

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3719 / November 19, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15616**

**In the Matter of**

**AGAMAS CAPITAL MANAGEMENT, LP,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTIONS 203(e) 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) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Agamas Capital Management, LP (“Agamas” 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, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) 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 Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

This matter concerns hedge fund adviser Agamas's failure to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act, as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, concerning three important areas of private fund management: (i) valuation of fund assets, (ii) the accuracy of disclosures to fund investors about the valuation practice, and (iii) cross trades between clients. At its peak, Agamas managed almost \$900 million in assets through the Agamas Continuum Master Fund, Ltd. (the "Continuum Fund") and a separately managed account ("SMA") designed to emulate the risk and asset profile and performance of the Continuum Fund.

The Continuum Fund traded in a wide range of securities, including those whose prices were non-widely quoted in the market, such as mortgage-backed securities ("MBS"), asset-backed securities ("ABS"), collateralized debt obligations ("CDOs"), and convertible bonds. To price these securities, Agamas adopted detailed valuation procedures that were disclosed in the fund's offering materials to investors. However, from January 2007 through December 2008, Agamas failed to fully document the basis for its frequent use of discretion in pricing the fund's MBS, ABS, and other non-widely-quoted securities as required by the valuation procedures. In addition, Agamas failed to adopt policies and procedures to review its investor disclosures periodically to ensure they accurately described Agamas's valuation practice. Lastly, Agamas failed to adopt policies and procedures to manage conflicts of interest arising from executing cross trades between the Continuum Fund and the SMA.

#### Respondent

**Agamas Capital Management, LP ("Agamas")** is a Delaware limited partnership located in New York, New York. At all relevant times, Agamas served as investment adviser for the Continuum Fund. From October 2007 through December 2008, Agamas also served as investment adviser for one SMA. Agamas was registered as an investment adviser with the Commission from January 2006 through December 2009, when the firm withdrew its registration and wound down operations.

#### Other Relevant Entity

**Agamas Continuum Master Fund, Ltd. (the "Continuum Fund")** is a Cayman Islands exempted company that operated as a hedge fund with three feeder funds: Agamas Continuum Fund, LP (onshore), Agamas Continuum Fund (Cayman), Ltd. (offshore), and Agamas Continuum Unit Trust (offshore, yen-denominated).

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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.

## Facts

### **A. Overview of Agamas's Advisory Business**

Agamas was formed by three individuals in November 2004 and the Continuum Fund was launched shortly thereafter. The Continuum Fund's stated primary objective was to generate high, risk-adjusted absolute returns that were uncorrelated to traditional fixed income and equity portfolios. Agamas employed a relative value strategy in managing the Continuum Fund and traded in a wide range of assets including MBS, ABS, CDOs, convertible bonds, derivatives, and other fixed income and equity instruments. Agamas registered with the Commission as an investment adviser in January 2006.

Each of Agamas's three principals was responsible for managing a certain portion of the Continuum Fund portfolio, with oversight of the entire portfolio exercised by Agamas's chief investment officer. Agamas also formed a Pricing Committee that was responsible for final pricing and valuation of the Continuum Fund's holdings. The Pricing Committee, which met on a monthly basis, was comprised of Agamas's three principals and chaired by Agamas's chief investment officer. Final authority over pricing was held by Agamas's chief financial officer, who also served as Agamas's chief compliance officer.

In October 2007, Agamas took on another client, a \$50 million SMA for a large global investment management firm. According to the SMA's advisory agreement, Agamas was to manage the SMA to emulate the risk and asset profile and performance of the Continuum Fund.

At its peak in February 2008, the Continuum Fund had approximately \$830 million in assets and approximately 50 investors, most of which were institutional. In April 2009, Agamas began liquidating the Continuum Fund due to redemption requests and the decreased viability of the fund's relative value strategy as a result of the global financial crisis; Agamas completed the fund's liquidation later that same year. Several months earlier in August 2008, the SMA notified Agamas that it was terminating their advisory agreement; Agamas completed the liquidation of the SMA by the end of 2008.

### **B. Failure to Implement Policies and Procedures Regarding the Discretionary Valuation of Non-Widely Quoted Securities**

At the Continuum Fund's inception, Agamas adopted detailed written procedures for valuing the Continuum Fund's portfolio, including positions in MBS, ABS, CDOs, convertible bonds, and other securities whose prices were non-widely quoted by an established over-the-counter service or recognized broker-dealers. As described below, however, Agamas deviated from its valuation procedures by failing to fully document its repeated use of discretion in valuing the fund's non-widely quoted securities.

## Agamas's Stated Valuation Procedures

Agamas's procedures for valuing the Continuum Fund's assets were disclosed to investors in the fund's Private Placement Memorandum ("PPM"). For the fund's MBS, ABS, and other non-widely quoted securities, the PPM set forth a detailed, objective valuation methodology that involved calculating a weighted average of available quotes from independent broker-dealers. Specifically, the PPM stated:

Valuation of [s]ecurities and other instruments held by the [Continuum Fund] is determined generally in accordance with the following guidelines:

For Non Widely Quoted Securities (e.g. CMOs, Convertible Bonds, Asset Backed Securities, Mortgage Backed Securities), the Investment Manager will determine fair value by obtaining quotes from at least five (5) broker-dealers that are market makers in the related asset class, or the Partnership's prime brokers or lending agents or from pricing services, and using a valuation equal to the mean of the valuations provided by such independent parties after discarding the highest "ask" price and the lowest "bid" price of the valuations obtained. In the case of "mids", such "mid" pricing will be doubled for purposes of calculating the mean. If quotations are not in the form of prices or valuations, the securities will be valued using well known third party market calculators (e.g. Bond Studio or Bloomberg) or internally developed calculators based upon the above data.

The PPM then explained in cascading fashion how Agamas was to proceed if it could not obtain five independent broker-dealer quotes. Different methods applied if Agamas obtained (i) at least three but less than five quotes, (ii) two quotes, (iii) one quote, or (iv) no outside quotes.

Lastly, the PPM contained provisions that required Agamas to use its good faith discretion in certain circumstances, but also required full documentation of Agamas's basis for discretionary valuation. One such discretionary provision set forth in the PPM stated:

If the Investment Manager in its reasonable judgment believes that any pricing does not accurately reflect the value of such security or other asset (including, but not limited to, situations where the price is set by reference to an exchange in a different time zone), the Investment Manager will value such security or other asset at its fair market value as determined in good faith by the Investment Manager. Whenever the Investment Manager prices a security independent of third party valuations, the Investment Manager will fully document the basis for such valuation and allow inspection of such documentation at the Investment Manager's place of business, by any investor who requests it.

Agamas did not modify or update its written valuation procedures once they were adopted for the Continuum Fund.

## Agamas's Valuation Practice

From January 2007 through December 2008, including during the global financial crisis, Agamas routinely used its discretion to price the Continuum Fund's non-widely quoted securities. This practice was different in several ways from the detailed, objective procedures contained in the PPM.

Shortly after month-end, Agamas received the broker-dealer quotes, which were typically bid-side or mid-market quotes rather than bid/ask quotes. In many instances, Agamas received more than five quotes for each security; all quotes were entered manually into spreadsheets by Agamas. Agamas then converted all bid-side quotes into "mid" quotes,<sup>2</sup> and reviewed all of the mid quotes for each security. For certain securities, Agamas frequently discarded quotes that were deemed outliers without documenting its rationale. Agamas then averaged the remaining mid prices to determine a final price for the security. In some cases, Agamas's portfolio managers decided that the final price did not reflect the true market price, and then overrode the price. Agamas's Pricing Committee, which met monthly to finalize valuation of the fund's portfolio, consistently ratified the portfolio managers' recommended prices and quote overrides.

Although the Continuum Fund's PPM required Agamas to fully document the basis for valuing securities independently, Agamas failed to do so. For certain securities, Agamas did not adequately document its rationale for converting bid-side quotes to mid quotes, or why certain broker-dealer quotes were outliers to be discarded. Nor did Agamas adequately document its reasons for overriding final price calculations. Moreover, Agamas's Pricing Committee, which was responsible for the Continuum Fund's final pricing and valuation, did not maintain records adequately explaining its valuation decisions.

For example, Agamas consistently discarded a higher number of low quotes than high quotes when pricing the Continuum Fund's MBS holdings. During 2007 and 2008, Agamas discarded more than five times as many low MBS quotes (3,111) as high MBS quotes (557). On an average monthly basis, 85% of the MBS quotes Agamas excluded were low quotes and only 15% were high quotes. Agamas did not adequately document its rationale for this significant use of discretion when valuing the fund's MBS holdings. By failing to follow its own procedures set forth in the Continuum Fund's PPM, Agamas was not reasonably positioned to demonstrate whether its use of discretion was resulting in fair valuation of the fund's assets.

### **C. Failure to Adopt and Implement Policies and Procedures to Ensure Accuracy of Investor Disclosures**

Agamas did not adopt and implement written policies and procedures reasonably designed to ensure that its valuation disclosures to Continuum Fund investors were accurate. As described above, the Continuum Fund's PPM laid out detailed, objective procedures for pricing non-widely quoted securities based on statistical calculation principles. In practice, however, from January 2007 through December 2008 Agamas was primarily using its discretion in fair valuing certain of the fund's non-widely quoted securities without fully documenting its rationale and methodology.

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<sup>2</sup> A mid quote was determined by Agamas to approximate the mean of a broker-dealer bid/ask quote.

As a result of not having reasonably designed policies and procedures, Agamas did not review the fund's PPM and other investor disclosures on a regular basis to determine whether they were potentially inaccurate and misleading in describing Agamas's valuation practices.

**D. Failure to Adopt and Implement Policies and Procedures Governing Cross Trades Between Clients**

In October 2007, almost three years after forming the Continuum Fund, Agamas took on a \$50 million SMA that was to emulate the risk and asset profile and performance of the Continuum Fund. The SMA's advisory agreement with Agamas specifically permitted cross trades with the Continuum Fund under certain conditions, and the Continuum Fund's PPM generally disclosed that potential conflicts of interest may arise if Agamas began advising separate accounts with similar investment strategies.

From December 2007 through November 2008, Agamas executed 32 cross trades between the Continuum Fund and the SMA. Agamas used many of these cross trades to provide diversification to the SMA and to effect the SMA's liquidation. However, Agamas failed to adopt written policies and procedures reasonably designed to manage conflicts of interest when executing cross trades between clients.

Cross Trades to Cure Breach of SMA's Exposure Limit

In June 2008, the SMA client notified Agamas that a particular Alternative-A position ("Alt-A") in its account was in breach of the single security exposure limit provided in the SMA's advisory agreement.<sup>3</sup> The breach had occurred as a result of a previous cross trade in May 2008 of the same Alt-A security from the Continuum Fund to the SMA.

The SMA's owner instructed Agamas to reduce the Alt-A position by approximately \$20 million as soon as possible. Because the breaching Alt-A position was relatively large, Agamas needed not only to reduce the position but also to find replacement Alt-A securities for the SMA. By that time, however, the MBS market had deteriorated and no other buyers or sellers were readily available at what Agamas deemed to be acceptable prices.

In late July 2008, Agamas decided to rectify the breach by trading \$19.6 million of the breaching Alt-A position from the SMA back to the Continuum Fund in exchange for an equivalent amount of smaller, different Alt-A positions with substantially identical fundamentals. These cross trades, executed through unaffiliated broker-dealers, enabled the SMA to resolve its breach, obtain greater diversification in its overall Alt-A holdings, and continue emulating the Continuum Fund's risk and asset profile. The Continuum Fund was left with a larger position in the specific Alt-A security, but with less diversification in its overall Alt-A holdings. However, Agamas failed to have written policies and procedures in place to determine the pricing of the cross trades and whether the transactions were in the best interests of both clients.

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<sup>3</sup> Alt-A securities were backed by mortgage pools with credit risk levels between those of prime and subprime home loans.

## Cross Trades to Liquidate SMA

In August 2008, the SMA client notified Agamas that it was terminating the advisory agreement and instructed Agamas to liquidate the SMA's holdings. Agamas complied and, by October 2008, had sold most of the SMA's portfolio in the market.

With no immediate buyers for the remaining securities in the SMA's portfolio, Agamas decided to have the Continuum Fund purchase those securities from the SMA. From mid-October through mid-November 2008, Agamas caused the Continuum Fund to purchase 10 convertible bond positions and 6 Alt-A positions for approximately \$5.6 million in cash. Before executing these cross trades through unaffiliated broker-dealers, Agamas sought broker-dealer quotes, but did not receive any offers to purchase the securities at prices that Agamas believed represented fair value. Aside from e-mails with broker-dealers, Agamas maintained no other records documenting its pricing methodology.

Agamas failed to have written policies and procedures in place to determine the pricing of the cross trades and whether the transactions were in the best interests of both clients. The trades enabled the SMA to liquidate its portfolio in the midst of the global financial crisis, when the market for MBS and other fixed income instruments was illiquid. Although the Continuum Fund ultimately profited from these cross trades, they added more illiquid positions to the Continuum Fund portfolio shortly after fund investors approved a temporary lockup of the fund.<sup>4</sup>

## Violations

Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

Agamas willfully<sup>5</sup> violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to: (i) implement written policies and procedures reasonably designed to prevent improper valuation of the Continuum Fund's assets; (ii) adopt and implement written policies and procedures reasonably designed to prevent Agamas from making inaccurate disclosures to investors in offering materials; and (iii) adopt and implement written policies and procedures reasonably designed to prevent unfair cross trades between clients.

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<sup>4</sup> In August 2008, Agamas, citing illiquid market conditions and \$120 million in pending redemption requests, sent Continuum Fund investors a proxy letter proposing and recommending that investors approve a temporary, six-month lockup period for the fund. The lockup was to run from September 2008 through March 2009. Continuum Fund investors approved the temporary lockup, and all pending redemption requests were cancelled.

<sup>5</sup> 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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

## Undertakings

Respondent Agamas undertakes to complete the following actions:

Notice to Continuum Fund Investors and Other Accounts. Within thirty (30) calendar days following the entry of this Order, Agamas shall mail or email a copy of the Order to all limited partners/shareholders/unit holders in the Continuum Fund and its feeder funds, Agamas Continuum Fund, LP, Agamas Continuum Fund (Cayman), Ltd., and Agamas Continuum Unit Trust, and to all other Agamas advisory clients during any portion of the period from January 1, 2007 through December 31, 2008. Agamas shall include a cover letter in a form not unacceptable to the Commission's staff, and use commercially reasonable efforts to obtain an acknowledgment of receipt.

Certification of Compliance by Respondent. Agamas shall certify, in writing, compliance with the undertaking set forth above. The certification shall provide written evidence of compliance with the undertaking in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance, including, but not limited to: (i) the name and contact information of all Continuum Fund investors and Agamas advisory clients that were provided a copy of the Order, and (ii) copies of all other documents provided to Continuum Fund investors and advisory clients. The Commission staff may make reasonable requests for further evidence of compliance, and Agamas agrees to provide such evidence. The certification and supporting material shall be submitted to Anthony S. Kelly, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5010, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than thirty (30) calendar days from the date of the completion of the undertaking.

## IV.

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

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

- A. Respondent Agamas cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.
- B. Respondent Agamas is censured.
- C. Respondent Agamas shall, within ten (10) calendar days of the entry of this Order, pay a civil money penalty in the amount of \$250,000.00 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) Respondent 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
- (2) Respondent 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

Payment by check or money order must be accompanied by a cover letter identifying Agamas Capital Management, LP as a Respondent 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 Anthony S. Kelly, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5010.

- D. Respondent Agamas shall comply with the undertakings enumerated in Section III above.

By the Commission.

Elizabeth M. Murphy  
Secretary