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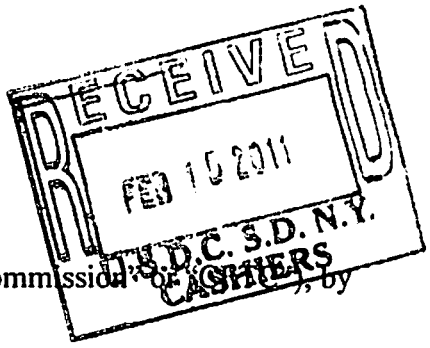
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. COMMODITY FUTURES TRADING COMMISSION,	:	Civil Case No. _____
Plaintiff,	:	
v.	:	**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION, CIVIL MONETARY PENALTIES AND OTHER EQUITABLE RELIEF**
BRIAN KIM and LIQUID CAPITAL MANAGEMENT, LLC	:	
Defendants.	:	(ECF CASE)



Plaintiff U.S. Commodity Futures Trading Commission ("Commission" or "CFTC"), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least 2008 through the present, Brian Kim ("Kim") and Liquid Capital Management, LLC ("LCM") (collectively "Defendants") engaged in acts including fraudulent solicitation, misappropriation and misrepresentations to investors and regulatory organizations, in connection with the commodity pool Liquid Capital Fund, L.P. (the "Pool").

2. In or about April 2008, Defendants were trading commodity futures contracts ("futures") in an account for the Pool and lost nearly the entire amount that had been deposited into the trading account. Shortly thereafter, during the period from June through October 2008, Kim submitted falsified documents to gain access to the bank account for a certain New York City Condominium Homeowners Association (the "Condo Association"), from which he transferred over $435,000 to LCM and the Pool. Defendants then used the stolen funds for

purposes including continuing to trade futures on behalf of the Pool and making a payment to an investor in another hedge fund Kim had been operating since approximately 2000.

3. By at least March 2009, Defendants were aggressively soliciting for the Pool. Kim and employees acting under his direction represented to investors in the Pool ("Pool Participants)" and prospective Pool Participants that the Pool would be trading e-mini S&P futures contracts, which are traded on the Chicago Mercantile Exchange ("CME"), a designated contract market. Defendants engaged in fraudulent solicitation practices, such as representing to Pool Participants and prospective Pool Participants that, since inception, the Pool had generated returns of 240% or more.

4. Between March 2009 through the end of October 2010, Defendants solicited, for the purpose of trading in a commodity for future delivery on or subject to the rules of a contract market, a total of at least $2.1 million intended as investments in the Pool from at least 37 Pool Participants. Defendants accepted funds sent by Pool Participants to be invested in the Pool ("Pool Participant Contributions") as deposits into an account in the name of Defendant LCM, which Kim treated as his own personal account.

5. During the period from March 2009 through the end of October 2010, Defendants only transferred approximately $745,000 of the Pool Participant Contributions from the LCM bank account to a bank account for the Pool, from which only $668,000 was used for trading futures.

6. Defendants were largely unsuccessful in their futures trading. From January 1 through October 31, 2010 alone, they lost over $293,000 of Pool Participants' money.

7. Defendants failed to disclose the Pool's trading losses to the Pool Participants. Instead, to conceal and perpetuate the fraud, Defendants repeatedly represented to Pool

Participants and prospective Pool Participants that the Pool was generating positive returns. Defendants provided Pool Participants with account statements misrepresenting the earnings in their accounts.

8. In a manner typical of a Ponzi scheme, purported "profits" paid to Pool Participants by Defendants came from existing participants' original principal and/or from money invested by subsequent Pool Participants. Moreover, at least $300,000 of the funds contributed by Pool Participants was used to pay investors in another partnership by the name of Logan/Faireborn Group, L.P. ("Logan/Faireborn") -- an investment fund which had been operated by Kim beginning years earlier. Up through at least October 2010, Defendants continued to falsely represent to Logan/Faireborn investors that their investments were growing.

9. Defendants also misappropriated large amounts of money contributed by Pool Participants for their own use. Approximately $866,000 of the Pool Participant Contributions, were used by Defendants for improper purposes including cash withdrawals by Kim and personal expenses such as groceries, car payments, trips to Atlantic City, skiing in Vermont, and retail shopping at stores like Coach and Barney's New York.

10. To further conceal the fraudulent operations, on several occasions Defendants lied to the National Futures Association ("NFA"), a registered futures association acting in furtherance of its official duties under the Commodity Exchange Act, misrepresenting the Pool's activities and performance history.

11. When confronted with administrative subpoenas issued by the CFTC to Kim, LCM, and the Pool, Kim again attempted to conceal his fraudulent activity by producing documents to the CFTC that he had altered by removing critical information concerning investments made into the Pool. Kim has also failed to produce numerous responsive documents.

By virtue of this conduct and the further conduct described herein, Defendants were engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(1)(A)-(C) of the Commodity Exchange Act (the "Act"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13101 - 13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006), Section 9(a)(4) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §13(a)(4), Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2010).

12. Kim committed the acts described herein while acting as an agent for LCM. Therefore, LCM is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010), as principal for its agent's acts, omissions or failures in violation of the Act, as amended by the CRA, and Regulations.

13. Kim is liable under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), as a controlling person of LCM for its violations of the Act and Regulations, because he controlled LCM and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting LCM's violations.

14. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commission brings this action to preliminarily and permanently enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations and to further enjoin Defendants from engaging in any commodity-related activity and to provide immediate access to their books and records. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution,

disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

15. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

16. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

17. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), because Defendants transacted business in the Southern District of New York and certain of the transactions, acts, practices, and courses of business alleged occurred, are occurring, and/or are about to occur within this District.

III. PARTIES

18. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2010).

19. Defendant **Brian Kim** is a U.S. citizen with a last-known address in New York, New York. Kim has been a member of NFA, and has been registered as an Associated Person of LCM, since February 2005.

20. Defendant **Liquid Capital Management, LLC ("LCM")** is a Delaware Limited Liability Company formed in or about March 2004 with a last known place of business in New

York, New York. Kim is the sole and managing member of LCM. LCM is a member of NFA, and has been registered as a Commodity Pool Operator ("CPO") since February 2005 and a Commodity Trading Advisor ("CTA") since January 2008. LCM is the General Partner of the commodity pool **Liquid Capital Fund, LP ("The Pool")**, a Delaware Limited Partnership with a last known place of business in New York, New York.

Other Relevant Entities

21. **Logan/Faireborn Group, L.P. ("Logan/Faireborn")** is a Delaware limited partnership formed in or about July 2000. Liquid Capital LLC, managed by Brian Kim, was the General Partner for Logan/Faireborn at the time of formation. Beginning by at least April 2009, statements to Logan/Faireborn investors indicated that LCM was the General Partner for the fund. As described below, from at least April 2009 up through at least October 2010, Kim and LCM sent statements to the Logan/Faireborn investors containing false representations as to the value of their accounts.

IV. FACTS

A. Defendants used stolen funds to trade on behalf of the Pool

22. Beginning in June 2008, Kim embarked on a scheme by which he stole a total of over $435,000 from the Condo Association and used much of that money for trading futures for the Pool.

23. On or about June 11, 2008, falsely purporting to act on behalf of the Condo Association, Kim filled out and submitted a corporate resolution to the bank where the Condo Association's account was held. In this falsified corporate resolution, Kim identified himself as the President-Secretary of the Condo Association and authorized himself to execute transactions on behalf of the Condo Association.

24. In this fabricated corporate resolution, Kim also forged the signature of the person named as the Vice-President of the Condo Association.

25. On June 16 and then again on July 14, 2008, Kim sent a fax to the bank holding the Condo Association's account and gave the instruction to transfer funds from the Condo Association's account to a bank account for LCM, although he had no authority to do so. Through these two transactions, Kim caused the wrongful transfer of a total of $430,000 from the Condo Association to LCM.

26. Of the $430,000 wrongfully taken from the Condo Association, Defendants transferred $373,000 to a bank account in the name of the Pool. From this account, Defendants further transferred $300,000 to the commodity trading account for the Pool, most of which was lost through trading.

27. Defendants' trading resulted in over $200,000 in losses. Defendants transferred the remaining funds out of the trading account and back to the bank account for the Pool. Of the funds taken from the Condo Association that were not lost through trading, Defendants withdrew at least $50,000 and used at least another $25,000 to make a payment to an investor in Logan/Faireborn. By the end of July 2008, Defendants had depleted nearly the entire $430,000 that had been misappropriated from the Condo Association.

28. On or about Oct. 9, 2008 Kim again wrote to the Condo Association's bank, falsely authorizing the bank to transfer all remaining funds from the Condo Association's bank account to the Pool. A total of $5,229.24 was transferred to the Pool's bank account. Defendants subsequently transferred $5,000 from these funds into the Pool's commodity trading account.

29. In order to conceal his fraud from the Condo Association, on or about September 30, 2008, with a deposit of $100, Kim opened a second bank account for the Condo Association. Using a statement from this second account, Kim manufactured a fabricated account statement, which he presented to the Condo Association, falsely representing that as of January 30, 2009 the Condo Association had a balance of $438,292.96. In reality, Kim had already withdrawn the $100 he deposited in this account and closed it months earlier, in or about November 2008.

30. In or about December 2009, Kim was arrested in connection with the theft of money from the Condo Association and was subsequently indicted. Kim was released on bail and continued to engage in the fraudulent activity described below.

31. A trial date in the criminal matter was set for January 4, 2011. Kim failed to appear in court on that date and a bench warrant was issued for his arrest.

B. Defendants made false and misleading representations to solicit Pool Participants

32. During the period from at least March 2009 and continuing up through at least October 2010 – even while Kim was out on bail in connection with his pending criminal matter – Defendants were aggressively soliciting members of the general public to invest in the Pool. In connection with these solicitations, Defendants repeatedly made material misrepresentations regarding the Pool's performance and risk of loss and failed to disclose material information.

33. During the period from approximately March 2009 through October 2010, Defendants employed at least three individuals whom Kim instructed to make cold calls and solicit prospective Pool Participants using false information provided by Kim. Kim also provided his employees with lists of prospects to call, often in the form of corporate phone directories of specific companies, typically in the technology or bio-tech industries.

34. Kim provided his employees with scripts and detailed instructions regarding what to say during pitches. These pitches contained misstatements, such as false representations as to the Pool's historical performance.

35. Kim instructed his employees to tell prospective Pool Participants that their money would be invested into Liquid Capital Fund, L.P., where their investment would be pooled with others and used to trade e-mini S&P futures, which are traded on the CME, a designated contract market, using a managed futures trading technique.

36. Beginning in or about March 2009 and continuing through October 2010, Kim falsely represented to his employees and instructed his employees to tell potential Pool Participants that the Pool had begun operating in September 2006, engaged in trading only from September 2006 through August 2007 and had halted trading until 2009. Kim further falsely represented to his employees and instructed them to tell prospective Pool Participants that, in total, the Pool had generated returns of approximately 240% or more since inception. Defendants repeatedly made these false representations to prospective Pool Participants.

37. Contrary to the representations Defendants made or caused to be made to Pool Participants during the period from at least March 2009 through October 2010, the Pool was actively engaged in trading at least as early as April 2005 and engaged in trading during 2008. Furthermore, Defendants' trading on behalf of the Pool during the periods from at least April 2005 through September 2006 and again in 2008 resulted in significant trading losses.

38. Contrary to the false representations Defendants made or caused to be made to prospective Pool Participants that the Pool had been profitable since inception, over the entire period from April 2005 through December 2008, the Pool had actually incurred total trading losses of $1,134,823.59. As a result of the failure to disclose this information, Defendants made

or caused statements to be made to Pool Participants and prospective Pool Participants which were materially misleading.

39. In addition to verbal misrepresentations of the Pool's performance, during the period from at least March 2009 through August 2010, Defendants also repeatedly prepared monthly investment performance reports ("MPR") which omitted the trading results for periods in which the Pool had incurred a negative return and, thus, were false or misleading representations as to the Pool's performance. Defendants routinely sent these misleading MPRs to prospective Pool Participants.

40. Defendants also misrepresented the Pool's subsequent trading performance during 2009 and 2010. For the period from at least July 2009 through August 2010, Kim provided the employee responsible for preparing the MPRs with a fabricated rate of return for each month, which was then used to calculate updated performance statistics for the Pool. Kim withheld the actual trading results from his employees.

41. For example, during August 2010, the Pool traded futures in two different accounts and lost a total of approximately $104,727.25 of the combined starting balance of approximately $304,474. However, the MPR prepared for August 2010 stated that the Pool had generated a return of .59% for the month. The August 2010 MPR also falsely reported other performance statistics, for example, it stated that the Pool's Year to Date return was 13.02% and the return since inception was 332.68%.

42. Moreover, from at least July 2009 through August 2010, each of these MPRs were calculated based on the hypothetical growth of a $1 million investment and failed to reflect the actual declining value of the Pool's assets due to Kim's trading strategies and misappropriation of Pool assets, as detailed below.

43. Kim himself spoke on the telephone or through email with and personally met with prospective Pool Participants to induce them to invest in the Pool. During these conversations, Kim falsely represented that the Pool was generating positive returns.

44. Kim also made at least two appearances on CNBC (see Exhibit A), which identified him as the Founder and the President and Chief Investment Officer of Liquid Capital. Defendants posted these interviews on their website *liquidcm.com* and emailed links to videos of the interviews to prospective Pool Participants.

45. On or about July 20, 2010, Kim emailed a prospective Pool Participant and stated that the Pool's assets were "about $2.5 million." As of July 20, 2010, the Pool only held approximately $395 in its bank account and less than $250,000 in its trading account. LCM held less than $50,000 in its bank account.

46. Kim often used a "pitch book" in his meetings with prospective Pool Participants. The pitch book contained misrepresentations including a statement that: "The maximum amount of loss to the portfolio at any given time is 3%."

47. Kim and other employees and agents of LCM explained to prospective Pool Participants that they were really seeking investments of $250,000 to $500,000, but would allow them to invest smaller amounts, as little as $5,000, to try out the Pool. As detailed below, Defendants subsequently provided Pool Participants with false information as to the value of their investments in order to solicit further investments.

48. Defendants also falsely stated to prospective Pool Participants that the Pool was audited by a certain accounting firm. This firm had never audited or been engaged to perform an audit for the Pool.

C. Defendants mishandled Pool Participant's contributions

49. Once a prospective Pool Participant agreed to become a Pool Participant, Defendants provided the prospective Pool Participant with an Offering Memorandum for the Pool dated January 2009 ("Pool Memorandum"). Pool Participants completed subscription documents and made contributions in exchange for a Limited Partnership interest in the pool.

50. Defendants instructed Pool Participants to make their contributions to the Pool as wires or checks payable to LCM rather than in the name of the Pool.

51. During the period from March 2009 through the end of October 2010, Defendants solicited at least $2.1 million in contributions from Pool Participants. These Pool Participant Contributions were deposited in the bank account for LCM, from which only a portion was ever transferred to an account for the Pool.

D. Defendants misappropriated Pool Participant's contributions

52. Between March 2009 through October 2010, Defendants only transferred $745,000 of the $2.1 million in Pool Participant Contributions to a bank account for the Pool and, from this account, only $668,000 was further transferred to an account in the Pool's name for trading futures.

53. Defendants used the remaining portion of the Pool Participant's Contributions that were not traded in the name of the pool, for a variety of purposes, which included cash withdrawals and payments by check or debit card for personal expenses such as condominium association fees, car payments, credit card bills, dry cleaning, skiing and gambling trips, high end shopping at stores including Barney's New York, Coach, and Kiehls.

54. In a manner typical of a Ponzi scheme, Defendants also misappropriated money from the Pool Participant Contributions to make payments to investors in the Logan/Faireborn fund, which Kim had started years earlier. At least $300,000 of the Pool Participant

Contributions was used to make payments to Logan/Faireborn investors. Defendants did not disclose this use of the Pool Participant's contributions to either the Pool Participants or to the Logan/Faireborn investors.

E. Defendants issued false reports to Pool Participants

55. Once an individual had made an investment, Defendants emailed weekly and monthly reports, which, as described below, often misrepresented the Pool's performance and the value of the Pool Participants' account. Defendants subsequently used these false reports to solicit additional contributions from Pool Participants.

56. For example, at least one Pool Participant received a monthly statement for June 2010, which indicated that the Pool's year to date return was 8.9%. During 2010, the Pool engaged in trading e-mini S&P futures and, by June 30, 2010, the Pool's commodity trading account had actually lost over $146,000 for the year. Defendants failed to disclose these losses to Pool Participants.

57. Between July 1 and October 30, 2010, Defendants lost approximately, $84,000 more in this commodity trading account, bringing the Pool's total trading losses for 2010 to $230,578.20.

58. In or about June of 2010, the Pool also began trading through another trading account. Defendants wired a total of $250,000 from the Pool's bank account into this new trading account. Between July and August 2010, Defendants traded e-mini S&P futures on the CME in this account and incurred approximately $190,000 in further trading losses. Defendants also failed to disclose these losses to Pool Participants.

59. In contrast to the Pool's actual trading results, monthly statements sent to one Pool Participant as of August 31, 2010 represented that the year to date return for the Pool was

11.30%. A statement sent to another Pool Participant, also as of August 31, 2010 represented that the year to date return for the Pool was 6.68%.

60. Monthly statements for two Pool Participants for August 2010, represented that these two accounts were valued at over $1.1 million, combined. As of August 30, the total amount held in the bank accounts and trading accounts for the Pool and Defendant LCM combined was less than $160,000.

61. As of November 30, 2010, the bank accounts for the Pool and Defendant LCM had a combined balance of less than $8,000 and the trading accounts had been liquidated.

62. Defendants did not disclose to the Pool Participants that the Pool did not have sufficient assets to pay the amounts reported to them as the value of their investments.

63. Additionally, Defendants used the false reports to Pool Participants to attempt to solicit further investments. Kim or other employees or agents of LCM repeatedly contacted existing Pool Participants and attempted to solicit further investments from existing Pool Participants based on the misrepresentations that the value of their previous investment had grown.

64. Several Pool Participants did increase their investments based on the false representations that their initial investment had been profitable. At least $370,000 out of the total Pool Participant Contributions to the pool, were made by existing Pool Participants in 2010 as additions to their initial investment.

F. Defendants issued false reports to investors in Logan/Faireborn

65. Defendants operated Logan/Faireborn beginning in or about July 2000. As of October 2010, Logan/Faireborn still had at least three investors. During at least 2004, Logan/Faireborn engaged in trading futures in an account held under its own name.

66. By 2005, futures trading accounts and bank accounts for Logan/Faireborn were closed. Funds were transferred from at least one bank account for Logan/Faireborn to an account held by LCM.

67. Throughout the period from at least 2004 through October 2010, Defendants sent monthly statements to Logan/Faireborn investors. As of October 2010, Defendants had represented to three Logan/Faireborn investors that their investments were worth a total of approximately $3.1 million combined. Logan/Faireborn does not have sufficient assets to pay investors the amounts represented on these statements.

68. As detailed above, Defendants regularly used Pool Participant Contributions to the Pool to make payments to Logan/Faireborn investors.

G. Defendants made repeated misrepresentations to NFA

69. For the years from at least 2006 through 2009, LCM, as a registered CPO, was required to report to NFA on an annual basis certain financial information related to its activities as a CPO.

70. As specified below, Defendants repeatedly made false or misleading statements to NFA, a registered futures association, which was acting in furtherance of its official duties under the Act, regarding the nature of the Pool's activities, thereby avoiding the generally applicable reporting requirements.

71. On the occasions Defendants did provide reports on the Pool's operations to NFA, such reports contained material misrepresentations and omissions.

i. Defendants made misrepresentations in the Pool's performance report filed in March 2008

72. In March 2008, through NFA's electronic system, Defendants submitted a document for the Pool entitled Statement of Investment Performance Statistics and Independent

Accountant's Report ("2007 Statement") reporting the Pool's performance for the period from September 2006 through August 2007. This 2007 Statement misrepresented the Pool's performance history.

73. The 2007 Statement for the Pool falsely identified September 2006 as the commencement of the Pool's operations and reported the results of the Pool's trading activity in one account for September 2006 through August 2007. Contrary to Defendants' representations to NFA, Defendants had also been actively – and unsuccessfully – trading futures in two other accounts held for the Pool throughout the period from at least April 2005 through the end of August 2006.

74. Between April 2005 and August 2006, Defendants deposited a total of over $435,000 into these two trading accounts, nearly all of which was lost through trading losses and related fees.

75. In or about September 2006, Defendants opened a third account, in which they continued trading for the Pool. Defendants traded in this third account from September 2006 until approximately August 2007 and earned an overall profit in this one account.

76. By failing to disclose trading activity by the Pool between April 2005 and August 2006, which resulted in significant losses, Defendants falsely inflated the Pool's performance and value. Because Defendants excluded from the 2007 Statement the Pool's loss of over $420,000 during the period from April 2005 through the end of August 2006, the information provided to NFA was false or misleading.

ii. Defendants made further misrepresentations to NFA in December 2008

77. On or about December 3, 2008, Kim spoke with an NFA employee regarding the Pool's reporting requirements for the prior year, 2007 and the fact that the 2007 Statement did not contain all of the information required to be reported.

78. During that conversation, Kim, on behalf of LCM, represented to NFA that all of the funds held by the Pool were his own, and that he has never solicited for participants of the LC Fund. Kim also stated that that he planned on soliciting for the fund in the first quarter of 2009.

79. On or about December 5, 2008, Kim, on behalf of LCM, wrote a letter to NFA stating:

> Liquid Capital Management LLC, the general partner of Liquid Capital Fund, LP [i.e., LCM] is not currently soliciting client funds for investment nor has it done so from September of 2006 through August of 2007.
>
> During that period, the Fund contained only the capital of the General Partner. After August of 2007, no trades were place [sic] including all of 2008.

80. Contrary to Kim's representation, Defendants had actively traded futures in the Pool's commodity trading account from April through December 2008, including trades placed with funds misappropriated from the Condo Association.

81. From January 1 through the end of December 2008, the Pool had incurred trading losses in excess of $580,000 in its commodity trading account. Accordingly, Defendants' representation to NFA that no trades were placed in 2008 was also false.

iii. Defendants made further misrepresentations to NFA in April 2010

82. In early 2010, Defendants received notice that an annual financial report was due for the Pool for 2009. On April 8, 2010, Kim sent NFA an email stating: "I am writing to explain why a Pool Financial Statement was not filed. Although Liquid Capital Management is registered as a CPO and CTA, it does not currently handle client funds. We are currently in the process of building our trading infrastructure and developing and testing a trading strategy. This was the same case as last year."

83. As detailed above, from at least April through December 2009 Defendants were actively soliciting and accepting contributions from Pool Participants. Therefore, Kim's representations to NFA were false or misleading.

84. Additionally, both the Pool and LCM itself engaged in trading futures in 2009. In January and February 2009, the Pool traded E-mini S&P 500 contracts. Additionally, as detailed above, in Defendants' MPRs, Defendants made specific representations regarding the Pool's year to date performance for 2009.

iv. Defendants made further misrepresentations to NFA in the June 30, 2010 Quarterly Report

85. On or about June 30, 2010, Kim, on behalf of LCM, filed a quarterly report with NFA ("June 2010 Quarterly Report"). In the June 2010 Quarterly Report, Kim falsely represented that the Pool held no assets from limited partners and was not actively trading.

86. In the section to report monthly rates of return, for January through June of 2010, Kim, on behalf of LCM, entered "NT" for each month, indicating that the Pool was not trading. However, as detailed above, from at least March through June 2010, Defendants were actively trading E-mini S&P futures contracts on the CME. Accordingly, Defendants' representations to NFA were false or misleading.

87. Kim further represented that during the past quarter, the Pool had acquired $109,000 in cash, all belonging to its General Partner, LCM. Because Defendants had accepted over $750,000 in funds from Pool Participants intended as contributions into the Pool, this representation was false or misleading.

H. Kim is a controlling person of LCM

88. Kim had complete control over Defendant LCM. Kim formed LCM as the sole member and has been responsible for its operations throughout the relevant period of time.

89. Kim was registered as and acted as an AP for the CPO, LCM. Kim personally engaged in solicitation for the Pool, speaking with prospective Pool Participants and Pool Participants by phone and meeting with them in person.

90. Kim directed all trading on behalf of the Pool and was the only authorized trader on the trading account. Throughout the relevant period, Kim was the sole signatory on all bank accounts and commodity trading accounts for LCM and the Pool.

91. Kim also hired and supervised employees of LCM and had authority to fire the employees. Kim provided employees with false information about the Pool's history and performance and gave the employees specific directions concerning the solicitation of prospective Pool Participants. Kim also provided the employees with materials such as scripts and pitch books containing false information to pass on to prospective Pool Participants.

92. The Pool Memorandum states: "Brian Kim controls [LCM]" and that "Brian Kim controls all of the [Pool's] operations and activities, including the management of its portfolio."

93. Kim knowingly induced LCM's violations in that he personally participated in the fraud by knowingly misrepresenting profit potential, risk of loss, and trading profits to prospective and actual Pool Participants, by misappropriating Pool Participants' money, by making false statements to NFA, and by using funds stolen from the Condo Association to engage in trading on behalf of the Pool.

I. Kim Altered Evidence Submitted to the Commission

94. Administrative subpoenas were issued on behalf of the Commission to LCM and the Pool on or about September 25, 2010. Following a very limited production and subsequent objections, on or about October 25, Kim made another partial production, which included at least one document that had been altered.

95. On or about October 21, 2010, Kim asked his employees not to come into the office so that he could review files from their computers in order to respond to the subpoenas. Kim's October 26, 2010 production included a spreadsheet prepared by one of his employees detailing names of Pool Participants and the dates and amounts of the investments.

96. Prior to producing this spreadsheet, Kim altered it by removing certain entries which resulted in reducing the total amount of funds identified as having been solicited and received by LCM for the Pool, as well as concealing the identity of those Pool Participants. Commission staff has obtained an unredacted copy of this spreadsheet from another source.

97. LCM and the Pool have not yet produced a substantial number of responsive documents such as client signed agreements, bank records, trading account statements and account statements sent to customers.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I

Violations of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Fraud in Connection with Futures)

98. The allegations set forth in paragraphs 1 through 97 are realleged and incorporated herein by reference.

99. Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), make it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false

report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever . . . .

100. As set forth above, from at least April 2008 through the present, Defendants Kim and LCM, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for futures delivery that is made or to be made, on or subject to the rules of a designated contract market for or on behalf of any other person, including Pool Participants, cheated or defrauded or attempted to cheat or defraud Pool Participants or prospective Pool Participants and willfully deceived or attempted to deceive Pool Participants or prospective Pool Participants by, among other things, knowingly: (i) misappropriating Pool Participant funds; (ii) misrepresenting the Pool's past performance to Pool Participants and prospective Pool Participants; (iii) providing Pool Participants with fraudulent monthly account statements that misrepresented the value of Pool Participants' accounts and Pool performance; and (iv) misappropriating funds from the Condo Association to be used for trading commodity futures without the Condo Association's knowledge or consent, all in violation of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

101. Kim directly engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

102. Kim committed the acts of misappropriation and commingling described above, within the scope of his employment or office for LCM. Therefore, LCM is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010),

as principal for its agent's acts, omissions or failures in violation of the Act, as amended by the CRA, and Regulations.

103. Kim controlled LCM directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, LCM's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Kim is liable as a controlling person for LCM's violations of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

104. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

COUNT II

Violations of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006) (Fraud In Connection With A Commodity Pool)

105. The allegations set forth in paragraphs 1 through 104 are realleged and incorporated herein by reference.

106. As defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), a CPO is any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property . . . for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

107. As defined in Section 1a(6) of the Act, a CTA is any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility . . . .

108. Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006), prohibits CPOs, CTAs and APs of CPOs and CTAs from using the mails or any other means of interstate commerce to:

> (A) employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
>
> (B) engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

109. From at least April 2008 through the present, Defendant LCM, while acting as a CPO and Defendant Kim, while acting as an AP of a CPO, solicited, accepted, or received funds from others and engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

110. From at least April 2008 through the present, Defendant LCM, while acting as a CTA and Defendant Kim, while acting as an AP of a CTA has, for compensation or profit, engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in— (I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.

111. During the period from at least April 2008 through the present, Defendants Kim and LCM, while acting as a CPO and CTA and Defendant Kim, while acting as an AP of a CPO and CTA, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, employed a device, scheme, or artifice to defraud Pool Participants and prospective Pool Participants or engaged in a transaction, practice, or course of business knowingly or which

operated as a fraud or deceit upon Pool Participants and prospective Pool Participants in violation of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006), by, among other things, knowingly (i) misappropriating Pool Participant funds; (ii) misrepresenting the Pool's past performance to Pool Participants and prospective Pool Participants; (iii) providing Pool Participants with fraudulent monthly account statements that misrepresented the value of Pool Participants' accounts and Pool performance; and (iv) misappropriating funds from the Condo Association to be used for trading commodity futures without the Condo Association's knowledge or consent, all in violation of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006).

112. Kim made the false representations and committed acts of misappropriation described above within the scope of his employment or office for LCM. Therefore, LCM is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010), as principal for its agent's acts, omissions or failures of the Act, as amended by the CRA and Regulations.

113. Kim controlled LCM directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, LCM's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Kim is liable as a controlling person for LCM's violations of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006).

114. Each misappropriation, issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006).

COUNT III

Violations of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C) (Fraud In Connection With Futures – Logan/Faireborn)

115. The allegations set forth in paragraphs 1 through 114 are realleged and incorporated herein by reference.

116. Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), make it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever . . . .

117. As set forth above, from at least April 2008 through the present, Defendants Kim and LCM, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for futures delivery that is made or to be made, on or subject to the rules of a designated contract market for or on behalf of any other person, cheated or defrauded or attempted to cheat or defraud Logan/Faireborn investors and willfully deceived or attempted to deceive Logan/Faireborn investors by, among other things, knowingly (i) providing investors in Logan/Faireborn with fraudulent monthly account statements that misrepresented the value of their accounts and (ii) failing to disclose to investors in Logan/Faireborn that the payments they were receiving were from Pool Participants and not

from funds belonging to Logan/Faireborn, all in violation of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

118. Kim directly engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

119. Each issuance of a false account statement, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C).

COUNT IV

Violations of Section 9(a)(4), 7 U.S.C. § 13(a)(4) (2006) (Misrepresentations to NFA)

120. The allegations set forth in paragraphs 1 through 119 are realleged and incorporated herein by reference.

121. Section 9(a)(4) makes it an unlawful felony for "Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use 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 this chapter acting in furtherance of its official duties under this chapter."

122. As set forth above, Kim, acting on behalf of LCM, knowingly or with reckless disregard for the truth, misrepresented to NFA the commencement of the Pool's trading activity, thereby misrepresenting the Pool's profitability. As further set forth above, Kim subsequently made additional statements to NFA in which he misrepresented the Pool's trading activities and handling of customer funds.

123. Kim made the misrepresentations described above within the scope of his employment or office for LCM. Therefore, LCM is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010), as principal for its agent's acts, omissions or failures of the Act, as amended by the CRA, and Regulations.

124. Kim controlled LCM directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, LCM's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Kim is liable as a controlling person for LCM's violations of Section 9(a)(4) of the Act, 7 USC §13(a)(4) (2006).

125. Each misrepresentation, or omission of a material fact, filing of false or misleading financial information, including but not specifically limited to those alleged herein is alleged as a separate violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006).

COUNT V

Violations of Regulations 4.20(b) and(c), 17 C.F.R. §§ 4.20(b) and (c) (Commingling of Pool Participant Funds by a CPO, Accepting Pool Funds Not In the Name of the Pool, Failure to Operate the Pool as a Separate Entity)

126. The allegations set forth in paragraphs 1 through 125 are realleged and incorporated herein by reference.

127. Regulation 4.20(b) requires that "[a]ll funds, securities or other property received by a commodity pool operator from an existing or prospective pool participant . . . must be received in the pool's name." Regulation 4.20(c) prohibits a CPO from commingling the property of any pool that it operates, or that it intends to operate, with the property of any other person.

128. From at least September 2008 through October 2010, LCM violated Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2010), by depositing Pool Participant funds in LCM's bank account, rather than in an account held in the name of the Pool, using funds from LCM to make payments on behalf of the Pool, and commingling those funds with monies that Kim and/or LCM received from other sources.

129. Kim controlled LCM directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, LCM's acts constituting the violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Kim is liable for LCM's violations of Sections 4.20(b) and (c) of the Regulations, 17 C.F.R. §§ 4.20(b) and (c) (2010).

130. Each instance of LCM receiving funds, securities or other property from an existing or prospective Pool Participant for the purchase of an interest or as an assessment on an interest in a pool that it operated or intended to operate not received in the name of the pool is alleged as a separate and distinct violation of Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2010). Each instance of commingling of funds of any pool that it operates or intends to operate with the property of any other person is alleged as a separate and distinct violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2010).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

a) An order finding that Defendants violated Sections 4b(a)(1)(A)-(C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C); Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006), Section 9(a)(4) of the Act, as amended by the

CRA, to be codified at 7 USC § 13(a)(4); Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2010).

b) An order of preliminary and permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, from engaging, directly or indirectly in conduct in violation of Sections 4b(a)(1)(A)-(C), 4*o*(1), and 9(a)(4) of the Act, as amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010 (Dodd-Frank Act)), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C); 6*o*(1), and § 13(a)(4); and Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2010).

c) An order of preliminary and permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof from engaging, directly or indirectly in:

i) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a);

ii) entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2010)) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§

2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for their own personal account or for any account in which they have a direct or indirect interest;

iii) having any commodity futures, options on commodity futures, commodity options and/or forex contracts traded on their behalf;

iv) controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options and/or forex contracts;

v) soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options and/or forex contracts;

vi) applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and

vii) acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).

d) An order directing Defendants, as well as any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

e) An order directing Defendants and any successors thereof to make full restitution to every person or entity whose funds they received or caused another person or entity to receive as a result of acts and practices that constituted violations of the Act, as amended by the CRA, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

f) An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the customers whose funds were received by them as a result of the acts and practices which constituted violations of the Act, as amended by the CRA, as described herein;

g) An order directing that Defendants and any successors thereof provide the Commission immediate and continuing access to their books and records, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to Pool Participants, Logan/Faireborn investors, and other persons in connection with commodity futures transactions or purported commodity futures transactions, including the names, addresses and telephone numbers of any such persons from whom they received such funds from January 2004 to the date of such

accounting, and all disbursements for any purpose whatsoever of funds received from commodity pool participants, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from January 2004 to and including the date of such accounting;

h) An order directing each Defendant and any successors thereof to pay a civil monetary penalty under the Act to be assessed by the Court, in the amount of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act, as amended by the CRA, and/or Regulations or (2) $130,000 for each violation of the Act, as amended by the CRA, and/or Regulations from October 23, 2004 through October 22, 2008, and $140,000 for each violation of the Act, as amended by the CRA, and/or Regulations on or after October 23, 2008, plus post-judgment interest;

i) An order requiring Defendants and any successors thereof to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

j) Such other and further relief as the Court deems proper.

Dated: February 15, 2011

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF U.S. COMMODITY FUTURES TRADING COMMISSION

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EXHIBIT
A

BRIAN KIM
CNBC APPEARANCES

CNBC, *Growth In Asian Derivatives*, (Aug. 25, 2009, 8:40 PM), http://www.cnbc.com/id/15840232/?video=1324553614&play=1

CNBC, *Getting to the Bottom of Dark Pools*, (Nov. 9, 2009, 1:45 PM), http://www.cnbc.com/id/15840232/?video=1227056332&play=1