies, harm fund performance and increase fund expenses.

6. After the AXP Funds issued the new prospectus disclosures that prohibited market timing in January 2002, AEFC still permitted approximately 20 market timers to continue market timing the AXP Funds for an additional time period that lasted approximately six to eight months.

7. The Director of Mutual Fund Products at AEFC described the rationale for providing the exceptions as providing “additional flexibility to these market timing customers based upon the magnitude of their investments.” These exceptions were not disclosed in the respective mutual fund prospectuses, nor were the boards of directors of the funds informed of these arrangements.

### **Improper Market Timing in 401(k) Plans**

8. From January 1, 2002 through September 30, 2003, 27 past and present employees of AEFC and related companies market timed various AXP Funds through their 401(k) retirement plans. Although the AXP Funds’ prospectuses banned market timing starting on January 1, 2002, AEFC did not put in place any procedures to monitor the employees’ 401(k) accounts for frequent trading or market timing activity or disclose to investors that there were no such procedures until October 2003.

## **Improper Market Timing in Variable Annuity Products**

9. Anti-market timing language was added to the variable annuity product prospectuses sold by AEFC in May 2002. Prior to this addition, the variable annuity contracts referred the contract holder back to the fund prospectuses to determine whether a particular mutual fund permitted market timing. AEFC filed registration statements with the Commission that incorporated these new variable annuity product prospectuses.

10. After the variable annuity prospectus disclosures were changed in May 2002, AEFC allowed a known market timer to continue to market time AEFC's variable annuity products until October 2003. This exception was not disclosed in the variable annuity product prospectuses and the AXP Funds' boards of directors were not informed of this arrangement.

11. As a result of the conduct described above in paragraphs 4 through 10, AEFC willfully violated:

a. Section 206(2) of the Advisers Act in that, while acting as an investment adviser, it engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients; and

b. Section 34(b) of the Investment Company Act in that it made untrue statements of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

12. By permitting market timing in its variable annuity products, as described above in paragraphs 9 and 10, AEFC also willfully violated Section 206(1) of the Advisers Act in that it, while acting as an investment adviser, employed devices, schemes, or artifices to defraud clients or prospective clients.

## **Undertakings**

13. AEFC undertakes the following<sup>3</sup>:

a. At least once every year, starting in 2005, AEFC shall make presentations to its Board of Directors and the Boards of Directors of the AXP Funds (or any committees designated by the Boards of Directors to perform similar functions) that include an overview of AEFC's policies and procedures to prevent market timing, any material changes to these policies and procedures and whether

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<sup>3</sup> The undertakings and sanctions set forth herein shall be binding upon all successors to and affiliates of Respondent.

AEFC's and the AXP Funds' disclosures related to market timing are in compliance with this Order and the federal securities laws.

14. *Independent Distribution Consultant.* AEFC shall retain, within 60 days of the date of entry of this Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission. AEFC shall exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Distribution Consultant. AEFC shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested for his or her review. AEFC shall develop a Distribution Plan for the distribution of all of the disgorgement and civil penalties ordered in Section IV.C. below, and any interest or earnings thereon, in accordance with a methodology developed in consultation with the Independent Distribution Consultant and acceptable to the staff of the Commission. The Distribution Plan shall address how the monetary sums attributable to AEFC's violations related to the market timing described herein shall be distributed to benefit investors in the AXP Funds for market timing activity that took place between January 1, 2002 and September 30, 2003.

- a. AEFC shall submit the Distribution Plan to the Independent Consultant and the staff of the Commission no more than 120 days after the date of entry of this Order.
- b. The Distribution Plan shall be binding unless, within 180 days after the date of entry of this Order, the staff of the Commission advises AEFC and the Independent Distribution Consultant, in writing, of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.
- c. With respect to any determination or calculation with which AEFC, the Independent Distribution Consultant or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 210 days of the date of entry of this Order. In the event that AEFC, the Independent Distribution Consultant and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.
- d. Within 225 days of the date of entry of this Order, AEFC shall submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission's Rules Regarding Disgorgement and Fair Fund Plans. Following a Commission order approving a final plan of disgorgement, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules Regarding Disgorgement and Fair Fund Plans, AEFC shall require the Independent Distribution Consultant, with AEFC,

to take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

e. To ensure the independence of the Independent Distribution Consultant, AEFC: (i) shall not have the authority to terminate the Independent Distribution Consultant, without the prior written approval of the Commission's staff; (ii) shall compensate the Independent Distribution Consultant and persons engaged to assist the Independent Distribution Consultant for services rendered pursuant to this Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Independent Distribution Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the Independent Distribution Consultant from transmitting any information, reports or documents to the Commission or the Commission's staff.

f. AEFC shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with AEFC, or any of its present or former affiliates, parent companies, directors, officers, employees, or agents acting in their capacity as such, provided, however, that notwithstanding the foregoing the Independent Distribution Consultant may serve as Independent Distribution Consultant pursuant to the Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order in the matter of American Express Financial Advisors Inc. AEFC shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Order not, without prior written consent of a majority of the independent Trustees or Directors and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with AEFC, or any of its present or former affiliates, parent companies, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

15. For good cause shown, and upon a timely application from AEFC or the Independent Distribution Consultant, the Commission's staff may extend any of the procedural dates set forth above.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in AEFC's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the Investment Company Act it is hereby ORDERED that:

- A. AEFC is censured.
- B. AEFC shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act and Section 34(b) of the Investment Company Act.
- C. IT IS FURTHER ORDERED that:
1. AEFC shall, within 60 days of the entry of this Order, pay disgorgement plus prejudgment interest in the total amount of \$10 million (“Disgorgement”). AEFC also shall, within 60 days of the entry of this Order, pay a civil monetary penalty in the amount of \$5 million (“Penalties”). Such payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies AEFC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Merri Jo Gillette, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 900, Chicago, Illinois 60604.
  2. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in Section C. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as Penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, AEFC agrees that it shall not, after offset or reduction in any Related Investor Action based on AEFC’s payment of disgorgement in this action, further benefit by offset or reduction of any part of AEFC’s payment of Penalties in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, AEFC agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the Penalties imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against AEFC by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. AEFC shall comply with the undertakings enumerated in Section III. 13 through 15.

By the Commission.

Jonathan G. Katz  
Secretary