UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3520 / December 19, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30309 / December 19, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15140

In the Matter of **FIDUCIARY ASSET MANAGEMENT, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) 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 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 Fiduciary Asset Management, LLC ("Respondent" or "FAMCO").

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, and Sections 9(b) and 9(f) of the Investment Company 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[1] that:

Summary

1. These proceedings arise from FAMCO's conduct as a sub-adviser to the Fiduciary/Claymore Dynamic Equity Fund ("HCE" or "the Fund"). From April 2007 through October 2008, FAMCO implemented two new derivative strategies to supplement the Fund's existing covered call investment strategy. Specifically, HCE wrote out-of-the-money S&P 500 put options and entered into short variance swaps, both of which had a significant effect on HCE's performance, but which also exposed the Fund to substantial losses in the event of a steep market decline or spikes in market volatility. HCE failed to include adequate disclosure about the principal risks to the Fund arising from the Fund's use of written put options and variance swaps, either in its annual report or in an amended Fund registration statement. As a result, FAMCO managed HCE in a manner that was inconsistent with the Fund's registration statement. FAMCO also omitted any description of these strategies and their effect on HCE's return from its commentaries in the Fund's 2007 annual report and 2008 semi-annual report. In those same reports, FAMCO also claimed that it had used hedging strategies to protect the Fund from downside risk, when in fact HCE's use of written put options and short variance swaps exposed the Fund to substantial losses in periods of significant market decline or volatility. In September and October 2008, HCE realized an approximately $45.4 million loss, or 45% of the Fund's net assets as of the end of August 2008, on five written put options and variance swaps, contributing to a 72.4% two-month decline in the Fund's net asset value ("NAV").

Respondent

2. 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. In 2007, FAMCO was acquired by a third party. FAMCO was the sub-adviser to the Fiduciary/Claymore Dynamic Equity Fund. FAMCO received an annual sub-advisory fee of .5% of the Fund's net assets.

Other Relevant Entities

3. 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 regularly filed periodic reports with the Commission as required by the Investment Company Act. The Fund was liquidated in May 2009.

4. 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

[1] 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

services for investment companies. Claymore also served as HCE's fund administrator from 2006 through 2009. In October 2009, Claymore was acquired by a third party and, in September 2010, changed its name to Guggenheim Funds Investment Advisors, LLC.

Background

5. 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. The registration statement also indicated that the Fund was allowed to utilize a variety of derivative strategies.

6. 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.

7. 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 was responsible for the management of HCE's portfolio. According to Claymore's fund policies and procedures manual, Claymore, in conjunction with HCE's counsel, was responsible for preparing and filing HCE's registration statement.

8. 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 designated two of its employees as HCE's portfolio managers.

9. In addition, FAMCO had a role in HCE's periodic reporting. For each HCE annual and semi-annual report, FAMCO provided Claymore with a signed certification that an HCE portfolio manager: (1) 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 registration statement.

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

11. For each HCE annual and semi-annual report, FAMCO provided Claymore with a signed certification that an HCE portfolio manager 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.

FAMCO's Implementation of New Investment Strategies

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

13. Prior to April 2007, at FAMCO's direction, HCE purchased S&P 500 put options and wrote S&P 500 call options as protection for the portfolio. Beginning in April 2007, at FAMCO's direction, 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, at FAMCO's direction and based on internal analyses, HCE ceased holding long and written put options together and began consistently writing put options in its portfolio with no corresponding long position.

14. 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.[2] Usually, this strategy was profitable. But HCE stood to lose money on a written put position if the S&P 500 declined below the option strike price during the option period.

15. 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. However, these premiums came at a price of exposing HCE to potentially significant losses in the event of a steep market downturn.

16. 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 (or "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 a "short variance" position profits whenever realized volatility is less than the implied volatility.

17. FAMCO began regularly trading short variance swaps in HCE's portfolio in July 2007. These transactions were included in daily portfolio reports that were

[2] 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."

provided to Claymore. HCE maintained written put options and short variance swaps in its portfolio at nearly all times from July 2007 through October 2008, except for a two-month period from April to June 2008.

18. 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 that writing put options and trading short variance swaps each could add hundreds of basis points to HCE's return each year, so long as there were no significant market declines or volatility. According to FAMCO's internal research and analysis, such declines were expected to be infrequent, although they were not unprecedented.

19. However, by using these strategies, FAMCO increased HCE's exposure to market declines and volatility, which exposed the Fund to significant potential losses if the S&P 500 declined rapidly or became very volatile. In so doing, FAMCO changed HCE from a fund designed to provide investors with some downside protection, to a fund that magnified investors' downside exposure.

20. When FAMCO began writing put options in HCE without any corresponding long positions, one of FAMCO's employees objected that the risks associated with this strategy outweighed the benefit received from the option premiums.

Put Option and Variance Swap Performance

21. FAMCO's written put options and variance swaps materially affected HCE's return in 2007 and 2008. During this period, FAMCO also caused HCE to purchase S&P 500 put options, write S&P 500 call options, and enter into long variance swaps.

22. 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 reduced the Fund's return by .4% in four months of trading the products.

23. 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

24. 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, which exposed the Fund to significant downside risk. On August 25, 2008, FAMCO wrote 700 put option contracts with an 1150 strike price and an October 17, 2008 expiration, when the S&P 500 was trading between 1265 and 1290. On August 28, 2008, FAMCO wrote an additional 500 put options contracts with an 1170 strike price and an October 17, 2008 expiration, when the S&P 500 was trading between 1284 and 1301.

25. 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 volatility.

26. Beginning in early September 2008, the financial markets began declining rapidly and became very volatile. On September 19, 2008, FAMCO settled HCE's expiring one-month variance swap position for a loss of $7,025,454.

27. As of September 19, 2008, HCE also had an unrealized $1.25 million loss on its written put options. FAMCO's estimate of HCE's exposure on those options had grown to $39.7 million, or 44% of the Fund's NAV. Nevertheless, FAMCO caused HCE to roll its expiring variance swap position 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.

28. 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.

29. 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.

FAMCO's Use of Inadequately Disclosed Investment Strategies

30. 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.

31. 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.

32. 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 by exposing the Fund to significant losses during significant market declines or unusual market volatility.

33. 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."

34. HCE's Statement of Additional Information ("SAI"), which was 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. Although the registration statement provided for the use of swap instruments, it did not provide any specific disclosure about the use of variance swaps.

35. Further, the "Risks" section in HCE's registration statement did not discuss the risks associated with put writing or variance swaps. The registration statement made no mention of the downside risks the Fund could face by trading index put options and variance swaps, including leveraged exposure to market declines or exposure to spikes in market volatility.

36. 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. Most of the discussion about the risks of using index options related to the possibility that such options may be imperfect hedges for HCE's portfolio securities.

37. 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 those strategies exposed the Fund to new and material risks. In so doing, FAMCO engaged in strategies and exposed the Fund to new risks that were not adequately disclosed. HCE never amended its registration statement to include sufficient disclosure of the 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 2007 Annual Report

38. 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 was described as an interview with HCE's portfolio managers, did not disclose the impact of the written index put options and short variance swaps on Fund performance, and also did not adequately disclose the downside risk to the portfolio.

39. In the Questions and Answers section, HCE's portfolio managers 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. HCE's 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.

40. However, HCE's portfolio managers did not 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 and call options, as well as purchasing S&P 500 put options, which contributed approximately $6 million to HCE's $13.6 million NAV growth.

41. In fact, contrary to the portfolio manager commentary, stock selection accounted for a relatively small amount of the Fund's outperformance. HCE's equity portfolio outperformed the S&P 500 by only slightly more than the Fund's advisory fee. The Questions and Answers section did not provide an accurate picture of what was driving HCE's performance because it omitted any discussion of HCE's profits from S&P 500 put options and call options during the period.

42. In the Questions and Answers section, HCE's portfolio managers also failed to mention variance swaps when discussing which holdings most hurt performance in 2007.

43. HCE disclosed in its financial statements the written put options and variance swaps held at the end of the reporting period. However, HCE's portfolio managers failed to discuss specifically their written put option and variance swap strategies when explaining the Fund's hedging strategies. Instead, the portfolio managers noted that the Fund's covered call option strategy had the potential to protect the Fund in a downward trending market and stated that they had purchased index put options and had written index call options for protection. This disclosure was incomplete because it failed to acknowledge that written put options and variance swaps exposed the Fund to losses in periods of significant market decline or volatility.

44. HCE's 2007 annual report also contained a risks disclosure section prepared by Claymore, which stated that the views expressed "reflect those of the portfolio managers and Claymore only." This section 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.

45. FAMCO regularly prepared portfolio attribution reports which showed how the various investments in HCE's portfolio had performed. Both of HCE's portfolio managers followed the performance of the Fund's investments and strategies. FAMCO had a responsibility to ensure that the statements attributed to the portfolio managers were correct. Therefore, FAMCO made materially misleading statements and omissions of material fact in HCE's 2007 annual report regarding the contributors to the Fund's performance and the Fund's exposure to downside market risk.

HCE's 2008 Semi-Annual Report

46. 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, which was attributed to HCE's portfolio managers, again failed to disclose the impact of the written index puts and variance swaps on performance and failed to inform investors about the Fund's exposure to downside risk in declining or volatile markets. FAMCO had a responsibility to ensure that the statements attributed to the portfolio managers were correct. The semi-annual report's risks disclosure again omitted any discussion of the specific risks associated with written put options and variance swaps in periods of significant market decline or volatility.

47. In response to a question in the Questions and Answers section asking what investment decisions most helped the Fund's performance, HCE's portfolio managers stated that the Fund's performance benefited from "industry and stock selection, the covered call strategy, and the hedge program." The portfolio managers noted that HCE's equity portfolio outperformed the S&P 500, and identified the Fund's covered call strategy as offsetting a loss on HCE's equity portfolio. The portfolio managers also stated 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."

48. In fact, HCE was exposed to significant downside risk as a result of the written put options and variance swaps held during this period.

49. HCE earned profits on its written put options and short variance swaps, during a period in which the markets declined modestly. But HCE was exposed to significant losses if the markets had declined more dramatically or had been more volatile. Accordingly, the disclosure regarding downside protection was misleading in light of HCE's exposure to downside risk in periods of significant market decline or volatility.

50. 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 $917,289, or .8%, from short variance positions.

51. These strategies increased HCE's return, while exposing HCE to significant loss in periods of significant market decline or volatility. Yet HCE's portfolio managers did not mention the strategies when discussing the Fund's performance. Accordingly, FAMCO's discussion regarding what most helped HCE's performance was inadequate.

52. HCE's portfolio managers also failed to identify the Fund'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.

53. 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 prepared by Claymore, which stated that it reflected the views of the portfolio managers and Claymore. The risk disclosures were misleading as a result of those omissions.

54. FAMCO regularly prepared portfolio attribution reports for internal use that showed how the various investments in HCE's portfolio had performed. Both of HCE's portfolio managers followed the performance of the various investments and strategies. Therefore, FAMCO made materially misleading statements and omissions of material fact in HCE's 2008 semi-annual report regarding the contributors to the Fund's performance and regarding the portfolio being strategically hedged for downside protection, and omitted from discussion of the Fund's risks the specific risks associated with writing put options and trading short variance swaps in declining markets.

Violations

55. As a result of the conduct described above, FAMCO willfully[3] 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.

56. As a result of the conduct described above, FAMCO willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit the making of any untrue statement of a material fact or the omission of a material fact necessary to make statements made not misleading, or to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

[3] 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

57. Respondent FAMCO undertakes the following:

To cooperate fully with the Commission in any judicial or administrative proceeding or investigation commenced by the Commission, or to which the Commission is a party, relating to the matters in this Order. FAMCO's cooperation shall include:

> Production of Information. Upon reasonable notice, and without a subpoena, FAMCO shall truthfully and completely disclose information and documents reasonably requested by Commission staff in connection with the Commission's related investigation, litigation, or other proceedings.
>
> Production of Cooperative Personnel. Upon reasonable notice, and without a subpoena, FAMCO shall use its best efforts to secure the attendance and truthful testimony of any current or former partner, principal, officer, agent, or employee of FAMCO, at any meeting, interview, testimony, deposition, hearing, trial, or other legal proceeding as may be reasonably requested by the Commission staff.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent FAMCO'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. Respondent FAMCO cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

B. Respondent FAMCO is censured.

C. Respondent FAMCO shall, within ten (10) days of the entry of this Order, pay disgorgement of $644,951, prejudgment interest of $134,978 and a civil penalty of $1,300,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. §3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) 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

(3) 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

Payments by check or money order must be accompanied by a cover letter identifying FAMCO 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 Robert J. Burson, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois 60604.

D. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent 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 civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent 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.

By the Commission.

Elizabeth M. Murphy
Secretary