

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

U.S. COMMODITY FUTURES TRADING
COMMISSION;

Plaintiff,

v.

CHRISTIAN KIS,

Defendant.

Case No. 3:06-0935
Judge William J. Haynes, Jr.
Magistrate Judge Griffin

**Consent Order Of Permanent Injunction, For Other Equitable Relief,
And For A Civil Penalty**

On September 27, 2006, Plaintiff Commodity Futures Trading Commission ("Commission") filed this civil Action against Defendant Christian Kis, seeking injunctive and other equitable relief, as well as the imposition of restitution and civil monetary penalties, for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2002), and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004).

On October 6, 2006, this Court issued a statutory restraining order freezing assets under the control of Defendant and prohibiting the destruction of documents (doc. no. 13). On October 17, 2006, this Court issued an Order of Preliminary Injunction and Other Equitable Relief, which continued the freeze of assets under the control of Defendant and the prohibition upon the destruction of documents (doc. no. 17).

I.

CONSENTS AND AGREEMENTS

1. To effect settlement of the matters alleged in the complaint in this Action without a trial on the merits or any further judicial proceedings, Defendant consents to the entry of this "Consent Order Of Permanent Injunction, For Other Equitable Relief, And For Civil Penalties" ("Order").

2. Defendant agrees that he has read this Order and agrees to this Order voluntarily and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

3. Defendant admits that this Court has jurisdiction over him and the subject matter of this Action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which 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 any provision of the Act or any rule, regulation or order thereunder.

4. Defendant admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), in that certain of the acts and practices alleged in the complaint occurred in this District.

5. In addition, Defendant waives: (a) all claims which he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), to seek costs, fees and other expenses relating to, or arising from, this Action; (b) the entry of findings of fact and conclusions of law in this Action as provided by Rule 52 of the Federal Rules of Civil

Procedure, except as provided below in Section II; (c) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and (d) all rights of appeal in this Action.

6. By consenting to the entry of this Order, Defendant neither admits nor denies any of the findings made in this Order or the allegations contained in the Complaint, except as to jurisdiction and venue, which he admits. However, Defendant agrees that the allegations of the Complaint and all of the Findings of Fact made by this Court and contained in Part II of this Order shall be taken as true and correct and be given preclusive effect, without further proof, for the purpose of any bankruptcy proceeding filed by, on behalf of, or against Defendant or to enforce the terms of this Order. Defendant also shall provide immediate notice of any bankruptcy filed by, on behalf of, or against him in the manner required by Part V of this Order.

7. Defendant agrees that neither he nor any of his agents, servants, employees, contractors nor attorneys shall take any Action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in the Order or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendant's (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party.

8. Defendant consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this Action.

9. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the

entry of findings of fact, conclusions of law, a permanent injunction and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein.

II.

FINDINGS OF FACT

A. The Raptor Capital Investment

10. Defendant formed Raptor Capital as a commodity pool to solicit money from investors to primarily trade commodity futures contracts on registered exchanges through a pooled investment vehicle.

11. Commencing approximately in October 2002 and continuing until approximately January 2006 (the "relevant period"), Defendant solicited investors, primarily by using an Internet website and by posting messages on online message boards.

12. Defendant informed investors that his trading strategy involved using their investments to trade commodity futures for the S&P 500, Dow and Nasdaq indices.

13. Defendant provided investors with a prospectus for Raptor Capital when he solicited investors to purchase shares in Raptor Capital. The prospectus did not contain the information required to be disclosed to commodity pool participants by the Commission's Regulations, including Regulations 4.24 and 4.25, 17 C.F.R §§ 4.24 and 4.25 (2006). Additionally, the prospectus did not contain the information required to be disclosed to commodity trading advisor clients by the Commission's Regulations, including Regulations 4.34 and 4.35, 17 C.F.R. §§ 4.34 and 4.35 (2006).

14. Between approximately March 2003 and August 2005, Defendant accepted money from investors via wire transfers or checks into a bank account held in the name of Raptor Group, not Raptor Capital.

15. After soliciting money for investments in Raptor Capital for a number of months, Defendant finally incorporated Raptor Capital in Nevada in September 2003.

16. Defendant informed investors that in exchange for their investment, they would be issued shares in Raptor Capital. During the relevant period, Defendant issued at least 28 stock certificates in Raptor Capital.

17. The investors were dispersed throughout the United States and the United Kingdom, and the amounts invested ranged from \$10,000 to over \$200,000. In total, Defendant solicited and received approximately \$815,800 from investors.

18. Defendant informed investors that at the end of each year, he, through Raptor Capital, would distribute to them all the earnings generated from his commodity trading on behalf of Raptor Capital and investors, less his fee of twenty percent (20%) of the profits made each month in which his trading generated profits.

19. Defendant informed investors that, in lieu of receiving an annual distribution of cash, they could reinvest the amount of their annual distribution in additional shares of Raptor Capital.

B. Defendant' Trading Accounts and Trading Results

20. Defendant deposited money provided to him by Raptor Capital's investors into a brokerage account at Interactive Brokers LLC ("Interactive Brokers") opened by him in October 2002. The Interactive Brokers account had two subaccounts, one for commodity futures trading and the other for securities trading.

21. During the relevant period, the Interactive Brokers account was an individual account in the name of Defendant, not an account in the name of the commodity pool, Raptor Capital.

22. Defendant used the Interactive Brokers commodity futures subaccount as the primary trading account for Raptor Capital investors' money, and during the relevant period deposited approximately \$700,000 in that subaccount.

23. From September 2003 through October 2005, Defendant lost approximately \$700,000 trading commodity futures in the Interactive Brokers commodity futures subaccount.

24. In 2003, 2004, and 2005, Defendant sustained overall annual trading losses each year. Moreover, from September 2003 through October 2005, Defendant sustained net losses from trading commodity futures and securities during 20 out of 26 months.

25. Not only did Defendant suffer losses in the Interactive Brokers commodity futures subaccount, he also lost approximately \$70,000 in the Interactive Brokers securities subaccount.

26. From February 2004 to July 2004, Defendant also held a commodity futures trading account at BNP Paribas Brokerage Services, Inc. ("BNP Paribas") in his own name. From the beginning of February 2004 until the end of March 2004, Defendant deposited \$115,000 into the BNP Paribas account.

27. In 2004, Defendant lost over \$73,000 trading commodity futures in the BNP Paribas account, and withdrew the remainder.

C. Defendant Reported False Trading Results to Investors

28. Defendant informed investors that Raptor Capital's stock price per share (the "share price") would increase if he generated gains from profitable commodity futures trading, and that the share price would be posted on the www.raptorgroupresearch.com website.

29. Throughout the relevant period, Defendant regularly posted on the website purported increases in the share price. The website postings falsely represented to the investors that Defendant generated gains from profitable commodity futures trading when in reality his

commodity futures trading resulted in consistent and significant losses. On the rare occasion that Defendant's trading generated earnings, the posted increase in share price falsely represented earnings greater than actual earnings generated.

30. In addition to the false representations on the website that his trading had resulted in monthly and annual gains, during the relevant period, Defendant also sent quarterly e-mail messages to investors, each falsely reporting that the share price had increased due to profitable commodity futures trading.

31. Despite suffering trading losses in 2003, Defendant also falsely issued, or caused to be issued, an Internal Revenue Service ("IRS") Schedule K to investors for the period September 16, 2003 through December 31, 2003 that reported taxable distributions to investors. The distribution amounts reported were amounts that would have required trading gains of approximately forty percent (40%) during that three month period.

32. Despite suffering trading losses in 2004, Defendant also falsely issued, or caused to be issued, an IRS Schedule K and a year-end statement to investors that reported commodity trading gains in 2004 of approximately twenty-three percent (23%).

33. Despite suffering trading losses in 2005, from January 2005 through September 2005, Defendant also falsely issued, or caused to be issued, quarterly statements to investors that reported a share price that had increased from trading gains in eight of the nine months, for a total increase of approximately sixteen percent (16%).

34. At the end of 2005, Defendant issued, or caused to be issued, an IRS Schedule K to each investor reporting the total loss of the investors' money.

35. Almost all of Defendant's investors chose to reinvest their purported gains in reliance upon Defendant's false statements that his trading had been profitable.

36. During the relevant period, investors and potential investors in Raptor Capital relied upon Defendant's various false statements, reports, and website postings when making investment decisions. As a result, the investors lost all of the money they deposited with Defendant.

III.

CONCLUSIONS OF LAW

37. This Court has jurisdiction over the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), 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.

38. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), because Defendant's actions in violation of the Act occurred within this district.

39. This Court has personal jurisdiction over Defendant, who resides in Hendersonville, Tennessee.

40. The Commission and Defendant have agreed to this Court's retention of continuing jurisdiction over the Defendant for the purpose of enforcing the terms of this Order.

41. Beginning in at least September 2003, Defendant solicited and accepted funds for investments in Raptor Capital for the purpose of pooling the invested capital and trading it in the commodity futures markets. By doing so, Defendant operated Raptor Capital as a commodity pool, and acted as a Commodity Pool Operator ("CPO"), as defined in the Act.

42. Beginning in at least September 2003, Defendant was in the business of advising Raptor Capital and the Raptor Capital investors as to the advisability of commodity futures

trading and managed and directed the commodity futures trading on behalf of Raptor Capital and the investors for compensation or profit. By such conduct, Defendant acted as a Commodity Trading Advisor ("CTA"), as defined in the Act.

A. Violations Of The Act

43. Beginning in at least September 2003, Defendant willfully made, or caused to be made, false reports to Raptor Capital and investors in Raptor Capital in the form of account statements, internet postings, electronic mail messages, and IRS Schedules K that reported profitable commodity futures trading when his trading actually resulted in continual and substantial losses, in violation of Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii) (2002).

44. By making or causing to be made, false statements and reports to Raptor Capital and investors, Defendant, acting as a commodity pool operator and commodity trading advisor, directly or indirectly employed or is employing a device, scheme, or artifice to defraud clients or participants or prospective clients or participants, or has engaged or is engaged in transactions, practices or a course of business that operated or operates as a fraud or deceit upon clients or participants or prospective clients or participants by using the mails or other means or instrumentalities of interstate commerce in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1) (A) and (B) (2002).

45. Beginning in at least September 2003, Defendant used the mails or instrumentalities of interstate commerce in or in connection with his business as a CPO, while failing to register with the Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2002).

46. Defendant has used the mails or instrumentalities of interstate commerce in or in connection with his business as a CTA while failing to register with the Commission as a CTA, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1)(2002).

B. Violations of the Commission's Regulations

47. Beginning in at least September 2003, Defendant deposited pool funds into the Interactive Brokers account held in his own name. By doing so, Defendant failed to operate the pool as a legal entity separate from himself as the pool operator, in violation of Commission Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2006).

48. Beginning in at least September 2003, Defendant accepted pool funds into accounts in the name of Raptor Group and/or Defendant and not in the name of the pool. By doing so, Defendant violated Commission Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2006).

49. Commission Regulation 4.21, 17 C.F.R. § 4.21 (2006), requires that a CPO must furnish the pool participant with a written Disclosure Document containing specific language set forth by Commission Regulations, including Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25 (2006) by no later than the time it delivers to the prospective participant a subscription agreement for the pool. In addition, prior to accepting or receiving funds, a CPO is required to receive from a pool participant an acknowledgment signed and dated by the participant that the participant received a Disclosure Document.

50. Beginning in at least September 2003, Defendant failed to furnish pool participants with a written Disclosure Document that provided the information required by Commission Regulations, including Regulations 4.24 and 4.25, and failed to receive signed and dated acknowledgments from the pool participants stating that they received a Disclosure

Document. By doing so, Defendant violated Commission Regulation 4.21, 17 C.F.R. § 4.21 (2006).

51. Commission Regulation 4.30 prohibits a CTA from soliciting, accepting or receiving from an existing or prospective client funds in the CTA's name to purchase any commodity interest of the client. Beginning in at least September 2003, Defendant solicited, accepted and received funds into accounts owned or controlled by "Raptor Group" or Defendant in his personal capacity. By doing so, Defendant violated Commission Regulation, 4.30, 17 C.F.R. § 4.30 (2006).

52. Commission Regulation 4.31 requires that, by no later than when an advisory agreement is delivered, a CTA must furnish a prospective client with a written Disclosure Document containing specific language set forth in the Commission's Regulations, including Regulations 4.34 and 4.35, 17 C.F.R. §§ 4.34 and 4.35 (2006), which includes, but is not limited to, disclosure of a CTA's past performance record. In addition, prior to entering into an agreement to direct or guide an investor's commodity interest trading account, a CTA is required to receive from the prospective client an acknowledgment signed and dated by the client stating that the client received a Disclosure Document.

53. Beginning in at least September 2003, Defendant failed to furnish his investors with written Disclosure Documents containing the specific language set forth by regulation and failed to receive signed and dated acknowledgments from Raptor Capital and investors stating that they received a Disclosure Document. By doing so, Defendant violated Commission Regulation 4.31, 17 C.F.R. § 4.31 (2006).

IV.

ORDER OF PERMANENT INJUNCTION

NOW THEREFORE, IT IS ORDERED THAT:

54. Kis is permanently restrained, enjoined and prohibited from directly or indirectly:

a. Cheating or defrauding, or attempting to cheat, or defraud other persons or willfully deceiving or attempting to deceive by any means whatsoever other persons by any means whatsoever in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity futures transaction or in regard to any act of agency performed with respect to any order or contract, in violation of Sections 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii);

b. Using the mail or any means or instrumentality of interstate commerce to directly or indirectly employ any device, scheme or artifice to defraud any client or participant or prospective client or participant, or to 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 in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B);

c. Using the mail or any means or instrumentality of interstate commerce to directly or indirectly engage in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and, in connection therewith, solicit, accept, or receive 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 in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1);

d. Using the mail or any means or instrumentality of interstate commerce to directly or indirectly, for compensation or profit, engage 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 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 in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1); and

e. Violating Commission Regulations 4.20, 4.21, 4.30, and 4.31, 17 C.F.R. §§ 4.20, 4.21, 4.30 and 4.31.

55. Kis is permanently restrained, enjoined and prohibited from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) ("commodity interest"), including but not limited to, the following:

a. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);

b. Engaging in, controlling, or directing the trading of any commodity interest accounts for or on behalf of any other person or entity, directly or indirectly, whether by power of attorney or otherwise;

c. Soliciting, receiving or accepting any funds in connection with the purchase or sale of any commodity interest contract;

d. Entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf, and

e. Engaging in any business activities related to commodity interest trading.

56. Kis is permanently restrained, enjoined and prohibited from 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), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

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

V.

**ORDER OF RESTITUTION, CIVIL MONETARY PENALTY,
AND ANCILLARY RELIEF**

IT IS FURTHER ORDERED THAT:

A. Restitution

58. Kis shall pay restitution in the amount of eight hundred fifteen thousand eight hundred dollars (\$815,800), plus post-judgment interest.

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

60. To effect payment by Kis and distribution of restitution, the Court appoints Daniel Driscoll, Executive Vice-President of the National Futures Association ("NFA") or his successor, as Monitor ("Monitor"). The Monitor shall collect restitution payments from Kis, and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, he shall not be

liable for any action or inaction arising from his appointment as Monitor, other than actions involving fraud.

61. Kis shall make restitution payments under this Order in the name "Christian Kis - Restitution Fund" and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's, or bank money order, to Daniel Driscoll, Monitor, National Futures Association, 200 W. Madison Street #1600, Chicago, Illinois 60606-3447 under cover letter that identifies himself and the name and docket number of the proceeding. Kis 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, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, at the same address.

62. The Monitor shall oversee Kis's restitution obligation, and shall have discretion to determine the manner for distribution of funds in an equitable fashion to defrauded Kis customers, as appropriate, or may defer distribution until such time as it deems appropriate. Kis shall cooperate with the Monitor to provide such information as the NFA deems necessary and appropriate to identify Kis customers to whom the Monitor, in his sole discretion, may determine to include in any plan for distribution of any Restitution payments.

63. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, Kis's defrauded customers are 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 that has not been paid by Kis, to ensure continued compliance with any provision of this Order and to hold Kis in contempt for any violations of any provision of this Order.

B. Civil Monetary Penalty

64. Kis shall pay to the Commission a civil monetary penalty in the amount of one hundred and thirty thousand dollars (\$130,000), plus post-judgment interest.

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

66. Kis shall pay this civil monetary penalty by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

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

If payment is to be made by electronic funds transfer, Kis shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Kis shall accompany payment of the penalty with a cover letter that identifies Kis and the name and docket number of this proceeding. Kis 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, N.W., Washington, D.C. 20581, and to the Chief, Office of Cooperative Enforcement, at the same address.

C. Priority Of Monetary Sanctions And Partial Payments

67. All payments by Kis pursuant to this Order shall first be applied to satisfaction of his restitution obligation. After satisfaction of his restitution obligation, payments by Kis pursuant to this Order shall be applied to satisfy Kis's civil monetary penalty obligation.

68. Any acceptance by the Commission and/or Monitor of partial payment of Kis's restitution obligation and/or civil monetary penalty shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment of any remaining balance.

VI.

MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

69. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

70. Invalidation: If any provision of this Order, or the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

71. Waiver: The failure of any party hereto or of any customer at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or

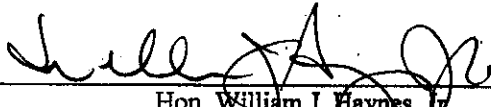
construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

72. Acknowledgements: Upon being served with copies of this Order after entry by the Court, Kis shall sign an acknowledgment of such service and serve such acknowledgments on the Court and the Commission within seven (7) calendar days.

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

74. Counterparts and Facsimile Execution: This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Agreement that is delivered by facsimile shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Agreement.

Ordered this 5th day of February 2007.



Hon. William J. Haynes, Jr.
United States District Court for the Middle District of Tennessee