

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**STEPHEN X. KIM and SPYGLASS  
MANAGEMENT, L.P.,**

**Defendants.**

C.A. No. \_\_ - \_\_\_\_

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendants Stephen X. Kim (“Kim”) and Spyglass Management, L.P. (“Spyglass Management”) (collectively, the “Defendants”), alleges as follows:

**I.  
INTRODUCTION**

1. This matter involves a scheme by Stephen Kim to defraud investors in Spyglass Capital Partners, L.P. (“Spyglass Partners” or the “fund”), a pooled investment vehicle or “hedge fund” managed by Kim through Spyglass Management.

2. Between 2004 and 2006, Kim raised approximately \$4.7 million from investors located primarily in Texas using offering materials that contained misleading information relating to Kim’s education and business backgrounds.

3. From the outset, after raising capital from investors, Spyglass Management lost a significant amount of those funds through trading. Rather than report the losses, Kim had

Spyglass Partners produce investor statements that showed that the fund was profitable. In addition, Spyglass Management provided false forms to investors and the IRS showing income for the 2004 tax year, when in fact Spyglass Partners had incurred significant losses.

4. In 2005, Spyglass Management began making Ponzi payments to its investors in order to obtain additional funds and to lure capital from new investors. And, through 2006, Kim and Spyglass Management repeatedly made false statements to investors concerning the valuation and profitability of Spyglass Partners' investment activities.

5. By reason of the foregoing, the Defendants violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]. The Commission, in the interest of protecting the public from any further violations of the federal securities laws, brings this action against the Defendants seeking permanent injunctive relief.

## **II.** **JURISDICTION AND VENUE**

6. The Commission brings this action under Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209 of the Advisers Act [15 U.S.C. § 80b-9], seeking to restrain and enjoin permanently the Defendants from engaging in the acts, practices and courses of business alleged herein.

7. This Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

8. The Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business described in this Complaint.

9. Venue is proper because the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Southern District of Texas.

### **III. DEFENDANTS**

10. **Spyglass Management, L.P.**, is a Nevada limited partnership based in Houston, Texas, which is currently registered with the Commission as an investment adviser. Spyglass Management served as the investment adviser to Spyglass Partners from 2004 through 2007.

11. **Stephen X. Kim**, age 38, resides in Houston, Texas. Kim is the sole owner of Spyglass Holdings, LLC, which is the general partner of Spyglass Management. Kim served as the sole investment officer of Spyglass Management. Kim was a registered representative with various FINRA broker-dealers from 1993 to 1996 and 2001 to 2003. He was self-employed as a day-trader from 1996 to 2001 and 2003 to 2004.

### **IV. RELATED ENTITY**

12. **Spyglass Capital Partners, L.P.**, is a Nevada limited partnership formed by Kim on November 20, 2003. Spyglass Management directed, managed, and controlled Spyglass Partners until 2007, when the limited partners replaced Spyglass Management as the managing general partner.

### **V. STATEMENT OF FACTS**

13. Stephen Kim formed Spyglass Partners in 2003 to operate as a private pooled

investment vehicle or hedge fund, and formed Spyglass Management to manage the fund. Spyglass Management voluntarily registered with the Commission as an investment adviser in February 2006.

14. In late 2004, Spyglass Partners, through Kim, raised approximately \$4.7 million from investors primarily located in Houston, Texas.

15. Kim represented to investors that Spyglass Partners would employ an investment strategy of trading Collateralized Mortgage Obligations (“CMO”), primarily Reverse Interest-Only CMOs. Kim claimed that Spyglass Partners would seek to capture the leveraged income streams from CMOs through a buy and hold strategy. Kim’s entire trading strategy was based on the premise that interest rates, which were at historical lows, would rise.

16. Although the offering materials for Spyglass Partners did disclose that this trading strategy involved some level of risk, it represented that these risks would be managed by a “dynamic hedging strategy” that would protect the fund from any significant fall in interest rates.

### **MISPREPRESENTATIONS**

17. In offering materials and personal sales pitches for the fund, Kim portrayed himself as a successful businessman who had gained significant personal wealth through personal securities trading. In reality, Kim was simply a day-trader who lost money.

18. The offering materials represented that Kim had degrees in finance and economics from the University of Texas, and that he had 12 years of experience in the securities industry with several well-known brokerage firms. Although Kim had a degree in economics from the University of Texas, he did not have a finance degree. Furthermore, his so-called industry experience was primarily as a lower-level securities representative. And, Kim failed to disclose that one of the brokerage firms listed in his biography had terminated Kim for engaging

in unauthorized trading.

19. Kim claimed that, in addition to employing a dynamic hedging strategy, Spyglass Partners would limit its risk by purchasing and holding government-issued instruments.

20. In addition, Kim told investors and potential investors that he would not take any compensation until investors in Spyglass Partners received a one-hundred percent return of their original investment.

#### **2004 TRADING LOSSES**

21. From its inception, Spyglass Partners lost money on its trading. Contrary to written and oral representations, Spyglass Management failed to employ a hedging strategy to limit losses.

22. Kim and Spyglass Management also directed the fund to enter into highly leveraged and speculative repurchase and reverse repurchase agreements.

23. After several months of trading CMOs and highly-leveraged repurchase agreements, the fund had incurred losses of approximately \$2.3 million.

24. Instead of reporting these losses, Kim had Spyglass Management send false reports to investors that showed gains for the fund.

25. To sustain the fraud, Kim provided false information to Spyglass Management's accountants, which resulted in the filing of false forms K-1 and 1065 with the IRS that showed false profits instead losses for 2004.

#### **2005 PONZI PAYMENTS AND THE COLLAPSE OF THE FRAUD**

26. In early 2005, Kim directed Spyglass Partners to make approximately \$1.7 million in Ponzi payments to its investors. \$977,000 of these Ponzi payments were reinvested in the fund. In addition, several investors invested additional principal in the fund, and referred

new investors to the fund.

27. In or around June 2005, Kim sent an update to investors claiming that, due to market volatility, Spyglass Partners would not be making any additional distributions of profits. Nevertheless, Kim continued to have Spyglass Management send false reports to investors indicating that the fund was profitable.

28. In 2006, however, Kim misappropriated approximately \$1.5 million of the fund's remaining assets to repay several outstanding personal obligations.

29. Later in 2006, Kim abandoned Spyglass Partners and attempted to recoup investor losses through other business ventures.

30. In November 2006, after the investors became aware of Kim's other business ventures and the dearth of information concerning the fund, Kim had Spyglass Management produce a false statement valuing the fund at \$1.9 million, when in reality the fund only had approximately \$1,000.

## **VI. CLAIMS**

### **FIRST CLAIM FOR RELIEF Violations of Section 17(a) of the Securities Act**

31. Paragraphs 1 through 31 are realleged and incorporated by reference as if fully set forth herein.

32. Between 2004 and 2007, the Defendants, in the offer and sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by the use of the mails, directly and indirectly, have:

(a) employed devices, schemes and artifices to defraud.

(b) obtained money and property by means of untrue statements of material fact or

omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in transactions, practices or courses of business which operate as a fraud and deceit upon their investors.

33. The Defendants knew or were reckless in not knowing that the representations and omissions set forth herein were false and misleading.

34. By reason of the activities described herein, the Defendants Kim and Spyglass Management violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**SECOND CLAIM FOR RELIEF**  
**Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

35. Paragraphs 1 through 31 are realleged and incorporated by reference as if fully set forth herein.

36. Defendants, by engaging in the conduct described above, directly and indirectly, in connection with the purchase and sale of securities, and by use of the means and instrumentalities of interstate commerce and of the mails, have:

(a) employed devices, schemes and artifices to defraud;

(b) made untrue statements of material facts and omitted 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

(c) engaged in acts, practices or courses of business that have operated or will operate as a fraud and deceit upon other persons.

37. Defendants intentionally, knowingly or recklessly made the untrue statements and

omissions and engaged in the devices, schemes, artifices, transactions, acts, practices and courses of business described above.

38. By reason of the foregoing acts and practices, the Defendants Kim and Spyglass Management 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 thereunder [17 C.F.R. § 240.10b-5].

**THIRD CLAIM FOR RELIEF**  
**Violations of Sections 206(1) and 206(2) of the Advisers Act**

39. Paragraphs 1 through 31 are realleged and incorporated by reference as if fully set forth herein.

40. Between 2004 and 2007, the Defendants, both investment advisers, directly or indirectly, singly or in concert, by the use of the means or instruments of transportation or communication in interstate commerce, or of the mails, have employed and are employing devices, schemes and artifices to defraud Spyglass Partners' investors, and have engaged and are engaging in transactions, practices and courses of business which operate as fraud and deceit upon these investors.

41. The Defendants knew or were reckless in not knowing that the representations and omissions set forth herein were false and misleading.

42. By reason of the activities described herein, Defendants Kim and Spyglass Management 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)].

**VII.**  
**REQUEST FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that the Court enter a final

judgment:

A. permanently enjoining Defendants Kim and Spyglass Management, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], 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 Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)];

B. ordering Defendants Kim and Spyglass Management to each pay civil penalties pursuant to Exchange Act Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]; and

C. granting such other relief as may be necessary and appropriate.

Dated this 11th day of March, 2010.

Respectfully submitted,

*s/Toby M. Galloway*

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