

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

**SECURITIES ACT OF 1933**  
Release No. 9159 / November 22, 2010

**SECURITIES EXCHANGE ACT OF 1934**  
Release No. 63355 / November 22, 2010

**INVESTMENT ADVISERS ACT OF 1940**  
Release No. 3113 / November 22, 2010

**INVESTMENT COMPANY ACT OF 1940**  
Release No. 29503 / November 22, 2010

**ADMINISTRATIVE PROCEEDING**  
File No. 3-14133

In the Matter of

**EMIL C. BUSSE, JR.**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933, SECTIONS  
15(b)(6) AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, SECTIONS 203(f)  
AND 203(k) OF THE INVESTMENT  
ADVISERS ACT OF 1940, AND SECTION  
9(b) OF THE INVESTMENT COMPANY  
ACT OF 1940, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER**

**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 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b)(6) and 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 Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Emil C. Busse, Jr. (“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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, Sections 15(b)(6) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

### **III.**

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

#### **Summary**

These proceedings involve violations of the antifraud provisions of the federal securities laws as the result of the Respondent's attempt to prevent a portfolio that was part of a mutual fund from "breaking the buck," i.e. dropping below a net asset value ("NAV") of \$1.00 per share. The Respondent managed a mutual fund that contained a money market portfolio and a bond portfolio. Both portfolios contained funds received exclusively from loans of securities made by customers of an affiliate of the Respondent's employer. From early February through at least March 2008, the Respondent caused the reallocation of numerous loans of securities from customers invested in the money market portfolio to customers invested in the bond portfolio. The Respondent engaged in this activity in an effort to increase the assets in the bond portfolio and enable the fund to keep its portfolio NAV at \$1 per share. The Respondent did not disclose these reallocations to customers or to his supervisors. As a result of his improprieties, certain customers in the inflated bond portfolio suffered losses of approximately \$6 million when, despite the efforts of the Respondent, the portfolio's NAV dropped to \$.99 per share. By engaging in this conduct, Respondent willfully aided and abetted and caused violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### **Respondent**

1. Busse is 62 years old and lives in Burnsville, Minnesota. Busse worked at FAF Advisors, Inc. ("FAF") as its Managing Director for its securities lending program from 1990 through June 2008, when FAF terminated him. He is not currently employed. Busse has no disciplinary history.

#### **Other Relevant Entities**

2. FAF is a Delaware corporation based in Minneapolis, Minnesota. It has been registered with the Commission as an investment adviser since April 13, 2001. FAF is a wholly owned subsidiary of U.S. Bank, N.A.

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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.

3. U.S. Bank, N.A. is a commercial bank and a wholly owned subsidiary of U.S. Bancorp., a diversified financial services company based in Minneapolis, Minnesota.

4. Mount Vernon Securities Lending Trust is an open-end investment company registered with the Commission since October 17, 2005. FAF was the investment adviser for Mount Vernon.

5. Mount Vernon Securities Lending Prime Portfolio is one of the two portfolios in Mount Vernon that was available for investment by customers of U.S. Bank's securities lending program. It operates as a money market mutual fund within the meaning of Rule 2a-7 under the Investment Company Act.

6. Mount Vernon Securities Lending Short-Term Bond Portfolio was one of the two portfolios in Mount Vernon available for investment by securities lending customers. The Bond Portfolio was managed to preserve capital and minimize fluctuations in NAV. It was liquidated in June 2008.

### **Background**

7. FAF hired Busse in April 1990 to develop a securities lending program so that institutional customers of U.S. Bank's Institutional Trust & Custody business could earn additional income from the securities they held at U.S. Bank. Under the program, customers had the option of loaning securities they held at U.S. Bank to certain approved broker-dealers in exchange for cash collateral. FAF acted as the lending agent for customers and administered the program, for which it received a fee of .02 percent annually on the average daily net assets of the portfolios. Customers who participated in the program could then invest the cash proceeds into either the Prime Portfolio or the Bond Portfolio.

8. The Prime Portfolio operated as a money market fund within the meaning of Rule 2a-7 under the Investment Company Act. As such, FAF was required to manage the fund with a view toward maintaining a stable NAV of \$1 per share. A team of persons at FAF, including Busse, managed the Prime Portfolio. The Bond Portfolio was not managed as a money market fund. FAF, however, sought to keep the NAV at \$1 per share.

9. In presentations to investors about its securities lending program, FAF represented that it allocated lending opportunities fairly among investors who participated in the program. FAF did so by its use of a software program, called "WorldLend," to determine which investor in a lending queue received the next lending opportunity. The primary factor in determining which investor received the next loan opportunity was each investor's percentage of shares it had out on loan, known as the utilization rate. Thus, the investors that had the lowest utilization rates were automatically placed at the top of the queue for the following trading day.

### **Respondent's Unlawful Scheme**

10. In early 2008, certain structured investment vehicles ("SIVs") held by the Bond Portfolio became distressed because part of their value was based on mortgage-backed securities which had declined in value. These investments had been approved by FAF's Credit Committee prior to their purchase, and all held AA or better rating status at the time of their acquisition.

Due to these holdings and their deteriorating condition, FAF's management concluded that there was a high likelihood that the Bond Portfolio's NAV would drop below \$1 per share, that is, "break the buck." FAF's management determined, however, that no action was necessary to attempt to counteract the drop in NAV because the Bond Portfolio was not managed as a money market fund and, therefore, was not required to maintain a \$1 NAV. FAF informed Bond Portfolio investors that the NAV would likely drop below \$1. The NAV remained at \$1 until March 5, 2008, when it dropped to \$.99 per share, due to the decline in value of the SIVs.

11. In early February 2008, FAF erroneously concluded that the Bond Fund had broken the buck, and began notifying customers of this event. Busse participated in at least one such communication with a large institutional investor which held a significant position in the Bond Fund. However, subsequent to this call with the customer, it was determined that there had been an accounting error and, in fact, the NAV of the Bond Fund had not dropped below \$1. Thereafter, in an effort to avoid or delay the occurrence of such an event, Busse directed his assistant to reallocate numerous loans from lenders in the Prime Portfolio to lenders in the Bond Portfolio. Busse knew that this would increase the asset value of the Bond Portfolio and thereby dilute the effect that the distressed SIVs had on its value. Busse told the assistant that the purpose of these reallocations was to try to enable the Bond Portfolio to maintain an NAV of \$1.

12. From early February through at least March 2008, Busse caused FAF to reallocate hundreds of loans from investors in the Prime Portfolio to investors in the Bond Portfolio. As part of his effort to maintain the NAV at \$1, FAF reallocated loans to certain investors in the Bond Portfolio who were also advisory clients of FAF, exposing them to increased losses when the Bond Portfolio's NAV dropped to \$.99.

13. Although the WorldLend queuing system continued to allocate loans properly, Busse effectively counteracted the fairness of the queuing system by subsequently reallocating the outstanding loans made by investors in the Prime Portfolio to investors in the Bond Portfolio. Busse caused certain investors in the Prime Portfolio to lose income when their loan was terminated and their collateral transferred to an investor in the Bond Portfolio. Busse continued to engage in this artifice to support the Bond Fund even after his efforts to prevent the Bond Portfolio from breaking the buck had clearly failed: the Bond Portfolio's NAV fell to \$.99 per share on March 5, 2008.

### **The Discovery of Respondent's Scheme**

14. In early March 2008, a representative of one of the clients participating in the securities lending program (the "Client") requested an update on the amount of the Client's assets in the Bond Portfolio. The Client noted that its investment in the Bond Portfolio had increased from between 450 and \$500 million to \$871.8 million. The Client also discovered that the Bond Portfolio's assets had increased by \$800 million, and that it had funded at least \$372 million, or close to 50 percent of the increase.

15. On March 12, 2008, several persons from FAF, including Respondent and at least one FAF officer, met with the Client's representative. Before the meeting, the officer asked Busse why the Client's investment in the Bond Portfolio had increased so dramatically. Busse misleadingly stated that another large client could not make additional loans of stock because statutory requirements prevented it from making further loans, resulting in more lending

opportunities for the Client. This statement was misleading because, at the time of this meeting, Busse did not further disclose that reallocations were occurring in order to avoid the NAV falling below \$1

16. On March 25, 2008, the FAF officer again asked Busse how the Client's assets in the Bond Portfolio had gotten so high. Respondent again stated that the number of new loans had increased, but this time he also admitted that he had reallocated loans. FAF's compliance department then began an internal investigation, and ultimately retained a law firm to conduct an independent investigation. On June 27, after the independent investigation concluded, FAF terminated Busse's employment.

17. Respondent's activities had a detrimental effect on the investors in both the Prime Portfolio and the Bond Portfolio because the reallocations resulted in increased assets in the Bond Portfolio at a time when its NAV was about to decrease from \$1 to \$.99. This resulted in losses to Bond Portfolio investors of about \$5.7 million. Additionally, investors in the Prime Portfolio lost approximately \$200,000 because of decreased lending opportunities to those investors.

### **Violations**

18. As a result of the conduct described above, FAF, through the actions of Busse, violated, and Busse willfully aided and abetted and caused FAF's violations of, Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-8 promulgated thereunder, which makes it a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser to a pooled investment vehicle to make false or misleading statements to investors in the pooled investment vehicle.

19. As a result of the conduct described above, FAF, through the actions of Busse, violated, and Busse willfully aided and abetted and caused violations of, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase, offer, or sale of securities.

### **IV.**

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b)(6) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Busse cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Respondent Busse be, and hereby is barred from association with any broker, dealer, or investment adviser, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$65,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Emil C. Busse, Jr. 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 Robert J. Burson, Senior Associate Regional Director, 175 West Jackson Blvd., Suite 900, Chicago, IL 60604.

By the Commission.

Elizabeth M. Murphy  
Secretary

## Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Section 8A of the Securities Act of 1933, Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") on Respondent Emil C. Busse, Jr. and his legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Jerrold H. Kohn, Esq.  
Chicago Regional Office  
Securities and Exchange Commission  
175 W. Jackson Blvd., Suite 900  
Chicago, IL 60604

Mr. Emil C. Busse, Jr.  
2313 Wildwood Court  
Burnsville, MN 55306

Jonathan M. Harris, Esq.  
Lindquist & Vennum PLLP  
4200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
(Counsel for Emil C. Busse, Jr.)