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Office of Proceedings

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In the Matter of:	*	
BRIAN KIM, and LIQUID CAPITAL MANAGEMENT, LLC, Registrants.	*	CFTC Docket No. SD 12-05

INITIAL DECISION ON DEFAULT

Before: Philip V. McGuire,
Judgment Officer

Appearance: Lara Turcik, Esq.,
CFTC Division of Enforcement
New York, New York

Background

By motion filed September 28, 2012, the Commission's Division of Enforcement has moved for entry of a default judgment against Brian Kim ("Kim") and Liquid Capital Management, LLC ("LCM"), pursuant to Commission rules 3.60(g) and 10.93, 17 C.F.R. §§ 3.60(g) and 10.93 (2012), based on the failure of Kim and LCM to answer or otherwise appear or respond to the Notice of Intent to Suspend, Revoke, or Restrict the Registration of Brian Kim and Liquid Capital Management, LLC ("Notice"), issued by the Commission and filed by the Division on July 24, 2012.

Soon after the Division filed the Notice, the Commission's Office of Proceedings served the Notice on Kim and LCM at the addresses that Kim and LCM had provided the National Futures Association for any communications from the Commission.[1] Thus, Kim and LCM were properly served pursuant to CFTC rule 3.50.[2]

After Kim and LCM defaulted by failing to respond to the Notice, on September 28, 2012, the Division of Enforcement filed a motion for entry of a default order against Kim and LCM. By Notice dated October 5, Kim and LCM were given an October 26, 2012 deadline to the Division's motion.[3] Kim and LCM have not responded to the Division's motion. Accordingly, this matter is ripe for entry of a default judgment.

As a result of their defaults, Kim and LCM have waived a hearing on all of the issues and are precluded from introducing evidence of mitigation and rehabilitation necessary to overcome the presumption of unfitness for registration. In addition, the allegations in the Notice, as supplemented by the proposed findings and conclusions in the Division's motion, are deemed true and conclusive for purposes of finding that Kim and LCM are statutorily disqualified from registration under Sections 8a(2)(C), (D) and (E), and with respect to LCM Section (H), of the Commodity Exchange Act ("Act"), as amended by the Food, Conservation, and Energy Act

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[1] *See* Jung affidavits, Exhibits 1 and 2, Division's September 28th motion. All subsequent orders, notices and Division submissions have been served on Kim and LCM at the addresses that Kim and LCM had provided the National Futures Association for any communications from the Commission.

[2] Pursuant to CFTC rule 3.30(a), 17 C.F.R. § 3.30(a) (2012), the address of each registrant as submitted on its application for registration or as submitted on the biographical supplement shall be deemed to be the address for delivery to the registrant for any communications from the Commission, including any summons, complaint, notice and other written documents or correspondence, unless the registrant specifies another address for this purpose. CFTC rule 3.30(b), 17 C.F.R. § 3.30(b) (2012), provides that each registrant, while registered and for two years after the termination of registration, must notify the National Futures Association of any change of address, and that failure to do so may result in an order of default in any Commission or NFA proceedings. Moreover, pursuant to CFTC rule 3.50, 17 C.F.R. § 3.50 (2012), for purposes of an action for the denial, suspension or revocation of registration, service upon a registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing.

[3] A courtesy copy of the October 5th Notice was served on Kim in care of the Metropolitan Correctional Center in New York, NY.

of2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§131021-13204, l22 Stat.1651 (enacted June 18, 2008), 7 U.S.C. §8a(2)(C), (D), (E), and (H). *See* CFTC rule 3.60(a)(4). Thus, as set out below, the Division's motion has been granted, Kim and LCM have been found to be statutorily disqualified from registration, and Kim's and LCM's registrations have been revoked.

Findings of Fact

1. Liquid Capital Management, LLC, a Delaware limited liability company, has been registered with the Commission as a commodity pool operator ("CPO") since February 18, 2005, and as a commodity trading advisor ("CTA") since January 14, 2008. LCM's address, as submitted on its most recent annual registration update, is in New York, NY.

2. Brian Kim has been registered as an associated person of LCM since February 18, 2005. Kim is listed as the sole principal of LCM, and owns a 10% or more financial interest in LCM. Kim's address, as submitted on his most recent annual registration update, also is in New York, NY.

3. On February 15, 2011, the Commission filed a federal civil injunctive action against Kim and LCM, which alleged, among other things, that from 2008 to 2011, Kim and LCM had fraudulently solicited over $3.3 million in pool participant funds, from which they had misappropriated at least $2 million, and that Kim made had false statements to the National Futures Association. *CFTC v. Brian Kim and Liquid Capital Management, LLC*, Case No. 1 l-CV-1013 (S.D.N.Y.) ("*CFTC v. Kim*") (Exhibit 2, Division's September 28th motion).

On April 15, 2011, the United States District Court for the Southern District of New York entered an Order for Entry of Default Judgment, Permanent Injunction and Ancillary Equitable Relief Against Brian Kim and Liquid Capital Management, LLC, supplemented by an additional

Order dated September 16, 2011, which contained findings of fact and conclusions of law that Kim fraudulently misappropriated pool participant funds for his personal use, fraudulently solicited prospective pool participants by misrepresenting the pool's past performance, made material false statements to pool participants including account statements reflecting false information regarding trading profits and account values, and made false statements to NFA. The Court found that by engaging in this conduct, Kim and LCM violated Sections 4b(a)(l)(A)-(C), 4o(l), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(l)(A)-(C); 6o(l), and 13(a)(4). The Court permanently enjoined Kim and LCM, in relevant part, from registering with the Commission or acting as a principal or agent of a registrant, and from committing any further fraud in violation of Sections 4b(a)(l)(A)-(C), 4o(1), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(l)(A)-(C), 6o(1), and 13(a)(4). *CFTC v. Kim* (Exhibit 2, Division's September 28th motion).

4. In two actions filed by the District Attorney for the County of New York based on the substantially same conduct alleged in *CFTC v. Kim*, Kim and LCM plead guilty and were convicted on multiple criminal charges, including grand larceny, scheme to defraud, falsifying business records in the first degree and felony violations of the Martin Act. Justice Charles Solomon sentenced Kim to a four to twelve-year term of imprisonment. *People v. Brian Kim*, Case No. 5965-2009 (N.Y. Sup. Ct.); and *People v. Brian Kim and Liquid Capital Management*, LLC, Case No. 86-2011 (N.Y. Sup. Ct.) (Exhibit 4, Division's September 28th motion).

5. Kim fled the U.S. shortly before the hearing in *People v. Brian Kim*. In this connection, on August 1, 2011, the U.S. Attorney's Office for the Southern District of New York filed a Grand Jury indictment charging Kim with willfully and knowingly making a false statement in an application for a United States passport in violation of 18 USC 1542. Upon his return, Kim pled guilty to this charge, and was sentenced by Judge Colleen McMahon of the

United States District Court for the Southern District of New York to a term of imprisonment for fourteen months to run concurrently with any sentence Kim was to receive in *People v. Kim* and *People v. Kim and LCM. United States v. Kim*, 1:1 l-CR-642 (CM) (S.D.N.Y.) (Exhibit 3, Division's September 28th motion).

Conclusions of Law

Section 8a(2)(C) (CFTC v. Kim and LCM)

Section 8a(2)(C) of the Commodity Exchange Act ("Act"), as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 12a(2)(C), in relevant part, authorizes the Commission to revoke the registration of any person "if such person is permanently . . . enjoined by order, judgment, or decree of any court of competent jurisdiction . . . including an order entered pursuant to an agreement of settlement to which the Commission ... is a party, from . . . (ii) engaging in or continuing any activity when such activity involves ... fraud ...." The United States District Court for the Southern District of New York is a court of competent jurisdiction. By order dated April 15, 2011, as supplemented by order dated September 16, 2011, the Court permanently enjoined Kim and LCM from registering with the Commission or acting as a principal or agent of a registrant, and from committing any further fraud in violation of the Commodity Exchange Act. *CFTC v. Brian Kim and Liquid Capital Management, LLC*, Case No. 1 l-CV-1013 (S.D.N.Y.) The Court's order therefore constitutes a valid basis for revoking Kim's and LCM's registration pursuant to Section 8a(2)(C) of the Act, as amended.

Section 8a(2)(D) (People v. Kim, People v. Kim and LCM, and U.S. v. Kim)

Section 8a(2)(D) of the Act, as amended by the CRA and the Dodd- Frank Act, to be codified at 7 U.S.C. § 12a(2)(D), in relevant part, authorizes the Commission to revoke the

registration of any person "if such person has been convicted within ten years preceding the filing of the application for registration or any time thereafter of any felony that.. . (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery; (ii) arises out of the conduct of the business of commodity trading advisor or commodity pool operator, or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling."

The Supreme Court for the State of New York is a court of competent jurisdiction. Before that Court, Kim and LCM plead guilty and were convicted on multiple criminal charges, including grand larceny, scheme to defraud, falsifying business records in the first degree and felony violations of the Martin Act. *People v. Brian Kim*, Case No. 5965-2009 (N.Y. Sup. Ct.); and *People v. Brian Kim and Liquid Capital Management, LLC*, Case No. 86-2011 (N.Y. Sup. Ct.). The entry of Kim's and LCM's guilty pleas for multiple felonies involving fraud, forgery and misappropriation in connection with their operation of a commodity pool before that Court constitutes a valid basis for revoking Kim's and LCM's registrations pursuant to Section 8a(2)(D) of the Act, as amended.

As noted above, the United States District Court for the Southern District of New York is a court of competent jurisdiction. Before that Court, Kim plead guilty to willfully and knowingly making a false statement in an application for a United States passport. *United States v. Kim*, 1:1 l-CR-642 (CM) (S.D.N.Y.). Kim's conviction for passport fraud also constitutes a valid basis for revoking Kim's registration pursuant to Section 8a(2)(D) of the Act, as amended.

Section 8a(2)(E)(CFTC v. Kim)

Section 8a(2)(E) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 12a(2)(E), in relevant part, authorizes the Commission to revoke the registration of any person "if such person, within ten years preceding the filing of the application [for registration] or any time thereafter, has been found in a proceeding brought by the Commission , . . (i) to have violated any provision of [the] Act. . . where such violation involves , . , fraud [or] misappropriation of funds . . . ." As previously noted, the United States District Court for the Southern District of New York is a court of competent jurisdiction. In *CFTC v. Kim*, by order dated April 15, 2011, as supplemented by order dated September 16, 2011, the Court found that Kim had fraudulently misappropriated pool participant funds for his personal use, and that Kim and LCM fraudulently solicited prospective pool participants by misrepresenting the pool's past performance and made material false statements to pool participants including account statements reflecting false information regarding trading profits and account values. The Court's findings that Kim and LCM violated the Act for conduct involving fraud and misappropriation therefore constitutes a valid basis for revoking Kim's and LCM's registrations pursuant to Section 8a(2)(E) of the Act, as amended.

Section 8a(2)(H)

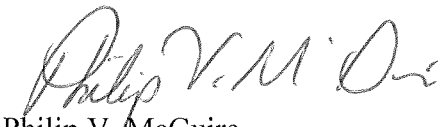
Section 8a(2)(H) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 12a(2)(H), in relevant part, authorizes the Commission to revoke the registration of any person if "revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph." Section 8a(2)(H) of the Act further provides that the term "principal," as used in Section 8a(2) of the Act, includes a general partner of a partnership or a person who owns more than 10% of the voting shares of a

corporation. Because Kim is listed as LCM's sole principal, owns a more than 10%) financial interest in LCM, and is subject to the revocation of his registration pursuant to Sections 8a(2)(C), (D), and (E) of the Act, as amended, LCM's registration is also subject to revocation pursuant to Section 8a(2)(H) of the Act, as amended.

ORDER

Brian Kim is statutorily disqualified from registration under Sections 8a(2)(C), (D) and (E) of the Act; and Liquid Capital Management is statutorily disqualified from registration under Sections 8a(2)(C), (D), (E) and (H) of the Act. Accordingly: it is concluded that Brian Kim and Liquid Capital Management are unfit for registration, the Division's motion for entry of a default judgment is hereby granted, and the registrations of Brian Kim and Liquid Capital Management are hereby revoked.

Dated November 9, 2012.



Philip V. McGuire,
Judgment Officer