

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)	CFTC Docket No. SD <u>12-05</u>
Brian Kim and Liquid Capital Management, LLC,)	
Registrants.)	

NOTICE OF INTENT TO REVOKE THE REGISTRATIONS
OF BRIAN KIM AND LIQUID CAPITAL MANAGEMENT LLC

I.

The U.S. Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges and is prepared to prove, that:

1. Liquid Capital Management LLC (“LCM”) is a Delaware limited liability company whose current listed address with the Commission is 817 Broadway, 10th Fl., New York, NY 10003.
2. LCM 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, pursuant to Section 4m of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6m.
3. Brian Kim (“Kim”) has been registered as an Associated Person (“AP”) of LCM since February 18, 2005. Kim is the sole principal of LCM and owns a 10% or more financial interest in LCM and has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of LCM which are subject to regulation by the Commission. Kim’s application for registration shows an address in New York, NY.

RECEIVED
CFTC
2012 JUN 21 PM 2:30
OFFICE OF
PRINCIPAL
REGISTRATION

4. On February 15, 2011, the Commission filed a federal civil injunctive action against Kim and LCM. *See CFTC v. Brian Kim and Liquid Capital Management, LLC*, Case No. No. 11-CV-1013 (S.D.N.Y. filed February 15, 2011) (hereinafter “*CFTC v. Kim*”). The CFTC’s complaint alleged, *inter alia*, that Kim and LCM fraudulently operated the commodity pool Liquid Capital L.P. and engaged in multiple acts of fraudulent solicitation, misappropriation, and the making of material false statements to pool participants, all in violation of the anti-fraud provisions of the Act. The CFTC complaint further alleged that during the period from 2008 through November 2011, Kim and LCM fraudulently solicited over \$3.3 million in pool participant funds, from which they misappropriated at least \$2 million. The CFTC complaint also charged Kim and LCM with making false statements to the National Futures Association (NFA) in violation of Section 9(a)(4) of the Act, 7 U.S.C. §13(a)(4).

5. Kim and LCM were also indicted and have pled guilty to multiple criminal charges brought by the District Attorney’s Office for New York County, all of which arise out of the same scheme alleged in *CFTC v. Kim*. Criminal charges were filed in two separate actions – one against Kim and one against both Kim and LCM. *See People v. Brian Kim*, case No. 05965-2009 (N.Y. Sup. Ct.) (charging Kim with Grand Larceny); *People v. Brian Kim and Liquid Capital Management, LLC*, Case No. 00086-2011 (N.Y. Sup. Ct.) (charging Kim and LCM with Grand Larceny in the First and Second Degree, Scheme to Defraud, Falsifying Business Records in the First Degree and felony violations of the Martin Act). In connection with these actions, Kim was sentenced to a prison term of up to 15 years.

6. Kim also fled the United States shortly before trial in *People v. Brian Kim* and, upon his return, pled guilty to willfully and knowingly making a false statement in an application

for a United States passport in violation of 18 USC 1542 and is currently serving a prison term of 14 months. *United States v. Kim*, 1:11-cr-00642-CM-1.

7. On April 15, 2011, in *CFTC v. Kim*, 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, LL, supplemented by an additional order dated September 16, 2011 (hereinafter, collectively “Order”). The Order contained findings of fact and conclusions of law, which found, *inter alia*, that Kim fraudulently misappropriated at least \$2 million of pool participant funds, fraudulently solicited prospective pool participants, and made material false statements to pool participants. The Order found that by engaging in this conduct, Kim and LCM violated Sections 4b(a)(1)(A)-(C), 4o(1), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C); 6o(1), and 13(a)(4). The Order, in relevant part, permanently restrains Kim and LCM from:

- (a) directly or indirectly committing fraud in violation of Sections 4b(a)(1)(A)-(C), 4o(1), and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1), and 13(a)(4);
- (b) registering with the commission, claiming an exemption from registration, acting in any capacity requiring registration or an exemption from registration; and
- (c) acting as a principal (as that term is defined in Commission Regulation (“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).

8. Pursuant to Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C), the Commission may revoke the registration of any person who has been permanently enjoined by order of a court of competent jurisdiction, from certain enumerated activities, including but not limited to (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, CTA, CPO, or an AP of any registrant under the Act, or (ii) engaging in or continuing any activity involving fraud or any transaction in or advice concerning contracts of sale of a commodity for futures delivery or concerning matters subject to Commission regulation under Section 4c or 19 of the Act, 7 U.S.C. §§ 6c or 23.

9. Pursuant to Section 8a(2)(D) of the Act, 7 U.S.C. § 12a(2)(D), the Commission may revoke the registration of any person who has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that, among other things, (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 a 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.

10. Furthermore, pursuant to Section 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(E), the Commission may revoke the registration of any person who has been found, in a proceeding brought by the Commission, to have violated the Act by committing fraud or misappropriation within ten years preceding the filing of the registration application or any time thereafter.

11. Pursuant to Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H), the Commission may revoke the registration of any person if revocation of the registration of any principal of such person is warranted pursuant to Section 8a(2) of the Act. Section 8a(2)(H) of the Act

further provides that “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. Additionally, pursuant to Regulation 3.1(a)(1), if an entity is organized as a limited liability company, “principal” includes any director, president, chief executive officer, manager, managing member or members vested with the management authority for the entity, and any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity’s activities that are subject to regulation by the Commission.

12. The facts set forth above constitute a valid basis for the Commission to revoke Kim’s registration as an AP of LCM.

13. The facts set forth above constitute a valid basis for the Commission to revoke LCM’s registration as a CPO and CTA.

II.

14. Pursuant to Regulation 3.60(a), 17 C.F.R. § 3.60(a) (2011), Kim and LCM are hereby notified that a public proceeding shall be conducted in accordance with the provisions of Regulation 3.60, 17 C.F.R. § 3.60 (2011), and Part 10 of the Regulations, 17 C.F.R. § 10.1 *et seq.*, on the following questions:

(a) Whether Kim is subject to statutory disqualification from registration under Section 8a(2)(C), (D), and (E) of the Act as set forth in Section I above;

(b) Whether LCM is subject to statutory disqualification from registration under Section 8a(2)(C), (D), (E), and (H) of the Act as set forth in Section I above; and

(c) If the answers to questions (a) and (b) are affirmative, then whether the registration of Kim as an AP of LCM and the registrations of LCM as a CPO and CTA should be revoked.

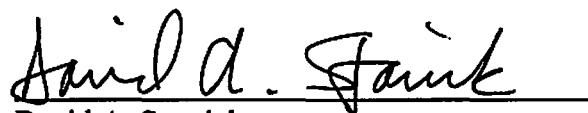
15. Such proceeding shall be held before an Administrative Law Judge or a Presiding Officer in accordance with Regulations 3.60 and 10.8, 17 C.F.R. §§ 3.60, 10.8 (2011), and all post-hearing procedures shall be conducted pursuant to Regulations 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j) (2011).

16. In accordance with the provisions of Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3) (2011), Kim and LCM are entitled to file responses challenging the evidentiary bases of the statutory disqualification or show cause why, notwithstanding the accuracy of the allegations, their registrations should not be revoked. Such responses must be filed with the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon Lara Turcik, Trial Attorney, Division of Enforcement, Eastern Regional Office, 140 Broadway, 19th Fl., New York, NY, 10005, within thirty (30) days after the date of service of this Notice upon Kim and LCM, in accordance with the provisions of Regulation 3.60(b), 17 C.F.R. § 3.60(b) (2011). If Kim and LCM fail to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true, and the Administrative Law Judge or the Presiding Officer may issue an Order of Default in accordance with the provisions of Regulation 3.60(g), 17 C.F.R. § 3.60(g) (2011).

III.

17. The Proceedings Clerk shall serve this Notice of Intent to Revoke the Registrations of Brian Kim and Liquid Capital Management, LLC in accordance with

Regulations 3.50, 17 C.F.R. §§ 3.50, or by any other means permitted under the Act or
Regulations thereunder.

A handwritten signature in black ink, reading "David A. Stawick", written over a horizontal line.

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 24, 2012