

128 FERC ¶ 61,154  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Amaranth Advisors L.L.C.	Docket Nos. IN07-26-000
Amaranth LLC	IN07-26-003
Amaranth Management Limited Partnership	IN07-26-004
Amaranth International Limited	IN07-26-005
Amaranth Partners LLC	
Amaranth Capital Partners LLC	
Amaranth Group Inc.	
Amaranth Advisors (Calgary) ULC	
Brian Hunter	
Matthew Donohoe	

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued August 12, 2009)

1. In this order, the Commission approves an uncontested joint settlement (Settlement)<sup>1</sup> filed July 23, 2009, by Amaranth Advisors L.L.C., Amaranth LLC, Amaranth Management Limited Partnership, Amaranth International Limited, Amaranth Partners LLC, Amaranth Capital Partners LLC, Amaranth Group Inc., Amaranth Advisors (Calgary) ULC, and Matthew Donohoe (collectively, Settling Respondents) and the Commission's Enforcement Litigation Staff (Enforcement Litigation Staff).<sup>2</sup> The proposed Settlement resolves all claims against the Settling Respondents arising out of conduct alleged to have been in violation of section 1c.1 of the Commission's

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<sup>1</sup> The Settlement consists of the Joint Offer of Settlement, the Joint Explanatory Statement, and the Settlement Agreement.

<sup>2</sup> Settling Respondents and Enforcement Litigation Staff are together referred to in this order as Participants.

regulations.<sup>3</sup> While Brian Hunter is not a Settling Respondent, the Settling Respondents are authorized to represent that he has waived his right to comment on the Settlement and agrees to waiver of the comment period.

2. As discussed below, the Commission's evaluation of this Settlement is driven in large part by the current state of the Settling Respondents' financial assets. Since the Commission issued the Order to Show Cause and Notice of Proposed Penalties (Show Cause Order) on July 26, 2007,<sup>4</sup> Settling Respondents' assets have been substantially diminished. As a result, if Enforcement Litigation Staff were to continue to litigate this matter, there is only a very small chance it would be able to collect the proposed penalties set forth in the Show Cause Order. Under these circumstances, it is in the public interest to approve a settlement in which the Settling Respondents agree to make a payment of \$7.5 million to the United States Treasury and acknowledge that they are accountable for their trading in the New York Mercantile Exchange (NYMEX) Natural Gas Futures Contract (NG Futures Contract), which raised questions about its effect on prices in the physical natural gas market. The Settling Respondents concede the Commission's subject matter jurisdiction over this matter. The Settlement does not seek to vacate the Commission's prior orders asserting jurisdiction in this matter; those orders will continue to stand as Commission precedent on the jurisdictional issue. The Settlement requires the Settling Respondents to seek dismissal of their pending appeal challenging, *inter alia*, the Commission's assertion of jurisdiction. The Settlement was coordinated with the Commodity Futures Trading Commission (CFTC), and is contingent upon entry of a consent order by the federal district court in a related matter involving certain of the Settling Respondents. Approval of this Settlement will allow the Enforcement Litigation Staff to narrow the scope of the issues in dispute in this proceeding, and thus will allow the Commission to devote its enforcement resources to other important investigations, including those relating to market manipulation. Finally, the Commission was and still is unable to attach or otherwise require Settling Respondents to prevent the dissipation of their assets during the pendency of a proceeding. As a result, the Commission was unable to prevent the dissipation of assets that could have been used to recompense customers or satisfy a civil penalty order.

## **I. Background**

3. On July 26, 2007, the Commission issued the Show Cause Order, ordering the Respondents to show cause why they should not be found to have violated section 1c.1 of

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<sup>3</sup> 18 C.F.R. § 1c.1 (2009) (Natural Gas Anti-Manipulation Rule). The Natural Gas Anti-Manipulation Rule prohibits natural gas market manipulation in connection with the sale or purchase of natural gas or transportation services that are subject to the Commission's jurisdiction. *See Amaranth Advisors L.L.C.*, 120 FERC ¶ 61,085 (2007).

<sup>4</sup> *Amaranth Advisors L.L.C.*, 120 FERC ¶ 61,085 (2007).

the Commission's regulations by engaging in certain trading activities in 2006.<sup>5</sup> By order issued July 17, 2008, the Commission, *inter alia*, set for hearing issues raised in the Show Cause Order.<sup>6</sup> The Chief Administrative Law Judge (Chief Judge) held a prehearing conference on August 5, 2008<sup>7</sup> and subsequently designated a Presiding Administrative Law Judge (ALJ).<sup>8</sup> On November 7, 2008, the Participants filed a joint Motion for Suspension of Proceedings and Extension of Time to Facilitate Settlement, which the Chief Judge granted on November 10, 2008.<sup>9</sup> Subsequently, the Participants filed a settlement on November 24, 2008 (November settlement). The Chief Judge granted the Participants' motion to suspend the proceedings to allow consideration of the November settlement.<sup>10</sup>

4. On December 3, 2008, the ALJ certified the November settlement to the Commission. The ALJ granted the Participants' request that the November settlement be treated as non-public under the terms of the protective order issued in this proceeding until such time as the Commission acted on it. By order dated February 12, 2009, the Commission rejected the November settlement as inconsistent with the public interest.<sup>11</sup> The Chief Judge re-instituted the procedural schedule, and the Participants proceeded with discovery and pre-trial preparation. On July 23, 2009, the Participants filed the Settlement with the Commission, seeking waiver of Rule 602(b)(2), which would otherwise require the Secretary to transmit the offer to the ALJ.

## II. Settlement

5. The Joint Explanatory Statement accompanying the Settlement recounts the extensive procedural history of this proceeding. The Settling Respondents do not admit or deny the allegations set forth in the Show Cause Order; however, they stipulate to a number of facts, including the Settling Respondents' positions in the NG Futures Contracts at the beginning of the trading day on February 24, March 29, and April 26, 2006, as well as the Settling Respondents' sales of such NG Futures Contracts on those

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<sup>5</sup> *Id.* The order contains a summary of the earlier procedural history of this proceeding.

<sup>6</sup> *Amaranth Advisors L.L.C.*, 124 FERC ¶ 61,050 (2008).

<sup>7</sup> *Amaranth Advisors L.L.C.*, Docket No. IN07-26-000 (August 6, 2008).

<sup>8</sup> *Amaranth Advisors L.L.C.*, Docket No. IN07-26-000 (August 13, 2008).

<sup>9</sup> *Amaranth Advisors L.L.C.*, Docket No. IN07-26-000 (November 10, 2008).

<sup>10</sup> *Amaranth Advisors L.L.C.*, Docket No. IN07-26-000 (November 25, 2008).

<sup>11</sup> *Amaranth Advisors L.L.C.*, 126 FERC ¶ 61,112 (2009).

same trading days. They also stipulate to the Settling Respondents' positions in derivative swaps on those days. The Settling Respondents stipulate that the NG Futures Contract settlement price on those days would likely have been different if Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC had not traded during the settlement periods on those days, and that the value of their swap positions would have been lower if the NG Futures Contract settlement price had been higher than it actually was. Finally, the Settling Respondents stipulate that Amaranth L.L.C.'s NG Contract position exceeded NYMEX position limits and applicable hedge exemptions from such limits on February 23 and May 23, 2006.

6. The Settlement notes that Amaranth Advisors L.L.C, Amaranth Advisors (Calgary) ULC, and Matthew Donohoe acknowledge that they are accountable for their trading in NYMEX NG Futures Contracts, which raised questions about the effect of the trading on prices in the physical natural gas market. The Settlement states that such questions were properly raised because the trading at issue appeared atypical, anomalous, and unusual, and, therefore, had the potential to erode public confidence in the validity of the NYMEX settlement price. The Settlement also states that the Commission therefore properly investigated the trading at issue. Further, the Settling Respondents concede the Commission's subject matter jurisdiction in this proceeding.

7. If approved by the Commission, the Settlement would obligate the Settling Respondents to pay a civil penalty of \$7,500,000 to the United States Treasury. The Settlement provides that the first payment of \$5,500,000 shall be paid on the first business day after the Effective Date, and the remaining \$2,000,000 shall be paid not later than one year from the Effective Date of the Settlement.<sup>12</sup> Resolution of this matter is being coordinated with the CFTC and is contingent upon resolution of all claims against Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC in the related matter entitled *CFTC v. Amaranth Advisors L.L.C.*<sup>13</sup>

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<sup>12</sup> The Settlement Agreement states that Effective Date means the latter of the date on which the Commission issues an order approving the Settlement without modification and the date upon which the United States District Court for the Southern District of New York enters a final non-appealable order resolving by settlement and consent the claims against Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC in the matter titled *CFTC v. Amaranth Advisors L.L.C.*, No. 07 Civ. 6682 (S.D.N.Y.).

<sup>13</sup> No. 07 Civ. 6682 (S.D.N.Y.). Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC are the only Respondents also named as Defendants in that matter. Mr. Hunter is also a Defendant in that related matter, but resolution of this proceeding is not contingent upon resolution of the claims against Mr. Hunter in the related matter.

8. Upon approval of the Settlement without modification, the Participants agree that all claims that were brought or that could have been brought in connection with the alleged violations addressed in Docket No. IN07-26-000, as to the Settling Respondents, their parents, subsidiaries, affiliates, and each of their agents, officers, directors, and employees, both past and present, with the exception of Brian Hunter, and any successor in interest, as well as any related appellate actions among and between the Participants, including but not limited to *Amaranth Advisors L.L.C. v. FERC*,<sup>14</sup> shall be dismissed with prejudice and without costs. The Settling Respondents agree to file a petition to dismiss their pending appeal within 10 days of the Effective Date.<sup>15</sup> The Settling Respondents further agree that the Commission order approving the Settlement without modification shall be a final and non-appealable order assessing a civil penalty under section 21 of the Natural Gas Act (NGA).<sup>16</sup> The Settling Respondents waive rehearing and judicial review of any Commission order approving the Settlement without modification.

9. The Settlement provides that failure to make a timely payment or to comply with any provision of the Settlement shall be deemed a violation of a final order of the Commission under the NGA and may subject the Settling Respondents to additional action under the enforcement and penalty provisions of the NGA. If the Settling Respondents do not make the agreed-upon payments in a timely manner, interest pursuant to 18 C.F.R. § 35.19(a)(2)(iii) (2009) will begin to accrue from the date that payment is due and shall be payable to the United States Treasury. The interest will be in addition to the penalty described above.

10. Subject to certain provisos, the Settling Respondents also agree that neither they nor any of their agents, employees, contractors, representatives, or attorneys will make any public statement denying any allegation in the Show Cause Order or the Settlement, or create or tend to create the impression that the Show Cause Order or the Settlement are without factual basis.

### **III. Discussion**

11. The Commission concludes that the proposed Settlement is, under the circumstances that exist at this time, a fair and reasonable resolution of this proceeding. Although Enforcement Litigation Staff believed that there were sufficient assets among the Settling Respondents to satisfy the monetary remedies sought at the time of the Show Cause Order, during the course of this proceeding Amaranth LLC has been returning capital to investors. Amaranth Advisors L.L.C. provided financial statements to the

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<sup>14</sup> No. 07-1491 (D.C. Cir. Dec. 6, 2007).

<sup>15</sup> See *Amaranth L.L.C. v. FERC*, No. 07-1491 (D.C. Cir. Dec. 6, 2007).

<sup>16</sup> 15 U.S.C. § 717t, as amended.

Commission's Enforcement Litigation Staff. The Settlement states that the financial statements show, along with the history of distributions to investors since September 2006, that the likelihood of the Settling Respondents satisfying a judgment in the amount sought in the Show Cause Order, by the time Enforcement Litigation Staff would likely be able to secure a judgment for payment of the same, is very small. As a result, the Settlement requires the Settling Respondents to pay a \$7.5 million penalty in satisfaction of the claims of both this Commission and the CFTC. At the same time, Enforcement Litigation Staff will continue to pursue the claims against the non-settling Respondent, Brian Hunter.

12. As part of the Settlement, the Settling Respondents stipulate to a number of facts at issue in this proceeding. The Settling Respondents stipulate to their positions in NG Futures Contracts at the beginning of the trading day on February 24, March 29, and April 26, 2006, as well as their sales of such NG Futures Contracts and their positions in derivative swaps on those same trading days. The Settling Respondents stipulate that the NG Futures Contract settlement price on those days would likely have been different if Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC had not traded during the settlement periods on those days, and that the value of their swap positions would have been lower if the NG Futures Contract settlement price had been higher than it actually was. Finally, the Settling Respondents stipulate that Amaranth L.L.C.'s NYMEX NG Contract position exceeded NYMEX position limits and applicable hedge exemptions from such limits on February 23 and May 23, 2006.

13. The Commission believes it is important that Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC, and Matthew Donohoe acknowledge that they are accountable for their trading in NYMEX NG Futures Contracts, which raised questions about the effect of the trading on prices in the physical natural gas market. The Settlement states that such questions were properly raised because the trading at issue appeared atypical, anomalous, and unusual, and, therefore, had the potential to erode public confidence in the validity of the settlement price. The Settlement also states that the Commission properly investigated the trading at issue. Further, the Settling Respondents concede the Commission's subject matter jurisdiction in this proceeding.

14. It is also important that the Commission is assured that the remaining litigation against the non-settling Respondent will not be affected by the Settlement with the Settling Respondents. The Commission notes that, subject to certain provisos, the Settling Respondents have agreed that neither they nor any of their agents, employees, contractors, representatives, or attorneys will make any public statement denying any allegation in the Show Cause Order or the Settlement, or create or tend to create the impression that the Show Cause Order or the Settlement are without factual basis.

15. At the time the Commission issued the Show Cause Order, it did not then (and does not currently) have the statutory authority to secure, on a preliminary and temporary basis, the assets of a respondent to an order to show cause. Rather, under the relevant

statutory provisions, the Commission must issue a final order requiring payment which, if disobeyed, could then be enforced in a United States District Court, including by attachment of assets. As a result, substantially all of the assets previously held by the Settling Respondents are no longer available to satisfy any monetary remedies that might have been imposed at the conclusion of litigation in this proceeding.

16. For the reasons stated above, the Commission hereby finds the Settlement to be fair and reasonable and approves it as consistent with the public interest.

17. The Commission's approval of this Settlement does not constitute approval of or precedent regarding, any principle or issue in this proceeding or any other proceeding.

18. In light of the Settlement's resolution of all issues relating to Settling Respondents in this proceeding, the requests for rehearing filed by Settling Respondents and pending in Docket Nos. IN07-26-003 and IN07-26-005 are hereby dismissed as moot.

The Commission orders:

The Commission hereby approves the Settlement, as discussed in the body of this order, and dismisses as moot the requests for rehearing filed by Settling Respondents and pending in Docket Nos. IN07-26-003 and IN07-26-005.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Amaranth Advisors L.L.C.  
Amaranth LLC  
Amaranth Management Limited Partnership  
Amaranth International Limited  
Amaranth Partners LLC  
Amaranth Capital Partners LLC  
Amaranth Group Inc.  
Amaranth Advisors (Calgary) ULC  
Brian Hunter  
Matthew Donohoe

Docket No. IN07-26-000

**JOINT OFFER OF SETTLEMENT AND REQUEST FOR WAIVER OF RULE  
602 REQUIREMENTS AND EXPEDITION**

Enforcement Staff of the Federal Energy Regulatory Commission (“Enforcement Staff”) and Amaranth Advisors L.L.C., Amaranth LLC, Amaranth Management Limited Partnership, Amaranth International Limited, Amaranth Partners LLC, Amaranth Capital Partners LLC, Amaranth Group Inc., Amaranth Advisors (Calgary) ULC, and Matthew Donohoe (the “Settling Respondents”) (jointly, the “Settling Participants”), all Respondents in this proceeding except Brian Hunter, submit this Joint Offer of Settlement to resolve all claims asserted against all Settling Respondents in the *In re Amaranth Advisors L.L.C., et al.* proceeding arising from conduct described in the July 26, 2007 Order to Show Cause<sup>1</sup> (the “Matter”). As provided by Rule 602 of the Commission’s Rules of Practice and Procedure, Participants attach hereto the following

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<sup>1</sup> *Amaranth Advisors L.L.C.*, 120 FERC ¶ 61,085 (2007).

documents: (1) Joint Explanatory Statement (Attachment A); and (2) Settlement Agreement (Attachment B).

In addition, for the reasons explained below and under the unique circumstances of this case, the Settling Participants hereby also request the following procedural relief: waiver of the requirement of Rule 602(b)(2)(i) that this offer be submitted by the Secretary to the Presiding Judge and that instead it be submitted to the Commission; that, with the consent of Mr. Hunter (the only Participant not a party to the settlement), the comment period under Rule 602(f) be waived; and, finally, that action by the Commission on the settlement be given all possible expedition. These materials are being filed non-publicly with a redacted public version pursuant to the Commission's Protective Order dated March 14, 2008 and it is the contemplation and request of the Settling Participants that the substance of these materials should remain non-public until the Commission issues an order approving the Settlement Agreement.

The Commission often expresses its preference to resolve enforcement matters through settlement, whenever possible.<sup>2</sup> Settlement avoids litigation risk as well as the time and costs of a hearing and permits the Commission to reallocate to other enforcement matters resources that would otherwise have been spent on litigation.<sup>3</sup> To date, this Matter has already consumed substantial Commission and staff resources and promises to continue to do so if this settlement agreement is not approved. This

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<sup>2</sup> *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156 at P 33 (2008).

<sup>3</sup> *Id.*

proceeding has been pending before the Commission for more than two years. In addition, a related case was brought in 2007 by the Commodity Futures Trading Commission (“CFTC”) against some of the Respondents<sup>4</sup> (the “CFTC Matter”). As detailed more fully in the accompanying papers, this settlement has been coordinated with, and is contingent upon approval by the district court in the CFTC Matter of a simultaneous settlement between the CFTC and all defendants in the CFTC Matter except Brian Hunter. To resolve this Matter, the Settling Participants have engaged in substantial negotiations to develop a Settlement Agreement that is acceptable to all Settling Participants and is fair and reasonable and in the public interest.

As set forth in the Joint Explanatory Statement, the Settling Respondents neither admit nor deny any of the allegations set forth in the Order to Show Cause. However, the Settlement Agreement resolves, as to all Settling Respondents, all claims actually brought or that could have been brought in the Matter, as to the named Settling Participants or their parents, subsidiaries, affiliates, principals, employees, agents, representatives, and attorneys, except Brian Hunter. In addition, the Settlement Agreement resolves all related appellate action among and between the Settling Participants. This includes, but is not limited to *Amaranth Advisors LLC et al. v. FERC*, No. 07-1491 (D.C. Cir. Dec. 6, 2007) which is to be dismissed with prejudice and without costs.

A total of \$7.5 million in civil penalties will be paid by Settling Respondents to resolve this matter and the CFTC matter. The amount is substantially based on

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<sup>4</sup> *CFTC v. Amaranth Advisors L.L.C., et al.*, No. 07 Civ. 6682 (S.D.N.Y. filed July 25, 2007).

consideration of the Settling Respondents' financial condition, specifically the losses experience by the fund and advisor entities of approximately \$6 billion in September 2006 and the advisor entities' subsequent cessation of active trading. Payment of this amount shall be made on a schedule as detailed in the Settlement Agreement.

The Settlement Agreement, if approved, will fully resolve all disputes between the Settling Participants and release Settling Respondents from all claims that have been brought or could have been brought in this Matter, facilitate resolution of claims against some Respondents who are defendants in the CFTC Matter, and put an end to a substantial portion of an already lengthy proceeding. In sum, the Settlement Agreement is fair and reasonable and in the public interest and should be approved by the Commission. Approval of the Settlement Agreement will provide for regulatory certainty, promote administrative efficiency, and help to bring these matters to a close.

A number of procedural rulings by the Commission would greatly facilitate settlement under the unique circumstances of this case. First, Settling Participants request a waiver of the requirement in Rule 602(b)(2)(i) that this Joint Settlement Offer be submitted by the Secretary to the Presiding Administrative Law Judge. Instead, the Settling Participants request that the Joint Settlement Offer be submitted directly to the Commission, especially given the prior request by Respondents for direct communications with the Commission pertaining to settlement. Moreover, this is the second Joint Settlement Offer that has been submitted in this Matter. The prior Joint

Settlement Offer was rejected by the Commission.<sup>5</sup> Therefore, it is appropriate for this Joint Settlement Offer to be submitted directly to the Commission in the interest of time to avoid any uncertainty as to how matters will proceed. The Settling Participants are advised that the Presiding Judge is in accord with this approach.

Second, the Settling Participants request that the comment period provided for under Rule 602(f) be waived. Under Rule 602(g), only a participant in the proceeding is permitted to contest a settlement offer.<sup>6</sup> Mr. Hunter is the only Participant in this Matter that is not a party to this Joint Offer of Settlement and, therefore, Mr. Hunter is the only person that could potentially contest it. He has waived his right to do so and agrees to waiver of the comment period. The purpose of the comment period is to determine if the settlement is contested, but under these circumstances comments are unnecessary. In addition, the hearing in this Matter is set to begin on August 4, 2009, which is sooner than the end of the comment period prescribed in Rule 602(f).<sup>7</sup> Thus, to avoid unnecessary discovery and hearing preparations by all of the Participants, it is important to have an expeditious resolution to this Joint Offer of Settlement, which would not be possible if the full comment period is available.

The Settling Participants have separately moved, in public papers filed contemporaneously herewith, that the Commission issue an order forthwith severing the

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<sup>5</sup> *Amaranth Advisors L.L.C.*, 126 FERC ¶ 61,112 (2009).

<sup>6</sup> 18 C.F.R. § 385.602(g) (2008).

<sup>7</sup> 18 C.F.R. § 385.602(f)(2) (2008).

Settling Participants from the proceeding in the sub-docket IN07-26-004 and staying the proceeding as to them with respect to the sub-docket including any pre-hearing or hearing obligations as to the matter set for hearing on August 4, 2009 pending the Commission consideration of the Joint Offer of Settlement (other than a few discovery matters and possible testimonial obligations that Enforcement Staff believes are relevant to the case against Respondent Brian Hunter).

Finally, as noted above, the Settling Participants urge the Commission to resolve this matter expeditiously in order to promote certainty for all Participants in this Matter. Any delay in considering this Joint Settlement Offer could cause additional uncertainty with the respect to the related matters including but not limited to the appellate activity and the resolution of the CFTC Matter.

Respectfully submitted,

ENFORCEMENT STAFF

Lee Ann Watson  
Deputy Director  
Division of Investigations  
Office of Enforcement

Dated July 23, 2009

By:

Enforcement Staff

/s/

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*Counsel for Matthew Donohoe*



# **Exhibit A**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Amaranth Advisors L.L.C.  
Amaranth LLC  
Amaranth Management Limited Partnership  
Amaranth International Limited  
Amaranth Partners LLC  
Amaranth Capital Partners LLC  
Amaranth Group Inc.  
Amaranth Advisors (Calgary) ULC  
Brian Hunter  
Matthew Donohoe

Docket No. IN07-26-000

**JOINT EXPLANATORY STATEMENT**

Enforcement Staff of the Federal Energy Regulatory Commission (“Enforcement Staff”) and all Respondents in this proceeding except Brian Hunter, specifically Amaranth Advisors L.L.C., Amaranth LLC, Amaranth Management Limited Partnership, Amaranth International Limited, Amaranth Partners LLC, Amaranth Capital Partners LLC, Amaranth Group Inc., Amaranth Advisors (Calgary) ULC, and Matthew Donohoe (together, the “Settling Respondents”), (Settling Respondents and Enforcement Staff jointly, the “Settling Participants”) submit the Settlement Agreement, attached hereto, that resolves all claims asserted, against all Settling Respondents in the *In re Amaranth Advisors L.L.C., et al.* proceeding arising from conduct described in the July 26, 2007 Order to Show Cause<sup>1</sup> (the “Matter”) and a related appellate proceeding.<sup>2</sup>

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<sup>1</sup> *Amaranth Advisors L.L.C.*, 120 FERC ¶ 61,085 (2007).

<sup>2</sup> *See Amaranth Advisors LLC et al. v. FERC*, No. 07-1491 (D.C. Cir. Dec. 6, 2007).

Settling Participants request that the Commission approve the attached Settlement Agreement. Once approved and effective, the Settlement Agreement will permit the Settling Participants to avoid unnecessary and costly litigation and enable the Commission to provide regulatory certainty, promote administrative efficiency, and bring to a close a substantial portion of this lengthy proceeding. Additionally, for the reasons discussed herein, approval of this Settlement Agreement is fair and reasonable and in the public interest. This Explanatory Statement is not intended to, and does not alter any of the provisions of the Settlement Agreement and is provided solely in compliance with Rule 602(c)(1)(ii) of the Commission's Rules of Practice and Procedure.<sup>3</sup>

## INTRODUCTION

This matter has been under investigation or pending as a proceeding before the Commission for more than three years. During that time, for reasons unrelated to the matters in the proceeding, Amaranth LLC experienced losses of approximately \$6 billion in September 2006. By October 2006, Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC had ceased active trading and began the process of managing and disposing of Amaranth LLC's assets, and returning capital to investors. From the Enforcement staff's perspective, the settlement reflects the financial condition of the funds, specifically the cessation of trading and the disposal of assets. In addition, a related case was brought by the Commodity Futures Trading Commission ("CFTC")

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<sup>3</sup> 18 C.F.R. § 602(c)(1)(ii) (2008).

against some of the Settling Respondents (the “CFTC Matter”).<sup>4</sup> The instant settlement has been coordinated with, and is contingent upon entry of a consent order by the district court in the CFTC Matter relating to, a simultaneous settlement between the CFTC and the defendants in the CFTC matter, except Brian Hunter. To resolve this Matter, the Settling Participants have engaged in substantial negotiations to develop a Settlement Agreement that is acceptable to all Settling Participants and is fair and reasonable and in the public interest.

## **I. DESCRIPTION OF THE PROCEEDINGS**

### **A. Commission Proceedings**

After a lengthy investigation by Enforcement Staff, the Commission issued on July 26, 2007 an Order to Show Cause and Notice of Proposed Penalties in the *In re Amaranth Advisors L.L.C., et al.* proceeding, ordering all Respondents to show cause why they have not violated section 1c.1 of the Commission’s regulations entitled “Prohibition of Natural Gas Market Manipulation,” and why they should not be assessed civil penalties for, and required to disgorge unjust profits plus interest from, these alleged violations.<sup>5</sup>

In response to the Commission’s Order to Show Cause, certain Respondents filed requests for expedited rehearing to terminate the Order to Show Cause for lack of subject

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<sup>4</sup> *CFTC v. Amaranth Advisors L.L.C., et al.*, No. 07 Civ. 6682 (S.D.N.Y. filed July 25, 2007).

<sup>5</sup> *Amaranth Advisors L.L.C.*, 120 FERC ¶ 61,085 at P 1 (2007).

matter jurisdiction. On November 30, 2007, the Commission denied the rehearing requests of Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC, Amaranth Management Limited Partnership and Amaranth Group Inc., stating the Commission's view that it has jurisdiction to punish manipulative trading so that energy markets remain fair and competitive.<sup>6</sup> On December 14, 2007, all Respondents filed their respective answers to the Order to Show Cause and motions for summary disposition denying virtually all of the allegations in the Order to Show Cause, including arguing the Commission's lack of jurisdiction, and arguing that the matter should be terminated with no further action.

After considering all of the pleadings filed by Participants, the Commission denied all Respondents' respective motions for summary disposition and the remaining motions for rehearing on July 17, 2008. The Commission also set the Matter for hearing to address the allegations in the Order to Show Cause. In accordance with the Commission's order, Chief Judge Curtis L. Wagner set the hearing in this Matter to begin on May 5, 2009 and end with an initial decision on September 1, 2009. Chief Judge Wagner designated the Honorable Carmen Cintron as the presiding judge for the hearing. On October 16, 2008, Amaranth LLC and Amaranth International Limited renewed their motions for summary disposition, which Judge Cintron denied. On February 17, 2009, the Chief Judge Wagner issued an order retaining Judge Cintron as the presiding judge and setting a hearing date of August 4, 2009. Judge Cintron subsequently issued

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<sup>6</sup> *Amaranth Advisors L.L.C.*, 121 FERC ¶ 61,224 at P 66 (2007).

additional orders governing interim dates and procedures for the Participants' preparation for the hearing.

## **B. Court Proceedings**

Certain Respondents also filed claims in federal district courts and the U.S. Court of Appeals for the District of Columbia Circuit to stay the Commission's administrative proceedings, as described above, and to challenge the Commission's subject matter jurisdiction. On July 23, 2007, Brian Hunter filed a civil action and a motion before the U.S. District Court for the District of Columbia, seeking a temporary restraining order, a preliminary injunction to enjoin the Commission from exercising its enforcement jurisdiction over him in the Commission proceeding in docket number IN07-26-000, and a declaratory judgment. The court denied the motion for a temporary restraining order and preliminary injunction on December 10, 2007<sup>7</sup> and dismissed the case on July 30, 2008.<sup>8</sup> Brian Hunter filed a petition for review of this dismissal before the U.S. Court of Appeals for the District of Columbia Circuit on October 27, 2008.<sup>9</sup> This appeal is still pending. Oral argument is set for September 23, 2009. This appeal would not be resolved by this Settlement Agreement because Mr. Hunter is not one of the Settling Respondents. Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC, Amaranth Management Limited Partnership, and Amaranth Group, Inc. filed a petition for review

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<sup>7</sup> *Hunter v. FERC*, 527 F. Supp. 2d 9 (D.D.C. 2007).

<sup>8</sup> *Hunter v. FERC*, 569 F. Supp. 2d 12 (D.D.C. 2008).

<sup>9</sup> *Hunter v. FERC*, Docket No. 08-5380 (D.C. Cir. Oct. 27, 2008).

of the Commission's July 26, 2007<sup>10</sup> and November 30, 2007<sup>11</sup> orders in the U.S. Court of Appeals for the District of Columbia Circuit on December 6, 2007.<sup>12</sup> This appeal is still pending, and oral argument is also set for September 23, 2009, however, this appeal would be resolved by this Settlement Agreement, if approved by the Commission.

In a related matter, the CFTC filed a complaint on July 25, 2007, against Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC, and Brian Hunter in the U.S. District Court for the Southern District of New York alleging, based on some of the same facts alleged in this Matter, violations of the Commodity Exchange Act.<sup>13</sup>

## II. SUMMARY OF SETTLEMENT AGREEMENT TERMS

The Settlement Agreement resolves, as to all Settling Respondents, all claims actually brought or that could have been brought in the Matter as to the named Settling Participants, their parents, subsidiaries, and affiliates, and each of their agents, officers, directors, and employees, both past and present with the exception of Brian Hunter, and any successor in interest ("Releasees"). In addition, the Settlement Agreement resolves all related appellate action among and between the Settling Participants. This includes, but is not limited to this proceeding and *Amaranth Advisors LLC et al. v. FERC*, No. 07-

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<sup>10</sup> See *Amaranth Advisors L.L.C.*, 120 FERC ¶ 61,085 (2007).

<sup>11</sup> See *Amaranth Advisors L.L.C.*, 121 FERC ¶ 61,224 (2007).

<sup>12</sup> *Amaranth L.L.C. v. FERC*, Docket No. 07-1491 (D.C. Cir. Dec. 6, 2007).

<sup>13</sup> *CFTC v. Amaranth Advisors L.L.C., et al.*, No. 07 Civ. 6682 (S.D.N.Y. filed July 25, 2007) (the CFTC Matter).

1491 (D.C. Cir. Dec. 6, 2007), which appeal is to be dismissed with prejudice and without costs.<sup>14</sup> Also, as explained more fully below, the Settlement is being coordinated with a related settlement of the CFTC Matter. The Settling Respondents neither admit nor deny any of the allegations set forth in the Order to Show Cause in this proceeding, though they do stipulate to certain facts and to the Commission's subject matter jurisdiction in this matter, although nothing herein or therein shall in any manner limit any Respondents' ability to deny and defend themselves from allegations in any other proceeding. The Settlement Agreement binds Settling Respondents and their agents, successors, and assigns. It does not create or impose any additional or independent obligations on Settling Respondents, or any affiliated entity, agent, officer, director, or employee, other than those obligations expressly identified in the Settlement Agreement. The principal terms of the Settlement Agreement are described below.

**A. Coordination with Settlement of CFTC Matter and Effective Date**

The Settlement Agreement has been executed by the Settling Participants in coordination with the settlement in the CFTC Matter. At the time of this submission, the Settling Respondents who are also defendants in the CFTC Matter (i.e., Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC), along with members of the CFTC enforcement staff, have submitted to the CFTC a proposed Consent Order for approval and if approved by the CFTC, the Consent Order will be filed with the U.S. District Court for the Southern District of New York in the CFTC Matter for entry as a

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<sup>14</sup> This paragraph does not apply to the appellate action titled *Hunter v. FERC*, No. 08-5380 (D.C. Cir. Oct. 27, 2008).

final non-appealable judgment. The instant settlement of the Matter will become effective when both: (1) the Commission has approved the Settlement Agreement, without modification, unless the modifications have been expressly agreed to in writing by the Settling Respondents, and (2) the U.S. District Court for the Southern District of New York has entered a final, non-appealable order resolving by settlement and consent the claims against Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC in the CFTC Matter.

### **B. Termination**

Unless the Commission issues an order approving the Agreement in its entirety and without modification, and the CFTC Matter is resolved by a final, non-appealable order of settlement, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement Staff nor Settling Respondents shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by Enforcement Staff and Settling Respondents. If the Commission does not issue such an order and the CFTC Matter is not resolved by a final, non-appealable order of settlement, all documents filed in connection therewith shall be deemed null and void and withdrawn and shall not be disclosed or used for any purpose.

### **C. Monetary Remedies**

The Settlement Agreement obligates Settling Respondents to pay a civil penalty of \$7.5 million to resolve their involvement in both this Matter and the CFTC Matter. The payment of this amount shall occur after the Effective Date (as defined in the Settlement

Agreement) and on a schedule that takes into account certain aspects of the process of the distribution of the assets of the Settling Respondents' business, including managing and disposing of Amaranth LLC's assets and returning capital to investors, but no later than one year from the Effective Date (as defined in the Settlement Agreement).

In connection with the payment of the civil penalty provided for in the Settlement Agreement, Settling Respondents have agreed that the Commission's order approving the Agreement without modification shall be a final and non-appealable order assessing a civil penalty under section 21 of the Natural Gas Act (NGA).<sup>15</sup> Settling Respondents have waived rehearing of any Commission order approving the Settlement Agreement without modification, and judicial review by any court of any Commission order approving the Settlement Agreement without modification. The failure of Settling Respondents to make a timely payment or to comply with any other provision of the Settlement Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the NGA, 15 U.S.C. §§ 717a, *et seq.* and may subject the Settling Respondents to additional action under the enforcement and penalty provisions of the NGA. In addition, if the Settling Respondents do not make the payments required by the Settlement Agreement at the time provided for in the Settlement Agreement, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations from the date that payment is due, in addition to the penalty specified above.<sup>16</sup>

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<sup>15</sup> 15 U.S.C. § 717t (2006).

<sup>16</sup> 18 C.F.R. § 35.19(a)(2)(iii) (2008).

#### **D. Stipulations**

The Settling Participants stipulated to numerous facts in the Settlement Agreement pertaining to the following subjects. First, the Settling Participants stipulate to facts related to the structure and the roles of the particular entities. Second, they stipulate to the fact that there is a relationship between the NG Futures contract settlement price and Commission-jurisdictional wholesale natural gas transactions. Third, the Settling Participants stipulate to many details of Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC's trading activities on February 24, 2006, March 29, 2006, and April 26, 2006, including that the values of Amaranth LLC's swap positions for those months would have been lower if the NG Futures Contract Settlement Price had been higher. The Settling Participants also agree that the NYMEX NG settlement price on the three relevant dates would likely have been different if Amaranth Advisors had not traded during the settlement periods on those days. Amaranth Advisors L.L.C, Amaranth Advisors (Calgary) ULC and Matthew Donohoe dispute that their trading was unlawful, but acknowledge that they are accountable for their trading in NYMEX natural gas futures contracts, which raised questions about the effect of the trading on prices in the physical natural gas market. Such questions were properly raised because the trading at issue appeared atypical, anomalous, unusual and therefore had the potential to erode public confidence in the validity of the NYMEX settlement price. As a consequence, the Commission therefore properly investigated the trading at issue. All Settling Respondents concede the Commission's subject matter jurisdiction over the Matter.

### **E. Releases**

Commission approval of this Settlement Agreement without modification shall release Releasees from, and forever bar the Commission from, bringing against Releasees, any and all administrative or civil claims arising out of the alleged violations addressed in Docket No. IN07-26-000 or any administrative or civil claims of any kind, whether known or unknown, based on the conduct and circumstances raised in this Matter.

### **III. COMMENTS**

The Order to Show Cause describes the Settling Respondents as a number of “Advisor” and “Fund” entities and a “Trader” in the case of Mr. Donohoe and states that, at different times, Amaranth Group Inc. and Amaranth Advisors (Calgary) ULC employed the “Traders” Brian Hunter and Matthew Donohoe. At about the time of the conduct alleged as violations in the Order to Show Cause, the collective value of the Fund and Advisor entities had exceeded \$9 billion. However, during Enforcement Staff’s investigation, Amaranth LLC experienced losses of approximately \$6 billion in September 2006. These losses were unrelated to the trading described in the Order to Show Cause. By October 2006, Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC ceased active trading and began the process of managing and disposing of Amaranth LLC's assets, and returning capital to investors, although the timing of that disbursement was uncertain so as to allow for an orderly disposition of investment assets

and the disposition of highly illiquid assets. In the Enforcement Staff's view, at the time the Order to Show Cause was issued, Respondents held sufficient assets among them to satisfy the monetary remedies sought. However, the process was ongoing and the Commission did not then and does not currently have the statutory authority to secure, on a preliminary and temporary basis, the assets of a respondent to an order to show cause. Rather, under the relevant statutory provisions, the Commission must (after all due process) issue a final order requiring payment which, if disobeyed, could then be enforced in a U.S. District Court, including by attachment of assets.

During all the time this proceeding has been going forward towards ultimate resolution, with the knowledge of the Commission, capital has been returned to investors by the fund entity Settling Respondents and the business assets of Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC have been substantially disposed. For example, as of July 2009, Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC have less than \$700,000 in cash. Approximately 98% of the investment assets in the portfolio of Amaranth LLC (the "Master Fund") as a percentage of value as of September 30, 2006, have been disposed. In the view of the Enforcement Staff, absent a voluntary settlement, it is highly likely that Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC and/or Amaranth LLC would be able to convert the value of any other significant assets that may remain and disburse the proceeds to investors before the time by which the Commission could secure satisfaction of a judgment. Although the allegations of the Order to Show Cause run to the Fund entities, Enforcement Staff views the Funds as less culpable than Amaranth Advisors L.L.C., Amaranth Advisors (Calgary)

ULC or the traders. Moreover, Amaranth LLC's investors have already lost well over 60% of their investment in the Funds since September 1, 2006. In recognition of these considerations, Enforcement Staff has agreed that the monetary terms of the settlement are fair and reasonable under the circumstances.

None of the foregoing financial conditions or considerations apply to the situation of Mr. Hunter, and thus far Enforcement Staff has not been able to reach a settlement with Mr. Hunter. Mr. Hunter is not a party to this Settlement Agreement and, barring further developments, it is the contemplation of the Enforcement Staff that the proceeding as to Mr. Hunter will continue, including the hearing set for August 4, 2009, and also that the CFTC Matter as to Mr. Hunter will also likely proceed. Settling Respondents understand the potential for such continuation of proceedings against Mr. Hunter.

Moreover, in considering whether to resolve the claims at this time, Settling Respondents indicated that, for a variety of practical reasons, they strongly preferred a joint settlement with both the Commission and with the CFTC pertaining to the CFTC Matter. Enforcement Staff agrees that a settlement relating to both regulators is desirable and preferable. Enforcement Staff's consultations with staff of the CFTC indicate that staff of the CFTC also agree with that sentiment. The Settlement Agreement thus facilitates the settlement involving the CFTC and vice versa.

#### **IV. CONCLUSION**



/s/

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Donald K. Dankner  
Raymond B. Wuslich  
Charles B. Klein  
Stephen J. Senderowitz  
David E. Mollón  
Steven M. Schwartz  
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Management Limited Partnership, Amaranth  
Partners LLC, Amaranth Capital Partners LLC  
and Amaranth Group Inc.*

DAVIS POLK & WARDWELL LLP

/s/

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*Counsel for Amaranth LLC*

SHEARMAN & STERLING LLP

/s/

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Herbert S. Washer  
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*Counsel for Amaranth International Limited*

SIMPSON THACHER & BARTLETT LLP

/s/

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Mark J. Stein  
Joshua A. Levine  
Sara A. Ricciardi  
Heather L. Shaffer

*Counsel for Matthew Donohoe*



# **Exhibit B**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Amaranth Advisors L.L.C.  
Amaranth LLC  
Amaranth Management Limited Partnership  
Amaranth International Limited  
Amaranth Partners LLC  
Amaranth Capital Partners LLC  
Amaranth Group Inc.  
Amaranth Advisors (Calgary) ULC  
Brian Hunter  
Matthew Donohoe

Docket No. IN07-26-004

20090812 08/12/2009

SETTLEMENT AGREEMENT

(July 20, 2009)

**I. INTRODUCTION**

1. The staff of the Office of Enforcement (“Enforcement Staff”) of the Federal Energy Regulatory Commission (“Commission”) and Amaranth Advisors L.L.C., Amaranth LLC, Amaranth Management Limited Partnership, Amaranth International Limited, Amaranth Partners LLC, Amaranth Capital Partners LLC, Amaranth Group Inc., Amaranth Advisors (Calgary) ULC and Matthew Donohoe (together, “Respondents” and jointly with Enforcement Staff, “Participants”) propose this settlement agreement (“Settlement Agreement”) to resolve all claims asserted against these Respondents in this proceeding, *In re Amaranth Advisors L.L.C., et al.*, before the Commission (the “Matter”) and those that could have been asserted against these Respondents, whether known or unknown, based on the conduct and circumstances raised in this Matter.<sup>1</sup>

2. Respondents enter into this Settlement Agreement in order to avoid the costs of defending this action and to avoid the risks of litigation as a consequence of trading in the New York Mercantile Exchange, Inc. (“NYMEX”) natural gas futures contracts by Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC, and Matthew Donohoe

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<sup>1</sup> The term “Respondents” in this Settlement Agreement specifically does not include Brian Hunter. Mr. Hunter is not a party to this Settlement Agreement. None of the claims asserted against Mr. Hunter are encompassed in this Settlement Agreement.

in a manner that could create the potential for the Commission to raise questions about the trading's effect on prices in the physical natural gas market. Respondents do not hereby admit or deny any of the allegations in this Matter.

3. Amaranth Advisors L.L.C, Amaranth Advisors (Calgary) ULC and Matthew Donohoe dispute that their trading was unlawful, but acknowledge that they are accountable for their trading in NYMEX natural gas futures contracts (the "NG Futures Contract(s)") which raised questions about the effect of the trading on prices in the physical natural gas market. Such questions were properly raised because the trading at issue appeared atypical, anomalous, unusual and therefore had the potential to erode public confidence in the validity of the NYMEX settlement price. As a consequence, the Commission therefore properly investigated the trading at issue.

4. Respondents concede the Commission's subject matter jurisdiction in this action.

## II. STIPULATED FACTS

5. Enforcement Staff and Respondents hereby stipulate and agree to the following:

a. This case involves three distinct but interrelated markets: (1) the NG Futures Contract market, which contracts are traded exclusively on NYMEX; (2) a variety of other "derivative" financial products, most of which are termed "swaps" (some traded on NYMEX, some "over the counter" (e.g., on the Intercontinental Exchange, Inc. ("ICE")), and all of which derive their value based on the "settlement price" of the NG Futures Contract for a given month; and (3) Commission-jurisdictional wholesale natural gas sales, namely, wholesale natural gas sales in interstate commerce that are not "first sales" within the meaning of the Natural Gas Policy Act of 1978 ("NGPA").

b. The NG Futures Contract is a contract for the future delivery of 10,000 MMBtu of natural gas over the course of the contract month to the buyer's interconnection on the Sabine Pipe Line Co.'s Henry Hub in Louisiana. The NG Futures Contract market provides important benefits to the physical natural gas markets. Many market participants view NG Futures Contract pricing as a reliable price signal for the purpose of transacting or planning for natural gas sales. The NG Futures Contract market also allows physical natural gas market participants to hedge against risks of future price volatility on their fixed contract obligations.

c. During the relevant time period (early 2006), the NG Futures Contract was principally traded in an "open outcry" market on the NYMEX trading floor located in the financial district in New York, New York. During its trading hours, it is an open and continuous auction by NYMEX members who are acting on behalf of their customers, the brokerage companies they represent, or themselves. It is referred to as "open outcry" because, instead of a single auctioneer selling an item, every member on the floor can

shout out bids (*i.e.*, prices at which they are willing to buy a contract) or offers (*i.e.*, the prices at which they wish to sell a contract).

d. According to NYMEX, the final NG Futures Contract “settlement price” is generally set as the volume-weighted average price of trades made during the 30-minute settlement period, which is the last 30 minutes of trading on the termination day for the prompt-month contract. The “prompt-month” is the next calendar month. The “termination day” for the NG Futures Contract is the third-to-last business day of the month preceding the prompt month, and the settlement period occurs from 2:00 p.m. Eastern Time to 2:30 p.m. Eastern Time on the termination day (except when NYMEX is operating on a holiday schedule). So, for example, for February 2006, the prompt-month contract was the March 2006 NG Futures Contract. The last business day for February 2006 was Tuesday, February 28, so the settlement period for the March 2006 NG Futures Contract took place from 2:00 p.m. Eastern Time to 2:30 p.m. Eastern Time on Friday, February 24, 2006.

e. Although few actually do so, futures market participants can choose to hold their positions to the end of the settlement period for the prompt-month contract, and thus become obligated, with some exceptions, to “go to delivery.” That is to say, the “futures” contract for the prompt month can become a present contractual obligation for the purchase and sale of the physical gas. Longs would thus be required to take delivery and shorts would be required to make delivery of 10,000 MMBtu per contract over the course of the contract month, at the buyer’s interconnection on the Sabine Pipe Line Company’s Henry Hub in Louisiana. The NYMEX Exchange Rule 220.11(D) provides that the “last settlement price shall be the basis for delivery.”

f. A number of financial natural gas derivatives, including certain financially-settled natural gas “swaps” and certain “options,” are financially settled using the NYMEX settlement price. A natural gas swap (“swap”) is a purely financial instrument that operates much like the NG Futures Contract except that, rather than settling by becoming a physical delivery or purchase obligation if held through the termination date, it settles financially at the termination of the NG Futures Contract at the NG Futures Contract’s final settlement price. Financial swaps do not entail physical delivery risk. The buyer in a swap transaction for a given contract month agrees to pay the seller a “fixed price,” *i.e.*, a specific amount determined at the time when the transaction occurs. The seller pays the buyer a “floating price,” which will be the actual final settlement price for the NG Futures Contract and which is not known at the time of the swap transaction.

g. A physical basis transaction is a contract for delivery of natural gas at some location in the wholesale, nationwide natural gas delivery system. Certain physical basis contracts are priced at the NG Futures Contract settlement price for a given month, plus or minus a fixed amount representing the expected “basis.” A second category of Commission-jurisdictional transactions that often could be affected by the NG Futures

Contract are “index” transactions. Monthly price indices are compiled and published by several trade press entities (e.g., Platts or NGI) who obtain information provided on a voluntary basis by market participants about trades occurring at various physical natural gas trading locations. Monthly indices are often calculated, in whole or in part, based on the volume-weighted average price of fixed-price and/or physical basis transactions executed at such locations during “bid week,” which is the last five business days of the month. As such, the NG Futures Contract settlement price often is used in the calculation of indices for locations where bid week physical basis trades are reported to publishers and used in the calculation of the monthly index. The price indices that include physical basis transactions, in turn, are sometimes used in bilateral natural gas markets as a price

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h. Amaranth LLC is a Cayman Islands company that operated as a multi-strategy investment fund. Pursuant to certain advisory agreements, its investment advisors included Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC (together, “Amaranth Advisors”). Amaranth LLC is a “master fund” in a “master-feeder” fund structure. As is common in such “master-feeder” structures, investors invest in three shareholder funds (Amaranth International Limited, Amaranth Partners LLC, and Amaranth Capital Partners LLC), which in turn choose to invest substantially all of their respective capital in Amaranth LLC. Amaranth Advisors, among others, then managed Amaranth LLC's investment portfolio pursuant to investment advisory agreements.

i. Amaranth Group Inc. is a Delaware S corporation owned 100 percent by Nicholas Maounis (“Maounis”). As of May 1, 2006, Amaranth Group Inc. owned one percent and served as general partner of Amaranth Management Limited Partnership, a Delaware holding entity, which entity in turn owned 78 percent of Amaranth Advisors L.L.C. Pursuant to an administrative services agreement, Amaranth Group Inc. employed personnel who carried out the work of Amaranth Advisors L.L.C. Personnel physically located in Calgary were employed by Amaranth Advisors (Calgary) ULC.

j. At the peak headcount in 2006, approximately 400 people worked for Amaranth Group Inc., Amaranth Advisors (Calgary) ULC, and their affiliated advisor entities. At the close of 2005, Amaranth LLC had approximately \$6.9 billion in capital. In September 2006, Amaranth LLC experienced significant losses from its natural gas positions that resulted in discontinuing active trading.

k. Matthew Donohoe was an “execution trader” for the energy trading desk. As such, Donohoe would place orders with NYMEX floor brokers or execute trades with counterparties on behalf of the trading book managed by Brian Hunter, who was the head natural gas portfolio manager at Amaranth Advisors (Calgary), ULC. He left Amaranth Advisors (Calgary) ULC after the noted 2006 losses.

l. On August 23, 2005, Amaranth Advisors L.L.C., acting on behalf of Amaranth LLC, submitted an application to NYMEX for an exemption from NYMEX's position limits for trading in the NG Futures Contract and the Henry Hub Swap Contract (or NN Contract). Specifically, Amaranth Advisors L.L.C. requested that Amaranth LLC's position limits for the last three trading days of the prompt month NG Futures Contract be raised from 1,000 NG Futures Contract equivalents to 3,000 NG Futures Contract equivalents. On September 16, 2005, NYMEX substantially granted Amaranth Advisors L.L.C.'s exemption request – permitting Amaranth LLC to hold a position of no more than 2,500 NG Futures Contract equivalents during the last three days of trading.

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m. Amaranth Advisors did not sell more than 50 prompt-month contracts in any months' final 30 minute settlement period until February 2006.

n. Amaranth LLC entered the trading day on February 24, 2006 with a short position of 1,729 March NG Futures Contracts. Amaranth Advisors bought between 4,800 and 4,900 contracts prior to the close on February 24. Through its NYMEX floor broker ALX Energy, Inc. ("ALX"), Amaranth Advisors began selling at roughly 2:00 p.m., which is the beginning of the settlement period, and sold 20 contracts before the settlement period, 2,901 contracts during the settlement period, and 190 contracts in the "post close." According to NYMEX, Amaranth Advisors was the largest seller in the close. The first trade tickets created by the floor broker's phone clerk, time stamped at 1:59 p.m., indicate an order to sell 500 contracts, which represents the largest sell in the opening minutes of the close. According to NYMEX records, the prevailing market price dropped from around \$7.40 at 2:00 p.m. to about \$7.10 sometime around 2:08 p.m. Amaranth LLC's position in the derivative March swaps was short 14,005 futures contract equivalents. As relevant here, the value of this March swap position would have been lower if the NG Futures Contract settlement price had been higher than it actually was.

o. On March 29, 2006 Amaranth LLC entered the trading day with a long position of 1,603 April NG Futures Contracts. Amaranth Advisors (Calgary) ULC placed orders with its broker ALX to sell 303 April NG Futures Contracts prior to the close between 12:41 p.m. and 1:50 p.m. At 2:00 p.m. and 2:03 p.m., Amaranth Advisors (Calgary) ULC placed further orders for ALX to sell 100 April NG Futures Contracts and 1,200 April NG Futures Contracts. During the week prior, Amaranth Advisors (Calgary) ULC had built Amaranth LLC's aggregate April swap position from being short roughly 9,500 futures contract equivalents at the end of the day on March 21 to short 15,054 futures contract equivalents at the end of the day on March 29. In addition, Amaranth LLC had a net short position of 19,639.5 contracts in the May NG Futures Contract swaps and penultimate swaps. As relevant here, the value of this April swap position would have been lower if the NG Futures Contract settlement price had been higher than it actually was.

p. Amaranth LLC began April 26, 2006 with a long position of 3,044 May NG Futures Contracts. Three orders were placed with separate brokers (TFS Energy Futures, LLC (“TFS”), Gotham Energy Brokers, Inc. (“Gotham”), and ALX) to sell these 3,044 contracts, starting at 2:22 p.m. An audio recording shows that instructions were given to Gotham to wait until the last eight minutes to sell, *i.e.*, to begin at 2:22 p.m. The phrase “last 8 minutes” is written on the order tickets by Gotham and TFS. The third order ticket by ALX – for 2000 May NG Futures Contracts – is time stamped at 2:22 p.m. On April 26, Amaranth Advisors (Calgary) ULC built Amaranth LLC’s short May swap position to 19,753 futures contract equivalents. As relevant here, the value of this May swap position would have been lower if the NG Futures Contract settlement price had been higher than it actually was.

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q. According to NYMEX, Amaranth LLC’s NYMEX NG position exceeded NYMEX position limits and applicable hedge exemptions from such limits on February 23, 2006 and May 23, 2006.

r. The NYMEX NG Futures Contract settlement price on the three relevant dates (February 24, 2006, March 29, 2006, and April 26, 2006) would likely have been different if Amaranth Advisors had not traded during the settlement periods on those dates.

### III. PROCEDURAL HISTORY

6. On July 26, 2007, the Commission issued an Order to Show Cause and Notice of Proposed Penalties (“Order to Show Cause”) in this Matter ordering Respondents and Brian Hunter to show cause why they have not violated section 1c.1 of the Commission’s regulations, which prohibits natural gas market manipulation,<sup>2</sup> and why they should not be assessed civil penalties for, and required to disgorge unjust profits plus interest from, these alleged violations.<sup>3</sup>

7. Certain of the Respondents filed requests for expedited rehearing to terminate the Order to Show Cause for lack of subject matter jurisdiction. The Commission denied the rehearing requests of Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC, Amaranth Management Limited Partnership and Amaranth Group Inc. on November 30, 2007, stating the Commission’s view that it has jurisdiction to punish manipulative trading so that energy markets remain fair and competitive.<sup>4</sup>

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<sup>2</sup> 18 C.F.R. § 1c.1 (2008).

<sup>3</sup> *Amaranth Advisors L.L.C.*, 120 FERC ¶ 61,085 at P 1 (2007).

<sup>4</sup> *Amaranth Advisors L.L.C.*, 121 FERC ¶ 61,224 at P 66 (2007).

8. On December 6, 2007, Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC, Amaranth Management Limited Partnership, and Amaranth Group, Inc. filed a petition for review of the Commission's July 26, 2007 Order to Show Cause<sup>5</sup> and November 30, 2007 Order<sup>6</sup> in the United States Court of Appeals for the District of Columbia Circuit. This appeal is still pending and has been set for argument on September 23, 2009.<sup>7</sup>

9. On December 14, 2007, Respondents filed their answers to the Order to Show Cause and motions for summary disposition denying virtually all of the allegations in the Order to Show Cause, including arguing that the Commission lacks jurisdiction, and arguing that the matter should be terminated with no further action.

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10. On February 1, 2008, the Commission ordered Enforcement Staff to file a brief addressing Respondents' answers to the Order to Show Cause and motions for summary disposition.<sup>8</sup> Enforcement Staff filed its brief addressing issues for trial and opposing Respondents' motions for summary disposition on March 18, 2008. Respondents filed their responses to Enforcement Staff's brief on May 19, 2008.

11. On July 17, 2008, the Commission denied Respondents' motions for summary disposition and the remaining motions for rehearing. The Commission also set the Matter for hearing to address the allegations in the Order to Show Cause.<sup>9</sup> In so doing, the Commission directed the Chief Judge to make a settlement judge available to the Participants. The Commission also ordered that if an agreement is reached, the resulting certification of settlement should address "the financial health of the Amaranth business entities that are parties to the agreement."<sup>10</sup>

12. Chief Judge Curtis L. Wagner held a prehearing conference on August 5, 2008 to clarify the positions of the Participants; determine the track schedule for the hearing; establish procedural dates for the hearing; discuss the possibility of settlement; establish

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<sup>5</sup> See *Amaranth Advisors L.L.C.*, 120 FERC ¶ 61,085 (2007).

<sup>6</sup> See *Amaranth Advisors L.L.C.*, 121 FERC ¶ 61,224 (2007).

<sup>7</sup> *Amaranth L.L.C. v. FERC*, Docket No. 07-1491 (D.C. Cir. Dec. 6, 2007).

<sup>8</sup> *Amaranth Advisors L.L.C.*, 122 FERC ¶ 61,087 (2008).

<sup>9</sup> *Amaranth Advisors L.L.C.*, 124 FERC ¶ 61,050 (2008).

<sup>10</sup> *Id.* at n.20.

concurrent settlement procedures; receive into evidence any matters that could be stipulated; and address any other matters as appropriate.<sup>11</sup>

13. On August 6, 2008, Chief Judge Curtis L. Wagner set the hearing in this Matter to begin on May 5, 2009 and end with an initial decision on September 1, 2009. Chief Judge Curtis L. Wagner designated the Honorable Carmen Cintron as the presiding judge for the hearing.

20090812-1008-PRC-PDF (Unofficial) 08/12/2009  
14. On October 16, 2008, Amaranth LLC and Amaranth International Limited renewed their motions for summary disposition. On October 30, 2008, Judge Cintron denied the renewed motions for summary disposition, set the schedule, and ordered procedures to be used for discovery and other pre-hearing matters.<sup>12</sup>

15. On February 17, 2009 Chief Judge Curtis Wagner reset the dates in the hearing with the hearing commencing on August 4, 2009 and an Initial decision due on December 1, 2009.<sup>13</sup> Judge Cintron subsequently issued additional orders governing interim dates and procedures for the Participants' preparation for the hearing.

16. Amaranth Advisors L.L.C. provided to the Commission's Enforcement Staff (1) a statement of its financial condition, (2) a statement of any pending or anticipated claims, and (3) a statement of the net asset value of Amaranth LLC, Amaranth International Limited, Amaranth Partners LLC, and Amaranth Capital Partners LLC. This information, along with the history of distributions to investors since September 2006, shows that the likelihood of the Amaranth Entities satisfying a judgment in the amount sought in the Order to Show Cause, by the time the Commission would likely be able to secure a judgment for payment of the same, is very small.

#### IV. RESOLUTION, REMEDIES AND SANCTIONS

17. Respondents neither admit nor deny any of the allegations set forth in the Commission's Order to Show Cause in this Matter, and nothing herein shall in any manner limit Respondents' ability to deny and defend themselves from allegations in any other proceeding. However, Amaranth Advisors acknowledges the Commission's legitimate interest in these issues and that it was appropriate for the Commission to review these matters because the NYMEX settlement price for the prompt month contract is sometimes used as a benchmark for jurisdictional physical natural gas sales. Moreover, in view of the costs and risks of litigation, and in the interest of resolving the

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<sup>11</sup> *Amaranth Advisors L.L.C.*, Docket No. IN07-26-000 (July 22, 2008).

<sup>12</sup> *Amaranth Advisors L.L.C.*, Docket No. IN07-26-000 (October 30, 2008).

<sup>13</sup> *Amaranth Advisors L.L.C.*, Docket No. IN07-26-004 (February 17, 2009).

matter in lieu of an adjudication on the merits, Respondents and Enforcement Staff enter into this Settlement Agreement. For purposes of settling any and all civil and administrative disputes arising from Enforcement Staff's investigation, the Order to Show Cause and the related hearing currently pending before the Commission, and all pending appeals, Enforcement Staff and Respondents agree that on and after the Effective Date of this Settlement Agreement, Respondents shall take the following actions and be subject to the following obligations:

20090812 18. Resolution of this Matter is being coordinated with the U.S. Commodity Futures Trading Commission and is contingent upon resolution of all the claims against Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC in the related matter entitled *CFTC v. Amaranth Advisors L.L.C., et al*, 07 Civ. 6682 (S.D.N.Y.).<sup>14</sup>

19. A civil penalty of \$7.5 million shall be paid to the United States Treasury in resolution of the claims asserted against the Respondents in this Matter and the claims against Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC in the action titled *CFTC v. Amaranth Advisors L.L.C., et al*, 07 Civ. 6682 (S.D.N.Y.). The payment of \$5.5 million of this amount shall be paid the first business day following the Effective Date and the payment of \$2 million shall be due no sooner than 30 days from the receipt by Amaranth Advisors of distributions of cash to Amaranth Advisors from its capital accounts with Amaranth Capital Partners LLC and/or Amaranth Partners LLC. But in any case such \$2 million payment shall be made not later than one year from the Effective Date.

20. All claims actually brought or that could have been brought in the Matter, as to the named Respondents, their parents, subsidiaries, and affiliates, and each of their agents, officers, directors, and employees, both past and present, with the exception of Brian Hunter, and any successor in interest as well as any related appellate action among and between the Participants, including but not limited to *Amaranth Advisors L.L.C. et al. v. FERC*, No. 07-1491 (D.C. Cir. Dec. 6, 2007), shall be dismissed with prejudice and without costs. To effectuate this, Respondents agree to file within 10 days of the Effective Date petitions to dismiss their appeal.<sup>15</sup>

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<sup>14</sup> Amaranth Advisors L.L.C., Amaranth Advisors (Calgary) ULC and Brian Hunter are the only parties named in both this Matter as a respondent and also as a defendant in the related matter entitled *CFTC v. Amaranth Advisors L.L.C., et al*, 07 Civ. 6682 (S.D.N.Y.). Resolution of this Matter is not contingent upon resolution of the claims against Mr. Hunter in the related matter entitled *CFTC v. Amaranth Advisors L.L.C., et al*, 07 Civ. 6682 (S.D.N.Y.).

<sup>15</sup> This paragraph does not apply to appellate action titled *Hunter v. FERC*, No. 08-5380 (D.C. Cir. Oct. 27, 2008).

21. Neither the Respondents nor any of their agents, employees, contractors, representatives, or attorneys shall make any public statement denying any allegation in the Order to Show Cause or this Settlement Agreement, or create or tend to create the impression that the Order to Show Cause or this Settlement Agreement are without factual basis; provided, however, nothing in this paragraph shall affect any of the Respondents' or their agents', employees', contractors', representatives', or attorneys' (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party; and provided further nothing in this paragraph shall affect the statements Respondents or their agents, employees, contractors, representatives, or attorneys can make to investors in Amaranth LLC, Amaranth Capital Partners LLC, Amaranth Partners LLC, or Amaranth International Limited. Respondents shall undertake all reasonable steps necessary to ensure that their agents, employees, contractors, representatives, or attorneys understand and comply with this Settlement Agreement.

## V. TERMS

22. The "Effective Date" of this Settlement Agreement shall be the latter of the date on which the Commission issues an order approving this Settlement Agreement without modification and the date upon which the United States District Court for the Southern District of New York enters a final non-appealable order resolving by settlement and consent the claims against Amaranth Advisors L.L.C. and Amaranth Advisors (Calgary) ULC in the matter titled *CFTC v. Amaranth Advisors L.L.C., et al*, 07 Civ. 6682 (S.D.N.Y.).

23. Unless the Commission issues an order approving the Settlement Agreement in its entirety and without modification, the Settlement Agreement shall be null and void and of no effect whatsoever, and neither Enforcement Staff nor any Respondent shall be bound by any provision or term of the Settlement Agreement, unless otherwise agreed in writing by such Respondent. If the Commission does not issue such an order, all documents filed in connection therewith shall be deemed null and void and withdrawn and shall not be disclosed or used for any purpose.

24. Upon issuance of such an order, the Settlement Agreement will bind the Commission, the Respondents and their agents, successors, and assigns, with the exception of Brian Hunter. The Settlement Agreement does not create or impose any additional or independent obligations on Respondents, or any affiliated entity, or their agents, officers, directors, or employees, with the exception of Brian Hunter, other than the obligations identified in Section IV of this Settlement Agreement.

25. In connection with the payment of the civil penalty provided for herein, Respondents agree that the Commission's order approving the Settlement Agreement without modification shall be a final and unappealable order assessing a civil penalty under section 21 of the Natural Gas Act (NGA), 15 U.S.C. § 717t, as amended.

Respondents further waive rehearing of any Commission order approving the Settlement Agreement without modification, and judicial review by any court of any Commission order approving the Settlement Agreement without modification.

26. Commission approval of this Settlement Agreement without modification shall release Respondents, their parents, subsidiaries, and affiliates, and each of their agents, officers, directors, and employees, both past and present, with the exception of Brian Hunter, and any successor in interest ("Releasees"), and forever bar the Commission, from bringing against Releasees, any and all administrative or civil claims arising out of the alleged violations addressed in Docket No. IN07-26-004 or any administrative or civil claims of any kind, whether known or unknown, based on the conduct and circumstances raised in this Matter.

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27. Failure to make a timely payment or to comply with any other provision of this Settlement Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the NGA, 15 U.S.C. §§ 717a, *et seq.* and may subject Respondents to additional action under the enforcement and penalty provisions of the NGA.

28. If Respondents do not make the payments above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

29. The signatories to this Settlement Agreement agree that they enter into the Settlement Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement Staff or Respondents has been made to induce the signatories or any other party to enter into the Settlement Agreement.

30. Each of the undersigned entities warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf. The Settlement Agreement may be signed in counterparts and is executed in sextuplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:

  
\_\_\_\_\_  
Enforcement Staff

7/17/09  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Amaranth Advisors LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amaranth Management Limited Partnership

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amaranth Partners LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amaranth Group Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amaranth Advisors (Calgary) ULC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Amaranth Capital Partners LLC

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Amaranth LLC

7/18/09  
\_\_\_\_\_  
Date



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Amaranth International Limited

*July 20, 2009*

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Date

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Matthew Donohoe

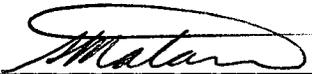
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Date

Agreed to and Accepted:

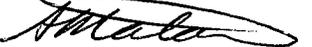
  
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Enforcement Staff

7/17/09  
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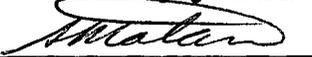
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By: **Amaranth Group, Inc.**  
**Its General Partner**

  
\_\_\_\_\_  
Amaranth Management Limited Partnership

7/20/09  
\_\_\_\_\_  
Date

By: **Amaranth Advisors L.L.C.,**  
**Its Managing Member**

  
\_\_\_\_\_  
Amaranth Partners LLC

7/20/09  
\_\_\_\_\_  
Date

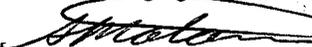
  
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Amaranth Group Inc.

7/20/09  
\_\_\_\_\_  
Date

  
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Amaranth Advisors (Calgary) ULC

7/20/09  
\_\_\_\_\_  
Date

By: **Amaranth Advisors L.L.C.,**  
**Its Managing Member**

  
\_\_\_\_\_  
Amaranth Capital Partners LLC

7/20/09  
\_\_\_\_\_  
Date

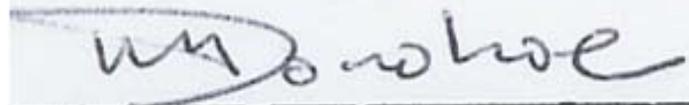
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Amaranth LLC

\_\_\_\_\_  
Date

Amaranth International Limited

Date

~~7/20/2009~~



Matthew Donohoe

Date

7/20/2009

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