

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 8:20-CV-00394

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

KINETIC INVESTMENT GROUP, LLC, and  
MICHAEL SCOTT WILLIAMS,

Defendants, and

KINETIC FUNDS I, LLC,  
KCL SERVICES, LLC d/b/a LENDACY,  
SCIPIO LLC,  
LF42, LLC,  
EL MORRO FINANCIAL GROUP, LLC,  
and KIH, INC. f/k/a KINETIC  
INTERNATIONAL, LLC,

Relief Defendants.

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**NONPARTY OBSIDIAN TECHNOLOGIES, LLC'S  
UNOPPOSED MOTION TO MODIFY THE ASSET FREEZE ORDER**

Nonparty Obsidian Technologies, LLC f/k/a Silexx Financial Systems, LLC (“Obsidian”), through its undersigned counsel, respectfully moves to modify the Court’s March 6, 2020 Order Granting Plaintiff Securities and Exchange Commission’s Emergency Motion for Asset Freeze and Other Relief (“Freeze Order”) [D.E. 33] to release to Obsidian all funds in Obsidian’s accounts at BMO

Harris Bank, N.A. (“BMO”) ending in -4271 and -1601 (the “Accounts”), except for \$50,000 that Defendant Williams may have an interest in. In support of this Motion, Obsidian states as follows:

1. On February 20, 2020, Plaintiff Securities and Exchange Commission (the “SEC”) filed its Complaint against Defendants Kinetic Investment Group, LLC and Michael Scott Williams (“Williams”) (collectively, “Defendants”).<sup>1</sup> [D.E. 1]. On March 6, 2020, the Court entered the Freeze Order.

2. The Freeze Order, *inter alia*, restrains BMO from moving or otherwise disposing of any funds in the Accounts, *but only as to funds owed to Williams*. The order specifically provides in relevant part:

B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendants or Relief Defendants, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this order by personal service, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets, including, but not limited to, the following presently known accounts:

...

18. Obsidian Technologies, LLC (as to funds owed to Williams)  
BMO Harris Bank, N.A.  
Account No. XXXXXX1601

19. Obsidian Technologies, LLC (as to funds owed to Williams)  
BMO Harris Bank, N.A.  
Account No. XXXXXX4271

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<sup>1</sup> The SEC’s Complaint also named Kinetic Funds I, LLC, KCL Services, LLC d/b/a Lendacy, Scipio, LLC, LF42, LLC, El Morro Financial Group, LLC, and KIH, Inc. f/k/a Kinetic International, LLC, as “Relief Defendants.”

*See* [D.E. 33], pp. 3, 5.

3. As discussed below, Williams' interest in the Accounts, if any, is not greater than \$50,000.

4. Upon its formation in March 2007, Obsidian was known as Silexx Financial Systems, LLC, a Delaware limited liability company ("Silexx"). While Williams owned a 40% equity interest in Silexx, he did not have an active or management role in the operation of the company. The SEC did not allege, nor does the Receiver contend, that Silexx (or later, Obsidian) received any monies that were the subject of the fraud alleged in the SEC's Complaint. Any transfers of monies between Silexx and Defendants or Relief Defendants, occurred for the most part between May 2012 and November 2017 when Silexx and Defendants shared office and personnel, and consisted of payments for general office and administrative expenses.<sup>2</sup>

5. On November 1, 2017, Silexx sold substantially all its assets to the Chicago Board of Exchange ("CBOE") and distributed the net proceeds it received at the closing of such sale to its members, including Williams, on a pro rata basis in accordance with its Operating Agreement. A portion of the purchase price payable

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<sup>2</sup> The SEC alleges that "Defendants used \$30,872.44 of investor funds to pay Silexx[.]" [D.E.1] at ¶ 39. Silexx received those funds as payment for software services it rendered to Defendants.

for the assets was structured as an earn-out, which CBOE paid to Obsidian upon the satisfaction of specified conditions.<sup>3</sup>

6. Part of the earn-out monies were to be distributed to Obsidian's members, with monies to remain within its Accounts to wind down the company's operations and to pay expenses. On March 3, 2020, Obsidian and Williams executed a Distribution Agreement and Mutual Release (the "Release"). *See* Distribution Agreement and Mutual Release, [D.E. 49-1]. Pursuant to the Release, Obsidian distributed to Williams's counsel \$3,414,964, representing Williams' pro rata share of the earn-out payment CBOE paid to Obsidian for purchasing its assets ("Sale Distribution"). *See id.* at ¶¶ B-D, 1. In exchange, Williams agreed that the transfer of the Sale Distribution funds to his counsel for Mr. Williams' benefit would "satisfy any obligation to distribute the Sale Distribution to Williams[,] and released and forever discharged Obsidian, "and its officers and directors . . . from and against any and all claims and demands [Williams] had, or has or may have against [Obsidian] in connection with, or arising out of, the operation and sale of [Obsidian], including the distribution of proceeds from the sale of [Obsidian.]" *Id.* at ¶¶ 1, 4.

7. The Release acknowledges that Obsidian withheld from releasing a portion of the distribution of sales proceeds to its members to allot for the payment of expenses of winding down its business and those it incurred in connection with

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<sup>3</sup> Subsequently, on November 13, 2017, Silexx changed its name to Obsidian.

certain regulatory matters relating to Mr. Williams and entities affiliated with him. As a result, the Release provides that “depending on the amount of such expenses, [Obsidian] may make a final distribution to Williams of *not more than \$50,000 at a future date* [.]” *Id.* at ¶ 3. (emphasis added).

8. Therefore, Williams’ interest, if any, in the balance of Obsidian’s Accounts frozen by the Freeze Order does not exceed \$50,000. Indeed, Obsidian’s expenses may reduce Williams’ interest to \$0. Notwithstanding, and in recognition of Williams’ potential interest in, *at most*, \$50,000 in the Accounts, Obsidian respectfully requests an Order modifying the Freeze Order to release to Obsidian all funds in the Accounts except for \$50,000. Such an order would afford Obsidian the opportunity to use these funds to pay its expenses and financial obligations, including those incurred in connection with regulatory matters relating to Mr. Williams and entities affiliated with him, including this action brought by the SEC.<sup>4</sup> Since entry of the Freeze Order Obsidian has not had access to funds in the Account to pay its expenses, yet it continues to accrue expense. Accordingly, it seeks the relief sought in this Motion from the Court.<sup>5</sup> If the requested relief is granted, Obsidian will report

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<sup>4</sup> By requesting a release of all funds in the Accounts except for \$50,000, Obsidian does not admit or concede that Williams has any actual interest over any of those funds. Indeed, Obsidian expressly reserves its right to demonstrate later that, as contemplated under the Release, Williams’ interest over those \$50,000 has diminished, if not completely extinguished.

<sup>5</sup> Additionally, in October 2020, IONIC Capital Management LLC (“IONIC”) contacted Obsidian and asserted that IONIC erroneously initiated several wires totaling \$16,276.50 to Obsidian’s Account ending in -4271. Through further correspondence to Obsidian, IONIC contends that it intended to wire the \$16,276.50 to an entity known as Dash Financial Technologies LLC to pay invoices for May 2019-May 2020. Upon receiving IONIC’s communication regarding

to this Court upon payment of all expenses for a final determination of the \$50,000 remaining in the Accounts.

9. In anticipation of filing this Motion, Obsidian contacted counsel for Plaintiff Securities and Exchange Commission (“SEC”), counsel for the Receiver, Mark A Kornfeld (“Receiver”), and counsel for Williams to determine whether Plaintiff, the Receiver, or Williams had any objections to the relief requested in this Motion. Counsel for the SEC, the Receiver, and Williams have each separately informed undersigned counsel for Obsidian that they do not oppose its request for a release to Obsidian of all funds in the Accounts, except for \$50,000.

### **CONCLUSION**

For reasons set forth above, Obsidian respectfully requests that this Court enter an order modifying the Freeze Order [D.E. 33] to release to Obsidian all funds in the Accounts, except for \$50,000 that Williams may have an interest in under the Release between Obsidian and Williams. A proposed Order for the Court’s consideration is attached hereto as **Exhibit A**.

Respectfully submitted,

**NELSON MULLINS BROAD AND  
CASSEL**

*Counsel for Nonparty Obsidian  
Technologies, LLC*

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the erroneously sent funds, Obsidian contacted BMO to request that it return the funds to IONIC. Notwithstanding, BMO has refused to return the funds to IONIC, citing the Freeze Order as justification for its refusal. Should the Court grant the requested relief, Obsidian intends to return the \$16,276.50 to IONIC as they do not belong to Obsidian.

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*/s/ Dan Newman*  
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**LOCAL RULE 3.01(g) CERTIFICATION**

Pursuant to Local Rule 3.01(g), the undersigned certifies that counsel for Obsidian conferred with counsel for the Receiver, the SEC, and Defendant Williams prior to filing this Motion. Counsel for the Receiver, the SEC, and Williams have indicated that neither the Receiver, the SEC, nor Williams oppose the requested relief.

**NELSON MULLINS BROAD AND CASSEL**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of February, 2021, the foregoing document was filed with the Clerk of the Court using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of the Notice of Electronic Filing generated by CM/ECF.

**NELSON MULLINS BROAD AND CASSEL**

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and KIH, INC. f/k/a KINETIC  
INTERNATIONAL, LLC,

Relief Defendants.

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**[PROPOSED] ORDER**

**THIS CAUSE** comes before the Court for consideration of the Unopposed Motion to Modify the Asset Freeze Order [D.E. 33] (“Motion”) [D.E. \_\_] filed by Nonparty Obsidian Technologies, LLC f/k/a Silexx Financial Systems, LLC (“Obsidian”). Upon review and consideration of the Motion, being advised that the Motion is unopposed by the U.S. Securities and Exchange Commission (“SEC”), the Receiver, and Defendant Williams, and being otherwise fully advised, the Court

**GRANTS** the Motion under the terms set forth below. Accordingly, it is hereby **ORDERED** that the Asset Freeze Order [D.E. 33] shall be modified as follows:

1. The Court approves the release to Obsidian of all funds in Obsidian's accounts at BMO Harris Bank, N.A. ending in -4271 and -1601, except for \$50,000 that Defendant Williams may have an interest in under the Release between Obsidian and Defendant Williams.

2. All remaining terms of the Asset Freeze Order not modified by this Order shall remain in place.

**DONE** and **ORDERED** in Tampa, Florida, this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

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MARY S. SCRIVEN  
UNITED STATES DISTRICT COURT JUDGE

**Copies furnished to:**  
Counsel of Record  
Any unrepresented person