

SEP 27 2006

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

BY \_\_\_\_\_  
DEPUTY CLERK

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

vs.

CHRISTIAN KIS,

Defendant.

Civil Action No. 3 06 0935

**JUDGE HAYNES**

**Complaint For Injunctive And Other Equitable Relief And For Civil Penalties Under The  
Commodity Exchange Act, As Amended, 7 U.S.C. §§ 1 et seq.**

The United States Commodity Futures Trading Commission ("Commission"), by its attorneys, alleges as follows:

**I. Summary**

1. Commencing in approximately March 2003 and continuing until approximately January 2006 (the "relevant period"), defendant Christian Kis ("Kis" or "Defendant") solicited and accepted more than \$400,000 from at least fifteen members of the general public to purchase shares in a company he controlled, Raptor Capital, Inc. ("Raptor Capital"). Kis informed the investors that he would use the funds they invested in Raptor Capital to trade commodity futures.

2. Kis operated Raptor Capital as a commodity pool and pooled the investors' funds together in various accounts, including at least one personal account of his own. Kis thereafter used the funds to trade commodity futures.

3. Ultimately, Kis lost all of the investors' funds through his unprofitable commodity futures trading. To cover his trading losses, Kis fabricated and issued, or caused Raptor Capital to issue, false statements to the investors reflecting gains from profitable commodity futures trading.

4. The fabrication and issuance, or causing the issuance, of false statements to investors reflecting profitable trading results violated Sections 4b(a)(2)(ii) and 4o(1) of the Commodity Exchange Act, as amended (the "CEA"), 7 U.S.C. §§ 6b(a)(2)(ii) and 6o(1) (2002).

5. In soliciting and accepting funds from certain individuals for purposes of pooling the funds and investing in commodity futures, Kis was acting as a commodity pool operator ("CPO") without being registered as required. In advising and managing the trading of commodity futures on behalf of Raptor Capital and its investors for compensation or profit, Kis was acting as a commodity trading advisor ("CTA") without being registered as required. Defendant's failure to register as a CPO and CTA violated Section 4m(1) of the CEA, 7 U.S.C. § 6m(1) (2002).

6. While acting as a CPO required to be registered under the CEA, Kis failed to operate the pool as a legal entity separate from himself, received pool funds in his own name, commingled pool participant funds with his personal funds in accounts held in his name only, failed to provide pool participants with the information required to be in a commodity pool Disclosure Document, and did not receive a signed acknowledgement by investors of receipt of a Disclosure Document prior to receiving investor funds. By virtue of these failures, Defendant violated Commission Regulations ("Regulations") 4.20 and 4.21, 17 C.F.R. §§ 4.20 and 4.21 (2006).

7. While acting as a CTA required to be registered, Kis solicited, received or accepted funds from investors into accounts in his own name to purchase and trade commodity futures on behalf of Raptor Capital and the investors and failed to provide Raptor Capital and/or the investors with the information required to be in a CTA Disclosure Document or to receive a signed acknowledgement of receipt of a Disclosure Document. By such conduct, Defendant violated Commission Regulations 4.30 and 4.31, 17 C.F.R. §§ 4.30 and 4.31 (2006).

8. Accordingly, pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), the Commission brings this action to enjoin Defendant's unlawful acts and practices, to obtain a freeze on Defendant's assets, to compel Defendant's compliance with the CEA, and to obtain an order permitting expedited discovery. The Commission also seeks a permanent injunction, civil monetary penalties, restitution to customers for losses proximately caused by Defendant's fraud, disgorgement of Defendant's ill-gotten gains, and such other ancillary relief as this Court may deem necessary or appropriate.

9. Unless enjoined by this Court, Defendant is likely to continue to engage in the acts and practices alleged in this Complaint, as more fully described below.

## **II. Jurisdiction and Venue**

10. The CEA establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the CEA, 7 U.S.C. §13a-1(e) (2002), in that Defendant has transacted or transacts business in this District, and violations of the CEA described herein have occurred, are occurring, or are about to occur in this District.

### **III. The Parties**

12. The Commission is an independent federal regulatory agency which is charged with the administration and enforcement of the CEA, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*

13. Kis' last known residential address is in Hendersonville, Tennessee. Kis is the only officer and director of Raptor Capital, managed its day-to-day activities, and conducted all trading done with funds provided by Raptor Capital's investors. Kis was listed with the National Futures Association ("NFA") as a principal of Raptor Group, Inc. ("Raptor Group"), which registered as a CTA in October 2005, after most of the conduct alleged herein had occurred. Kis is not registered with the NFA in any capacity.

### **IV. Facts**

#### **A. The Raptor Capital Investment**

14. Kis formed Raptor Capital to solicit money from investors to primarily trade commodity futures contracts on registered exchanges through a pooled investment vehicle.

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

16. Kis solicited investors primarily using an internet website and by posting messages on online message boards.

17. Kis 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).

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

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

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

21. The investors were dispersed throughout the United States and the United Kingdom, and the amounts invested ranged from \$10,000.00 to \$110,000.00.

22. Kis 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.

23. Kis 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. Kis' Trading Accounts and Trading Results**

24. Kis 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.

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

26. Kis used the Interactive Brokers commodity futures subaccount as the primary trading account for Raptor Capital investors' money, and during the relevant period deposited approximately \$450,000 in that subaccount.

27. From September 2003 through October 2005, Kis lost at least \$400,000 trading commodity futures in the Interactive Brokers commodity futures subaccount resulting in the loss of most investors' entire investment.

28. In 2003, 2004, and 2005, Kis sustained overall annual trading losses each year. Moreover, from September 2003 through October 2005, Kis sustained losses during 21 out of 26 months, did not trade in one month, and had gains of approximately \$100 or less in two months.

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

30. From February 2004 to July 2004, Kis 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, Kis deposited \$115,000 into the BNP Paribas account.

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

**C. Kis Reported False Trading Results to Investors**

32. Kis informed investors that Raptor Capital's stock price per share ("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](http://www.raptorgroupresearch.com) website.

33. Throughout the relevant period, Kis regularly posted on the website purported increases in the share price. The website postings falsely represented to the investors that Kis 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 Kis' trading generated earnings, the posted increase in share price falsely represented earnings greater than actual earnings generated.

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

35. Despite suffering trading losses in 2003, Kis also falsely issued, or caused to be issued, an Internal Revenue Service ("IRS") Schedule K-1 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.

36. Despite suffering trading losses in 2004, Kis also falsely issued, or caused to be issued, an IRS Schedule K-1 and a year-end statement to investors that reported commodity trading gains in 2004 of approximately twenty-three percent (23%).

37. Despite suffering trading losses in 2005, from January 2005 through September 2005, Kis 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%).

38. At the end of 2005, Kis issued, or caused to be issued, an IRS Schedule K-1 to each investor reporting the total loss of the investors' money.

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

40. In August 2005, one Raptor Capital investor made a large additional investment. In doing so, that investor relied upon Kis's prior false statements, which purported to show that the investor's initial investment in Raptor Capital had been profitable.

41. During the relevant period, investors and potential investors in Raptor Capital relied upon Kis' various false statements, reports, and website postings when making investment decisions. As a result, the investors' suffered substantial financial losses of at least \$400,000.

## **V. Violations Of The Commodity Exchange Act**

### **COUNT ONE**

#### **VIOLATION OF SECTION 4b(a)(2)(ii) OF THE CEA: FRAUD BY FALSE STATEMENTS**

42. The allegations contained in paragraphs 1 through 41 above are re-alleged and incorporated by reference herein.



43. By willfully making, or causing to be made, false reports to Raptor Capital and investors in the form of account statements, internet postings, electronic mail messages, and IRS Schedules K-1 that reported profitable commodity futures trading when his trading actually resulted in continual and substantial losses, Kis violated Section 4b(a)(2)(ii) of the CEA, 7 U.S.C. § 6b(a)(2)(ii) (2002).

44. Each false report that Kis made or caused to be made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(ii) of the CEA, 7 U.S.C. § 6b(a)(2)(ii) (2002).

**COUNT TWO**  
**VIOLATION OF SECTION 4o(1) OF THE CEA:**  
**FRAUD AS A COMMODITY POOL OPERATOR AND AS A COMMODITY TRADING**  
**ADVISOR**

45. The allegations set forth in paragraphs 1 through 44 are re-alleged and incorporated by reference herein.

46. By making, or causing to be made, false statements and reports to Raptor Capital and investors, Kis 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 which 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) of the CEA, 7 U.S.C. § 6o(1) (2002).

47. Each occasion upon which Kis made or caused to be made false statements or reports to investors in Raptor Capital is alleged herein as a separate and distinct violation of Section 4o(1) of the CEA, 7 U.S.C. § 6o(1) (2002).

**COUNT THREE**  
VIOLATION OF SECTION 4m(1) OF THE CEA:  
FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

48. The allegations set forth in paragraphs 1 through 47 are re-alleged and incorporated by reference herein.

49. Beginning in at least September 2003, Kis solicited for investments in Raptor Capital for the purpose of pooling the invested capital and trading it in the commodity futures markets. By doing so, Kis operated Raptor Capital as a commodity pool.

50. Beginning in at least September 2003, Kis 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 CEA, 7 U.S.C. § 6m(1) (2002).

**COUNT FOUR**  
VIOLATION OF SECTION 4m(1) OF THE ACT:  
FAILURE TO REGISTER AS A COMMODITY TRADING ADVISOR

51. The allegations set forth in paragraphs 1 through 50 are re-alleged and incorporated herein by reference.

52. Kis 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, Kis acted as a CTA.

53. Kis 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).

**COUNT FIVE**

**VIOLATION OF REGULATION SECTION 4.20(a)-(b):  
FAILURE BY A CPO TO TREAT THE COMMODITY POOL AS A SEPARATE ENTITY  
AND ACCEPTING POOL FUNDS OTHER THAN IN THE NAME OF THE POOL**

54. The allegations set forth in paragraphs 1 through 53 are re-alleged and incorporated by reference herein.

55. Kis deposited pool funds into the Interactive Brokers account held in his own name. By doing so, Kis 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).

56. Kis accepted pool funds into accounts in the name of Raptor Group and/or Kis and not in the name of the pool. By doing so, Kis violated Commission Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2006).

**COUNT SIX**

**VIOLATION OF REGULATION SECTION 4.21:  
FAILURE TO PROVIDE THE INFORMATION REQUIRED TO BE IN A COMMODITY  
POOL DISCLOSURE DOCUMENT AND FAILURE TO RECEIVE SIGNED  
ACKNOWLEDGMENTS FROM POOL PARTICIPANTS**

57. The allegations set forth in paragraphs 1 through 56 are re-alleged and incorporated by reference herein.

58. Commission Regulation 4.21, 17 C.F.R. § 4.21 (2006), requires that a CPO deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with Commission 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 pool participants an acknowledgment signed and dated by the participants that they received the Disclosure Document.

59. Kis 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, 17 C.F.R. §§ 4.24 and 4.25 (2006), and failed to receive signed and dated acknowledgments from the pool participants stating that they received a Disclosure Document. By doing so, Kis violated Regulation 4.21, 17 C.F.R. § 4.21 (2006).

**COUNT SEVEN**  
**VIOLATION OF REGULATION 4.30:**  
**COMMODITY TRADING ADVISOR SOLICITING, ACCEPTING OR RECEIVING FUNDS**  
**FROM INVESTORS INTO ACCOUNTS IN HIS OWN NAME**

60. The allegations set forth in paragraphs 1 through 59 are re-alleged and incorporated herein by reference.

61. Commission Regulation 4.30, 17 C.F.R. § 4.31(2006), 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.

62. As alleged above, Kis solicited, accepted and received funds into accounts in the name of Raptor Group and/or Kis. By doing so, Kis violated Commission Regulation 4.30, 17 C.F.R. § 4.30 (2006).

**COUNT EIGHT**  
**VIOLATION OF REGULATION 4.31:**  
**FAILURE TO PROVIDE THE INFORMATION REQUIRED TO BE IN A COMMODITY**  
**TRADING ADVISOR DISCLOSURE DOCUMENT AND FAILURE TO RECEIVE SIGNED**  
**ACKNOWLEDGMENTS FROM CLIENTS**

63. The allegations set forth in paragraphs 1 through 62 are re-alleged and incorporated herein by reference.

64. Commission Regulation 4.31, 17 C.F.R. § 4.31 (2006), requires that a CTA must deliver or cause to be delivered to a prospective client a Disclosure Document containing the information set forth in Commission 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, for the trading program pursuant to which the trading advisor will direct his account or will guide his trading by no later than the time the trading advisor delivers to the prospective client an advisory agreement to direct or guide the client's account. In addition, prior to entering into an agreement to direct a prospective client's commodity interest trading account, a CTA is required to receive from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a Disclosure Document for the trading program pursuant to which the CTA will direct the client's account.

65. As alleged above, Kis 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 the Disclosure Documents in violation of Regulation 4.31, 17 C.F.R. § 4.31 (2006).

#### **VI. Relief Requested**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the CEA, 7 U.S.C. § 13a-1 (2002), and pursuant to its own equitable powers, enter:

(a) a statutory restraining order enjoining Defendant and all persons insofar as they are acting in the capacity of his agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with him who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering, or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property

of Defendant, wherever located, including all such records concerning Defendant's business operations including but not limited to the operations of Raptor Capital and Raptor Group, Inc.;

2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendant, wherever located, including all such records concerning Defendant's business operations including but not limited to the operations of Raptor Capital and Raptor Group, Inc.; and

3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, 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, under the control of, or in the name of Defendant, Raptor Capital, or Raptor Group, Inc.;

(b) orders of preliminary and permanent injunction prohibiting Defendant from engaging in conduct violative of Sections 4b(a)(2)(ii), 4m(1) and 4o(1) of the CEA, 7 U.S.C. §§ 6b(a)(2)(ii), 6m(1) and 6o(1) (2002), and Commission Regulations 4.20(a)-(b), 4.21, 4.30 and 4.31, 17 C.F.R. §§ 4.20, 4.21, 4.30 and 4.31 (2006), and from engaging in any commodity-related activity, including

commodity futures and options trading, soliciting new customers, giving advice or other information in connection with the purchase or sale of commodity futures or commodity options contracts for others, and introducing customers to any other persons engaged in the business of commodity futures or options trading;

(c) an order directing Defendant to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the CEA or Commission Regulations, and interest thereon from the date of such violations;

(d) an order directing Defendant to make full restitution, pursuant to such procedure as the Court may order, to every investor whose funds were received by him as a result of acts and practices which constituted violations of the CEA or Commission Regulations, and interest thereon from the date of such violations;

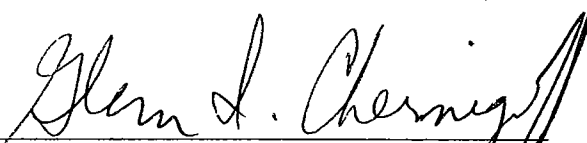
(e) an order directing Defendant to pay a civil monetary penalty in the amount of not more than the higher of \$130,000 or triple his monetary gain for each violation of the CEA or Commission Regulations; and

(f) such orders and further remedial ancillary relief as the Court may deem appropriate.

Dated: September 26, 2006

Respectfully submitted,

**COMMODITY FUTURES TRADING  
COMMISSION**

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