

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 68467 / December 19, 2012**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3521 / December 19, 2012**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 30310 / December 19, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15141**

**In the Matter of**

**MOHAMMED RIAD  
AND KEVIN TIMOTHY  
SWANSON**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 21C OF  
THE SECURITIES EXCHANGE ACT  
OF 1934, SECTIONS 203(f), AND 203(k)  
OF THE INVESTMENT ADVISERS  
ACT OF 1940, AND SECTIONS 9(b)  
AND 9(f) OF THE INVESTMENT  
COMPANY ACT OF 1940**

**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 Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f), 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 Mohammed Riad (“Riad”) and Kevin Timothy Swanson (“Swanson”) (collectively “Respondents”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**Respondents**

1. Mohammed Riad, age 43, resides in Clayton, Missouri. During 2007 and 2008, Riad was Managing Director and Senior Portfolio Manager at Fiduciary Asset Management, LLC (“FAMCO”). Riad was portfolio manager of

Fiduciary/Claymore Dynamic Equity Fund (“HCE”) from its inception until October 2008. Riad also became a Vice President of HCE in 2007. Currently, Riad is the Chief Executive Officer of a Missouri-registered investment advisory firm located in St. Louis, Missouri. Riad holds Series 7, 8, 63, and 65 licenses.

2. Kevin Timothy Swanson, age 45, resides in St. Louis, Missouri. During 2007 and 2008, Swanson was a portfolio manager at FAMCO and served as a co-portfolio manager of HCE with Riad. Between 2011 and 2012, Swanson served as the Chief Investment Officer for an investment adviser located in St. Louis, Missouri. Swanson is a Chartered Financial Analyst and formerly held a Series 7 license.

### **Other Relevant Entities**

3. Fiduciary Asset Management, LLC is a Delaware limited liability company based in St. Louis, Missouri. FAMCO has been registered with the Commission as an investment adviser since 1994. FAMCO is a wholly-owned subsidiary of the Piper Jaffray Companies. FAMCO was the sub-adviser to HCE. FAMCO received an annual sub-advisory fee of .5% of the Fund’s net assets. On December 19, 2012, the Commission instituted settled administrative proceedings in In the Matter of Fiduciary Asset Management, LLC, in which the Commission found that FAMCO willfully violated Section 34(b) of the Investment Company Act and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. FAMCO consented to the issuance of the Commission’s order without admitting or denying the Commission’s findings.

4. Fiduciary/Claymore Dynamic Equity Fund was a closed-end investment company organized in April 2005. HCE’s shares were offered to the investing public pursuant to a registration statement filed with the Commission. HCE’s investors included asset managers, retirement plans and individual retirement account holders. HCE regularly filed periodic reports with the Commission as required by the Investment Company Act. The Fund was liquidated in May 2009.

5. Claymore Advisors, LLC (“Claymore”) is a Delaware limited liability company based in Lisle, Illinois. Claymore has been registered with the Commission as an investment adviser since 2003, and provides portfolio management services for investment companies. Claymore served as investment adviser to HCE from the Fund’s inception in April 2005 until its liquidation in 2009. Claymore also served as HCE’s fund administrator from 2006 through 2009. On December 19, 2012, the Commission instituted settled administrative proceedings in In the Matter of Claymore Advisors, LLC, in which the Commission found that Claymore failed reasonably to supervise FAMCO with a view to preventing its violations of the securities laws within the meaning of Section 203(e)(6) of the Advisers Act, and caused HCE’s violations of Investment Company Act Rule 8b-16. Claymore consented to the issuance of the Commission’s order without admitting or denying the Commission’s findings.

## Background

6. According to HCE's April 2005 registration statement, the Fund's primary investment strategy was to invest in equities and write call options on a substantial portion of those equities. This strategy is commonly referred to as a covered call strategy. Covered call strategies trade upside potential in the equities held in the portfolio for current income from option premiums received.

7. HCE informed investors in its periodic reports that this covered call strategy had the potential to protect the Fund in a downward trending market. The Fund also disclosed to investors that it had a goal of paying an annual dividend equal to an 8.5% yield on the Fund's initial public offering price.

8. Claymore provided advisory services to HCE pursuant to an investment advisory agreement, and delegated certain of its responsibilities to FAMCO through a sub-advisory agreement. Under the sub-advisory agreement, FAMCO acted as a fiduciary and was responsible for the management of HCE's portfolio.

9. FAMCO was required to manage the Fund in accordance with HCE's investment objective, policies, and restrictions as stated in the Fund's registration statement. FAMCO's engagement as sub-adviser was subject to annual review by HCE's Board of Directors. FAMCO initially designated Riad as HCE's portfolio manager and later in 2005 added Swanson as co-portfolio manager. Riad was the senior portfolio manager, and Swanson reported to him.

10. FAMCO was involved in HCE's periodic reporting. For each HCE annual and semi-annual report, Riad provided Claymore with a signed certification that: (1) he had reviewed the portfolio of investments contained in HCE's report and that, to the best of his knowledge, the portfolio of investments was complete and accurate; and (2) to the best of his knowledge, the securities in the portfolio were purchased in compliance with the investment parameters set forth in the prospectus.

11. Each HCE annual and semi-annual report also contained a Questions and Answers discussion with Riad and Swanson (also referred to as the portfolio manager commentary). A Claymore consultant interviewed Swanson for each periodic report and then, after the interview, drafted the Questions and Answers section based on Swanson's statements during the interview. Once the initial draft was completed, Riad, Swanson, and others at FAMCO and Claymore reviewed and edited the Questions and Answers before it was included in the report.

12. For each HCE annual and semi-annual report, Swanson provided Claymore with a signed certification that he had reviewed the portfolio manager commentary contained in the report and that, to the best of his knowledge, it did not contain any material misstatement or omission that would make the report inaccurate or misleading.

## HCE'S Put Option And Variance Swap Strategies

13. Beginning in April 2007 and continuing through October 2008, FAMCO implemented two new strategies intended to supplement HCE's income and to help meet the Fund's dividend objective. More specifically, during this period HCE regularly wrote short duration, out-of-the-money S&P 500 put options and also entered into short variance swaps.

14. Riad was primarily responsible for managing these new strategies, although Swanson assisted and advised Riad. Swanson described these strategies as allowing FAMCO to "do more with less."

15. Prior to April 2007, HCE purchased S&P 500 put options and wrote S&P 500 call options as protection for the portfolio. Beginning in April 2007, HCE began writing S&P 500 put options as well, at times holding long and written put options simultaneously and at other times holding only written put options. Beginning in November 2007, HCE ceased holding long and written put options together and began consistently holding only written put options in its portfolio with no corresponding long position.

16. When FAMCO wrote put options for HCE's portfolio, HCE collected a premium from the purchaser of the option, and agreed to compensate the purchaser for any declines in the S&P 500 beyond the "strike price" of the option. HCE typically wrote put options with one- or two-month expirations, and with strike prices that were between 6% and 10% below the S&P 500's level at the time the options were written.<sup>1</sup> Usually, this strategy was profitable. But HCE stood to lose money on a written put position if the S&P 500 approached or declined below the option strike price during the option period.

17. Throughout 2008, the notional exposures to potential losses on put options that HCE wrote ranged from 60% to 140% of the Fund's net asset value ("NAV").<sup>2</sup> Each month HCE wrote put options during 2008, the Fund collected between \$500,000 to \$1.4 million in premiums, which significantly increased the Fund's return each time the options expired out-of-the-money. Between April 2007 and August 2008, HCE collected \$9.6 million in premiums from written put options.

18. Variance swaps are essentially a bet on whether the actual or realized market volatility will be higher or lower than the market's expectation for volatility ("implied volatility"). A party with a "long variance" position profits when realized volatility for the contract period is greater than the implied volatility. A party with

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<sup>1</sup> The amount by which the option's strike price is below the current price is commonly referred to as the amount by which the option is "out-of-the-money."

<sup>2</sup> An option's notional exposure is the amount of maximum loss exposure on the option that would be realized in the event that the underlying referenced security or index, in this case the S&P 500, were to decline to 0.

a “short variance” position profits whenever realized volatility is less than the implied volatility.

19. FAMCO began regularly trading short variance swaps in HCE’s portfolio in July 2007. HCE maintained written put options and short variance swaps in its portfolio at nearly all times from July 2007 through October 2008, with the only significant exception being a two-month period from April to June 2008.

20. FAMCO’s use of written put options and variance swaps significantly affected HCE’s performance and changed the Fund’s risk profile. FAMCO’s internal documents projected writing put options and trading short variance swap could potentially add hundreds of basis points to HCE’s return each year, so long as there were no significant market disruptions. However, by using these strategies, FAMCO leveraged HCE’s exposure to market declines and volatility, which exposed the Fund to massive potential losses if the S&P 500 declined rapidly or became very volatile. In so doing, FAMCO changed HCE from a fund that provided some downside protection to a fund that magnified downside exposure.

21. In connection with these new strategies, FAMCO maintained research files with a variety of materials, including research reports which analogized short variance swaps to selling insurance. One report noted that such an approach was “potentially very risky” and required enough capital “to absorb the occasional inevitable losses.” The same report also noted that while short positions usually result in “modest gains,” they can be exposed to “very large losses if volatility spikes up significantly.”

22. When FAMCO began writing put options in HCE without any corresponding long positions, a FAMCO accountant with options trading experience warned Riad that the risks associated with this strategy outweighed the benefit received from the option premiums. However, Riad dismissed this warning because he did not believe the stock market would decline far enough during the life of the put options to generate significant losses.

23. Subsequently, the FAMCO accountant raised his concerns about excessive risk to FAMCO’s compliance department. In response, FAMCO consulted with Claymore regarding whether writing put options was permissible in the Fund. However, FAMCO did not fully explain to Claymore or HCE the nature of its short strategies and the associated risks. The accountant continued to raise his concerns about risk to Riad as FAMCO continued to trade written put options.

#### **Riad’s Characterization Of These Strategies To HCE**

24. As HCE’s sub-adviser, FAMCO was subject to the supervision of Claymore and HCE’s Board of Directors. On several occasions during 2007 and 2008, Riad misled Claymore and HCE’s Board of Directors regarding the purpose behind the put option and variance swap strategies, as well as the risk associated with those strategies.

25. For example, in December 2007, Riad described the put-writing strategy to Claymore as a “conservative high yielding strategy,” and in March 2008 told

Claymore he was using put options and variance swaps to hedge the portfolio against declines in market volatility and to “lock in” high market volatility levels. This was not true, and Riad subsequently admitted that locking in volatility was not a reason for writing put options and trading variance swaps. Swanson was aware of Riad’s misrepresentation to Claymore and HCE regarding the reasons for implementing these new strategies.

26. On several occasions between October 2007 and July 2008, Riad also described his put option and variance swap trading to Claymore and HCE’s Board as a means to mitigate downside risks to the investment portfolio or to augment downside protection in adverse markets. This was not true either.

27. The first time Riad maintained a written put option position in HCE without a corresponding long put position, Swanson asked if such a position was permissible, and suggested that a naked short option position might raise questions. Riad responded that he was “stalling” and hoped that the short position would expire profitably before he needed to have “that discussion.”

### **Put Option And Variance Swap Performance**

28. HCE’s written put options and variance swaps materially affected HCE’s return in 2007 and 2008. During this period, HCE also purchased S&P 500 put options, wrote S&P 500 call options, and entered into long variance swaps.

29. During HCE’s fiscal year ending November 30, 2007, HCE’s NAV increased 12.87%, compared to the S&P 500’s 7.72% return and a 5.54% return for the CBOE Buywrite Monthly Index (“BXM”), an index that simulates an S&P 500 covered call strategy. HCE’s written put options, long put options, and written S&P 500 call options contributed approximately 2.0%, 1.7%, and 1.7% respectively to HCE’s NAV growth; these strategies accounted for more than 40% of the Fund’s NAV growth for the period, and nearly all of HCE’s excess return above the S&P 500. HCE’s short variance swaps were one of HCE’s worst performing investments for the period, reducing the Fund’s return by .4% in four months of trading the products.

30. HCE’s derivative strategies continued to boost return during the first half of 2008. For the six-month period ending May 31, 2008, HCE’s return was .37% of NAV, compared to -4.50% for the S&P 500 and 2.00% for the BXM. HCE’s written put options, short variance swaps, and written call options contributed approximately 2.1%, .8%, and .7% respectively to the Fund’s return. By contrast, HCE’s long put options and long variance swaps decreased the Fund’s return by .6% and .8%, respectively.

### **HCE’s Collapse During The Fall Of 2008**

31. FAMCO continued to write put options and trade short variance swaps throughout the summer of 2008. In late August 2008, FAMCO wrote two-month, 10% out-of-the-money S&P 500 put options in HCE with a \$139 million notional exposure, which equated to 136% of the Fund’s NAV, as of August 28, 2008.

32. FAMCO estimated this position to have a potential loss exposure of \$17,630,000, or approximately 17.5% of the Fund's value, as of the end of August. FAMCO also caused HCE to enter into a one-month short variance swap in August 2008, further exposing the Fund to market declines and volatility.

33. In August and early September 2008, Riad made similar put option and variance swap trades in a hedge fund that he managed for himself and other principals at FAMCO.

34. Beginning in early September 2008, the financial markets began declining rapidly and became very volatile. On September 10, 2008, Riad stated in an internal FAMCO email that "[A FAMCO research analyst] told me this would happen. Never sell variance in front of a broker/dealer disaster." The day after Lehman Brothers filed for bankruptcy, Riad closed out the written put position in the hedge fund he managed for himself and other principals at FAMCO, but left HCE's put position open.

35. On September 18, 2008, the same FAMCO accountant who previously had expressed concerns about the risks of writing put options met with FAMCO's compliance department. Once again, the accountant expressed his concern that the Fund was taking on too much risk with the put option and variance swap strategies.

36. On September 19, 2008, FAMCO settled HCE's expiring one-month variance swap position for a loss of \$7,025,454. As of September 19, HCE also had an unrealized \$1.25 million loss on its written put options, and FAMCO's estimate of HCE's exposure or potential losses on those options had grown to \$39.7 million, or 44% of the Fund's NAV. Nevertheless, Riad caused HCE to enter into two new, one-month short variance swaps that same day, despite the possibility of suffering significant losses on the outstanding put option positions if the S&P 500 continued to decline.

37. The S&P 500 continued to decline with increased volatility in late September and October 2008. FAMCO covered HCE's written put positions in early October and realized a loss of \$15,527,300. HCE also lost an additional \$22,844,124 on the two variance swaps entered into in September, for an aggregate loss of \$29,869,578 million from both its August and September variance swaps.

38. In September and October 2008, HCE lost approximately \$73.4 million, or 72.8% of its NAV. By comparison, the S&P 500 index declined 24.5%, and the BXM declined 19.9%. Approximately \$45.4 million of HCE's losses during this two-month period were directly attributable to HCE's use of written put options and short variance swaps.

39. HCE's Board met in early October 2008 to discuss the Fund's performance. Riad told the Board that he had implemented a strategy of purchasing put options, and he was using written put options to offset the cost of FAMCO's long put strategy. He also said that the Fund's long option position had expired or was offset during the summer, but that he had intended to reinstate it after the November 2008 election. Riad

said that he decided to maintain the written put option exposure in the portfolio in the meantime.

40. Riad's description of his strategy to the Board was not true. Between November 2007 and August 2008, Riad purchased put options in HCE just once, and held a long position for less than three months. By contrast, Riad wrote put options on fifteen different occasions during that period and maintained a short position for more than eight of those ten months. Riad's use of written put options far exceeded that which was necessary to offset the cost of HCE's long put options.

41. Before HCE's collapse, Riad's written put option strategy had generated \$7.6 million in option premiums and profits of \$3.85 million for the Fund. Riad caused FAMCO to continue writing put options as part of a principal fund strategy, and not merely to offset the cost of long put option positions.

### **HCE's Failure To Disclose Its Put Option And Variance Swap Strategies**

42. Commission Form N-2 requires a registered investment company to describe in its registration statement the types of investments, investment policies, practices, and techniques that the investment company employs or intends to employ, the extent to which it may engage in investment policies, and the risks inherent in such policies. Form N-2 also requires a registered investment company to discuss the principal risk factors associated with investment in the investment company.

43. Investment Company Act Rule 8b-16 requires that a registered investment company amend its registration statement annually. Rule 8b-16 provides that a closed-end fund need not amend its registration statement provided that it includes certain information in its annual reports, including any material changes in the fund's investment objectives or policies that have not been approved by shareholders, and any material changes in the principal risk factors associated with investment in the fund.

44. Neither HCE's registration statement nor any of its annual reports disclosed writing index put options or trading variance swaps as principal fund strategies. Neither strategy received any mention in the registration statement's sections entitled "Fund Investments" and "Portfolio Contents," where HCE described the types of investments in which the Fund would invest under normal market conditions.

45. In fact, HCE's registration statement disclosed that the Fund would pursue primarily a covered call strategy. HCE never disclosed that put options and variance swaps were primary drivers of fund performance, or that the use of those products might alter the Fund's risk profile.

46. HCE's prospectus, which was part of HCE's registration statement, disclosed in a separate section entitled "Strategic Transactions" the fact that the Fund may utilize a variety of derivative strategies, including "purchas[ing] and sell[ing] exchange-listed and over-the-counter put and call options on securities, equity and fixed-income indices and other instruments, purchas[ing] and sell[ing] futures contracts and options thereon and enter[ing] into various transactions such as swaps, caps, floors or collars."

HCE's Statement of Additional Investment ("SAI"), also part of HCE's registration statement, disclosed that the Fund might purchase or sell index options, but described those products as potential hedges against other portfolio securities. The registration statement did not provide any specific disclosure about the use of variance swaps beyond the more general disclosures about using derivatives.

47. Further, the "Risks" section in HCE's registration statement did not discuss the risks associated with put writing or variance swaps, including leveraged exposure to market declines or exposure to spikes in market volatility. Instead, HCE's risk disclosures relating to its use of derivatives merely contained a warning that the use of derivatives could leave the Fund worse off, depending on the adviser's ability to correctly predict movements in the securities and interest rate markets.

48. FAMCO used put options and variance swaps in HCE's portfolio to such a degree that those strategies became an integral part of how HCE sought to achieve its investment objective and exposed the Fund to new and material risks. In so doing, FAMCO engaged in strategies and exposed the Fund to risks that were not adequately disclosed.

49. Although FAMCO informed Claymore that it intended to trade put options and variance swaps in HCE's portfolio, Riad did not adequately explain to Claymore or HCE's Board of Directors the risks associated with the written put option and variance swap strategies or take adequate steps to ensure that the strategies were consistent with HCE's registration statement disclosures regarding the Fund's investments, strategies, and risks.

50. As a consequence, HCE never amended its registration statement to include sufficient disclosure of its put-writing and variance swap strategies and the risks associated with those strategies, nor did HCE include sufficient information about those strategies and risks in its 2007 annual report.

### **HCE's Misleading 2007 Annual Report**

51. HCE's annual report for the period ended November 30, 2007 omitted material information necessary to make the statements contained therein not misleading. The Questions and Answers section of the annual report, which purported to be an interview with Riad and Swanson as FAMCO's co-portfolio managers, contained misleading statements and omissions regarding the drivers of Fund performance and the Fund's exposure to downside risk.

52. In the Questions and Answers section, Riad and Swanson answered the question "Which investment decisions most helped the Fund's performance?" by attributing HCE's strong performance to stock selection and the covered call strategy. The portfolio managers highlighted particular sector and single stock investments that contributed to return, including eleven individual stock investments which contributed between approximately \$(20,000) and \$1 million each (net of covered call option positions) to HCE's NAV growth.

53. However, Riad and Swanson failed to disclose that the Fund had generated significant income from alternative investment strategies outside of its covered call strategy, including writing S&P 500 put options, writing S&P 500 call options, and purchasing S&P 500 put options, which contributed approximately \$2.2 million (2.0%), \$1.9 million (1.7%), and \$1.9 million (1.7%) respectively to HCE's NAV growth.

54. In fact, contrary to Riad's and Swanson's commentary, stock selection accounted for a relatively small amount of the Fund's outperformance. HCE's equity portfolio outperformed the S&P 500 by 1.25%, which was only slightly more than the 1% advisory fee charged by the Fund. As a result, Riad's and Swanson's commentary was materially misleading, and created a distorted picture of what was driving HCE's performance by omitting discussion of HCE's profits from S&P 500 put options and call options during the period.

55. In the Questions and Answers section, Riad and Swanson also failed to mention that HCE lost \$400,509 on its variance swap positions when discussing which holdings most hurt performance in 2007. Instead, Riad and Swanson highlighted four individual stock investments, three of which lost less than \$100,000 (net of covered call option positions). Omitting any discussion of the short variance swaps rendered the disclosure misleading.

56. Riad and Swanson also failed to discuss HCE's written put option and variance swap strategies when explaining the Fund's hedging strategies in the Questions and Answers section. Instead, Riad and Swanson noted that the Fund's covered call option strategy had the potential to protect the Fund in a downward trending market and, at times during 2007 when they were concerned about the market, they bought index put options and wrote index call options for protection. Riad and Swanson never mentioned the written put options or the variance swaps, which exposed the Fund to losses in periods of significant market decline or volatility. Without mention of the written put options or variance swaps and the Fund's exposure to downside risk from those positions, this disclosure was misleading.

57. Further, in the interview that served as the basis for the Questions and Answers section, Swanson told Claymore's consultant that HCE appropriately hedged the portfolio to take advantage of spikes in market volatility, when the Fund actually had lost money on its short variance swaps during the period.

58. HCE's 2007 annual report also contained a risks disclosure section, which listed the risks associated with investing in the Fund. The risks disclosure stated that the views expressed "reflect those of the portfolio managers and Claymore only." The risks disclosure omitted discussion of any of the risks associated with writing put options and trading variance swaps, and therefore misled investors regarding the risks of investing in HCE.

59. Riad and Swanson regularly received portfolio attribution reports prepared internally at FAMCO that showed how the various investments in HCE's portfolio had performed, and they followed the performance of the various investments and

strategies. Therefore, Riad and Swanson knowingly, recklessly, and negligently made misleading statements and omissions in HCE's 2007 annual report regarding the contributors to the Fund's performance. Riad and Swanson also knowingly, recklessly, and negligently made misleading statements and omissions regarding their actions to protect the Fund against declining markets, and omitted from discussion of the Fund's risks any of the risks associated with writing put options and trading short variance swaps.

### **HCE's Misleading 2008 Semi-Annual Report**

60. HCE's semi-annual report for the six months ended May 31, 2008 contained many of the same deficiencies as the 2007 annual report. The Questions and Answers section attributed to Riad and Swanson again mischaracterized the primary drivers of performance and misled investors about the Fund's exposure to downside risk. The semi-annual report's risks disclosure again omitted any discussion of the risks associated with written put options and variance swaps in periods of significant market decline or volatility.

61. In response to a question in the Questions and Answers section asking what investment decisions most helped the Fund's performance, Riad and Swanson stated that HCE's performance benefited from "industry and stock selection, the covered call strategy, and the hedge program." Riad and Swanson noted that HCE's equity portfolio lost only 3%, outperforming the S&P 500, and touted the Fund's covered call strategy by noting that the call options offset 2/3 of the 3% loss on HCE's equity portfolio. Riad and Swanson also claimed that "[d]uring most of this period, the portfolio was strategically hedged for additional downside protection, and that proved to be a good decision as equity markets trended downward."

62. In fact, FAMCO had written put options and short variance positions in the portfolio during approximately 65% of the period, while it maintained long put option and long variance positions for less than 40% of the period. The S&P 500 actually increased during most of the period that FAMCO hedged the portfolio with long put options and long variance swaps, causing HCE to lose approximately \$1.5 million on those positions during the same period.

63. HCE earned profits on its written put options and short variance swaps, but those profits had nothing to do with equity markets trending downward. HCE profited because the markets declined only slightly, and was exposed to significant losses if the markets had declined more steeply. Accordingly, this disclosure was misleading in light of HCE's exposure to downside risk in periods of significant market decline or volatility.

64. The option premiums that HCE collected on written put options were a major contributor to the Fund's NAV growth, generating approximately \$2.4 million of income and boosting NAV growth by approximately 2.1%. HCE also profited by approximately \$801,212, or .7%, from writing S&P 500 call options, and by approximately \$917,289, or .8%, from short variance positions.

65. These strategies significantly increased HCE's return, while exposing HCE to significant loss in periods of significant market decline or volatility. Yet Riad and Swanson did not mention the strategies when discussing the Fund's performance. Accordingly, Riad's and Swanson's discussion regarding what most helped HCE's performance was materially misleading.

66. Riad and Swanson also failed to identify HCE's long put options or long variance swaps in response to a question about which holdings most hurt performance, even though those positions constituted some of the worst performers in the Fund's portfolio. Instead, Riad and Swanson highlighted an underweight position in the energy equity sector and investments in two broker/dealers. Accordingly, these omissions caused the Questions and Answers section regarding the drivers of performance to be materially misleading.

67. Like HCE's annual report, the Fund's semi-annual report did not discuss any of the specific risks associated with trading put options and variance swaps in its risks disclosure section, which stated that it reflected the views of the portfolio managers and Claymore. The risk disclosures were misleading as a result of those omissions.

68. Riad and Swanson regularly received portfolio attribution reports prepared internally at FAMCO that showed how the various investments in HCE's portfolio had performed, and they followed the performance of the various investments and strategies. Therefore, Riad and Swanson knowingly, recklessly, and negligently made misleading statements and omissions in HCE's 2008 semi-annual report regarding the contributors to the Fund's performance. Riad and Swanson also knowingly, recklessly, and negligently made misleading statements and omissions regarding the portfolio being strategically hedged for downside protection, and excluded from discussion of the Fund's risks the specific risks associated with writing put options and trading short variance swaps in periods of significant market decline or volatility.

### **Violations**

69. As a result of the conduct described above, Riad and Swanson willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

70. As a result of the conduct described above, Riad and Swanson willfully aided and abetted and caused FAMCO's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit fraudulent conduct by an investment adviser.

71. As a result of the conduct described above, Riad and Swanson willfully violated Section 34(b) of the Investment Company Act, which prohibits untrue statements of material fact or omissions of any fact necessary in order to prevent the statements made, in the light of the circumstances under which they were made, from being materially misleading, in any registration statement, report or other document filed under the Investment Company Act.

72. As a result of the conduct described above, Riad and Swanson willfully aided and abetted and caused HCE's violations of Section 34(b) of the Investment Company Act, which prohibits untrue statements of material fact or omissions of any fact necessary in order to prevent the statements made, in the light of the circumstances under which they were made, from being materially misleading, in any registration statement, report or other document filed under the Investment Company Act.

73. As a result of the conduct described above, Riad caused HCE's violations of Investment Company Act Rule 8b-16, which requires registered closed-end investment companies to amend their registration statements to include changes to the fund that are required to be disclosed in the registration statement, or to include such information in their annual reports.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents Riad and Swanson pursuant to Section 21C of the Exchange Act, including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents Riad and Swanson pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents Riad and Swanson pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

E. Whether, pursuant to Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, Respondent Riad should be ordered to cease and desist from committing or causing violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, Section 34(b) of the Investment Company Act, and Investment Company Act Rule 8b-16.

F. Whether, pursuant to Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, Respondent Swanson should be ordered to cease and desist from committing or causing violations and any future

violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and Section 34(b) of the Investment Company Act.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If a Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against it/him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary