

**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,
SCIPPIO, LLC, LF 42, LLC, EL MORRO
FINANCIAL GROUP, LLC, and KIH, INC.,
f/k/a KINETIC INTERNATIONAL, LLC,**

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION TO (i) APPROVE SETTLEMENT WITH
FOGARTY FAMILY INVESTORS AND RESOLVE PENDING MOTION TO
LIQUIDATE (DOC. 108); AND (ii) AUTHORIZE REPAYMENT OF MARGIN
BALANCE AND TRANSFER OF REMAINING ACCOUNT FUNDS FROM
INTERACTIVE BROKERS TO RECEIVERSHIP ACCOUNTS**

Mark A. Kornfeld, Esq., through the undersigned counsel and solely 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, Scipio, LLC, LF 42, LLC, El Morro Financial Group, LLC, and KIH Inc., f/k/a Kinetic International, LLC (collectively, the "Receivership Entities"), files this Unopposed Motion to (i) Approve Settlement With Fogarty Family Investors And Resolve Pending Motion To Liquidate (Doc. 108); and (ii) Authorize Repayment of Margin Balance and Transfer of Remaining Account

Funds From Interactive Brokers to Receivership Accounts (the “Motion”), and seeks entry of an Order substantially in the form attached hereto as **Exhibit A**. As discussed below, this settlement represents a significant benefit as it will save the Receivership Estate nearly \$8 million in margin obligations, allow the Receiver to close Kinetic Funds’ brokerage accounts, and more than double the available cash-on-hand.

I. INTRODUCTION

Immediately following his appointment, the Receiver obtained control of Receivership Entity Kinetic Funds I, LLC’s (“Kinetic Funds”) brokerage account relationship at Interactive Brokers (“IB”). That brokerage account not only contained various sub-accounts purportedly implementing the trading strategies offered by Kinetic Funds and consisting of approximately \$13 million in total cash and securities, but also included (i) two separate sub-accounts holding approximately \$10 million in securities positions, and (ii) approximately \$12 million in undisclosed total margin debt across several sub-accounts. As the named account holder, Kinetic Funds could have been obligated to repay these outstanding margin obligations which would have significantly depleted available funds to return to Kinetic Funds investors.

The Receiver determined an investigation of the sub-accounts and margin debt was necessary as part of his duties to maximize potential assets for investors. The Receiver, through his retained professionals, determined that two separate sub-accounts belonged to Kinetic Funds investors Jon Fogarty and the Fogarty Family Revocable Trust dated September 14, 1971 (the “Fogarty Trust”) (collectively, the “Fogarty Family”) for whom Defendant Williams had been providing investment management services (unrelated to Kinetic Funds) for over a decade. These management services included a trading strategy leveraged through

the use of margin. While the dated nature of the earlier activity complicated the Receiver's analysis, the Receiver identified approximately \$1 million in margin activity incurred in the Kinetic Funds account on behalf of the Fogarty Family during the period from January 2013 to June 2014 - before the Kinetic Funds account was transferred to IB. That analysis also confirmed the Fogarty Family's IB sub-accounts continued to incur significant and growing margin obligations after the transfer.

The Receiver filed his Motion to (i) Approve Determination of Brokerage Account Margin Obligation; (ii) Partially Liquidate Investor Accounts to Satisfy Margin Obligations; (iii) Repay Remaining Margin Balance; and (iv) Transfer Majority of Remaining Receivership Cash Assets to Fiduciary Bank Accounts (the "Motion to Liquidate") (Doc. 108) which, in relevant part, sought a declaration that the Fogarty Family was responsible for a significant portion of margin obligations present in the IB account. The Receiver also sought to partially liquidate assets from one of the Fogarty Family's sub-accounts to pay off the margin debt.

The Receiver has engaged in meaningful discussions with the Fogarty Family. He now seeks approval of a settlement agreement entered into with the Fogarty Family which will allow Kinetic Funds to avoid nearly \$8 million of the roughly \$12 million in margin obligations owed to IB as of the date of his appointment. Upon the Court's approval of this settlement agreement, the Receiver's cash-on-hand will be approximately \$16 million (not including his ongoing efforts to sell real estate assets that are expected to generate an additional seven figures in proceeds) that will then be distributed through a Court-approved claims process. The Receiver submits that the proposed settlement with the Fogarty Family,

as set forth in the Settlement Agreement attached hereto as **Exhibit B**, should be approved as it is fair, reasonable, and in the Receivership Estate's best interests.

In addition to seeking approval of the Settlement Agreement, the Receiver seeks the entry of an Order authorizing him to both effectuate the provisions of the Settlement Agreement as well as terminate Kinetic Funds' relationship with IB and transfer any remaining net proceeds for safekeeping (and eventual distribution) to the Receiver's current fiduciary accounts established at ServisFirst Bank (the "Fiduciary Accounts").

II. RELEVANT BACKGROUND

1. 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") against the Defendants Kinetic Investment Group and Williams and Relief Defendants, alleging that the Defendants violated the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940 by making false or materially misleading representations to investors and that over \$6 million of investor funds was misappropriated to fund other business ventures and pay for other unauthorized expenses. Doc. 1 ¶¶ 4, 28-38. 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.

2. On March 6, 2020, the Court entered the Order Appointing Receiver. Among other things, the Order Appointing Receiver directed the Receiver to "[t]o take custody, control and possession of all Receivership Property and records relevant thereto from the

Receivership Defendants; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto” Doc. 34 at ¶ 7.B.

3. As set forth in further detail in the Motion to Liquidate and supporting declarations (Docs. 108-110), which are incorporated herein, the Receiver was concerned about the over-\$12 million in total margin obligations contained within Kinetic Funds’ brokerage account relationship at IB (the “KF Brokerage Account”) as of his appointment. Doc. 108, ¶¶ 19-20; Doc. 110 Ex. 1. The IB account documentation did not reveal how those margin obligations were originally incurred prior to the account’s opening in mid-2014. The Receiver learned that Kinetic Funds had previously maintained an account relationship with Bank of America Merrill Lynch (“BOA/ML”) and was able to obtain monthly brokerage statements for the period from January 1, 2013 to mid-2014 when the account was transferred to IB.¹ Those limited statements showed that the Fogarty Family sub-accounts had carried a margin balance which increased during that period. *Id.* ¶¶ 17-18; Doc. 110 ¶ 10.

4. Although the Fogarty Family’s securities positions were transferred to IB in mid-2014 when Kinetic Funds moved its account relationship, the corresponding margin balances were not re-allocated to the Fogarty Family’s IB sub-accounts.² Rather, the margin

¹ Although BOA/ML advised it did not have any responsive documents from that time period, the Receiver learned that Kinetic Funds had used an introducing broker to handle the account relationship while BOA/ML was used to custody the account assets. That introducing broker was no longer in business, but the Receiver was able to locate and subpoena its successor and obtain brokerage statements.

² Following Kinetic Funds’ transfer to IB in mid-2014, the Fogarty Family’s securities holdings were transferred to a sub-account at IB for the Fogarty Trust with an account number ending in xxx4167 (the “4167 Sub-Account”) and a sub-account at IB for Jon Fogarty with an account number ending in xxx4170 (the “4170 Sub-Account”). Doc. 108 ¶ 21.

balances were essentially assumed by Kinetic Funds and maintained in a single sub-account with a balance of approximately -\$11.4 million as of June 2014. *Id.* ¶ 25; Doc. 110 ¶¶ 13-15. That margin balance was subsequently partially paid down using Kinetic Funds' investor assets until it was repaid (and replaced) by Kinetic Funds' generation of a new margin loan of -\$7.346 million in June 2018 in a sub-account with account number ending in xxx2028 (the "KF 2028 Margin Balance"). Doc. 108 ¶¶ 29-30; Doc. 110 ¶ 17 Ex. 9. The KF 2028 Margin Balance remains outstanding today with a balance of -\$7,708,296 as of September 29, 2020.

III. THE PROPOSED SETTLEMENT

The Receiver and the Fogarty Family's counsel have engaged in productive, transparent, and good-faith settlement discussions that have culminated in the mutually-agreeable settlement terms set forth in the attached Settlement Agreement. In agreeing to this compromise, the Receiver has exercised sound business judgment and has determined that a settlement is in the best interest of the Receivership Entities. The settlement avoids the inherent uncertainty, time and substantial anticipated expense of further litigation over these issues. The Settlement Agreement is subject to Court approval, necessitating this Motion.

The Settlement Agreement's relevant terms include the following:

- a. Within 10 days of an Order approving the Settlement Agreement becoming final and non-appealable, the Fogarty Family will pay the Receiver a total of \$3,472,685.90 (the "Settlement Payment");
- b. After receipt of the Settlement Payment, the Receiver will transfer to the Fogarty Family, and the Fogarty Family agrees to receive and assume full legal responsibility and ownership of, the 4167 Sub-Account and 4170 Sub-Account which includes the 4167 Margin Balance. With this transfer, the Fogarty Family agrees to assume complete and sole liability for repayment of the 4167 Margin Balance with a current margin balance of \$4,368,623.60 as of September 29, 2020;

- c. Within 10 days of an Order approving the Settlement Agreement becoming final and non-appealable, the Receiver will withdraw the Motion to Liquidate with prejudice and, on behalf of the Receivership Entities, hereby release, acquit, waive, and forever discharge any claims or actions he has or might have against the Fogarty Family relating to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance;
- d. Similarly, the Fogarty Family will release, acquit, waive, and forever discharge the Receiver and the Receivership Entities from any claims or actions they have or might have relating to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance; and
- e. The Receiver agrees that the Settlement Agreement shall in no way affect the Fogarty Family's right to submit any future claim(s) in the receivership for any alleged damages they may have suffered as Kinetic investors (pursuant to the Court-approved procedures for a future claims process, once those specific procedures have been approved by the Court).

See Ex. B. The foregoing provisions of the Settlement Agreement are included here for summary purposes only and are not intended to constitute a full recitation of all of the terms.

The Receiver believes that the Settlement Agreement provides a cost-effective solution and practical, sound decision that ultimately results in a substantial benefit to the Receivership Estate. Further, the Receiver avers that the proposed settlement, as reflected by the Settlement Agreement, is in the best interests of the Receivership and aggrieved investors because the proposed resolution conserves Receivership Estate assets and judicial resources, avoids the significant fees, costs, and inherent uncertainty of any further proceedings or

litigation, and guarantees both the influx of significant assets, and the avoidance of significant liabilities, for the benefit of the Receivership Estate. Because these disputes have been resolved prior to contested litigation, the attorneys' fees and costs incurred by the Receivership Estate are reduced and thus further benefits the Receivership Estate.

IV. CLOSING THE IB ACCOUNT RELATIONSHIP AND TRANSFERRING NET PROCEEDS TO RECEIVERSHIP ACCOUNTS

The resolution of the Motion to Liquidate and approval of the Settlement Agreement are important steps that will clear the way for the Receiver to pay off the remaining margin obligations for Kinetic Funds' accounts at IB and transfer the net proceeds to the Receiver's fiduciary accounts for safekeeping, as well as critically and permanently eliminating any further margin interest (which accrues daily). After the approval of the Settlement Agreement, the Fogarty Family will provide the Receiver with instructions for the transfer of the 4167 Sub-Account and 4170 Sub-Account, which includes the respective securities positions and the 4167 Margin Balance. The Settlement Payment made by the Fogarty Family will also be deposited in Receiver's Fiduciary Accounts.

Following the transfer of the Fogarty Family's sub-accounts and receipt of the Settlement Payment, the Receiver seeks approval to repay the KF 2028 Margin Balance using the currently-available funds in the IB KFYield sub-account and to subsequently transfer the roughly \$5.3 million in remaining proceeds from IB to the Fiduciary Accounts. The deposit of the Settlement Payment and transfer of the net proceeds from the KF Brokerage Account will bring the balance of the Receiver's Fiduciary Accounts to approximately \$16 million.³

³ This consists of (i) roughly \$7.3 million on hand as of August 31, 2020 (not including funds frozen from Williams' former law firm's trust account), (ii) the deposit of the approximately

V. ARGUMENT

A. Legal Standard

“A district court has broad powers and wide discretion to determine relief in an equity receivership.” *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In considering whether to approve a settlement brokered by an equity receiver, a district court will examine the parameters of the receivership order's mandate and has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *Sterling v. Steward*, 158 F.3d 1199 (11th Cir. 1998). “Determining the fairness of the settlement is left to the sound discretion of the trial court and we will not overturn the court’s decision absent a clear showing of abuse of that discretion.” *Id.* at 1202 (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) (emphasis supplied); see also *SEC v. Credit Bancorp, Ltd.*, 2001 WL 1658200 at *2 (S.D.N.Y. 2001), (approving receiver's motion to approve a settlement with a creditor and holding that “[i]t is enough that the Receiver's request for settlement falls well within the broad discretion granted to him by the [order appointing receiver] and the ordinary powers of a receiver.” The Receiver also notes, as indicated below, that both the Commission and Defendant Williams have no objection to the relief requested in this Motion.

B. The Settlement Agreement Is Fair, Adequate, And Reasonable

To approve a settlement in an equity receivership, a district court must find the settlement is fair, adequate and reasonable, and not the product of collusion between the

\$3.4 million Settlement Payment from the Fogarty Family, and (iii) the transfer of approximately \$5.3 million in net proceeds from Interactive Brokers after zeroing out the remaining margin balance.

parties. *Sterling*, 158 F.2d at 1203. To determine whether the settlement is fair, the court should examine the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id.* at 1203 n.6 (citing *Bennett*, 737 F.2d at 986).

Upon due consideration of these governing factors, the Settlement Agreement should be approved as fair, adequate, and reasonable. The Settlement Agreement represents the culmination of extensive, arm’s length negotiations conducted between the parties and their experienced counsel in good faith. Before entering into the Settlement Agreement, the Receiver and his counsel carefully considered and dutifully investigated the potential claims and defenses and the likelihood of success. As detailed in the Motion to Liquidate, this analysis included an extensive investigation of these complicated matters including the nearly ten-year account activity for Kinetic Funds’ sub-accounts at BOA/ML and IB. Under these circumstances, the Receiver believes there would be challenges and uncertainty in any further pursuit of his claims against the Fogarty Family - including the absence of available documentation during the pre-2013 time period during which a portion of the margin balance appears to have been generated.

The Receiver also considered the delay, uncertainty, and expense of litigating such claims. In addition to being time-intensive and expensive, the Receiver also factored in the potential ancillary litigation that might be necessary to pursue these matters and the range of potential recovery. The probability of any litigation resulting in a similar or better outcome

than the proposal delineated in the Settlement Agreement also weighs in favor of approving the Settlement Agreement. Even assuming the Receiver would be able to recover any additional funds from the Fogarty Family after pursuing likely protracted and extensive litigation, it would be difficult for the Receiver to achieve a recovery from the Fogarty Family much more than the proposed recovery provided under the terms of the Settlement Agreement. Other courts have approved recoveries obtained by receivers that reflected recoveries ranging from 15% - 25% of the amount at stake. *See SEC v. Creative Capital Consortium*, 2014 WL 12629681, *1 (S.D. Fla. 2014) (approving settlement agreement for 21% of amount sought by receiver); *Sterling*, 158 F. 3d at 1204, n.7 (affirming the district court's finding that “any settlement recovery above 15% of maximum recovery would be fair” and thus settlement for approximately 25% of that amount would also be fair).⁴

Finally, this settlement saves the Receivership Estate exponential discovery, motion practice and trial costs. The Settlement Agreement provides a substantial benefit to, and is in the best interests of, the Receivership Entities and their investors and other creditors. Accordingly, because the Settlement Agreement is fair, equitable, and reasonable, the Receiver requests that the Court employ its equitable powers to grant the requested relief.

VI. CONCLUSION

The Receiver respectfully requests that the Court grant this Motion and enter an Order substantially in the form as **Exhibit A** (i) approving the Settlement Agreement attached hereto as **Exhibit B** and finding it is fair, adequate, and reasonable; (ii) directing the Receiver and

⁴ Indeed, the 21% gross recovery in *Creative Capital* was further reduced by the receiver’s counsel’s contingency arrangement which ultimately resulted in a net recovery for the receivership estate of approximately 15%.

the Fogarty Family to comply with the Settlement Agreement; (iii) directing IB to cooperate with the Receiver and the Fogarty Family in carrying out the provisions of the Settlement Agreement, including the internal and external transfer of the 4167 Sub-Account and 4170 Sub-Account; (iv) directing the Receiver to use the currently liquidated proceeds in the KF Brokerage Account to satisfy the current margin balance in the KF 2028 Margin Balance and to subsequently transfer all remaining proceeds in the KF Brokerage Account to the Receiver's Fiduciary Accounts; and (v) any such further relief as deemed just and proper.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), the undersigned certifies that counsel for the Receiver conferred with counsel for the Commission and counsel for Defendant Michael Williams prior to filing this Motion and both counsel have indicated that they do not oppose the relief requested in this motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 2020, I electronically served the foregoing on the following counsel of record by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

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I FURTHER CERTIFY that on this 30th day of September, 2020, I electronically served the foregoing on the following through electronic email:

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/s/ Jordan D. Maglich
Jordan D. Maglich

EXHIBIT A

**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,
SCIPIO, LLC, LF 42, LLC, EL MORRO
FINANCIAL GROUP, LLC, and KIH, INC.,
f/k/a KINETIC INTERNATIONAL, LLC,**

Relief Defendants.

**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION TO (i) APPROVE
SETTLEMENT WITH FOGARTY FAMILY INVESTORS AND RESOLVE
PENDING MOTION TO LIQUIDATE (DOC. 108); AND (ii) AUTHORIZE
REPAYMENT OF MARGIN BALANCE AND TRANSFER OF REMAINING
ACCOUNT FUNDS FROM INTERACTIVE BROKERS
TO RECEIVERSHIP ACCOUNTS**

THIS CAUSE came before the Court on the Receiver's Unopposed Motion to (i) Approve Settlement With Fogarty Family Investors And Resolve Pending Motion To Liquidate (Doc. 108); and (ii) Authorize Repayment of Margin Balance and Transfer of Remaining Account Funds From Interactive Brokers to Receivership Accounts (Doc. ____) (the "Motion"), filed by Mark A. Kornfeld, Esq. (the "Receiver"), as court-appointed Receiver for the Receivership Entities. The Receiver seeks an Order from this Court approving the Settlement Agreement with Jon Fogarty and the Fogarty Family Revocable Trust dated

September 14, 1971 (collectively, the “Fogarty Family”), authorizing the parties (with assistance as needed from Interactive Brokers LLC (“IB”)) to effectuate the terms of the Settlement Agreement, and to subsequently allow the Receiver to transfer the net proceeds from the IB sub-accounts to the Receiver’s fiduciary bank accounts. The Court having reviewed the Motion, the Settlement Agreement between the Parties, the record in this action, noting that Plaintiff Securities and Exchange Commission and Defendant Michael Williams do not object to the requested relief, and being otherwise fully advised in the premises, and finding it appropriate to approve the Motion, it is hereby:

ORDERED AND ADJUDGED as follows:

1. The Motion is **GRANTED**. The Court finds that the Settlement Agreement is fair, adequate, and reasonable and is thus approved in its entirety.
2. The Parties are authorized and directed to comply with the terms of the Settlement Agreement.
3. Interactive Brokers is directed to cooperate with, and to use reasonable efforts to assist, the Parties with their effectuation of the terms of the Settlement Agreement, including but not limited to the transfer and liquidation of the various sub-accounts, holdings, and margin balances owned by the Receivership Entities.
4. The Receiver is authorized and directed to repay the KF 2028 Margin Balance and to transfer the remaining proceeds in the KF Brokerage Account to the Receiver’s Fiduciary Accounts (as those terms are defined in the Motion).

5. The Court shall retain jurisdiction to enforce the terms of the Settlement Agreement.

DONE and **ORDERED** in Chambers at Tampa, Florida this ____ day of _____, 2020, in the Middle District of Florida.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of record
Carlos Provencio, Counsel for Interactive Brokers LLC

EXHIBIT B

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and among Mark. A. Kornfeld, Esq. as Receiver (the “Receiver”) over Kinetic Investment Group, LLC, Kinetic Funds I, LLC (“Kinetic Funds”), KCL Services, LLC d/b/a Lendacy, Scipio, LLC, LF 42, LLC, El Morro Financial Group, LLC, and KIH Inc., f/k/a Kinetic International, LLC (collectively, the “Receivership Entities”), the Fogarty Family Revocable Trust dated September 14, 1971 (the “Fogarty Trust”), and Jon Fogarty (the Fogarty Trust and Jon Fogarty are collectively referred to as the “Fogarty Family.” The Receiver, the Fogarty Trust, and Jon Fogarty are collectively referred to as the “Parties”).

RECITALS

A. On February 20, 2020, the Securities and Exchange Commission (the “Commission”) filed a civil enforcement action against Michael Scott Williams (“Williams”), Kinetic Funds, and others in the U.S. District Court for the Middle District of Florida in the case styled *Securities and Exchange Commission v. Michael Scott Williams et al.*, Case No. 8:20-cv-394 (M.D. Fla.) (the “SEC Receivership Action”).

B. By order dated March 6, 2020, the Receiver was appointed as Receiver over the Receivership Entities by the Court presiding over the SEC Receivership Action (the “Court”). Among other things, the Order Appointing Receiver (Doc. 34) directed the Receiver to investigate the business and financial affairs of the Receivership Entities and to identify, secure and gather assets for the benefit of defrauded investors.

C. Prior to the Receiver’s appointment, Kinetic Funds maintained a brokerage account relationship with Interactive Brokers (the “KF Brokerage Account”) consisting of a master account and a number of sub-accounts. After the Receiver identified and secured the KF Brokerage Account, there remained:

- i. Approximately \$13 million in cash in sub-accounts attributable to Kinetic Funds trading strategies;
- ii. Approximately \$10 million in securities located in two sub-accounts mainly consisting of a large position in shares of Johnson and Johnson and which sub-accounts did not appear attributable to Kinetic Funds trading strategies; and
- iii. Approximately \$12 million in total margin balances across two sub-accounts.

This Agreement addresses the ownership of these securities and the underlying obligations and legal responsibilities for the repayment of the outstanding margin obligations.

D. One sub-account within the KF Brokerage Account with an account number of U1362028 had a margin balance of -\$7,698,187.16 as of July 31, 2020 (the “KF 2028 Margin Balance”).

E. The Receiver concluded from his investigation that the two sub-accounts within the KF Brokerage Account that appeared distinct from Kinetic Funds’ trading strategies were separately managed on behalf of the Fogarty Trust and Jon Fogarty independent of the Kinetic Funds investment offering at issue in the SEC Receivership Action:

i. One sub-account with account number U1364167 (the “Fogarty Trust Sub-Account”) contained 62,928 shares of Johnson and Johnson (Ticker Symbol JNJ) and a margin loan balance of -\$4,425,784.35 as of July 31, 2020 (the “4167 Margin Balance”); and

ii. The second sub-account with account number U1364170 (the “Jon Fogarty Sub-Account”) contained (i) 6,000 shares of Edwards Life Sciences Corp. (Ticker Symbol EW); (ii) 11,547 shares of Gainsco, Inc. (Ticker Symbol GANS); and (iii) 495 shares of Mid-Con Energy Partners LP (Ticker Symbol MCEP). The Jon Fogarty Sub-Account did not have any margin balance. The Jon Fogarty Sub-Account and the Fogarty Trust Sub-Account are collectively referred to as the “Fogarty Sub-Accounts.”

The Receiver found no evidence that any of the securities in either of the Fogarty Sub-Accounts were commingled with, purchased, or otherwise traceable to Kinetic Funds assets.

F. After conducting a detailed forensic investigation that involved the review of years of brokerage and bank statements, the Receiver took the position that a substantial portion of the balances in both the KF 2028 Margin Balance and the 4167 Margin Balance was originally incurred on behalf of the Fogarty Family.

G. On July 17, 2020, the Receiver filed his Motion to (i) Approve Determination of Brokerage Account Margin Obligations; (ii) Partially Liquidate Investor Accounts to Satisfy Margin Obligations; (iii) Repay Remaining Margin Balance; and (iv) Transfer Majority of Remaining Receivership Cash Assets to Fiduciary Bank Accounts (the “Motion”) (Doc. 108) in the SEC Receivership Action. In relevant part, the Motion sought to liquidate the Fogarty Accounts in order to satisfy the portion of the KF 2028 Margin Balance the Receiver believed was attributable to the Fogarty Family based on his investigative efforts. The Motion also indicated that the Receiver’s investigation of the 4167 Margin Balance was ongoing. The Fogarty Family contests in large part the findings of the Receiver and the relief requested in the Motion.

H. Prior to and since filing the Motion, the Parties have engaged in good-faith, arm’s-length settlement negotiations which have included frequent telephone and email communications as well as the exchange of a significant amount of documentation gathered and reviewed in the Receiver’s investigation. In addition to their representation by experienced counsel, the Parties have also had the opportunity to engage outside professionals and request additional documentation in conducting their respective investigations.

I. The Parties desire to fully and completely settle the Receiver's claims relating to the Fogarty Family's alleged responsibility for, and obligation to repay, the KF 2028 Margin Balance and the 4167 Margin Balance. The Parties acknowledge that this settlement is not an admission of any liability or wrongdoing on the part of any Party but rather an effort to amicably resolve these issues and to stop the continuing accrual of margin interest obligations.

J. The Parties understand and agree that their settlement is contingent on the Court approving this Agreement. As a result, the Parties have agreed to a full and final settlement contingent on the entry of an Order by the Court which, in relevant part, provides for final approval of the settlement and this Agreement in substantially the same form and substance as attached hereto as "**Exhibit A**" (the "Approval Order").

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is **HEREBY AGREED** between the Parties as follows:

1. Recitals. The Parties represent, warrant and affirm that the above recitals are true and correct. The recitals set forth above are an integral part of this Agreement and are incorporated herein by reference.

2. Effectiveness. On the date of execution by the last Party to sign this Agreement, this Agreement shall take effect as between the Parties, subject to the approval by the Court as provided herein. On the date the Agreement is approved by the Court by the entry of the Approval Order (the "Effective Date"), this Agreement shall be effective for all purposes.

3. Settlement Terms. Contingent upon the approval by the Court and the entry of the Approval Order, and subject to the terms and conditions of this Agreement, in full and final settlement of any claims, actions, demands, rights, promises, and obligations, known or unknown, arising from or related in any way to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance (the "Released Claims"), the Parties agree to the following terms (the "Settlement Terms"):

a. Within ten business days after approval of this settlement by the Court becoming a final non-appealable order, the Fogarty Trust will pay the Receiver three million three hundred ninety thousand seven hundred eighty-seven dollars and 00/100 cents (\$3,390,787) (the "Fogarty Trust Payment");

b. Within ten business days after approval of this settlement by the Court becoming a final non-appealable order, Jon Fogarty will pay the Receiver eighty-one thousand eight hundred ninety-eight dollars and 90/100 cents (\$81,898.90) (the "Fogarty Payment");

c. As consideration for the Fogarty Trust Payment and the Fogarty Payment, the Receiver will transfer to the Fogarty Family, and the Fogarty Family agrees to receive, full ownership of and legal responsibility for the 4167 Sub-Account and the 4170 Sub-Account which will consist of any and all equity positions and margin loan obligations within those two accounts including but not limited to the 4167 Margin Balance. For the avoidance of confusion, the Fogarty Trust shall be solely responsible for the repayment of the 4167 Margin Balance.

d. Within five business days after receipt of the Fogarty Trust Payment and the Fogarty Payment, the Fogarty Family will provide the Receiver with written authorization to transfer all positions in the 4167 Sub-Account (including the entire and current 4167 Margin Balance) and 4170 Sub-Account to an Interactive Brokers account (or accounts) owned by the Fogarty Family as specified by the Fogarty Family (the "Transfer Instructions"). The Receiver will then provide the Transfer Instructions to Interactive Brokers and work with Interactive Brokers to process the transfer of the accounts to the Fogarty Family (the "Account Transfer").

e. This Agreement will have no bearing or legal effect on the Fogarty Family's ability to submit any Proof of Claim Form(s) and standing to receive any approved recovery relating to their respective investments in Kinetic Funds pursuant to any Court-approved claims process.

f. The Parties hereby affirm that the provisions of this Agreement and the settlement, including the Settlement Terms, are fair and reasonable. The Receiver and the Fogarty Family understand and agree that, subject to the Court's approval, the effectuation of the Settlement Terms and releases as provided herein is in full accord and satisfaction of and in compromise of the Released Claims, and the payment, release, and waiver are not an admission of liability, which is expressly denied, but are made solely for the purpose of terminating a dispute and avoiding further litigation.

4. Approval of Settlement by the Court. After execution of this Settlement Agreement by all parties, the Receiver will promptly move the Court for approval of this settlement. In the motion, the Receiver will request that the Court enter an Order approving the settlement in the form attached hereto as Exhibit A. If the Court fails to approve the settlement, the Parties will return to the status quo and this Agreement is of no force or effect.

5. Releases.

a. Release of the Fogarty Family. Upon occurrence of the Effective Date and completion of the Settlement Terms, the Receiver, on behalf of the Receivership Entities, shall irrevocably and unconditionally, fully, finally, and forever waive, release, acquit, and discharge the Fogarty Trust and Jon Fogarty from any claims, actions, demands, rights, promises, and obligations, known or unknown, arising from or related in any way to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America

Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance.

b. Release of the Receiver. Upon occurrence of the Effective Date and completion of the Settlement Terms, the Fogarty Trust and Jon Fogarty shall irrevocably and unconditionally, fully, finally, and forever waive, release, acquit, and discharge the Receiver and the Receivership Entities from any claims, actions, demands, rights, promises, and obligations, known or unknown, arising from or related in any way to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance.

c. The Parties acknowledge and are aware that they might hereafter discover facts in addition to or different from those they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to fully, finally and forever settle and release any and all actions, claims, proceedings, matters, disputes and differences, known or unknown, suspected and unsuspected, which exist, may exist, or have existed relating in any way to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance.

d. For avoidance of any ambiguity, the release of the Receiver and Receivership Entities in Section 5.b expressly and explicitly has no bearing or legal effect on the Fogarty Family's ability to participate in any Court-approved claims process in the SEC Receivership Action, including but not limited to the ability to submit any Proof of Claim Form(s) and to receive any Court-approved distributions.

6. Withdrawal of Motion. Within 10 days after approval of this settlement by the Court becoming a final, non-appealable order, the Receiver will withdraw the Motion with prejudice.

7. No Admission of Liability. This Agreement is a compromise of disputed claims and shall not be considered as an admission of liability or responsibility by any Party. The Parties acknowledge and agree that no Party has at any time admitted any liability to any other person for any claims released herein.

8. Governing Law and Enforcement of Settlement Agreement; Attorney's Fees. This Agreement shall be governed by, construed and enforced in accordance with, the laws of Florida, without regard to its choice of law provisions. Each party shall bear its own attorneys' fees and

costs incurred through the execution of this Agreement. In the event an action is commenced to enforce the terms of this Agreement, the Parties shall bear their own attorneys' fees and costs.

9. Integrated Agreement. This is an integrated agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, concerning the subject matter of this Agreement are contained here or attached hereto. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made concerning the subject matter of the Agreement. All prior and contemporaneous conversations, negotiations, representations, covenants and warranties concerning the subject matter are merged herein.

10. Modification. This Agreement may not be modified except by a writing jointly signed by the Receiver and the Fogarty Family.

11. Severance. If any of the provisions or terms of this Agreement shall be held for any reason to be invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms hereof, and this Agreement shall be construed as if such unenforceable term had never been contained herein.

12. Voluntary Agreement. The Parties represent that they have each read this Agreement and know the contents, and that they sign the same freely and voluntarily. Each party also represents that they have consulted, or had the opportunity to consult, with legal counsel regarding the terms of this Agreement. The Parties have relied upon the advice of their respective counsel as to the terms and provisions of this Agreement, and any claim that the provisions of this Agreement are to be construed against the drafter are waived or do not apply to the interpretation of the provisions hereof.

13. Benefit and Burden. This Agreement shall be binding upon, and inure to the benefit of, the Parties, and their respective successors, predecessors, assigns, agents, representatives, heirs, executors, administrators, and personal representatives.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original, all of which together shall be considered one and the same instrument. This Agreement may be executed by email or facsimile and such signatures shall be binding and deemed original for the purposes of enforcing this Agreement.

15. Cooperation. The Parties agree to cooperate fully and to execute any and all supplemental documents and to take additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and which are not inconsistent with its terms.

16. Signatures and Binding Authority. The Parties signify agreement to this Agreement by their signatures below. Each signatory for any legal entity or individual represents and warrants that he or she has full power and authority to bind legally such entity or individual to this Agreement.

By witness whereof the parties have set their hands as of the dates indicated.

The Fogarty Family Revocable Trust dated September 14, 1971

By:  _____
DocuSigned by:
Jon Fogarty
708-7804-0418

Trustee
Its: _____

September 30, 2020
Date: _____

Jon Fogarty

 _____
DocuSigned by:
Jon Fogarty
708-7804-0418

September 30, 2020
Date: _____

Mark A. Kornfeld, as Receiver of the
Receivership Entities

 _____

Date: September 30, 2020 _____

EXHIBIT A

**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,
SCIPIO, LLC, LF 42, LLC, EL MORRO
FINANCIAL GROUP, LLC, and KIH, INC.,
f/k/a KINETIC INTERNATIONAL, LLC,**

Relief Defendants.

**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION TO (i) APPROVE
SETTLEMENT WITH FOGARTY FAMILY INVESTORS AND RESOLVE
PENDING MOTION TO LIQUIDATE (DOC. 108); AND (ii) AUTHORIZE
REPAYMENT OF MARGIN BALANCE AND TRANSFER OF REMAINING
ACCOUNT FUNDS FROM INTERACTIVE BROKERS
TO RECEIVERSHIP ACCOUNTS**

THIS CAUSE came before the Court on the Receiver's Unopposed Motion to (i) Approve Settlement With Fogarty Family Investors And Resolve Pending Motion To Liquidate (Doc. 108); and (ii) Authorize Repayment of Margin Balance and Transfer of Remaining Account Funds From Interactive Brokers to Receivership Accounts (Doc. ____) (the "Motion"), filed by Mark A. Kornfeld, Esq. (the "Receiver"), as court-appointed Receiver for the Receivership Entities. The Receiver seeks an Order from this Court approving the Settlement Agreement with Jon Fogarty and the Fogarty Family Revocable Trust dated

September 14, 1971 (collectively, the “Fogarty Family”), authorizing the parties (with assistance as needed from Interactive Brokers LLC (“IB”)) to effectuate the terms of the Settlement Agreement, and to subsequently allow the Receiver to transfer the net proceeds from the IB sub-accounts to the Receiver’s fiduciary bank accounts. The Court having reviewed the Motion, the Settlement Agreement between the Parties, the record in this action, noting that Plaintiff Securities and Exchange Commission and Defendant Michael Williams do not object to the requested relief, and being otherwise fully advised in the premises, and finding it appropriate to approve the Motion, it is hereby:

ORDERED AND ADJUDGED as follows:

1. The Motion is **GRANTED**. The Court finds that the Settlement Agreement is fair, adequate, and reasonable and is thus approved in its entirety.
2. The Parties are authorized and directed to comply with the terms of the Settlement Agreement.
3. Interactive Brokers is directed to cooperate with, and to use reasonable efforts to assist, the Parties with their effectuation of the terms of the Settlement Agreement, including but not limited to the transfer and liquidation of the various sub-accounts, holdings, and margin balances owned by the Receivership Entities.
4. The Receiver is authorized and directed to repay the KF 2028 Margin Balance and to transfer the remaining proceeds in the KF Brokerage Account to the Receiver’s Fiduciary Accounts (as those terms are defined in the Motion).

5. The Court shall retain jurisdiction to enforce the terms of the Settlement Agreement.

DONE and **ORDERED** in Chambers at Tampa, Florida this ____ day of _____, 2020, in the Middle District of Florida.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of record
Carlos Provencio, Counsel for Interactive Brokers LLC

EXHIBIT B

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and among Mark. A. Kornfeld, Esq. as Receiver (the “Receiver”) over Kinetic Investment Group, LLC, Kinetic Funds I, LLC (“Kinetic Funds”), KCL Services, LLC d/b/a Lendacy, Scipio, LLC, LF 42, LLC, El Morro Financial Group, LLC, and KIH Inc., f/k/a Kinetic International, LLC (collectively, the “Receivership Entities”), the Fogarty Family Revocable Trust dated September 14, 1971 (the “Fogarty Trust”), and Jon Fogarty (the Fogarty Trust and Jon Fogarty are collectively referred to as the “Fogarty Family.” The Receiver, the Fogarty Trust, and Jon Fogarty are collectively referred to as the “Parties”).

RECITALS

A. On February 20, 2020, the Securities and Exchange Commission (the “Commission”) filed a civil enforcement action against Michael Scott Williams (“Williams”), Kinetic Funds, and others in the U.S. District Court for the Middle District of Florida in the case styled *Securities and Exchange Commission v. Michael Scott Williams et al.*, Case No. 8:20-cv-394 (M.D. Fla.) (the “SEC Receivership Action”).

B. By order dated March 6, 2020, the Receiver was appointed as Receiver over the Receivership Entities by the Court presiding over the SEC Receivership Action (the “Court”). Among other things, the Order Appointing Receiver (Doc. 34) directed the Receiver to investigate the business and financial affairs of the Receivership Entities and to identify, secure and gather assets for the benefit of defrauded investors.

C. Prior to the Receiver’s appointment, Kinetic Funds maintained a brokerage account relationship with Interactive Brokers (the “KF Brokerage Account”) consisting of a master account and a number of sub-accounts. After the Receiver identified and secured the KF Brokerage Account, there remained:

- i. Approximately \$13 million in cash in sub-accounts attributable to Kinetic Funds trading strategies;
- ii. Approximately \$10 million in securities located in two sub-accounts mainly consisting of a large position in shares of Johnson and Johnson and which sub-accounts did not appear attributable to Kinetic Funds trading strategies; and
- iii. Approximately \$12 million in total margin balances across two sub-accounts.

This Agreement addresses the ownership of these securities and the underlying obligations and legal responsibilities for the repayment of the outstanding margin obligations.

D. One sub-account within the KF Brokerage Account with an account number of U1362028 had a margin balance of -\$7,698,187.16 as of July 31, 2020 (the “KF 2028 Margin Balance”).

E. The Receiver concluded from his investigation that the two sub-accounts within the KF Brokerage Account that appeared distinct from Kinetic Funds’ trading strategies were separately managed on behalf of the Fogarty Trust and Jon Fogarty independent of the Kinetic Funds investment offering at issue in the SEC Receivership Action:

i. One sub-account with account number U1364167 (the “Fogarty Trust Sub-Account”) contained 62,928 shares of Johnson and Johnson (Ticker Symbol JNJ) and a margin loan balance of -\$4,425,784.35 as of July 31, 2020 (the “4167 Margin Balance”); and

ii. The second sub-account with account number U1364170 (the “Jon Fogarty Sub-Account”) contained (i) 6,000 shares of Edwards Life Sciences Corp. (Ticker Symbol EW); (ii) 11,547 shares of Gainsco, Inc. (Ticker Symbol GANS); and (iii) 495 shares of Mid-Con Energy Partners LP (Ticker Symbol MCEP). The Jon Fogarty Sub-Account did not have any margin balance. The Jon Fogarty Sub-Account and the Fogarty Trust Sub-Account are collectively referred to as the “Fogarty Sub-Accounts.”

The Receiver found no evidence that any of the securities in either of the Fogarty Sub-Accounts were commingled with, purchased, or otherwise traceable to Kinetic Funds assets.

F. After conducting a detailed forensic investigation that involved the review of years of brokerage and bank statements, the Receiver took the position that a substantial portion of the balances in both the KF 2028 Margin Balance and the 4167 Margin Balance was originally incurred on behalf of the Fogarty Family.

G. On July 17, 2020, the Receiver filed his Motion to (i) Approve Determination of Brokerage Account Margin Obligations; (ii) Partially Liquidate Investor Accounts to Satisfy Margin Obligations; (iii) Repay Remaining Margin Balance; and (iv) Transfer Majority of Remaining Receivership Cash Assets to Fiduciary Bank Accounts (the “Motion”) (Doc. 108) in the SEC Receivership Action. In relevant part, the Motion sought to liquidate the Fogarty Accounts in order to satisfy the portion of the KF 2028 Margin Balance the Receiver believed was attributable to the Fogarty Family based on his investigative efforts. The Motion also indicated that the Receiver’s investigation of the 4167 Margin Balance was ongoing. The Fogarty Family contests in large part the findings of the Receiver and the relief requested in the Motion.

H. Prior to and since filing the Motion, the Parties have engaged in good-faith, arm’s-length settlement negotiations which have included frequent telephone and email communications as well as the exchange of a significant amount of documentation gathered and reviewed in the Receiver’s investigation. In addition to their representation by experienced counsel, the Parties have also had the opportunity to engage outside professionals and request additional documentation in conducting their respective investigations.

I. The Parties desire to fully and completely settle the Receiver's claims relating to the Fogarty Family's alleged responsibility for, and obligation to repay, the KF 2028 Margin Balance and the 4167 Margin Balance. The Parties acknowledge that this settlement is not an admission of any liability or wrongdoing on the part of any Party but rather an effort to amicably resolve these issues and to stop the continuing accrual of margin interest obligations.

J. The Parties understand and agree that their settlement is contingent on the Court approving this Agreement. As a result, the Parties have agreed to a full and final settlement contingent on the entry of an Order by the Court which, in relevant part, provides for final approval of the settlement and this Agreement in substantially the same form and substance as attached hereto as "**Exhibit A**" (the "Approval Order").

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is **HEREBY AGREED** between the Parties as follows:

1. Recitals. The Parties represent, warrant and affirm that the above recitals are true and correct. The recitals set forth above are an integral part of this Agreement and are incorporated herein by reference.

2. Effectiveness. On the date of execution by the last Party to sign this Agreement, this Agreement shall take effect as between the Parties, subject to the approval by the Court as provided herein. On the date the Agreement is approved by the Court by the entry of the Approval Order (the "Effective Date"), this Agreement shall be effective for all purposes.

3. Settlement Terms. Contingent upon the approval by the Court and the entry of the Approval Order, and subject to the terms and conditions of this Agreement, in full and final settlement of any claims, actions, demands, rights, promises, and obligations, known or unknown, arising from or related in any way to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance (the "Released Claims"), the Parties agree to the following terms (the "Settlement Terms"):

a. Within ten business days after approval of this settlement by the Court becoming a final non-appealable order, the Fogarty Trust will pay the Receiver three million three hundred ninety thousand seven hundred eighty-seven dollars and 00/100 cents (\$3,390,787) (the "Fogarty Trust Payment");

b. Within ten business days after approval of this settlement by the Court becoming a final non-appealable order, Jon Fogarty will pay the Receiver eighty-one thousand eight hundred ninety-eight dollars and 90/100 cents (\$81,898.90) (the "Fogarty Payment");

c. As consideration for the Fogarty Trust Payment and the Fogarty Payment, the Receiver will transfer to the Fogarty Family, and the Fogarty Family agrees to receive, full ownership of and legal responsibility for the 4167 Sub-Account and the 4170 Sub-Account which will consist of any and all equity positions and margin loan obligations within those two accounts including but not limited to the 4167 Margin Balance. For the avoidance of confusion, the Fogarty Trust shall be solely responsible for the repayment of the 4167 Margin Balance.

d. Within five business days after receipt of the Fogarty Trust Payment and the Fogarty Payment, the Fogarty Family will provide the Receiver with written authorization to transfer all positions in the 4167 Sub-Account (including the entire and current 4167 Margin Balance) and 4170 Sub-Account to an Interactive Brokers account (or accounts) owned by the Fogarty Family as specified by the Fogarty Family (the "Transfer Instructions"). The Receiver will then provide the Transfer Instructions to Interactive Brokers and work with Interactive Brokers to process the transfer of the accounts to the Fogarty Family (the "Account Transfer").

e. This Agreement will have no bearing or legal effect on the Fogarty Family's ability to submit any Proof of Claim Form(s) and standing to receive any approved recovery relating to their respective investments in Kinetic Funds pursuant to any Court-approved claims process.

f. The Parties hereby affirm that the provisions of this Agreement and the settlement, including the Settlement Terms, are fair and reasonable. The Receiver and the Fogarty Family understand and agree that, subject to the Court's approval, the effectuation of the Settlement Terms and releases as provided herein is in full accord and satisfaction of and in compromise of the Released Claims, and the payment, release, and waiver are not an admission of liability, which is expressly denied, but are made solely for the purpose of terminating a dispute and avoiding further litigation.

4. Approval of Settlement by the Court. After execution of this Settlement Agreement by all parties, the Receiver will promptly move the Court for approval of this settlement. In the motion, the Receiver will request that the Court enter an Order approving the settlement in the form attached hereto as Exhibit A. If the Court fails to approve the settlement, the Parties will return to the status quo and this Agreement is of no force or effect.

5. Releases.

a. Release of the Fogarty Family. Upon occurrence of the Effective Date and completion of the Settlement Terms, the Receiver, on behalf of the Receivership Entities, shall irrevocably and unconditionally, fully, finally, and forever waive, release, acquit, and discharge the Fogarty Trust and Jon Fogarty from any claims, actions, demands, rights, promises, and obligations, known or unknown, arising from or related in any way to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America

Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance.

b. Release of the Receiver. Upon occurrence of the Effective Date and completion of the Settlement Terms, the Fogarty Trust and Jon Fogarty shall irrevocably and unconditionally, fully, finally, and forever waive, release, acquit, and discharge the Receiver and the Receivership Entities from any claims, actions, demands, rights, promises, and obligations, known or unknown, arising from or related in any way to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance.

c. The Parties acknowledge and are aware that they might hereafter discover facts in addition to or different from those they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to fully, finally and forever settle and release any and all actions, claims, proceedings, matters, disputes and differences, known or unknown, suspected and unsuspected, which exist, may exist, or have existed relating in any way to the 4167 Sub-Account or the 4170 Sub-Account (or any predecessor accounts at any institution including Bank of America Merrill Lynch), including but not limited to the transfer of those accounts as well as the calculation, determination, or repayment of the Fogarty Family's obligations to repay any portion of any margin balance contained in any sub-account in the KF Brokerage Accounts, including but not limited to the KF 2028 Margin Balance and/or the 4167 Margin Balance.

d. For avoidance of any ambiguity, the release of the Receiver and Receivership Entities in Section 5.b expressly and explicitly has no bearing or legal effect on the Fogarty Family's ability to participate in any Court-approved claims process in the SEC Receivership Action, including but not limited to the ability to submit any Proof of Claim Form(s) and to receive any Court-approved distributions.

6. Withdrawal of Motion. Within 10 days after approval of this settlement by the Court becoming a final, non-appealable order, the Receiver will withdraw the Motion with prejudice.

7. No Admission of Liability. This Agreement is a compromise of disputed claims and shall not be considered as an admission of liability or responsibility by any Party. The Parties acknowledge and agree that no Party has at any time admitted any liability to any other person for any claims released herein.

8. Governing Law and Enforcement of Settlement Agreement; Attorney's Fees. This Agreement shall be governed by, construed and enforced in accordance with, the laws of Florida, without regard to its choice of law provisions. Each party shall bear its own attorneys' fees and

costs incurred through the execution of this Agreement. In the event an action is commenced to enforce the terms of this Agreement, the Parties shall bear their own attorneys' fees and costs.

9. Integrated Agreement. This is an integrated agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, concerning the subject matter of this Agreement are contained here or attached hereto. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made concerning the subject matter of the Agreement. All prior and contemporaneous conversations, negotiations, representations, covenants and warranties concerning the subject matter are merged herein.

10. Modification. This Agreement may not be modified except by a writing jointly signed by the Receiver and the Fogarty Family.

11. Severance. If any of the provisions or terms of this Agreement shall be held for any reason to be invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms hereof, and this Agreement shall be construed as if such unenforceable term had never been contained herein.

12. Voluntary Agreement. The Parties represent that they have each read this Agreement and know the contents, and that they sign the same freely and voluntarily. Each party also represents that they have consulted, or had the opportunity to consult, with legal counsel regarding the terms of this Agreement. The Parties have relied upon the advice of their respective counsel as to the terms and provisions of this Agreement, and any claim that the provisions of this Agreement are to be construed against the drafter are waived or do not apply to the interpretation of the provisions hereof.

13. Benefit and Burden. This Agreement shall be binding upon, and inure to the benefit of, the Parties, and their respective successors, predecessors, assigns, agents, representatives, heirs, executors, administrators, and personal representatives.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original, all of which together shall be considered one and the same instrument. This Agreement may be executed by email or facsimile and such signatures shall be binding and deemed original for the purposes of enforcing this Agreement.

15. Cooperation. The Parties agree to cooperate fully and to execute any and all supplemental documents and to take additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and which are not inconsistent with its terms.

16. Signatures and Binding Authority. The Parties signify agreement to this Agreement by their signatures below. Each signatory for any legal entity or individual represents and warrants that he or she has full power and authority to bind legally such entity or individual to this Agreement.

By witness whereof the parties have set their hands as of the dates indicated.

The Fogarty Family Revocable Trust dated September 14, 1971

By:  _____
DocuSigned by:
Jon Fogarty
708-7804-0418

Trustee
Its: _____

September 30, 2020
Date: _____

Jon Fogarty

 _____
DocuSigned by:
Jon Fogarty
708-7804-0418

September 30, 2020
Date: _____

Mark A. Kornfeld, as Receiver of the
Receivership Entities

 _____

Date: September 30, 2020 _____