

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**KINETIC INVESTMENT GROUP, LLC and
MICHAEL SCOTT WILLIAMS,**

CASE NO.: 8:20-cv-394

Defendants, and

**KINETIC FUNDS I, LLC,
KCL SERVICES, LLC d/b/a LENDACY,
SCPIO, LLC, LF 42, LLC, EL MORRO
FINANCIAL GROUP, LLC, and KIH, INC.,
f/k/a KINETIC INTERNATIONAL, LLC,**

Relief Defendants.

THE RECEIVER'S LIQUIDATION PLAN

Mark A. Kornfeld, Esq., through undersigned counsel and in his capacity as the court-appointed Receiver (the "Receiver") for Defendant Kinetic Investment Group, LLC and Relief Defendants Kinetic Funds I, LLC, KCL Services, LLC d/b/a Lendacy, Scpio, LLC, LF 42, LLC, El Morro Financial Group, LLC, and KIH Inc., f/k/a Kinetic International, LLC, submits this Liquidation Plan (the "Plan") in accordance with Paragraph 47 of the Order Granting Plaintiff Securities and Exchange Commission's Motion for Appointment of Receiver, dated March 6, 2020 (the "Order Appointing Receiver") (Doc. 34). The Plan is based on the work of the Receiver and his counsel, agents, and other retained professionals (the "Professionals") and their investigation and findings to date. The Receiver reserves the

right to modify, supplement, or otherwise revise the recommendations presented in this Plan based on his continuing investigation.

I. INTRODUCTION

On February 20, 2020, the Commission filed a complaint (the “Complaint”) (Doc. 1) in the United States District Court for the Middle District of Florida (the “Court”) alleging violations of federal securities laws against Defendants Kinetic Investment Group, LLC (“Kinetic Investment Group”) and Michael S. Williams (“Williams”) and Relief Defendants Kinetic Funds I, LLC (“Kinetic Funds”), KCL Services, LLC d/b/a Lendacy (“Lendacy”), Scipio, LLC (“Scipio”), LF 42, LLC, El Morro Financial Group, LLC, and KIH Inc., f/k/a Kinetic International, LLC (“Kinetic International”) (collectively, the “Receivership Entities”).

The Complaint alleged that the scheme involved securities offerings made on behalf of Kinetic Funds, a purported hedge fund with a sub-fund structure managed by Kinetic Investment Group and Williams. *Id.* ¶ 2. Defendants represented to investors that Kinetic Funds’ largest sub-fund, KFYield, invested all of its assets in income-producing U.S. listed financial products hedged by listed options. *Id.* Potential investors were told that KFYield was a liquid investment that would “maintain 90% principle [sic] protection” and that an investor could redeem their principal investment “100% . . . without penalties” with a 30-day written notice. *Id.* ¶¶ 2, 28. Investors in the KFYield fund, which attracted the near-entirety of investor funds entrusted to Kinetic Funds, were routinely provided with documentation from Bloomberg’s reporting service that claimed KFYield had achieved positive annual returns every year since inception. *Id.* ¶ 24. Many, but not all, investors were apparently

drawn to the Kinetic Funds investment opportunity by the solicitations and advertised opportunity to also obtain low-interest and unsecured loans from Lendacy based on the dollar amount of any KFYield investment and with the understanding that 100% of their KFYield investment would continue earning dividends. *Id.* ¶ 28.

On March 6, 2020, the Court entered the Order Appointing Receiver. By separate Order, the Court also granted the Commission's Motion for Asset Freeze and granted other relief as to all Defendants (Doc. 33). Among other things, the Orders froze Defendants' assets and enjoined any further violations of federal securities laws. Upon his appointment, the Receiver immediately began his efforts to marshal and secure assets pursuant to the Order Appointing Receiver. As of the date of this Plan, the Receiver has successfully frozen approximately \$13.1 million in net cash proceeds in bank and brokerage accounts belonging to the Receivership Entities. Pursuant to the Order Appointing Receiver, the Receiver established fiduciary bank accounts at ServisFirst Bank for each Receivership Entity.

The Receiver also successfully secured other valuable real property and personal property belonging to or in the possession of Receivership Entities. For example, Receivership Entity Scipio previously purchased a historic bank building located at 152 Tetuan Street, San Juan, Puerto Rico (the "Bank Building") using funds directly traceable to investor deposits. The Receiver changed the locks to the Bank Building on March 8, 2020. The Receiver also discovered a safe in the office maintained by Kinetic Investment Group in Sarasota, Florida which contained gold coins of various weights totaling 120.1 ounces. Finally, the Receiver learned that Kinetic International used investor funds to make an investment in an aerospace start-up company and to develop a cryptocurrency software

trading platform. The Receiver obtained possession of both of those items.

Further information on the Receiver's efforts to date is available in the Receiver's Interim Report filed on April 30, 2020 (Doc. 60) and available on the Receiver's website at www.kineticreceivership.com.

II. LIQUIDATION PLAN

The Order Appointing Receiver directs the Receiver to “develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property” and to file his Liquidation Plan within 90 days of the entry of the Order Appointing Receiver. Doc. 34 ¶¶ 46-47. The Receiver presents the following Liquidation Plan.

A. Recovered, Remaining, and Recoverable Receivership Real Property

i. Assets On Hand And Potentially Recoverable

As set forth above, the Receivership Estate currently contains the Bank Building which is a historic and unique parcel of real property located in Old San Juan, Puerto Rico that was purchased in May 2018 using investor funds. The Receiver's professionals visited the building on March 8, 2020 to secure the property and observed that the building appeared to have been in a state of disrepair for some time. *See* Doc. 60 Ex. H. The Receiver has obtained two additional appraisals estimating the building's current value as \$1.86 million and \$2.33 million, respectively.¹ Each of the appraisals obtained by the Receiver references

¹ Defendant Williams also apparently obtained an appraisal of the Bank Building in September 2019 which estimated the building's “as-is” value to be \$2.9 million. Of course, the Receiver is mindful that this appraisal took place before the ongoing COVID-19 pandemic.

the significant repairs likely needed for any contemplated use of the Bank Building.²

The Receiver's investigation also revealed that Defendant Williams used investor funds to purchase a luxury apartment multiplex and associated parking spaces in San Juan, Puerto Rico (the "Apartment"). As further detailed in the Receiver's Motion for Possession of and Title to Residential Real Property (Doc. 72), Defendant Williams was not entitled or authorized to use investor funds to purchase a luxury apartment for his primary residence and the Receiver is seeking turnover of that Apartment so that it may be liquidated for the benefit of Williams' defrauded victims. If and when the Court grants the Receiver's requested relief, the Receiver intends to obtain appraisals of the Apartment to understand the possible proceeds any sale of the property would yield.

Other than the real property discussed above, the Receiver's initial investigation has not uncovered any other potential instances where real property was purchased with or otherwise traceable to investor funds. The Receiver will update the Court as his investigation continues.

ii. Contemplated Liquidation Procedure

Paragraphs 32 and 33 of the Order Appointing Receiver govern the Receiver's sale of any real property:

32. Subject to Paragraph 33 immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the

² One appraisal concludes that the building "requires a complete interior renovation" while the other indicates that the "general physical condition of interior areas can be rate [sic] as poor."

Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

33. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the Receivership Estates.

Doc. 34 ¶¶ 32-33. As referenced by Paragraph 33, public and private sales of real property in a receivership are governed by 28 U.S.C. § 2001 (“**Section 2001**”). Section 2001(a) sets forth procedures applicable to public sales of receivership real property (such as auctions), while Section 2001(b) provides procedures for private sales of receivership real estate. Both public and private sales of receivership real estate are subject to various marketing, notice, and appraisal requirements. *See, e.g.*, 28 U.S.C. § 2001. Although the Receiver presently intends to comply with these requirements, he also notes that courts (including courts in this district) have recognized their authority to deviate from or otherwise modify these requirements as necessary. *See, e.g., SEC v. Billion Coupons, Inc.*, 2009 WL 2143531 at *3 (D. Hawaii 2009) (authorizing private sale without any appraisals); *SEC v. Patrick Kirkland et al.*, 2009 WL 1439087 (M.D. Fla. 2009) (authorizing private sale based on one appraisal).

Pursuant to the Order Appointing Receiver and relevant statutory guidance, the Receiver intends to consider several factors in determining the feasibility and procedure for the disposition of any Receivership real property, including (i) whether a public or private sale is most appropriate given the property’s individual characteristics and likelihood of generating the optimal recovery for the receivership estate; (ii) input and recommendations from real estate professionals as to the potential market and marketability of any property; and (iii) the

need to seek Court approval to modify or deviate from the statutory procedures set forth in 28 U.S.C. §§ 2001 and 2004.

The Receiver will use commercially reasonable efforts to market each property to as many potential buyers as possible and will also include any relevant information on his website at www.kineticreceivership.com. While it is the Receiver's experience that a private sale is typically the most efficient and cost-effective way to liquidate real property and generate the maximum net proceeds for the Receivership Estate, he will work with his professionals to determine a liquidation method for each parcel of real property designed to generate the greatest return for the Receivership Estate. It is the Receiver's understanding that both the Bank Building and the Apartment are free and clear of any liens or encumbrances. To the extent the Receiver receives an offer which he believes is appropriate to accept, he will then seek approval from the Court of the proposed purchase agreement and sale. Any net proceeds from the sale will then be deposited into the appropriate Receivership Entity bank account.

B. Recovered, Remaining, and Recoverable Receivership Personal Property

i. Assets On Hand And Potentially Recoverable

The Receiver has recovered and secured various personal property pursuant to the Order Appointing Receiver which includes (i) office furniture and equipment retrieved from the Sarasota, Florida office used by Kinetic Investment Group (the "Sarasota Office") and the San Juan, Puerto Rico office previously used by multiple Receivership Entities (the "Puerto Rico Office"); (ii) physical gold holdings stored in a safe at the Sarasota Office; (iii) software source code; and (iv) a \$500,000 investment in an aerospace start-up company.

The Sarasota Office contained various office equipment, furniture, electronics, and various other furnishings. The Receiver has arranged for this property to be temporarily stored in a storage unit and is in the process of determining whether any of the property may have resalable value or should be donated or otherwise disposed of. The Receiver was also notified by Defendant Williams' counsel of the existence of three computers that were located in the Puerto Rico Office, and the Receiver is in the process of obtaining possession of, and analyzing, those computers.

The Receiver also secured a large safe in the Sarasota Office which contained approximately 120.1 ounces of gold coins in the following denominations:

- 111 1-ounce coins;
- 9 1/2-ounce coins;
- 14 1/4-ounce coins; and
- 11 1/10-ounce coins (collectively, the "Gold Holdings").

It is the Receiver's understanding that the Gold Holdings were purchased on behalf of investors in the Kinetic Funds KF Gold sub-fund. The Gold Holdings are currently being held at a secure and access-restricted location until they are liquidated.

The Receiver has also recovered two intangible assets that were purchased and/or generated by Kinetic International using funds traceable to investor deposits. One of these assets is the apparently-unfinished computer source code for a cryptocurrency trading platform that was being developed by Kinetic International but which apparently was not finished following Williams' resignation from Kinetic International in May 2019. As further detailed in the Receiver's Interim Report, a technological professional retained by Kinetic International following Williams' resignation determined that the software likely had little value and could not be improved or otherwise completed. *See* Doc. 60 at 65, fn. 40.

Kinetic International also made an investment of approximately \$500,000 into Zephyr Aerospace, LLC (the “Zephyr Investment”) on or around March 31, 2019. The Zephyr Investment is memorialized by a Simple Agreement for Future Equity signed by Zephyr and by Defendant Williams on behalf of Kinetic International, and the agreement provides for Kinetic International’s ability to receive shares in Zephyr Aerospace upon the future occurrence of certain events.

The Receiver continues to investigate whether any other personal property was purchased with assets of the Receivership Estate but has not yet been turned over to the Receiver.

ii. Contemplated Liquidation Procedure

Paragraph 31 of the Order Appointing Receiver provides the Receiver with authority to sell any personal property without obtaining Court approval:

The Receiver may, without further Order of the Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

Doc. 60 ¶ 31. For personal property in the Receivership Estate that does not appear to have any potential material value after analyzing the true and proper value, such as recovered office furniture or equipment from the Sarasota office, the Receiver intends to proceed under Paragraph 31 in attempting to sell or otherwise dispose of that property.

For the Gold Holdings, the Receiver intends to obtain at least **five** quotes from various businesses specializing in the purchase and sale of precious metals and to also list the coins for sale on his website at www.kineticreceivership.com and to accept the highest bid

received. The Receiver believes that Paragraph 31 of the Order Appointing Receiver allows him to liquidate the Gold Holdings without further Order of the Court.

The Receiver is in the process of evaluating whether any recoverable value may be obtained or generated by either the Software or the Zephyr Investment. For the Software, the Receiver intends to seek Court approval to retain a consultant to evaluate the status and completeness of the current source code and whether there could be any benefit by attempting to sell the Software in its current state. For the Zephyr Investment, the Receiver has been in contact with the principal of Zephyr and is seeking additional information about the company and its prospects. At this stage, the Receiver is not optimistic that either asset will prove to generate any material value for investors.

iii. Donation, Disposal, or Abandonment of Assets

The Receiver understands the necessity of managing the Receivership Estate in an efficient and cost-effective matter. For example, certain assets such as the office equipment or furniture from the Sarasota Office could have little to no commercial value or could be worth less than the required cost of securing and/or storing those assets. If the Receiver determines those assets would not result in any material sale proceeds and would be cost-prohibitive to maintain or store, he will likely abandon the assets or donate them to an appropriate charity pursuant to the authority set forth in Paragraph 31 of the Order Appointing Receiver. The Receiver might also seek the Court's approval to abandon or donate such assets if the circumstances warrant.

C. Potential Litigation Claims

The Receiver's primary focus since his appointment has been on securing known assets and investigating the various business operations of the Receivership Entities. In carrying out his initial investigation, the Receiver has also started to analyze the existence and viability of potential claims against third parties that may have received payments or transfers to which they were not entitled to receive or persons or entities that provided services to or otherwise improperly benefitted from their affiliation with the Receivership Entities.

It is too early to estimate whether or not the Receiver will bring any such claims or whether any claims will result in any recovery to the Receivership Estate. In proceeding with these determinations, the Receiver intends to consider a number of factors including the cost-benefit analysis of any potential claim. Thus, the Receiver is not yet able to predict the likelihood, amount or effectiveness of any particular claim or the claims as a whole. The Receiver may, however, plan to first offer those who are required to return money to the Receivership Estate the opportunity to do so cooperatively in an effort to avoid costly litigation for all involved. The Receiver intends to seek Court approval before instituting any such third-party actions.

D. Claims Proceedings And Distribution Of Proceeds

In the short time since his appointment, the Receiver and his Professionals have made significant progress in understanding the complex businesses operated by the various Receivership Entities that were both financially and organizationally intertwined. In addition to Kinetic Funds, Defendant Williams also managed and directed the operations of Receivership Entities Lendacy, Kinetic International, and El Morro which appear to have been

solely or primarily funded with investor funds. In particular, Lendacy described itself as a “partner” of Kinetic Funds and touted its ability to provide below-market-rate lines of credit to Kinetic Funds investors. A majority of investors with Kinetic Funds appear to have received a loan from Lendacy based on the amount of their Kinetic Funds investment. The Receiver is still in the process of determining how a Kinetic Funds investor’s receipt of a loan from Lendacy will be treated in the overall claims process. The Receiver has been in communication with many of Kinetic Funds investors and has appreciated their cooperation and assistance.

The Receiver has worked with his legal and forensic professionals to investigate and understand the claims of potential creditors. The Receiver anticipates that there will be two general categories of potential creditors: (1) individuals that invested in Kinetic Funds and/or received a loan from Lendacy; and (2) employees and other general trade creditors of the Receivership Entities. At this preliminary stage, it appears unlikely that the Receiver will recover sufficient assets to cover the universe of claims that are expected to be filed. Given these factors, the Receiver is currently in the process of formulating a claims process and procedure that will allow for the orderly, efficient and equitable distribution of assets while also minimizing any delays and administrative costs.

The Receiver anticipates presenting the proposed claims process for the Court’s approval within the next 45 days (the “Claims Motion”). The Claims Motion will seek (i) approval of the claims submission process, (ii) approval of the noticing procedures to be used in providing notice of the date by which claims must be filed against the Receivership Entities (the “Bar Date”) and the claims submission process; and (iii) to establish the Bar Date. As

soon as practicable following entry of an order approving the Claims Motion, the Receiver plans to provide electronic and written notice of the Bar Date and the claims submission process to all interested parties.

III. CONCLUSION

The Receiver continues to finalize his plan for liquidating all remaining, recovered and recoverable Receivership Property and urges all interested parties, including any parties interested in purchasing any assets, to visit the Receiver's website at www.kineticreceivership.com for further information.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

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