

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

AMARANTH ADVISORS L.L.C., et al.,

Defendants.

07 Civ. 6682 (DC)

ECF CASE

**CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY PENALTY AND
OTHER RELIEF AS TO DEFENDANTS AMARANTH ADVISORS L.L.C. AND
AMARANTH ADVISORS (CALGARY) ULC**

On July 25, 2007, plaintiff U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC") filed a Complaint against Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC (collectively, the "Amaranth Defendants") and Brian Hunter ("Hunter") (collectively, the "Defendants"), alleging that the Defendants intentionally and unlawfully attempted to manipulate the price of natural gas futures contracts on the New York Mercantile Exchange ("NYMEX") on February 24 and April 26, 2006 in violation of Sections 6(c), 6(d), and 9(a)(2) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006), and that Amaranth Advisors L.L.C. made material misrepresentations to NYMEX in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4)(2006). The Complaint seeks statutory and equitable relief, including permanent injunctions and civil monetary penalties, for violations of the Act, 7 U.S.C. §§ 1 *et seq.* (2002). Thereafter, the Defendants filed a motion to dismiss, which the Court denied. The Defendants filed their answers on July 9, 2008.

**I.
CONSENTS AND AGREEMENTS**

1. To effect settlement of the matters alleged in the Complaint in this action prior to a trial on the merits or further judicial proceedings, the Amaranth Defendants:

- a. Consent to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Relief ("Order");**
- b. Affirm that they have read and agreed to this Order voluntarily, and that no threat or promise other than as set forth specifically herein, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order;**
- c. Acknowledge service upon them of the Summons and Complaint in this action;**
- d. Consent, solely for the purposes of settlement, to the jurisdiction of the Court in this action;**
- e. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.**
- f. Waive:**
 - i. The entry of findings of fact and conclusions of law;**
 - ii. Any and all claims that they may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), relating to, or arising from, this action;**
 - iii. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231- 223, 110 Stat. 862-63 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this action**

- iv. Any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
 - v. All rights of appeal in this action.
- g. Agree that they will not oppose enforcement of the order on the ground that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive any objections based thereon;
- h. Consent to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order, to assure compliance with the Order, and for any other purposes relevant to this action, even if the Amaranth Defendants now or in the future reside(s) outside the jurisdiction; and
- i. Agree that neither the Amaranth Defendants nor any agents or employees under their respective authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect the Amaranth Defendants' (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. The Amaranth Defendants shall take all steps necessary to ensure their agents and employees under their respective authority or control comply with this provision.
2. By consenting to the entry of this Order, the Amaranth Defendants neither admit nor deny the allegations contained in the Complaint, except as to jurisdiction and venue, which the Amaranth Defendants admit. The Amaranth Defendants do not consent to the use of the

allegations of the Complaint as the sole basis for any other proceeding brought by the CFTC, other than: any proceeding to enforce the terms of this Order; any Commission registration proceeding relating to any of the Amaranth Defendants pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Commission's Regulations, 17 C.F.R. §§ 3.1 *et seq.*; and/or any proceeding in bankruptcy filed by or against any of the Amaranth Defendants. The Amaranth Defendants agree that the allegations of the Complaint shall be taken as true and correct and be given preclusive effect, without further proof, solely in: (a) any proceeding to enforce this Order; (b) any Commission registration proceeding relating to any of the Amaranth Defendants pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*; and/or (c) any proceeding in bankruptcy filed by or against any of the Amaranth Defendants prior to full satisfaction of the Amaranth Defendants' civil monetary penalty obligation as set forth below in Section III of this Order.

3. This Consent Order fully and finally resolves all claims and allegations brought by the CFTC against the Amaranth Defendants in this action.

II. ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

1. The Amaranth Defendants are permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct that violates Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006), including manipulating or attempting to manipulate the price of any commodity in interstate commerce or for future delivery on or subject to the rules of a registered entity.

2. Defendant Amaranth Advisors L.L.C. is further permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct that violates Section 9(a)(4) of

the Act, 7 U.S.C. § 13(a)(4)(2006), including willfully falsifying, concealing, or covering up by any trick, scheme, or artifice a material fact, making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade or futures association designated or registered under the Act acting in furtherance of its official duties under the Act.

3. The injunctive provisions of this Order shall be binding on the Amaranth Defendants, upon any person acting in the capacity of officer, agent, servant, or employee of any of the Amaranth Defendants, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in active concert or participation with any of the Amaranth Defendants.

**III.
ORDER FOR CIVIL MONETARY PENALTY
AND OTHER ANCILLARY RELIEF**

IT IS HEREBY ORDERED THAT:

1. The Amaranth Defendants agree to a joint and several civil monetary penalty in the amount of \$7.5 million (\$7,500,000), plus post-judgment interest, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (the "CMP Obligation"), to be paid in accordance with paragraphs 3, 4 and 7 below.

2. Post-judgment interest shall accrue on the Amaranth Defendants' CMP Obligation beginning on the date payment is due and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

3. \$5.5 million (\$5,500,000) of the CMP Obligation shall be paid within ten days from the date of entry of this Order. The \$2 million (\$2,000,000) balance of the CMP Obligation shall be paid on the earlier of (a) thirty days from the receipt by the Amaranth Defendants of

distributions of cash to Amaranth Advisors L.L.C. from its capital accounts with Amaranth Capital Partners LLC and/or Amaranth Partners LLC or (b) the later of one year from the date of entry of this Order or the date on which the Federal Energy Regulatory Commission ("FERC") issues an order resolving by settlement and consent the claims against the Amaranth Defendants and other respondents (except Brian Hunter) in the matter captioned In re Amaranth Advisors, L.L.C. et al., Docket No. IN07-26-000, Order to Show Cause (FERC July 26, 2007) (the "FERC OSC").

4. Payments by the respondents in the FERC OSC, other than Brian Hunter, in satisfaction of any civil penalty entered in the FERC OSC shall satisfy the CMP Obligation up to a total of \$3.75 million.

5. Any amount paid pursuant to this Order that is clawed back from the CFTC, FERC, or any other agency, commission or branch of the U.S. government in the course of any bankruptcy proceeding shall not be counted towards full satisfaction of the CMP Obligation.

6. Upon payment in full or in part of the CMP Obligation, the Amaranth Defendants shall simultaneously transmit copies of the cover letter, which contains the name and docket number of this proceeding, and the form of such payment to: the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

7. CMP Obligation payments to the CFTC hereunder shall be made by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money

order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169
Telephone: 405-954-6569

If payment is to be made by electronic funds transfer, the Amaranth Defendants shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Such payment shall be accompanied by a cover letter that contains the name and docket number of this proceeding.

IV. MISCELLANEOUS PROVISIONS

I. Notices. All notices required by this Order shall be sent by certified mail, return receipt requested, or by facsimile, as follows:

a. Notice to Plaintiff:

Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, New York 10005
Fax: (646) 746-9940

b. Notice to Defendants Amaranth Advisors L.L.C. and Amaranth Advisors

(Calgary) ULC:

c/o David Mollón, Esquire
Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Fax: (212) 294-4700

2. **Successors and Assigns.** This Order shall inure to the benefit of and be binding on the Amaranth Defendants' successors, assigns, heirs, beneficiaries and administrators.
3. **Counterparts.** This Order may be executed by the parties in counterparts and by facsimile.
4. **Entire Agreement, Amendments and Severability.** This Order incorporates all of the terms and conditions of the settlement among the parties. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing, (2) signed by all parties, and (3) approved by order of the Court.
5. **Invalidation:** If any provision of this Order, or if the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provisions to any other person or circumstance shall not be affected by the holding.
6. **Waiver:** The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.
7. **Cooperation:** The Amaranth Defendants shall cooperate fully with the Commission, including the Commission's Division of Enforcement ("Division"), in this proceeding, and in any investigation, civil litigation, or administrative matter related to the subject matter of this proceeding or any current or future Commission investigation related thereto. As part of such cooperation, the Amaranth Defendant agrees to:
 1. provide in a reasonable time and manner testimony, depositions, and/or interviews, and to testify completely and truthfully in any such proceeding, trial,

or investigation. The Amaranth Defendants would be entitled to reimbursement for the statutory allowances for attendance and travel in associated with such cooperation; and

2. comply fully, promptly, and truthfully with any inquiries or requests for information including but not limited to inquiries or requests:
 - i. for authentication of documents;
 - ii. for any documents within the Amaranth Defendant's possession, custody, or control, including inspection and copying of documents;
 - iii. The Amaranth Defendants designate David E. Mollón, Esq. to receive all requests for information pursuant to this undertaking. Should the Amaranth Defendants seek to change the designated person to receive such requests, notice shall be given to the Division of such intention 14 days before it occurs. Any person designated to receive such request shall be located in the United States.

8. Acknowledgments: The Amaranth Defendants understand and acknowledge that this Order must be accepted and ratified by the Commission before it becomes final.

9. Continuing Jurisdiction of this Court: The Court shall retain jurisdiction of this cause to assure compliance with this Order and for all other purposes related to this action.

10. Authority: a) Amaranth Advisors L.L.C. - the person executing this Order on behalf Amaranth Advisors L.L.C. represents, warrants and covenants that he/she is a corporate representative of Amaranth Advisors L.L.C., that this Order has been duly authorized by Amaranth Advisors L.L.C., and that he/she has been duly empowered to sign and submit it on behalf of Amaranth Advisors L.L.C.; and b) Amaranth Advisors (Calgary) ULC - the person executing this Order on behalf Amaranth Advisors (Calgary) ULC represents, warrants and covenants that he/she is a corporate representative of Amaranth Advisors (Calgary) ULC, that this Order has been duly authorized by Amaranth Advisors (Calgary) ULC, and that he/she has been duly empowered to sign and submit it on behalf of Amaranth Advisors (Calgary) ULC.

11. There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Relief as to Defendants Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC.

SO ORDERED at New York, New York this 12th day of August, 2009.


Denny Chin
United States District Judge

Consented to and
Approved for Entry by:

Consented to and approved for entry by:

Dated: ____, 2009

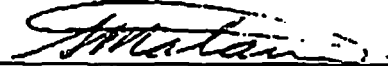
David Mollón, Esquire
Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Fax: (212) 294-4700
Attorneys for Defendants Amaranth Advisors
L.L.C. and Amaranth Advisors (Calgary) ULC

Dated: 7/22, 2009



Alan Matano on behalf of Defendant Amaranth
Advisors L.L.C.

Dated: 7/22, 2009



Alan Matano on behalf of Defendant Amaranth
Advisors (Calgary) U.L.C.

Dated: ____, 2009

Stephen J. Obie

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SO ORDERED at New York, New York this _____ day of _____, 2009.

Denny Chin
United States District Judge

Consented to and
Approved for Entry by:

Consented to and approved for entry by:

8/12/09
Dated: _____, 2009



David Mollón, Esquire
Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Fax: (212) 294-4700
Attorneys for Defendants Amaranth Advisors
L.L.C. and Amaranth Advisors (Calgary) ULC

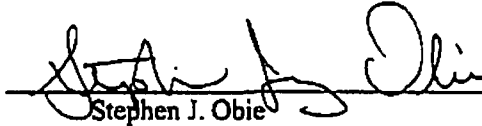
Dated: _____, 2009

Alan Matano on behalf of Defendant Amaranth
Advisors L.L.C.

Dated: _____, 2009

Alan Matano on behalf of Defendant Amaranth
Advisors (Calgary) U.L.C.

Dated: August 10,
2009



Stephen J. Obie
Acting Director, Division of Enforcement
Vincent A. McGonagle
Senior Deputy Director
Manal Sultan [MS 8068]
Chief Trial Attorney
David W. MacGregor
Chief Trial Attorney

U.S. COMMODITY FUTURES TRADING
COMMISSION
140 Broadway, 19th Floor
New York, New York 10005
(646) 746-9761
(646) 746-9940 (facsimile)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK