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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**U.S. SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

KIK INTERACTIVE INC.

Defendant.

Case No. 19-cv-5244

Jury Trial Demanded

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the “SEC”) alleges as follows against Defendant Kik Interactive Inc. (“Kik”):

SUMMARY

1. From May to September 2017, Kik offered and sold one trillion digital tokens called “Kin.” More than 10,000 investors worldwide purchased Kin for approximately \$100 million in U.S. dollars and digital assets – over half of this sum coming from investors located in the United States. However, Kik’s offer and sale of Kin was not registered with the SEC, and investors did not receive the disclosures required by the federal securities laws.

2. Congress enacted the Securities Act of 1933 to regulate the offer and sale of securities. In contrast to ordinary commerce, which often operates under the principle of *caveat emptor*, Congress enacted a regime of full and fair disclosure, requiring those who offer and sell securities to

the investing public to provide sufficient, accurate information to allow investors to make informed decisions before they invest. Such disclosure is ordinarily provided in a “registration statement,” which provides public investors with financial and managerial information about the issuer of the securities, details about the terms of the securities offering, the proposed use of investor proceeds, and an analysis of the risks and material trends that would affect the enterprise.

3. Section 5(a) of the Securities Act [15 U.S.C. § 77e(a)] provides that, unless a registration statement is in effect as to a security or an exemption from registration applies, it is unlawful for any person, directly or indirectly, to sell securities in interstate commerce. Section 5(c) of the Securities Act [15 U.S.C. § 77e(c)] provides a similar prohibition against offers to sell or offers to buy, unless a registration statement has been filed or an exemption from registration applies. Thus, Sections 5(a) and 5(c) of the Securities Act prohibit the unregistered offer or sale of securities in interstate commerce absent an exemption.

4. The definition of “security” includes a range of investment vehicles, including stocks, bonds, and “investment contracts.” Investment contracts are transactions where an individual invests money in a common enterprise and reasonably expects profits to be derived from the entrepreneurial or managerial efforts of others. In a variety of circumstances, courts have found that investment vehicles other than stocks and bonds constitute investment contracts, including interests in orange groves, animal breeding programs, railroads, airplanes, mobile phones, and enterprises existing only on the Internet. As the Supreme Court of the United States has noted, Congress defined security broadly to embody a “flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.”

5. Kik, a private Canadian company founded in 2009, owns and operates a mobile messaging application called Kik Messenger. Despite Kik Messenger’s initial success and the

company's receipt of venture capital funding, Kik's costs have always far outpaced its revenues, and the company has never been profitable.

6. In late 2016 and early 2017, Kik faced a crisis. Fewer and fewer people were using Kik Messenger. The company expected to run out of cash to fund its operations by the end of 2017, but its revenues were insignificant, and executives had no realistic plan to increase revenues through its existing operations. In late 2016 and early 2017, Kik hired an investment bank to try to sell itself to a larger technology company, but no one was interested.

7. Faced with a shrinking financial "runway," Kik decided to "pivot" to an entirely different business and attempt what a board member called a "hail Mary pass": Kik would offer and sell one trillion digital tokens in return for cash to fund company operations and a speculative new venture.

8. Starting in early 2017, Kik began to devise a plan to offer and sell digital tokens. The plan became public on or about May 25, 2017, when Kik announced the Kin token offering by publishing a "white paper" and issuing press releases, and through a speech by Kik's Chief Executive Officer ("CEO") at a blockchain industry conference in Manhattan. Through these and other outlets, Kik enthusiastically described the Kin offering and Kik's plans to create, develop, and support what Kik called the "Kin Ecosystem," in which, at an unspecified future date (if the project was successful), Kin could be used to buy goods and services.

9. From the initial May 2017 announcement through September 2017, Kik relentlessly pitched Kin and the prospect that Kik's future efforts to develop the Kin Ecosystem would drive an increase in Kin's value. Kik emphasized that only a finite number of tokens would be created and that rising demand for the tokens would cause their value to appreciate. Kik promised that it would spur such demand by dedicating company expertise and resources – including proceeds from Kin sales – to specific, Ecosystem-enhancing projects, including: the redesign of Kik Messenger to

incorporate Kin; the creation of what Kik called a “rewards engine” to compensate companies that fostered Kin transactions; and the implementation of a new, Kin-specific “transaction service” to address flaws in existing blockchain technology. Kik also assured prospective buyers that, following distribution of the tokens, buyers would be able to trade Kin on secondary trading platforms, often described as “exchanges,” enabling conversion of Kin to either a digital asset (*e.g.*, Bitcoin or Ether) or fiat currency (*e.g.*, U.S. dollars).

10. Throughout its Kin promotional campaign, Kik also declared that the company would share with buyers a common interest in profiting from Kin’s success: in addition to selling one trillion tokens through its then-ongoing offering, Kik would create and allocate to itself three trillion Kin tokens over a two-and-a-half-year period. Kik told potential buyers that, by allotting 30 percent of the outstanding supply of Kin to itself, the company would align its financial interests with those of other Kin investors, which would give the company an incentive to take entrepreneurial and managerial steps to increase the demand for the token. And, Kik described Kin as an opportunity for both Kik and early Kin investors to “make a ton of money.”

11. Starting with the May 2017 announcement, Kik offered and sold the one trillion Kin tokens in a single offering aimed at both wealthy investors and the general public.

12. From May to September 2017, Kik offered and sold tokens to professional investment funds and other select, wealthy investors using purchase agreements that Kik called “Simple Agreements for Future Tokens” or “SAFTs.” Kik’s SAFTs entitled purchasers to the future delivery of the Kin that they purchased when they entered into the agreements. Under the SAFTs, investors bought Kin at a discount to the price that the general public would pay, and Kik promised to deliver the tokens pursuant to a schedule, half at the time that it delivered tokens to the general public and half on the one-year anniversary of the first delivery. Kik’s sale of Kin through these purchase agreements was denominated in U.S. dollars, and Kik raised approximately \$49 million.

13. From May through September 2017, Kik also offered Kin to the general public and had public investors sign up for this public sale, even while the company was offering and selling discounted Kin to investment funds and other wealthy investors using its SAFTs. Kik's September 2017 sale of Kin to the general public was denominated in Ether, and Kik received approximately \$50 million worth of this digital asset.

14. On September 26, 2017, Kik delivered to the public investors all of the Kin that they had purchased, and delivered to the investors who bought at a discount through SAFTs half of the tokens they had purchased, pursuant to the contracts' terms.

15. Of the nearly \$100 million in cash and Ether received by Kik, over \$55 million was raised from United States-based investors.

16. Throughout Kik's 2017 offering and sale of Kin, the decentralized economy that Kik had marketed did not exist. In addition, when Kik distributed Kin on September 26, 2017, no one – not even Kik – offered goods or services in return for Kin.

17. On July 25, 2017, approximately seven weeks before Kik started the public sale of Kin, the SEC issued what is often called the "DAO Report." The DAO Report "advise[d] those who would use . . . distributed ledger or blockchain-enabled means for capital raising, to take appropriate steps to ensure compliance with the U.S. federal securities laws," and found that digital assets at issue in that matter were securities. Even prior to the DAO Report, however, Kik had been informed by one of its consultants that the Kin offering was, potentially, an offering of securities that needed to be registered with the SEC and that "unregistered public securities offerings are not legal in the U.S."

18. Under the federal securities laws, Kik offered and sold securities from the initial May 2017 announcement of Kin through September 2017. But, Kik has never filed with the SEC a registration statement for its offer and sale of securities. By failing to prepare and file a registration

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