

**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 THIRD INTERIM REPORT

Mark A. Kornfeld, Esq., in his capacity as the court-appointed Receiver (the "Receiver") for Kinetic Investment Group, LLC ("KIG"), Kinetic Funds I, LLC ("Kinetic Funds"), KCL Services, LLC d/b/a Lendacy ("Lendacy"), Scipio, LLC ("Scipio"), LF 42, LLC ("LF42"), El Morro Financial Group, LLC ("El Morro"), and KIH Inc., f/k/a Kinetic International, LLC ("Kinetic International") (collectively, the "Receivership Defendants"), respectfully files his Third Interim Report (the "Third Report") covering information and activity occurring from July 1, 2020 to September 30, 2020. In addition to providing notice of the receivership to all known investors shortly after his appointment, the Receiver has also established an informational website at www.kineticreceivership.com, which is regularly

updated with important court filings (including previous and subsequent Interim Reports), announcements, and other news that might be relevant to interested parties.

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I. INTRODUCTION

A. Overview of Significant Activities During This Reporting Period

During the time period covered by this Third Report (July 1, 2020 to September 30, 2020), the Receiver and the team of retained professionals have engaged in significant activities including but not limited to:

1. **Investigated Brokerage Account Margin Obligations And Ultimately Sought Court Approval Of Unopposed Settlement Providing Nearly \$8 Million Benefit To Receivership Estate**

- The Receiver discovered the existence of significant margin obligations totaling over \$12 million in the brokerage account maintained by Kinetic Funds at Interactive Brokers. Following an investigation, the Receiver filed a Motion on July 22, 2020, seeking the Court's approval for his determination that a significant portion of that balance was incurred for the benefit of two Kinetic Funds investors and that Kinetic Funds should not be responsible for those amounts. The Receiver subsequently engaged in negotiations with those investors that culminated in a settlement which, if approved, would result in a net benefit of nearly \$8 million to the Receivership Estate. The Receiver filed his 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. 141) (the "Settlement Motion") on September 30, 2020, and the Settlement Motion remains pending. Following the Court's approval, the Receiver will then payoff the remaining margin and transfer the net proceeds to his fiduciary accounts for eventual distribution to investors.

2. **Filed Motion to Establish and Approve Claims Procedure**

- Following an investigation and analysis and with the assistance of his Retained Professionals, the Receiver filed his Motion to Establish and Approve (i) Procedure to Administer and Determine Claims; (ii) Proof of Claim Form; and (iii) Claims Bar Date and Notice Procedures (the "Claims Motion") on August 20, 2020, which, in relevant part, sought Court approval for the procedures and framework for a process to begin the process of distributing recovered assets to approved claimants. The Claims Motion is pending.

3. Efforts to Market and Liquidate Puerto Rico Properties

- The Receiver was able to trace investor funds to the purchase of two properties in San Juan, Puerto Rico: a luxury apartment multiplex used as Defendant Williams' primary residence and a historic bank building known as the El Banco Español building (the "Bank Building"). The Receiver reached an agreement with Defendant Williams regarding the turnover of the apartment multiplex which was approved by the Court on July 8, 2020 (Doc. 105). Following the Court's approval of that agreement and the parties' unsuccessful mediation, the Receiver began the process of obtaining several appraisals to assist him in marketing and liquidating that property. With respect to the Bank Building, the Receiver is working with a broker to liquidate the property and has received a range of purchase offers - including one which was less than the lowest appraisal commissioned by the Receiver. The Receiver has entered into a tentative agreement to accept the highest offer for \$2.1 million (exclusive of costs, commissions, and other expenses and subject to certain conditions). The Receiver intends to seek court approval of the sale of the Bank Building in the near future.

4. The Second Interim Report

- The Receiver prepared and filed his Second Interim Report (Doc. 121) on July 30, 2020, which provided a comprehensive summary, analysis, and supporting documentation of the Receiver's continuing investigation as well as the tracing of investor funds.

5. Litigation Claims

- The Receiver continued to analyze potential litigation claims against third parties that may have received funds from or otherwise provided services to or for the benefit of any Receivership Entities.

6. Continued Investigation and Review of Relevant Documentation and Information

- The Receiver and his professionals continued their investigation of the business operations of the various Receivership Entities. This included identifying, obtaining, and reviewing relevant documentation and information from the Receivership Entities' offices and interviewing various individuals, as well as securing three additional computers previously used by one or more Receivership Entities in Puerto Rico. The Receiver also served 1 non-party with a copy of the Order Appointing Receiver and issued 17 subpoenas.

7. Posted Personal Property from Sarasota Office for Liquidation and Sought Court Approval for Disposal of Personal Property

- The Receiver inventoried and posted photographs of the office contents for sale and is in the process of determining the appropriate disposition of those contents. The Receiver filed a motion on October 21, 2020 seeking Court approval of authority to dispose of this property and any personal property with an individual value of \$5,000 or less.

8. Responded to Williams' Motions to Unfreeze Assets

- The Receiver reviewed and responded to Defendant Williams' Second Motion to Modify Asset Freeze Order (Doc. 135), which sought approval to unfreeze additional funds held by the Receiver to pay for Defendant Williams' defense.

9. Continued Investor Outreach and Website Updates

- The Receiver responded to phone calls and written communications from Kinetic Funds investors and continued to provide updates and announcements on the informational website at www.kineticreceivership.com for investors and other interested parties.

In summary, as of the date of this Report, the Receiver has (i) secured and frozen cash and non-cash receivership assets worth approximately \$21 million in bank and brokerage accounts, a portion of which are potentially subject to over \$12 million in margin debt; (ii) secured significant real property assets, which upon liquidation should result in an additional proceeds deposited with the Receivership Estate; and (iii) investigated the over-\$12 million in margin debt sitting in Kinetic sub-accounts at Interactive Brokers and sought Court approval for a settlement with third parties that would leave Kinetic Funds responsive for only a small portion of that balance.¹ In the event the Court approves the Settlement Motion referenced above and detailed below in Section V.A, the Receiver expects the balance of his

¹ The Standardized Fund Accounting Report for the relevant period prepared by the Receiver's accountant is attached hereto as **Exhibit 1**.

fiduciary accounts to exceed \$16 million upon completion of that settlement. Through these efforts, the Receiver has sought to and continues to investigate the relevant issues in order to enforce the Estate's rights and protect and maximize the Kinetic Funds' assets available for future return to investors. The above-referenced activities are discussed in more detail in the pertinent sections of this Third Report.

II. BACKGROUND

A. Procedure and Chronology

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 Defendants and Relief Defendants alleging that 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. Defendants represented to investors that the 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 also attracted to the Kinetic Funds investment opportunity by the advertised ability to obtain low-interest and unsecured loans from Lendacy based on their 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.

On May 12, 2020, Defendant Williams filed his Answer and Affirmative Defenses to the Commission’s Complaint in which he denied the Commission’s substantive allegations and set forth 13 affirmative defenses (Doc. 56). On May 28, 2020, the Commission filed its Motion for Judgment of Permanent Injunction following the Receiver’s execution of a Consent Judgment on behalf of the various Receivership Entities named in the Complaint. Doc. 86. The Commission and Williams mediated this case on August 28, 2020, which resulted in an impasse (Doc. 132).

B. The Receiver’s Role and Responsibilities

As an independent agent of the Court, the Receiver’s powers and responsibilities are set forth in the Order Appointing Receiver which provides, in relevant part, that the Receiver:

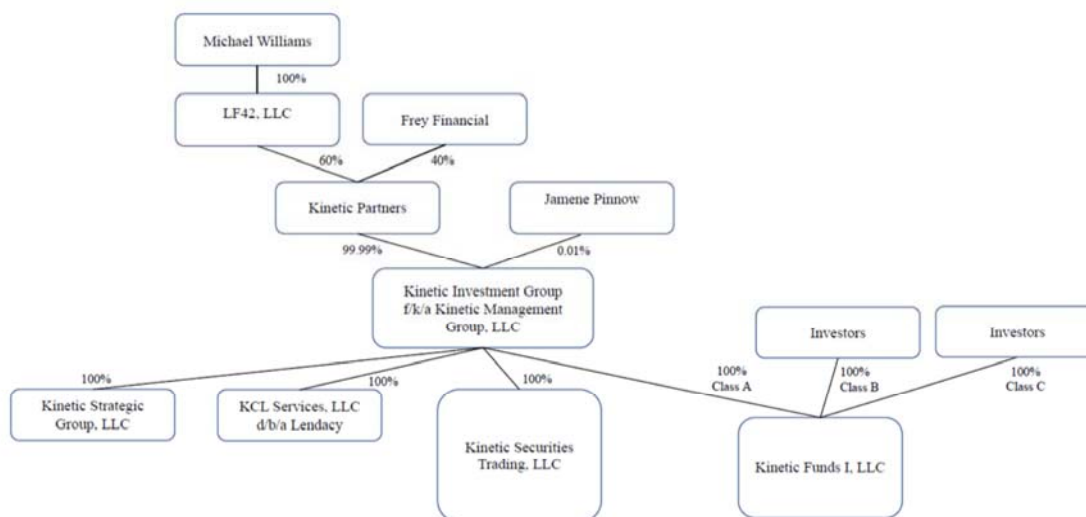
- “[S]hall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Defendants under applicable state and federal law...” and “shall

assume and control the operation of the Receivership Defendants and shall pursue and preserve all of their claims.” Doc. 34 ¶¶ 4-5;

- Shall “take custody, control, and possession of all Receivership Property and records relevant thereto from the Receivership Defendants...” and “manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property pending further Order of this Court.” *Id.* ¶ 7(B);
- Is “authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and...to institute such actions and legal proceedings...as the Receiver deems necessary and appropriate...” *Id.* ¶ 37; and
- Is directed to “develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property...and to “file and serve a full report and accounting of each Receivership Estate” for each calendar quarter. *Id.* ¶¶ 46, 48.

C. Receivership Defendants

The Receiver incorporates by reference herein the descriptions of the various Receivership Defendants and Other Relevant Non-Parties set forth in the First Report. *See* Doc. 60 at pp. 12-16. A previous chart illustrating the relationship between these various entities is reproduced below:



Source: Tax Returns

Companies all used George V. Famiglio Jr. & Associates,
CPAs, 1634 Main Street, Sarasota FL 34236, 941-957-0775

All businesses use address: 1800 Second Street, Suite 955,
Sarasota

IV. OVERVIEW OF RECEIVER'S PRELIMINARY FINDINGS

In his First Report and Second Report, the Receiver presented a detailed summary of various preliminary findings. Unless specifically indicated herein, those preliminary findings are incorporated herein and remain consistent with the Receiver's ongoing investigation. The Receiver reserves the right to revise, amend, and/or supplement these conclusions as the investigation progresses. The Receiver presents the following non-exclusive conclusions that he continues to supplement based on his preliminary review of the documents in his possession and with the assistance of his legal, accounting, and forensic professionals.

A. Discrepancies Between Kinetic Funds' Actual And Reported Performance And Assets

i. Performance Discrepancies

Many investors were attracted to KFYield through promises of consistent investment returns made possible through lower risk, "principle [sic] protection," and "maximum

liquidity.” No later than early 2017, KFYield’s performance and other information were listed on Bloomberg, and those reports were provided to current and prospective investors showing that KFYield had achieved consistent positive returns. For example, the Q2 2019 Quarterly Report distributed to current investors included a Bloomberg report indicating that the fund had profitable monthly returns for 41 out of the 50 months during the period from April 2015 to June 2019 - including a streak of 21 consecutive months of positive monthly returns from October 2017 to June 2019.²

The following chart lists KFYield’s annual performance from 2013 to 2019 based on figures reported by Bloomberg and distributed to current and prospective investors:

<u>Year</u>	<u>Bloomberg Reported Performance For KFYield Fund</u>
2013	9.79%
2014	21.27%
2015	.21%
2016	2.24%
2017	1.04%
2018	7.09%
2019 (through June 28, 2019) ³	2.45%

Beginning in June 2014, Kinetic Funds moved its brokerage accounts for KFYield and other sub-accounts to Interactive Brokers.⁴ According to Interactive Brokers’ Portfolio Analyst

² With the exception of a -3.33% monthly return in 2015, the fund’s performance for the remaining reported eight unprofitable months during that period ranged from -.02% to -.61%.

³ The Receiver has not seen any information indicating that Kinetic Funds updated the Fund’s performance figures as reported by Bloomberg after September 2019.

⁴ Prior to June 2014, trading accounts for KFYield and other sub-funds were held at Bank of America/Merrill Lynch by Kinetic Securities Trading (“KST”), a predecessor to Kinetic Funds.

tool, the KFYield trading account's performance (and change in net asset value) from 2015 (the first full year at Interactive Brokers) to 2019 was:

<u>Year</u>	<u>Actual Interactive Brokers Performance For KFYield Fund</u>
2015	-8.8%
2016	-3.8%
2017	-27.5%
2018	12.8%
2019 (annual)	-1.2%

There are significant discrepancies between the figures reported on Bloomberg and calculated by Interactive Brokers.

For example, in the "Fourth Quarter 2017" quarterly report distributed by Kinetic Investment Group that included the fund's reported performance data on Bloomberg for that period, Williams stated that "[I]ast year maintained a conservative approach of over-hedging against potential market volatility." The Bloomberg report included with that Quarterly Report showed that, as of December 29, 2017, the fund had total assets of \$31.78 million and its year-to-date performance was 1.04%.

However, the 2017 annual statement produced by Interactive Brokers for KFYield's trading account showed that the account declined in value by over 25% during that period:

Net Asset Value					
	December 31, 2016	December 31, 2017			
	Total	Long	Short	Total	Change
Cash	-11,437,677.94	0.00	-88,877,936.84	-88,877,936.84	-77,440,268.90
Stock	17,653,496.00	104,667,799.00	-219,768.00	104,438,041.00	86,784,646.00
Options	264,376.62	3,067,374.02	-13,927,674.86	-10,860,300.83	-11,124,677.36
Interest Accruals	-4,140.83	0.00	-99,942.86	-99,942.86	-95,802.03
Dividend Accruals	34,887.82	134,620.11	0.00	134,620.11	99,632.29
Total	6,610,940.67	107,869,693.13	-103,126,312.66	4,734,380.66	-1,776,669.99
Time Weighted Rate of Return					-27.62%

According to this statement, KFYield had a Net Asset Value (“NAV”) of \$6,510,940.57 as of December 31, 2016, and that NAV declined to \$4,734,380.58 as of December 31, 2017 - an annual change of -\$1,776,559.99 or -27.62% of the account’s NAV. As of December 31, 2017, the account holdings consisted of over \$104 million in stock positions, -\$10.8 million in net options positions, and a cash balance of nearly -\$89 million.⁵

Another portion of that statement entitled “Change in NAV” showed a breakdown of the annual change in the NAV during that period:

Change in NAV	Total
Starting Value	6,510,940.57
Mark-to-Market	-3,154,506.38
Position Transfers	16,684.00
Dividends	1,923,148.82
Withholding Tax	-2,035.76
Change in Dividend Accruals	99,632.29
Interest	-439,632.20
Change in Interest Accruals	-95,802.03
Other Fees	-253.30
Commissions	-120,842.30
Transaction Fees	-2,953.13
Ending Value	4,734,380.58

As the statement shows, the KFYield account generated nearly \$2 million in dividends during this period (which appeared to have largely been generated by using significant amounts of margin to purchase dividend-generating equities) but also incurred mark-to-market losses of over -\$3.1 million and paid over \$500,000 in commissions and margin interest charges during that period.

⁵ Unlike previous reports, which included the fund’s top 10 holdings as of the end of the relevant quarter, the 2017 Q4 report included the fund’s top holdings as of February 13, 2018 - approximately 45 days after the end of the relevant quarter and which were significantly different than the fund’s holdings as of December 29, 2017.

Despite having open equity positions with a value of more than \$100 million as of December 29, 2017, the account statement shows that the vast majority of these holdings were purchased using margin and that KFYield's account value was actually \$4.734 million as of December 29, 2017. In other words, the liquidation of the account would have generated less than \$5 million in net proceeds. The fund's reported NAV of roughly \$4.7 million as of December 31, 2017, differs by over \$25 million compared to the total assets represented in the Bloomberg report for the same time period. Similarly, the account's annual decline of over 27% during 2017 is significantly different than the 1.04% increase represented in the Bloomberg report for the same period. The Receiver has made requests to Williams' counsel for more information and clarification regarding the calculation of investment performance for KFYield but has, to date, not received any formal response.

iii. Apparent Shortfall

Based on the above-identified discrepancies, there appears to have been a shortfall between actual and reported fund assets since at least 2017. Using the late-2017 timeframe as an example, the December 2017 monthly statements distributed to KFYield investors show the total market value of the KFYield fund investments as nearly \$27 million.⁶ This theoretically is the amount of funds that were being held and managed on behalf of KFYield investors, and accordingly is the amount that would need to be returned in the event that all investors elected to redeem their investments.

⁶ This figure also appears to differ from the Bloomberg report showing total assets of nearly \$32 million as of December 29, 2017.

However, it appears that Kinetic Funds had approximately half of the amount represented to KFYield investors readily accessible and available for withdrawal as of December 31, 2017. As of December 31, 2017, Kinetic Funds' bank account at BMO Harris (which also received deposits from investors seeking to invest in other sub-funds) had a balance of approximately \$9.8 million, and KFYield's sub-account at Interactive Brokers had a value of approximately \$4.73 million. In other words, Kinetic Funds had approximately \$14.5 million of available assets in either cash or securities (which also does not factor in any margin obligations in the other sub-accounts held by Kinetic Funds at Interactive Brokers). Although the Receiver understands that Kinetic Funds had extended various Lendacy loans to investors and non-investors, those unsecured loans were not assets that could be immediately called or otherwise converted to cash to meet investor redemptions. Indeed, in the event that Kinetic Funds' largest investor alone sought to liquidate its \$18 million investment (which did not have a corresponding Lendacy loan), it is unclear how Kinetic Funds would have been able to satisfy that redemption - let alone maintain continuity of operations. The Receiver continues to investigate the origin, extent, and duration of this shortfall.

B. Kinetic Funds Management Fees

The Receiver's investigation shows Kinetic Funds and Lendacy made total transfers of nearly \$5 million to Kinetic Investment Group over the relevant period - including nearly \$3.9 million alone from Kinetic Funds. Although the agreements between Kinetic Funds and its investors specified that Kinetic Funds would pay Kinetic Investment Group a management fee of 1% of assets under management as well as 20% of any profits realized from trading of investor assets, the total transfers of nearly \$5 million appear to be significantly larger than

what the 1% “expense ratio” for assets under management would have been even using the numbers reported to investors at the end of each calendar year.⁷ Based on the Receiver’s investigation, it appears that at least a portion of these transfers were used by Kinetic Investment Group for other unauthorized expenses that did not benefit investors. For example, El Morro Financial received nearly \$1 million in transfers from Kinetic Investment Group during the period of March 2017 to December 2019. *See* First Report pp. 47-53.⁸ The Receiver continues to investigate these discrepancies.

C. Lendacy’s Funding Source Was Kinetic Funds

Lendacy received approximately \$16.2 million into its bank accounts from February 2013 to March 2020, including nearly \$13 million in transfers of investor funds from Kinetic Funds’ bank account. Lendacy used these transfers to fund at least 28 loans to various individuals and entities during that time period. These loans often featured significantly below-market rates, were not typically collateralized, and contained little recourse in the event of default. Of those 28 loans, at least four were made to insiders (such as Williams, his related entities, and employees) and non-KFYield investors.⁹

⁷ This also assumes that Kinetic Investment Group was entitled to receive this “expense ratio” fee even if a majority of investor funds were never deposited into brokerage accounts as represented.

⁸ The vast majority of these transfers appear to have been made pursuant to monthly invoices ranging from \$25,000 to \$50,000 generated by El Morro for purported services relating to “Statement Reporting” and other various expenses apparently for Kinetic Funds investors. El Morro also funded a lavish Kinetic Financial Summit in San Juan, Puerto Rico in early 2019 that had no discernible benefit to Kinetic Funds investors.

⁹ With the exception of Williams, none of the remaining insider loan recipients had an underlying investment with KFYield, which means that their loan would have likely been funded with other investor funds.

D. Significant Losses From Association With VTrader Pro, LLC

At the March 6, 2020 hearing, Williams' counsel disclosed that part of the Kinetic Funds asset shortfall identified by the Court was attributable to losses suffered in connection with Kinetic Funds' previous relationship with a failed broker-dealer named VTrader Pro, LLC ("VTrader"). The Receiver has seen evidence that Kinetic Funds' predecessor, KST, was a Class B, "Entrepreneurial Member Trader" of VTrader before VTrader's registration was terminated in January 2013.¹⁰ As an "Entrepreneurial Member Trader," KST shared in the profits and losses of VTrader and received distributions based on the percentage of profits in its individual trading accounts. There were number other Member Traders in VTrader that were unrelated to KST or Williams. KST and every other Member Traders' trading accounts were assets of VTrader and essentially comingled. This meant that KST's trading account was subject to VTrader's obligations and third party claims and exposed to the losses and shortfalls incurred by other Member Traders.

At some point in 2011, VTrader suffered heavy losses and needed a capital infusion to remain viable. To this end, Williams agreed to exchange \$1 million from the KST Class B investment in VTrader and convert it to Class A stock. The Receiver is also investigating whether KST leveraged its margin capabilities at its then-current broker-dealer to make any further investments in VTrader. VTrader subsequently collapsed, resulting in the loss of KST's \$1 million investment. It appears those losses were satisfied by (and correspondingly

¹⁰ See <https://brokercheck.finra.org/firm/summary/131920>.

depleted) investor assets.¹¹ A K-1 was also generated showing a \$1 million loss for Kinetic Partners, LLC.

Between mid-2012 through the end of 2012, it appears KST moved its accounts out of VTrader and over to Bank of America/Merrill Lynch. The Receiver's investigation into these events has been hampered by the passage of nearly ten years from these events and the unavailability of sufficient documentation, but it appears that investor funds were adversely affected by these events.

E. Williams' Use Of Investor Funds For His Own Benefit

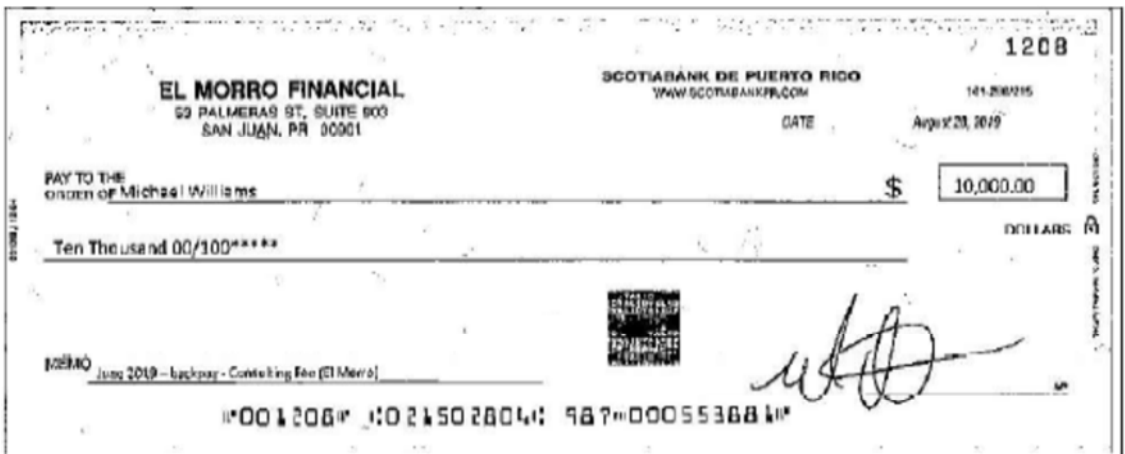
The Receiver's review of the financial transactions among the various Receivership Entities has allowed him to trace millions of dollars in investor funds that were transferred to or for the benefit of Defendant Williams and without any discernible authorized purpose or benefit to Kinetic Funds. As further detailed in the First Report, these transfers include:

- The use of \$1.7 million in investor funds, later classified as a Lendacy loan, to purchase a luxury apartment multiplex in Puerto Rico and corresponding parking spaces. In addition to using one of the apartments as his primary residence, Williams also rented out one of the units to a tenant for which he received monthly rental income not turned over to Kinetic Funds (*See* First Report pp. 43-44);
- The use of \$2.7 million in investor funds, later classified as a Lendacy loan, to purchase a historic commercial bank building in San Juan, Puerto Rico on behalf of Receivership Entity Scipio, LLC (*See* First Report pp. 45-46);
- The use of \$2 million in investor funds, later classified as a Lendacy loan on behalf of Receivership Entity LF42, for various expenses relating to several

¹¹ In January 2012, VTrader informed Williams that most of the \$1 million that KST had converted to Class A stock had been used to pay down debt balances owed by Class B members and was gone. With respect to the \$1 million Williams converted into a Class A investment, it appears that KST received only \$5,000 in the liquidation. Thus, in addition to any trading losses KST incurred on its subaccounts, it also seemingly lost nearly \$1,000,000 as a result of its Class A investment in VTrader.

Receivership Entities located and operating in San Juan, Puerto Rico, including the funding of the “Kinetic Summit” in February 2019 (*See* First Report p. 47);

- The payment of nearly \$1 million in investor funds to Receivership Entity El Morro Financial purportedly for statement preparation and other services and the payment of more than \$50,000 in salary to Williams from mid-2017 to mid-2019. Several \$10,000 checks were also written payable to (and signed by) Williams in late 2019 that contained the notation “Consulting Fee” in the memo portion:



(*See* First Report pp. 47-53);

- The structuring of at least one “Consulting Agreement” between Kinetic Investment Group and LF42, Williams’ entity, including an agreement in September 2019 - after Williams was on notice of the Commission’s investigation - signed by Williams on behalf of KIG and LF42 and pursuant to which Kinetic Investment Group transferred \$10,000 per month to LF42 from

September 2019 to February 2020 for Williams' benefit (*See* First Report p. 47);

- The sale of Williams' car to an employee in the Sarasota, Florida Kinetic Funds office for which the employee signed a Lendacy loan for \$18,000 and the same sum was wired to Williams (*See* First Report p. 47); and
- Arranging for who the Receiver understands to be Williams' girlfriend to be on the payroll of Kinetic Investment Group despite the lack of any justifiable business purpose or services for value (*See* First Report pp. 47).

V. **ACTIONS TAKEN BY RECEIVER DURING REPORTING PERIOD**

During the period covered by this Interim Report, the Receiver took a number of steps to fulfill his duties under the Order Appointing Receiver.

A. **Investigation Of Brokerage Account Assets And Margin Debt And Subsequent Settlement With Investors Resulting In Nearly \$8 Million Benefit To Receivership Estate**

Immediately following his appointment, the Receiver obtained control of Kinetic Funds' brokerage account relationship at Interactive Brokers. In addition to containing various sub-accounts purportedly implementing the trading strategies offered by Kinetic Funds and consisting of approximately \$13 million in total cash and securities, the Receiver also discovered (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, although the Interactive Brokers account documentation did not reveal how those margin obligations were originally incurred prior to the account’s opening in mid-2014.

The Receiver was able to obtain historical brokerage statements from Kinetic Funds’ previous account relationship with Bank of America Merrill Lynch (“BOA/ML”) for the period from January 1, 2013 to mid-2014 (when the account was transferred to Interactive Brokers).¹² From those statements, the Receiver determined that the Fogarty Family sub-accounts had carried a sizeable margin balance that increased during that period until mid-2014 when Kinetic Funds moved its account relationship to Interactive Brokers. The corresponding margin balances inexplicably did not appear to have been re-allocated to the Fogarty Family’s new Interactive Brokers sub-accounts following the transfer; instead, those margin balances were essentially assumed by Kinetic Funds and maintained in a single sub-account at IB. 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

¹² 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.

in xxx2028 (the “KF 2028 Margin Balance), which remains outstanding today with a balance of -\$7,708,296 as of September 29, 2020.

Following his investigation, 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 the approximately \$12 million in margin obligations present in the Interactive Brokers 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 remained in frequent communication with the Fogarty Family both before and after filing the Motion to Liquidate. These communications eventually resulted in a settlement agreement which will allow Kinetic Funds to avoid nearly \$8 million of the roughly \$12 million in margin obligations owed to Interactive Brokers as of the date of the Receiver’s appointment through a combination of payments from the Fogarty Family to the Receivership Estate and the Fogarty Family’s assumption of margin obligations. On September 30, 2020, the Receiver filed the Settlement Motion (Doc. 141) which remains pending. The motion also seeks authority to repay the remaining KF2028 Margin Balance and transfer the net proceeds to the Receiver’s fiduciary accounts.

Assuming the Court approves the Settlement Motion, the Receiver expects to have cash-on-hand of approximately \$16 million following the deposit of the settlement payment

from the Fogarty Family and the remaining proceeds from the Interactive Brokers accounts (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.

B. Claims Process

As indicated in previous reports, the Receiver has focused on understanding and analyzing the flow of investor funds in order to determine the appropriate framework and procedure for a claims process to begin returning funds to claimants with approved claims. On August 20, 2020, the Receiver filed the Claims Motion, which remains pending and seeks Court approval of the Receiver's proposed claims process including the draft proof of claim form, the method to determine investor claims, timing and deadlines for submission of claims, and mechanisms to provide notice of the claims process. Following the filing of the Claims Motion, the Receiver also sent correspondence to each potential claimant he had identified notifying them of the filing of the Claims Motion and their ability to submit any comment or objection to the Court on or before September 3, 2020. The Receiver is not aware of any comment or objection being filed by any interested party. If the Court approves the Claims Motion, the Receiver will then proceed forthwith with implementing the proposed procedures. Relevant information will also be posted on the Receiver's informational website at www.kineticreceivership.com.

C. Efforts To Market And Sell The El Banco Espanol Building In Puerto Rico

In or around May 2018, Receivership Entity Scipio, LLC entered into an agreement to purchase the historic Banco Espanol building located at 152 Tetuan Avenue, San Juan, Puerto

Rico (the “Bank Building”). The Receiver’s investigation showed that approximately \$2.75 million of funds traceable to Kinetic Funds’ bank account were used to purchase the Bank Building and that Scipio was listed as the buyer on the purchase agreement. Like the Villa Gabriella purchase, Williams apparently created documents after the sale to make the transaction look like a Lendacy loan even though the Receiver is not aware of any application or approval for any loan. And while Lendacy loans were traditionally extended to Kinetic Funds investors based on a percentage of that underlying investor’s Kinetic Funds investment, Scipio was not and had never been a Kinetic Funds investor. According to Lendacy’s former President, Williams sought to purchase the building to create a private club for billionaires, among other uses. This purchase was not for the benefit of investors in Kinetic Funds.

The Receiver’s counsel traveled to Puerto Rico to secure and take possession of the Bank Building on March 7, 2020. With the exception of a small art school occupying a portion of the ground floor, the building was vacant, and no substantive work appears to have occurred at the building for some time, if ever. Following Williams’ representation at the hearing on March 6, 2020, that a recent appraisal valued the building at \$5 million, the Receiver obtained that appraisal and determined that the \$5 million figure was valid only assuming that more than \$2 million in construction-related expenses were undertaken and completed. Otherwise, the building was appraised at a \$2.9 million “as-is” value. That appraisal was also completed in September 2019 - six months prior to the March 2020 hearing.

The Receiver obtained two additional appraisals for the Bank Building which valued the building at \$1.86 million and \$2.33 million, respectively. Each of the appraisals obtained by the Receiver references the significant repairs likely needed for any contemplated use of

the Bank Building, with one appraisal observing that the building “requires a complete interior renovation” and the other noting that the “general physical condition of interior areas can be rate [sic] as poor.”

The Receiver determined that liquidating the Bank Building via a private sale would yield the maximum recovery for the receivership estate, and as a result, entered into a listing agreement with Mr. Benjamin Rivera with ODV Appraisal Group. Mr. Rivera began marketing the Bank Building and ultimately received several offers ranging from \$1.124 million to \$2.1 million. The Receiver ultimately determined to accept the \$2.1 million offer which provided for a 90-day term for the buyer to secure financing. The Receiver has filed an unopposed motion seeking Court approval for his retention of local counsel in Puerto Rico to assist with this and any other real estate sales (Doc. 148), as the sale of real estate in Puerto Rico is set by statute and the necessary documents are often prepared in Spanish. Once the Receiver has a signed agreement, the Receiver will then seek Court approval of the sale. Assuming a sale price of \$2.1 million for the Bank Building, the Receiver anticipates net proceeds from the sale of roughly \$2 million after factoring in commissions and associated expenses and fees. Upon the sale, the net proceeds will be deposited into the appropriate Receivership Entity bank account

D. Efforts To Market The Villa Gabriella Luxury Apartment Multiplex In Puerto Rico

The Commission’s Complaint alleged that Williams “used KFYield funds” to purchase “three luxury apartments and two parking spaces for himself in San Juan, Puerto Rico.” Doc. 1 ¶ 34. The Receiver’s investigation revealed evidence supporting these allegations. *See, e.g.*, First Report pp. 43-44. On March 6, 2020, Williams’ counsel informed

the Receiver's counsel of their position that the Villa Gabriella property was not subject to the Receiver's reach since it was held and owned by Williams individually. The Receiver agreed temporarily not to seek possession of the Villa Gabriella property in which Williams (and his girlfriend) were allegedly living.

The Receiver's investigation showed that funds from Kinetic Funds' bank account were directly traceable to the purchase of Villa Gabriella. On May 15, 2020, the Receiver filed his Motion for Possession of and Title to Residential Real Property (the "Motion for Turnover") (Doc. 72) seeking turnover of Villa Gabriella in order to secure and liquidate the property to generate additional funds to be used to compensate Kinetic Funds investors. After the Motion for Turnover was filed, the Receiver was approached by Defendant Williams' counsel and subsequently entered into an agreement to resolve the Motion for Turnover which, in relevant part, provided for the transfer of title of Villa Gabriella to the Receiver and permitted the Receiver to take steps to market and sell the property in the event the scheduled mediation on August 28, 2020 was unsuccessful. This agreement was set forth in the Joint Stipulation filed on July 6, 2020, and later adopted by the Court on July 8, 2020 (Doc. 105).

After the mediation between the Commission and Williams resulted in an impasse, the Receiver reached out to local appraisers and commissioned three appraisals of Villa Gabriella and the associated parking spots. After completion of the appraisals, the Receiver intends to proceed with the marketing and liquidation of Villa Gabriella and the related parking spots.

E. Litigation Matters

The Receiver has also, as necessary, tended to various pending litigation matters in this case including pleadings filed by Williams and providing regular updates to the Court.

This included the Receiver's filing of a Limited Response to Defendant Williams' Second Motion to Modify Asset Freeze Order seeking to unfreeze nearly \$250,000 of frozen funds to fund Williams' defense costs (Doc. 135). The Receiver also continues to make monthly transfers to Williams to pay Court-ordered monthly living expenses (Doc. 95).

Pursuant to the Order Appointing Receiver, the Receiver has also updated the Court and interested parties of his continuing progress in this case through the preparation of the First Report (Doc. 60), the Liquidation Plan (Doc. 92), and the Second Report (Doc. 111). These documents and all other case filings are available on the Receiver's information website established at www.kineticreceivership.com.

F. Ongoing Efforts to Obtain Documentation And Information From Parties And Non-Parties

In addition to the computers and various documents located at the Sarasota Office, the Receiver and his professionals have continued to seek the production of relevant documentation and information from other parties. During the period covered by this report, the Receiver served one non-party with a copy of the Order Appointing Receiver and issued 17 subpoenas.

G. Continued Investor Outreach and Administration Of Website

Throughout the relevant period, the Receiver continued to communicate with investors and other interested parties regarding the status of his efforts and any particular questions or issues brought to the Receiver's attention. The Receiver also continued to administer his informational website located at www.kineticreceivership.com which is regularly updated with court filings and reports and also allows interested parties to contact the Receiver.

H. Receivership Accounting

Receivership funds are currently being held at ServisFirst Bank. As referenced above in Section V.A, the Receiver also anticipates transferring the net proceeds from Kinetic Funds' IB accounts upon the Court's approval of the Settlement Motion. The Receiver has attached a cash accounting report showing the amount of money on hand as of September 30, 2020 as **Exhibit 1**.

VI. THE NEXT QUARTER

A. Investigation

The Receiver believes he has identified and, if applicable, frozen or secured all known assets attributable to investor funds, and he continues to investigate the Receivership Defendants' business operations and underlying financial transactions between those operations.¹³ These investigative efforts remain ongoing through the review of additional documents from (and, where necessary, interviews with) third parties. The Receiver continues to work diligently and efficiently on this task, which includes a substantial amount of documentation and financial records. The Receiver will continue to attempt to locate additional funds and other assets and will likely institute proceedings to recover assets on behalf of the Receivership Defendants. In an effort to more fully understand the conduct at issue and in an attempt to locate more assets, the Receiver will continue to conduct interviews and/or depositions of parties and third parties who may have knowledge of the fraudulent scheme. The Receiver believes that continuation of the Receivership (and employment of the

¹³ A further description of these assets and the Receiver's intended liquidation plan is set forth in the Receiver's Liquidation Plan attached hereto as **Exhibit 2** and incorporated herein.

retained professionals) is necessary and imperative for the continued marshaling, liquidation, and distribution of assets.

B. Upon Court Approval, Implementing Proposed Claims Process

The Receiver has prioritized the process of returning investor funds as soon as possible through a Court-approved claims process. As referenced above in Section V.F, the Receiver has completed his initial analysis of individual investor accounts both with Kinetic Funds and, where applicable, Lendacy, and on August 20, 2020 the Receiver filed the Claims Motion seeking court approval for the framework and procedures for a claims process (Doc. 131). That motion remains pending.

C. Liquidation of Assets

The Receiver completed his investigation of the Interactive Brokers margin balance and sought the Court's approval of his settlement with the Fogarty Family on September 30, 2020 which, if approved, will result in a net benefit of nearly \$8 million to the Receivership Estate. The liquidation of the Receivership Estate's real property assets will remain a primary focus of the Receiver in the near period. With respect to the Bank Building, the Receiver's marketing efforts have resulted in his preliminary acceptance of a \$2.1 million purchase offer which will be presented for Court approval in the near future. As for the Villa Gabriella property, the Receiver is in the process of obtaining necessary appraisals of the properties and related parking spaces and will be seeking to market and liquidate those assets in the near future. The Receiver is also in the process of liquidating personal property secured from Kinetic Funds' office in Sarasota, Florida, and has sought Court approval for the liquidation and these and similarly-situated personal property going forward (Doc. 147). Any interested

parties should visit the Receiver's website at www.kineticreceivership.com for more information.

D. Potential Third-Party Claims

The Receiver is currently analyzing 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.

QUARLES & BRADY LLP

/s/ Jordan D. Maglich

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Florida Bar No. 0086106

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Facsimile: (813) 387-1800

Jordan.maglich@quarles.com

Zachary.foster@quarles.com

Counsel for Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 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:

Christine Nestor, Esq.
Stephanie N. Moot, Esq.
John T. Houchin, Esq.
Barbara Viniestra, Esq.
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Counsel for Defendant Michael Williams

/s/ Jordan D. Maglich _____

Attorney

EXHIBIT 1



REPORT OF STANDARDIZED FUND ACCOUNTING REPORT

Mark A. Kornfeld, As Receiver for Kinetic Investment Group, LLC et al.
Tampa, FL

We have compiled the standardized fund accounting report for the period July 1, 2020 to 9/30/2020 and from inception March 6, 2020 to September 30 2020, included in the accompanying prescribed form (Civil Court Docket No. 8:20-cv-00394-WFJ-SPF). We have not audited or reviewed the accompanying standardized fund accounting report and accordingly, do not express an opinion or any assurance about whether the standardized fund accounting report is in accordance with the form prescribed by the Civil Court Docket No. 8:20-cv-00394-WFJ-SPF).

Mark A. Kornfeld, As Receiver for Kinetic Investment Group, LLC et al, is responsible for the preparation and fair presentation of the standardized fund account report in accordance with requirements prescribed by the Civil Court Docket No 8:20-cv-00394-WFJ-SPF, and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the standardized fund accounting report.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist Mark A. Kornfeld, As Receiver for Kinetic Investment Group, LLC et al, in presenting financial information in the form of a standardized fund accounting report without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the standardized fund accounting report.

This standardized fund accounting report is presented in accordance with the requirements of the Civil Court Docket No. 8:20-cv-00394-WFJ-SPF , which differ from accounting principles generally accepted in the United States of America. This report is intended solely for the information and use of the Civil Court Docket No 8:20-cv-00394-WFJ-SPF and is not intended and should not be used by anyone other than this specified party.

Oldsmar, Florida
October 9, 2020

Standardized Fund Accounting Report for
Mark A. Kornfeld as Receiver for Kinetic Investment Group, LLC et al. - Cash Basis
Receivership; Civil Court Docket No. 8:20-cv-00394-WFJ-SPF
Reporting Period 07/01/2020 to 09/30/2020

FUND ACCOUNTING (See Instructions):		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 07/01/2020):			\$ 13,877,487.82
	Increases in Fund Balance:			
Line 2	Business Income			
Line 3	Cash and Securities**			
Line 4	Interest/Dividend Income	25,663.13		
Line 5	Business Asset Liquidation			
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income			
Line 8	Miscellaneous - Other			
	Total Funds Available (Line 1 - 8):		25,663.13	13,903,150.95
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors			
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	581,254.55		
Line 10b	Business Asset Expenses	306.73		
Line 10c	Personal Asset Expenses	8,829.36		
Line 10d	Investment Expenses	15,737.48		
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations		606,128.12	606,128.12
Line 11	Disbursements for Distribution Expenses Paid by the Fund			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator			
	Independent Distribution Consultant (IDC)			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 - 11)			606,128.12
Line 13	Ending Balance (As of 09/30/2020)			13,297,022.83

**Standardized Fund Accounting Report for
 Mark A. Kornfeld as Receiver for Kinetic Investment Group, LLC et al. - Cash Basis
 Receivership; Civil Court Docket No. 8:20-cv-00394-WFJ-SPF
 Reporting Period 07/01/2020 to 09/30/2020**

FUND ACCOUNTING (See Instructions):		Detail	Subtotal	Grand Total
Line 14	Ending Balance of Fund - Net Assets:			13,297,022.83
Line 14a	Cash & Cash Equivalents			13,297,022.83
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund - Net Assets			13,297,022.83
OTHER SUPPLEMENTAL INFORMATION:		Detail	Subtotal	Grand Total
Line 15	Report of Items Not To Be Paid by the Fund			
	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	Plan Development Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses Not Paid by the Fund		-	
Line 15b	Plan Implementation Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses Not Paid by the Fund		-	
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund:			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			-
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund		-	
Line 17	DC & State Tax Payments			
Line 18	No of Claims			
	# of Claims Received This Reporting Period _____			
	# of Claims Received Since Inception of Fund _____			
Line 19	No of Claimants/Investors:			
Line 19a	# of Claimants/Investors Paid This Reporting Period _____			
	# of Claimants/Investors Paid Since Inception of Fund _____			

Receiver:
 By: _____
 Title _____
 Date _____

Standardized Fund Accounting Report for
Mark A. Kornfeld as Receiver for Kinetic Investment Group, LLC et al. - Cash Basis
Receivership; Civil Court Docket No. 8:20-cv-00394-WFJ-SPF
Reporting Period From Inception 03/06/20 to 09/30/2020

FUND ACCOUNTING (See Instructions):		Detail	Subtotal	Grand Total
Line 1	Beginning Balance (As of 03/06/2020):			\$ -
	Increases in Fund Balance:			
Line 2	Business Income			
Line 3	Cash and Securities	13,652,912.22		
Line 4	Interest/Dividend Income	53,390.91		
Line 5	Business Asset Liquidation			
Line 6	Personal Asset Liquidation			
Line 7	Third-Party Litigation Income			
Line 8	Miscellaneous - Other	223,877.75		
	Total Funds Available (Line 1 - 8):		13,930,180.88	13,930,180.88
	Decreases in Fund Balance:			
Line 9	Disbursements to Investors			
Line 10	Disbursements for Receivership Operations			
Line 10a	Disbursements to Receiver or Other Professionals	581,254.55		
Line 10b	Business Asset Expenses	9,097.34		
Line 10c	Personal Asset Expenses	8,829.36		
Line 10d	Investment Expenses	33,976.80		
Line 10e	Third-Party Litigation Expenses			
	1. Attorney Fees			
	2. Litigation Expenses			
	Total Third-Party Litigation Expenses			
Line 10f	Tax Administrator Fees and Bonds			
Line 10g	Federal and State Tax Payments			
	Total Disbursements for Receivership Operations		633,158.05	633,158.05
Line 11	Disbursements for Distribution Expenses Paid by the Fund			
Line 11a	Distribution Plan Development Expenses:			
	1. Fees:			
	Fund Administrator			
	Independent Distribution Consultant (IDC)			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses			
Line 11b	Distribution Plan Implementation Expenses:			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses			
	Total Disbursements for Distribution Expenses Paid by the Fund			
Line 12	Disbursements to Court/Other:			
Line 12a	Investment Expenses/Court Registry Investment System (CRIS) Fees			
Line 12b	Federal Tax Payments			
	Total Disbursements to Court/Other:			
	Total Funds Disbursed (Lines 9 - 11)			633,158.05
Line 13	Ending Balance (As of 09/30/2020)			13,297,022.83

**Standardized Fund Accounting Report for
 Mark A. Kornfeld as Receiver for Kinetic Investment Group, LLC et al. - Cash Basis
 Receivership; Civil Court Docket No. 8:20-cv-00394-WFJ-SPF
 Reporting Period From Inception 03/06/20 to 09/30/2020**

FUND ACCOUNTING (See Instructions):		Detail	Subtotal	Grand Total
Line 14	Ending Balance of Fund - Net Assets:			13,297,022.83
Line 14a	Cash & Cash Equivalents		*	13,297,022.83
Line 14b	Investments			
Line 14c	Other Assets or Uncleared Funds			
	Total Ending Balance of Fund - Net Assets			13,297,022.83
OTHER SUPPLEMENTAL INFORMATION:		Detail	Subtotal	Grand Total
Line 15	Report of Items Not To Be Paid by the Fund			
	Disbursements for Plan Administration Expenses Not Paid by the Fund:			
Line 15a	Plan Development Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Miscellaneous			
	Total Plan Development Expenses Not Paid by the Fund		-	
Line 15b	Plan Implementation Expenses Not Paid by the Fund			
	1. Fees:			
	Fund Administrator			
	IDC			
	Distribution Agent			
	Consultants			
	Legal Advisors			
	Tax Advisors			
	2. Administrative Expenses			
	3. Investor Identification:			
	Notice/Publishing Approved Plan			
	Claimant Identification			
	Claims Processing			
	Web Site Maintenance/Call Center			
	4. Fund Administrator Bond			
	5. Miscellaneous			
	6. Federal Account for Investor Restitution (FAIR) Reporting Expenses			
	Total Plan Implementation Expenses Not Paid by the Fund		-	
Line 15c	Tax Administrator Fees & Bonds Not Paid by the Fund:			
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund			-
Line 16	Disbursements to Court/Other Not Paid by the Fund:			
Line 16a	Investment Expenses/CRIS Fees			
Line 16b	Federal Tax Payments			
	Total Disbursements to Court/Other Not Paid by the Fund		-	
Line 17	DC & State Tax Payments			
Line 18	No of Claims			
	# of Claims Received This Reporting Period _____			
	# of Claims Received Since Inception of Fund _____			
Line 19	No of Claimants/Investors:			
Line 19a	# of Claimants/Investors Paid This Reporting Period _____			
	# of Claimants/Investors Paid Since Inception of Fund _____			

Receiver: _____
 By: _____
 Title _____
 Date _____

Misc Items

Sale of Gold Coins

223,877.75

Total

\$ 223,877.75

EXHIBIT 2

**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.

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, Scipio, 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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