

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case No. 8:20-cv-00394

KINETIC INVESTMENT GROUP, LLC AND  
MICHAEL SCOTT WILLIAMS,

Defendants, and

KINETIC FUNDS I, LLC,  
KCL SERVICES, LLC D/B/A LENDACY,  
SCIPIO, LLC,  
LF42, LLC,  
EL MORRO FINANCIAL GROUP, LLC, AND  
KIH, INC. F/K/A KINETIC INTERNATIONAL, LLC

Relief Defendants

**DEFENDANTS' AND RELIEF DEFENDANTS' RESPONSE IN OPPOSITION  
TO THE SECURITIES AND EXCHANGE COMMISSION'S EMERGENCY  
MOTIONS AND MEMORANDUMS OF LAW FOR ASSET FREEZE AND OTHER  
RELIEF (DOC. 2) AND FOR APPOINTMENT OF RECEIVER (DOC. 3)**

Defendants Kinetic Investment Group, LLC ("Kinetic Group") and Michael Scott Williams ("Mr. Williams"), and Relief Defendants Kinetic Funds I, LLC ("Kinetic Funds"), KCL Service, LLC d/b/a Lendacy ("Lendacy"), Scipio, LLC ("Scipio"), LF42, LLC ("LF42"), El Morro Financial Group, LLC ("El Morro"), and KIH, Inc., f/k/a Kinetic International, LLC ("KIH")<sup>1</sup>, through undersigned counsel, file this Response in Opposition to the Securities and

---

<sup>1</sup> In this Response, Kinetic Group and Mr. Williams are collectively referred to as "Defendants," and Kinetic Funds, Lendacy, Scipio, LF42, El Morro, and KIH are collectively referred to as "Relief Defendants".

Exchange Commission's Emergency Motions and Memorandums of Law For (1) Asset Freeze And Other Relief ("Freeze Motion") (D.E. 2), and (2) Appointment of Receiver ("Receiver Motion") (D.E. 3) (collectively, the "Motions"), and state:

**I. INTRODUCTION**

The Securities and Exchange Commission (the "SEC") requests extraordinary relief including an overly broad asset freeze and an appointment of a receiver. The SEC, however, falls woefully short in demonstrating that it is entitled to such extraordinary relief, or any relief at all. The SEC's core allegations grossly mischaracterize Defendants' businesses, and are premised on false and misleading claims that Defendants and Relief Defendants made misrepresentations to their investors and misappropriated investor funds.

To magnify the issue, an asset freeze or the appointment of a receiver would cause irreparable harm to Defendants' investors by, among other things, depriving them of necessary monthly dividend payments which certain investors use to support their livelihood, businesses, or charitable organizations. In addition, the SEC's requested relief could cause certain investors to default on their Lendacy loans causing them to suffer negative tax consequences and/or possible fees and penalties.

The effect of such an order imposes immediate liability on Defendants and Relief Defendants by completely freezing every dollar and asset in their names and deprives Defendants of any ability to defend themselves against the Complaint's significant and misguided allegations. Additionally, a freeze of Mr. Williams' personal and business assets will significantly hinder his ability to obtain advice of counsel of his choice to defend himself in a parallel criminal investigation.

Finally, the SEC has failed to demonstrate any genuine urgency sufficient to justify the emergency relief it seeks. It is undisputed that the SEC's investigation of Defendants has been ongoing since May 2019 and has been publicly-known since at least September 2019. The SEC has failed to identify any recent developments, nor any other circumstances which necessitate emergency relief. In fact, Mr. Williams and entities he controlled have not applied for or received any Lendacy loans since April 2019. Defendants have refused to take on additional investors while this investigation is pending and have cooperated with the SEC by producing thousands of documents. More importantly, the SEC has offered no evidence demonstrating Defendants' potential dissipation or transfer of assets.

As detailed more fully below, in light of the SEC's failure to meet its burden of demonstrating a prima facie case of a violation of any securities laws, the irreparable harm an asset freeze or receivership will cause, and the SEC's lack of diligence and invented urgency, the Court should deny the Motions in their entirety.

## **II. FACTUAL BACKGROUND.**

### **A. Mr. Williams Forms Kinetic Funds**

Mr. Williams formed Kinetic Funds in 2012. *See* ¶ 8 of the Declaration of Michael Scott Williams attached hereto as **Exhibit A**. Kinetic Funds operates as a private pooled investment fund that is managed by Kinetic Group. *Id.* Kinetic Funds employs four investment strategies through sub-funds characterized as yield, gold, growth, and inflation. The yield strategy, known as KFYield, has accounted for most Kinetic Funds' securities, holdings, options, and dividends since its inception, and it is the subject of this action. *Id.* Mr. Williams serves as the manager of KFYield. *Id.*

KFYield focuses on income generation through investments in a variety of securities, which can include, among others, stocks, government bonds, corporate bonds, real estate investment trusts (REITS), master limited partnerships (MLPs), preferred shares, and exchange traded funds (ETFs), and cash. *See, e.g.*, Doc. 2-11 at p. 6. KFYield hedges its portfolio by buying and selling listed options. *See* Ex. A at ¶ 15. KFYield utilizes portfolio margin and hedges its positions with put and call options. *Id.* The fund captures dividends and maintains low volatility and low risk, and money invested in KFYield is used to purchase securities consistent with the fund’s stated investment objective. *Id.* at ¶ 12. KFYield may also carry a cash balance. *See* Doc. 2-11 at pp. 7 and 12

Since its inception, Kinetic Funds, through KFYield has successfully generated investors income consistent with its stated objectives and, importantly, it continues to do so today.

**B. The Governing Documents Provide The Manager With Broad Discretion In Investing Funds.**

The governing documents relating to Kinetic Funds and KFYield (i.e., Subscription Agreement and Operating Agreement) give the Managing Member (i.e., Mr. Williams) broad discretion in investing the funds and do not preclude Defendants from using KFYield’s portfolio margin capabilities in doing so.

More specifically, Exhibits B-1 and C-1 to the Kinetic Funds I, LLC Operating Agreement state that “[a]ssets in the Fund *include but are not necessarily limited to*, ETFs, stocks, and listed options.” (Doc. 2-11 pp. 6, 11) (emphasis added). Exhibits B-1 and C-1 to the Operating Agreement also explain that “[f]und(s) will trade derivatives, *but may also be invested in individual stocks, components of the indices, cash, and other exchange listed*



*products, in the sole and absolute discretion of the Class A (and Managing) Member, in its sole and absolute discretion, from time to time and at any time.” Id. at pp. 7, 12 (emphasis added).* The investors also agreed that the Managing Member had “sole and absolute discretion” to “make any and all trading decisions[.]” *Id. at pp. 6, 11.* Moreover, in the Subscription Agreement, the investors agreed that the Managing Member “may segregate and manage any portion or all” of the investment “separate and apart from [Kinetic’s] assets, in [his] absolute discretion, including without limitation, by selling or otherwise disposing of such assets of the investor and reinvesting the proceeds there from.” *Id. at p. 18.*

When an investor invests in KFYield, the cash is first deposited into a BMO Harris Bank account held by Kinetic Funds (the “BMO Cash Account”). Ex. A at ¶ 13. After receipt of the investor’s funds, KFYield’s portfolio manager receives notification to purchase securities in the KFYield fund in its account at Interactive Brokers (a registered broker-dealer) in the precise amount of the investment, and to hedge the additional investment. *Id.* The investor’s cash investment may be transferred, if and when deemed necessary, to an account held with Interactive Brokers (a registered broker-dealer) that is used to purchase securities in the full amount of that investor’s cash investment. *Id.*

### **C. Lendacy.**

In 2014, Mr. Williams co-founded Lendacy as private financing company to provide flexible lines of credit and provides an opportunity to assist Kinetic Funds’ clients with their financing needs. *Id. at ¶ 9.* More specifically, Lendacy can provide to accredited investors in Kinetic Fund with a loan or credit line and the accredited investor can use dividends received from their investment in KFYield to pay the interest and principal on their Lendacy loan. *Id.*

Lendacy initially offered financing to KFYield investors who could use income generated from their KFYield portfolios to pay their Lendacy loans, however, Lendacy may also provide a loan and/or credit line to individuals or entities who were not KFYield investors. *Id.* at ¶ 10.<sup>2</sup>

Kelly Locke (“Ms. Locke”), the SEC’s prime witness, managed Lendacy’s operations, and later served as its President and co-owner. *Id.* at ¶ 11. Ms. Locke hired Kelly Pufahl (“Ms. Pufahl”) to be her operations manager. *Id.* Ms. Locke and Ms. Pufahl managed all aspects of Lendacy, including its books, accounting, cash transfers, and reports. *Id.* Ms. Locke approved all Lendacy loans, including the Lendacy loan she granted herself and the loans to Mr. Williams, Scipio, and LF42. *Id.* Mr. Williams did not have management access to Lendacy or its bank accounts until June 2019, following the departure of Ms. Locke and Ms. Pufahl. *Id.*

Contrary to the SEC’s allegations, KFYield investments were never diverted to Lendacy to fund loans to Mr. Williams or any other Lendacy clients. *Id.* at ¶ 12. Instead, money invested in KFYield was used to purchase securities consistent with the fund’s stated investment objective, as well as options to hedge KFYield’s portfolio. *Id.* KFYield purchased securities in an amount equivalent to every dollar invested in KFYield. *Id.* at ¶ 16.

After Lendacy approved a loan application, its President would initiate a transfer from the Kinetic Funds BMO Cash Account to Lendacy’s account at BMO Harris Bank using its portfolio margin capabilities with Interactive Brokers combined with its existing cash balances,

---

<sup>2</sup> The SEC attaches no evidence to its Motions to suggest that Lendacy was (a) marketed to provide loans to only KFYield investors, or (b) was precluded from offering loans to individuals or entities who were not KFYield investors.

not investors' funds. *Id.* at ¶ 14. Lendacy loans were never financed with diverted KFYield investor funds. *Id.* at ¶ 19.<sup>3</sup>

**D. The Loans Identified By The SEC Did Not Come From Investor Funds.**

As a threshold matter, the loans identified in the Freeze Motion did not come from investor funds. Instead, these loans were issued by Lendacy based on Kinetic Funds' use of its portfolio margin capabilities as described above. Thus, the SEC's contention that each of the loans identified in its Freeze Motion are misappropriation of investors' funds is misguided.

Payoff of the relative's mortgage. The SEC's attempt to spin Mr. Williams' alleged payoff of a relative's mortgage in April 2015 into an example of a misappropriation of assets is disingenuous, and the transactions surrounding the payoff of the mortgage were legitimate. In April 2015, Mr. Williams personally invested \$65,000 in Kinetic Funds. *See* Ex. A at ¶ 23. Mr. Williams subsequently applied for and received a Lendacy loan in the amount of \$40,000 in April 2015. *Id.* at ¶ 24. Therefore, this loan is no different than other Lendacy loans made to KFYield investors and other third-parties. Mr. Williams' loan is evidenced by an agreement with Lendacy (Doc. 46), and Mr. Williams is in the process of paying off the loan. Ex. A at ¶ 24. In fact, even Ms. Locke, the President of Lendacy and the SEC's prime witness, testified that this transaction was "legitimate". *See* Doc. No. 2-6 at 96:9-16.

Line of credit issued to LF42. LF42 applied for and received a \$2,550,000 Lendacy line of credit in April 2019. Ex. A at ¶ 25. This line of credit is evidenced by two written

---

<sup>3</sup> Mr. Williams provides a detailed summary of how Kinetic Funds used its portfolio margin capabilities to purchase listed securities in his Declaration. *See* Ex. A, at ¶¶ 12-20

Credit Facility Agreements and Disclosures dated April 15, 2019. *Id.* LF42 is in the process of paying off its Lendacy loans plus interest in full. *Id.*

Loan issued to Mr. Williams to purchase apartment in San Juan, Puerto Rico. Mr. Williams applied for and received a Lendacy loan in the amount of \$1,517,000 in March 2017, which was used to purchase an apartment in San Juan, Puerto Rico. Ex. A at ¶ 26. This loan is evidenced by a Credit Facility Agreement and Disclosure dated March 23, 2017. In exchange for this loan, Mr. Williams pledged the property purchased and his future payout from the sale of Silexx Financial Systems, LLC (“Silexx”) which was expected to be a greater amount than his Lendacy loan. *Id.* After the first installment payment from the sale of Silexx in 2017, Mr. Williams invested \$1,500,000 into the fund and to secure the loan. *Id.* Mr. Williams is in the process of paying off this loan. *Id.*

Loan issued to Scipio to purchase historic bank building. Scipio applied for and received a Lendacy loan in the amount of \$2,755,000 in May 2018. *Id.* at ¶ 27. This loan was used to purchase a historic bank building in Old San Juan, Puerto Rico. This loan is evidenced by a Credit Facility Agreement and Disclosure dated May 4, 2018. *Id.* In exchange for this loan, Scipio forwarded to Lendacy a clear and free title purchase agreement of the property to collateralize the loan and believed that it was accomplished. *Id.* Scipio is in the process of paying off this loan. *Id.*

**E. Defendants Have Complied With The SEC’s Instructions To Refuse Investors’ Redemption Requests.**

Prior to 2019, Kinetic Funds timely honored all redemption requests by its investors in accordance with the terms of the applicable Kinetic Funds subscription documentation. Ex. A at ¶ 29. In May 2019, shortly after the SEC issued its investigative subpoenas—but prior to

Defendants’ production of any documents—Mr. Williams was contacted by a Kinetic Funds’ investor who told him that an SEC employee contacted the investor to inquire into alleged problems with Kinetic and the investor’s account. *Id.* at ¶ 30. The call understandably concerned the investor, who subsequently made a redemption request from Kinetic Funds. *Id.* Kinetic Funds redeemed 100% of that investor’s investment. *Id.*

Shortly thereafter, the SEC requested that Kinetic Funds no longer honor redemption requests until its investigation concluded. *Id.* ¶ 31. Defendants have followed the SEC’s instructions to not honor redemption requests from the date the SEC’s request was made.

**F. Mr. Williams Has Been Informed That There Is A Pending Parallel Investigation.**

Mr. Williams has been informed by the United States Department of Justice that there is a pending parallel investigation into matters arising out of the SEC’s allegations in its Complaint and Motions. This investigation has been reported on by the local press in Puerto Rico beginning as early as September 2019. *See* Ex. A at ¶ 4.

**III. ARGUMENT**

**A. The SEC Has Not Made A Prima Facie Case Showing That Defendants Violated Any Securities Laws.**

To obtain an asset freeze order, the SEC must make a “prima facie case, i.e., has presented sufficient evidence to withstand a directed verdict motion,” showing that the Defendants violated the securities laws. *SEC v. Founding Partners Capital Mgmt.*, No. 2:09-CV-229-FTM-29SPC, 2009 WL 10669238, at \*3 (M.D. Fla. May 7, 2009).

Here, the SEC claims that Defendants violated Section 17(a)(2) of the Securities Act, Section 10(b) and Rule 10b-5 of the Exchange Act, and the antifraud provisions of the

Advisor's Act (collectively, the "Securities Laws") by allegedly (1) misrepresenting to "investors that KFYield would invest in U.S. listed financial products and hedge at least 90% of those holdings using listed options," and (2) directing the transfer of KFYield assets to Defendants and Relief Defendants through Lendacy loans. *See e.g.*, Doc. 2 at p. 19. To make a prima facie case showing that Defendants violated the Securities Laws, the SEC must present evidence Defendants made a false statement or omission of material fact, with scienter, in connection with the purchase or sale of a security. *See, generally, SEC v. Merchant Capital, LLC*, 483 F.3d 747, 766 (11th Cir. 2007); *SEC v. Morgan Keegan & Co., Inc.*, 678 F.3d 1233, 1244 (11th Cir. 2012). Here, the SEC fails to show that Defendants made any false statements in connection with Kinetic Funds or KFYield and, therefore, this Court should deny the Motions.

As explained in Section II(A), *supra*, Lendacy loans were financed using KFYield's portfolio margin capabilities, not investors' cash investments. Indeed, Anadi Guar, Kinetic Funds' Financial Engineer and Trade Manager, confirmed that if \$1 million is invested in KFYield and received in the BMO Cash Account, Kinetic Funds increased its portfolio of securities using portfolio margin by \$1 million with the purchase of U.S. listed securities, regardless of whether that investor applied for and was issued a Lendacy loan. *See* Ex. 39 to Freeze Motion at 289:6-10. The governing subscription documents afforded Defendants with broad discretion in the use of KFYield's assets and did not preclude Defendants from using KFYield's portfolio margin capabilities to issue Lendacy loans. In short, investor monies were not improperly diverted to fund Lendacy loans as the SEC alleges. Again, neither Kinetic

Funds nor Lendacy ever represented to potential investors in the KFYield funds that Lendacy's lending business was available exclusively to KFYield investors.

Moreover, none of the alleged improper Lendacy loans identified by the SEC in its Freeze Motion constitute a misappropriation of investors' funds because investors' cash investments were not used to fund Lendacy loans. *See* Section II(A) and (C), *supra*. Instead, these transfers were made using Kinetic Funds' portfolio margin capabilities with Interactive Brokers combined with the fund's existing cash balances.

Accordingly, this Court should deny the SEC's Motions because the SEC has failed to make a *prima facie* case showing that Defendants violated any securities laws.

**B. The SEC Has Not Proven Any Risk of Repetition of Dissipation.**

The SEC not only fails to make a *prima facie* case of an alleged violation of the securities laws, but also fails to satisfy its burden to demonstrate a risk of further alleged misconduct.

“[A]n asset freeze is essentially a preliminary injunction and therefore subject to the requirements for preliminary injunctive relief.” *FTC v. Home Assure, LLC*, No. 8:09-CV-547-T-23TBM, 2009 WL 1043956, at \*1 n. 4 (M.D. Fla. Apr. 16, 2009). To obtain a preliminary injunction in the context of alleged securities violations, the SEC must provide, among other things, ““positive proof” that the defendant will likely violate securities laws in the future.” *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 733 (11th Cir. 2005); *see also SEC v. Healthsouth Corp.*, 261 F. Supp. 2d 1298, 1319 (N.D. Ala. 2003) (dissolving an asset freeze because, among other things, the SEC failed to present “evidence of a reasonable likelihood that the alleged wrongs would be repeated.”); *but see, FTC v. IAB Mktg. Assocs., LP*, 972 F. Supp. 2d 1307,

1313 n.3 (S.D. Fla. 2013) (“There does not need to be evidence that assets will likely be dissipated in order to impose an asset freeze.”). The SEC failed to meet its burden.

Here, the SEC merely recites its allegations of alleged past violations and cites Mr. Williams’ alleged control over the Defendants and Relief Defendants as the only basis for their unsupported accusations that a “freeze would prevent the possibility of further dissipation of assets.” (Doc. No. 2, p. 25). Unsupported and speculative accusations of what might occur in the future are not established simply because they are stated. To the contrary, the SEC presents no evidence demonstrating that Defendants engaged in any alleged misappropriation or other purported wrongs since April 2019, and the SEC has presented no evidence that investors are losing money. (Doc. No. 2, p. 14). In fact, Mr. Williams and the other Relief Defendants have taken substantial steps in paying off the loans identified in the Freeze Motion. Moreover, Defendants have complied with the SEC’s instructions to refrain from honoring the investor’s redemption requests by the SEC and cooperated significantly in the SEC’s investigation by producing thousands of documents. Finally, Mr. Williams or any entity under his control has not applied for or received a Lendacy loan since April 2019. *See* Ex. A at ¶ 28.

**C. The SEC Has Not Met Its Burden In Demonstrating That An Asset Freeze Is Warranted For Each Relief Defendant.**

To obtain an asset freeze against a Relief Defendant, the SEC must present sufficient evidence from which a reasonable fact finder could infer that the Relief Defendant “(1) [] received ill-gotten funds, and (2) does not have a legitimate claim to those funds.” *SEC v. Sun Capital, Inc.*, No. 09-CV-29-FTM-29SPC, 2009 WL 1362634, at \*1 (M.D. Fla. May 13, 2009) (citing *SEC v. George*, 426 F.3d 786, 798 (6th Cir. 2005)); *see also SEC v. Nat’l Diamonds Inv. Co.*, No. 9:19-CV-80633, 2019 WL 2583863, at \*6 (S.D. Fla. June 11, 2019) (same). For



the reasons discussed in Section III(A), the SEC cannot show that the monies received by Relief Defendants are “ill-gotten.”

Regardless, even if the SEC put forth a prima facie case that the monies were “ill-gotten,” Mr. Williams, LF42, and Scipio have legitimate claims to the funds transferred to them. “To have no legitimate claims to the funds means, in the securities context, that an individual ‘gave no consideration for the [ill-gotten funds] and thus received them as a gift.’” *Nat’l Diamonds Inv. Co.*, 2019 WL 2583863, at \*7 (quoting *SEC v. Cavanagh*, 155 F.3d 129, 137 (2d Cir. 1998)). “When there has been no consideration given for the receipt of the ill-gotten gains, there is no legitimate claim to the funds and a relief defendant must return the proceeds.” *Id.*

Courts have found that a relief defendant has a legitimate claim to the funds where, as here, it presented evidence that it received the loan proceeds pursuant to a written loan agreement, which gave it certain rights and obligations regarding the proceeds. *See, e.g., Sun Capital*, 2009 WL 1362634, at \*2. Hence, Mr. Williams, Scipio, and LF42 each executed written loan agreements in connection with their Lendacy loans. (Docs. 2-25, 2-26-, 2-27, 2-28). Accordingly, the Court should deny the SEC’s request for an asset freeze.

#### **D. An Asset Freeze Or A Receivership Will Cause Harm To Investors.**

Kinetic Fund and KFYield are presently managed by Anadi Guar who has substantial relevant trading experience with the fund and has been in that position since the Summer of 2017. Ex. A at ¶ 32. A blanket freeze will cause severe harm to investors for several reasons.

First, an asset freeze will create a default risk to investors who obtained Lendacy loans. There are several investors carrying Lendacy loans that rely on monthly dividends to pay the

interest and principal on their Lendacy loans. An asset freeze or the appointment of a receiver would trigger a loan default because they would be unable to use KFYield investment dividends to make their monthly loan payments. Ex. A at ¶ 34.

Second, an asset freeze or receivership would impose an income and tax risk to investors. Many KFYield investors rely on their monthly dividend payments from their investments for, among other things, personal income and/or income for their businesses or charitable organizations. *Id.* at ¶ 35. An asset freeze or receivership would end this revenue stream and trigger negative tax events. *Id.*

Third, an asset freeze would create risk to collateral held in the San Juan bank building purchased by Scipio with its Lendacy loan. The San Juan bank building is a historical project that is very important for the 500<sup>th</sup> anniversary of Old San Juan in 2020. *Id.* at ¶ 36. A mural, art classes, and historical work have started on the building. *Id.* Scipio currently has terms for a construction loan and refinancing, and is in the process of filing for the tax credits. *Id.* However, an asset freeze or a receivership would cease any financing and would essentially destroy both the project and the property's equity value. *Id.* The failure of this important historical project would also be a disappointment to the citizens of Puerto Rico after all of the recent natural disasters. *Id.*

Accordingly, the SEC's Motions should be denied due to the potential harms its requested relief would cause investors.

#### **E. The Scope of the SEC's Requested Asset Freeze Is Overbroad.**

The "power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum would constitute a penalty

assessment.” *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005). Here, the SEC identifies specific sums of money allegedly improperly transferred to each Relief Defendant. Instead of requesting an asset freeze in the specific amount identified, the SEC improperly requests a blanket freeze of all the assets for each Relief Defendant, the Court should deny the SEC’s overbroad attempt to freeze all of the assets of each Relief Defendant. *See, e.g., SEC v. Wyly*, 73 F.Supp.3d 315, 322 (S.D.N.Y. 2014) (concluding that the SEC may not obtain a freeze of relief-defendant assets that “are completely unrelated to any wrongdoing”), *vacated in part on other grounds, SEC v. Wyly*, Case No. 1:10-cv-05760, 2017 WL 4119282 (S.D.N.Y. June 12, 2017).

Moreover, LF42, one of the Relief Defendants, is Mr. Williams’ personal LLC, which he uses to pay for living expenses. It is wholly unrelated to Kinetic. The SEC alleges that LF42 received an improper loan from Lendacy. Even if the loan was improper—which it was not—Mr. Williams is in the process of paying back \$2.5 million loan transferred to LF42. Therefore, the Court should deny the SEC’s overbroad request to freeze all of the assets of LF42.

**F. The SEC Has Failed To Show A Receiver Is Needed On An Emergency Basis.**

A court may appoint a receiver as part of its “broad power to remedy violations of federal securities laws.” *SEC v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010).<sup>4</sup> The purpose of

---

<sup>4</sup> As an initial matter, the Court should deny the SEC’s request for a receiver because, as discussed above, the SEC failed to establish a prima facie case of fraud. *See, e.g., SEC v. Morgan*, Case No. 1:19-cv-00661, 2019 WL 2385395, at \*12 (W.D.N.Y. June 5, 2019) (declining to appoint receiver for a particular entity where the SEC failed to establish that that entity made material misrepresentations); *SEC v. Petrofunds, Inc.*, 414 F.Supp. 1191 (S.D.N.Y. 1976) (declining to appoint a receiver when, among other things, the defendants countered the

appointing a receiver is to “prevent a diversion or waste of assets to the detriment of those for whose benefit...[the] injunctive action is being brought.” *SEC v. Universal Express, Inc.*, Case No. 04 Civ. 2322, 2007 WL 2469452, at \*3 (S.D.N.Y. Aug. 31, 2007) (internal quotation omitted). As discussed in Section III(D) *supra*, appointing a receiver here would have a contrary effect. Instead of benefitting the investors, a receivership would instead jeopardize the investors and would be detrimental to their investments. For this reason alone, the Court should deny the SEC’s request to appoint a receiver. *Petrofunds, Inc.*, 414 F.Supp. at 1197 (declining to appoint a receiver because of, among other things, the potential harmful impact of a receiver on the assets allegedly belonging to public investors); *see also SEC v. Brigadoon Scotch Distributors, Ltd.*, 388 F.Supp. 1288, 1290 (S.D.N.Y. 1975)(declining to impose the “drastic” remedy of a receivership where the expense of a receivership would not only impose an undue burden on the defendants, but could also jeopardize the interests of the public).

Moreover, courts have recognized that the appointment of a receiver is an “extraordinary remedy to be invoked only in cases of necessity and upon a clear showing that an emergency exists,” *Universal Express, Inc.*, 2007 WL 2469452, at \*3 (quoting *SEC v. American Bd. of Trade Inc.*, 645 F.Supp. 1047, 1052 (S.D.N.Y. 1986)) and that an appointment “should not follow requests by the SEC as a matter of course.” *Manor Nursing Ctrs., Inc.*, 458 F.2d at 1105; *see also SEC v. Spence & Green Chemical Co.*, 612 F.2d 896, 903 (5th Cir. 1980) (“[T]he imposition of a receivership on a corporation is a drastic measure....”).

---

SEC’s charges and presented evidence raising sharp factual issues and the SEC declined offer of evidentiary hearing).

No emergency exists here. The underlying investigation has been ongoing since at least May 2019. KFYield is still operating and being managed by Anadi Guar, and dividends are being paid. The last transaction at issue occurred nearly one year ago, and a substantial portion of the Lendacy loans transferred to Mr. Williams or his entities are being repaid. For these reasons, the Court should deny the SEC's request to appoint a receiver.

**G. An Asset Freeze Raises Serious Constitutional Concerns For Mr. Williams' Ability To Obtain Advice Of Counsel In The Pending Investigation.**

The SEC filed the Motions with knowledge of the pending criminal investigation. Freezing Mr. Williams' personal and business assets will significantly hinder his ability to obtain counsel of his choice to defend himself in the parallel criminal investigation.

The Court "may exercise its discretion to forbid or limit payment of living expenses or attorneys' fees out of frozen assets." *F.T.C. v. RCA Credit Servs., LLC*, No. 8:08-cv-2062-T-27MAP, 2008 WL 5428039, at \*4 (M.D. Fla. 2008). However, when an asset freeze may hinder the defendant's ability to obtain counsel of his choosing in a criminal case, the Court must pay "particular attention to the defendant's Fifth and Sixth Amendment rights." *SEC v. Coates*, 1994 WL 455558, at \*3 (S.D.N.Y. Aug. 23, 1994). This is so because "the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment." *Luis v. United States*, 136 S. Ct. 1083, 1088 (2016).

In this circumstance, the SEC bears the burden of making a prima facie case of a securities law violation and providing evidence that the personal assets it seeks to freeze are traceable to the fraudulent conduct alleged in civil case. *Coates*, 1994 WL 455558, at \*4 (citing *U.S. v. Monsanto*, 924 F.2d 1186 (1991)); see also *Commodity Futures Trading Comm'n v. Walsh*, Case No. 09 CV 1749, 2010 WL 882875, at \*2 (S.D.N.Y. Mar. 9, 2010) (holding certain

personal assets shall become available to defendants to pay legal fees in a parallel criminal case “if the Government cannot meet its burden of demonstrating that there is probable cause to believe that those funds are tainted by fraud.”).

Mr. Williams has engaged criminal counsel and a full asset freeze will profoundly affect his ability to retain and receive advice from that counsel. The Court must deny a blanket freeze request on all of Mr. Williams’ assets because the SEC has failed to establish a likelihood success on the merits, as set forth *infra* Section III(A), and has failed to meet its burden of demonstrating that all of Mr. Williams assets are traceable to the purported fraudulent conduct alleged by the SEC. The SEC’s Freeze Motion fails to satisfy its heightened burden to safeguard Mr. Williams’ constitutional rights.

**H. Compelling A Sworn Accounting From Mr. Williams Is Inappropriate Because Of The Pending Criminal Investigation.**

“[C]ompelling an accounting with respect to an individual defendant is inappropriate where there is a parallel criminal proceeding and the defendant has asserted his Fifth Amendment right against self-incrimination.” *Morgan*, 2019 WL 2385395 at \*12; *see also*, *SEC v. Dawson*, Case No. 06-6360, 2007 WL 9711173, \*6 (E.D.N.Y. Feb. 2, 2007) (“[A]n accounting is not appropriate here in light of the fact that Dawson has asserted his Fifth Amendment privilege against self-incrimination and that he appears to have been solely responsible for the operations of the corporations, with the assistance of his wife.”). Here, compelling Mr. Williams to execute a sworn accounting will infringe on his Fifth Amendment privilege against self-incrimination. Accordingly, this Court should deny the SEC’s request that Mr. Williams provide a sworn accounting.

#### IV. CONCLUSION

For the reasons set forth herein, Defendants and Relief Defendants respectfully requests that this Court deny the SEC's Freeze Motion and Receiver Motion in their entirety.

Dated: March 4, 2020

Respectfully submitted,

/s/ Gregory W. Kehoe

Gregory W. Kehoe (FBN 0486140)

[kehoeg@gtlaw.com](mailto:kehoeg@gtlaw.com)

Danielle Kemp (FBN 474355)

[kempd@gtlaw.com](mailto:kempd@gtlaw.com)

Joseph Picone (FBN 118381)

[piconej@gtlaw.com](mailto:piconej@gtlaw.com)

**GREENBERG TRAURIG, P.A.**

101 East Kennedy Blvd., Suite 1900

Tampa, FL 33602

Telephone: (813) 318-5700

Facsimile: (813) 318-5900

/s/ Steven M. Malina

(Pro Hac Vice)

Steven M. Malina

Illinois Bar No. 6196571

**GREENBERG TRAURIG, P.A.**

77 West Wacker Drive

Suite 3100

Chicago, IL 60601

Telephone: (312) 456-8400

Facsimile: (312) 456-8435

[malinas@gtlaw.com](mailto:malinas@gtlaw.com)

*Attorneys for Defendants and Relief  
Defendants*

**CERTIFICATE OF SERVICE**

I CERTIFY that on March 4, 2020 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice to electronic filing to counsel of record.

/s/ Gregory W. Kehoe  
Attorney



**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case No. 8:20-cv-00394

KINETIC INVESTMENT GROUP, LLC AND  
MICHAEL SCOTT WILLIAMS,

Defendants, and

KINETIC FUNDS I, LLC,  
KCL SERVICES, LLC D/B/A LENDACY,  
SCIPIO, LLC,  
LF42, LLC,  
EL MORRO FINANCIAL GROUP, LLC, AND  
KIH, INC. F/K/A KINETIC INTERNATIONAL, LLC

Relief Defendants

---

**DECLARATION OF MICHAEL SCOTT WILLIAMS**

I, Michael Scott Williams, pursuant to 28 U.S.C. § 1746, declare the following:

1. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

2. I make this declaration in support of the Response in Opposition to the Securities and Exchange Commission's (1) Emergency Motion and Memorandum of Law for Asset Freeze and Other Relief ("Freeze Motion"), and (2) Emergency Motion and Memorandum of Law for Appointment of Receiver ("Receiver Motion") (collectively, the "Motions").

3. I am the managing member of Kinetic Investment Group, LLC ("Kinetic Group"), Kinetic Funds I, LLC ("Kinetic Funds"), KCL Services, LLC d/b/a ("Lendacy"), and LF42, LLC

(“LF42”). I am also the President of Scipio, LLC (“Scipio”) and El Morro Financial Group, LLC (“El Morro”), and a shareholder of KIH, Inc. f/k/a Kinetic International, LLC (“KIH”).

4. The SEC has been investigating me and the entities referenced in Paragraph 3 since at least May 2019, when it issued multiple subpoenas. The existence of this investigation including material information from the SEC subpoenas were leaked to the press who have been reporting it since at least September 2019. Attached hereto as **Exhibit 1** is a true and correct copy of the *Latino Rebels*’ article “Feds Investigate Businessman Managing Puerto Rico Government Agency Investments”, published on September 25, 2019.

5. In 2019, the Defendants and Relief Defendants provided more than ten thousand pages of documents to the SEC relating to me, Kinetic Group, Kinetic Funds, Lendacy, LF42, Scipio, El Morro, and KIH.

6. I am informed the United States Department of Justice is conducting a parallel pending investigation into matters arising out of the SEC’s allegations in its Complaint and Motions.

7. The SEC’s core allegations in its Complaint and in the Motions grossly mischaracterize my businesses and are premised on the false claim that I misappropriated investor funds or made misrepresentations to investors.

8. Kinetic Funds was formed in 2012 and operates as a private pooled investment fund that is managed by Kinetic Group. Kinetic Funds employs four investment strategies through sub-funds characterized as yield, gold, growth, and inflation. The yield strategy, known as KFYield, has accounted for most Kinetic Funds’ equity investments since its inception, and it is the subject of this action. I am the manager of KFYield. I also have an investment over \$1,500,000 in the

KFYield fund. The investment was made from the proceeds from selling my company Silexx Financial Systems, LLC ("Silexx") in 2017.

9. In 2014, I co-founded Lendacy as a private financing company to provide its clients with flexible lines of credit. An accredited investor in the investment fund can use dividends he or she receives from their investment in KFYield to pay the interest and principal on their Lendacy loan.

10. Most, but not all, Lendacy clients were or are investors in KFYield. Lendacy, however, can provide loans to anyone. Lendacy choose to focus on marketing the flexible credit line solutions with Kinetic Funds, because of the ability to utilize dividends to pay the Lendacy loans. The dividends typically yield a higher interest than the loan interest, allowing a borrower to pay both interest and principal if they choose to.

11. Kelly Locke was the Director of Lendacy, managed its operations, and later served as the President of Lendacy and co-owner. Ms. Locke hired Kelly Pufahl to be her operations manager. Ms. Locke and Ms. Pufahl managed all aspects of Lendacy, including its books, accounting, cash transfers, and reports. Ms. Locke also managed the marketing, hiring, engagement of sales representatives, and obtaining software and services needed to support Lendacy. I did not have management access to Lendacy and was not able to view the bank accounts until June 2019. At no time, while Lendacy was managed by Ms. Locke or Ms. Pufahl, did I initiate the transfer monies to or from Lendacy. I believe Ms. Locke approved all Lendacy loans during her tenure, including the Lendacy loans she granted herself and the loans to me, Scipio, and LF42. Ms. Locke was never an investor in KFYield and never put up any collateral to support her Lendacy loans.



**Investors' Funds Were Used To Purchase Listed Securities**

12. Contrary to the SEC's allegations in its Complaint and Motions, KFYield investor monies were never diverted to Lendacy to fund loans to me or other Lendacy clients. Fund money was held in cash and securities and/or with Interactive Broker's, as stated in the Kinetic fund documents. Every time an investment of money was deposited into the fund's bank account, the trading operation was notified and increased their securities and options purchases (hedges) to generate dividend income that was targeted at 5.5%. Monies invested in the fund would either remain in cash (as stated) or transferred if/when necessary to the brokerage firm to increase the portfolio positions. Money invested in KFYield was used to purchase securities consistent with the fund's stated investment objective, as well as options to hedge KFYield's portfolio.

13. An investor's cash investment in KFYield was deposited into the fund's cash account at BMO Harris Bank (the "BMO Cash Account"). After receipt on an investor's funds, KFYield's portfolio manager received a transaction confirmation which served as notice to purchase securities in the KFYield fund in its account at Interactive Brokers (a registered broker-dealer) in the precise amount of the investment, and to hedge the additional investment. The BMO Cash Account for the fund maintains cash balances and when, if needed or requested, by the trading operation, cash would be transferred to the account held at Interactive Brokers. Cash is a permissible holding of KFYield as stated in the governing subscription agreements. *See* Exhibit 7 of the Freeze Motion at pp. 7 and 12. Based on preexisting cash balances in the KFYield's Interactive Brokers and BMO Harris accounts, it would not be necessary in all instances to transfer cash in the BMO Cash Account to Interactive Brokers to invest. But, to be clear, investments were made in the KFYield account to match the precise amount of the investor's deposit. This was necessary to maintain the dividend target rate. No investor deposit to the KFYield fund was

diverted. The monies in BMO Cash Account generate interest for the fund and are the fund's monies.

14. After a Lendacy loan application was approved, Ms. Locke or Ms. Pufahl would initiate a transfer from the Kinetic Funds BMO Cash Account to Lendacy's account at BMO Harris Bank. Monies transferred from Kinetic Funds to Lendacy used to issue loans were funded by Kinetic Funds' use of its portfolio margin capabilities with Interactive Brokers combined with its existing cash balances.

15. Portfolio margin is a risk-based margin policy available to qualifying United States investors. The goal of portfolio margin is to align margin requirements with the overall risk of the portfolio. Kinetic Funds utilizes portfolio margin to invest its investors' funds in U.S. listed securities, using options to hedge its positions to capture dividends and maintain low volatility and low risk.

16. Kinetic Funds' portfolio margin capabilities are based on the net investment of the fund. More specifically, Kinetic Funds portfolio margin may increase related to the purchase amount for each dollar invested, if cash remains in the BMO Cash Account. For example, if the investors collectively made a \$10 million investment in Kinetic Funds, the fund would purchase a \$10 million portfolio of U.S. listed securities with Interactive Brokers using a combination of investment capital and portfolio margin. As stated in the governing documents related to Kinetic Funds and KFYield executed by the investors (i.e., the Operating Agreements), KFYield maintained Risk Based Margin at 25% (or 75% to equity ratio). *See* Exhibit 7 of the Freeze Motion at pp. 7 and 12. The fund utilizes the portfolio margin up to 25%.

17. Every time an investment is made in Kinetic Funds, Anadi Guar, Kinetic Funds' Financial Engineer and Trade Manager throughout the relevant period to this day, is notified that

capital has been received in the BMO Cash Account. Kinetic Funds does not need to immediately transfer the cash from the BMO Cash Account to the Interactive Brokers Account every time a cash investment is made; instead, Mr. Guar increases the portfolio holdings by the amount of the cash investment. For example, if \$1 million is invested in KFYield and received in the BMO Cash Account, Mr. Guar is notified and increases the portfolio holdings utilizing portfolio margin by \$1 million with the purchase of U.S. listed securities, even if the cash is not transferred. Cash remaining in the funds BMO Cash Account earns interest for the fund.

18. By utilizing portfolio margin and maintaining a hedged position in the market, Lendacy can provide loans from funds in its BMO Cash Account. In effect it is a margin loan that has a low probability to be “called” because the portfolio is always hedged. While Lendacy provided capital to borrowers via their institutional banking account at BMO Harris, the capital provided to Lendacy was created from the portfolio margin provided by Interactive Brokers. In order to maintain cash at the fund’s bank account at BMO and/or to provide loans to Lendacy, portfolio margin was utilized by Interactive Broker. As stated in the Disclaimer, the fund maintains a Risk Base Haircut (RBH Margin) of 25%, this provides the fund to maintain cash balances in the BMO bank account. *See* Exhibit 7 of the Freeze Motion at pp. 7 and 12.

19. Accordingly, investor monies were not improperly diverted to fund Lendacy loans as the SEC alleges. To the contrary, Lendacy loans were financed using fund monies, which were made available for use strictly through the use of portfolio margin capabilities.

20. Attached hereto as **Exhibit 2** is a true and correct copy of a summary of net investments made into KFYield Fund, equity and option purchases, and portfolio margin. This summary is based on documentation received from Interactive Brokers.



21. As reflected in Exhibit 2, interest paid on Lendacy loans was transferred to KFYield.

**The Loans Identified By The SEC Did Not Come From Investor Funds.**

22. The loans to me or entities under my control identified by the SEC on pages 12 through 14 of its Freeze Motion were not funded with investors' monies. Instead, these transfers were made using Kinetic Funds' portfolio margin capabilities with Interactive Brokers combined with the fund's existing cash balances, as described above. In addition, loans to me and an entity under my control are in the process of being paid back.

23. I personally invested \$65,000 of my own money into KFYield in April 2015<sup>True</sup> and correct copies of the executed Class C Member Addendum and Subscription Agreement are attached hereto as **Composite Exhibit 3.**<sup>1</sup> In addition, I personally invested \$1.5 million in KFYield in May 2018, from the subsequent sale of the software company I co-founded, Silexx. This substantial investment remains in KFYield as of the date of this Declaration, and I will not attempt to redeem the investment during the pendency of these proceedings. My total investment in the fund exceed \$1.6m

24. I applied for and received a Lendacy loan in the amount of \$40,000 in April 2015. This loan is evidenced by a written executed a Credit Facility Agreement and Disclosure pursuant to which I received a \$40,000 Lendacy loan based on my own personal investment in KFYield. A true and correct copy of the Credit Facility Agreement and Disclosure is attached to the SEC's Freeze Motion as Exhibit 46. I am in the process of paying off this loan.

25. LF42 applied for and received a \$2,550,000 in Lendacy credit line in April 2019. This credit line is evidenced by two written Credit Facility Agreements and Disclosures dated

---

<sup>1</sup> KFYield was previously known as GEMINI.

April 15, 2019. True and correct copies of these agreements are attached as Exhibits 23 and 24 to the Freeze Motion. LF42 is in the process of paying off its Lendacy loans plus interest in full.

26. I applied for and received a Lendacy loan in the amount of \$1,517,000 in March 2017. This loan was used to purchase an apartment in San Juan, Puerto Rico. This loan is evidenced by a Credit Facility Agreement and Disclosure dated March 23, 2017. A true and correct copy of this agreement is attached as Exhibit 21 to the Freeze Motion. In exchange for this loan, I over collateralized and pledged the property purchased with clear and free title and my future payout from the sale of Silexx which was expected to be a greater amount than my Lendacy loan. After the first installment payment from the sale of Silexx in 2017, I invested \$1,500,000 into the fund and to secure the loan. Dividends from my investment are being used to pay the interest and principal. I am in the process of paying off this loan.

27. Scipio applied for and received a Lendacy loan in the amount of \$2,755,000 in May 2018. This loan was used to purchase a historic bank building in Old San Juan, Puerto Rico. This loan is evidenced by a Credit Facility Agreement and Disclosure dated May 4, 2018. A true and correct copy of this agreement is attached as Exhibit 22 to the Freeze Motion. In exchange for these loans, Scipio forwarded to Lendacy clear and free title purchase agreement of the property to collateralize the loan and believed that it was accomplished. Scipio is also in the process of repaying its Lendacy loan used to purchase the historic bank building and finance the construction of the project. Scipio is in the process of paying off this loan.

28. I have no Lendacy loan applications pending, I have not and will not apply or take any loan from Lendacy during the pendency of these proceedings, and I have not and will not attempt to access any Lendacy bank account or assets during the pendency of these proceedings.



### **Redemption Requests**

29. Prior to 2019, Kinetic Funds timely honored all redemption requests made by its investors in accordance with the terms of the applicable Kinetic Funds subscription documentation.

30. In May 2019, shortly after the SEC issued an investigative subpoena—but prior to Defendants’ production of any documents—I was contacted by a Kinetic Funds’ investor who advised me that an SEC employee contacted the investor to inquire into alleged problems with Kinetic and the investor’s account. That investor subsequently did make a redemption request, and Kinetic Funds redeemed 100% of that investor’s money.

31. After the article was released later in the year, it triggered several redemption requests. The SEC contacted my counsel to learn of potential redemptions and we provided the redemption request list. We were prepared to honor those redemption requests at year-end and internally approved those received. Shortly thereafter, the SEC requested that Kinetic Funds no longer honor redemption requests until its investigation concluded. KFYield has followed the SEC’s instructions to not honor certain redemption requests made by some Kinetic Funds investors from the date the SEC’s request was made to present and informed the investors of the SEC’s request.

### **An Asset Freeze And The Appointment Of A Receiver Will Harm Investors.**

32. The investments in Kinetic Fund and KFYield are presently managed by Anadi Guar, Kinetic Funds’ Financial Engineer and Trade Engineer, who has substantial relevant trading experience with the fund and has been in that position since the Summer of 2017. Dividends paid to KFYield investors from January 2017 to December 2019 is shown in Exhibit 2 to this Declaration.

33. A blanket freeze on my assets as well as the assets of Kinetic Group, Kinetic Funds, KFYield, and Lendacy will cause severe harm to investors, including me.

34. First, an asset freeze will create a default risk to investors who obtained Lendacy loans. There are several investors carrying Lendacy loans that rely on monthly dividends they receive from their investments in KFYield to pay the interest and principal on their Lendacy loans. An asset freeze or the appointment of a receiver would trigger a default under their Lendacy loans because they would be unable to use dividends from their KFYield investments to make their monthly loan payments, which they rely on.

35. Second, an asset freeze or receivership would impose an income and tax risk to investors. Many KFYield investors rely on their monthly dividend payments from their investments for, among other things, personal income and/or income for their businesses or charitable organizations. An asset freeze or receivership would end this revenue stream and could trigger negative tax events.

36. Third, an asset freeze would create risk to collateral held in the San Juan bank building purchased by Scipio with its Lendacy loan. The San Juan bank building is a historical project that is very important for the 500<sup>th</sup> anniversary of Old San Juan, which is occurring in 2020. A mural, art classes, and historical work have started on the building. Scipio currently has terms for a construction loan and refinancing and is in the process of filing for the tax credits. However, an asset freeze or a receivership would cease any financing for this historical project and would essentially kill the project and the equity value of the property. The failure of this important historical project would also be a disappointment to the citizens of Puerto Rico after all of the recent natural disasters. A summary of the important ongoing events surrounding this historical project is located on the project's website: <https://www.elbancoespanol.org/>.

37. Since I and the Kinetic entities received the SEC's subpoenas, I have not solicited any monies for the fund and Lendacy has not issued any loans. In one case, a current investor sent unsolicited monies to invest (\$400k), which we immediately returned. I have not taken any profit distributions from Kinetic in years and have reinvested monies into the company, including my personal monies made from my software company Silexx. I have worked for Kinetic without taking a salary and believe that my efforts to preserve equity and shareholder value is important for both the investors and partners. I remain diligent in my efforts. Regardless of the impact of an asset freeze would have to me personally, it would cause potential losses and tax consequences to the investors.

**Parallel Investigation And Scope Of Asset Freeze Request**

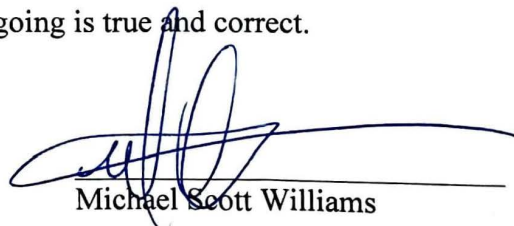
38. The SEC filed its Motions with knowledge of the pending parallel investigation. A freeze of my personal assets will significantly hinder my ability to obtain counsel of my choice to defend myself in the parallel investigation.

39. In addition, the overbroad scope of the Freeze Motion will immediately cripple my ability to defend against the SEC's misguided Complaint. The scope of the SEC's requested blanket asset freeze will (a) make it impossible for me to access any financial resources to defend myself or afford the costs associated with my defense, and (b) eliminate my access to any sources of financial assistance, including the ability to pay for my daily living expenses and needs.

40. LF42 is my personal LLC that I use to pay for living expenses. As described above, LF42 is in the process of paying its Lendacy loans in full.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 3-4-2020

  
Michael Scott Williams



# EXHIBIT 1



CONTACT



MÁS MEJOR



March 4, 2020

## Feds Investigate Businessman Managing Puerto Rico Government Agency Investments

By: [Centro de Periodismo Investigativo](#) SEP 25, 2019 12:25 PM Originally published at [Centro de Periodismo Investigativo](#)



By [Joel Cintrón Arbasetti](#)

**Versión en español [aquí](#).**

**SAN JUAN** — Puerto Rico “is the place to invest in right now, because inefficiency breeds the biggest opportunities,” **said** Michael Scott Williams-King, founder of financial firms Kinetic Funds and Kinetic International.

A native of Michigan, he arrived on the Island five years ago attracted by the incentives the government offered investors. He benefits from Law 20 on the export of services and Law 22 for the transfer of foreign investors to Puerto Rico. Since 2016, he has managed \$18 million in public funds from the State Insurance Fund Corporation (CFSE, in Spanish) and the Automobile Accident Compensation Administration (ACAA, for its initials in Spanish) through Kinetic Funds.

Williams organized an investor **summit** from February 27 to March 1, 2019 at the Vanderbilt Hotel in Condado to present Kinetic International's services. "Why [invest] now? Now is the time as the government is starting to recover from Hurricane Maria, the Opportunity Zones for investing in real estate, we begin to see investments and positive changes," says the event **page**.

The Commissioner of the Office for Financial Institutions (OCIF, in Spanish), George Joyner, was a keynote speaker at the convention. As well as Noel Zamot, who at that time was the Revitalization Coordinator for the Financial Oversight and Management Board for Puerto Rico, and member of the Board of Directors of Kinetic International.

In May, Kinetic International's lawyers informed Joyner that the Securities and Exchange Commission (SEC) was investigating Williams. The SEC is one of the federal agencies that regulates the United States' financial market. Some **common violations** that it looks into include misrepresentation or omission of financial information, manipulation of stock market prices and stealing customers' funds. The SEC can start civil cases or refer them to the courts if it finds criminal action.

The Center Investigative for Journalism (CPI, in Spanish) learned that the Federal Bureau of Investigation (FBI) has also interviewed several people regarding Williams' financial activities.

In November 2016, Williams signed a \$15 million investment contract with the CFSE and another \$2 million with the ACAA through Kinetic Funds I, LLC. Both contracts are valid until 2021. The Commonwealth Employees Association (AEELA, in Spanish) in turn invested \$500,000 on November 29, 2016. Kinetic Funds has about 30 clients including individuals and pension plans in Puerto Rico and the United States.

Documents obtained by the CPI and accounts from three sources indicate that Williams transferred, without authorization, money from Kinetic Funds' investment capital to the account held by KCL Services, another of his companies, from which he withdrew money in the form of loans to finance Kinetic International's personal and operational expenses.

Bank account documents reflect that on March 21, 2017 there was a withdrawal of \$1.5 million from the Kinetic Funds account and a deposit for the exact same amount in the KCL Services account. On Mar. 23, Williams paid \$1,422,325 for a penthouse in Old San Juan. On May 4, 2018 there was a withdrawal of \$2,676,564 from Kinetic Funds and a deposit for the same amount at KCL Services. On the same day, Williams paid \$2.9 million to the Puerto Rico Conservation Trust for the building of the former Banco Español on Tetuán Street in Old San Juan through the SCIPIO, LLC firm, according to what the CPI confirmed in the government Property Registry. Williams is the president and sole member of that company, documents from the State Department show.

*Michael Williams*

"In 2018, Mr. Williams-King and his team acquired the historical building Banco Español in Old San Juan. This ambitious project includes renovating the historic building and commissioning the largest fresco to currently be painted in the world. The project is being filmed for a future documentary," said the Kinetic Financial Summit page.

Other expenses that Williams allegedly paid for with his clients' money include designers, legal services, vacations and the costs of the Kinetic Financial Summit.

Williams told the CPI that he cannot comment on these imputations or on the SEC's investigation.

## Failing to Comply With Law 20

On March 3, 2016, Williams incorporated El Morro Financial Limited Liability company in Puerto Rico, through which he benefits from Law 20. El Morro Financial has as clients KCL Services and SCPIO, both incorporated in Puerto Rico, and Kinetic Investment Group, incorporated in Delaware and with an address in Sarasota, Florida. Williams owns all three companies.

To receive tax exemptions from Law 20 for exports, by providing services to a client, "that client must be based off the island," Manuel Laboy, secretary of the Department of Economic Development and Commerce, said in an interview with the CPI.

Can a company that receives the benefits of Law 20 provide services to a company that is owned by the same person? the CPI asked.

"No, there is an issue there. The transaction has to comply with what they say, that there is no link between A and B. Why? Because what you want is to really generate new money. When this was elaborated in 2012, the idea was to prevent a company from coming to Puerto Rico, which was established or was here, was local, then it sells services to company B, which is in Florida. But that company B in Florida really has some link of economic activity in Puerto Rico. So, if you don't establish that, we may risk what is called a short circuit. That is, I sell services to B that's in Florida, but that one in Florida really has economic ties in Puerto Rico. Therefore, new money never really came, it came from Puerto Rico. There is a circle, you want to avoid that. You want to make sure, so that it is truly exporting, that the money is new, that's what exporting really is," Laboy said.

In the State Department Corporations Registry documents, Williams identifies himself as president, and appears on his LinkedIn account as a partner of El Morro Financial. The company does not have a website and the physical address is the same as Kinetic International, KCL Services and Kinetic Financial Advisors. The CPI called a number several times that is supposed to be for El Morro Financial, according to a document, but no one answered.

If there is an agency like the SEC or the FBI investigating a beneficiary of Law 20 or 22, what action does the Department of Economic Development and Commerce take?, the CPI

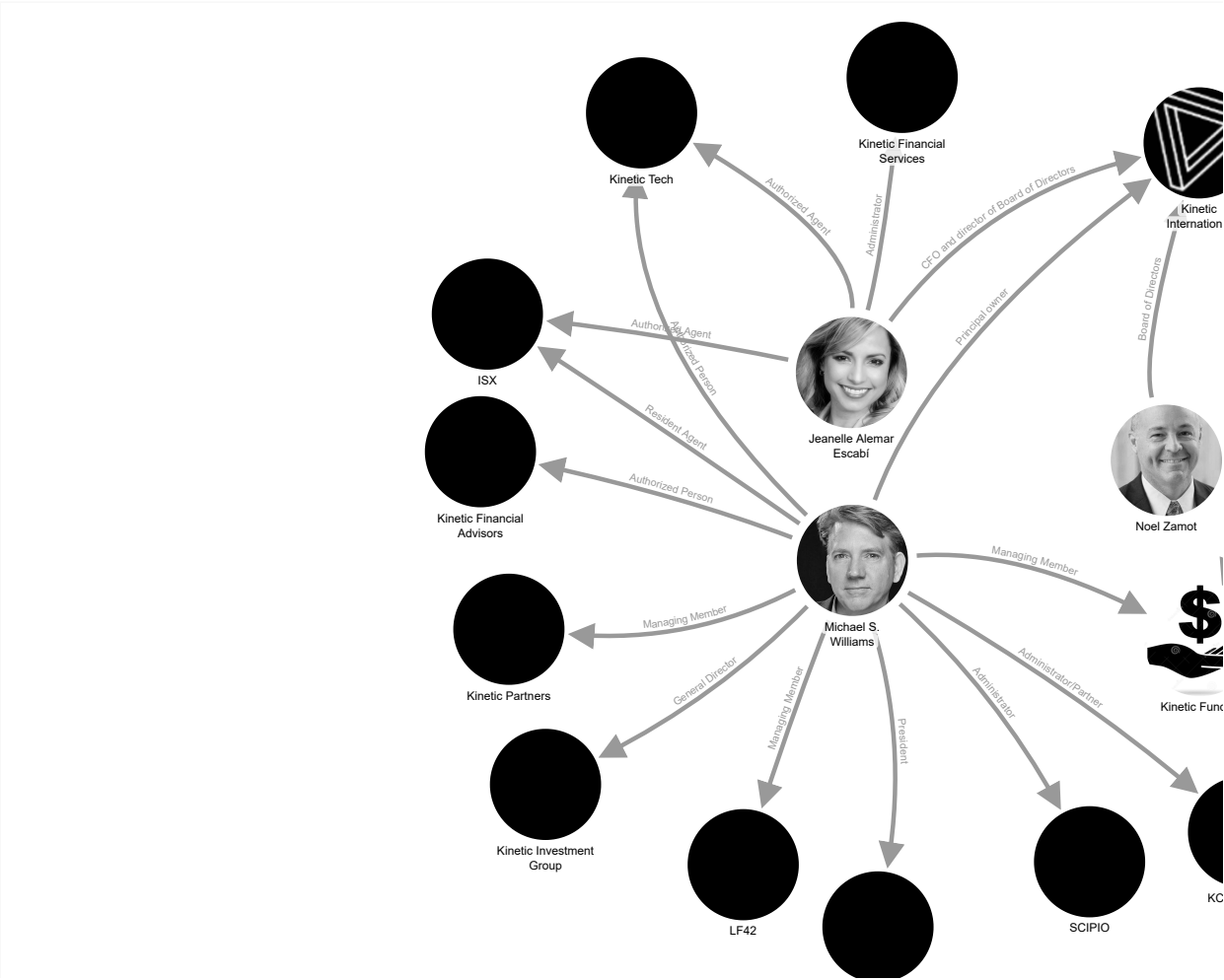
asked Laboy.

“It will depend on the type of investigation and what kind of request they make to us,” he replied.

The Secretary said he doesn’t know Michael Williams or know about Kinetic Funds. He revealed never the less that he made a referral to the FBI about other incentive beneficiaries offered by the DDEC because “we detected strange things.” He added that they have received several requests for information from the FBI and other federal agencies related to investigations of companies and individuals receiving tax incentives in Puerto Rico, but he did not say how many or whom.

Last May the FBI **arrested** executive Gopalkrishna Pai, a beneficiary of Law 20, for bank fraud.

## Michael Williams and Kinetic



## Financial Institutions Commissioner Stays Idle

Joyner has known since May that the SEC is investigating Williams, but his office has not opened an investigation into the investor’s business on the Island. The OCIF **granted** him an



International Financial Entity license for Kinetic International on Jan. 16, 2019. Another Williams company called Kinetic Financial Advisors is **registered** with the OCIF as a financial advisor.

One of the reasons Joyner gave for not investigating the investor is that it was Williams' own lawyers who notified him about the SEC investigation. Another explanation was that the SEC investigation is about Williams' operations in Florida.

Under the CFSE and ACAA contracts, payments from these corporations are sent by checks to the Kinetic Funds address in Florida. Joyner said he didn't know that these two public corporations invested in Kinetic Funds.

The complaint against Williams was filed with the SEC in June 2018. Last May, five of his employees resigned for alleged irregularities in the investor's financial operations. Zamot told the CPI that among the employees who resigned are Michael Sayre, chief technology executive, and James Bishop, chief operating officer of Kinetic International. The CPI learned that Williams employees informed Zamot about the complaint to the SEC involving Kinetic Funds, but when asked about that company, Zamot said, "I don't know any entity with that name."

"At the Board of Directors meeting on May 7, Mr. Williams resigned, of his own will, to his position as CEO [of Kinetic International] to allow working on the matter of Sayre's and Bishop's departure in an open and transparent way. He also resigned from his board positions saying he wanted to focus on personal and other business matters... he resigned from his position to allow the board of directors to address complaints against him, without influencing the process. The OCIF and all relevant entities have been notified," Zamot said.

However, Zamot did not report Williams to the SEC and is still on Kinetic International's Board of Directors with Jeanelle Alemar-Escabí, who serves as director of the Board. Williams remains the majority owner of Kinetic International while heading Kinetic Funds.

Alemar offered legal services to Williams from 2017 until the end of 2018, when Williams invited her to join Kinetic International's board of directors. Since the beginning of May, she has been the company's director of finance, which went from being an international financial entity to a "regular start-up corporation," according to Alemar. State Department documents show Alemar is the administrator of Kinetic Financial Services and the authorized person for Kinetic Tech and ISX, all companies belonging to Williams.

"Neither the entity nor myself have received any notification from federal or state agencies regarding an investigation on Michael Williams," Alemar said.

Williams also appears in at least seven companies registered with the State Department, where he occupies different positions: he is president, manager and the authorized person.

How did you meet Michael Williams?, the CPI asked Zamot.

"In one of several meetings where private entities had questions about Title V," he replied, referring to the section of the PROMESA law that establishes the process for declaring "critical infrastructure projects."

"When the [Kinetic International] company came to present the technology to the investment world, they asked me to be part of the board of directors. I had been previously asked to be a director, but at that time I was working at the [Oversight] Board and I couldn't do that until we got a decision from our ethics advisor... the combination of using technology to ensure transparency in investments in the public sector was something that was very close to my vision and values. That's why I accepted that position, conditioned on the ethics advisor's decision," said Zamot.

The CPI asked Zamot for the result of the ethical consultation and he said that the document was available on the Oversight Board's website, but it was not found. The CPI again asked Zamot for the document, but there was no response. The Oversight Board's public relations officer, José Luis Cedeño, did not respond to a request for the document made to the Oversight Board's ethics advisor, Andrea Bonime-Blanc.

Zamot was appointed as the Oversight Board's Revitalization Coordinator in July 2017 and resigned on March 15, 2019. Days before his resignation was effective, Zamot denounced that the former Governor Ricardo Rosselló's administration hindered the hurricane recovery process to benefit close friends. On March 20, the Oversight Board revealed it submitted information regarding Zamot requested by the Department of Justice.

Why didn't the OCIF open an investigation into Michael Williams?, the CPI asked the Commissioner of Financial Institutions.

"In the normal course of things, if they had not brought us the information about the [SEC's] investigations, we would [have investigated]. If we learn about something from public sources, we call the person concerned and we ask for an explanation. The Office takes affirmative steps when it becomes aware of things that are out in public," Joyner said.

So, when you learned that the SEC is investigating Michael Williams, why wasn't an investigation opened into the two companies he has registered with the OCIF, Kinetic International and Kinetic Funds?, the CPI asked.

"Again, the one that brought us the information of the SEC investigation is Kinetic International itself, through its legal representatives," Joyner replied.

And that prevents you from investigating?

"No, but because they, Kinetic International, were the ones who brought us the information, our response was ok, I know you have a license to operate, come prepared to talk to me about the status of that... what are your future plans. So when they come and show us that they have a problem with the company's main owner or main stakeholder, a controlling person, which is what Michael Williams is, caused by this other investigation that the SEC is doing in Florida but that does not directly impact the Puerto Rico operation,

then [I ask them,] 'what's your plan?' Because right now we are dealing with a voluntary disclosure. It was not that a complaint was filed, but that they are presenting it, that triggers the voluntary liquidation of the license as an international financial entity."

And after that liquidation do you believe that the OCIF has no responsibility to scrutinize Michael Williams even though he is being investigated by the SEC?

"Yes, unless the Florida SEC investigation somehow impacts his businesses in Puerto Rico. But he no longer has a business in Puerto Rico regulated by the OCIF...

Kinetic Funds is registered as a financial advisor at OCIF.

"But we are not the main regulator," Joyner said.

## Williams' Helpers

On July 11, 2018, Williams signed an agreement with The Garffer Group of Legal Advisors (G2LA) for \$5,000 per month. The document indicates that Garffer offers "lobbying services" and "government relations, in particular with the CFSE and ACAA." Jerome Garffer is not registered as a lobbyist either in the Senate or in the House of Representatives, the CPI found.

"Those contracts were already there before [he started working for Williams]. What he wanted was for us to help him keep the contract. He [Williams] doesn't know anyone (in Puerto Rico), he needed to understand the government structure. After that he started asking for other things that I was not going to do at all and I decided not to continue with the relationship... [The contract with ACAA and the Fund] had come through a friendship he had with an investment consultant that was there before and that gave him that. The consultant was no longer there and he did not understand the government agencies. And I told him that I could help him understand that, how agencies work," Garffer told the CPI.

Why did you decide not to work with him?

"I'm going to refrain from revealing that. But there came a point where I decided that it was not in my best interest to continue that relationship... Because at some point he was selling his business or something and things got complicated and I didn't like what I saw and decided to end the relationship," said Garffer.

On May 10, 2017 Michael Williams donated \$2,500 to former Governor Ricardo Rosselló's campaign.

Eliseo Acosta, president of Innova Technologies Group, allegedly received \$60,600 in commissions for Williams' contracts with the CFSE, ACAA and AEELA in 2016. Between January and September 2017 Williams paid Acosta another \$32,500 for seeking clients for Kinetic Funds, two sources told the CPI.

What is your relationship with Michael Williams?, the CPI asked Acosta.

"You came here to start a business? Well, look, I know so-and-so, go there and if something goes well, great, buy me a cup coffee. I don't live off of that, period," Acosta replied in a first call. First, he said he did not receive payments, but that his company did.

"I organized several meetings that did not prosper because there were other interests and other people. For example, I remember [AEELA's], and so on with the occasional mayor. But you can look it up, nothing prospered, that is, none had a result."

Do you mean meetings between those people and Michael Williams?

"Yes, at one point."

What you did was arrange meetings for Williams and government agencies so he could get contracts?

"With government agencies in particular, just like anyone who calls. I work in the private sector. But I am not a lobbyist or anything like that. I am a business person... With Williams, I have a friendship... For example, I know millions of people and he was referred by a friend of mine from Florida who introduced us, and the truth is, I liked him."

Did you do work for Williams?, the CPI asked.

"But we're talking about 2016. It's 2019."

In 2016, he signed the contracts with the [State Insurance] Fund and ACAA.

"If you stop me in the middle of the lobby and walk me through there, you will see that nobody knows who I am... I have not gone through there with that man at all. I can tell you that I have gone into other places yes, and nothing happened because they chose not to do things."

What did they want to do, get contracts?

"Well if you're investigating, I'm telling you because I have nothing to hide, that at one point when [Williams] arrived, the first thing he asked was 'are these things regulated?' Well, I can introduce you to someone. And that's how it happened, you know, whatever. And I said mayor because I am trying to remember one, as well as private companies. But there was nothing."

In those arrangements you say you did for Williams, did you receive or request any kind of commission? How did you get paid for that work?

"As I said and I repeat, I had failed efforts. If he used someone to do that and got it done, I can tell you it wasn't me."

The question is not whether you failed, but if you got a commission or payment for that work, the CPI insisted.

"Well, you always say 'if something materializes, well, buy me a cup of coffee,' or whatever. But I am trying to answer your questions but I really didn't do what you're saying... If you want to call it work, yes, but no," said Acosta.

In the video of the October 2016 State Insurance Fund Corporation's (CFSE, for its initials in Spanish) Governing Board meeting, Fund Administrator Liza Estrada-Figueroa said the contract with Kinetic Funds raised questions among the administration and the lawyers consulting on the agency's financial affairs. The CFSE financial advisors, Consultiva Wealth Management, recommended that the contract be signed.

"When they sent us the contract, some questions came up because it was different from what we were used to seeing for this type of funds. We referred it to the attorneys who work with these matters to give us their opinion. They raised a few questions, we asked Consultiva, and Consultiva sent what is now Attachment Two, which is a written opinion clearing up the doubts we had and that the lawyer had about this type of fund, saying it complies with the investment policy and that they recommended that we sign it," said Estrada-Figueroa at the meeting.

The State Insurance Fund provided documents to the CPI that show that Kinetic Funds makes monthly investment status reports through Gavion, the firm that currently manages the Corporation's investment portfolio.

How could the investigation against Williams affect the investments of the Fund and ACAA?, the CPI asked Myrna Rivera, founder and senior adviser of Consultiva.

"We would have to see what the nature of the investigation is and what the outcome is to determine what impact it could have on that and any other portfolio," Rivera replied.

Can investments be affected as long as there is no final determination on the investigation?

"The Kinetic fund appears in Bloomberg's systems and other systems. As a fiduciary, this is information that you are giving me that is of concern. But we have to wait for what the SEC says. We have to see what started the investigation and what the nature of the investigation is, which may or may not have to do with [the Insurance Fund] portfolio. The SEC can evaluate individuals as it can evaluate investment processes, it is a highly regulated business. In this case, Gavion has to make sure that it is properly monitoring that investment."

Rivera explained that part of the evaluation process that investment firms do is to study the structure of the company, its management, the background, the technical experience, how the company is constituted, what its strategy is, how it is executed and what the benefit is.

"We did that analysis, we met with Michael Williams, we went through that whole process. Consultiva has an investment committee that, as an internal protocol, interviews and

evaluates documents and creates an evaluation memorandum,” Rivera said.

Claudia Motta-Vélez, of the Reichard & Escalera law firm, is the resident agent for Scipio and El Morro Financial, owned by Michael Williams and incorporated on March 3, 2016. In June 2016, Reichard & Escalera signed a contract for \$150,000 with the State Insurance Fund Corporation valid until June 30, 2017. One of the services that the law firm had to provide under the contract was “legal consultations and opinions in matters regarding investments.” The contract between Kinetic Funds and the Insurance Fund to manage \$15 million in investment was signed in November 2016, while the Reichard & Escalera law firm advised the public corporation on financial matters.

Luis R. Ramos-Cartagena, deputy administrator of the Insurance Fund from August 5, 2016 to January 3, 2017, signed the contract. The CPI contacted Ramos-Cartagena to ask about commissioning Kinetic, but he said he did not remember that contract and that investment management issues were consulted with Reichard & Escalera.

Vance Thomas, director of the Governing Board at that time, and Liza M. Estrada, former Fund administrator, also told the CPI that they did not remember signing the contract with Kinetic Funds, although the **videos** show that they participated in several meetings where the contract with that company was discussed.

Junta de Gobierno CFSE 29 agosto 2016 ...



Service charges with Kinetic Funds are capped at \$750,000, according to the CFSE and ACAA contracts. Williams signs the documents as Managing Member of LF42, LLC, and Managing Member of Kinetic Partners, LLC. None of these companies are incorporated in Puerto Rico, but rather in Delaware.

Payments for these contracts are sent by check to Kinetic Funds’ address in Sarasota Florida, and by electronic transfer to an account at BMO Harris bank in Chicago. Kinetic Funds focuses on income generation through investments in corporate and government bonds,

according to the contracts. By June 2019, it had a total of assets valued at \$43,869,000. Its main investments are in Goldman Sachs Group, Simon Property Group, 3M Co, Pfizer and Johnson & Johnson, according to [Bloomberg](#).

The contracts with Puerto Rico public corporations, which were signed in the midst of the economic and fiscal crisis and during the government's bankruptcy proceeding, have a clause that states: "The person who signs understands the risks associated with this offer, including the speculative nature of the investment and the financial dangers, including the risk of losing all of the investment."

Williams, a Navy veteran who served in the Persian Gulf War, began his career about 25 years ago as a stockbroker, according to his [biography](#). He has made presentations for the Securities and Exchange Commission that is now investigating him, he is co-author of the book *Fundamentals of the Options Market* of the McGraw Hill publishing house. This year he finished writing his first novel, entitled *Journey to Masyaf*.

\*\*\*

*Luis J. Valentín Ortiz contributed to this story.*

## More From LR



Share this:

 Facebook

 Twitter

 Reddit

 LinkedIn

 Tumblr

 Email

Leave a Reply

Enter your comment here...

This site uses Akismet to reduce spam. [Learn how your comment data is processed.](#)

PODCAST



The Dominican Republic Is Protesting Allegations of Election Fraud



The Latino and Latina Political Leaders of... New Hampshire



LIVE From Las Vegas Part II: Nevada’s Labor Power



All Eyes on Nevada

Tom Steyer’s Nevada Chances



## TRENDING



Immigrant Rights Group RAICES Action Releases Candidate Scorecard Ahead of Super Tuesday



Latina Engineer Denied Tenure at the University of Colorado Boulder (VIDEO)



The Declaration of Independence: The Full Text in English.... and Spanish



Biden Claims 9 Super Tuesday Victories, Including Texas



Mike Bloomberg Raises Hispandering Level With Some 'Tejas' Talk in Miami



Subscribe

Enter your email

OK

Futuro Media

Latino USA

---

America By The Numbers

---

In The Thick

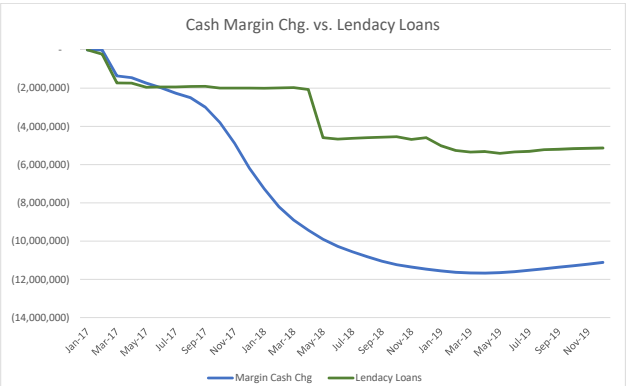
---

© LATINO REBELS. PART OF FUTURO MEDIA.

	2019	Monthly
Kinetic Fund		
Portfolio Avg	39,641,429	
Dividend Avg	213,786	
Portfolio Purchase Avg	34,381,041	
Cash Margin (avg)	(15,634,700)	
Lendacy		
Monthly Payment	62,304	
Div. use for payment	15,060	

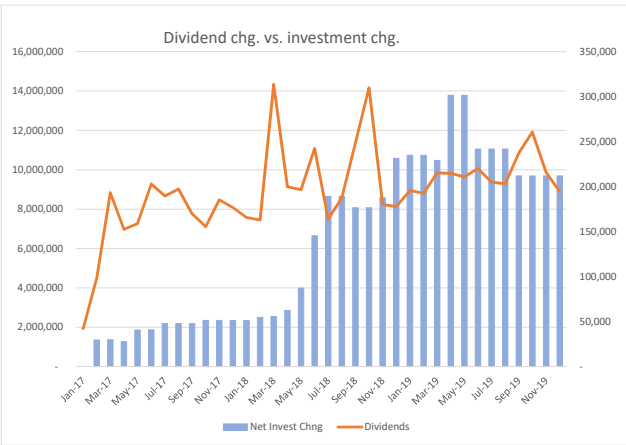
Graph: Cash Margin Chg. vs. Lendacy Loans

This graph demonstrates that the Cash Margin increases in the portfolio based on the capital at BMO Harris and/or issued to Lendacy. As more loans are issued, more cash margin is required at the portfolio margin level.



Graph: Dividend Chg. vs Investment Chg.

As more investments are made, the fund continues to increase the portfolio allocation to generate more monthly dividends.



Example Data:

Cash Report				
				Total
Base Currency Summary				
Starting Cash				-18,842,565.70
Commissions				-9,818.35
Dividends				113,505.01
Broker Interest Paid and Received				-41,345.51
Net Trades (Sales)				35,222,943.17
Net Trades (Purchase)				-44,478,835.97
Payment In Lieu of Dividends				86,341.64
Ending Cash				-27,949,778.71
Ending Settled Cash				-23,480,774.07
Open Positions				
Symbol	Quantity	Mult	Cost Price	Cost Basis
Stocks				
USD				
APPL	11,000	1	170.40587	1,874,406.46
BA	10,000	1	329.5744854	3,295,744.85
BIUD	5,000	1	102.4686	512,343.00
CAT	19,500	1	151.9787884	2,963,586.37
GS	1,000	1	255.5942819	255,594.28
GWV	9,000	1	289.0681213	2,601,613.09
IBM	16,000	1	153.2081258	2,451,330.01
JNJ	2,500	1	128.59654	321,491.64
KMB	10,000	1	112.7410	1,127,410.00
LMT	4,000	1	328.2995542	1,313,158.22
MMM	2,200	1	208.4454537	460,780.00
MSFT	20,000	1	95.64475	1,912,895.00
MTN	10,000	1	230.9830	2,309,830.00
OKE	1,000	1	59.9350	59,935.00
RTN	30,300	1	216.7739604	6,568,251.00
SPQ	5,000	1	150.2953877	751,476.94
TXN	5,000	1	104.045072	520,225.36
WSM	4,100	1	48.9268293	200,600.00
Total				29,500,711.22

Dividends		
Date	Description	Amount
USD		
2018-04-02	WMT(US9311421039) Payment in Lieu of Dividend (Ordinary Dividend)	8,094.84
2018-04-02	WMT(US9311421039) Cash Dividend 0.52000000 USD per Share (Ordinary Dividend)	28,669.16
2018-04-03	KMB(US4943681035) Payment in Lieu of Dividend (Ordinary Dividend)	2,946.00
2018-04-03	KMB(US4943681035) Cash Dividend 1.00000000 USD per Share (Ordinary Dividend)	9,254.00
2018-04-05	RCL(US020862286) Payment in Lieu of Dividend (Ordinary Div - NRA Withholding Exempt)	600.00
2018-04-06	MRK(US58533Y1055) Cash Dividend 0.48000000 USD per Share (Ordinary Dividend)	6,000.00
2018-04-10	ITW (US4523081053) Cash Dividend USD 0.78000000 PAYMENT IN LIEU OF DIVIDEND (Ordinary Dividend)	1,000.74
2018-04-10	ITW (US4523081053) Cash Dividend USD 0.78000000 (Ordinary Dividend)	1,339.26
2018-04-11	MTN(US1879Q1094) Cash Dividend 1.47000000 USD per Share (Ordinary Dividend)	36.75
2018-04-11	MTN(US1879Q1094) Payment in Lieu of Dividend (Ordinary Dividend)	14,663.25
2018-04-11	PM(US181721090) Cash Dividend 1.07000000 USD per Share (Mixed Income)	9,912.48
2018-04-11	PM(US181721090) Payment in Lieu of Dividend (Mixed Income)	3,997.52
2018-04-13	SLB(AN8058571086) Cash Dividend 0.50000000 USD per Share (Ordinary Div - NRA Withholding Exempt)	1,744.50
2018-04-13	SLB(AN8058571086) Payment in Lieu of Dividend (Ordinary Div - NRA Withholding Exempt)	5,255.50
2018-04-16	QXY(US6745591058) Payment in Lieu of Dividend (Ordinary Dividend)	2,891.35
2018-04-16	QXY(US6745591058) Cash Dividend 0.77000000 USD per Share (Ordinary Dividend)	6,733.65
2018-04-30	EIX(US2810201077) Payment in Lieu of Dividend (Ordinary Dividend)	5,756.58
2018-04-30	EIX(US2810201077) Cash Dividend 0.60500000 USD per Share (Ordinary Dividend)	1,563.93
2018-04-30	JPM (US4625H1005) Cash Dividend USD 0.56000000 PAYMENT IN LIEU OF DIVIDEND (Ordinary Dividend)	17,920.00
2018-04-30	MDY (US78467Y1073) Cash Dividend USD 0.86141000 (Ordinary Dividend)	2,626.44
2018-04-30	MDY (US78467Y1073) Cash Dividend USD 0.86141000 PAYMENT IN LIEU OF DIVIDEND (Ordinary Dividend)	23,215.86
2018-04-30	SPY(US78462F1030) Cash Dividend 1.09677500 USD per Share (Ordinary Dividend) from U1358796	45,625.84
Total		199,647.65

EXHIBIT 2

Trans Report		Calculation	IB Data		IB Data	IB Data	Calculation	Calculation	Calculation	IB Data	Trans Report	Trans Report	Calculation	Trans Report		From IB				
KFYield Investments			KFYield Portfolio								Lendacy Loans (Issued)					Cash Balance	Calculation	Calculation	Calculation	
	Inv/Red	Net Change	Equity Purchase (buy)	Equity Positions (EOM)	Options (EOM)	Portfolio (EOM)	Portfolio (Avg)	Chg Cash (Margin)	Dividends		Credit Line	Payments	Net Chg	Div Pay		Avg Cash Balance	Net Change	Avg Cash Change		
Jan-17	-	-	21,517,651	27,404,082	915,306	28,319,388	28,319,388	-	42,349	(13,600)	363,853	-	-	3,166	(15,812,678)					
Feb-17	1,350,000	1,350,000	16,309,800	27,693,967	2,365,832	30,059,799	29,189,594	-	98,563	(231,000)	6,600	(224,400)	822	(23,644,245)	(19,728,462)	-	-			
Mar-17	17,000	1,367,000	24,313,477	32,066,209	4,191,871	36,258,080	31,545,756	(1,362,056)	193,296	(1,516,292)	10,404	(1,730,288)	2,315	(27,900,797)	(22,452,573)	(2,724,112)	(1,362,056)			
Apr-17	(93,000)	1,274,000	25,983,586	24,133,051	3,127,290	27,260,341	30,474,402	(1,451,192)	152,584	(25,000)	20,854	(1,734,434)	7,728	(18,073,987)	(21,357,927)	(1,629,465)	(1,451,192)			
May-17	588,261	1,862,261	25,983,586	28,600,513	4,142,786	32,743,299	30,928,181	(1,732,516)	159,044	(226,187)	10,964	(1,949,657)	4,687	(26,093,038)	(22,304,949)	(2,576,487)	(1,732,516)			
Jun-17	12,400	1,874,661	22,908,554	29,795,416	3,468,743	33,264,159	31,317,511	(1,975,911)	202,924	(100,000)	114,803	(1,934,854)	5,671	(24,542,973)	(22,677,953)	(2,949,491)	(1,975,911)			
Jul-17	316,795	2,191,456	25,748,600	32,517,726	2,859,673	35,377,399	31,897,495	(2,263,665)	189,532	(19,924)	19,731	(1,935,047)	4,458	(27,948,574)	(23,430,899)	(3,702,437)	(2,263,665)			
Aug-17		2,191,456	17,552,915	31,350,409	3,162,906	34,513,315	32,224,473	(2,497,327)	197,352	-	21,403	(1,913,644)	6,187	(25,005,748)	(23,627,755)	(3,899,293)	(2,497,327)			
Sep-17	(2,100)	2,189,356	26,423,301	54,556,637	(525,045)	54,031,592	34,647,486	(2,990,564)	169,876	(4,200)	17,552	(1,900,292)	8,451	(46,523,164)	(26,171,689)	(6,443,228)	(2,990,564)			
Oct-17	161,277	2,350,633	29,929,265	73,263,426	(2,739,025)	70,524,401	38,235,177	(3,802,078)	155,566	(105,000)	13,719	(1,991,572)	5,445	(64,681,324)	(30,022,653)	(10,294,191)	(3,802,078)			
Nov-17		2,350,633	19,726,927	85,726,641	(3,759,785)	81,966,856	42,210,784	(4,886,754)	185,319	(22,000)	15,464	(1,998,108)	4,969	(77,923,684)	(34,377,292)	(14,648,830)	(4,886,754)			
Dec-17	(3,000)	2,347,633	11,993,136	94,976,096	(4,169,383)	90,806,713	46,260,445	(6,186,619)	176,740	(22,000)	22,214	(1,997,895)	7,969	(88,814,587)	(38,913,733)	(19,185,272)	(6,186,619)			
Jan-18		2,347,633	54,911,901	39,541,555	1,194,092	40,735,647	45,835,461	(7,266,450)	165,769	(22,000)	16,678	(2,003,217)	5,576	(38,384,889)	(38,873,053)	(19,144,591)	(7,266,450)			
Feb-18	160,000	2,507,633	38,060,537	48,695,331	652,646	49,347,977	46,086,355	(8,205,662)	162,956	-	17,090	(1,986,127)	5,212	(43,515,696)	(39,204,670)	(19,476,209)	(8,205,662)			
Mar-18	47,900	2,555,533	39,972,779	20,182,311	4,047,524	24,229,835	44,629,253	(8,893,077)	313,531	(2,000)	17,301	(1,970,825)	7,762	(14,503,511)	(37,557,926)	(17,829,465)	(8,893,077)			
Apr-18	300,000	2,855,533	41,772,476	29,500,711	4,119,250	33,619,961	43,941,173	(9,430,181)	199,847	(122,000)	22,289	(2,070,536)	12,885	(23,480,774)	(36,678,104)	(16,949,643)	(9,430,181)			
May-18	1,140,000	3,995,533	31,430,909	37,498,080	4,678,521	42,176,601	43,837,374	(9,897,596)	196,467	(2,825,000)	303,386	(4,592,150)	7,519	(35,984,086)	(36,637,280)	(16,908,818)	(9,897,596)			
Jun-18	2,656,904	6,652,437	32,107,587	35,401,700	5,851,573	41,253,273	43,693,813	(10,281,104)	242,370	(165,950)	94,872	(4,663,228)	9,410	(27,788,800)	(36,145,697)	(16,417,236)	(10,281,104)			
Jul-18	2,000,000	8,652,437	20,865,034	25,524,915	4,342,255	29,867,170	42,966,095	(10,561,484)	164,002	(2,000)	44,545	(4,620,683)	9,101	(15,449,051)	(35,056,400)	(15,327,939)	(10,561,484)			
Aug-18		8,652,437	41,935,393	44,219,099	6,676,368	50,895,467	43,362,564	(10,812,997)	187,330	-	33,089	(4,587,594)	5,851	(35,302,194)	(35,068,690)	(15,340,228)	(10,812,997)			
Sep-18	(581,731)	8,070,706	59,469,010	45,320,132	5,790,077	51,110,209	43,731,499	(11,049,495)	248,154	(2,000)	27,343	(4,562,251)	15,157	(39,326,299)	(35,271,433)	(15,542,972)	(11,049,495)			
Oct-18	(2,100)	8,068,606	30,052,309	27,612,638	4,149,242	31,761,880	43,187,426	(11,231,677)	309,665	(2,000)	24,377	(4,539,874)	10,908	(20,583,067)	(34,603,780)	(14,875,319)	(11,231,677)			
Nov-18	510,000	8,578,606	19,995,659	22,816,831	2,776,270	25,593,101	42,422,455	(11,358,869)	180,228	(160,000)	22,037	(4,677,838)	13,654	(15,158,985)	(33,758,354)	(14,029,893)	(11,358,869)			
Dec-18	2,000,900	10,579,506	41,173,773	35,464,924	5,734,889	41,199,813	42,371,512	(11,467,809)	177,748	(22,000)	115,685	(4,584,153)	8,077	(29,788,801)	(33,592,956)	(13,864,495)	(11,467,809)			
Jan-19	160,000	10,739,506	30,519,382	33,624,225	5,846,832	39,471,057	42,255,493	(11,553,909)	195,616	(560,000)	141,495	(5,002,658)	7,729	(25,335,616)	(33,262,663)	(13,534,201)	(11,553,909)			
Feb-19	10,739,506	24,178,067	37,105,477	5,385,018	42,490,495	42,264,532	(11,628,125)	192,583		(485,500)	233,327	(5,254,832)	8,119	(30,015,754)	(33,137,782)	(13,409,320)	(11,628,125)			
Mar-19	(267,100)	10,472,406	29,661,475	20,891,599	2,684,924	23,576,523	41,572,383	(11,667,007)	215,300	(122,000)	31,660	(5,345,172)	19,906	(12,340,212)	(32,367,501)	(12,639,040)	(11,667,007)			
Apr-19	3,310,000	13,782,406	39,577,257	18,139,482	2,022,364	20,161,846	40,807,721	(11,671,865)	214,713	(2,000)	29,801	(5,317,370)	21,663	(8,823,799)	(31,526,655)	(11,798,193)	(11,671,865)			
May-19		13,782,406	39,577,257	19,718,300	1,385,736	21,104,036	40,128,284	(11,649,866)	210,673	(115,000)	21,755	(5,410,615)	17,714	(9,999,550)	(30,784,341)	(11,055,879)	(11,649,866)			
Jun-19	(2,729,693)	11,052,713	34,197,071	15,571,949	1,693,852	17,265,801	39,366,201	(11,601,122)	220,100	-	80,040	(5,330,576)	18,320	(6,196,317)	(29,964,740)	(10,236,278)	(11,601,122)			
Jul-19		11,052,713	30,418,820	13,452,405	1,486,844	14,939,249	38,578,235	(11,525,601)	204,951	-	22,458	(5,308,118)	17,008	(2,041,035)	(29,063,975)	(9,335,514)	(11,525,601)			
Aug-19		11,052,713	44,860,404	27,957,129	2,960,089	30,917,218	38,338,828	(11,444,737)	203,141	-	96,098	(5,212,020)	16,852	(18,929,189)	(28,747,263)	(9,018,802)	(11,444,737)			
Sep-19	(1,364,210)	9,688,503	52,788,182	32,513,139	1,207,371	33,720,510	38,198,879	(11,362,601)	237,185	(2,000)	18,801	(5,195,218)	11,716	(22,067,865)	(28,544,857)	(8,816,396)	(11,362,601)			
Oct-19	1,000	9,689,503	42,438,045	41,428,790	1,132,384	42,561,174	38,327,182	(11,285,389)	260,642	(2,000)	28,445	(5,168,773)	13,626	(28,484,277)	(28,543,075)	(8,814,614)	(11,285,389)			
Nov-19		9,689,503	11,275,324	31,540,697	169,740	31,710,437	38,138,132	(11,206,305)	216,040	(2,000)	23,191	(5,147,582)	15,382	(20,909,584)	(28,324,976)	(8,596,514)	(11,206,305)			
Dec-19		9,689,503	33,081,207	22,322,734	808,503	23,131,237	37,721,274	(11,117,504)	194,455	(2,000)	20,572	(5,129,010)	12,684	(10,388,117)	(27,826,730)	(8,098,268)	(11,117,504)			
Total			31,464,185	35,225,787	2,495,487	37,721,274	39,139,245	(7,981,087)	195,462	(191,740)	58,997	(3,527,517)	9,825	(27,826,730)	(30,845,965)	(11,117,504)	(8,209,118)			
2019			34,381,041	26,188,827	2,231,971	28,420,799	39,641,429	(11,476,169)	213,786	(107,708)	62,304	(5,235,162)	15,060	(15,634,700)	(29,514,358)	(9,785,896)	(11,539,755)			

Key:

Inv/Red = Investment and Redemptions (from the transaction statement referencing BMO Kinetic Funds account)

Net Change = the net increase/decrease based on the Inv/Red

Equity Purchase (buy) = net equity purchase per month (buys only) - as equity positions are sold/exercised, new equities are purchase to capture dividends (IB Broker Trade Report)

Equity Positions (EOM) = net end-of-month equity positions - note: some positions carried for up to 90 days - potential double dividend collection (IB Broker Report open positions)

Options (EOM) = net option values that are used to hedge equity, spreads, etc.

Portfolio (EOM) = net equity and option portfolio value (data added from IB Broker open position)

Portfolio (Avg) = average portfolio value. Note Allocation model is targeting an average allocation (average from Portfolio EOM)

Chg Cash (Margin) = net change in the average cash margin. This will increase if more capital is at BMO and/or issued to Lendacy (calculated from IB net cash data)

Dividends = net dividends collected (IB broker dividend report)

Lendacy Credit Line = net credit issued (from transaction statement reference BMO Lendacy account)

Payments = net payments received (from transaction statement reference BMO Lendacy account)

Net Chg = the net change of credit + payment

Div Pay = how much in dividends are used for payments

**EXHIBIT C**  
**TO**  
**OPERATING AGREEMENT**  
**OF**  
**KINETIC FUNDS I, LLC**

**Class C Member Addendum**

This Addendum, consisting of three (3) pages, is entered into as of 5/4/18, 20\_\_ in connection with the admission of LF42, LLC as a Class C Member of KINETIC FUNDS I, LLC (the "Class C Member"). KINETIC FUNDS I, LLC is hereinafter referred to as the "Company" and Kinetic Partners, LLC the Company's Class A Member, is hereinafter referred to as the "Class A Member." This Addendum shall constitute a counterpart signature page to the Company's Operating Agreement.

The execution of this Addendum confirms investment by the Class C Member at the Company..

The Class C Member has agreed to invest in one or more Funds (as hereinafter defined) provided by the Company. The Class A Member will have full and complete discretion to make any and all trading decisions and affect any strategies as the Class A Member shall determine, in its sole and absolute discretion, in order to manage the Funds.

**INVESTMENT:**

The Class C Member will contribute SIXTY FIVE THOUSAND DOLLARS (\$65,000.00) to be invested in one, or more, of the following investment funds (each, a "Fund", more than one, "Funds") at the discretion of the Class C Member. Please check the box below corresponding to the Funds that the Class C Member will participate in and indicate the amount to be initially allocated to each.

All Funds may include a "Preferred Return" investment. This investment is in a private sector funding company that offers fixed rate preferred interest returns. The preferred return helps reduce volatility, generates additional income, and increases Alpha of the funds. The preferred returned will vary in maturity, amount, and interest. The Preferred Return investment may be added as/if/when they become available. The invested amount will be at the sole discretion of the Class A (Managing) Member.

- ☐ AEGIS (Inflation) – Fund focuses on hedging against a rise in inflation and/or devalue in the U.S. dollar. Investments in the gold, silver, commodities, currency and international markets. Assets in the Fund include, but are not necessarily limited to, ETFs, stocks, and listed options. Assets may be long and/or short.

Amount: \_\_\_\_\_

- ☐ GEMINI (Income) – Fund focuses on income generation. Investments in government bonds, corporate bonds, REITS, MLPs, Preferred Shares. Assets in the Fund include but are not necessarily limited to, ETFs, stocks, and listed options. Assets tend to be (but need not be) long.

Amount: \$65,000

- ☐ TERRA (Value) – Fund focuses on multinational companies with strong balance sheets, fundamentals, positive revenue, and sound corporate management. The Fund is actively managed and may be long and/or short to prosper in rising and declining markets. Assets in the Fund include, but are not necessarily limited to, stocks, preferred stocks, and listed options. Assets may be long and/or short.

Amount: \_\_\_\_\_

The Class C Member may, with the approval of the Class A Managing Member, reallocate between the Funds listed above on a quarterly basis, upon thirty (30) days prior written notice actually received by the Class A Managing Member prior to the end of any calendar quarter. In no event may any allocation result in less than \_\_\_\_\_ (\$\_\_\_\_) being placed in any one Fund.

**FINANCIAL PRODUCTS:**

The Fund(s) will trade derivatives, but may also be invested in individual stocks, components of the indices, cash, and other exchange listed products in the sole and absolute discretion of the Class A (and Managing) Member, in its sole and absolute discretion, from time to time and at any time. The Funds also may include a Preferred Return investment, as described above, which will vary in maturity, amount, and interest.



**REPORTING:**

The Class C Member will receive a monthly statement of its selected Fund(s)' investments. The report will be sent by email on the 15<sup>th</sup> of each month for the preceding month's activity. The Fund(s)' Profit/Loss are reported on a mark-to-market basis for month-end. Any/all dividends issued by financial products held in the Fund will reported as a separate line item. The Company may provide statements online, if/when available. If a Class C Member wishes to receive statements by standard mail, that will be arranged by request. The Company does not guarantee the receipt via standard mail by the 15<sup>th</sup> of the month.

**RISK MARGIN:**

The Funds' goal is to not exceed a Risk Margin of 75% to equity ratio, measured in the form of "haircut" or risk-based margin. While this it is the goal to maintain this Risk Margin exposure, a particular position or positions may increase or decrease depending on market conditions. IT MUST BE NOTED that this is a guideline only when deploying positions and maintaining the positions, and that this goal may be exceeded, in the sole and absolute discretion of the Class A Member from time to time and at any time.

**PROFITS AND LOSSES:**

The Class C member will receive 100% of any and all dividends issued by any/all financial products held in the Fund selected as indicated on the previous page of this Addendum.

The Class C member will receive 80% of net profits earned by any Fund selected as indicated on the previous page of this Addendum. The term "net profits" as used herein means the gross revenue generated by a particular Fund, minus any and all expenses incurred by the Company, directly or indirectly, in connection with the operation of a particular Fund, including, but not necessarily limited to, any and all fees or charges imposed by any securities exchange, clearing firms, quotation services, commission, interest and the like, that are charged directly to the Fund and a Class C Member by the Company's clearing firm, broker dealer, or any third-party services related to transacting business in the Fund. All Funds are based on mark-to-market accounting; this may change due to regulatory changes or requirements. Changes, if any, may affect realized returns and tax reporting. The Class C member will be notified as to any changes, when and if they occur. It is the Class C Member's responsibility to contact its tax professional to see how it may or may not affect its tax reporting.

The Class A Member will receive 20% of the net profits. The Class A Member will not participate in any dividend distributions by any/all financial products that are held in the Fund(s). Any/all dividends by financial products held in the Fund selected by the Class C Member will be issued to the Class C Member.

**HIGHWATER MARK:**

A Class C Member will have a high-water mark that is based on the initial principal amount stated in the INVESTMENT section on the prior page hereof. The Class A Member will only receive 20% of net profits (as defined in the "Profits and Loss" section) for any profits that exceed the "high-water mark". The high-water market is reset at year-end based on the closing mark-to-market value of the Class C Members' capital, which includes any profit/loss at year-end.

**WITHDRAWALS:**

The Class C Member may make a Principal Withdrawal request at the end of a calendar year, provided that thirty (30) days' prior written notice is provided to Company, but only may do so following the one (1) year anniversary from the date the principal deposit was actually received by Company (based on the amount indicated in the INVESTMENT section on the first page hereof. Principal Withdrawals are not a right and are at all times subject to regulatory and Company approvals. For example, but not by way of limitation, withdrawal requests maybe denied, in the Class A Managing Member's sole and absolute discretion, due to liquidity limitations of some long-term investments which may include the Preferred Return private funding investment obligations, and which may not have matured at the time of the Principal Withdrawal Request.

The CLASS A (Managing) Member will endeavor to facilitate any such request(s) and instructions, but The Class A (Managing) Member hereby expressly reserves the sole and absolute discretion to reject any Principal Withdrawal request that could or would create, by way of example only and not intended to in any way to limit the Class A Member's discretion in this regard, margin or risk requirements. A Class C Member must fully complete the Company's Redemption Form and submit it to Company no later than thirty (30) days prior to a calendar quarter-end. The Company's Redemption Form is available upon request.

Anything to the contrary herein notwithstanding, any and all required qualified distributions for a Class C Member that has attained the age set by the Internal Revenue Service ("IRS") for minimum distributions will be made to the trust company/custodian designated by the said Class C Member no later than April of the year

following the year that said Class C Member attains the age of 70 ½ or as may otherwise may be required by the IRS.

**TERMINATION:**

The Class A Member may terminate the Class C membership at any time with written notice to the Class C Member and follow the procedures as described in the WITHDRAWAL section.

The Class C Member may terminate its Class C membership with at least ninety (90) days' prior written notice. Distributions by and/or Withdrawal of funds from, the Company (if any) will at all times remain subject to the REINVESTMENT / PROFIT DISTRIBUTIONS and WITHDRAWALS sections hereinabove.

**FEES AND EXPENSES:**

The Fund(s) is/are charged an annual One Percent (1%) management fee by the Class A Member. The 1% annual fee will be charged to the subject Fund on a monthly pro-rated basis, based on the net equity value of the Fund on the last business day of each month. Tax preparation, accounting, legal, and any other related fees will be itemized and directly debited from the Class C Member's account on the Company's records.

**RISKS:**

Neither the Company nor the Class A Member guarantees that any profits will be generated with the Class C Member's capital contribution and the Class C Member expressly understands and agrees that its entire capital contribution may be lost, in which case the Class C Member will have no recourse against the Company or the Class A (Managing) Member unless the Class A Member is proven in a court of law to have engaged in grossly negligent or intentionally wrongful acts or failures to act.

AGREED AND ACKNOWLEDGED THIS 30 DAY OF April, 2015.

**CLASS C MEMBER**

MICHAEL S WILLIAMS (print name)

LF42, LLC

(company name – if applicable – please attach Operating Agreement or other corresponding documentation, if Class C Member is not an individual.)

By:  \_\_\_\_\_

Address:   
SARASOTA FL 

Office/Residence Phone: \_\_\_\_\_

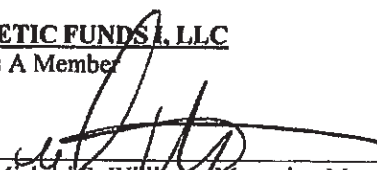
Cellphone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

**KINETIC FUNDS I, LLC**

Class A Member

By:  \_\_\_\_\_  
Michael S. Williams, Managing Member of  
KF 42, LLC, Managing Member of its Managing  
Member, Kinetic Partners, LLC



APPENDIX I TO  
SUBSCRIPTION AGREEMENT

## OFFERING QUESTIONNAIRE

## KINETIC FUNDS I, LLC

(All Information Will Be Treated Confidentially)

**INSTRUCTIONS**

This Questionnaire is being distributed to a select group of investors, each of whom KINETIC FUNDS I, LLC, a Delaware limited liability company (the "Company"), believes may find investment in the Company suitable for such investor's current investment objectives. The primary purpose of this Questionnaire is to elicit information sufficient to permit the Company reasonably to conclude that the Subscriber has sufficient investment sophistication and ability to take financial risk to meet the standards for availability of the private offering exemption from the registration requirements of the 1933 Act, and the qualification or registration requirements of any other applicable securities law. Capitalized terms used and not otherwise defined in this Questionnaire have the meanings respectively ascribed to them in the Subscription Agreement and the Company's Operating Agreement, as amended and as may in the future be amended from time to time (the "Agreement") of which this Offering Questionnaire is an integral part.

If, in completing this Questionnaire, you are in doubt regarding the meaning or implication of any of the terminology or regarding the significance of any particular question, please contact KINETIC FUNDS I, LLC, [REDACTED] Sarasota, FL [REDACTED] telephone: [REDACTED] email: [REDACTED]

If the answer to any question is "None" or "Not Applicable," please so state.

YOUR ANSWERS WILL AT ALL TIMES BE KEPT STRICTLY CONFIDENTIAL. EACH PERSON SIGNING THIS QUESTIONNAIRE AGREES, HOWEVER, THAT THE COMPANY'S MANAGING MEMBER MAY PRESENT THIS QUESTIONNAIRE TO SUCH PARTIES AS THE MANAGING MEMBER DEEMS APPROPRIATE IF CALLED ON TO ESTABLISH THE AVAILABILITY OF AN EXEMPTION FROM REGISTRATION OR QUALIFICATION OF THE INTERESTS UNDER THE 1933 ACT OR ANY OTHER SECURITIES LAW OR IN CONNECTION WITH COMPLIANCE WITH ANY OTHER APPLICABLE LAW, RULE OR REGULATION (INCLUDING, WITHOUT LIMITATION, ANTIMONEY LAUNDERING LAWS, RULES AND REGULATIONS).

Unless you have already furnished a completed and signed Offering Questionnaire to the Managing Member, or have otherwise furnished to the Managing Member all of the information elicited by this Questionnaire, and unless the information furnished is still true and complete, please complete, sign, date and return one copy of this Questionnaire with original signatures to KINETIC FUNDS I, LLC at the address set forth above.

**Note for Trusts:** If the Subscriber is a trust that believes it is an "accredited investor" described in Part E, category (4), please furnish a separate Questionnaire with respect to the Subscriber and each person participating in making the investment decision (except that persons participating in making the investment decision need not complete Parts C, E, F and G).

KINETIC FUNDS I, LLC



**Note for Certain Entities:** If the Subscriber is an entity that believes it is an "accredited investor" by virtue of the accredited investor status of each equity owner thereof (see Part E, category (13)), please furnish a separate Questionnaire with respect to the Subscriber and each such equity owner.

## A. IDENTIFYING INFORMATION

Both entities and individual subscribers should complete this Part A, inserting the information requested with respect to the Subscriber, not any person completing this Questionnaire on the Subscriber's behalf, except that if such person is acting as a custodian for a minor whose funds will be invested, please so indicate and complete the information with respect both to such person and to the minor.

Full Name(s): LF 42, LLC

Business Address:

██████████ SARASOTA FL ██████████

Home Address:

\_\_\_\_\_

Phone: ██████████

\_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_

Email: ██████████

\_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

\_\_\_\_\_

Date of Birth: ██████████

\_\_\_\_\_

Marital Status: S

Number of Dependents: 1

In what state is the Subscriber's principal residence? (If the Subscriber has resided in this state less than one year, or plans to change the Subscriber's state of residence, please explain.) FL

Is there any reason the Subscriber might be considered a resident of another state (e.g., live part of the year, have an office or business, registered to vote, pay taxes or hold a driver's license in another state)? If so, please explain: N

Is the Subscriber acting as an agent, representative, nominee or intermediary for any other person, entity or other beneficial owner? Yes \_\_\_ No X

If the Subscriber is an individual, is the Subscriber a senior foreign political figure,<sup>1</sup> an immediate family member<sup>2</sup> of a senior foreign political figure or a close associate<sup>3</sup> of a senior foreign political figure? Yes \_\_\_ No X

<sup>1</sup> A "senior foreign political figure" is a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a "senior foreign political figure" includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure. [Footnote continued at bottom of following page]

KINETIC FUNDS I, LLC

If the Subscriber is a corporation, Company, limited liability company, trust, association or other entity:

1. Please identify the following
  - a. Type of entity: LLC
  - b. The jurisdiction under the laws of which the Subscriber is organized and existing:  
DELAWARE
  - c. The jurisdiction where the Subscriber's principal place of business is located:  
FLORIDA
2. Has the Subscriber established the identity of each director, officer and beneficial owner of the Subscriber (including, but not limited to, each shareholder, member, partner and beneficiary)?  
Yes X No
3. Does the Subscriber have any intention or obligation to distribute, assign, transfer or sell all or any portion of the Interests to any of its directors, officers or beneficial owners?  
Yes X No

If the Subscriber is an investment entity (such as an investment pool organized as a limited Company, limited liability company, corporation or other entity): N/A

1. Has the Subscriber established and does it apply anti-money laundering practices and procedures that comply with all applicable laws, rules and regulations?  
Yes    No
2. Is any director, officer, manager, member, partner, shareholder or other beneficial owner of the Subscriber (i) a person, entity or other organization that is included on any so-called "watch list" maintained by any governmental agency of the U.S. (including, but not limited to, the U.S. Central Intelligence Agency, the U.S. Department of the Treasury, the U.S. Federal Bureau of Investigation, the IRS, the U.S. Office of Foreign Assets Control and the SEC) or (ii) a senior foreign political figure, an immediate family member of a senior foreign political figure or a close associate of a senior foreign political figure?  
Yes    No

Is the Subscriber a bank organized under non-U.S. law, or an agency, branch or office located outside the U.S. of a U.S. bank (a "Foreign Bank")? Yes    No X

If yes, the Managing Member will not process this subscription until the Subscriber fully completes and returns to the Managing Member a Certification Regarding Correspondent Accounts for Foreign Banks. Please contact the Managing Member to obtain a form of Certification.

The "immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children and in-laws.

A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

KINETIC FUNDS I, LLC

**B. EMPLOYMENT AND BACKGROUND**

If the Subscriber is an individual, please furnish all of the following information with respect to the Subscriber and the Subscriber's spouse. If the Subscriber is an entity or is investing jointly with a person other than the Subscriber's spouse, please furnish all of the following information in this Part B regarding each officer, manager, partner, trustee or other person who will participate in the investment decision. If the Subscriber is acting as a custodian for a minor whose funds will be invested, please furnish information in this Part B regarding the custodian only.

Investor Name: **MICHAEL S WILLIAMS**

<u>College/University</u>	<u>Degree</u>	<u>Major</u>	<u>Year</u>

Name and Address of Current Employer: **LF42, LLC**

Nature of Employment: **OWNER**

Nature of Employer's Business: **HOLDING COMPANY**

If self-employed, nature of business:

Spouse/Co-Investor Name: \_\_\_\_\_

<u>College/University</u>	<u>Degree</u>	<u>Major</u>	<u>Year</u>

Name and Address of Current Employer:

Nature of Employment:

Nature of Employer's Business:

If self-employed, nature of business:

**KINETIC FUNDS I, LLC**

Describe briefly all positions (including directorships) held during the past five years that were related to financial, business, accounting, economics, taxation or investment matters and that the Subscriber believes demonstrate the Subscriber's investment sophistication. Where appropriate, briefly describe the business of the company or other entity in which the position was held:

MANAGER/TRADE: KINETIC Funds

MANAGER : SILEX

Describe briefly any other background in business (particularly in the securities business), economics, finance, accounting, taxation, law, investing or related fields (include any relevant educational experience) that demonstrates investment sophistication:

OPTION MARKER MAKER  
INSTITUTIONAL FLOOR BROKER  
EXCHANGE MEMBER  
B/P OWNER

Describe briefly any legal actions, including lawsuits, arbitrations and mediations, involving securities, commodities or other investments, in which the Subscriber has been involved in the past five years. State the names of the parties to the proceeding, whether the Subscriber was a plaintiff or defendant, where the action took place (i.e., name of court, location of arbitration), a brief description of the dispute and the resolution of the matter:

NONE

---

KINETIC FUNDS I, LLC



**C. FINANCIAL INFORMATION**

**Entities.** This section should be completed for any Subscriber that is an entity, such as a corporation, limited liability company, Company, trust, etc.

Number of partners, shareholders, members, other beneficial owners or beneficiaries: 2

Is the Subscriber a qualified retirement plan (such as a 401(k) plan, profit sharing plan, Keogh plan or pension plan), individual retirement account, individual retirement annuity, or a fund providing for medical care or benefits, severance pay, or accident, disability, death, unemployment, vacation or other similar benefits ("employee plans")? Yes \_\_\_ No X

Is any class of equity interests in the Subscriber held by any such "employee plan" or by an entity (such as a fund of funds) whose assets constitute "plan assets" of an employee plan under the Department of Labor's "plan asset" regulations at 29 C.F.R. §2510.3-101? Yes \_\_\_ No X

If yes, what is the aggregate percentage of the value of each class of equity interests in the Subscriber held by such "employee plans" (excluding from the computation non-employee plan interests held by any individual or entity with discretionary authority or control over the assets of the Subscriber)? %

If the Subscriber is a trust other than such an "employee plan," is the trust revocable pursuant to its trust agreement? Yes \_\_\_ No X

Is the Subscriber a charitable remainder trust or other tax-exempt entity? Yes \_\_\_ No X

If yes, does the Subscriber understand (a) that the Company may allocate to the Subscriber unrelated business taxable income ("UBTI") and (b) the consequences of any such allocation? Yes \_\_\_ No \_\_\_

What is the Subscriber's approximate net worth? \$                     

Was the Subscriber formed for the specific purpose of acquiring Interests? Yes \_\_\_ No X

Have the shareholders, partners or other holders of equity or beneficial interests in the Subscriber been provided the opportunity to decide individually whether or not to participate, or the extent of their participation, in the Subscriber's investment in the Company? Yes \_\_\_ No \_\_\_

Is less than 40% of the Subscriber's total assets invested in the Company? Yes \_\_\_ No X

Is the Subscriber a company that would be an investment company under the ICA but for the exception provided by ICA section 3(c)(7)? Yes \_\_\_ No X

Is the Subscriber a private investment company (a company that would be an investment company under the ICA but for the exception provided by ICA section 3(c)(1))? Yes \_\_\_ No X

Is the Subscriber an investment company as defined in the ICA? Yes \_\_\_ No X

Is the Subscriber a business development company as defined in Advisers Act section 202(a)(22)? Yes \_\_\_ No X

If the Subscriber is a private investment company, an investment company under the ICA or a business development company (as those terms are described above), does each of the equity owners of the Subscriber have a net worth in excess of \$1,500,000? Yes \_\_\_ No \_\_\_

---

KINETIC FUNDS I, LLC

**Individuals and Owners.** The following question should be answered by (1) each Subscriber who is an individual (in the capacity of one who self-directs his/her individual retirement account, as and if applicable); (a custodian for a Subscriber who is a minor must provide the minor's financial information, not the custodian's information and a custodian for a pension plan/individual retirement account must provide the plan's or account's, as the case may be, financial information); (2) each partner of a Subscriber that is a Company; (3) each member of a Subscriber that is a limited liability company; (4) each beneficiary of a Subscriber that is a trust (other than an employee benefit plan trust that is not self-directed); and (5) each shareholder of a Subscriber that is a closely held corporation.

Is the person's individual or joint net worth with his or her spouse, as of the date hereof, in excess of \$1,500,000?  
Yes   X   No       

#### D. INVESTMENT BACKGROUND AND OBJECTIVES

Both entities and individual Subscribers should complete this Part D, inserting the information requested with respect to the Subscriber, not any person who is completing this Questionnaire on the Subscriber's behalf.

Approximate number of years the Subscriber has been investing: 20        Please indicate the frequency of the Subscriber's investments in:

Real estate other than the Subscriber's principal residence (directly or through Companys or other entities managed by others):

( ) often,                      ( ) occasionally,                      (X ) seldom,                      ( ) never

Mutual funds and private securities investment pools (such as the Company):

( ) often,                      ( ) occasionally,                      (X ) seldom,                      ( ) never

Approximate current net portfolio value: \$                                 

Marketable securities (stocks, options, derivatives, bonds, debentures, notes):

(X ) often,                      ( ) occasionally,                      ( ) seldom,                      ( ) never

Approximate current net portfolio value: \$                                 

Privately held corporations, limited liability companies and Companys and start-up ventures (stocks, bonds, debentures, notes, member or partner interests):

(X ) often,                      ( ) occasionally,                      ( ) seldom,                      ( ) never

Approximate current net portfolio value: \$                                 

**Change in Amounts Invested.** Is the total amount of the Subscriber's investments currently substantially more than the total amount typically invested over the past several years (other than as the result of market increases)?

Yes        No   X  

If yes, please give details (e.g., when did increase occur, what was approximate value of total prior portfolio):

KINETIC FUNDS I, LLC

**Order of Objectives (number preferences from 1 to 3, from most preferred to least)**

**\_\_2\_\_ Capital Appreciation**

**\_\_1\_\_ Income**

**\_\_3\_\_ Liquidity**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

---

*KINETIC FUNDS I, LLC*



**E. "ACCREDITED INVESTOR"**

If the Subscriber is an "accredited investor" as that term is defined in Regulation D under the 1933 Act, and under other applicable securities laws and regulations, please indicate by initialing the category or categories that accurately describe the Subscriber's situation [initial all applicable blanks]:

- ☒ (1) A natural person (not an entity) whose individual net worth, or joint net worth with his or her spouse, at the time of his or her purchase exceeds \$1,500,000;
- ☐ (2) A natural person (not an entity) who [initial appropriate blank(s)]: (a) ☐ had an individual income in excess of \$200,000 in each of the preceding two years or (b) ☐ had joint income with his or her spouse in excess of \$300,000 in each of those years and (c) in either case (a) or (b), has a reasonable expectation of reaching the same income level in the current year;
- ☐ (3) An employee benefit plan within the meaning of Title I of ERISA [initial appropriate blank]: (a) if the investment decision is made by a plan fiduciary, as defined in section 3(21) thereof, which is (i) ☐ a bank, (ii) ☐ a savings and loan association, (iii) ☐ an insurance company or (iv) ☐ a registered investment adviser, or (b) ☐ if the employee benefit plan has total assets in excess of \$5,000,000, or (c) ☐ if the employee benefit plan is a self-directed plan, with investment decisions made solely by persons that are accredited investors;
- ☐ (4) A trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities of the Company being offered, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment in the Company;
- ☐ (5) A bank as defined in 1933 Act section 3(a)(2) or a savings and loan association or other institution as defined in 1933 Act section 3(a)(5)(A), whether acting in its individual or fiduciary capacity;
- ☐ (6) A broker or dealer registered pursuant to section 15 of the 1934 Act;
- ☐ (7) An insurance company as defined in 1933 Act section 2(13);
- ☐ (8) An investment company registered under the ICA or a business development company as defined in ICA section 2(a)(48);
- ☐ (9) A small business investment company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;
- ☐ (10) A private business development company as defined in Advisers Act section 202(a)(22)
- ☐ (11) An organization described in Code section 501(c)(3), corporation, Massachusetts or similar business trust, Company or limited liability company, not formed for the specific purpose of acquiring the securities of the Company being offered, or a plan established or maintained by a state or its political subdivisions or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, in any such case with total assets in excess of \$5,000,000 (in case of an organization described in Code section 501(c)(3), such total assets include endowment, annuity and life income funds are to be determined according to the Subscriber's most recent audited financial statements);
- ☒ (12) A manager, director, executive officer or general partner of the Company or the Managing Member; or
- ☒ (13) An entity in which all the equity owners are accredited investors.

---

KINETIC FUNDS I, LLC

If the Subscriber has indicated category (3) (c) or (13) above, please list below the names and categories of accreditation of the accredited investors making the investment decisions (category (3)(c)) or who are the equity owners (category (13)) (attach additional pages if necessary):

<u>Accredited Investor Person Making Decision/Equity Owner</u>	<u>Category</u>
MICHAEL S WILLIAMS	1
JAMENE PINNOW	1

---

**Special Note for Trusts, Limited Liability Companies, Companys and Certain Retirement Plans:** The application of the "accredited investor" categories to trusts (including Massachusetts or similar business trusts), limited liability companies, Companys and self-employed individual retirement plans is subject to complex regulatory interpretations and may differ under state and federal law. Accordingly, such an entity attempting to qualify may be required to deliver additional information, including a satisfactory opinion of its counsel.

#### **F. PURCHASER REPRESENTATIVE**

The Subscriber will be eligible to invest in the Company only if the Subscriber, either alone or together with the Subscriber's "purchaser representative" (such as an investment adviser, attorney, accountant or other consultant), has such knowledge and experience in financial and business matters that the Subscriber is capable of evaluating the merits and risks of an investment in the Company and has the capacity to protect the Subscriber's own interests in connection with the proposed investment in the Company. Does the Subscriber intend to have a "purchaser representative" advise him or her in order to meet this requirement? Yes \_\_\_\_ No X.

If yes, the Managing Member will furnish to the Subscriber additional information and a Purchaser Representative Questionnaire for completion before considering whether to accept the subscription. In the meantime, the Subscriber should furnish the information indicated below with respect to the Subscriber's purchaser representative:

Name: \_\_\_\_\_ Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

---

KINETIC FUNDS I, LLC

**G. NASD WITHHOLDING RULE**

For purposes of this section G., the following definitions apply:

"Collective investment account" means any hedge fund, investment Company, investment corporation or any other collective investment vehicle that is engaged primarily in the purchase and/or sale of securities. A "collective investment account" does not include a family investment vehicle or investment club.

"Family investment vehicle" means a legal entity beneficially owned solely by immediate family members.

"Immediate family member" means a person's parent, parent-in-law, spouse, sibling, brother-in-law, sister-in-law, son-in-law, daughter-in-law, child, or any other individual to whom the person provides material support.

"Investment club" means a group of friends, neighbors, business associates or others that pool their money to invest in stock or other securities and are collectively responsible for making investment decisions.

"Limited business broker/dealer" means any broker or dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities and direct participation program securities.

"Material support" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.

"Restricted person" means a person who generally is ineligible to receive New Issues under the rules and interpretations of the NASD.

To permit the Company to invest in initial public offerings in compliance with Rule 2790 of the NASD (the "New Issue Rule"), please indicate by checking the appropriate blank below whether or not the Subscriber, or any beneficial owner of the Subscriber, is any of the following:

- ☐ (1) A member of the NASD or otherwise a domestic or foreign broker or dealer;
- ☐ (2) An officer, director, general partner, associated person or employee of a NASD member or any other broker or dealer (other than a limited business broker/dealer);
- ☐ (3) An agent of a NASD member or any other broker or dealer (other than a limited business broker/dealer) that is engaged in the investment banking or securities business;
- ☐ (4) An immediate family member of a person specified in the preceding clause (2) or (3) if the person specified:
  - (a) materially supports, or receives material support from, the immediate family member;
  - (b) is employed by or associated with the NASD member, or an affiliate of the NASD member, selling any New Issue to the immediate family member; or
  - (c) has an ability to control the allocation of any New Issue;

---

KINETIC FUNDS I, LLC



- \_\_\_\_ (5) A finder or any person acting in a fiduciary capacity to the managing underwriter of New Issues, including, but not limited to, an attorney, an accountant or a financial consultant;
- \_\_\_\_ (6) An immediate family member of a person specified in the preceding clause (5) if the person specified in such clause (5) materially supports, or receives material support from, the immediate family member;
- \_\_\_\_ (7) A person who has authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment adviser or collective investment account;
- \_\_\_\_ (8) An immediate family member of a person specified in the preceding clause (7) that materially supports, or receives material support from, such person;
- \_\_\_\_ (9) A person listed, or required to be listed, in Schedule A of a Form BD (other than with respect to a limited business broker/dealer), except persons identified by an ownership code of less than 10%;
- \_\_\_\_ (10) A person listed, or required to be listed, in Schedule B of a Form BD (other than with respect to a limited business broker/dealer), except a person whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A identified by an ownership code of less than 10%;
- \_\_\_\_ (11) A person listed, or required to be listed, in Schedule C of a Form BD that meets the criteria of the preceding clause (9) or (10);
- \_\_\_\_ (12) A person that directly or indirectly owns 10% or more of a public reporting company listed, or required to be listed, in Schedule A of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, or other than with respect to a limited business broker/dealer);
- \_\_\_\_ (13) A person that directly or indirectly owns 25% or more of a public reporting company listed, or required to be listed, in Schedule B of a Form BD (other than a reporting company that is listed on a national securities exchange or is traded on the Nasdaq National Market, or other than with respect to a limited business broker/dealer); or
- \_\_\_\_ (14) An immediate family member of a person specified in any of the preceding clauses (9) through (13), unless the person owning the broker/ dealer: (a) does not materially support, or receive material support from, the immediate family member, and (b) is not an owner of the NASD member, or an affiliate of the NASD member, selling any New Issue to the immediate family member, and has no ability to control the allocation of any New Issue.

**Is the Subscriber or any beneficial owner of the Subscriber a person described in any of the preceding clauses (1) through (14)?** Yes \_\_\_\_ No \_\_\_\_

---

KINETIC FUNDS I, LLC.

If the answer to the preceding question is yes, the Subscriber may nevertheless be eligible to purchase New Issues if the Subscriber is in one of the categories listed below. Please indicate by checking the appropriate blank below whether or not the Subscriber is any of the following:

- ☐ (1) An investment company registered under the ICA;
- ☐ (2) A common trust fund or similar fund as described in section 3(a) (12) (A) (iii) of the 1934 Act that (a) has investments from 1,000 or more accounts and (b) does not limit beneficial interests in the fund principally to trust accounts of restricted persons under the New Issue Rule;
- ☐ (3) An insurance company general, separate or investment account, provided that (a) the account is funded by premiums from 1,000 or more policyholders, or, if a general account, the insurance company has 1,000 or more policyholders, and (b) the insurance company does not limit the policyholders whose premiums are used to fund the account principally to restricted persons under the New Issue Rule, or, if a general account, the insurance company does not limit its policyholders principally to restricted persons under the New Issue Rule;
- ☐ (4) An account in which the beneficial interests of restricted persons under the New Issue Rule does not exceed in the aggregate 10% of such account;
- ☐ (5) A publicly traded entity (other than a broker/dealer or an affiliate of a broker/dealer where such broker/dealer is authorized to engage in the public offering of New Issue Securities either as a selling group member or underwriter) that: (a) is listed on a national securities exchange; (b) is traded on the Nasdaq National Market; or (c) is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange or trading on the Nasdaq National Market;
- ☐ (6) An investment company organized under the laws of a foreign jurisdiction, provided that (a) the investment company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority, and (b) no person owning more than 5% of the shares of the investment company is a restricted person under the New Issue Rule;
- ☐ (7) An ERISA benefits plan that is qualified under Code section 401(a), provided that such plan is not sponsored solely by a broker/dealer.
- ☐ (8) A state or municipal government benefits plan that is subject to state and/or municipal regulation;
- ☐ (9) A tax exempt charitable organization under Code section 501(c) (3); or
- ☐ (10) A church plan under Code section 414(e).

Is the Subscriber a person described in any of the preceding clauses (1) through (10)? Yes ☐ No ☒ X

The Subscriber understands that if any representation in this Part G is or ever becomes untrue in any respect, the business of the Company may be materially and adversely affected thereby, and the Subscriber will be fully responsible for the consequences thereof. The Subscriber agrees to notify the Managing Member promptly in writing if any such representation is or ever is about to become or ever becomes untrue in any respect.

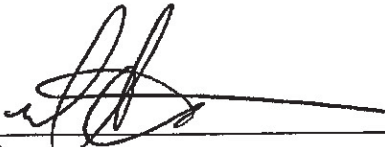
---

KINETIC FUNDS I, LLC

**H. SIGNATURE**

To the best of my knowledge and belief, the above information supplied by me is true and correct in all respects. I agree that I will notify the Managing Member in writing immediately of any material change in any of the foregoing information prior to consummation of my purchase of Interests and any change in the information in Part A or G at any time in the future. I understand that the information being furnished in this Questionnaire is required primarily to enable the Managing Member and the Company to determine whether an offer and sale of Interests to the Subscriber may be made without registration under federal and state securities laws, and whether the Company will comply with certain provisions of federal and state laws applicable to investment advisers and private investment companies.

Date: 4-30, 2015

  
Signature

Print Name: MICHAEL S WILLIAMS

---

KINETIC FUNDS I, LLC

## KINETIC FUNDS I, LLC

### SUBSCRIPTION INSTRUCTIONS

An investor desiring to subscribe for limited liability company interests in KINETIC FUNDS I, LLC ("Interests") must do the following:

1. Complete, date and sign a Subscription Agreement in the attached form. Have your signature notarized in the Acknowledgement form.
2. Complete, date and sign an Offering Questionnaire in the form appearing as Appendix I to the Subscription Agreement.
3. Complete, date and sign the Form W-9 attached to the Subscription Agreement.
4. Keep copies of the completed, dated, signed and notarized Subscription Agreement, Offering Questionnaire and Form W-9 for your records.
5. Send the completed, dated and originally signed Subscription Agreement, Offering Questionnaire and Form W-9 to:

KINETIC FUNDS I, LLC

Sarasota, FL

6. Unless the Managing Member otherwise agrees, payment of the subscription amount must be made by check or wire transfer through or from a U.S. bank or a banking institution.

- (a) Send a cashier's check in payment for the amount subscribed (as indicated on the signature page of the Subscription Agreement) payable to "KINETIC FUNDS I, LLC", to:

KINETIC FUNDS I, LLC

Sarasota, FL

OR

- (b) Wire transfer that amount to:

BMO Harris  
111 West Monroe  
Chicago, IL 60603

Routing #:   
Swift Code [for international]:

Further Credit To: KINETIC FUNDS I, LLC  
Account #:

Kinetic Funds I, LLC  
CONFIDENTIAL



## KINETIC FUNDS I, LLC

---

### KINETIC FUNDS I, LLC

#### SUBSCRIPTION AGREEMENT

1. SUBSCRIPTION. The undersigned (the "Subscriber") hereby irrevocably subscribes for a membership interest ("Interests") in KINETIC FUNDS I, LLC, a Delaware limited liability Company (the "Company"), in the amount indicated on the signature page of this Subscription Agreement. In payment for the Interests, the Subscriber is concurrently sending a check in that amount payable in immediately available funds or is wire transferring that amount to the custodian for the Company in accordance with the Subscription Instructions furnished by the Company to the Subscriber. Such subscription, when and if accepted by the Managing Member of the Company, Michael S. Williams (the "Managing Member"), will constitute the initial Capital Contribution by the Subscriber to the Company, in accordance with the Company's Operating Agreement, as amended and as and if amended in the future (the "AGREEMENT") relating to the Company and its business. Capitalized terms used and not otherwise defined in this Subscription Agreement have the meanings respectively ascribed to them in the AGREEMENT.

2. REPRESENTATIONS, WARRANTIES AND AGREEMENTS BY SUBSCRIBER. The Subscriber hereby represents, warrants and agrees as follows:

(a) The Interests are being purchased by the Subscriber and not by any other person, with the Subscriber's own funds and not with the funds of any other person, and for the account of the Subscriber, not as a nominee or agent and not for the account of any other person. On acceptance of this Subscription Agreement by the Managing Member, no person other than the Subscriber will have any interest, beneficial or otherwise, in the Interests. The Subscriber is not obligated to transfer Interests or any part thereof or interest therein to any other person nor does the Subscriber have any agreement or understanding to do so. The Subscriber is purchasing the Interests for investment for a period described in the Company's Operating Agreement, as and if amended, which has been delivered to you, and not with a view to the sale or distribution of any part or all thereof by public or private sale or other disposition. The Subscriber has no intention of selling, granting any participation in or otherwise distributing or disposing of any Interests. The Subscriber does not intend to subdivide the Subscriber's purchase of Interests with any person.

(b) The Subscriber understands that the Interests have not been registered or qualified under the 1933 Act or any other securities law or regulation, on the ground, among others, that there will be no distribution or public offering of the Interests. The Subscriber understands that the Interests will be issued by the Company in connection with a transaction that does not involve any public offering within the meaning of section 4(2) of the 1933 Act or applicable provisions of other securities laws and regulations, under the respective rules and regulations of the SEC and the administrators of such other laws and regulations thereunder. The Subscriber understands that the Company is relying in part on the Subscriber's representations herein for purposes of claiming such exemptions and that such exemptions may not be available if, notwithstanding the Subscriber's representations, the Subscriber has in mind merely acquiring Interests for resale on the occurrence or non-occurrence of some predetermined event. The Subscriber has no such intention.

(c) The Subscriber, either alone or with the Subscriber's professional advisers who are unaffiliated with, have no equity interest in and are not compensated by the Company or any affiliate of the Company ("Affiliate") or selling agent of the Company, directly or indirectly, has such knowledge and experience in financial and business matters that the Subscriber is capable of evaluating the merits and risks of an investment in Interests and has the capacity to protect the Subscriber's own interests in connection with the Subscriber's proposed investment in Interests.

## KINETIC FUNDS I, LLC

---

(d) The Subscriber either has previously furnished to the Managing Member a completed and signed Offering Questionnaire attached hereto as Appendix I or is doing so contemporaneously with the submission of this Subscription Agreement. The information in the Subscriber's most recently completed and signed Offering Questionnaire previously delivered or being delivered to the Managing Member, which is incorporated herein by reference, is true, correct and complete in all respects as of the date hereof.

(e) The Subscriber acknowledges that under U.S., international and other antimoney laundering laws, rules, regulations, treaties or other restrictions, the Managing Member or the Company (as the case may be) may require further identification of the Subscriber before they will process a subscription or withdrawal and that the Subscriber's subscription or withdrawal may be delayed if the Subscriber does not provide such required information on a timely basis. The Subscriber agrees to provide to the Managing Member any additional information regarding the Subscriber that the Managing Member or the Company deems necessary or convenient to ensure compliance with all applicable laws concerning money laundering and similar illicit activities.

(f) The Subscriber understands that the Company is prohibited from accepting subscriptions for interests by any person or entity that is acting, directly or indirectly, in violation of any anti-money laundering laws, rules, regulations, treaties or other restrictions, or on behalf of any suspected terrorist or terrorist organization, including any person, entity or organization that is included on any so-called "watch list" maintained by any governmental agency of the U.S. (including, but not limited to, the U.S. Central Intelligence Agency, the U.S. Department of the Treasury, the U.S. Federal Bureau of Investigation, the IRS, the U.S. Office of Foreign Assets Control and the SEC) (each such person or entity being called herein a "Prohibited Investor"):

(1) The Subscriber is not (A) acting as an agent, representative, nominee or intermediary for any other person, entity or other beneficial owner (each such person or entity being called herein an "Underlying Beneficial Owner") and no Underlying Beneficial Owner has any beneficial or economic interest in the Interests, (B) a Prohibited Investor or (C) a senior foreign political figure,<sup>1</sup> an immediate family member<sup>2</sup> of a senior foreign political figure or a close associate<sup>3</sup> of a senior foreign political figure.

(2) If the Subscriber is a corporation, Company, limited liability company, trust, association or other entity, the Subscriber (A) has established the identity of each director, officer and beneficial owner of the Subscriber (including, but not limited to, each shareholder, member, partner, trustee and beneficiary), (B) will maintain all evidence identifying such persons for at least five years after the date the Subscriber terminates its entire interest in the Company, (C) has made such information available to the Managing Member in the Offering Questionnaire or will provide such information to the Managing Member immediately on the Managing Member's request and (D) has no intention or obligation to distribute, assign, transfer or sell all or any portion of the Interests to any underlying beneficial owner.

<sup>1</sup> A "senior foreign political figure" is a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a "senior foreign political figure" includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure.

<sup>2</sup> The "immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children and in-laws.

<sup>3</sup> A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.



## KINETIC FUNDS I, LLC

---

(3) If the Subscriber is an investment entity (such as an investment pool organized as a limited Company, limited liability company, corporation or other entity), (A) the Subscriber has established and applies anti-money laundering practices and procedures that comply with all applicable laws, rules and regulations and are designed to detect and report any activity that raises suspicion of money laundering activities and (B) none of the Subscriber's directors, officers, managers, members, partners, shareholders or other beneficial owners is a Prohibited Investor, a senior foreign political figure, an immediate family member of a senior foreign political figure or a close associate of a senior foreign political figure.

(4) The assets used to subscribe for the Interests hereby were not derived, directly or indirectly, from any illegal activity or source.

(g) If the Subscriber is a bank organized under non-U.S. law or is an agency, branch or office located outside the U.S. of a U.S. bank (a "Foreign Bank"), or if the Subscriber receives deposits from, makes payments on behalf of, or handles other financial transactions related to a Foreign Bank:

(1) The Foreign Bank maintains a place of business that is located at a fixed address, other than solely an electronic address or a post-office box, in a country in which the Foreign Bank is authorized to conduct banking activities, at which location the Foreign Bank (A) employs one or more individuals on a full-time basis and (B) maintains operating records related to its banking activities;

(2) The Foreign Bank is subject to inspection by the banking authority that licensed the Foreign Bank to conduct banking activities;

(3) The Foreign Bank does not provide banking services to any other Foreign Bank that does not have a physical presence in any country and that is not a regulated affiliate (as that term is defined in 31 C.F.R. §103.175); and

(4) The Subscriber agrees to furnish such other documentation that the Managing Member or the Company may request at any time, including, but not limited to, any certification or recertification provided for by 31 C.F.R. §103.177(b).

(h) The Subscriber agrees to notify the Managing Member immediately if any of the representations, warranties or agreements in section 2(e), (f) or (g) becomes false, inaccurate or incomplete in any respect at any time that the Subscriber holds any Interests. The Subscriber understands and agrees that if the Managing Member believes that any of the representations, warranties or agreements in section 2(e), (f) or (g) or any other information that the Subscriber has supplied to the Managing Member or the Company is or becomes false, inaccurate or incomplete in any respect, the Managing Member or the Company may be required to expel the Subscriber from the Company, freeze the assets of the Subscriber, suspend the Subscriber's withdrawal rights, request additional information or recertification, deliver the Subscriber's assets invested in the Company to a governmental agency, report any such action and the Subscriber's identity to a governmental agency or take any combination of the foregoing actions or any other action as required by applicable law. The Subscriber hereby (1) waives and releases any known or unknown claim that the Subscriber might now or at any future time have against the Company, the Managing Member or any of their respective Affiliates, controlling persons, shareholders, members, managers, partners, directors, officers, employees, attorneys and agents in connection with such action by the Managing Member or the Company and (2) agrees that, in connection with such action by the Managing Member or the Company, the Managing Member may segregate and manage any portion or all of the Subscriber's investment in the Company separate and apart from the Company's assets, in the Managing Member's absolute discretion, including without limitation, by selling or otherwise disposing of such assets of the Subscriber and reinvesting the proceeds there from.

## KINETIC FUNDS I, LLC

---

The rights and obligations of the Managing Member under this section 2(h) shall supersede any duties that the Managing Member may have to the Subscriber under the Agreement or otherwise.

(i) Unless otherwise approved by the Managing Member, distributions of the Company's assets to the Subscriber (whether as a result of a distribution to all Capital Class Members or in connection with a withdrawal by the Subscriber) shall be made (1) only to the Subscriber (as reflected on the Company's books and records) and (2) only through accounts held at a U.S. bank.

(j) The Subscriber acknowledges receipt of the AGREEMENT and acknowledges that the Subscriber has been furnished with such financial and other information concerning the Company, the Managing Member and the business and proposed business of the Company as the Subscriber considers necessary in connection with the Subscriber's investment in Interests. The Subscriber has carefully reviewed the AGREEMENT and is thoroughly familiar with the existing and proposed business, operations, management, properties and financial condition of the Company and has discussed with representatives of the Managing Member any questions the Subscriber may have had with respect thereto. The Subscriber understands:

- (1) The risks involved in this offering, including the speculative nature of the investment;
- (2) The financial hazards involved in this offering, including the risk of losing the Subscriber's entire investment;
- (3) The lack of liquidity and restrictions on transfers of Interests; and
- (4) The tax consequences of this investment.

The Subscriber has consulted with the Subscriber's own legal, accounting, tax, investment and other advisers with respect to the tax treatment of an investment by the Subscriber in Interests and the merits and risks of an investment in Interests.

(k) The Subscriber understands that the investment in Interests is highly speculative, and is able to bear the economic risk of such investment. The Subscriber is an "accredited investor" as defined in the Offering Questionnaire attached hereto as Appendix I. If the Subscriber has indicated category (13) in Part E of such Offering Questionnaire, all direct and indirect equity owners of the Subscriber are also accredited investors.

(l) The Subscriber has a net worth in excess of \$1,500,000. Each direct or indirect ultimate equity owner of the Subscriber has a net worth in excess of \$1,500,000, if the Subscriber is (1) a private investment company (a company that would be defined as an investment company under the ICA, but for the exception from that definition provided by ICA section 3(c)(1)), (2) an investment company registered under the ICA or (3) a business development company as defined in Advisers Act section 202(a) (22).

(m) If the Subscriber is an individual, the Subscriber is a citizen of the U.S., or a resident alien taxable as a citizen of the U.S., over twenty-one years of age (or the age of majority in the Subscriber's state of residence) and if the Subscriber is an unincorporated association, all of its members are such citizens or resident aliens of such age. The requirements of the preceding sentence will be deemed met if the Subscriber is such a citizen or resident alien of such age who is acting as a custodian, trustee or legally appointed personal representative for the beneficial investor (who may be under such age). The Subscriber agrees to notify the Company within sixty days of becoming a nonresident alien.



## KINETIC FUNDS I, LLC

---

(n) If the Subscriber is a corporation, limited liability company, Company, trust or other entity:

(1) Unless otherwise indicated on the Subscriber's Offering Questionnaire, the Subscriber is not a foreign corporation, foreign limited liability company, foreign Company, foreign trust or foreign estate (as those terms are defined in the Code and the Regulations). The Subscriber agrees to notify the Company within sixty days of the date that the Subscriber becomes any such foreign person.

(2) The Subscriber was not formed for the purpose of investing in Interests. Less than forty percent of the Subscriber's total assets will be invested in the Company. The Subscriber has or will have other substantial business or investments.

(3) If the Subscriber is an "investment company", as that term is defined in the Investment Company Act of 1940, as amended, (the "ICA") or it relies on the exclusion from the definition of "investment company" provided by ICA section 3(c)(1) or 3(c)(7), the Subscriber understands and agrees that the Subscriber's subscription hereby may be reduced by the Managing Member to an amount that is less than ten percent of the total amount of interests in the Company held by all Capital Class Members.

(4) Other than as may be required with respect to the allocation of profits and losses from New Issue securities (under Rule 2790 of the National Association of Securities Dealers, Inc. (the "NASD"), as such Rule may be amended or replaced from time to time by the NASD or any similar rule or interpretation of any self-regulatory organization or governmental agency or official having similar authority), the governing documents of the Subscriber require that each beneficial owner of the Subscriber, including, but not limited to, shareholders, members, partners and beneficiaries, participate through such beneficial owner's interest in the Subscriber in all of the Subscriber's investments and that the profits and losses from each such investment are shared among such beneficial owners in the same proportions as all other investments of the Subscriber. No such beneficial owner may vary such beneficial owner's share of profits and losses or the amount of such beneficial owner's contribution for any particular investment made by the Subscriber.

The Subscriber understands that the Subscriber's certification in section 2(m) or (n)(1) above regarding non-foreign status may be disclosed to the IRS by the Company, and any false statement may be punishable by fine, imprisonment or both.

(o) If the Subscriber is a corporation, limited liability company, Company, trust or other entity and is not an Employee Benefit Plan, less than twenty-five percent of the value of each class of equity interests in the Subscriber (excluding from the computation non-Employee Benefit Plan interests of any individual or entity with discretionary authority or control over the assets of the Subscriber) is held by benefit plan investors, as defined in the Department of Labor's "plan asset" regulations at 29 C.F.R. §2510.3-101 ("Benefit Plan Investors"). If the Subscriber is as described in the preceding sentence and at any time twenty-five percent or more of the value of any class of equity interests in the Subscriber (computed as described in the preceding sentence) is or becomes held by Benefit Plan Investors (in which event, the Subscriber shall be or become a "25% Subscriber"), the Subscriber shall immediately disclose such fact to the Company. If the Subscriber is or becomes a 25% Subscriber or an Employee Benefit Plan, the person signing this Subscription Agreement on behalf of the Subscriber hereby represents and warrants as follows:

(1) If the Subscriber is an Employee Benefit Plan that is subject to Title I of ERISA, such person is either a named fiduciary of the Employee Benefit Plan (as defined in ERISA section 402(a)(2)) or an investment manager of the Employee Benefit Plan (as defined in ERISA section 3(38)) with

## KINETIC FUNDS I, LLC

---

full authority under the terms of the Employee Benefit Plan and full authority from all Employee Benefit Plan beneficiaries, if required, to cause the Employee Benefit Plan to invest in the Company. Such investment has been duly approved by all other named fiduciaries whose approval is required, if any, and is not prohibited or restricted by any provision of the Employee Benefit Plan or of any related instrument.

(2) If the Subscriber is an Employee Benefit Plan that is subject to Title I of ERISA or a 25% Subscriber whose assets include assets of an Employee Benefit Plan under the "plan asset" regulations, such person has determined independently that the investment by the Employee Benefit Plan or 25% Subscriber in the Company satisfies all requirements of ERISA section 404(a)(1), specifically including the "prudent man" standards of ERISA section 404(a)(1)(B) and the "diversification" standard of section 404(a)(1)(C), and will not be prohibited under any provision of ERISA section 406 or Code section 4975(c)(1). Such person has requested and received all information from the Managing Member that such person, after due inquiry, considered relevant to such determinations. In determining that the requirements of ERISA section 404(a)(1) are satisfied, such person has taken into account the risk of loss of part or all of the Employee Benefit Plan's or 25% Subscriber's investment and that an investment in the Company will be relatively illiquid, and funds so invested will not be readily available for the payment of employee benefits. Taking into account these factors and all other factors relating to the Company, the undersigned has concluded that investment in the Company constitutes an appropriate part of the Employee Benefit Plan's or 25% Subscriber's overall investment program.

(3) Such person will notify the Managing Member, in writing, of any alteration in the identity of any named fiduciary or investment manager, including such person, who has the authority to approve investments in the Company.

(4) Neither the Managing Member nor any Affiliate of the Managing Member has rendered any investment advice (within the meaning of ERISA section 3(21) and the regulations thereunder) to the Subscriber (or, if the Subscriber is a 25% Subscriber, to any Employee Benefit Plan investing in the 25% Subscriber) with respect to the assets that will be invested in the Company on a regular basis pursuant to a mutual understanding, arrangement or agreement, written or otherwise, between the Subscriber (or, if the Subscriber is a 25% Subscriber, between any Employee Benefit Plan investing in the 25% Subscriber) and any of such parties who will act in regard to the Company, and none of such parties renders any investment advice to the Subscriber or to any such Employee Benefit Plan that furnishes a primary basis for investment decisions with respect to assets of the Subscriber or of any such Employee Benefit Plan.

If the Managing Member or any Affiliate, director, officer, member, manager, partner, employee or agent of the Managing Member is ever held to be a fiduciary, it is agreed that, in accordance with ERISA sections 405(c)(1), 405(c)(2) and 405(d) and any successor sections thereto, the fiduciary responsibilities of that person shall be limited to such person's duties in administering the business of the Company, and such person shall not be responsible for any other duties with respect to any Employee Benefit Plan or any Employee Benefit Plan investing in the 25% Subscriber (specifically including evaluating the initial or continued appropriateness of any such Employee Benefit Plan's investment in the Company under ERISA section 404(a)(1)). The Managing Member may, but shall not be required to, elect to report the Company's underlying assets directly to the DOL pursuant to 29 C.F.R. 2520.103-12.

(p) This Subscription Agreement constitutes a legal, valid and binding agreement of the Subscriber enforceable against the Subscriber in accordance with its terms. The Subscriber, if not an individual, is empowered and duly authorized to enter into this Subscription Agreement (including the power of attorney herein) under any governing document, operating agreement, Company agreement, trust instrument, pension plan, charter, articles or certificate of incorporation or organization, bylaw provision or the like. The person, if any, signing this



## KINETIC FUNDS I, LLC

---

Subscription Agreement on behalf of the Subscriber is empowered and duly authorized to do so by the governing document, trust instrument, operating agreement, Company agreement, pension plan, charter, articles or certificate of incorporation or organization, bylaw provision, board of directors or stockholder resolution, or the like.

(q) The offer to sell Interests was directly communicated to the Subscriber by the Company in a manner such that the Subscriber was able to ask questions of and receive answers from the Managing Member concerning the terms and conditions of this transaction. At no time was the Subscriber presented with or solicited by any leaflet, public promotional meeting, newspaper, magazine or similar media (including, without limitation, any internet site that does not comply with procedures required to prevent a public solicitation of Interests), or radio or television article or advertisement, or any other form of advertising or general solicitation. The Subscriber has not reproduced, duplicated or delivered to any other person the AGREEMENT or any part thereof or excerpt therefrom, including, without limitation, this Subscription Agreement, except to the Subscriber's own advisers, and shall not do so without the Managing Member's prior consent.

(r) The Subscriber understands that insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or persons controlling the Company pursuant to the AGREEMENT or this Subscription Agreement, the Company has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the 1933 Act and is therefore unenforceable.

(s) The Subscriber understands and agrees that the Managing Member and the Company may release and disclose to proper governmental authorities confidential information about the Subscriber and, if applicable, its directors, officers and beneficial owners, if the Managing Member is required to do so by applicable law, rule, regulation, subpoena or court order or if the Managing Member believes it is in the best interest of the Company in light of the applicable laws, rules and regulations regarding Prohibited Investors.

3. AGREEMENT TO REFRAIN FROM REALES. The Subscriber agrees that the Subscriber shall in no event pledge, hypothecate, sell, transfer, assign or otherwise dispose of any Interests, nor shall the Subscriber receive any consideration for Interests from any person, unless and until prior to any proposed pledge, hypothecation, sale, transfer, assignment or other disposition, the Subscriber shall have complied with all requirements and conditions in the AGREEMENT.

4. CERTIFICATES TO BE LEGENDED. The Subscriber understands and agrees that any instrument or certificate representing or relating to Interests may bear such legends as the Company may consider necessary or advisable to facilitate compliance with the 1933 Act and any other applicable securities law or regulation, including, without limitation, legends stating that the Interests have not been registered or qualified under the 1933 Act or any other securities law and setting forth the limitations on dispositions imposed hereby and by the Agreement.

5. INTERESTS WILL BE RESTRICTED SECURITIES. The Subscriber understands that the Interests will be "restricted securities" as that term is defined in Rule 144 under the 1933 Act and, accordingly, that the Subscriber must hold the Interests indefinitely unless they are subsequently registered or qualified under the 1933 Act and any other applicable securities law or exemptions from such registration and qualification are available. The Subscriber understands that the Company is under no obligation so to register or qualify Interests under the 1933 Act or any other securities law, or to comply with Regulation A or any other exemption under the 1933 Act or any other law. The Subscriber understands that Rule 144 is not available for any sale of Interests and will not be available for at least several years.



## KINETIC FUNDS I, LLC

---

6. **COMPANY MAY REFUSE TO TRANSFER.** If, in the opinion of counsel for the Managing Member or a manager of the Managing Member, the Subscriber has acted or at any time hereafter shall have acted in a manner inconsistent with the representations and warranties in this Subscription Agreement, the Managing Member may refuse to transfer the Interests until such time as such counsel is of the opinion that such transfer will not require registration or qualification of Interests under the 1933 Act or any other securities law or registration of the Company under the ICA. The Subscriber understands and agrees that the Company may refuse to acknowledge or permit any disposition of Interests that does not comply in all respects with the Agreement and this Subscription Agreement and that the Company intends to make an appropriate notation in its records to that effect.

7. **INDEMNIFICATION.** The Subscriber agrees to indemnify and defend the Company, the Managing Member, each person, if any, who controls the Managing Member within the meaning of the 1933 Act or the 1934 Act, and each of their respective Affiliates, controlling persons, shareholders, members, managers, partners, directors, officers, employees, attorneys and agents and hold them harmless from and against any and all claims, liabilities, losses, damages, settlements and expenses (including, without limitation, attorneys' fees and expenses, expert witnesses' fees and expenses and court costs) as and when suffered or incurred on account of or arising out of:

- (a) Any breach of or inaccuracy in the Subscriber's representations, warranties or agreements herein, including, without limitation, the defense of any claim based on any allegation of fact inconsistent with any of such representations, warranties or agreements;
- (b) Any disposition of Interests contrary to any of such representations, warranties or agreements;
- (c) Any action, suit or proceeding based on (1) a claim that any of such representations, warranties or agreements were inaccurate or misleading or otherwise cause for obtaining damages or redress under the 1933 Act or any other securities law, or (2) any disposition of any Interests or any part thereof or interest therein; or
- (d) Any delay in the Subscriber's subscription, any freezing of the assets of the Subscriber, any suspension or delay of the Subscriber's withdrawal rights, any delivery of the Subscriber's assets invested in the Company to a governmental agency, or any other action, delay or disclosure, pursuant to section 2(e), (f), (g), (h) or (s).

8. **POWER OF ATTORNEY.** The Subscriber hereby irrevocably constitutes and appoints the Managing Member, with full power of substitution and re-substitution, the Subscriber's true and lawful attorney, for the Subscriber and in the Subscriber's name, place and stead and for the Subscriber's use and benefit to sign, execute, deliver, certify, acknowledge, swear to, file, record and publish:

- (a) The AGREEMENT and the Company's Certificate of Formation, and any amendments to either of such documents in accordance with the AGREEMENT;
- (b) Any other certificates, instruments, agreements and documents necessary to qualify or continue the Company as a limited liability company or a Company wherein members have limited liability in the states or other jurisdictions where the said attorney-in-fact deems necessary or advisable;

## KINETIC FUNDS I, LLC

---

(c) All conveyances, assignments, documents of transfer or other instruments and documents necessary to effect the assignment of interests or the dissolution and termination of the Company in accordance with the Agreement; and

(d) All filings and submissions pursuant to any applicable law, regulation, rule, order, decree or judgment which, in the opinion of said attorney-in-fact, may be necessary or advisable in connection with the business of the Company.

The power of attorney granted herein is coupled with an interest, shall be irrevocable, shall survive the death, disability or incapacity of the Subscriber, shall be deemed given by each and every assignee and successor of the Subscriber and may be exercised by said attorney-in-fact by listing, or attaching a list of, the names of the Subscriber and other persons for whom the said attorney-in-fact is acting and signing the Agreement and such other certificates, instruments and documents with the single signature of an authorized signatory on behalf of the said attorney-in-fact acting as such for all of the persons whose names are so listed.

9. ARBITRATION. The parties waive their right to seek remedies in court, including any right to a jury trial. The parties agree that any dispute between or among any of the parties or any of their Affiliates arising out of, relating to or in connection with this Subscription Agreement or the Company or its formation, organization, capitalization, business or management, shall be resolved exclusively through binding arbitration conducted under the rules and before the facilities of any self-regulatory organization of which the Company is a member at the time of such dispute, or of the Judicial Arbitration and Mediation Service in or nearest in geographic proximity to Sarasota, Florida, ("JAMS") if the Company is not a member of any such self-regulatory organization at the time of such dispute. The arbitration hearing shall be held in the county and state of the principal office of the Company at the time the dispute arises, unless required to be held elsewhere by the rules of the organization before which the arbitration is conducted. Disputes shall not be resolved in any other forum or venue. If conducted under the auspices of JAMS, (a) the arbitration shall be conducted by a retired judge who is experienced in resolving disputes regarding the securities business, (b) the arbitrator shall apply the substantive law of the state of Florida to all state law claims, (c) limited discovery shall be conducted in accordance with JAMS' Arbitration Rules and Procedures, (d) the arbitrator may not award punitive or exemplary damages, unless (but only to the extent that) such damages are required by law to be an available remedy for the specific claim(s) asserted, (e) the arbitrator's award shall consist of a written statement as to the disposition of each claim and the relief, if any, awarded on each claim and (f) the award shall not include or be accompanied by any findings of fact, conclusions of law or other written explanation of the reasons for the award. The parties understand that the right to appeal or to seek modification of any ruling or award by the arbitrator is severely limited under state and federal law. Any award rendered by the arbitrator shall be final and binding, and judgment may be entered thereon in any court of competent jurisdiction in the county and state of the principal office of the Company at the time the award is rendered or as otherwise provided by law.

10. SUCCESSORS. The representations, warranties and agreements in this Subscription Agreement shall be binding on the Subscriber's successors, assigns, heirs and legal representatives and shall inure to the benefit of the respective successors and assigns of the Company and the Managing Member, any other person that shall hereafter be admitted to the Company as a Managing Member thereof in accordance with the Agreement, and their respective Affiliates.

## KINETIC FUNDS I, LLC

---

11. GOVERNING LAW. This Subscription Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida.

12. NUMBER AND GENDER. The use of the singular number shall be deemed to include the plural and vice versa, and each gender shall be deemed to include each other gender, as the context may require, and "person" shall be deemed to include natural person, corporation, limited liability company, Company, trust or other legal entity.

13. ENTIRE AGREEMENT. This Subscription Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by all parties. The representations, warranties, covenants and agreements in this Subscription Agreement shall survive the execution and delivery of this Subscription Agreement and the AGREEMENT and shall continue in full force and effect notwithstanding anything to the contrary in the AGREEMENT, except only to the extent otherwise provided in a written amendment of this Subscription Agreement, specifically referring hereto, that is signed by or on behalf of the Managing Member and the Subscriber.

14. SEVERABILITY. If any provision of this Subscription Agreement or the application thereof to any person or in any circumstances shall be held to be invalid, unlawful, or unenforceable to any extent, the remainder of this Subscription Agreement, and the application of such provision other than to the persons or in the circumstances deemed invalid, unenforceable or unlawful, shall not be affected thereby, and each remaining provision hereof shall continue to be valid and may be enforced to the fullest extent permitted by law.



# KINETIC FUNDS I, LLC

## KINETIC FUNDS I, LLC

### SUBSCRIPTION AGREEMENT SIGNATURE PAGE

AMOUNT OF CHECK OR SIMULTANEOUS WIRE TRANSFER:

\$65,000

TYPE OF OWNERSHIP: (Check One):

<u>Check One</u>	<u>TYPE OF OWNERSHIP</u>	<u>SIGNATURE PAGE</u>
	INDIVIDUAL OWNERSHIP	PAGE 13
	JOINT TENANTS WITH RIGHT OF SURVIVORSHIP	PAGE 13
	COMMUNITY PROPERTY	PAGE 13
	TENANTS-IN-COMMON	PAGE 13
	CORPORATION	PAGE 14
<input checked="" type="checkbox"/>	COMPANY OR LIMITED LIABILITY COMPANY	PAGE 15
	TRUST (Including employee benefit plan and individual retirement account trusts)	PAGE 16
	CUSTODIAN FOR MINOR	PAGE 17
	CUSTODIAN FOR PENSION PLAN/RETIREMENT FUNDS	PAGE 18
	OTHER (Please specify and include appropriate documentation)	NA

Kinetic Funds I, LLC  
CONFIDENTIAL

Page 12

## KINETIC FUNDS I, LLC

---

### INDIVIDUAL(S):

The Managing Member may require that you furnish a certified or notarized copy of your driver's license or passport.

Dated: \_\_\_\_\_, 200\_\_

Investor #1:  
Print or Type Name:

\_\_\_\_\_

Signature: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

Social Security No. \_\_\_\_\_

Investor #2 (if any):  
Print or Type Name:

\_\_\_\_\_

Signature: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

Social Security No. \_\_\_\_\_

---

Kinetic Funds I, LLC  
CONFIDENTIAL

## KINETIC FUNDS I, LLC

---

### CORPORATION:

The Managing Member may require that you furnish articles or certificate of incorporation, bylaws and corporate resolution certified by the secretary of the corporation authorizing execution of this Subscription Agreement by the person signing below.

Dated: \_\_\_\_\_, 20\_\_

Name of Corporate Investor:

\_\_\_\_\_  
\_\_\_\_\_

State of Incorporation

\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_  
Authorized Signature

Print Name and Title of Signatory \_\_\_\_\_

Tax Identification Number \_\_\_\_\_

---

Kinetic Funds I, LLC  
CONFIDENTIAL

## KINETIC FUNDS I, LLC

---

### COMPANY OR LIMITED LIABILITY COMPANY:

The Managing Member may require that you furnish a certified copy of the statement of Company or Company agreement or the operating agreement and articles or certificate of organization or formation authorizing execution of this Subscription Agreement by the person signing below.

Dated: April 30, 2015

Name of Company or Limited Liability Company  
LF42, LLC

State of Formation

DELAWARE

Address:

[REDACTED]  
SARASOTA FL [REDACTED]

By:

[Signature]  
Authorized Signature

Print Name and Title of Signatory MICHAEL S WILLIAMS

Tax Identification Number [REDACTED]

---

Kinetic Funds I, LLC  
CONFIDENTIAL



## KINETIC FUNDS I, LLC

---

### TRUST:

The Managing Member may require that you furnish a certified copy of the trust agreement or other instrument and any other documentation necessary to establish the authority of the person signing this Subscription Agreement.

Dated: \_\_\_\_\_, 20\_\_

Name of Trust

State and Date of Formation

\_\_\_\_\_

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_  
\* Signature of Trustee or Other Authorized Person

Print Name and Title of Signatory \_\_\_\_\_

Tax Identification Number \_\_\_\_\_

- \* All documents must be signed by or on behalf of the trustee or, in the case of an individual retirement account, the custodian, not by or on behalf of a participant or beneficiary.

---

Kinetic Funds I, LLC  
CONFIDENTIAL

## KINETIC FUNDS I, LLC

---

### CUSTODIAN FOR MINOR:

Dated: \_\_\_\_\_, 20\_\_\_\_

Print Name of Custodian: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Custodian

Custodian for:

Print Name of Minor \_\_\_\_\_

under the Florida Uniform Transfers to Minors Act

Social Security Number of Minor: \_\_\_\_\_

---

Kinetic Funds I, LLC  
CONFIDENTIAL

## KINETIC FUNDS I, LLC

---

### CUSTODIAN FOR PENSION PLAN/RETIREMENT FUNDS:

For non-self-directed Pension Plans and/or Retirement Funds or plans that are not in a trust, a signature from the authorized person for the custodian of the pension plan / retirement fund is required.

Dated: \_\_\_\_\_, 20\_\_

Name of Pension Plan / Retirement Fund / IRA:

\_\_\_\_\_

Name of Custodian:

\_\_\_\_\_  
\_\_\_\_\_

State of Incorporation

\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_

Authorized Signature

Print Name and Title of Signatory \_\_\_\_\_

---

Kinetic Funds I, LLC  
CONFIDENTIAL

