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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/15/2011

U.S. COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

BRIAN KIM
and

LIQUID CAPITAL MANAGEMENT, LLC
Defendants.

11 CV 1013 (DLC)

Order for Entry of Default Judgment Permanent Injunction and Ancillary Equitable Relief against Brian Kim and Liquid Capital Management, LLC

(ECF) #

On February 15, 2011, the U.S. Commodity Futures Trading Commission ("Commission") filed a Complaint charging Defendants Brian Kim ("Kim") and Liquid Capital Management, LLC ("LCM") with fraudulent solicitation, misappropriation and misrepresentations to investors ("Pool Participants") and regulatory organizations, in connection with the commodity pool Liquid Capital Fund, L.P. (the "Pool") in violation of Section 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")), §§ 13102, 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), Section 9(a)(4) of the Act, 7 U.S.C. §13(a)(4), Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2010).

On February 15, 2011, the Court issued an *Ex Parte* Statutory Restraining Order ("SRO"), which, among other things, froze all funds in the Defendants' accounts, prohibited

Defendants from altering or destroying books, records, and documents, and barring them from denying access to those books, records, or documents to any representative of the Commission.

On February 15, 2011, the SRO was served on all Defendants.

On March 2, 2011, after notice to Defendants and an opportunity to be heard, the Court issued a Preliminary Injunction which continued the terms of the SRO and enjoined further violations of the Act and certain other conduct pending final judgment.

Proper service of process has been effected, Defendants have failed to answer or otherwise defend this action and the Clerk has issued a Certificate of Default.

Upon application by the Commission, on March 25, 2011 the Court issued an Order to Show Cause For Default Judgment. The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Application, and other written submissions of the Commission filed with the Court, and being fully advised in the premises, pursuant to Fed. R. Civ. P. 55(b)(2), hereby:

GRANTS the Commission's application and enters findings of fact and conclusions of law finding Kim and LCM liable as to all violations as alleged in the Complaint. The Court further grants the Commission's request to assess monetary damages against Kim and LCM, including restitution and civil monetary penalties. Accordingly, the Court now issues the following Order for Default Judgment, Permanent Injunction and Ancillary Equitable Relief ("Order") against Defendants Kim and LCM.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and the Defendants pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1, in that the acts and practices in violation of the Act and Commission Regulations occurred within this district, among other places.

B. Findings of Fact

1. Kim is an individual who resided in New York, New York. Kim formed LCM and the Pool, which had LCM as its general partner. Kim solicited and obtained Pool Participants as early as May 2004. LCM has been registered with the Commission as a Commodity Pool Operator ("CPO") since February 2005 and as a Commodity Trading Advisor since January 2008.

2. Prior to the formation of the Pool, beginning approximately in 2000, Kim had formed another investment fund by the name of Logan/Faireborn, LP ("Logan"), through which Kim took in money from investors. By May 2009, LCM held itself out as the General Partner for Logan and was responsible for its operations.

3. During the period from June through October 2008, Defendant Kim, through fabricated documents, caused the unauthorized transfer of $435,229 from the Condominium Homeowners Association for a residential building in New York, NY ("Condo Association") to

bank accounts held by LCM and the Pool. Defendants used substantial portions of the funds wrongfully taken from the Condo Association to trade in Commodity Futures contracts ("futures"), incurring substantial losses, and Defendants used a portion of the funds to make payments to an investor in Logan. All remaining funds belonging to the Condo Association were withdrawn or spent by Defendants.

4. Defendants began soliciting investments for the Pool as early as 2004. By at least April 2005, Defendants were trading futures in an account held in the name of the Pool and did so in an account held for the Pool each year from 2005 through 2010.

5. By March 2009, Defendants were more aggressively soliciting for the Pool through cold calls targeting employees of certain companies. In these solicitations, Defendants repeatedly made material misrepresentations regarding the Pool's performance and risk of loss and failed to disclose material information. Defendants also made false representations to prospective investors as to the Pool's past performance that the Pool had generated returns of approximately 240% or more since inception. Contrary to Defendants' false representations to prospective Pool Participants that the Pool had been profitable since inception, over the entire period from April 2005 through December 2008, LCF had actually incurred total trading losses of $1,134,823.59.

6. In addition to verbal misrepresentations of the Pool's performance, during the period from at least March 2009 through August 2010, Defendants also 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.

7. 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. Defendants also issued false account statements to Pool Participants. Defendants emailed weekly and monthly reports, which misrepresented the Pool's performance and the value of the Pool Participants' account. Defendants used these false reports to solicit additional contributions from Pool Participants.

8. During the period from March 2009 through the present, Defendants solicited at least $2,898,547 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. Between March 2009 through October 2010, Defendants only transferred $745,000 of the $2.89 million in Pool Participant Contributions to a bank account for the Pool and only $668,000 was further transferred to an account for trading futures.

9. Defendants used at least $2 million of the Pool Participant's Contributions for improper purposes including 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.

10. Defendants also misappropriated new Pool Participant Contributions for the Pool 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 investors. Defendants did not disclose this use of the Pool Participant's contributions to either the Pool Participants or to the Logan investors.

11. During the period from April 2008 through December 2010 Pool Participants contributed a total of $2,898,547 to Defendants as a result of Defendants' misrepresentations. During the period from April 2008 through December 2010, Defendants returned a total of $204,615 to Pool Participants. Thus, the Pool Participants' losses totaled $2,693,932. In addition, Defendants wrongfully took $435,229 from the Condo Association. Therefore, the sum of the losses suffered by the Pool Participants and the Condo Association is $3,129,161.

12. The total gain to Defendants is $3,129,161. This is the sum of losses sustained by the Pool Participants of $2,693,932 and the loss to the Condo Association of $435,229.

13. As of October 2010, Logan/Faireborn still had at least three investors. Starting at least as early as 2004, Logan/Faireborn engaged in trading futures in an account held under its own name. By 2005, futures trading accounts and bank accounts for Logan/Faireborn were closed.

14. Throughout the period from at least 2004 through October 2010, Defendants sent monthly statements to investors in Logan/Faireborn. As of October 2010, Defendants had represented to three investors in Logan/Faireborn 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. Defendants regularly used Pool Participant Contributions to the Pool make payments to investors in Logan/Faireborn.

15. The National Futures Association ("NFA") is a self-regulatory organization registered with the Commission as a futures association. 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. On four separate occasions starting in March, 2008 through September 2010, Defendants 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 and the amount of its assets.

16. Kim had complete control over Defendant LCM, personally engaged in solicitation for the Pool, speaking with prospective Pool Participants and Pool Participants by phone and meeting with them in person. Kim also 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. 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. 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.

C. Conclusions of Law

1. Defendants are liable for 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)

From at least April 2008 through the present, Defendants Kim and LCM, by and through its agents and employees, including Kim, 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, (iv) misappropriating funds from the Condo Association to be used for trading commodity futures without the Condo Association's knowledge or consent, (v) providing investors in Logan/Faireborn with fraudulent monthly account statements that misrepresented the value of Pool Participants' accounts and Pool performance and (vi) 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).

Kim directly engaged in the acts and practices described above knowingly or with reckless disregard for the truth. 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 of the Act, as amended by the CRA, and Regulations.

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).

2. Defendants are liable for Violations of Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2006)

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.

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, 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.

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 4o(1) of the Act, 7 U.S.C. § 6o(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 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).

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.

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 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

3. Defendants are liable for Violations of Section 9(a)(4) of the Act, 7 USC § 13(a)(4) (2006)

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

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.

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).

4. Defendants are liable for Violations of Regulation 4.20(b) and(c), 17 C.F.R. § 4.20(b) and (c) (2010)

From at least September 2008 through September 2010, LCM violated Regulation 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 the LCM to make payments on behalf of the Pool, and commingling those funds with monies that Kim and/or LCM received from other sources.

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 Section 4.20(b) and (c) of the Regulations, 17 C.F.R. § 4.20(b) and (c) (2010).

5. A Permanent Injunction, Civil Monetary Penalties, and other Equitable Relief are Appropriate Remedies

Permanent injunctive relief is warranted in light of the egregious nature of the Defendants' conduct in fraudulently soliciting and receiving over $2.8 million from Pool Participants to invest in a commodity pool as well as Defendants' high level of scienter in conducting a well-planned scheme to systematically defraud the public. These facts demonstrate a reasonable likelihood of future violations.

Imposition of civil monetary penalties is appropriate in this case because Defendants' violations of the Act and Commission Regulations were intentional and directly impacted the numerous victims of this fraud. Likewise, the remedy of restitution is appropriate to compensate the victims of Defendants' wrongful acts.

II. ORDER FOR RELIEF

A. Permanent Injunction

IT IS THEREFORE ORDERED that Kim and LCM and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with any Defendant, including any successor thereof, are permanently restrained, enjoined and prohibited from directly or indirectly:

(1) 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 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010) , §§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), 13(a)(4); and/or Regulations 4.20(b) and (c), 17 C.F.R. §§ 4.20(b) and (c) (2010);

(2) trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2006));

(3) 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, 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;

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

(5) 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;

(6) 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;

(7)) 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

(8) 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).

IT IS FURTHER ORDERED that Kim and LCM shall provide an accounting to the Court within thirty (30) days hereof of all of Kim's and LCM's assets and liabilities, together with all funds it received from and paid to clients and other persons in connection with commodity interest transactions or purported commodity interest transactions, and all disbursements for any purpose whatsoever of funds received from commodity futures, options on commodity futures, commodity options and/or forex contracts transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, January 2008 through and including the date of such accounting.

IT IS FURTHER ORDERED that Kim and LCM are restrained from directly or indirectly, withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes, and all funds on deposit in any financial institution, bank or savings and loan account held by, accessible by, under the control of, or in the name of Kim or LCM.

The injunctive provisions of this Order shall be binding upon Kim and LCM, upon any person insofar as he or she is acting in the capacity of officer, agent, servant or employee of Kim or LCM, and upon any person who receives actual notice of this Order, by personal service, first-class mail, email or facsimile, insofar as he or she is acting in active concert or participation with Kim or LCM.

B. Civil Monetary Penalties and Restitution

1. <u>Civil Monetary Penalty</u>

IT IS FURTHER ORDERED that as of the date of this Order, Defendants shall pay and be jointly and severally liable for a civil monetary penalty in the amount of $9,387,483 (nine million three hundred eighty seven thousand four hundred eighty three dollars), plus post-judgment interest (the "CMP Obligation"). This sum constitutes triple the monetary gain to Defendants of $3,129,161. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and will be calculated using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Defendants shall pay their CMP Obligation by electronic funds transfer, or by U.S. Postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

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

If payment is to be made by electronic funds transfer, Defendant shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the penalty with a cover letter that identifies the paying Defendant and the name and docket number of the proceedings. The Defendant shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and the Chief, Office of

Cooperative Enforcement, Division of Enforcement, at the same address. Notice of payment shall also be sent to the Regional Counsel, Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 20th Floor, New York, NY 10005.

2. Restitution and Appointment of Monitor

IT IS FURTHER ORDERED that as of the date of this Order, Defendants shall pay and be jointly and severally liable for restitution to defrauded Pool Participants and the Condo Association in the amount of $3,129,161 (three million one hundred twenty-nine thousand one hundred sixty-one dollars). In addition, Defendants are required to pay post-judgment interest on the restitution amount.

Post-judgment interest shall accrue beginning on the date of entry of this Order and will be calculated by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

To effect payment by Defendants and distribution of restitution, the Court appoints the NFA as Monitor ("Monitor"). The Monitor shall collect restitution payments from Defendants, and make distributions as set forth below. Because the Monitor is acting as an officer of the Court in performing these services, the Monitor shall not be liable for any action or inaction arising from the Monitor's appointment, other than actions involving fraud.

Defendants shall make restitution payments under this order in the name "Liquid Capital Management - Restitution Fund" and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier check, or bank money order, to Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606 under cover letter that identifies the paying Defendant(s) and the name and docket number of the proceeding. Defendants shall simultaneously transmit copies

of the cover letter and the form of payment to (a) the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address.

The Monitor shall oversee Defendants' restitution obligation, and shall have discretion to determine the manner for distribution of funds in an equitable fashion to defrauded Pool Participants, the Condo Association and others identified in the list that shall be provided to the Monitor upon entry of this Order ("Restitution List"), as appropriate, or may defer distribution until such time as it deems appropriate. In the event that the amount of restitution payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of the making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part II.B.1, above.

Defendants shall cooperate with the Monitor as appropriate to provide such information as the NFA deems necessary and appropriate to identify Pool Participants to whom the Monitor, in his sole discretion, may determine to include in any plan for distribution of any restitution payments.

Omission from the Restitution List should not limit the ability of any Pool Participant to seek recovery from Defendants or any other entity or person. Further, the amount payable for restitution set forth above shall not limit the ability of any Pool Participant from proving that a greater amount is owed from Defendants or any other person or entity, and nothing herein shall

be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

To the extent that any funds accrue to the U.S. Treasury as a result of Defendants' restitution obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Part II.B.2.

3. Order of Payments

All payments made pursuant to this Order by Defendants shall first be applied to their restitution obligation, until such obligation (including interest) is fully satisfied. All payments after satisfaction of the Defendants' restitution obligation shall be applied to the Defendants' CMP obligation described herein.

4. Partial Payments

Any acceptance by the Commission or the Monitor of partial payment of Defendants' restitution obligation or CMP Obligation shall not be deemed a waiver of their requirement to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

III. MISCELLANEOUS PROVISIONS

A. Prohibition on Transfer of Funds: Kim and LCM shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any officer that may be appointed by the Court;

B. Third-Party Beneficiaries: Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each of the defrauded customers of Kim and LCM is explicitly made an intended

third-party beneficiary of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution amount which has not been paid by Defendants;

C. **Notices**: All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission: Stephen J. Obie, Regional Counsel
U.S. Commodity Futures Trading Commission
Division of Enforcement - Eastern Regional Office
140 Broadway, 19th floor
New York, New York 10005

D. **Retention of Jurisdiction**: This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

SO ORDERED, at New York, New York on this 15 day of April, 2011.

Denise Cote

Honorable Denise L. Cote
UNITED STATES DISTRICT JUDGE