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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
(Ft. Myers Division)**

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Case No.

2:04-cv-105-FtM-29DNF

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

v.

**KS ADVISORS, INC.,  
KS CONDOR PARTNERS, LTD., II,  
DAMIAN PARTNERS, LLC  
SCOTT FINE,  
AND KEVIN BOYLE,**

**Defendants.**

)  
)  
) **JOHN E. STEELE**  
) **UNITED STATES DISTRICT JUDGE**

)  
) **DOUGLAS N. FRAZIER**  
) **U.S. MAGISTRATE JUDGE**

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff, Securities and Exchange Commission (the "SEC" or "Commission"), alleges and states as follows:

**I. INTRODUCTION**

1. The Commission brings this action to enjoin Defendants from continuing to violate the federal securities laws in connection with the sale of approximately \$10 million of interests in two hedge funds, KS Condor Partners, Ltd., II ("Condor II") and Damian Partners, LLC ("Damian Partners"), by an unregistered investment advisor, KS Advisors, Inc. ("KS Advisors"), and its co-owners, Defendants Scott Fine ("Fine") and Kevin Boyle ("Boyle") (collectively, "Defendants"). Since approximately October 2000 through the present, Fine and Boyle have made material misrepresentations and omissions to over 100 investors, nationwide and abroad, regarding the "net asset value"

(“NAV”) of their investments in Condor II and Damian Partners – creating fictitious brokerage account statements to conceal massive trading losses – and the investment fees charged in connection with those investments. In addition, Fine and Boyle have misappropriated over \$1.4 million in fees and incurred an additional \$4 million in undisclosed trading losses. Unless immediately restrained and enjoined, Defendants will continue to defraud the investing public and place investor funds at serious risk of diversion and theft.

## **II. DEFENDANTS**

2. Defendant KS Advisors is a Florida corporation incorporated in May 1999, with its principal place of business in Ft. Myers, Florida. KS Advisors is an unregistered investment adviser, providing such services to Defendants Condor II and Damian, two purported hedge funds. KS Advisors serves as general partner of Condor II and as the operations manager for Damian Partners.

3. Defendant Condor II is a Florida limited partnership formed in 2000, with its principal place of business in Ft. Myers, Florida. Starting in October 2000, Condor II began offering limited partnership interests to investors in a purported hedge fund that trades in exchange listed options.

4. Defendant Damian Partners is a Florida limited liability corporation formed in 2002, with its principal place of business in Ft. Myers, Florida. Starting in March 2002, Damian Partners began offering membership interests in a purported hedge fund that trades in exchange listed options.

5. Defendant Boyle, age 45, is a resident of Ft. Myers, Florida. Boyle is president and secretary of KS Advisors, and serves as investment manager for Condor II and Damian Partners. Boyle is also a registered representative, formerly associated with various brokers-dealers.

6. Defendant Fine, age 45, is a resident of Ft. Myers, Florida. Fine is vice president and treasurer of KS Advisors, and also serves as investment manager for Condor II and Damian Partners. Fine is also a registered representative, formerly associated with various brokers-dealers. In November 2003, Fine was barred from association with any broker or dealer by the National Association of Securities Dealers ("NASD") for refusing to provide documents and testimony concerning KS Advisors and partnership investments.

### **III. JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa; and Section 214 of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-14.

8. This Court has personal jurisdiction over Defendants and venue is proper in the Middle District of Florida because many of the Defendants' acts and transactions constituting violations of the Securities Act, the Exchange Act and the Advisers Act occurred in the Middle District of Florida. In addition, the principal offices of KS

Advisors, Condor II and Damian Partners are located in the Middle District of Florida, and Fine and Boyle reside in this judicial district.

9. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

#### **IV. THE FRAUDULENT SCHEME**

##### **A. Offering of Investments in Condor II and Damian Partners**

10. KS Advisors serves as general partner for Condor II and as the operations manager for Damian Partners, two purported hedge funds managed by Fine and Boyle. Through investments in Condor II and Damian Partners, KS Advisors purports to offer “long-term capital appreciation consistent with the preservation of capital” through “a portfolio having a diversified risk profile.” The offering materials for both funds state that the proceeds of the offerings are to be invested in listed options of publicly traded companies “in an effort to maximize the return on the customer’s investment.”

11. KS Advisors offers investors the opportunity to purchase units in Condor II or Damian Partners for a minimum \$10,000 investment price per unit. Since at least October 2000, KS Advisors, Fine and Boyle have raised at over \$10 million from over 100 investors nationwide and abroad through sales of investments in Condor II and, commencing in 2002, in Damian Partners. As of December 2003, Condor II had raised approximately \$6.3 million from about 75 investors, and Damian Partners had raised approximately \$3.6 million from about 40 investors.

12. According to the funds' offering materials, KS Advisors has the sole power to direct any and all investment decisions in both funds. The offering materials identify Boyle and Fine as investment managers for both funds, and further claim that Fine and Boyle have over 25 years of combined securities industry experience and that they hold various securities licenses.

**B. Material Misrepresentations and Omissions**

***(i) Fraudulent Net Asset Values***

13. Boyle and Fine e-mail investors in Condor II and Damian Partners monthly statements showing the purported monthly NAV per unit investment in each fund. During at least 2003, these monthly e-mails reflected escalating returns for both Condor II and Damian Partners investors. KS Advisors' books and records also depict the NAVs of Condor II and Damian Partners increasing over 200% and 45%, respectively, from their inceptions to date. According to materials sent to investors in December 2003, the funds had combined assets of over \$14 million.

14. The representations made by KS Advisors, Boyle and Fine to their investors about the ever-increasing profits and NAVs of Condor II and Damian Partners are completely false. In truth, both hedge funds are in dire financial condition. Actual brokerage records obtained from the custodian of all securities holdings for Condor II and Damian Partners throughout the relevant time period reveal a huge discrepancy between the reported value of the hedge funds' holdings – and concomitant NAVs – and the actual holdings of the hedge funds. For example, the December 19, 2003 NAV computation for Condor II's and Damian Partners' on KS Advisors' books reflect values of \$10,189,196

and \$3,569,456, respectively. The corresponding brokerage statements show, however, actual account values for Condor II and Damian Partners of \$429,645 and \$1,147,652, respectively. Based on these statements, there is a total discrepancy of \$12,181,355 between the account values reported in Condor II's and Damian Partners' NAV computations and the brokerage statements.

15. Brokerage records further establish that the investments made by Boyle and Fine on behalf of Condor II and Damian Partners, which consist mostly of speculative options trading, have lost millions of dollars. In fact, total investor losses in Condor II and Damian Partners from Boyle and Fine's securities trading alone exceed \$4 million. These massive losses have not been disclosed to investors. To the contrary, monthly e-mails sent by Boyle and Fine to investors present glowing reports of the funds' performance, the safety of their investments, and indicate steadily increasing NAVs.

***(ii) Fraudulent Management Fee***

16. The Condor II offering materials disclose that KS Advisors will receive a quarterly management fee equal to 12.5% of the increase in the NAV of the Condor II partnership's assets. The Damian Partners offering materials disclose that KS Advisors will receive a monthly management incentive fee equal to 10% of the increase of Damian Partner's NAV. In August 2002, KS Advisors increased the monthly management fee for Damian Partners to 12.5%, explaining to investors that the fee was performance based and only charged against *increases* in NAV.

17. Since each fund's inception, however, the value of the Condor II and Damian Partners funds rarely, if ever, increased. Fine and Boyle nevertheless charged

management fees based on the false, inflated NAVs they calculated for Condor II and Damian Partners, reaping approximately \$900,000 in fraudulent management fees alone.

***(iii) Undisclosed, Illegal "Advisory Fee"***

18. In addition, since at least July 2003, Fine and Boyle also charged Condor II and Damian Partners investors improper, undisclosed and excessive fees based on sales commissions from securities transactions conducted in the two funds. Both sets of offering materials for the hedge funds state that KS Advisors has the sole discretion to chose the broker-dealer that conducts those transactions on behalf of the funds. Commencing in October 2000, KS Advisors utilized KESCO Securities Corp. ("KESCO"), a registered broker-dealer owned and operated by Boyle and Fine, to conduct the transactions on behalf of the hedge funds and receive the commissions from those transactions. In July 2003, however, after Fine was barred by the NASD from association with a broker or dealer, Boyle and Fine withdrew KESCO's registration and utilized an unrelated broker-dealer.

19. Although Boyle and Fine were no longer executing trades for Condor II and Damian Partners through KESCO, and therefore, not entitled to brokerage commissions, Fine and Boyle continued to calculate and charge sales commissions on the funds' securities transactions after they withdrew KESCO's registration. These charges were designated in KS Advisors' books and records as an "advisory fee" and did not appear on the corresponding ledgers for either Condor II or Damian Partners. These charges were also duplicative inasmuch as the third party broker was already charging

commissions for the executed trades. The charges were also excessive since they were usually as much as *seven times* the commissions charged by the executing broker.

20. Since July 2003, KS Advisors, at the direction of Fine and Boyle, have illegally charged investors of Condor II and Damian Partners nearly \$500,000 worth of undisclosed, improper and fraudulent “advisory fees.”

***(iv) Fraudulent Schedules K-1 to Form 1065***

21. KS Advisors, at the direction of Boyle and Fine, also prepares and sends to investors a Schedule K-1 of IRS Form 1065 for purposes of tax preparation. The Schedules K-1 reflect each investor’s purported investment gains at year end for income tax purposes. KS Advisors has sent Schedules K-1 to investors in Condor II from 2000 through 2002, and for investors in Damian Partners for 2002. Upon information and belief, the Schedules K-1 and corresponding Forms 1065 prepared by KS Advisors reported false and inflated gains based on the fictitious NAVs calculated by Fine and Boyle and reflected on KS Advisors’ books and records.

22. Condor II’s and Damian Partners’ Schedules K-1 and Forms 1065 for the tax year ending 2002 reflected fraudulent, inflated NAVs. Investors in Condor II and Damian have likely paid unnecessary taxes for tax years 2000 – 2002 based on the false gains represented to investors by Fine and Boyle.

23. The Schedules K-1 to IRS Forms 1065 for both Condor II and Damian Partners, for the tax year ending 2003, have been prepared and reflect the fraudulent, inflated NAVs calculated by Fine and Boyle. Upon information and belief, KS Advisors



is poised to send Condor II and Damian Partners investors these false Schedules K-1 for the 2003 tax year.

**C. Roles of Boyle and Fine**

24. Boyle and Fine, as president and vice president of KS Advisors, respectively, are responsible for the day to day management of KS Advisors. As investment managers of Condor II and Damian Partners, and signatories over their bank and brokerage accounts, Boyle and Fine make all investment decisions for the hedge funds and exercise control over the use and disposition of investors' funds.

25. Boyle and Fine prepare the monthly NAVs for the two hedge funds and directly communicate via e-mail with investors. Boyle and Fine further calculate and charge KS Advisors' monthly management fee based upon the inflated, fictitious returns reported to investors. Boyle and Fine have directed others at KS Advisors to calculate and charge Condor II and Damian Partners illegal commissions, reflected as an "advisory fee" on KS Advisors' books but undisclosed to investors.

**V. CLAIMS FOR RELIEF**

**COUNT I**

**Fraud in Violation of Section 17(a)(1) of the Securities Act**

26. The Commission repeats and realleges Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Since a date unknown but at least since October 2000 through the present as to Defendants KS Advisors, Condor II, Fine and Boyle, and since March 2002 through the present as to Defendant Damian Partners, Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, have been knowingly, willfully or recklessly employing devices, schemes or artifices to defraud.

28. By reason of the foregoing, Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT II**

**Fraud in Violation of Section 10(b) of the Exchange Act  
and Rule 10b-5 Promulgated Thereunder**

29. The Commission repeats and realleges Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

30. Since a date unknown but at least since October 2000 through the present as to Defendants KS Advisors, Condor II, Fine and Boyle, and since March 2002 through the present as to Defendant Damian Partners, Defendants, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in

connection with the purchase or sale of securities, have been knowingly, willfully or recklessly: (a) employing devices, schemes or artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaging in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

31. By reason of the foregoing, Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle, directly or indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

### **COUNT III**

#### **Fraud in Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act**

32. The Commission repeats and realleges Paragraphs 1 through 25 of its Complaint as if fully set forth herein.

33. Since a date unknown but at least since October 2000 through the present as to Defendants KS Advisors, Condor II, Fine and Boyle, and since March 2002 through the present as to Defendant Damian Partners, Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, have been: (a) obtaining money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances

under which they were made, not misleading; and/or (b) engaging in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

34. By reason of the foregoing, Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).

#### **COUNT IV**

##### **Fraud in Violation of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940**

##### **(As Against Defendants KS Advisors, Fine and Boyle Only)**

35. The Commission repeats and realleges Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

36. Since a date unknown but at least since October 2000 through the present, Defendants KS Advisors, Fine and Boyle, by use of the mails, and the means and instrumentality of interstate commerce, directly or indirectly, have knowingly, willfully or recklessly: (i) employed devices, schemes or artifices to defraud their clients or prospective clients; and (ii) engaged in transactions, practices and courses of business which have operated as a fraud or deceit upon their clients or prospective clients.

37. By reason of the foregoing, Defendants KS Advisors, Fine and Boyle violated and, unless enjoined, will continue to violate, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

## **VI. RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

### **I. Declaratory Relief**

Declare, determine and find that Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle committed the violations of the federal securities laws alleged in this Complaint.

### **II. Temporary Restraining Order, Preliminary and Permanent Injunctive Relief**

Issue a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction, restraining and enjoining Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: (a) Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a); (b) Sections 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3); (c) Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder; and (d) as to Defendants KS Advisors, Fine and Boyle, Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

### **III. Disgorgement**

Issue an Order requiring Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle to disgorge all ill-gotten profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

### **IV. Penalties**

Issue an Order directing Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3) and, as to Defendants KS Advisors, Fine and Boyle, pursuant to Section 209(e) of the Advisers Act, 15 U.S.C. §§ 80b-9.

### **V. Asset Freeze and Accounting**

Issue an Order freezing the assets of Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle until further Order of the Court, and requiring sworn accountings from each of them from each Defendant.

### **VI. Appointment of Receiver**

Issue an Order appointing a Receiver over the assets of KS Advisors, Condor II and Damian Partners, to marshal and safeguard all of said assets, to perform any other duties the Court deems appropriate, and to prepare a report to the Court and the Commission detailing the activities of these companies, and the whereabouts of investor funds.

**VII. Records Preservation and Expedited Discovery**

Issue an Order requiring Defendants KS Advisors, Condor II, Damian Partners, Fine and Boyle to preserve any records related to the subject matter of this lawsuit that are in their custody, possession or subject to their control, and to respond to discovery on an expedited basis.

**VIII. Further Relief**

Grant such other and further relief as may be necessary and appropriate.

**IX. Retention of Jurisdiction**

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: February 26, 2004

Respectfully submitted,

By:



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