

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3502 / November 20, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15101

In the Matter of

EM Capital Management, LLC
and Seth Richard Freeman

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e), 203(f),
AND 203(k) OF THE INVESTMENT
ADVISERS 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 Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against EM Capital Management, LLC (“EM Capital”) and Seth Richard Freeman (“Freeman”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, 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 Respondents’ Offers, the Commission finds that:

Summary

From December 2010 to mid-2012, EM Capital, a registered investment adviser located in Moraga, California, and its principal Freeman failed to furnish required books and records upon request by the Commission's Investment Adviser/Investment Company examination staff. The requested records included financial statements, e-mails, and documents relating to EM Capital's management of the EM Capital India Gateway Fund, a mutual fund that primarily invested in Indian equities. The staff repeatedly asked EM Capital and Freeman to produce the required books and records, and Freeman repeatedly promised to do so, but ultimately did not fully comply until September 2012, months after the staff notified him that it was considering enforcement action against him and the firm. As a result, EM Capital violated and Freeman aided and abetted and caused EM Capital's violations of Section 204 of the Advisers Act and Rule 204-2 thereunder, which requires SEC-registered investment advisers to produce required books and records to the Commission's staff.

Respondents

1. Respondent EM Capital Management, LLC is a registered investment adviser located in Moraga, California. As of June 2012, EM Capital reported assets under management of \$2 million in its Form ADV. During the relevant time, EM Capital served as the investment adviser to the EM Capital India Gateway Fund, a registered investment company and a series of the Northern Lights Fund Trust. Freeman is Chief Executive Officer and majority interest-holder of EM Capital.

2. Respondent Seth Richard Freeman, age 54, resides in Moraga, California and is Chief Executive Officer and majority interest-holder of EM Capital.

Facts

3. The Commission's national examination program conducts examinations of investment advisers and investment companies, broker-dealers, self-regulatory organizations, clearing agencies, and transfer agents to fulfill its mission of promoting compliance, preventing fraud, monitoring risk, and informing Commission policy. Verification of an investment adviser's books and records is a vital part of the examination process. In the Matter of The Barr Financial Group, Inc., Admin. Proc. No. 3-9918 (June 21, 2002) (Initial Decision). By not producing books and records and submitting to an examination, registered entities thwart the Commission's ability to enforce the securities laws and thereby ensure that clients are treated fairly. In re Amaroq Asset Management, LLC, Admin. Proc. No. 3-12822 (July 14, 2008) (Initial Decision).

4. In December 2010, the Commission's Investment Adviser/Investment Company examination staff sent an initial request for required books and records to EM Capital. After some delay, EM Capital produced some of the requested materials, but did not furnish certain key records such as the firm's financials. In January 2011, EM Capital's principal, Freeman, e-mailed the staff and stated that financials would be "provided in approximately three weeks as we are reviewing calendar 2009 and working on 2010 and intend to provide 2010." Freeman did not provide the 2009 or 2010 financial statements within three weeks as promised.

5. In May 2011, when no financial statements were forthcoming, exam staff expanded the scope of its exam and provided Freeman with an expanded list of document requests. The staff explained that the expanded exam was in part the result of EM Capital's previous failure to furnish required books and records to the staff. Freeman produced some of the newly-requested material but still did not furnish the 2009 or 2010 financial statements. Freeman also did not furnish required books and records from several new categories requested by exam staff, including e-mail communication and documents related to EM Capital's management of the EM Capital India Gateway Fund.

6. After months of unsuccessful back-and-forth between Freeman and the exam staff, the Commission's Enforcement staff sent a document request for all outstanding items to EM Capital on July 27, 2011. As before, Freeman promised Commission staff that he would provide all of the requested information but did not fully comply. On May 29, 2012, Commission Enforcement staff sent Freeman a Wells notice indicating the staff intended to recommend that the Commission bring enforcement action against EM Capital and Freeman alleging that the Respondents failed to furnish required books and records to members of the Commission's examination staff. Freeman produced the last of the requested documents in September 2012.

Violations

7. As a result of the conduct described above, EM Capital willfully¹ violated Section 204 of the Advisers Act and Rules 204-2(a)(1), (2), and (6) thereunder. Section 204 of the Advisers Act requires investment advisers to make and keep certain records and furnish copies thereof, and to make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Section 204 specifies that all records of investment advisers are subject to examination by representatives of the Commission. Rule 204-2 provides that investment advisers registered or required to be registered shall furnish on request true, accurate and current copies of various specific categories of books and records, including:

- A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger;
- General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts; and
- All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

EM Capital failed to furnish these records for its advisory business.

8. As a result of the conduct described above, Freeman willfully aided and abetted and caused EM Capital's violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

¹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

IV.

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

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

A. Respondents EM Capital and Freeman cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 promulgated thereunder.

B. Respondents EM Capital and Freeman are censured.

C. Respondents EM Capital and Freeman shall, within 30 days of the entry of this Order, jointly and severally pay a civil money penalty in the amount of \$20,000.00 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying EM Capital and Freeman as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Marshall S.

Sprung, Deputy Chief, Asset Management Unit, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Boulevard, Los Angeles, CA 90036.

By the Commission.

Elizabeth M. Murphy
Secretary