

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 8:20-cv-00394-MSS-SPF

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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**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S (“SEC”)  
OPPOSITION TO DEFENDANT MICHAEL SCOTT WILLIAMS’  
 (“WILLIAMS” or “MW”) MOTION FOR SUMMARY JUDGMENT [DE 202]**

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## INTRODUCTION

Williams has moved for summary judgment with nothing more than his self-serving declaration buttressed by rejected legal arguments. He provides zero evidence for his unsupported declaration and so-called facts, both of which are contrary to the abundant evidence – including his own deposition testimony – submitted with the SEC’s summary judgment motion. He simply cannot overcome the undisputed facts showing that he violated the federal securities laws, including that he made materials misrepresentations and omissions to investors regarding the use of their capital, and misappropriated at least \$6.3 million of investor funds.

## RESPONSE TO STATEMENT OF MATERIAL FACTS<sup>1</sup>

In addition to the SEC’s responses below, the Parties are contemporaneously filing a joint stipulation of agreed material facts per the Court’s order [DE 88].

1. Admitted.
2. Denied.<sup>2</sup>
3. Denied.<sup>3</sup>
4. Denied.<sup>4</sup>

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<sup>1</sup> The SEC sets forth material facts relevant to the question of Williams’ liability in its motion for summary judgment (“MSJ”) [DE 200], and incorporates those facts and supporting evidence here.

<sup>2</sup> SEC’s MSJ, Statement of Undisputed Material Facts ¶¶23, 27, 38, 41-49, 53-55 (“SEC MSJ ¶\_\_”).

<sup>3</sup> SEC MSJ ¶¶23, 27, 38, 41-49.

<sup>4</sup> *Id.* at ¶¶1-3, 9-11, 15, 17-20, 22, 24, 26, 28, 30-31, 38-39, 41-42.

5. Denied.<sup>5</sup>
6. Denied.<sup>6</sup>
7. Denied.<sup>7</sup>
8. Denied.<sup>8</sup>
9. Denied.<sup>9</sup>
10. Denied.<sup>10</sup>
11. Denied.<sup>11</sup>
12. Denied.<sup>12</sup>
13. Denied.<sup>13</sup>
14. Denied.<sup>14</sup>
15. Denied.<sup>15</sup>
16. Denied.<sup>16</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at ¶¶1-3; *see also* Ex. 3 to MSJ, SEC-Consultiva-E-0061263 (“The Fund(s) is/are charged an annual One Percent (1%) expense ratio.”), (“The Class A Member will only receive 20% of net profits . . . for any profits that exceed the “high-water mark.”) and 0061268 (same); Ex. 12 to MSJ, MW Tr. at 137:1-10, 382:5-18, 129:9-130:5, 159:23-25; 133:8-19, 131:4-15; Ex. 16 to MSJ, Kelly Locke Tr. at 186:17-20; *see also* Anadi Guar (“Guar”) Tr. at 270:8-18, 190:7-194:12, 275:7-276:7, attached hereto as **Exhibit “1”**.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> SEC MSJ ¶¶18-37.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

17. Denied.<sup>17</sup>

18. Denied.<sup>18</sup>

19. Denied.<sup>19</sup>

20. Denied.<sup>20</sup>

21. Denied.<sup>21</sup>

## MEMORANDUM OF LAW

### **I. The Standard for Granting Summary Judgment**

The Court must view the evidence and all factual inferences arising from it in the light most favorable to the SEC. *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). It must not weigh the evidence, but “determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Williams bears the burden of “identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which [he] believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Williams, however, fails to cite to the record, relying solely on his unsupported declaration.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

## **II. Williams Misappropriated Investor Funds; Therefore, He Is Not Entitled to Summary Judgment on Counts I, III-IV, VI-X, and XIII-XIV**

Williams' claimed immunity for committing fraud rests on his fundamental misunderstanding of the federal securities laws. Section 17(a)(1)-(3) of the Securities Act of 1933 ("Securities Act") and Section 10b and Rule 10b-5(a)-(c) of the Securities Exchange Act of 1934 ("Exchange Act") prohibit essentially the same type of conduct. *United States v. Naftalin*, 441 U.S. 768, 773 n. 4 (1979); *SEC v. Unique Financial Concepts*, 119 F. Supp. 2d 1332, 1339 (S.D. Fla. 1998), *aff'd*, 196 F.3d 1195 (11th Cir. 1999). The language of these provisions is "expansive" and "capture a wide range of conduct." *Lorenzo v. SEC*, 139 S. Ct. 1094, 1101-02 (2019). In *Lorenzo*, a case Williams curiously fails to cite in his motion, the Supreme Court recognized that there is "considerable overlap among the subsections of" Rule 10b-5 and § 17(a), and thus the same underlying conduct may establish a violation of more than one subsection. *Id.* at 1101-02 (knowing dissemination of misrepresentations with an intent to deceive violates Rule 10b-5(a) and (c) and § 17(a)(1)).

A violation of § 17(a)(1) requires: (1) a material misrepresentation or materially misleading omission; (2) in the offer or sale of securities; (3) made with scienter. *SEC v. Merchant Capital, LLC*, 483 F.3d 747, 766 (11th Cir. 2007). The elements for § 17(a)(2)-(3) are similar, except proof of mere negligence is sufficient to establish a violation. *SEC v. Monterosso*, 756 F.3d 1326, 1334 (11th Cir. 2014).

A violation under § 10(b) requires: (1) a device, scheme, or artifice to

defraud or materially false misrepresentations or misleading omissions; (2) in connection with the purchase or sale of securities; (3) made with scienter. *SEC v. Monterosso*, 756 F.3d at 1333-34. The SEC also must show the use of interstate commerce, the mails, or a national securities exchange. *SEC v. Corporate Relations Grp.*, 2003 WL 25570113, \*7 (M.D. Fla. Mar. 28, 2003).

Facts showing a violation of § 17(a) and § 10(b) by an investment adviser will also support a violation of § 206 of the Investment Advisers Act of 1940 (“Advisers Act”). *SEC v. Berger*, 244 F. Supp. 2d 180, 188-89 (S.D.N.Y. 2001).

Notably, Williams does not challenge the elements of scienter or the use of interstate commerce, nor could he. *See* MSJ at pp. 27-29.

**A. Williams’ Misappropriation Occurred “In the Offer or Sale” and “In Connection With the Purchase or Sale” of a Security**

The Supreme Court has counseled that § 17(a)’s “in the offer or sale” requirement is to be read broadly because the Securities Act was intended not just to protect investors, but also “to achieve a high standard of business ethics ... in every facet of the securities industry.” *Naftalin*, 441 U.S. at 773-75. It likewise has rejected a narrow interpretation of § 10(b)’s “in connection with the purchase or sale” requirement. *See SEC v. Zandford*, 535 U.S. 813, 819 (2002) (“[W]e have explained that [§ 10(b)] should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes.”); *Superintendent of Ins. of State of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12-13 (1971) (explaining that the “in connection



with” requirement is satisfied where the deception “touch[es]” the transaction, even if the deception does not occur alongside the purchase or sale of securities); *see also SEC v. Radius Capital Corp.*, 653 Fed. Appx. 744, 750 (11th Cir. June 29, 2016) (“In the years following *Naftalin*, the Supreme Court has rejected a narrow interpretation of the ‘in connection with’ and ‘in the offer or sale of’ requirements in SEC civil enforcement actions.”).

Williams argues that his misappropriation of investor assets to pay off the mortgage of his relative’s home, buy himself a luxury apartment, purchase a commercial bank building for his entity, and fund his other business ventures, fail to satisfy the “in connection with” requirement because such misappropriation occurred after investors invested in KFYield. *See* DE 202 at pp. 9-10. This argument carries no weight. *Zandford* involved a broker with discretionary authority to manage his clients’ investment account. *Id.* at 815. The broker misappropriated his clients’ funds by writing checks to himself from the clients’ investment account, all the while knowing that redeeming the check would require the sale of securities from that account. *Id.* at 821. The defendant argued that the subsequent misappropriation did not have the requisite connection with the securities sales to state a 10(b) violation, but was more akin to simple theft of cash. *Id.* at 820. The Supreme Court rejected this argument, holding that the sales constituted a scheme to defraud. *Id.* at 821. It explained

that the broker's breaches of fiduciary duty "coincide[d]" with the securities transactions and, thus, were "in connection with" securities sales. *Id.* at 825. "[T]he [clients'] securities did not have value for [the broker] apart from their use in a securities transaction and the fraud was not complete before the sale of securities occurred. *Id.* at 824-25.

Similarly, Williams' misappropriation coincided with the purchase of securities for KFYield investors. Investors deposited their capital into Kinetic Funds' bank account so it could be invested in KFYield. (SEC MSJ ¶¶26, 38). Instead of deploying the entire capital for investment, Williams kept a portion of the capital in the bank account and transferred the remainder to Kinetic Funds' brokerage account. (*Id.*) Securities for KFYield were then purchased with a combination of investor capital and margin, *i.e.*, funds borrowed from its broker. (*Id.* at ¶39). Williams chose to purchase securities for the KFYield portfolio with a mix of cash and margin so that investor assets left behind in the bank account could be directed to Lendacy to fund purported loans to Williams and others. (*Id.* at ¶41). In other words, the purchase of KFYield securities on margin at Williams' direction worked hand-in-hand with Williams' diversion of investor capital to fund purported Lendacy loans, including to himself and his entities. (*Id.* at ¶¶41, 44-48). Thus, Williams' misappropriation of investor assets was made "in the offer or sale" and "in connection with the purchase or sale" of

a security. *See Bankers Life*, 404 U.S. at \*8, 12 (Section 10(b)'s "in connection with" requirement met where new owners of a corporation used the proceeds of a legitimate bond sale to cover a kited check they used to acquire the corporation's stock; "[s]ince there was a 'sale' of a security and since fraud was used 'in connection with' it, there is redress under [Section] 10(b)[.]").

**B. Investor Capital, Not Money Borrowed On Margin, Funded Purported Lendacy Loans**

Williams argues that money borrowed on margin from Kinetic Funds' broker, Interactive Brokers ("IB"), and not investor capital, funded the Lendacy loans. *See* DE 202-1, Williams' Declaration at ¶¶15-18. According to Williams, "[a]ll of the funds that were transferred by Kinetic Funds to Lendacy were borrowed by Kinetic Funds from IB through the use of portfolio margin." *Id.* at ¶16. The bank records, however, belie Williams' tale. As set forth in the declaration of Crystal Ivory, attached hereto as **Exhibit "2"**, the Kinetic Funds and Lendacy bank accounts received a combined total of \$312,275 from IB between January 2015 and September 2019. *See* Ivory Decl. at ¶7. Math forecloses the possibility that IB's total deposits of \$312,275 – with the last one occurring on October 26, 2016 – covered over \$1.5 million in Lendacy credit line draws between November 2016 and September 2019. *Id.* at ¶¶7-9.

As the bank records show, it was investor funds deposited into Kinetic Funds' bank account, and then transferred to Lendacy's bank accounts, which funded the Lendacy loans. *Id.* at ¶¶5-6.

Williams could not escape liability even if there was a morsel of truth to his argument. In fact, he arguably digs a deeper hole for himself because the use of margin increases the cost and risk to investors (SEC MSJ ¶40). The Honorable William Jung pointed out the folly with his theory at the asset freeze hearing:

THE COURT: Why don't those funds that were freed up belong to the fund? I mean, so you have a pot of money and you're a fiduciary, and it's like retirements like grandma's money. So I can generate - I'm going to borrow against grandma's stock that I'm going to have to pay interest on because it's margin. You have to pay interest on it. If it goes down, it's going to go down hard. But borrowing from grandma's stock in the margin account, paying a little interest, and then that money that I borrowed -- or it was here and I had to put it over here but I borrowed it -- goes to Lendacy so I can, you know, have a condo, isn't that grandmas money?

\*\*\*

MR. KEHOE [Williams' former counsel]: They weren't in fact using the assets. They were using the margin.

THE COURT: Well, no. Of course they were using the assets. You get the margin by collateralizing grandma's stock.

MR. KEHOE: Sure.

THE COURT: So here's grandma's stock. I'm going to borrow against grandma's stock, put her at a greater risk than she might have anticipated, especially if the market goes down. It's crashing if the market goes down 25 percent for a year. Okay. So I'm borrowing against grandma's stock. She's not really aware of that. I'm a fiduciary and I'm getting the money from that and I'm buying me a condo in Puerto Rico.

First of all, that's a lot of risk I'm putting on grandma. The market better keep going up. Even if it stays the same, she's going to lose money because she's got to pay interest on the loan. And that's a lot of risk. And whatever I could generate with that money that I bought the condo with, I should use it for grandma and generate it for her, shouldn't I?

See March 6, 2020 hearing transcript at 24:14-26:20, attached hereto as **Exhibit "3"**.

Moreover, Williams never told investors that he would collateralize their assets so that he and his entities could receive margin-funded loans from Lendacy. (*Id.* at ¶¶33, 35).

### **III. Williams Made Material Misstatements and Omissions To Investors; Therefore, He Is Not Entitled to Summary Judgment on Counts I-XIV**

Williams argues that he and Kinetic Group did not make any *oral* misrepresentations and omissions to investors; interestingly, he does not dispute that either made *written* misrepresentations and omissions. *See* DE 202 at § V. pp. 15-17. The undisputed facts show that Williams violated the Securities Act and Exchange Act through *both* oral and written misrepresentations and omissions.

#### **A. Williams' Representations and Omissions Were False**

Williams made false statements and omissions to investors regarding the use of their funds and KFYield's performance. For example:

- Williams told investors orally and in writing that their capital would be invested in income-producing U.S. listed financial products and that their principal would be secure because the KFYield portfolio would be hedged with listed options. (SEC MSJ ¶¶22, 24). Contrary to Williams' representations, Williams "invested" a substantial portion of investor capital in Lendacy, which is not a U.S. listed financial product and could not be hedged using listed options. (*Id.* at ¶¶23, 25). Furthermore, KFYield's "investment" in Lendacy, the assets of which were unsecured loans primarily to Williams, impaired the liquidity of the fund and its ability to equitably honor redemption requests. (*Id.* at ¶29).
- Williams failed to disclose to most investors that KFYield would invest in a "private sector funding company", and to the extent he did, he conveniently

omitted that the “private sector funding company” referred to Lendacy, his private entity. (*Id.* at ¶34).

- Williams, through conversations and marketing materials, led prospective investors to believe Lendacy had a separate funding source that would finance the loan from Lendacy to the investor, and that their entire capital would be invested in KFYield. (*Id.* at ¶26). In reality, Williams used investor capital to fund Lendacy loans, including to himself and his entities, instead of deploying the entire capital for investment in KFYield. (*Id.* at ¶¶27, 38, 41, 44-48).
- Williams concealed his scheme by purchasing securities with a mix of investor capital and margin. (*Id.* at ¶¶39, 52). The use of margin increased the cost and risk of investment in KFYield. (*Id.* at ¶40). Williams did not disclose to investors the cost or the extent of KFYield’s margined positions. (*Id.* at ¶33). He instead presented a rosy picture of KFYield’s performance which did not comport with brokerage account statements. (*Id.* at ¶¶31-32).

Furthermore, Williams papered credit agreements, collateralized by supposed future payouts, to hide his use of investor assets to fund his personal expenses and business ventures. (*Id.* at ¶¶50-51).

Williams had ultimate authority for the false and misleading statements and omissions made orally and in documents provided to clients and prospective clients (*Id.* at ¶37), including in offering documents, Bloomberg reports, written marketing materials, brochures, and account statements (*Id.* at ¶¶15, 18, 30, 37). Furthermore, Williams *controlled* Kinetic Group (*Id.* at ¶1). Thus, under *Janus Capital Grp., Inc. v. First Derivative Traders* – another Supreme Court opinion Williams neglects to cite in his motion – Williams is ultimately responsible for the misstatements and omissions made by Kinetic Group. 564 U.S. 135, 142 (2011) (a person may be held primarily liable under § 10(b) and Rule 10b-5(b) for

“making” a misleading statement if he or she had “ultimate authority over the statement, including its content and whether and how to communicate it.”).

**B. Williams’ Misrepresentations and Omissions Meet the “In Connection With” Requirement**

Williams’ misrepresentations and omissions satisfy the “in connection with” requirement despite his assertion otherwise. There is no dispute that investors received the offering documents for Kinetic Funds, and that those documents fail to disclose that investor funds would be diverted to Lendacy or that Williams is the majority owner of Lendacy. (SEC MSJ ¶¶11-14). There also is no question that investors received marketing materials for Kinetic Funds that misrepresented and omitted the use of investor capital, the misappropriation of investor funds, and the performance of KFYield. (*Id.* at ¶¶22-37; 44-48); *see also* *SEC v. Merrill Scott & Assocs., Ltd.*, 2011 WL 5834271, \*10-11 (D. Utah Nov. 21, 2011) (misrepresentations and omissions regarding defendants’ misappropriation of investor assets were made in connection with the sale of securities); *SEC v. Benson*, 657 F. Supp. 1122, 1130-31 (S.D.N.Y. 1997) (the “in connection with” requirement was met where registration statements failed to “disclose the amounts misappropriated by corporate officials[.]”). Investors need not have received these materials before they invested in Kinetic Funds. *SEC v. Smith*, 2005 WL 2373849, \*7 (S.D. Ohio, Sept. 27, 2005) (“Regardless, the record is clear that the investors did receive a copy of the relevant POMs and marketing materials at some point. The

point in time in which the investors received those materials need not have been before they purchased the security[.]”). It is well-settled that the SEC is not required to prove reliance or investor losses in its enforcement actions. *SEC v. Morgan Keegan & Co., Inc.*, 678 F.3d 1233, 1244 (11th Cir. 2012).

**C. Williams’ Misrepresentations and Omissions Are Material**

The test for materiality is “whether a reasonable man would attach importance to the fact misrepresented or omitted in determining his course of action.” *SEC v. Monterosso*, 768 F. Supp. 2d 1244, 1263 (S.D. Fla. 2011), *aff’d* 756 F.3d 1326 (11th Cir. 2014). Thus, a statement or omission is material where “there is a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable shareholder as having significantly altered the ‘total mix of information available.’” *Id.*

Williams’ misrepresentations were clearly important to a reasonable person. *See e.g., SEC v. Smart*, 678 F.3d.850, 857 (10th Cir. 2012) (the fact money was not being used as represented would be material to a reasonable investor); *SEC v. Reynolds*, 2010 WL 3943729, \*3 (N.D. Ga. Oct. 5, 2010) (misrepresentations that investor funds would remain in defendant’s bank account until the transaction was approved were material as a matter of law). Instead of investing their funds as promised, Williams used investor funds, to the tune of at least \$6.3 million, to purchase a luxury apartment for himself, to buy commercial real estate, to pay-off



a relative's mortgage, and to fund other business ventures, among other things. (*Id.* at ¶¶22-25, 44-48). Instead of deploying the conservative investment strategy he touted, Williams margined the KFYield portfolio saddling investors with debt and the risk of a margin call. (*Id.* at ¶¶24, 38-40). There is no doubt that a reasonable person would find it material that Williams did the exact opposite of what he promised investors.

#### **IV. Williams Is An Investment Adviser to Kinetic Funds; Thus, He Is Not Entitled to Summary Judgment on Counts VII, IX, XI, and XII**

Under the Advisers Act, an “investment adviser” is “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.” 15 U.S.C. § 80b-2(a)(11). This definition is broad, *Thomas v. Metropolitan Life Ins. Co.*, 631 F.3d 1153, 1160 (10th Cir. 2011), and encompasses anyone who manages the funds of others for compensation or controls an investment advisory firm. *SEC v. ABS Manager, LLC*, 2014 WL 7272385, \*4 (S.D. Cal. Dec. 18, 2014).

Williams, without support, argues that he does not meet the definition of an “investment adviser” because he did not advise others on the value or advisability of investing in, purchasing, or selling securities, or receive compensation for the same. *See* DE 202 at p. 13. The undisputed facts prove otherwise. Williams is the founder, managing member and control person of Kinetic Group, which, in turn,

is the investment adviser for Kinetic Funds, a private pooled investment fund. (SEC MSJ ¶¶1-3). Williams carried out Kinetic Group's responsibilities as investment adviser by, among other things, directing Kinetic Funds' investments, communicating with investors about Kinetic Funds' investment strategy and performance, and soliciting investors to Kinetic Funds. (*Id.* at ¶¶1-2, 18-20, 22, 24, 26, 28, 30-31, 41-42. As examples:

On behalf of Kinetic Group, Williams authored a letter to investors advising them of the need to keep KFYield as a "core component" of their investment portfolio:

With the decline in sovereign and corporate yield in higher risk assets (liquidity and credit), combined with extreme equity valuations, we believe more than ever that KFYIELD should be a core component in the investment portfolio. Our dual mandate of principal protection and income generation is ever more needed as market conditions press to their extremes.<sup>22</sup>

Williams advised investors through Bloomberg reports, prepared and authorized by him, about KFYield's strategy, value, and performance, including its total assets, annual return, and performance versus the benchmark, among other information. (*Id.* at ¶18). *See also Abrahamson v. Fleschner*, 568 F.2d 862, 866, 870 (2d Cir. 1977) (general partners to an investment partnership were "engaged in the business of advising others" where monthly reports provided to investors

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<sup>22</sup> Ex. 46 to MSJ, SEC-KP-E-0264737; Ex. 12, MW at 213:20-214:14.

included statements on the firm's "low risk stance" and "set forth the percentage increase or decrease in the value of the firm's investments for the year to date and compared this performance with Standard & Poors 500 Stock Average").

In marketing materials he authorized, he solicited investors to KFYield by touting its portfolio and management by Kinetic Group:

As an investor, you want a partner with an intimate understanding of financial markets, who employs state-of-the-art technology to manage and mitigate risk and who, as a result, can offer wise and create guidance to succeed in a constantly changing, ever more complex financial environment. Meet the Kinetic Investment Group . . . The Kinetic Investment Group has created a product portfolio that addresses target rich opportunities in private equity, private index funds and gold and silver. Kinetic Funds YIELD is . . . a conservative blended fund that targets income while securing principal . . . .<sup>23</sup>

Williams also received compensation for providing investment advice. Through Kinetic Group, he received a 1% management fee for managing Kinetic Funds and, at times, a high-water mark fee.<sup>24</sup> See Ivory Decl. at ¶10 (showing \$3.1 million net transferred from Kinetic Funds and Lendacy to Kinetic Group); see also LF42's (Williams' personal LLC<sup>25</sup>) consulting agreement with Kinetic Group, attached hereto as **Exhibit "4"**, which was executed so Williams "could have some type of pay to do everybody's job" after Kinetic Group's "entire staff quit"<sup>26</sup>; Proof

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<sup>23</sup> Ex. 36 to MSJ at pp. 3, 6; Ex. 12, MW at 291:15-23.

<sup>24</sup> See *supra* n. 6.

<sup>25</sup> See Ex. 1 to MSJ at ¶40.

<sup>26</sup> See Ex. 12 to MSJ at 396:11-397: 4.

of Claim filed by Williams and LF42, attached hereto as **Exhibit “5”**.<sup>27</sup> Finally, Williams received compensation by “misappropriating or commingling investor funds for personal use.” *SEC v. JSG Capital Investments, LLC*, 2017 WL 3579570, \*7 (N.D. Cal. June 30, 2017) (citing *United States v. Elliott*, 62 F.3d 1304 (11th Cir. 1995)), *report adopted* 2017 WL 3575599 (N.D. Cal. July 28, 2017). Thus, like Kinetic Group, Williams acted as an “investment adviser.”<sup>28</sup>

**V. Williams, To the Extent Not Found Primarily Liable Under the Advisers Act, Aided and Abetted Kinetic Group’s Advisers Act Violations; Thus, He Is Not Entitled to Summary Judgment on Counts VIII, X, and XIV**

Misconstruing the law again, Williams argues that he cannot be held liable for aiding and abetting Kinetic Group’s primary violations of § 206(1), (2) and (4) of the Advisers Act and Advisers Act Rule 206(4)-8(a)(2).<sup>29</sup> *See* DE 201 at p. 10,

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<sup>27</sup> *See* ¶12, LF42 received \$60,000 in 2019 (in addition to other amounts in previous years) from a “Receivership Entity” pursuant to a “contract.”

<sup>28</sup> *See In the Matter of John J. Kenny*, Advisers Act Rel. No. 2128, 2003 WL 21078085, \*17 n.54 (May 14, 2003) (“An associated person may be charged as a primary violator under Section 206 where the activities of the associated person cause him or her to meet the broad definition of ‘investment adviser.’ For example, courts have found that an associated person is liable under Section 206 where the investment adviser is an alter ego of the associated person or is controlled by the associated person.”), *aff’d* 87 F. App’x 608 (8th Cir. 2004); *SEC v. Berger*, 244 F. Supp. 2d 180, 193 (S.D.N.Y. 2001) (granting summary judgment against defendant for violations of Section 206(1) and (2) of the Advisers Act “[b]ecause [the defendant] effectively controlled [the investment adviser] and its decision making, [he] is also properly labeled an investment adviser within the meaning of the Advisers Act.”); *Abrahamson*, 568 F.2d at 870 (“persons who manage [ ] the funds of others for compensation are ‘investment advisers’ within the meaning of the statute”).

<sup>29</sup> Aiding and abetting requires: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. *See SEC v. Goble*, 682 F.3d 934, 947 (11th Cir. 2012); *Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000). Severe recklessness will satisfy the scienter requirement for aiding and abetting. *SEC v. Big Apple Consulting USA, Inc.*, 783 F.3d 786, 800-01 (11th Cir. 2015).

¶12. Williams claims that these provisions cover scheme liability and can only be violated when conduct, other than misrepresentations or omissions, are involved. From this faulty premise, he concludes that Kinetic Group's scheme liability must be predicated on his misappropriation of investor funds, but because he cannot aid and abet his own misappropriation, Counts VIII, X and XIV necessarily fail.

The Supreme Court already rejected confining the antifraud provisions to "governing different, mutually exclusive, spheres of conduct". *Lorenzo*, 139 S. Ct. at 1102. In *Lorenzo*, the defendant argued that "the only way to be liable for false statements is through those provisions that refer *specifically* to false statements [and] [o]ther provisions [] concern[ing] 'scheme liability claims' [] are violated only when conduct other than misstatements is involved." *Id.* at 1101 (emphasis in original). Rejecting this argument, the Supreme Court held "[b]y sending emails he understood to contain material untruths" the defendant employed a device, scheme, and artifice to defraud within the meaning of Rule 10b-5(a), § 10(b), and § 17(a)(1) and engaged] in an act, practice, or course of business that operated as a fraud or deceit under Rule 10b-5(c). *Id.* It explained that "[it] and the Commission have long recognized considerable overlap among the subsections of the Rule and related provisions of the securities laws" and that "[e]ach succeeding prohibition was thus meant to cover additional kinds of illegalities – not to narrow the reach of the prior sections." *Id.* at 1102.

The same reasoning used in *Lorenzo* applies to the Advisers Act's antifraud provisions. See *Malouf v. SEC*, 933 F.3d 1248, 1263 (10th Cir. 2019) (Because misstatements could create scheme liability under § 17(a)(1) and Rule 10b-5(a) and (c) per *Lorenzo*, the defendant's failure to correct his investment advisory firm's misstatements could establish scheme liability under the nearly identical provisions of § 206(1) and (2) of the Advisers Act); *SEC v. Steadman*, 967 F.2d 636, 641 n.3 (D.C. Cir. 1992) (interpreting § 206(1) of the Advisers Act in the same way the Supreme Court interpreted § 17(a)(1) of the Securities Act because the statutory language is virtually identical). In accord with *Lorenzo* and *Malouf*, Kinetic Group's misrepresentations and omissions to investors establish its scheme liability under § 206(1), (2) and (4) of the Advisers Act and Advisers Act Rule 206(4)-8(a)(2).<sup>30</sup>

Williams also was aware of his role in the improper activity. He knew that Kinetic Group, through its marketing materials, had represented to investors that KFYield would invest in U.S. listed financial products and hedge at least 90% of

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<sup>30</sup> *IBEW Local 595 v. ADT Corp.*, 660 Fed. App'x 850 (11th Cir. 2016) – the unpublished pre-*Lorenzo* case Williams relies upon for the proposition that deceptive conduct beyond misrepresentations is required to establish a scheme to defraud or a fraudulent course of conduct – is not applicable nor is it good law in light of *Lorenzo*. See *SEC v. Kameli*, 2020 WL 2542154, \*14 (N.D. Ill. May 19, 2020) (requirement that scheme liability requires conduct beyond misrepresentations “is no longer tenable . . . in light of . . . *Lorenzo*”); *SEC v. Winemaster*, 2021 WL 1172773, \*23 (N.D. Ill. Mar. 29, 2021) (same); *SEC v. See ThruEquity, LLC*, 2019 WL 1998027, \*5 (S.D.N.Y. Apr. 26, 2019) (rejecting defendants' argument that scheme liability allegations were defective for “fail[ing] to allege a deceptive act that is distinct from misstatements”).

those holdings using listed options to ensure the safety and liquidity of investor capital (SEC MSJ ¶¶18, 22, 24, 28, 37). He knew Kinetic Group failed to disclose conflicts of interest to investors (*Id.* at ¶¶23, 34-35, 53-55). He knew or should have known that such action severely compromised Kinetic Group's duties to act in Kinetic Funds' best interest.

Furthermore, Williams substantially assisted Kinetic Group's violations because Williams' actions were a proximate or substantial causal factor in the primary violation. *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 48 (2d Cir. 1978); *Lazzaro v. Manber*, 701 F. Supp. 353, 369 (E.D.N.Y. 1988). Among other things, he: (1) controlled Kinetic Group and what it told investors about Kinetic Funds' investment strategy (SEC MSJ ¶¶1-2, 15, 18, 37); (2) controlled Kinetic Funds' brokerage and bank accounts (*Id.* at ¶¶42-43); (3) controlled Lendacy's bank account (*Id.* at ¶43); (4) directed the transfer of investor assets to Lendacy, and then to his entities and third parties to fund personal expenditures and his business ventures (*Id.* at ¶¶23, 36, 41-49); (5) failed to disclose his ownership of Lendacy (*Id.* at ¶34); and (6) failed to disclose the use of investor assets to fund purported loans to himself, his entities, and other investors. (*Id.* at ¶¶27, 35).

### CONCLUSION

Based on the foregoing, the Court should deny Williams' motion for summary judgment.

April 12, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 12, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Stephanie N. Moot

Stephanie N. Moot



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**FL-04184**

***GUAR\_ANADI\_20191114***

***11/14/2019 10:16 AM***

**Condensed Transcript**

**Prepared by:**

FL-04184

Thursday, December 5, 2019

**EXHIBIT**

**1**

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1 Mr. Williams provides on a monthly basis?  
 2 A Yes.  
 3 Q Like what we discussed in Exhibit 150,  
 4 correct?  
 5 A Yes. Yeah. That's all I do.  
 6 Q Do you have an understanding as to whether  
 7 the KF Growth Fund that's identified in Exhibit 152  
 8 owns or holds any other assets other than what is held  
 9 in this Interactive Brokerage account?  
 10 A Can you please repeat it?  
 11 Q Yeah. Does -- do you have any understanding  
 12 as to whether the KF Index or Growth Fund holds any  
 13 assets other than what's held in this Interactive  
 14 Brokerage account, which is account [REDACTED] 4165?  
 15 A I wouldn't know.  
 16 Q Do you have any understanding as to how many  
 17 investors invest in this fund?  
 18 A I should have understanding of that because I  
 19 do the statements, but there's, like, maybe one or two,  
 20 not more. I don't know the exact number.  
 21 Q Okay.  
 22 A Do not remember. But there's not a lot.  
 23 Q And the same sort of question that I asked  
 24 with respect to the prior fund.  
 25 Does the KF Index or Growth Fund have

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1 expenses or fees associated with it?  
 2 A It has.  
 3 Q And who calculates those fees?  
 4 A I do.  
 5 Q And do you as you sit here today recall how  
 6 that calculation is made?  
 7 A So all the calculations are I think pretty  
 8 same for all funds. It's 1 percent -- 1 percent APR.  
 9 So 1 percent divided by 12 times whatever is the  
 10 markets value.  
 11 Q And that's charged on a monthly basis,  
 12 correct?  
 13 A That's charged on the monthly basis and that  
 14 is subtracted. I think that is same for all the funds,  
 15 but since I did it like three years ago, I don't know  
 16 if it is 1 percent or 2 percent. Should be 1 percent.  
 17 Q And it would be 1 percent for each of the  
 18 four funds we've talked about?  
 19 A Yes.  
 20 Q And that's 1 percent in the aggregate, so you  
 21 would divide the 1 percent by 12 for the month?  
 22 A Yes. That's 1 percent APR. And there is  
 23 another fees. If at any time you are making profit and  
 24 it is greater than the -- there's a term for it.  
 25 Q The watermark?

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1 A Yeah. High watermark. If it is greater than  
 2 that, then we charge 20 percent of the high watermark.  
 3 Q So there's the 1 percent sort of expense fee?  
 4 A Yes.  
 5 Q And there's like a 20 percent I'll call it a  
 6 performance fee in the event that a fund exceeds the  
 7 high watermark?  
 8 A Yes, that is correct.  
 9 Q Do you know as you sit here today what the  
 10 high watermark is for the various funds?  
 11 A High watermark is the value based on the  
 12 previous years market value.  
 13 Q What is it in terms of -- how would you  
 14 determine if the fund -- the profit for the fund  
 15 exceeded the high watermark?  
 16 A So I have a previous month's -- I have  
 17 previous years market value --  
 18 Q Let's say it's a hundred thousand dollars.  
 19 A So that will be the market value for this  
 20 year, high watermark for January and January is -- say  
 21 the fund increases to 120,000, so 20,000 is the profit  
 22 which exceeded the hundred thousand, so we will take 20  
 23 percent of the \$20,000 and for next month high  
 24 watermark will be 120,000.  
 25 Q Okay. So you base the high watermark on the

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1 market value of the prior month?  
 2 A Only if it exceeded.  
 3 Q Right. So from any given month. For January  
 4 you would look at the market value at the end of  
 5 December?  
 6 A Yes.  
 7 Q And at the end of January if the fund  
 8 increased in value --  
 9 A Yes.  
 10 Q -- even if it was just a dollar --  
 11 A Yes.  
 12 Q -- then you would be -- the fund would be  
 13 entitled --  
 14 A 20 percent.  
 15 Q -- or the fund would have to pay the 20  
 16 percent of that one dollar?  
 17 A Yes.  
 18 Q Okay. So, for example, the hundred -- let's  
 19 say it was the hundred thousand dollars in December,  
 20 January it went up to 120, there's a 20,000-dollar  
 21 difference?  
 22 A Yes.  
 23 Q In order to determine the 1 percent fee, you  
 24 would take 1 percent divided by twelve times the 120?  
 25 A Yes.

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1 Q And that would give you the 1 percent expense  
 2 fee for that, right?  
 3 A Yes.  
 4 Q And then to calculate the performance fee,  
 5 you would take the increase in value, which is 20,000,  
 6 divide it by -- or multiply it by .2, which would give  
 7 you \$4,000?  
 8 A Yes.  
 9 Q So the fund would have to pay an additional  
 10 \$4,000 in performance?  
 11 A Yeah.  
 12 Q Does the KF Yield fund typically pay a  
 13 performance fee on a month-to-month basis?  
 14 A You mean high watermark?  
 15 Q Yes.  
 16 A No. It happens sometimes.  
 17 Q Does it happen more times than not or less  
 18 frequently?  
 19 A Less frequently.  
 20 Q On average, how often do you think per year?  
 21 Does it exceed a month?  
 22 A Like twice a month. Like two times or three  
 23 times maximum.  
 24 Q Two or three times a year?  
 25 A Yeah.

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1 Q Is there a particular time period in which  
 2 that occurs?  
 3 A Yeah. So, for example, when market sold off  
 4 last year in December -- no, in January and Feb, that  
 5 time we made considerable amount of money so we charge  
 6 high watermark then, but then for next month, March,  
 7 high watermark was already very high, so we didn't,  
 8 like, perform that well and market value went down, but  
 9 the high market -- watermark was still here and for  
 10 next month we had to, like, come up with a higher  
 11 number than this month, so we didn't charge after that  
 12 because the high watermark was really high.  
 13 Q When the fund is charged a high watermark,  
 14 how, if at all, is that reflected in the monthly  
 15 statements?  
 16 A It's not reflected in the monthly statement.  
 17 It's -- we just show that mark like -- so monthly  
 18 statements -- let's say, for example, if we made  
 19 80,000, right, and 1 percent is the charges -- normal  
 20 charges, we deduct that from 80,000 and then if there's  
 21 any high watermark, we deduct that and then we show  
 22 whatever is the remaining as a profit or loss.  
 23 Q And that get's added to the prior --  
 24 A Yes.  
 25 Q -- market value of the fund?

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1 A Yes.  
 2 Q And then you calculate the NAV --  
 3 A Yes.  
 4 Q -- like we just talked about earlier?  
 5 A Yes.  
 6 Q Okay. Mark this as Kinetic Exhibit 153.  
 7 (SEC Exhibit No. 153 was  
 8 marked for identification.)  
 9 BY MR. HOUCHIN:  
 10 Q Mr. Gaur, I'm showing you what has been  
 11 marked as Kinetic Exhibit 153, which is an account  
 12 activity statement for account ██████████4166 for the period  
 13 of September 1 through the 30th, 2019. Do you see  
 14 that?  
 15 A Yes.  
 16 Q And what is the name associated with this  
 17 account?  
 18 A Kinetic Funds 1, LLC.  
 19 Q And what is the alias for this account?  
 20 A KF-Inflation.  
 21 Q And how does this account relate to the  
 22 Kinetic Funds 1, LLC?  
 23 A It's one of the subsidiaries.  
 24 Q So this is the sub account for the Inflation  
 25 Fund?

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1 A Yes.  
 2 Q And what is the purpose of this account?  
 3 A I don't -- it's to keep up with the  
 4 Inflation. Again I don't know.  
 5 Q Is this the account -- the brokerage account  
 6 for the Inflation Fund?  
 7 A Yes. I think I used the same alias before to  
 8 cross check it, so, yes.  
 9 Q Okay. And who owns or controls this account  
 10 as far as you know?  
 11 A Michael sends me information about it, so I'm  
 12 assuming Michael. Don't really know.  
 13 Q Does anyone else provide you any information  
 14 with respect to the Inflation Fund?  
 15 A No.  
 16 Q Does anyone else ask you to provide any  
 17 services for or on behalf of the Inflation Fund?  
 18 A No.  
 19 Q And what services do you provide for the  
 20 Inflation Fund?  
 21 A I just do the statements.  
 22 Q The monthly statements --  
 23 A Yes.  
 24 Q -- for the investors? Do you have any  
 25 recollection as to the number of investors in the

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1 I'm weak in balance sheet and all. So I already  
 2 mentioned it to him before that I -- like if there's  
 3 something. But I'm good at, like, doing Excel  
 4 modeling. So that's what I like to do.  
 5 And he was late in statements or things  
 6 like that, that's why I started getting  
 7 responsibility about the statements and then he  
 8 would send me things, and I would just put that in  
 9 and send it.  
 10 Q Has Mr. Williams ever explained that there  
 11 could be a difference between what is reported in  
 12 Bloomberg and how we calculated the market value in  
 13 Exhibit 166?  
 14 A So this calculating of marketing value like  
 15 this has never occurred to me, so I never questioned  
 16 it.  
 17 Q How -- other than adding all of the  
 18 investments from the investor statements up, has anyone  
 19 ever suggested that you calculated the market value any  
 20 differently?  
 21 A No.  
 22 Q That's how you were trained --  
 23 A Yes.  
 24 Q -- when you came on board at Kinetic?  
 25 A Yes.

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1 Q And who trained you in that way?  
 2 A Who? Michael.  
 3 Q Yeah. Who told you that that's how you  
 4 should do the monthly calculation?  
 5 A So I had 2016 statements with me and I saw  
 6 that, and based on that, I created my statement sheet  
 7 and I saw the calculations, and I just replicated that.  
 8 Q Okay. Now, we talked a little bit earlier  
 9 about expenses and fees, correct?  
 10 A Yes.  
 11 Q And you indicated that the KF Yield Fund is  
 12 charged a 1 percent fee or expense fee.  
 13 A Yes.  
 14 Q And that's an annual 1 percent fee that's --  
 15 A One percent APR, yes.  
 16 Q Okay. And we went over how that calculation  
 17 was done?  
 18 A Yes.  
 19 Q If you look at Exhibit 165, which is the  
 20 composite document, and we turn to --  
 21 A Interactive Brokers.  
 22 Q -- the Interactive Brokers statement, is the  
 23 1 percent -- strike that.  
 24 What is the one percent fee charged to?  
 25 A It's charged to the total market value of

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1 the -- like \$42 million. So 1 percent of \$42 million.  
 2 Q Okay. So it's the total market value?  
 3 A Yes.  
 4 Q So if Bloomberg -- if the information in  
 5 Bloomberg as of September 30th is correct, that 1  
 6 percent fee would be charged on the 43.01 million?  
 7 A Yes.  
 8 Q And if the amount in Exhibit 166 is correct,  
 9 it would be 31-point roughly 2 million?  
 10 A Yes.  
 11 Q Okay. And that includes -- so that would  
 12 include whatever securities are held by the fund in  
 13 terms of the market value that it's being based upon?  
 14 A Yes.  
 15 Q So it would include stocks, it would include  
 16 the value of any puts or calls being held at the time  
 17 as well?  
 18 A Yes.  
 19 Q And whatever cash is in the BMO Harris  
 20 account?  
 21 A Yes.  
 22 Q And whatever account balance is in Lendacy?  
 23 A Yes.  
 24 Q So if we did -- let's draw a line here now  
 25 across the middle or the top third of Exhibit 166 and

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1 let's do a 1 percent fee calculation.  
 2 A Okay.  
 3 Q How would we go about doing that based on  
 4 using the 31 million?  
 5 A So if it is 31 million, then --  
 6 Q Okay. So you're indicating -- you're  
 7 converting the 1 percent per month to a monthly  
 8 percentage rate first?  
 9 A Yes.  
 10 Q And then you're multiplying that by the  
 11 market value, which is 31.1 million, correct?  
 12 A Yes. So this will be 25956.  
 13 Q So it's \$25,956?  
 14 A Yes.  
 15 Q Okay. Now, let's do the same calculation,  
 16 but we'll use the Bloomberg number of 43.01 million.  
 17 A 43.01 million divided by 1,200, so it will be  
 18 35, one by hundred times one by twelve, times 4301,  
 19 which is equal to 35841.67.  
 20 Q So that would represent the 1 percent fee?  
 21 A Yes.  
 22 Q Do you recall whether the fund met the high  
 23 watermark for September?  
 24 A I don't remember. I don't think so.  
 25 Q Okay. So if it didn't, then the fees or

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1 expenses associated for the fund should have been, if  
 2 we used the Bloomberg number, approximately thirty five  
 3 point 9 thousand?  
 4 A Yes. Three -- 35,000.  
 5 Q Yes, 35 point -- 35 point --  
 6 A Nine, yes.  
 7 Q Eight or nine. Do you recall if it's been  
 8 paid, how much in fees KF Yield paid for September?  
 9 A I do not, but I can check and get back to you  
 10 with it.  
 11 Q Okay. Do you have an understanding as to how  
 12 the membership structure in the Kinetic Funds 1, LLC is  
 13 made up of?  
 14 A Membership as in?  
 15 Q Yes. The different categories of members or  
 16 investors?  
 17 A I don't know.  
 18 Q So you don't know anything about class A  
 19 members versus class B members, versus class C members?  
 20 A Yes. I do not know.  
 21 Q Okay. And you explained the high watermark  
 22 earlier as just meaning from one month to the next, if  
 23 the fund is profitable, then the high watermark has  
 24 been met?  
 25 A No. I said from December, whatever is the

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1 value of December, that will be the high watermark for  
 2 January, and if profits are greater than January, then  
 3 we take the difference and that is the high watermark.  
 4 Q Hold on. The high watermark for January is  
 5 set at the end of the month market value for December?  
 6 A Yes.  
 7 Q So at the end of January, if the market value  
 8 of the fund is greater than it was in December --  
 9 A Yes.  
 10 Q -- the high watermark has been met?  
 11 A Yes.  
 12 Q And whatever that difference is, the fund  
 13 would be charged 20 percent?  
 14 A Yes.  
 15 Q Okay.  
 16 A I think it's only if -- excluding dividend if  
 17 they make the cut.  
 18 Q So it's the market value of the fund less  
 19 whatever dividends?  
 20 A Yes.  
 21 Q Okay. So for February, it would be the same  
 22 process. You would look for January's --  
 23 A No. So February we will see if in January if  
 24 high -- if we charged the fees in January, then we will  
 25 take January's value. If we did not take -- charge the

Page 275

1 fees in January, then we would take December's value.  
 2 So whichever value is --  
 3 Q Okay. So if -- whichever value would be  
 4 lower?  
 5 A Yes.  
 6 Q Okay. I think I got it.  
 7 Do you have any understanding as to how  
 8 expenses are incurred or paid from by the fund, and  
 9 the fund being KF Yield Fund?  
 10 A Expenses are --  
 11 Q Yeah. What types of expenses does the KF  
 12 Yield Fund have?  
 13 A Like rent and salary, and insurance of  
 14 employees.  
 15 Q KF Yield Fund has those types of expenses?  
 16 A KF Yield as in Kinetic Investment Group.  
 17 Q Okay. So that -- I'm asking about the fund  
 18 in general, right.  
 19 What's your understanding as to how  
 20 Kinetic Investment Group makes its money?  
 21 A Kinetic Investment Group makes its money with  
 22 this.  
 23 Q Which the 1 percent expense?  
 24 A Yes. And that is used to pay --  
 25 Q And then the 20 percent --

Page 276

1 A Yes.  
 2 Q -- kicker if it meets the high watermark?  
 3 A Yes.  
 4 Q And those fees are supposed to cover all the  
 5 operational costs associated with business; is that  
 6 correct?  
 7 A Yes.  
 8 Q Do you have any understanding as to whether  
 9 those fees do, in fact, cover the operational expenses  
 10 of the fund?  
 11 A Those fees, in fact --  
 12 Q Or the Kinetic Investment Group company?  
 13 A Yeah. I'm sorry?  
 14 Q Do you have an understanding that the fees,  
 15 the 1 percent and the 20 percent --  
 16 A Yes.  
 17 Q -- fees or expenses on a monthly basis, is  
 18 that sufficient to cover the operational costs for  
 19 Kinetic Investment Group?  
 20 A It should be. I don't know. It should be.  
 21 Q How do you know one way or the other if it is  
 22 or isn't?  
 23 A So right now I think Sade is working on the  
 24 expense report and once that is done, she will start  
 25 putting -- or Ashley will start putting all the actual



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STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Caretha Wisdom, Professional Court Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I was authorized to and did report said hearing in stenotype; and that the foregoing pages are a true and correct transcription of my shorthand notes of said hearing.

I further certify that said Hearing was taken at the time and place hereinabove set forth and that the taking of said hearing was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of any party connected with the action, nor am I financially interested in the action.

Dated this 27th day of November, 2019.



Caretha Wisdom,  
Professional Court Reporter



**DECLARATION OF CRYSTAL C. IVORY**

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

**I. INTRODUCTION**

1. My name is Crystal C. Ivory. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.
2. I am a certified public accountant, licensed by the State of Florida since 2007. I am currently employed as a Senior Staff Accountant by the Securities and Exchange Commission (“Commission”), Division of Enforcement, in the Miami Regional Office.
3. I provide this declaration in support of the Commission’s civil action against Kinetic Investment Group, LLC (“Kinetic Group”) and Michael S. Williams. As part of my duties as an accountant with the Commission, as further described in the below paragraphs, I was asked to perform the following:
  - a. identify and determine the source of funds into the Kinetic Funds I, LLC (“Kinetic Funds”) and KCL Services, LLC (“KCL”) bank accounts between January 2015 and September 2019;
  - b. identify and determine the total funds received from Interactive Brokers, LLC (“Interactive Brokers”) between January 2015 and September 2019 and the last payment received into Kinetic Funds and/or KCL bank accounts from Interactive Brokers;
  - c. identify and determine the total Lendacy credit line draws to investors between November 2016 and September 2019; and

**EXHIBIT**

**2**



- d. identify and determine the total net payments to Kinetic Group f/k/a Kinetic Management Group LLC from Kinetic Funds and KCL bank accounts between January 2015 and September 2019.

## **II. DOCUMENTS REVIEWED**

4. As part of my analysis, I reviewed the following materials:
  - a. Bank records for business checking account number XXXXXX4255 in the name of Kinetic Funds I, LLC at BMO Harris Bank for the period January 2015 through September 2019;
  - b. Bank records for business checking account number XXXXXX8676 in the name of KCL Services, LLC at BMO Harris Bank for the period January 2015 through September 2019; and
  - c. Bank records for business checking account number XXXXXX1081 in the name of KCL Services, LLC at BMO Harris Bank for the period January 2015 through September 2019.

## **III. ANALYSIS**

### **A. Source of Funds**

5. Based on my review of the BMO Harris Bank statements, as illustrated in the table below, approximately \$39 million was credited into the Kinetic Funds bank account and approximately \$13 million was credited into the KCL bank accounts between January 2015 and September 2019 as follows:

Description	KF 4255	KCL 8676	KCL 1081
Investor Proceeds*	36,626,937	-	-
Transfers from Kinetic Funds	-	10,299,092	725,495
Loan Repayment Proceeds	-	1,862,382	-
Transfers from KCL	1,858,842	23,497	15,516
Loan from LF42 / M. Williams	325,000	-	-
Inflows from Interactive Brokers, LLC	283,960	-	28,315
Inflows from Kinetic Management Group LLC	38,958	144,645	126,052
Bank Interest / Miscellaneous	13,120	22,275	6,995
<b>Total Inflows</b>	<b>39,146,817</b>	<b>12,351,891</b>	<b>902,373</b>

\* Includes \$1.565M in investment proceeds received from Michael Williams and \$100k in investment proceeds received via Kinetic Management Group

6. Investor proceeds represent approximately 93 percent of total inflows into the Kinetic Funds bank account; transfers from this Kinetic Funds account are approximately 83 percent of the inflows into the KCL bank accounts. The second largest source of funds into KCL bank accounts is Lendacy Loan repayments which represent approximately 14 percent of inflows.

#### **B. Receipts from Interactive Brokers**

7. Based on my review of the BMO Harris Bank statements for the Kinetic Funds and KCL accounts, approximately \$312,000 was received from Interactive Brokers between January 2015 and September 2019, as follows:

Transaction Date	Account Number	Payer	Wire Amount
4/15/2016	XXXXXX4255	Interactive Brokers LLC	100,000
10/13/2016	XXXXXX4255	Interactive Brokers LLC	175,000
10/26/2016	XXXXXX4255	Interactive Brokers LLC	8,960
<b>Subtotal received by Kinetic Funds</b>			<b>283,960</b>
2/11/2015	XXXXXX1081	Interactive Brokers LLC	5,712
2/25/2015	XXXXXX1081	Interactive Brokers LLC	5,363
3/6/2015	XXXXXX1081	Interactive Brokers LLC	5,752
4/7/2015	XXXXXX1081	Interactive Brokers LLC	5,765
5/11/2015	XXXXXX1081	Interactive Brokers LLC	5,723
<b>Subtotal received by KCL</b>			<b>28,315</b>
<b>Total</b>			<b>312,275</b>

8. As noted in the table above, the last payment received from Interactive Brokers into Kinetic Funds or KCL bank accounts was on October 26, 2016 for approximately \$9,000.

**C. Lendacy Credit Line Draws**

9. Based on my review of the BMO Harris Bank statements for the KCL accounts, approximately 44 Lendacy credit line draw payments totaling over \$1.5 million were paid between November 2016 and September 2019.

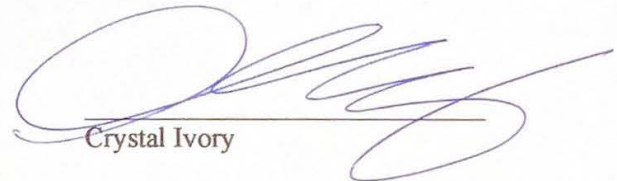
**D. Net Payments to Kinetic Management Group LLC**

10. Based on my review of the BMO Harris Bank statements for the Kinetic Funds and KCL accounts, approximately \$3.1 million (net) was paid from the Kinetic Funds and KCL bank accounts to Kinetic Management Group LLC between January 2015 and September 2019, as follows:

	<b>KF 4255</b>	<b>KCL 8676</b>	<b>KCL 1081</b>	<b>Total</b>
Payments to Kinetic Management Group	3,308,523	49,740	64,977	3,423,240
Receipts from Kinetic Management Group	38,958	144,645	126,052	309,655
<b>Total Net Payments</b>	<b>3,269,565</b>	<b>(94,906)</b>	<b>(61,075)</b>	<b>3,113,584</b>

I declare under penalty of perjury that the foregoing is true, correct and made in good faith.

Executed on this 12<sup>th</sup> day of April, 2021.



Crystal Ivory



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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	8:20-CV-394-WFJ-SPF
PLAINTIFF,	)	Tampa
	)	March 6, 2020
v.	)	9:32 a.m.
	)	
KINETIC INVESTMENT GROUP,	)	
LLC, ET AL.,	)	
	)	
DEFENDANTS.	)	

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE WILLIAM F. JUNG  
UNITED STATES DISTRICT JUDGE

Court Reporter: Tracey Aurelio, CRR, RMR, RDR  
Federal Official Court Reporter  
801 N. Florida Avenue, 15th Floor  
Tampa, Florida 33602  
(813) 301-5448

Proceedings recorded by mechanical stenography,  
transcript produced by computer.



1 doing the trading then purchased a hundred dollars of  
2 securities. There were margin portfolios, portfolio margin  
3 monies used to advance these loans, but the assets were in  
4 fact purchased. That's the bottom line.

5 What's remarkable from this case, again at the risk  
6 of repeating myself, is that the SEC apparently missed all of  
7 that in their yearlong investigation on this matter concerning  
8 Mr. Williams and everything that he did, that he allegedly  
9 did. They missed it because it's not there.

10 So what we have here -- if we have a disclosure  
11 argument and there has to be some further disclosure, that's  
12 one thing, but there has been no theft of assets, of investor  
13 assets whatsoever.

14 What happened was exactly what Your Honor outlined  
15 happened. Yes, money was freed up from the margin account to  
16 make loans into Lendacy, but no monies whatsoever, no monies  
17 whatsoever were stolen, and they have not established that at  
18 all.

19 THE COURT: Why don't those funds that were freed up  
20 belong to the fund? I mean, so you have a pot of money and  
21 you're a fiduciary, and it's like retirements like grandma's  
22 money. So I can generate -- I'm going to borrow against  
23 grandma's stock that I'm going to have to pay interest on  
24 because it's margin. You have to pay interest on it. If it  
25 goes down, it's going to go down hard. But borrowing from

1 grandma's stock in the margin account, paying a little  
2 interest, and then that money that I borrowed -- or it was  
3 here and I had to put it over here but I borrowed it -- goes  
4 to Lendacy so I can, you know, have a condo, isn't that  
5 grandma's money?

6 MR. KEHOE: Well, if in fact we go back to what the  
7 returns are, the investors got back their returns from the  
8 fund.

9 THE COURT: Well, they're getting their dividends.

10 MR. KEHOE: Getting the dividends, which is exactly  
11 what the agreement was. They were getting at least 5, 5 1/2,  
12 and in some instances 6 percent.

13 THE COURT: And that works, you know, because you got  
14 grandma's stock and you borrowed against it and gave the money  
15 over here. And as long as grandma -- putting aside why  
16 grandma shouldn't get that money, as long as the market goes  
17 up, you know, you can get that margin paid because the stock  
18 you borrowed against is now worth more. But if the market  
19 went down 20 percent and you got all that stock margin, that  
20 ain't going to be pretty.

21 MR. KEHOE: That didn't happen, Judge.

22 THE COURT: I know it didn't happen, but the question  
23 is whether it's a breach of fiduciary duty to insert that risk  
24 in there and take the money from -- use grandma's assets to  
25 buy a bank building.

1 MR. KEHOE: They weren't in fact using the assets.  
2 They were using the margin.

3 THE COURT: Well, no. Of course they were using the  
4 assets. You get the margin by collateralizing grandma's  
5 stock.

6 MR. KEHOE: Sure.

7 THE COURT: So here's grandma's stock. I'm going to  
8 borrow against grandma's stock, put her at a greater risk than  
9 she might have anticipated, especially if the market goes  
10 down. It's crashing if the market goes down 25 percent for a  
11 year. Okay. So I'm borrowing against grandma's stock. She's  
12 not really aware of that. I'm a fiduciary and I'm getting the  
13 money from that and I'm buying me a condo in Puerto Rico.

14 First of all, that's a lot of risk I'm putting on  
15 grandma. The market better keep going up. Even if it stays  
16 the same, she's going to lose money because she's got to pay  
17 interest on the loan. And that's a lot of risk. And whatever  
18 I could generate with that money that I bought the condo with,  
19 I should use it for grandma and generate it for her, shouldn't  
20 I?

21 MR. KEHOE: I mean, what in fact happened -- and  
22 Mr. Malina will go into this in chapter and verse -- was that  
23 the investors themselves were offered these Lendacy loans.  
24 About 70 percent of the Lendacy loans were, in fact, by  
25 investors.



1 UNITED STATES DISTRICT COURT )  
2 MIDDLE DISTRICT OF FLORIDA )

3  
4 **REPORTER TRANSCRIPT CERTIFICATE**

5 I, Tracey Aurelio, Official Court Reporter for the United  
6 States District Court, Middle District of Florida, certify,  
7 pursuant to Section 753, Title 28, United States Code, that  
8 the foregoing is a true and correct transcription of the  
9 stenographic notes taken by the undersigned in the  
10 above-entitled matter (Pages 1 through 89 inclusive) and that  
11 the transcript page format is in conformance with the  
12 regulations of the Judicial Conference of the United States of  
13 America.

14 /s *Tracey Aurelio*

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Tracey Aurelio, RMR, RDR, CRR  
Official Court Reporter  
United States District Court  
Middle District of Florida  
Tampa Division  
Date: April 24, 2020



This Contract is entered into by and between Kinetic Investment Group, LLC a Delaware Limited Liability Company ("KIG"), and LF42, LLC, ("LF42"). The term of this Agreement shall begin on September 5, 2019 and shall continue until it is terminated by both parties.

- I. Status. LF42 acknowledges and hereby accepts that, subject to the terms and conditions of this Agreement, KIG hereby engages LF42 as an independent LF42 to perform the services set forth herein. At no point shall this Agreement render LF42 an employee of KIG. LF42 is and will remain an independent LF42 in their relationship to KIG. LF42 is solely responsible for any national, federal, state, and/or local taxes levied with respect to any compensation LF42 receives from KIG. Notwithstanding the provisions of paragraph 8 herein, Lf42 shall have no claim against the Company, under this Agreement or otherwise, for any employee benefits of any kind, including but not limited to health or disability insurance or other benefits, payment for sick leave, or payment for vacation.
- II. Services. LF42 is retained to provide consulting, for KIG.
- III. Term of Engagement. This is a part-time contracted position and not an offer of full-time employment. LF42 is retained for the period beginning September 5, 2019 and ending Jan 2020. This Agreement may be extended upon the mutual signed consent of both parties, unless the Agreement is terminated before the end date and pursuant to the terms of the Agreement
- IV. Mission. LF42 will perform the Services outlined in paragraph 2 herein pursuant to KIG's process and procedures and in furtherance of KIG's mission and goals. In the event that, during the Term of Engagement, LF42 becomes employed by or obligated to, financially or otherwise, any other entity or organization, LF42 shall inform KIG of such employment or obligation immediately and in writing. In such event, KIG reserves the right to terminate this Agreement.
- V. Confidentiality. LF42 acknowledges that during the Term of Engagement, they will have access to and become acquainted with various trade secrets, innovations, processes, information, records and specifications owned, licensed, and/or used by KIG. LF42 agrees that they will not disclose or use any of the above, during the Term of Engagement or at any point thereafter, except as required during the Term of Engagement with KIG. All information, whether written or otherwise recorded, which relates to the business and operation of KIG and is either created by or in the possession of LF42 shall be considered the property of KIG and shall be returned to KIG immediately upon the expiry of the Term of Engagement, unless such ownership and/or return is waived in writing by KIG.
- VI. Equipment. LF42 and KIG hereby agree that KIG may loan to LF42 certain Equipment necessary in the performance of LF42's duties. In the event of damage to any Equipment loaned to LF42 by KIG during the term of this Agreement, LF42 will reimburse KIG the amount of loss, defined as being the cost of complete repair or the cost of replacement, whichever is lower.

EXHIBIT

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- VII. Remuneration. LF42 will receive \$10,000 from KIG for fulfilling the requirements of this Agreement. LF42 shall invoice KIG once monthly with payments being processed on a NET 30 payment schedule.
- VIII. Costs. If for any reason LF42 terminates this Agreement before the end of the Term of Engagement, LF42 shall immediately reimburse all costs incurred by KIG on behalf of LF42, including any payment made to LF42 for services not yet performed.
- IX. Termination. Either party may terminate this Agreement at any time by ten (10) days' written notice to the other party. In the event that LF42 fails to comply with the terms of this Agreement or with KIG's policies or reasonable directives, engages in serious misconduct under this Agreement, or materially breaches this agreement, or is convicted of any crime or offense, KIG may terminate the Agreement immediately and without prior written notice to LF42. In the event of any termination (with or without written notice) conducted under this Paragraph, remuneration to LF42 shall be pro-rated by days of work completed. LF42 hereby agrees that, if the compensation paid to LF42 at the time of termination exceeds the number of days worked, LF42 shall reimburse KIG for a pro-rated basis by certified check or money order within ten (10) business days of the date of termination.
- X. Liability. LF42 hereby releases KIG of all liability in the event of LF42's mental or physical injury, bodily harm, kidnapping, disappearance, or death during the Term of Engagement and/or during the performance of any activity relating to this Agreement.
- XI. Choice of Law and Dispute Resolution. In the event of controversies pertaining to this Agreement and/or its interpretation, KIG and LF42 agree that a) the laws of the State of Florida govern the validity, terms, and interpretation of this Agreement; b) any controversies shall be submitted to arbitration in accordance with the policies of the American Arbitration Association.
- XII. Entire Agreement. Entire Understanding. This document and any attached Appendices constitute the entire understanding and agreement of KIG and LF42. Any prior understandings and agreements, whether oral or written, hereby have no force or effect.
- XIII. Unenforceability. If any provision of this Agreement or any portion thereof is held to be invalid and unenforceable, the remainder of the Agreement shall maintain full force and effect.

Kinetic Investment Group, LLC

LF42, LLC

By:

Handwritten signature of Michael Williams in blue ink, written over a horizontal line.

Its:

Managing Partner

Print:

Michael Williams

By:

Handwritten signature of Michael Williams in blue ink, written over a horizontal line.

Its:

MANAGER

Print:

Michael Williams



### PROOF OF CLAIM FORM

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.

Name and address of Claimant  
(Please print or type):

Michael Scott Williams  
LF42 LLC

attn: Michael Williams  
7644 Sandalwood Way  
Sarasota, FL 34231 US

Case Number: 8:20-cv-394  
U.S. District Court Middle District of Florida (Tampa Division)

**ATTENTION:** The Honorable Mary S. Scriven of the United States District Court, Middle District of Florida, entered an order appointing Mark A. Kornfeld as Receiver over the assets of the above-captioned Defendant Kinetic Investment Group, LLC and relief defendants (individually, a **"Receivership Entity,"** and collectively, **"Receivership Entities"**). On \_\_\_\_\_, the Court issued an order establishing a Claim Bar Date for all claims and approving this Proof of Claim Form and the basic procedures to administer any claims. To be eligible to receive a distribution from the Receivership Entities' assets, you must complete and return this Proof of Claim Form and, if applicable, provide the requested documentation, so that it is received on or before \_\_\_\_, to **Mark A. Kornfeld, as Receiver, c/o Jordan D. Maglich, Esquire, Quarles & Brady LLP, 101 East Kennedy Blvd., Suite 3400, Tampa, Florida 33602.** *The proper filing of this completed claim form may entitle you to receive a distribution from the Receivership. Altered forms will not be accepted.*

The information provided in this Proof of Claim Form will be used to determine your distribution, if any, from the Receivership. The Receiver has the right to dispute and/or verify any information you have provided to determine the proper distribution amount, if any, to which you may be entitled. The Receiver further has the right to amend any information he may have provided as to your Net Investment Amount. **By identifying and providing a Net Investment Amount for an investor the Receiver does not waive any right to (1) deny, contest the validity of, or otherwise object to a claim or (2) if warranted, amend the provided Net Investment Amount.**

#### IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING THIS FORM

ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE ABOVE-CAPTIONED COURT FOR ALL PURPOSES, INCLUDING, WITHOUT LIMITATION, AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS THAT COULD BE OR HAVE BEEN ASSERTED BY THE RECEIVER AGAINST SUCH CLAIMANT OR THE HOLDER OF SUCH CLAIM IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING, THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANSACTED BY OR WITH ANY RECEIVERSHIP ENTITY AND/OR (2) ANY DEALING OR BUSINESS TRANSACTED THAT RELATES IN ANY WAY TO ANY RECEIVERSHIP PROPERTY. CLAIMANT FURTHER AGREES BY MAKING THIS SUBMISSION TO WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO SUCH CLAIMS, OBJECTIONS, DEFENSES, AND COUNTERCLAIMS.



IF THIS COMPLETED FORM, SIGNED UNDER PENALTY OF PERJURY, IS NOT RECEIVED BY THE RECEIVER AT THE ABOVE-REFERENCED ADDRESS BY \_\_\_\_\_, YOU WILL BE FOREVER BARRED FROM ASSERTING ANY CLAIM AGAINST THE RECEIVERSHIP ENTITIES' ASSETS AND YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTIONS FROM THE RECEIVER.

**General Instructions:**

You **must** answer each and every question on the following pages. If you are an investor, however, you do not need to answer questions 17-19, which are specific to Non-Investor Claimants. Similarly, Non-Investor Claimants do not need to answer questions 8-16, which are specific to Investor Claimants. Please answer each question applicable to you as fully as possible. If you need additional space to complete an answer, please attach a separate sheet of paper and indicate the number of the question for which you are providing the additional information. If the question does not apply to you, please write "not applicable." If the answer to the question is "no" or "none," please answer as such.

1. Full name of the Claimant (the person or entity making this claim to Receivership assets). \_\_\_\_\_  
Michael Scott Williams (LF42 LLC)  
\_\_\_\_\_
  
2. If this form is being completed by a person other than the Claimant or on behalf of an entity, please provide the full name, address, telephone number, and email address of the person completing this form and the basis for that person's authority to act on the Claimant's behalf. **If you are a power of attorney, trustee, or other fiduciary completing this form on behalf of the Claimant in question 1, you must provide documentation with this Proof of Claim Form reflecting your legal authority to do so.**  
\_\_\_\_\_  
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3. If this form is being completed on behalf of an entity, please provide the full names of the entity's officers, directors, trustees, managing agents, shareholders, partners, beneficiaries, and any other party with an interest in the entity. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. Provide **one** mailing address where the Claimant authorizes the receipt of all future communications relating to this claim, including any possible distribution payment the Claimant may receive. It is the Claimant's sole responsibility to advise the Receiver of any change to this address after the submission of this form.  
c/o: Michael Scott Williams (LF42 LLC)  
7644 Sandalwood Way  
Sarasota, FL 34231  
\_\_\_\_\_
  
5. Provide **one** email address for the Claimant where the Claimant authorizes the receipt of all future electronic communications relating to this claim. It is the Claimant's sole responsibility to advise the Receiver of any change to this email address after the submission of this form.  
msw.king@protonmail.com  
\_\_\_\_\_



Do you consent to the receipt of electronic communications from the Receiver in lieu of mailed communications where feasible and in the Receiver's discretion? Yes X No \_\_\_\_\_

6. Provide **one** telephone number for the Claimant. It is the Claimant's sole responsibility to advise the Receiver of any change to this telephone number after the submission of this form. 415-559-7792

7. Provide the basis for your claim (please check applicable boxes):

- Investor
- Provided Goods or Services to a Receivership Entity
- Other (specify basis) Partner - partnership contributions

If you are **not** an investor, write "Not Applicable" to questions 8 through 16. If you **are** an investor, write "Not Applicable" to questions 17 through 19. All Claimants **must** answer questions 1-7 and question 20.

**Questions Specific to Investors**

8. Please refer to Exhibit A attached to this document. If sufficient information is available, this Exhibit provides the following information: (1) the total amount invested; (2) the total payments, loans, and/or distributions received; and (3) the Net Investment Amount. Do the amounts listed in the Exhibit accurately represent the total amount of your investment and all funds you received related to this investment? Failure to respond to this question will mean that you agree with the amounts listed in the Exhibit.

\_\_\_\_\_ Yes, I agree with the amounts listed. X No, I do not agree with the amounts listed.

If you answered yes, you do not have to respond to questions 9, 10, and 11. If you answered no, you must answer questions 9, 10, and 11 and provide copies of the documents requested.

9. Please provide the following information regarding your investment in or with, or interest in, any Receivership Entity, and attach copies of all checks, bank or other financial account statements, invoices, wire transfer confirmations, and other documents relating to your answer.

1<sup>st</sup> investment in or with the Receivership Entities:

totaled \$ 65,000 and was made on May 4, 2015 (date); through a check (or wire transfer) made payable to Kinetic Funds and drawn on account number 4812564247 with BMO HARRIS BANK N.A. (identify financial institution).

If applicable, 2<sup>nd</sup> investment in or with the Receivership Entities:

totaled \$ 1,500,000 and was made on May 3, 2018 (date); through a check (or wire transfer) made payable to Kinetic Funds and drawn on account number 4812564247 with BMO HARRIS BANK N.A. (identify financial institution).

If additional investments were made, please attach a separate sheet identifying (1) those amounts, (2) the dates on which they were made, (3) the payee of the check (or recipient of the wire transfer), and (4) the account number and financial institution on which the check was drawn or the wire transfer initiated.

**ATTACHED: Documentation regarding other investments**

**Total amount you are claiming you invested with the Receivership Entities: \$ 4,479,964.00**

10. Have you ever received any money from a Receivership Entity, including as a "loan" or "credit facility" from Receivership Entity KCL Services, LLC d/b/a Lendacy, an "interest" payment, "return of principal," or "referral fee" relating to your investment or for any other reason? X Yes \_\_\_\_\_ No. If yes, please provide the following information for each amount received, and attach copies of all checks, bank or other financial account statements, wire transfer confirmations, and other documents relating to your answers.

	<u>Date</u>	<u>Amount</u>	<u>Payor/Payee of check/wire</u>
A.	<u>4/30/2015</u>	<u>40,000</u>	<u>Lendacy / LF42</u>
B.	<u>3/23/2017</u>	<u>1,517,000</u>	<u>Lendacy / Ramiro Millan</u>
C.	<u>4/15/2019</u>	<u>2,100,000</u>	<u>Lendacy / MISC</u>

If any additional amounts were received from any Receivership Entity, please attach a separate sheet identifying those amounts, the dates on which they were received, and the payor and payee of the check(s) or wire transfers.

**Total amount you are claiming you received from the Receivership Entities: \$ 3,657,000.00**

11. State the total amount of your claim (this is the amount that you are claiming you are owed from the Receivership): \$ 822,964.00

12. Did you receive any other funds or anything of value other than money (for example, a car or shares of stock) from any Receivership Entity or anyone acting on their behalf? Yes X No \_\_\_\_ . If yes, please identify how much or what you received, from whom, and the date it was received. \_\_\_\_\_  
 El Morro Payroll - approximately \$36,000 per year - (2017-2018). \_\_\_\_\_  
 LF42 contract - approximately (2015 \$60k, 2016 \$60k, 2017 \$25k, 2018 \$25k, 2019 \$60k) \_\_\_\_\_

13. Provide the name of the person or persons who solicited your investment in or with the Receivership Entities.  
 \_\_\_\_\_  
 \_\_\_\_\_

14. Please explain the way in which you came to learn about Kinetic Funds I, LLC and/or Kinetic Investment , Group, LLC and thereafter invest in or with them, including the person who introduced you to these entities, the statements made by that person, any documents provided by that person, meetings you had with the representative(s) of those entities, information that you relied on, and any other information.

Partner. As a Partner, has made significant investments into the companies over the years.  
Investments include, but not limited to: office expenses, legal, technology, and other business services.  
Exceeding \$500,000+

15. Are you related by blood or marriage to any of the individual defendants or relief defendants? \_\_\_\_ Yes X No. If yes, to whom are you related and what is the relationship. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

16. Did you receive any commissions, referral fees, compensation for the referral of clients, or any other



compensation of any nature from any Receivership Entity?  Yes  No. If yes, please identify how much or what you received, from whom, and the date it was received. \_\_\_\_\_

See #12

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

**Questions Specific To Non-Investor Claimants**

17. If you were not an investor, state with specificity how you claim an interest in any distribution by the Receivership Entities (for example, you provided goods or services to a Receivership Entity for which you have not been paid). \_\_\_\_\_

ISX Technology Expenses: \$286,761.00

Kinetic International Bank Expenses: \$152,110.00

Kinetic Investment Group Expenses: \$158,321.96

\*See Attached

18. State the amount you claim you are owed by any Receivership Entity. \$ 597,193  
Attach copies of all documents relating to your claim (for example, copies of all invoices submitted to a Receivership Entity and copies of records of all payments received from same). If you delivered goods to a Receivership Entity, include a copy of the document confirming receipt by a representative of the Receivership Entity.

19. Identify your contact person or persons at the Receivership Entities. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Question for all Claimants:**

20. Have you sued, threatened suit, or otherwise commenced any lawsuits, arbitrations, actions, or other proceedings, or made any demands against any person or entity relating in any way to your claim and/or any Receivership entity?  Yes  No. If yes, identify the nature and status of any such action, the date the action was initiated, the name of the attorney who commenced the action, and the amount of any money you received in connection with any such action. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Send this completed and signed, under penalty of perjury, Proof of Claim Form and legible copies of any documentation requested in this form to **Mark A. Kornfeld, as Receiver, c/o Jordan D. Maglich, Esquire, Quarles & Brady LLP, 101 East Kennedy Blvd., Suite 3400, Tampa, Florida 33602, SO THAT IT IS RECEIVED NO LATER THAN** \_\_\_\_\_.

IF YOU DO NOT AGREE WITH ANY AMOUNTS PROVIDED ON EXHIBIT A OR NO AMOUNTS WERE PROVIDED ON EXHIBIT A, YOU MUST PROVIDE COPIES OF ALL DOCUMENTS OR OTHER MATERIALS THAT ARE RELATED IN ANY WAY TO YOUR INVESTMENT IN THE RECEIVERSHIP ENTITIES, OR, IF YOU ARE NOT AN INVESTOR, TO YOUR CLAIM AGAINST A RECEIVERSHIP ENTITY, INCLUDING COPIES OF YOUR CANCELLED CHECKS, BANK OR OTHER FINANCIAL ACCOUNT STATEMENTS SHOWING ALL TRANSFERS OF FUNDS BETWEEN (OR FOR THE BENEFIT OF) YOU AND THE RECEIVERSHIP ENTITIES, STATEMENTS FROM THE RECEIVERSHIP ENTITIES, WIRE TRANSFER CONFIRMATIONS, AND ANY OTHER DOCUMENTS REGARDING YOUR CLAIM.

By signing below, I certify under penalty of perjury pursuant to Florida law that the information provided in this form is true and correct. If this claim is being submitted by more than one person, all persons submitting the claim must sign below certifying under penalty of perjury that the information provide is true and correct.

Signature of Claimant:  \_\_\_\_\_

Print Name: Michael Scott Williams (LF42, LLC)

Date: 2/02/2021

Title (if any): \_\_\_\_\_

**EXHIBIT A**

**Investor Name:** \_\_\_\_\_

<b>Amount Invested:</b>	\$ _____
<b>Total Payments/Loans/Distributions:</b>	\$ _____
<b>Net Investment Amount:</b>	\$ _____

THE RECEIVER HAS PROVIDED THE ABOVE INFORMATION BASED UPON DOCUMENTS AVAILABLE TO HIM. THESE FIGURES ARE BELIEVED TO BE ACCURATE AND REASONABLE CONCLUSIONS. PLEASE CAREFULLY REVIEW THE ABOVE AMOUNTS. IF THE NUMBERS PROVIDED ARE NOT CONSISTENT WITH YOUR RECORDS, IT IS YOUR OBLIGATION TO PROVIDE TRUE AND CORRECT INFORMATION TO THE RECEIVER. IF YOU CONFIRM THAT THE ABOVE AMOUNTS ACCURATELY REPRESENT THE AMOUNT YOU INVESTED, ALL AMOUNTS YOU RECEIVED RELATING TO THIS INVESTMENT, AND ANY OTHER FUNDS YOU RECEIVED FROM THE RECEIVERSHIP ENTITIES, YOU ARE DOING SO UNDER PENALTY OF PERJURY.

BY IDENTIFYING AND PROVIDING THE ABOVE FIGURES, THE RECEIVER DOES NOT WAIVE ANY RIGHT TO (1) DENY, CONTEST THE VALIDITY OF, OR OTHERWISE OBJECT TO A CLAIM OR, (2) IF WARRANTED, AMEND ANY OF THE PROVIDED FIGURES.

**Investments / Payments / Contributions**

**Michael Scott Williams**

**Kinetic Investments / Payments**

Date	Amounts	To	From	Bank	Account
5/4/2015	\$ 65,000	Kinetic Funds	LF42	BMO Harris	4812564247
5/3/2018	\$ 1,500,000	Kinetic Funds	LF42	BMO Harris	4812564247
3/5/2020	\$ 2,914,964	Kinetic Management Group LLC	CHI Trust (on behalf of LF42)	<i>(see Completed Wire Detail)</i>	
<b>Total</b>	<b>\$ 4,479,964</b>				

**Completed Wire Detail**

<b>Additional Contributions</b>	
ISX Technology	\$ 286,761
Kinetic International Bank	\$ 152,110
Kinetic Investment Group	\$ 158,322
<b>Total</b>	<b>\$ 597,193</b>

<b>Source Account</b>	CHI Trust (Checking)
<b>Amount</b>	\$2,914,964.00
<b>Beneficiary</b>	Kinetic Management Group LLC
<b>Beneficiary Account</b>	4813426794
<b>Bank</b>	BMO HARRIS BANK NA Chicago, IL
<b>Destination ABA</b>	071025661
<b>Special Instructions</b>	Michael Williams Loan and Operating Payments
<b>Date</b>	03/05/2020
<b>Federal Reference Number</b>	20200305B1Q8021C028171
<b>Global Reference Number</b>	G0100653706501
<b>Citibank Reference Number</b>	0650080695
<b>Customer Reference Number</b>	
<b>Additional Reference</b>	
<b>Set up by</b>	Alejandro Rodriguez
<b>Approved By</b>	Silvia Guerra

Note: Over the years there have been various miscellaneous expenses paid for by Williams (LF42) to the entities / companies.

**Source of Funds: Silexx**

Silexx Partnership 40%-50% profit distributions and sale of Silexx to CBOE

Sale of Silexx to CBOE in 2017 (executed contract had been provided to Receiver/SEC)

Approximate Distributions from Silexx: \$8m+



Investment 4-May-15 \$65,000



A part of BMO Financial Group

BMO HARRIS BANK N.A. 180607  
 P.O. BOX 94033  
 PALATINE, IL 60094-4033

ACCOUNT NUMBER: 4812564247

Statement Period  
 05/01/15 TO 05/31/15  
 IM0099002900000000

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LF42  
 1800 SECOND ST #955  
 SARASOTA FL 34236

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**CHECKING ACCOUNTS**

ESSENTIAL BUSINESS CKG LF42  
 ACCOUNT NUMBER 4812564247 (Checking)

DEPOSIT ACCOUNT SUMMARY

Previous Balance as of April	30, 2015	134,070.34
1 Deposits	(Plus)	8,000.00
5 Withdrawals	(Minus)	97,198.88
Ending Balance as of	May 31, 2015	44,871.46

Deposits and Other Credits

Date	Amount	Description
May 04	8,000.00	REMOTE DEPOSIT

Withdrawals and Other Debits

Date	Amount	Description
May 08	120.00	ACH DEBIT
May 29	1,609.03	ACH DEBIT
May 29	5,469.85	ACH DEBIT
		CCD ADP TX/FINCL SVC ADP - TAX
		CCD ADP TX/FINCL SVC ADP - TAX

Checks by Serial Number

Date	Serial #	Amount	Date	Serial #	Amount
May 04	554	65,000.00	May 18	555	25,000.00

INVESTMENT \$1,500,000 3-May-18



BMO HARRIS BANK N.A. 282977  
P.O. BOX 94033  
PALATINE, IL 60094-4033

ACCOUNT NUMBER: 4812564255

Statement Period  
05/01/18 TO 05/31/18  
IM0099002900000000

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KINETIC FUNDS I, LLC  
1800 SECOND ST #955  
SARASOTA FL 34236

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TOLL-FREE AT 1-888-340-2265. BMO HARRIS BANK N.A. MEMBER FDIC. EQUAL HOUSING  
LENDER. NMLS401052 VISIT US ONLINE AT WWW.BMOHARRIS.COM.

**CHECKING ACCOUNTS**

**SINISS ADVANTAGE CKG** **KINETIC FUNDS I, LLC**  
**COUNT NUMBER 4812564255 (Checking)**

Interest Paid YTD 2,048.70

DEPOSIT ACCOUNT SUMMARY

Previous Balance as of April	30, 2018	10,849,142.98
2 Deposits	(Plus)	2,500,000.00
14 Withdrawals	(Minus)	2,853,260.45
Interest Paid	(Plus)	444.16
Ending Balance as of May	31, 2018	10,496,326.69

Deposits and Other Credits

Date	Amount	Description
May 03	1,500,000.00	INCOMING WIRE
		WIRE TRANSFER CREDIT 1805038WIRE-IN
May 09	1,000,000.00	INCOMING WIRE
		FED WIRE TRANSFER CREDIT 1805099WIRE-IN

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

Class C Member Addendum

This Addendum, consisting of three (3) pages, is entered into as of 5/4/15, 20\_\_ in connection with the admission of LF42, LLC as a Class C Member of KINETIC FUNDS I, LLC (the "Class C Member"). KINETIC FUNDS I, LLC is hereinafter referred to as the "Company" and Kinetic Partners, LLC the Company's Class A Member, is hereinafter referred to as the "Class A Member." This Addendum shall constitute a counterpart signature page to the Company's Operating Agreement.

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

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

**INVESTMENT:**

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

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

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

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

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

Amount:     \$65,000    

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

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

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

**FINANCIAL PRODUCTS:**

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



**REPORTING:**

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

**RISK MARGIN:**

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

**PROFITS AND LOSSES:**

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

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

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

**HIGHWATER MARK:**

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

**WITHDRAWALS:**

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

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

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

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

**TERMINATION:**

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

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

**FEES AND EXPENSES:**

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

**RISKS:**

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

AGREED AND ACKNOWLEDGED THIS 30 DAY OF April, 2015.

**CLASS C MEMBER**

MICHAEL S WILLIAMS (print name)

LF42, LLC

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

By: 

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

Address: 1800 SECOND ST

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

SARASOTA FL 34236

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

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

**KINETIC FUNDS I, LLC**

Class A Member

By: 

Michael S. Williams, Managing Member of KF 42, LLC, Managing Member of its Managing Member, Kinetic Partners, LLC



## 1 CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE

**NOTICE: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE****1) YOUR AGREEMENT.**

In this Credit Facility Agreement and Disclosure ("Agreement"), the words "you," "your" and "yours" mean each and all of the borrowers named herein [the "Borrower(s)"]. The word "Lender" means KCL SERVICES, LLC, a Delaware limited liability company and/or its successors and assigns whose current business address is: 1800 2<sup>nd</sup> Street, Suite 955, Sarasota, Florida 34236. This Agreement is effective as of 4-29, 2015 (the "Effective Date").

You agree to all of the following terms.

**2) REPAYMENT OPTIONS.**

- a) You have selected the REPAYMENT OPTION indicated by checking and initialing the appropriate box below.

- (1) **DEFERRED**. Under the Deferred Option, you have no regularly scheduled payments and all interest is deferred. On the first December statement after the first Advance hereunder, and then annually thereafter, you will receive a statement from Lender setting forth the amount of indebtedness then outstanding, comprised of: (i) the original Advance; (ii) any additional Advances funded to Borrower; and (iii) any accumulated deferred interest accruing throughout the year. No later than January 15<sup>th</sup> of the following year, borrower will make an election and return same to Lender indicating the prior year's deferred interest to be either (i) added to the existing indebtedness making no contribution towards interest expense or principal reduction, or (ii) make an election to pay some or all of the deferred interest, or (iii) make an election to pay all interest expense plus a portion towards the outstanding principal balance.
- (2) **INTEREST ONLY**. You elect to make a minimum payment monthly to be credited solely to interest expense.
- (3) **INTEREST WITH PRINCIPAL REDUCTION**. This option consists of a fixed amount that will be selected for monthly reduction of principal. The required monthly payment will be comprised of: (a) the selected monthly reduction of principal component, plus (b) the monthly interest expense. The monthly payment under this option will vary due to changes in the underlying index and the number of days in the billing cycle pursuant to Section 7 hereinbelow. The formula Lender will use to calculate the monthly payment under this option is expressed as follows: Monthly Payment=fixed principal reduction amount plus monthly interest expense.
- (4) **FLAT PAY**. Under this option, you agree to pay \$ 750 per month. The monthly payment under this option will be constant. Based upon changes in the underlying index and the number of days in the billing cycle as described in Section 7 hereinbelow, the monthly payment may include some or all of the interest expense. In the event the payment exceeds the interest for that particular month, any such excess will be credited towards principal. The calculation Lender will use to calculate the application of a monthly payment under this option between interest and principal is expressed as follows: Monthly FLAT PAY amount minus monthly interest expense=Principal Reduction or "Deferred Interest" (as defined below). If this calculation results in a positive number, the principal amount will be reduced by said amount and posted as a principal reduction. If this calculation results in a negative number, the principal amount will be increased and posted as "Deferred Interest."

## CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE

- b) You expressly acknowledge and agree that:
- i) an Advance, and any additional Advance(s), may be renewed/extended at your election, but if so elected, for a term of Three Hundred Sixty-Four (364) days; and
  - ii) pursuant to Section 18, hereinbelow, Lender's Managing Member may, in its sole and absolute discretion, convert the credit facility to a twenty-five (25) year fully amortized payment schedule; and
  - iii) you may select another Repayment Option annually, subject to Lender's approval, which approval will not be unreasonably withheld or delayed.
- c) You acknowledge and agree that Lender shall have the unfettered right to aggregate and securitize its loans in any particular repayment option category described in Section 2(a) above from time to time and at any time, in Lender's sole and absolute discretion.
- 3) **ADVANCES FROM YOUR ACCOUNT.** You may borrow funds (obtain an "Advance") from your Account by:
- a) Oral request to Lender directing Lender to make an Advance:
    - i) Any oral request for an advance may be made only if the funds are directed to Borrower's account with Lender.
    - ii) All such advances shall be conclusively presumed to have been made for the benefit of Borrower when the Lender believes in good faith that such requests and directions have been made by authorized persons or when said advances are deposited to a credit account of any Borrower.
  - b) Executing and delivering to Lender written instructions directing Lender to make an Advance:
    - i) Directly to a Lender asset account in your name alone or together with third persons.
    - ii) By wire transfer to your order or the order of any third person.
    - iii) By issuing a disbursement check to you, payable to you or a third party.
  - c) At the time your Account is opened, executing and delivering to Lender, written instructions directing Lender to make an Advance to third party creditors to pay off the outstanding balance on any loan or credit account in your name alone or together with third persons.
  - d) Lender is under no obligation to honor a Request for Advance which is in violation of these provisions.
  - e) Limitations on the use of loan proceeds.
    - i) Borrower acknowledges and agrees that such funds may only be used for the purposes specifically indicated and approved by Lender contained in Borrower's Application for the subject Credit Facility.
    - ii) The methods for obtaining Advances from your Account described above shall be referred to in this Agreement collectively as "Requests for Advances."
    - iii) Subject to any cancellation or suspension of your Account and any other limitations or restrictions set forth in this Agreement, Lender will honor a Request for Advance within 24 hours after Lender receives properly executed written instructions or oral requests directing Lender to make an Advance.
    - iv) If there is more than one authorized signer on your Account, you hereby authorize and direct Lender to honor, and release Lender from any liability arising directly or indirectly out of honoring, a Request for Advance executed or orally requested by anyone authorized signer acting alone. However, should a dispute arise amongst you as to the use of the Account, Lender, at its sole discretion, may require the signatures of all authorized signers on any Request for Advance from your Account.
    - v) Except for a Request for Advance made in accordance with Section 3(c), Lender is under no obligation to honor a Request for Advance for less than \$5,000.00.



## CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE

4) YOUR CREDIT LIMIT IS \$ 40,000.

You may obtain an unlimited number of Advances from your Account during any one statement period. However, Lender will not be obligated to honor a Request for Advance, if the principal balance of your Account together with all other charges which are due, would after honoring the Request for Advance, exceed your credit limit.

## 5) PROMISE TO PAY.

You promise to repay Lender, at the location Lender designates from time to time (a) all borrowings from your Account, whether or not the borrowings exceed your credit limit, (b) all interest and other charges, and (c) all collection costs, court costs, attorneys' fees and all other expenses Lender incurs in enforcing this Agreement.

## 6) BILLING CYCLE.

The term "billing cycle" means the interval between the days or dates of the regular periodic statements (defined in Section 13 below) on your Account. Each billing cycle will correspond to an actual calendar month and contain the number of days in that corresponding calendar month. For example, your January billing cycle will contain 31 days.

## 7) INDEX.

The Index used to determine the Periodic FINANCE CHARGE Rate (described below) for your account is Federal Funds Rate as announced from time to time in the east coast edition of the *Wall Street Journal*, plus \_\_\_\_\_ basis points (the "Margin").

## 8) PERIODIC FINANCE CHARGE RATE.

Subject to the limits described in Section 10 below, Lender will determine the Periodic FINANCE CHARGE Rate for each day in the billing cycle by first adding a number of percentage points (the "Margin") to the Index then in effect. Lender will then divide this sum by 365 (or 366 for billing cycles beginning in a leap year) to get the Daily Periodic FINANCE CHARGE Rate applicable. Your initial Index is \_\_\_\_\_%. Your Margin is \_\_\_\_\_ basis points. Your initial ANNUAL PERCENTAGE RATE is \_\_\_\_\_% (corresponding to a Daily Periodic FINANCE CHARGE Rate of \_\_\_\_\_%). This initial ANNUAL PERCENTAGE RATE is based on the Index in effect on \_\_\_\_\_; provided, however, that this ANNUAL PERCENTAGE RATE may be higher than the Index plus the Margin due to the application of the minimum ANNUAL PERCENTAGE RATE requirement set forth in Section 10 below. The ANNUAL PERCENTAGE RATE does not include any charges other than interest.

## 9) PERIODIC FINANCE CHARGE.

Subject to the limit described in Section 10 below, the Periodic FINANCE CHARGE Rate will change in accordance with the Index in effect from time to time. The Periodic FINANCE CHARGE Rate will change on the day the Index changes. Increases in the Index will result in increases in the Periodic FINANCE CHARGE Rate and your minimum monthly payment. The reverse will happen when the Index decreases. To determine the Periodic FINANCE CHARGE for each day in the billing cycle, Lender will multiply the applicable Daily Periodic FINANCE CHARGE Rate then in effect by the Daily Balance described in Section 11 below for that billing cycle. The Periodic FINANCE CHARGE will begin to accrue the date the Lender honors a request for Advance or otherwise charges your Account pursuant to this Agreement, which, for purpose of this Agreement, shall be the day that either funds are wired or the date a check is posted.

CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE

10) ANNUAL PERCENTAGE RATE LIMIT.

Your Account is subject to a limit on the ANNUAL PERCENTAGE RATE. Your ANNUAL PERCENTAGE RATE shall never be greater than 20 percentage points, nor less than 0 percentage points.

11) CALCULATION OF DAILY BALANCE.

To determine how much interest should be charged for a billing cycle, Lender figures your Daily Balance for each day in the billing cycle. The Daily Balance is figured by taking your beginning Account balance each day, adding any new Request for Advance honored and any other charges applied to your Account and subtracting any payments and credits received that day. This produces the Daily Balance. Special Note: Daily accruing Periodic FINANCE CHARGE, late charges and other fees will not be included in determining your Daily Balance.

12) MONTHLY PAYMENTS.

Your Total Payment Due each month will be due not later than the Payment Due Date set forth in your regular periodic statement. The amount of your Total Payment Due will be calculated as follows:

- a) Your Total Payment Due will be equal to the amount of the Periodic FINANCE CHARGE which has accrued on your Balance during the previous billing cycle, plus all other amounts, including but not limited to any amount outstanding in excess of your credit limit and late payments or late charges then due but as yet unpaid. Depending upon the Repayment Option you selected in Section 2 hereinabove, your monthly payment may or may not reduce the principal that is outstanding on your Account.
- b) In the event that the Lender elects, pursuant to Section 2.(b) hereinabove, to convert your repayment obligation to a fully amortized loan, your Total Payment Due will be equal to the amount, calculated monthly by Lender, which would be sufficient to fully repay the balance on your Account, at the then current ANNUAL PERCENTAGE RATE in substantially equal installments over the remaining twenty-five (25) year term of your Account, plus all other amounts, including but not limited to late payments or late charges, then due but as yet unpaid. The Lender will apply each payment made with respect to your Account in the following order: (a) Periodic FINANCE CHARGES; (b) Late Charges; (c) Other Account Charges listed in Section 16 below, and any other charges charged to your account, and (d) the remaining principal balance.

13) REGULAR PERIODIC STATEMENT.

You will receive a monthly statement of your Account. All Advances and other charges assessed in connection with your Account will be reflected on the monthly statement for the month during which the Advance is honored or fee or charge is charged to your Account. The regular periodic statement will also reflect the Total Payment Due.

14) PREPAYMENTS.

You have the right, at any time, to prepay all or any part of the balance owing on your Account without penalty.

**15) STOP PAYMENT ORDERS.**

You can ask Lender to stop payment on a Request for Advance if the corresponding Advance has not yet been paid from your Account. To stop payment, you must mail or telecopy us a writing signed by you requesting that a stop payment be placed on a particular Request for Advance. Oral stop payment orders will not be accepted.

To place a Stop Payment Order, Lender needs the following information:

- (1) Your account number;
- (2) the exact number and amount of the Request for Advance;
- (3) the name of the person who signed the Request for Advance;
- (4) the name of the party to whom the Request for Advance is payable; and
- (5) the reason for the Stop Payment Order.

Lender will charge your Account \$10.00 when the Stop Payment Order goes into effect. A Stop Payment Order will not go into effect until Lender verifies that the Request for Advance identified is unpaid. Your Stop Payment Order will expire six months from its date, unless you renew it. You may write Lender to cancel a Stop Payment Order at any time. A Stop Payment Order is canceled automatically when your Account is closed.

**16) OTHER ACCOUNT CHARGES**

- a) So long as your Account remains open, on the anniversary of the date on which your Account is opened, and on the anniversary of such date every year thereafter Lender has the right to charge you a non-refundable, non-proratable Annual Account Fee of \$ 75.00. If such annual fee is assessed in any given year, such Annual Fee will be billed in the next regular periodic statement and added to the minimum monthly payment due.
- b) A \$25.00 returned check fee charge will be posted to your Account if a check or other instrument given to Lender to fully or partially repay your Account balance is not honored by the financial institution upon which it is written.
- c) An over the limit fee of \$25.00 will be posted to your Account if a Request for Advance is presented for payment against your Account and you do not have sufficient available credit to cover the Advance and Lender refuses to honor the Request for Advance.
- d) A fee of \$10.00 will be posted to your Account whenever you request Lender to stop payment on a Request for Advance.
- e) A fee of \$25.00 will be posted to your Account whenever you request Lender to pay an Advance by wire transferor disbursement check.
- f) Your Account will be charged a fee of \$25.00 per hour plus photocopy fees of \$5.00 per page whenever you request research or reconciliation services regarding your Account and/or photocopies of statements for purposes other than a billing error inquiry.
- g) If you fail to pay the Total Payment Due on or before the tenth day following your Payment Due Date, you will be charged a late charge equal to the greater of six percent of the portion of your Total Payment Due during the last billing cycle or \$5.00, whichever is greater.

**17) YOUR OBLIGATIONS ARE UNSECURED.**

Your obligations under this Agreement are unsecured. Notwithstanding the foregoing sentence, you understand and agree that your obligations hereunder are at all times subject to the Lender's Managing Member's election, in its sole and absolute discretion, to take the actions described and set forth in Section 2 hereinabove.



**18) SUSPENSION OF YOUR ACCOUNT AND REDUCTION OF YOUR CREDIT LIMIT.**

- a) Lender reserves the right, in its sole and absolute discretion, to dishonor your Requests for Advances or reduce the Credit Limit on your Account if:
  - i) Lender reasonably believes you will not be able to meet your payment obligations on the Account due to a material change in your financial circumstances.
  - ii) You are in default of a material obligation contained in this Agreement.
  - iii) Any form of government action prevents Lender from imposing the ANNUAL PERCENTAGE RATE calculated in accordance with the terms of this Agreement.
  - iv) A government regulatory agency has notified Lender that continuing to honor Requests for Advances would constitute an unsafe and unsound practice.
  - v) The maximum ANNUAL PERCENTAGE RATE that can be assessed in connection with your Account is reached.
  
- b) If Lender dishonors your Requests for Advances or reduces your credit limit in accordance with this Section 18, Lender will mail you a written notice not later than three business days after such action is taken. Lender will not be obligated to honor your Requests for Advances or reinstate your Credit Limit unless:
  - i) You notify Lender in writing that the basis upon which Lender elected to dishonor your Requests for Advances or reduce your Credit Limit has ceased to exist; and
  - ii) Lender independently verifies that the condition has in fact ceased to exist.

Lender will begin honoring your Requests for Advances and/or reinstate your Credit Limit as soon as reasonably possible after the conditions set forth in this Section 18(b) have been satisfied.

**19) CHANGES IN THE TERMS OF YOUR ACCOUNT.**

After your Account is opened, Lender may:

- a) Change the Index and Margin if the Index becomes unavailable, as long as historical fluctuations in the two indices are substantially similar and as long as the new index and margin will produce a rate similar to the rate in effect at the time the original Index became unavailable.
  
- b) Change, eliminate and/or add a term or condition of or to this Agreement provided you have expressly agreed to the amendments in writing.
  
- c) Without your consent, change, eliminate or add any terms or conditions of or to this Agreement, which amendment will be unequivocally beneficial to you or constitute an insignificant change in terms.

**20) CREDIT INFORMATION AND FINANCIAL STATEMENTS.**

You agree to provide to Lender upon Lender's reasonable request your current financial statement. Further, by maintaining this Account, you are authorizing Lender to release information to other persons such as credit bureaus, merchants and other financial institutions, about you and your Account, to obtain additional credit reports from time to time, and to request beneficiary statements from senior lienholders, if any.

**21) EVENTS OF DEFAULT.**

Lender may, without notice to you, declare your Account to be in default if any of the following conditions exist:

- a) You fail to make required payments under the terms of this Agreement.
  
- b) You engage in fraud or misrepresentation in connection with your Account or this Agreement.

**CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE**

- c) You use any funds provided by Lender for any purpose other than as represented by you in your Application submitted to Lender to obtain the Credit Facility and that was approved by Lender based on the information submitted in said Application.

**22) LENDER'S RIGHTS IN THE EVENT OF DEFAULT.**

- a) Upon Lender's notification to you that your Account is in default, Lender may immediately (a) refuse to honor any further Requests for Advances, (b) increase the Margin by two and one half (2.5) percentage points, (c) declare immediately due and payable the entire balance of your Account, and (d) exercise all of the rights or remedies provided under this Agreement and applicable law. After notification of default by Lender and any resulting increase in the Margin on your Account, and acceleration of the remaining balance on your Account, you shall have no further right to request disbursements under your Account. In the event Lender notifies you of a default and exercises any of the remedies set forth in this paragraph, and you exercise the rights provided to you under this Agreement, if any, to reinstate your Account, your Account shall be reinstated and the Margin will be reduced to the Margin in effect prior to Lender notifying you of a default.
- b) In addition to the foregoing, and without in any way limiting the foregoing, if the box in Section 26 hereinbelow is checked and the Borrower (or any of them if there is more than one Borrower) and Guarantor have initialed where indicated therein, the Guarantor shall be bound to all the provisions of the Guarantor Addendum attached hereto and by this reference made a part hereof.

**23) TAX DEDUCTIBILITY.**

You should consult a tax advisor regarding the deductibility of interest and charges for your Account.

**24) TERMINATION OF ACCOUNT AT YOUR ELECTION.**

You may terminate your Account at any time by providing written notice to Lender, whereupon you may:

- a) If not already done so, request Lender to convert your Account to a fully amortized twenty-five (25) year repayment obligation. If Lender grants this request, payment will be calculated in accordance with Section 12(b) of this Agreement; or
- b) Close your Account by immediately paying the total outstanding principal and interest balance on your Account.

If Lender does not grant your request pursuant to Section 24.(a) above, the total outstanding balance on your Account will be immediately due and payable.



**25) MISCELLANEOUS PROVISIONS.**

- a) Lender may delay in enforcing any of its rights under this Agreement, but such a delay shall not constitute a waiver of Lender's right to enforce those rights in the future.
- b) If more than one person has signed this Agreement, then your liability shall be joint and several which means that each of you will be separately liable for the entire amount owing on your Account.
- c) Your Account and this Agreement will be governed by the laws of the State of Florida or \_\_\_\_\_, in Lender's sole and absolute discretion.
- d) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- e) Borrower agrees to pay all costs, including costs of collection, expenses, and attorneys' fees incurred in collecting any sum due under this Agreement, whether or not suit is filed, and including any proceedings in bankruptcy. Any proceeds from any such action(s) shall be applied first to any and all costs of collection, then to any due and unpaid interest outstanding, then to the principal amount of any and all Advances.
- f) The terms and provisions of this Agreement cannot be waived, altered, modified, amended or terminated except as the Lender may consent thereto in writing duly signed by Lender. Any action to enforce the terms contained herein shall be filed in the state courts of Florida in the County of Sarasota or the United States District Court for the Middle District of Florida in Tampa, and Borrower hereby agrees and consents to subject himself/herself to the jurisdiction of said courts, and further agrees to be bound by any judgment rendered therein.
- g) Borrower shall not, in any manner, directly or indirectly, assign its obligations hereunder to any other person or entity. Any attempt to do so shall render all sums due or to become due under this Agreement to be immediately due and payable in full. Lender shall be permitted to assign its rights under this Agreement to any person or entity it may choose, at any time it may choose, whereupon all obligations of Borrower hereunder will be due directly to such assignee in accordance with the terms and conditions of this Agreement.
- h) All agreements between the Borrower(s) and the Lender as set forth in this Agreement are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to the Lender for the use, forbearance, or detention of the monies advanced to Borrower exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof, at the time such performance shall be due, shall be prohibited by law, the obligation to be fulfilled shall be reduced to the maximum not so prohibited, and if from any circumstance the Lender should ever receive as interest hereunder an amount which would exceed the highest lawful rate, such amount as would be excessive interest shall be applied to the reduction of the principal of then outstanding Advances under this Agreement and not to the payment of interest. This provision shall control every other provision of all agreements in this Agreement between the Borrower(s) and the Lender.
- i) If any one or more of the provisions of this Agreement shall, for any reason, be held or found by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable under the Employee Retirement Income Security Act of 1974 ("ERISA") or in any other material respect, (i) that invalidity, illegality or unenforceability will not affect any other provisions of this Agreement and (ii) this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein, provided, however that if the invalidity of any part or provision of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, Lender shall, in good-faith, develop a structure, the economic effect of which is as close as possible to the economic effect of this Agreement, without regard to such invalidity
- j) Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and personally delivered or sent by overnight courier, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent by overnight courier, charges prepaid, addressed as follows: if to the Lender, at the address set forth in Section 1 of this Agreement, or to such other address as the Lender may from time to time specify by notice to the Borrower(s); if to a Borrower, to such Borrower at the address set forth beneath such Borrower's signature below or as such Borrower may from time to time specify by notice to the Lender in accordance with this Section 25. (i). Any such notice shall be deemed to be delivered, given and received as of the date so delivered.

CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE

26) GUARANTOR.

If the box below is checked and Borrower and Guarantor (or any Borrower if there is more than one signatory to this Agreement) have initialed where indicated below, all of the Borrower's obligations set forth in this Agreement are guaranteed in accordance with the terms and provisions contained in the Guarantor Addendum attached hereto and by this reference made a part hereof.

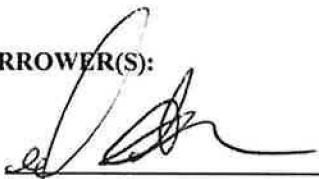
a. Borrower's Initials: \_\_\_\_\_

b. Guarantor's Initials: \_\_\_\_\_

27) BY SIGNING THIS AGREEMENT YOU AGREE TO BE BOUND TO ALL OF THE TERMS OF THIS AGREEMENT AND THE ADDENDA HERETO AS APPLICABLE AND YOU ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS AGREEMENT WITH APPLICABLE ADDENDA.

EXECUTED ON THE DATE OPPOSITE THE NAMES AND SIGNATURES BELOW:

BORROWER(S):

 (sign)

DATE: 4-30-15

Michael Williams (print)

Address:

Fax:

1800 SECOND ST #955  
SARASOTA FL 34236

\_\_\_\_\_

Phone:

Email:

\_\_\_\_\_ (home)

\_\_\_\_\_

\_\_\_\_\_ (business)

\_\_\_\_\_ (cell)

\_\_\_\_\_ (home)

\_\_\_\_\_ (business)

[signatures continued on following page, as applicable]

CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE

**BORROWER(S):**

\_\_\_\_\_ (sign)

**DATE:** \_\_\_\_\_

\_\_\_\_\_ (print)

**Address:**

**Fax:**

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

\_\_\_\_\_

**Phone:**

**Email:**

\_\_\_\_\_ (home)  
\_\_\_\_\_ (business)  
\_\_\_\_\_ (cell)  
\_\_\_\_\_ (home)  
\_\_\_\_\_ (business)

\_\_\_\_\_



## **YOUR BILLING RIGHTS -- KEEP THIS NOTICE FOR FUTURE USE**

This notice contains important information about your rights and Lender's responsibilities under the Fair Credit Billing Act.

**Notify Lender In Case Of Errors Or Questions About Your Bill.** If you think your bill is wrong, or if you need more information about a transaction on your bill, write Lender at the address listed on your bill. Write to Lender as soon as possible. Lender must hear from you no later than sixty (60) days after Lender sent you the first bill in which the error or problem appeared. You can telephone Lender, but doing so will not preserve your rights.

In your letter, give Lender the following information:

- i) Your name and account number.
- ii) The dollar amount of the suspected error.
- iii) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the items you are not sure about. If you have authorized Lender to pay your bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach Lender three (3) business days before the automatic payment is scheduled to occur.

**Your Rights And Lender's Responsibilities After Receipt Of Your Written Notice.** Lender must acknowledge your letter within thirty (30) days, unless Lender has corrected the error by then. Within ninety (90) days, Lender must either correct the error or explain why Lender believes the bill was correct.

After Lender receives your letter, Lender cannot try to collect any amount you question, or report you as delinquent. Lender can continue to bill you for the amount you question, including finance charges, and Lender can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while Lender is investigating, but you are still obligated to pay the parts of your bill that are not in question.

If Lender finds that Lender made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If Lender didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, Lender will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that Lender thinks you owe, Lender may report you as delinquent. However, if Lender's explanation does not satisfy you and you write to Lender within ten (10) days telling Lender that you still refuse to pay, Lender must tell anyone Lender reports you to that you have a question about your bill. And, Lender must tell you the name of anyone Lender reported you to. Lender must tell anyone Lender reports you to that the matter has been settled when it finally is.

If Lender doesn't follow these rules, Lender can't collect the first \$50.00 of the questioned amount, even if your bill is correct.

**GUARANTOR ADDENDUM**  
**TO**  
**CREDIT FACILITY AGREEMENT**  
**KCL Services, LLC**

If the box in Section 26 of the Agreement to which this Guarantor Addendum is appended is checked and the Borrower's (or any one of them if there is more than one) and the Guarantor's initials appear there, the following provisions are hereby incorporated into the Agreement and by this reference made a part thereof. Capitalized terms used herein have the meanings ascribed to them as set forth in the Agreement.

As a material inducement for Lender to fund an Advance or Advances, as the case may be, repayment of the Loan and all sums due hereunder and all sums which may become due hereunder (the "Guaranteed Obligations") will be personally guaranteed by the undersigned individual (the "Guarantor") and the Guarantor hereby agrees to personally guarantee all of the Guaranteed Obligations.

- a) Anything to the contrary herein notwithstanding, the liability of the Guarantor shall be direct and immediate as a primary and not a secondary obligation or liability, and is not conditioned or contingent upon the pursuit of any remedies against Borrower or any other person. Guarantor unconditionally waives any right which he/she may have to require that Lender first proceed against Borrower or any other person or entity with respect to the Guaranteed Obligations.
- b) Guarantor's obligations hereunder are an irrevocable, absolute, continuing agreement of payment and performance and not a guaranty of collection. Guarantor's obligations hereunder may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after Guarantor's death (in which event the Agreement and this Guarantor Addendum shall be binding upon such Guarantor's estate and Guarantor's legal representatives and heirs). The fact that at any time or from time to time the Guaranteed Obligations may be increased or reduced shall not release or discharge the obligations of Guarantor to Lender with respect to the Guaranteed Obligations. Guarantor's obligations hereunder may be enforced by Lender and any subsequent holder of this Promissory Note and shall not be discharged by the assignment or negotiation of all or part of this Promissory Note.
- c) If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at demand, maturity, acceleration or otherwise, Guarantor shall, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Guaranteed Obligations to Lender at Lender's address as set forth in the Agreement. Such demand(s) may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Obligations and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions of the Agreement.
- d) Guarantor hereby unconditionally agrees to waive and agrees not to assert or take advantage of any defense based upon:
  - i) The incapacity, lack of authority, death or disability of any Borrower, or any other person or entity;
  - ii) The failure of Lender to commence an action against Borrower at any time or to pursue any other remedy whatsoever at anytime;
  - iii) Any duty on the part of Lender to disclose to Guarantor any facts it may now or hereafter know regarding Borrower regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor, Guarantor acknowledging that it is fully responsible for being and keeping informed of the financial condition and affairs of Borrower;
  - iv) Lack of notice of default, demand of performance or notice of acceleration to Borrower or any other party with respect to the Loan or the Guaranteed Obligations;

**13 CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE**

- v) The consideration for this Agreement; any acts or omissions of Lender which vary, increase or decrease the risk on any Guarantor; any statute of limitations affecting the liability of any Guarantor hereunder, the liability of Borrower or any Guarantor hereunder, or the enforcement hereof, to the extent permitted by law;
- vi) The application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender or Guarantor;
- vii) An election of remedies by Lender, whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Guarantor or the rights of Guarantor to proceed against Borrower by way of subrogation or for reimbursement or contribution, or all such rights;
- viii) Any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a Guarantor; and
- ix) Any other suretyship defense that might, but for the terms hereof, be available to Guarantor.

**GUARANTOR:**

\_\_\_\_\_ (sign)

**DATE:** \_\_\_\_\_

\_\_\_\_\_ (print)

**Address:**

**Fax:**

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

\_\_\_\_\_

**Phone:**

**Email:**

\_\_\_\_\_ (home)  
\_\_\_\_\_ (business)  
\_\_\_\_\_ (cell)  
\_\_\_\_\_ (home)  
\_\_\_\_\_ (business)

\_\_\_\_\_





**1. YOUR AGREEMENT**

This Agreement is effective as of 3/23/2017, (the "Effective Date") by Michael Williams. In this Credit Facility Agreement and Disclosure ("Agreement"), the words "you," "your" and "yours" mean each and all of the borrowers, whether as an individual or entity, named herein [the "Borrower(s)"]. The word "Lender" means KCL SERVICES, LLC, a Delaware limited liability company and/or its successors and assigns whose current business address is: 1800 2nd Street, Suite 955, Sarasota, Florida 34236.

**YOU AGREE TO ALL OF THE FOLLOWING TERMS**

**2. YOUR CREDIT LIMIT IS \$ 1,517,000.00**

You may obtain an unlimited number of Advances from your Account during any one statement period. However, Lender will not be obligated to honor a Request for Advance, if the principal balance of your Account together with all other charges which are due, would after honoring the Request for Advance, exceed your credit limit.

**3. REPAYMENT OPTIONS**

a) You have selected the REPAYMENT OPTION indicated by checking and initialing the appropriate box below.

(1) **DEFERRED.** Under the Deferred Option, you have no regularly scheduled payments and all interest is deferred. On the first December statement after the first Advance hereunder, and then annually thereafter, you will receive a statement from Lender setting forth the amount of indebtedness then outstanding, comprised of: (i) the original Advance; (ii) any additional Advances funded to Borrower; and (iii) any accumulated deferred interest accruing throughout the year. No later than January 15<sup>th</sup> of the following year, borrower will make an election and return same to Lender indicating the prior year's deferred interest to be either (i) added to the existing indebtedness making no contribution towards interest expense or principal reduction, or (ii) make an election to pay some or all of the deferred interest, or (iii) make an election to pay all interest expense plus a portion towards the outstanding principal balance.

Deferred Payment Expiration Date: \_\_\_\_\_

**PAYMENT OPTION AFTER DEFERRAL PERIOD:**

Interest Only       Interest With Principal Reduction \$ \_\_\_\_\_       Flat Pay \$ \_\_\_\_\_

(2) **INTEREST ONLY.** You elect to make a minimum payment monthly to be credited solely to interest expense.

(3) **INTEREST WITH PRINCIPAL REDUCTION.** This option consists of a fixed amount that will be selected for monthly reduction of principal. The required monthly payment will be comprised of: (a) the selected monthly reduction of principal component, plus (b) the monthly interest expense. The monthly payment under this option will vary due to changes in the underlying index and the number of days in the billing cycle pursuant to Section 7 hereinbelow. The formula Lender will use to calculate the monthly payment under this option is expressed as follows: Monthly Payment = fixed principal reduction amount plus monthly interest expense.

(4) **FLAT PAY.** Under this option, you agree to pay \$ \_\_\_\_\_ per month. The monthly payment under this option will be constant. Based upon changes in the underlying index and the number of days in the billing cycle as described in Section 7 hereinbelow, the monthly payment may include some or all of the interest expense. In the event the payment exceeds the interest for that particular month, any such excess will be credited towards principal. The calculation Lender will use to calculate the application of a monthly payment under this option between interest and principal is expressed as follows: Monthly FLAT PAY amount minus monthly interest expense = Principal Reduction or "Deferred Interest" (as defined below). If this calculation results in a positive number, the principal amount will be reduced by said amount and posted as a principal reduction. If this calculation results in a negative number, the principal amount will be increased and posted as "Deferred Interest."





b) If, at any time, you have exceeded the Credit Limit set forth in Section 4 herein below (the "Credit Limit"), whether by accepting additional advances or by the accrual of interest due but deferred hereunder on the principal balance of any advances made hereunder, or otherwise, all payments theretofore deferred shall thereupon become immediately due and payable in full, including but not necessarily limited to, any and all costs and expenses of collection and all outstanding principal and interest due hereunder. Unless Lender should agree otherwise in a writing signed by the Lender, in Lender's sole and absolute discretion, Borrower's failure to make such immediate payment in full shall constitute an Event of Default under Section 21. hereinbelow whereupon the Lender shall have all the rights and remedies described in Section 22 and 25(e) herein below and as may additionally be provided in this Agreement. Borrower agrees that the parties' intent is that Lender shall have, and hereby does have, any and all legal and equitable remedies available to Lender in the case of an Event of Default.

In addition, if at any time for any reason the amounts due hereunder should exceed the Credit Limit, and notwithstanding any other provisions contained in this Agreement, that portion of the amounts then due that exceed the Credit Limit will thereupon be charged a penalty rate of interest on that excess equal to ten percent (10%) per annum.

c) You expressly acknowledge and agree that:

- i) an Advance, and any additional Advance(s), may be renewed/extended at your election, but if so elected, for a term of Three Hundred Sixty-Four (364) days; and
- ii) pursuant to Section 18. hereinbelow, Lender's Managing Member may, in its sole and absolute discretion, convert the credit facility to a twenty-five (25) year fully amortized payment schedule; and
- iii) you may select another Repayment Option annually, subject to Lender's approval, which approval will not be unreasonably withheld or delayed.

d) You acknowledge and agree that Lender shall have the unfettered right to aggregate and securitize its loans in any particular repayment option category described in Section 2(a) above from time to time and at any time, in Lender's sole and absolute discretion.

#### **NOTICE: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE**

#### **4. INDEX**

The Index used to determine a portion of the Periodic FINANCE CHARGE Rate (described below) for your account is Federal Funds Rate as announced from time to time in the east coast edition of the Wall Street Journal, The INDEX may and will change periodically and is set by the Federal Reserve.

**BORROWER BE ADVISED:** The Federal Funds Rate is a crucial component of your FINANCE CHARGE and it is possible that the FINANCE CHARGE rate may increase at any time and by any amount.

#### **5. MARGIN RATE**

The Margin Rate ("Margin") is the interest rate charge determined by the Lender at the time of this agreement. Your Margin is 200 basis points, set as an annual rate. BORROWER expressly understands and agrees that LENDER has the unfettered right, no sooner than six (6) months following the Effective Date and no more frequently than every calendar quarter thereafter, to adjust the Margin rate (up or down) in the Lender's sole and absolute discretion. The Margin rate will not increase more than 100 basis points in any twelve (12) month period. Lender's right hereunder to adjust the Margin rate is wholly independent of any increases to the FINANCE CHARGE on account of any increase(s) to the Federal Funds Rate. As and when such increases to the Federal Funds Rate should occur, any such increases will thereupon immediately be passed on to the BORROWER and become a revised component of the FINANCE CHARGE.







## 6. PERIODIC FINANCE CHARGE

Subject to the limits as may be described in Section 10 below, Lender will determine the PERIODIC FINANCE CHARGE Rate for each day in the billing cycle by first adding the Margin to the Index then in effect. Lender will then divide this sum by 365 (or 366 for billing cycles beginning in a leap year) to get the Daily Periodic FINANCE CHARGE Rate applicable.

- a) Your Index is 79 basis points (Federal Funds Rate). Based on the Fed Funds rate in effect on 3/22/2017.
- b) Your Margin is 200 basis points.
- c) Your initial ANNUAL PERCENTAGE RATE (INDEX plus the MARGIN) is 2.79 %

The PERIODIC FINANCE CHARGE rate is based on the ANNUAL PERCENTAGE RATE. The ANNUAL PERCENTAGE RATE will and may change due to:

- i) Changes in the Federal Funds Rate, which sets the Index value; and/or
- ii) Margin limit due to the application of the ANNUAL PERCENTAGE RATE requirement set forth in Section 10 below. The ANNUAL PERCENTAGE RATE does not include any charges other than interest.
- iii) Subject to the limit described in Section 10 below, the Periodic FINANCE CHARGE Rate will change in accordance with the Index in effect from time to time. The Periodic FINANCE CHARGE Rate will change on the day the Index changes. Increases in the Index will result in increases in the Periodic FINANCE CHARGE Rate and your minimum monthly payment. As and when the Index decreases, there will be corresponding decreases to the Periodic FINANCE CHARGE and your minimum monthly payment. To determine the Periodic FINANCE CHARGE for each day in the billing cycle, Lender will multiply the applicable Daily Periodic FINANCE CHARGE Rate then in effect by the Daily Balance described in Section 11 below for that billing cycle. The Periodic FINANCE CHARGE will begin to accrue the date the Lender honors a request for Advance or otherwise charges your Account pursuant to this Agreement, which, for purpose of this Agreement, shall be the day that either funds are wired or the date a check is issued to the Borrower.

## 7. LIMITS

Your Account is subject to a limit on the ANNUAL PERCENTAGE RATE. (Comprised of the Index plus Margin). Your ANNUAL PERCENTAGE RATE as determined by the Index and Margin shall never be less than 100 basis points. Please note that the Lender is unable to set an absolute upper limit because the FINANCE CHARGE includes the Index (Federal Funds Rate).

Borrower acknowledges and agrees that the Company's Managing Member may, in its sole and absolute discretion, elect to raise or lower the Margin at intervals no more frequently than once per calendar quarter by providing written notice of same to Borrower within the final thirty (30) days of a calendar quarter, to go into effect at the first of the month of the then following calendar quarter. There is no limit to how low the Margin may be adjusted, but in no event will it be adjusted higher than what is legally permitted by state and federal guidelines.

## 8. CALCULATION OF DAILY BALANCE

To determine how much interest should be charged for a billing cycle, Lender figures your Daily Balance for each day in the billing cycle. The Daily Balance is figured by taking your beginning Account balance each day, adding any new Request for Advance honored and any other charges applied to your Account and subtracting any payments and credits received that day. This produces the Daily Balance. Special Note: Daily accruing Periodic FINANCE CHARGE, late charges and other fees will not be included in determining your Daily Balance.





**9. ADVANCES FROM YOUR ACCOUNT. You may borrow funds (obtain an "Advance") from your Account by:**

- a) Oral request to Lender directing Lender to make an Advance:
  - i) Any oral request for an advance may be made only if the funds are directed to Borrower's account with Lender.
  - ii) All such advances shall be conclusively presumed to have been made for the benefit of Borrower when the Lender believes in good faith that such requests and directions have been made by authorized persons or when said advances are deposited to a credit account of any Borrower.
- b) Executing and delivering to Lender written instructions directing Lender to make an Advance:
  - i) Directly to a Lender asset account in your name alone or together with third persons.
  - ii) By wire transfer to your order or the order of any third person.
  - iii) By issuing a disbursement check to you, payable to you or a third party.
- c) At the time your Account is opened, executing and delivering to Lender, written instructions directing Lender to make an Advance to third party creditors to pay off the outstanding balance on any loan or credit account in your name alone or together with third persons.
- d) Lender is under no obligation to honor a Request for Advance which is in violation of these provisions.
- e) Limitations on the use of loan proceeds.
  - i) Borrower acknowledges and agrees that such funds may only be used for the purposes specifically indicated and approved by Lender contained in Borrower's Application for the subject Credit Facility.
  - ii) The methods for obtaining Advances from your Account described above shall be referred to in this Agreement collectively as "Requests for Advances."
  - iii) Subject to any cancellation or suspension of your Account and any other limitations or restrictions set forth in this Agreement, Lender will honor a Request for Advance within 24 hours after Lender receives properly executed written instructions or oral requests directing Lender to make an Advance.
  - iv) If there is more than one authorized signer on your Account, you hereby authorize and direct Lender to honor, and release Lender from any liability arising directly or indirectly out of honoring, a Request for Advance executed or orally requested by anyone authorized signer acting alone. However, should a dispute arise amongst you as to the use of the Account, Lender, at its sole discretion, may require the signatures of all authorized signers on any Request for Advance from your Account.
  - v) Except for a Request for Advance made in accordance with Section 3(c), Lender is under no obligation to honor a Request for Advance for less than \$5,000.00.

**10. PROMISE TO PAY**

You promise to repay Lender, at the location Lender designates from time to time (a) all borrowings from your Account, whether or not the borrowings exceed your credit limit, (b) all interest and other charges, and (c) all collection costs, court costs, attorneys' fees and all other expenses Lender incurs in enforcing this Agreement.

**11. BILLING CYCLE**

The term "billing cycle" means the interval between the days or dates of the regular periodic statements (defined in Section 13 below) on your Account. Each billing cycle will correspond to an actual calendar month and contain the number of days in that corresponding calendar month. For example, your January billing cycle will contain 31 days.





## 12. MONTHLY PAYMENTS

Your Total Payment Due each month will be due not later than the Payment Due Date set forth in your regular periodic statement. The amount of your Total Payment Due will be calculated as follows:

- a) Your Total Payment Due will be equal to the amount of the Periodic FINANCE CHARGE which has accrued on your Balance during the previous billing cycle, plus all other amounts, including but not limited to any amount outstanding in excess of your credit limit and late payments or late charges then due but as yet unpaid. Depending upon the Repayment Option you selected in Section 2. hereinabove, your monthly payment may or may not reduce the principal that is outstanding on your Account.
- b) In the event that the Lender elects, pursuant to Section 2.(b) hereinabove, to convert your repayment obligation to a fully amortized loan, your Total Payment Due will be equal to the amount, calculated monthly by Lender, which would be sufficient to fully repay the balance on your Account, at the then current ANNUAL PERCENTAGE RATE in substantially equal installments over the remaining twenty-five (25) year term of your Account, plus all other amounts, including but not limited to late payments or late charges, then due but as yet unpaid. The Lender will apply each payment made with respect to your Account in the following order: (a) Periodic FINANCE CHARGES; (b) Late Charges; (c) Other Account Charges listed in Section 16 below, and any other charges charged to your account, and (d) the remaining principal balance.

## 13. REGULAR PERIODIC STATEMENT

You will receive a monthly statement of your Account. All Advances and other charges assessed in connection with your Account will be reflected on the monthly statement for the month during which the Advance is honored or fee or charge is charged to your Account. The regular periodic statement will also reflect the Total Payment Due.

## 14. PREPAYMENTS

You have the right, at any time, to prepay all or any part of the balance owing on your Account without penalty.

## 15. STOP PAYMENT ORDERS

You can ask Lender to stop payment on a Request for Advance if the corresponding Advance has not yet been paid from your Account. To stop payment, you must mail or telecopy us a writing signed by you requesting that a stop payment be placed on a particular Request for Advance. Oral stop payment orders will not be accepted.

To place a Stop Payment Order, Lender needs the following information:

- (1) Your account number;
- (2) the exact number and amount of the Request for Advance;
- (3) the name of the person who signed the Request for Advance;
- (4) the name of the party to whom the Request for Advance is payable; and
- (5) the reason for the Stop Payment Order.

Lender will charge your Account \$45 when the Stop Payment Order goes into effect. A Stop Payment Order will not go into effect until Lender verifies that the Request for Advance identified is unpaid. Your Stop Payment Order will expire six months from its date, unless you renew it. You may write Lender to cancel a Stop Payment Order at any time. A Stop Payment Order is canceled automatically when your Account is closed.

- a) So long as your Account remains open, on the anniversary of the date on which your Account is opened, and on the anniversary of such date every year thereafter Lender has the right to charge you a non-refundable, non-proratable Annual Account Fee of \$75.00. If such annual fee is assessed in any given year, such Annual Fee will be billed in the next regular periodic statement and added to the minimum monthly payment due.
- b) A \$25.00 returned check fee charge will be posted to your Account if a check or other instrument given to Lender to fully or partially repay your Account balance is not honored by the financial institution upon which it is written.







- c) An over the limit fee of \$25.00 will be posted to your Account if a Request for Advance is presented for payment against your Account and you do not have sufficient available credit to cover the Advance and Lender refuses to honor the Request for Advance.
- d) A fee of \$10.00 will be posted to your Account whenever you request Lender to stop payment on a Request for Advance.
- e) A fee of \$25.00 will be posted to your Account whenever you request Lender to pay an Advance by wire transfer or disbursement check.
- f) Your Account will be charged a fee of \$25.00 per hour plus photocopy fees of \$5.00 per page whenever you request research or reconciliation services regarding your Account and/or photocopies of statements for purposes other than a billing error inquiry.
- g) If you fail to pay the Total Payment Due on or before the tenth day following your Payment Due Date, you will be charged a late charge equal to the greater of six percent of the portion of your Total Payment Due during the last billing cycle or \$5.00, whichever is greater.

## 16. YOUR OBLIGATIONS ARE UNSECURED

Your obligations under this Agreement are unsecured. Notwithstanding the foregoing sentence, you understand and agree that your obligations hereunder are at all times subject to the Lender's Managing Member's election, in its sole and absolute discretion, to take the actions described and set forth in Section 2 hereinabove.

## 17. SUSPENSION OF YOUR ACCOUNT AND REDUCTION OF YOUR CREDIT LIMIT

- a) Lender reserves the right, in its sole and absolute discretion, to dishonor your Requests for Advances or reduce the Credit Limit on your Account if:
  - i) Lender reasonably believes you will not be able to meet your payment obligations on the Account due to a material change in your financial circumstances.
  - ii) You are in default of a material obligation contained in this Agreement.
  - iii) Any form of government action prevents Lender from imposing the ANNUAL PERCENTAGE RATE calculated in accordance with the terms of this Agreement.
  - iv) A government regulatory agency has notified Lender that continuing to honor Requests for Advances would constitute an unsafe and unsound practice.
  - v) The maximum ANNUAL PERCENTAGE RATE that can be assessed in connection with your Account is reached.
- b) If Lender dishonors your Requests for Advances or reduces your credit limit in accordance with this Section 18, Lender will mail you a written notice not later than three business days after such action is taken. Lender will not be obligated to honor your Requests for Advances or reinstate your Credit Limit unless:
  - i) You notify Lender in writing that the basis upon which Lender elected to dishonor your Requests for Advances or reduce your Credit Limit has ceased to exist; and
  - ii) Lender independently verifies that the condition has in fact ceased to exist.
  - iii) Any form of government action prevents Lender from imposing the ANNUAL PERCENTAGE RATE calculated in accordance with the terms of this Agreement.
  - iv) A government regulatory agency has notified Lender that continuing to honor Requests for Advances would constitute an unsafe and unsound practice.

Lender will begin honoring your Requests for Advances and/or reinstate your Credit Limit as soon as reasonably possible after the conditions set forth in this Section 18(b) have been satisfied.







## 18. CHANGES IN THE TERMS OF YOUR ACCOUNT

After your Account is opened, Lender may:

- a) Change the Index and Margin if the Index becomes unavailable, as long as historical fluctuations in the two indices are substantially similar and as long as the new index and margin will produce a rate similar to the rate in effect at the time the original Index became unavailable.
- b) Change, eliminate and/or add a term or condition of or to this Agreement provided you have expressly agreed to the amendments in writing.
- c) Without your consent, change, eliminate or add any terms or conditions of or to this Agreement, which amendment will be unequivocally beneficial to you or constitute an insignificant change in terms.

## 19. CREDIT INFORMATION AND FINANCIAL STATEMENTS

You agree to provide to Lender upon Lender's reasonable request your current financial statement. Further, by maintaining this Account, you are authorizing Lender to release information to other persons such as credit bureaus, merchants and other financial institutions, about you and your Account, to obtain additional credit reports from time to time, and to request beneficiary statements from senior lienholders, if any.

## 20. EVENTS OF DEFAULT

Lender may, without notice to you, declare your Account to be in default if any of the following conditions exist:

- a) You fail to make required payments under the terms of this Agreement.
- b) You engage in fraud or misrepresentation in connection with your Account or this Agreement.
- c) You use any funds provided by Lender for any purpose other than as represented by you in your Application submitted to Lender to obtain the Credit Facility and that was approved by Lender based on the information submitted in said Application.

## 21. LENDER'S RIGHTS IN THE EVENT OF DEFAULT

Lender may, without notice to you, declare your Account to be in default if any of the following conditions exist:

- a) Upon Lender's notification to you that your Account is in default, Lender may immediately (a) refuse to honor any further Requests for Advances, (b) increase the Margin by two and one half (2.5) percentage points, (c) declare immediately due and payable the entire balance of your Account, and (d) exercise all of the rights or remedies provided under this Agreement and applicable law. After notification of default by Lender and any resulting increase in the Margin on your Account, and acceleration of the remaining balance on your Account, you shall have no further right to request disbursements under your Account. In the event Lender notifies you of a default and exercises any of the remedies set forth in this paragraph, and you exercise the rights provided to you under this Agreement, if any, to reinstate your Account, your Account shall be reinstated and the Margin will be reduced to the Margin in effect prior to Lender notifying you of a default.
- b) In addition to the foregoing, and without in any way limiting the foregoing, if the box in Section 26 hereinbelow is checked and the Borrower (or any of them if there is more than one Borrower) and Guarantor have initialed where indicated therein, the Guarantor shall be bound to all the provisions of the Guarantor Addendum attached hereto and by this reference made a part hereof.





## 22. TAX DEDUCTIBILITY

You should consult a tax advisor regarding the deductibility of interest and charges for your Account.

## 23. TERMINATION OF ACCOUNT AT YOUR ELECTION

You may terminate your Account at any time by providing written notice to Lender, whereupon you may:

- a) If not already done so, request Lender to convert your Account to a fully amortized twenty-five (25) year repayment obligation. If Lender grants this request, payment will be calculated in accordance with Section 12(b) of this Agreement; or
- b) Close your Account by immediately paying the total outstanding principal and interest balance on your Account.

If Lender does not grant your request pursuant to Section 24.(a) above, the total outstanding balance on your Account will be immediately due and payable.

## 24. MISCELLANEOUS PROVISIONS

You may terminate your Account at any time by providing written notice to Lender, whereupon you may:

- a) Lender may delay in enforcing any of its rights under this Agreement, but such a delay shall not constitute a waiver of Lender's right to enforce those rights in the future.
- b) If more than one person has signed this Agreement, then your liability shall be joint and several which means that each of you will be separately liable for the entire amount owing on your Account.
- c) Your Account and this Agreement will be governed by the laws of the State of Florida or \_\_\_\_\_, in Lender's sole and absolute discretion.
- d) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- e) Borrower agrees to pay all costs, including costs of collection, expenses, and attorneys' fees incurred in collecting any sum due under this Agreement, whether or not suit is filed, and including any proceedings in bankruptcy. Any proceeds from any such action(s) shall be applied first to any and all costs of collection, then to any due and unpaid interest outstanding, then to the principal amount of any and all Advances.
- f) The terms and provisions of this Agreement cannot be waived, altered, modified, amended or terminated except as the Lender may consent thereto in writing duly signed by Lender. Any action to enforce the terms contained herein shall be filed in the state courts of Florida in the County of Sarasota or the United States District Court for the Middle District of Florida in Tampa, and Borrower hereby agrees and consents to subject himself/herself to the jurisdiction of said courts, and further agrees to be bound by any judgment rendered therein.
- g) Borrower shall not, in any manner, directly or indirectly, assign its obligations hereunder to any other person or entity. Any attempt to do so shall render all sums due or to become due under this Agreement to be immediately due and payable in full. Lender shall be permitted to assign its rights under this Agreement to any person or entity it may choose, at any time it may choose, whereupon all obligations of Borrower hereunder will be due directly to such assignee in accordance with the terms and conditions of this Agreement.
- h) All agreements between the Borrower(s) and the Lender as set forth in this Agreement are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to the Lender for the use, forbearance, or detention of the monies advanced to Borrower exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof, at the time such performance shall be due, shall be prohibited by law, the obligation to be fulfilled shall be reduced to the maximum not so prohibited, and if from any circumstance the Lender should ever receive as interest hereunder an amount which would exceed the highest lawful rate, such amount as would be excessive interest shall be applied to the reduction of the principal of then outstanding Advances under this Agreement and not to the payment of interest. This provision shall control every other provision of all agreements in this Agreement between the Borrower(s) and the Lender.
- i) If any one or more of the provisions of this Agreement shall, for any reason, be held or found by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable under the Employee Retirement Income Security Act of 1974 ("ERISA") or in any other material respect, (i) that invalidity, illegality or unenforceability will not affect any other provisions of this Agreement and (ii) this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been





contained herein, provided, however that if the invalidity of any part or provision of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, Lender shall, in good-faith, develop a structure, the economic effect of which is as close as possible to the economic effect of this Agreement, without regard to such invalidity.

j) Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and personally delivered or sent by overnight courier, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent by overnight courier, charges prepaid, addressed as follows: if to the Lender, at the address set forth in Section 1 of this Agreement, or to such other address as the Lender may from time to time specify by notice to the Borrower(s); if to a Borrower, to such Borrower at the address set forth beneath such Borrower's signature below or as such Borrower may from time to time specify by notice to the Lender in accordance with this Section 25. (i). Any such notice shall be deemed to be delivered, given and received as of the date so delivered.

25. GUARANTOR

If the box below is checked and Borrower and Guarantor (or any Borrower if there is more than one signatory to this Agreement) have initialed where indicated below, all of the Borrower's obligations set forth in this Agreement are guaranteed in accordance with the terms and provisions contained in the Guarantor Addendum attached hereto and by this reference made a part hereof.

A. BORROWER'S INITIALS: \_\_\_\_\_ B. GUARANTOR'S INITIALS: \_\_\_\_\_

26. BY SIGNING THIS AGREEMENT YOU AGREE TO BE BOUND TO ALL OF THE TERMS OF THIS AGREEMENT AND THE ADDENDA HERETO AS APPLICABLE AND YOU ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS AGREEMENT WITH APPLICABLE ADDENDA.

EXECUTED ON THE DATE OPPOSITE THE NAMES AND SIGNATURES BELOW:

BORROWER(S):  INDIVIDUAL  TRUST  LLC  PARTNERSHIP  CORPORATION  OTHER

ENTITY NAME (IF APPLICABLE) \_\_\_\_\_

SIGNATURE  PRINTED NAME Michael Williams DATE 3/23/2017

ADDRESS 7644 Sandalwood Way CITY Sarasota STATE FL ZIP 34231

FAX \_\_\_\_\_ EMAIL lionfish42@gmail.com HOMEPHONE \_\_\_\_\_

BUSINESS PHONE 941-870-9544 CELL PHONE 415-559-7792

BORROWER(S):

SIGNATURE \_\_\_\_\_ PRINTED NAME \_\_\_\_\_ DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

FAX \_\_\_\_\_ EMAIL \_\_\_\_\_ HOMEPHONE \_\_\_\_\_

BUSINESS PHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_

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1800 2<sup>nd</sup> Street, Suite 956 | Sarasota, FL | 34236







## YOUR BILLING RIGHTS—KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and Lender's responsibilities under the Fair Credit Billing Act.

**Notify Lender In Case Of Errors Or Questions About Your Bill.** If you think your bill is wrong, or if you need more information about a transaction on your bill, write Lender at the address listed on your bill. Write to Lender as soon as possible. Lender must hear from you no later than sixty (60) days after Lender sent you the first bill in which the error or problem appeared. You can telephone Lender, but doing so will not preserve your rights.

In your letter, give Lender the following information:

- i) Your name and account number.
- ii) The dollar amount of the suspected error.
- iii) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the items you are not sure about. If you have authorized Lender to pay your bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach Lender three (3) business days before the automatic payment is scheduled to occur.

**Your Rights And Lender's Responsibilities After Receipt Of Your Written Notice.** Lender must acknowledge your letter within thirty (30) days, unless Lender has corrected the error by then. Within ninety (90) days, Lender must either correct the error or explain why Lender believes the bill was correct.

After Lender receives your letter, Lender cannot try to collect any amount you question, or report you as delinquent. Lender can continue to bill you for the amount you question, including finance charges, and Lender can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while Lender is investigating, but you are still obligated to pay the parts of your bill that are not in question.

If Lender finds that Lender made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If Lender didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, Lender will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that Lender thinks you owe, Lender may report you as delinquent. However, if Lender's explanation does not satisfy you and you write to Lender within ten (10) days telling Lender that you still refuse to pay, Lender must tell anyone Lender reports you to that you have a question about your bill. And, Lender must tell you the name of anyone Lender reported you to. Lender must tell anyone Lender reports you to that the matter has been settled when it finally is.

If Lender doesn't follow these rules, Lender can't collect the first \$50.00 of the questioned amount, even if your bill is correct.







## YOUR BILLING RIGHTS—KEEP THIS NOTICE FOR FUTURE USE

If the box in Section 26 of the Agreement to which this Guarantor Addendum is appended is checked and the Borrower's (or any one of them if there is more than one) and the Guarantor's initials appear there, the following provisions are hereby incorporated into the Agreement and by this reference made a part thereof. Capitalized terms used herein have the meanings ascribed to them as set forth in the Agreement.

As a material inducement for Lender to fund an Advance or Advances, as the case may be, repayment of the Loan and all sums due hereunder and all sums which may become due hereunder (the "Guaranteed Obligations") will be personally guaranteed by the undersigned individual (the "Guarantor") and the Guarantor hereby agrees to personally guarantee all of the Guaranteed Obligations.

- a) Anything to the contrary herein notwithstanding, the liability of the Guarantor shall be direct and immediate as a primary and not a secondary obligation or liability, and is not conditioned or contingent upon the pursuit of any remedies against Borrower or any other person. Guarantor unconditionally waives any right which he/she may have to require that Lender first proceed against Borrower or any other person or entity with respect to the Guaranteed Obligations.
- b) Guarantor's obligations hereunder are an irrevocable, absolute, continuing agreement of payment and performance and not a guaranty of collection. Guarantor's obligations hereunder may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after Guarantor's death (in which event the Agreement and this Guarantor Addendum shall be binding upon such Guarantor's estate and Guarantor's legal representatives and heirs). The fact that at any time or from time to time the Guaranteed Obligations may be increased or reduced shall not release or discharge the obligations of Guarantor to Lender with respect to the Guaranteed Obligations. Guarantor's obligations hereunder may be enforced by Lender and any subsequent holder of this Promissory Note and shall not be discharged by the assignment or negotiation of all or part of this Promissory Note.
- c) If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at demand, maturity, acceleration or otherwise, Guarantor shall, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Guaranteed Obligations to Lender at Lender's address as set forth in the Agreement. Such demand(s) may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Obligations and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions of the Agreement.
- d) Guarantor hereby unconditionally agrees to waive and agrees not to assert or take advantage of any defense based upon:
  - i) The incapacity, lack of authority, death or disability of any Borrower, or any other person or entity;
  - ii) The failure of Lender to commence an action against Borrower at any time or to pursue any other remedy whatsoever at any time;
  - iii) Any duty on the part of Lender to disclose to Guarantor any facts it may now or hereafter know regarding Borrower regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor, Guarantor acknowledging that it is fully responsible for being and keeping informed of the financial condition and affairs of Borrower;
  - iv) Lack of notice of default, demand of performance or notice of acceleration to Borrower or any other party with respect to the Loan or the Guaranteed Obligations;
  - v) The consideration for this Agreement; any acts or omissions of Lender which vary, increase or decrease the risk on any Guarantor; any statute of limitations affecting the liability of any Guarantor hereunder, the liability of Borrower or any Guarantor hereunder, or the enforcement hereof, to the extent permitted by law;
  - vi) The application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender or Guarantor;
  - vii) An election of remedies by Lender, whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Guarantor or the rights of Guarantor to proceed against Borrower by way of subrogation or for reimbursement or contribution, or all such rights;
  - viii) Any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a Guarantor; and
  - ix) Any other suretyship defense that might, but for the terms hereof, be available to Guarantor.





**GUARANTOR:**

**SIGNATURE** \_\_\_\_\_ **PRINTED NAME** \_\_\_\_\_ **DATE** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_ **CITY** \_\_\_\_\_ **STATE** \_\_\_\_\_ **ZIP** \_\_\_\_\_

**FAX** \_\_\_\_\_ **EMAIL** \_\_\_\_\_ **HOMEPHONE** \_\_\_\_\_

**BUSINESS PHONE** \_\_\_\_\_ **CELL PHONE** \_\_\_\_\_



## COLLATERAL PLEDGE AGREEMENT

Dated: Monday, March 20, 2017

DEBTOR: Michael S. Williams (the "Debtor")  
7644 Sandalwood Way  
Sarasota, FL 34231

SECURED PARTY: KCL Services, LLC DBA, 'LENDACY' (the "Secured Party")  
1800 2<sup>nd</sup> Street Suite 956  
Sarasota, FL 34236  
Attn: Kelly Locke, President

1. Security Interest and Collateral. To secure the payment and performance in accordance with the terms and conditions of the Lendacy Credit Facility Agreement (attached document) which Debtor may now or at any time hereafter owe to the Secured Party, the Debtor hereby grants the Secured Party a security interest (herein called the "Security Interest") in the following property (collectively, the "Collateral"): (i) the issued and outstanding capital stock, equity securities, membership interests or units, and ownership interests, and rights issued or granted in connection with the foregoing, of Silexx Financial Systems, LLC (a "Pledgee") that are now or hereafter owned or held of record or beneficially by Debtor, and the certificates representing such shares, securities and/or interests; (ii) all other capital stock, equity securities, warrants, options, membership interests and units, and ownership interests, and rights issued or granted in connection with the foregoing, issued by such Person now or hereafter owned or held of record or beneficially by Debtor at any time (and the certificates or other documents or instruments representing such shares, securities and/or other interests); (iii) all rights associated with anything of the foregoing (including any rights under any shareholders agreements, investor rights agreements, registration rights agreements, and similar agreements); and (iv) any and all replacements, products and proceeds of, and dividends, distributions in property or securities, returns of capital or other distributions made on or with respect to, any of the foregoing. Notwithstanding the foregoing or any other provision herein or any other provisions in any other Loan Document to the contrary, "Collateral" shall not include voting equity interests of Silexx Financial Systems, LLC.

"Loan Documents" shall mean the "Loan Documents" as defined in Lendacy Credit Facility Agreement (attached document).

"Obligations" shall mean, collectively, all "Obligations" as defined in the Lendacy Credit Facility Agreement

2. Representations, Warranties and Covenants. The Debtor represents, warrants and covenants that:
  - 2.1. Exhibit A attached hereto completely and accurately identifies, as of the date hereof, (i) the number of issued and outstanding equity interests of each Pledgee held by the Debtor and (ii) the percentage of the Debtor's ownership of the aggregate issued and outstanding equity interests of each such Pledgee.
  - 2.2. The Debtor will duly endorse, in blank, each and every instrument constituting Collateral by signing on said instrument or by signing a separate document of assignment or transfer, if requested by the Secured Party. The Debtor represents and warrants that all actions reasonably necessary or desirable to perfect and establish the first priority of, or otherwise protect, Secured Party's Security Interest in the Collateral, and the proceeds thereof, have been or will be duly taken, upon (A) the execution and delivery of this Agreement; (B) the taking of possession by Secured Party (or its agent or designee) of any certificates representing the Collateral, together with undated powers (or other documents of transfer reasonably acceptable to Secured Party) endorsed in blank by Debtor; and (C) The Debtor has delivered to (and with respect to any certificates acquired after the date of this Agreement, will deliver to) Secured Party all certificates representing the Collateral owned by Debtor to the extent such Collateral is represented by certificates, and undated powers (or




other documents of transfer reasonably acceptable to Secured Party) endorsed in blank with respect to such certificates. None of the Collateral owned or held by Debtor has been issued or transferred in violation of any securities registration, securities disclosure, or similar laws of any jurisdiction to which such issuance or transfer may be subject.

- 2.3. The Debtor is the owner of the Collateral free and clear of all liens, encumbrances and security interests, except the Security Interest and any restrictive legend appearing on any instrument constituting Collateral and liens for taxes not yet delinquent or that are being contested in good faith and provided the Debtor has established adequate reserves in accordance with GAAP.
  - 2.4. The Debtor will keep the Collateral free and clear of all liens, encumbrances and security interests, except the Security Interest and any restrictive legend appearing on any instrument constituting Collateral and any tax liens not yet delinquent or that are being contested in good faith and provided the Debtor has established adequate reserves in accordance with GAAP.
  - 2.5. The Debtor will pay, when due, all taxes and other governmental charges levied or assessed upon or against any Collateral, except to the extent any of such taxes or charges are being contested in good faith and adequate reserves have been established in accordance with GAAP.
  - 2.6. At any time, upon request by the Secured Party, the Debtor will deliver to the Secured Party all notices, financial statements, reports or other communications received by the Debtor as an owner or holder of the Collateral.
  - 2.7. The Debtor will upon receipt deliver to the Secured Party in pledge as additional Collateral all securities distributed on account of the Collateral such as stock dividends and securities resulting from stock splits, reorganizations and recapitalizations.
3. Valuation. Silexx Financial Systems, LLC current valuation is based on the accepted negotiation of the pending sale of Silexx Financial Systems, LLC in full for \$20,000,000 (TWENTY MILLION DOLLARS). The Debtor holds 40% interest in Silexx Financial Systems, LLC, which is the equivalent of \$8,000,000 (EIGHT MILLION DOLLARS). The Collateral interest (Exhibit A), represents 7.5% interest or \$1,500,000 (ONE MILLION FIVE HUNDRED THOUSAND DOLLARS).
  4. Remedies of a Default. The Collateral is to be only collected in the case of a default of the Debtor. In the event that Silexx Financial Systems, LLC is not sold at the time of default; the Secured Party will receive any/all distributions of monies owed to the Collateral amount pledged as defined in Exhibit A.
  5. Confidentiality. It is understood and agreed to that this agreement is confidential and contains information which must be kept confidential. To ensure the protection of such information, and to preserve any confidentiality necessary, it is agreed that Secured Party agrees not to disclose the confidential information obtained from this Agreement to anyone unless required to do so by law.

IN WITNESS WHEREOF, the undersigned has executed this Collateral Pledge Agreement as of the date and year first above written.

By:   
Kelly N. Locke

President of Lendacy

By:   
Michael S. Williams

Vice President of Silexx Financial Systems,  
LLC



Exhibit A

Collateral

<b>Issuer</b>	<b>Class or Other Description of Pledged Securities</b>	<b>\$ Amount Pledged</b>	<b>Total Value of outstanding Security</b>	<b>Percentage of Total outstanding securities pledged</b>
Silexx Financial Systems, LLC	Ownership Interest	\$1.5m	\$20m	7.5%



**1. YOUR AGREEMENT**

This Agreement is effective as of 04/15/2019, (the "Effective Date") by LF42, LLC. In this Credit Facility Agreement and Disclosure ("Agreement"), the words "you," "your" and "yours" mean each and all of the borrowers, whether as an individual or entity, named herein [the "Borrower(s)"]. The word "Lender" means KCL SERVICES, LLC, a Delaware limited liability company and/or its successors and assigns whose current business address is: 1800 2nd Street, Suite 955, Sarasota, Florida 34236.

**YOU AGREE TO ALL OF THE FOLLOWING TERMS**

**2. YOUR CREDIT LIMIT IS \$ 2,000,000**

You may obtain an unlimited number of Advances from your Account during any one statement period. However, Lender will not be obligated to honor a Request for Advance, if the principal balance of your Account together with all other charges which are due, would after honoring the Request for Advance, exceed your credit limit.

**3. REPAYMENT OPTIONS**

a) You have selected the REPAYMENT OPTION indicated by checking and initialing the appropriate box below.

- (1) **DEFERRED.** Under the Deferred Option, you have no regularly scheduled payments and all interest is deferred. On the first December statement after the first Advance hereunder, and then annually thereafter, you will receive a statement from Lender setting forth the amount of indebtedness then outstanding, comprised of: (i) the original Advance; (ii) any additional Advances funded to Borrower; and (iii) any accumulated deferred interest accruing throughout the year. No later than January 15<sup>th</sup> of the following year, borrower will make an election and return same to Lender indicating the prior year's deferred interest to be either (i) added to the existing indebtedness making no contribution towards interest expense or principal reduction, or (ii) make an election to pay some or all of the deferred interest, or (iii) make an election to pay all interest expense plus a portion towards the outstanding principal balance.

Deferred Payment Expiration Date: December 27, 2019

**PAYMENT OPTION AFTER DEFERRAL PERIOD:**

- Interest Only
- Interest With Principal Reduction \$ \_\_\_\_\_
- Flat Pay \$ 2,000,000

Michael Williams, managing member of LF42, LLC agrees to pledge, as collateral, up to \$2,000,000 of the 2nd payout indicated in the Asset Purchase Agreement between Silexx Financial Systems and CBOE on pages 15 -20, and is to be paid in full prior to December 28, 2019. The Asset Purchase Agreement is attached as collateral.

- (2) **INTEREST ONLY.** You elect to make a minimum payment monthly to be credited solely to interest expense.
- (3) **INTEREST WITH PRINCIPAL REDUCTION.** This option consists of a fixed amount that will be selected for monthly reduction of principal. The required monthly payment will be comprised of: (a) the selected monthly reduction of principal component, plus (b) the monthly interest expense. The monthly payment under this option will vary due to changes in the underlying index and the number of days in the billing cycle pursuant to Section 7 hereinbelow. The formula Lender will use to calculate the monthly payment under this option is expressed as follows: Monthly Payment = fixed principal reduction amount plus monthly interest expense.
- (4) **FLAT PAY.** Under this option, you agree to pay \$ \_\_\_\_\_ per month. The monthly payment under this option will be constant. Based upon changes in the underlying index and the number of days in the billing cycle as described in Section 7 hereinbelow, the monthly payment may include some or all of the interest expense. In the event the payment exceeds the interest for that particular month, any such excess will be credited towards principal. The calculation Lender will use to calculate the application of a monthly payment under this option between interest and principal is expressed as follows: Monthly FLAT PAY amount minus monthly interest expense = Principal Reduction or "Deferred Interest" (as defined below). If this calculation results in a positive number, the principal amount will be reduced by said amount and posted as a principal reduction. If this calculation results in a negative number, the principal amount will be increased and posted as "Deferred Interest."





b) If, at any time, you have exceeded the Credit Limit set forth in Section 4 herein below (the "Credit Limit"), whether by accepting additional advances or by the accrual of interest due but deferred hereunder on the principal balance of any advances made hereunder, or otherwise, all payments theretofore deferred shall thereupon become immediately due and payable in full, including but not necessarily limited to, any and all costs and expenses of collection and all outstanding principal and interest due hereunder. Unless Lender should agree otherwise in a writing signed by the Lender, in Lender's sole and absolute discretion, Borrower's failure to make such immediate payment in full shall constitute an Event of Default under Section 21. hereinbelow whereupon the Lender shall have all the rights and remedies described in Section 22 and 25(e) herein below and as may additionally be provided in this Agreement. Borrower agrees that the parties' intent is that Lender shall have, and hereby does have, any and all legal and equitable remedies available to Lender in the case of an Event of Default.

In addition, if at any time for any reason the amounts due hereunder should exceed the Credit Limit, and notwithstanding any other provisions contained in this Agreement, that portion of the amounts then due that exceed the Credit Limit will thereupon be charged a penalty rate of interest on that excess equal to ten percent (10%) per annum.

c) You expressly acknowledge and agree that:

- i) an Advance, and any additional Advance(s), may be renewed/extended at your election, but if so elected, for a term of Three Hundred Sixty-Four (364) days; and
- ii) pursuant to Section 18. hereinbelow, Lender's Managing Member may, in its sole and absolute discretion, convert the credit facility to a twenty-five (25) year fully amortized payment schedule; and
- iii) you may select another Repayment Option annually, subject to Lender's approval, which approval will not be unreasonably withheld or delayed.

d) You acknowledge and agree that Lender shall have the unfettered right to aggregate and securitize its loans in any particular repayment option category described in Section 2(a) above from time to time and at any time, in Lender's sole and absolute discretion.

#### **NOTICE: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE**

#### **4. INDEX**

The Index used to determine a portion of the Periodic FINANCE CHARGE Rate (described below) for your account is Federal Funds Rate as announced from time to time in the east coast edition of the Wall Street Journal, The INDEX may and will change periodically and is set by the Federal Reserve.

**BORROWER BE ADVISED:** The Federal Funds Rate is a crucial component of your FINANCE CHARGE and it is possible that the FINANCE CHARGE rate may increase at any time and by any amount.

#### **5. MARGIN RATE**

The Margin Rate ("Margin") is the interest rate charge determined by the Lender at the time of this agreement. Your Margin is zero basis points, set as an annual rate. BORROWER expressly understands and agrees that LENDER has the unfettered right, no sooner than six (6) months following the Effective Date and no more frequently than every calendar quarter thereafter, to adjust the Margin rate (up or down) in the Lender's sole and absolute discretion. The Margin rate will not increase more than 100 basis points in any twelve (12) month period. Lender's right hereunder to adjust the Margin rate is wholly independent of any increases to the FINANCE CHARGE on account of any increase(s) to the Federal Funds Rate. As and when such increases to the Federal Funds Rate should occur, any such increases will thereupon immediately be passed on to the BORROWER and become a revised component of the FINANCE CHARGE.







### 6. PERIODIC FINANCE CHARGE

Subject to the limits as may be described in Section 10 below, Lender will determine the PERIODIC FINANCE CHARGE Rate for each day in the billing cycle by first adding the Margin to the Index then in effect. Lender will then divide this sum by 365 (or 366 for billing cycles beginning in a leap year) to get the Daily Periodic FINANCE CHARGE Rate applicable.

- a) Your Index is 0 basis points (Federal Funds Rate). Based on the Fed Funds rate in effect on N/A.
- b) Your Margin is 0 basis points.
- c) Your initial ANNUAL PERCENTAGE RATE (INDEX plus the MARGIN) is 0 %

The PERIODIC FINANCE CHARGE rate is based on the ANNUAL PERCENTAGE RATE. The ANNUAL PERCENTAGE RATE will and may change due to:

- i) Changes in the Federal Funds Rate, which sets the Index value; and/or
- ii) Margin limit due to the application of the ANNUAL PERCENTAGE RATE requirement set forth in Section 10 below. The ANNUAL PERCENTAGE RATE does not include any charges other than interest.
- iii) Subject to the limit described in Section 10 below, the Periodic FINANCE CHARGE Rate will change in accordance with the Index in effect from time to time. The Periodic FINANCE CHARGE Rate will change on the day the Index changes. Increases in the Index will result in increases in the Periodic FINANCE CHARGE Rate and your minimum monthly payment. As and when the Index decreases, there will be corresponding decreases to the Periodic FINANCE CHARGE and your minimum monthly payment. To determine the Periodic FINANCE CHARGE for each day in the billing cycle, Lender will multiply the applicable Daily Periodic FINANCE CHARGE Rate then in effect by the Daily Balance described in Section 11 below for that billing cycle. The Periodic FINANCE CHARGE will begin to accrue the date the Lender honors a request for Advance or otherwise charges your Account pursuant to this Agreement, which, for purpose of this Agreement, shall be the day that either funds are wired or the date a check is issued to the Borrower.

### 7. LIMITS

Your Account is subject to a limit on the ANNUAL PERCENTAGE RATE. (Comprised of the Index plus Margin). Your ANNUAL PERCENTAGE RATE as determined by the Index and Margin shall never be less than 100 basis points. Please note that the Lender is unable to set an absolute upper limit because the FINANCE CHARGE includes the Index (Federal Funds Rate).

Borrower acknowledges and agrees that the Company's Managing Member may, in its sole and absolute discretion, elect to raise or lower the Margin at intervals no more frequently than once per calendar quarter by providing written notice of same to Borrower within the final thirty (30) days of a calendar quarter, to go into effect at the first of the month of the then following calendar quarter. There is no limit to how low the Margin may be adjusted, but in no event will it be adjusted higher than what is legally permitted by state and federal guidelines.

### 8. CALCULATION OF DAILY BALANCE

To determine how much interest should be charged for a billing cycle, Lender figures your Daily Balance for each day in the billing cycle. The Daily Balance is figured by taking your beginning Account balance each day, adding any new Request for Advance honored and any other charges applied to your Account and subtracting any payments and credits received that day. This produces the Daily Balance. Special Note: Daily accruing Periodic FINANCE CHARGE, late charges and other fees will not be included in determining your Daily Balance.







**9. ADVANCES FROM YOUR ACCOUNT. You may borrow funds (obtain an "Advance") from your Account by:**

- a) Oral request to Lender directing Lender to make an Advance:
  - i) Any oral request for an advance may be made only if the funds are directed to Borrower's account with Lender.
  - ii) All such advances shall be conclusively presumed to have been made for the benefit of Borrower when the Lender believes in good faith that such requests and directions have been made by authorized persons or when said advances are deposited to a credit account of any Borrower.
- b) Executing and delivering to Lender written instructions directing Lender to make an Advance:
  - i) Directly to a Lender asset account in your name alone or together with third persons.
  - ii) By wire transfer to your order or the order of any third person.
  - iii) By issuing a disbursement check to you, payable to you or a third party.
- c) At the time your Account is opened, executing and delivering to Lender, written instructions directing Lender to make an Advance to third party creditors to pay off the outstanding balance on any loan or credit account in your name alone or together with third persons.
- d) Lender is under no obligation to honor a Request for Advance which is in violation of these provisions.
- e) Limitations on the use of loan proceeds.
  - i) Borrower acknowledges and agrees that such funds may only be used for the purposes specifically indicated and approved by Lender contained in Borrower's Application for the subject Credit Facility.
  - ii) The methods for obtaining Advances from your Account described above shall be referred to in this Agreement collectively as "Requests for Advances."
  - iii) Subject to any cancellation or suspension of your Account and any other limitations or restrictions set forth in this Agreement, Lender will honor a Request for Advance within 24 hours after Lender receives properly executed written instructions or oral requests directing Lender to make an Advance.
  - iv) If there is more than one authorized signer on your Account, you hereby authorize and direct Lender to honor, and release Lender from any liability arising directly or indirectly out of honoring, a Request for Advance executed or orally requested by anyone authorized signer acting alone. However, should a dispute arise amongst you as to the use of the Account, Lender, at its sole discretion, may require the signatures of all authorized signers on any Request for Advance from your Account.
  - v) Except for a Request for Advance made in accordance with Section 3(c), Lender is under no obligation to honor a Request for Advance for less than \$5,000.00.

**10. PROMISE TO PAY**

You promise to repay Lender, at the location Lender designates from time to time (a) all borrowings from your Account, whether or not the borrowings exceed your credit limit, (b) all interest and other charges, and (c) all collection costs, court costs, attorneys' fees and all other expenses Lender incurs in enforcing this Agreement.

**11. BILLING CYCLE**

The term "billing cycle" means the interval between the days or dates of the regular periodic statements (defined in Section 13 below) on your Account. Each billing cycle will correspond to an actual calendar month and contain the number of days in that corresponding calendar month. For example, your January billing cycle will contain 31 days.





## 12. MONTHLY PAYMENTS

Your Total Payment Due each month will be due not later than the Payment Due Date set forth in your regular periodic statement. The amount of your Total Payment Due will be calculated as follows:

- a) Your Total Payment Due will be equal to the amount of the Periodic FINANCE CHARGE which has accrued on your Balance during the previous billing cycle, plus all other amounts, including but not limited to any amount outstanding in excess of your credit limit and late payments or late charges then due but as yet unpaid. Depending upon the Repayment Option you selected in Section 2. hereinabove, your monthly payment may or may not reduce the principal that is outstanding on your Account.
- b) In the event that the Lender elects, pursuant to Section 2.(b) hereinabove, to convert your repayment obligation to a fully amortized loan, your Total Payment Due will be equal to the amount, calculated monthly by Lender, which would be sufficient to fully repay the balance on your Account, at the then current ANNUAL PERCENTAGE RATE in substantially equal installments over the remaining twenty-five (25) year term of your Account, plus all other amounts, including but not limited to late payments or late charges, then due but as yet unpaid. The Lender will apply each payment made with respect to your Account in the following order: (a) Periodic FINANCE CHARGES; (b) Late Charges; (c) Other Account Charges listed in Section 16 below, and any other charges charged to your account, and (d) the remaining principal balance.

## 13. REGULAR PERIODIC STATEMENT

You will receive a monthly statement of your Account. All Advances and other charges assessed in connection with your Account will be reflected on the monthly statement for the month during which the Advance is honored or fee or charge is charged to your Account. The regular periodic statement will also reflect the Total Payment Due.

## 14. PREPAYMENTS

You have the right, at any time, to prepay all or any part of the balance owing on your Account without penalty.

## 15. STOP PAYMENT ORDERS

You can ask Lender to stop payment on a Request for Advance if the corresponding Advance has not yet been paid from your Account. To stop payment, you must mail or telecopy us a writing signed by you requesting that a stop payment be placed on a particular Request for Advance. Oral stop payment orders will not be accepted.

To place a Stop Payment Order, Lender needs the following information:

- (1) Your account number;
- (2) the exact number and amount of the Request for Advance;
- (3) the name of the person who signed the Request for Advance;
- (4) the name of the party to whom the Request for Advance is payable; and
- (5) the reason for the Stop Payment Order.

Lender will charge your Account \$45 when the Stop Payment Order goes into effect. A Stop Payment Order will not go into effect until Lender verifies that the Request for Advance identified is unpaid. Your Stop Payment Order will expire six months from its date, unless you renew it. You may write Lender to cancel a Stop Payment Order at any time. A Stop Payment Order is canceled automatically when your Account is closed.

- a) So long as your Account remains open, on the anniversary of the date on which your Account is opened, and on the anniversary of such date every year thereafter Lender has the right to charge you a non-refundable, non-proratable Annual Account Fee of \$75.00. If such annual fee is assessed in any given year, such Annual Fee will be billed in the next regular periodic statement and added to the minimum monthly payment due.
- b) A \$25.00 returned check fee charge will be posted to your Account if a check or other instrument given to Lender to fully or partially repay your Account balance is not honored by the financial institution upon which it is written.







- c) An over the limit fee of \$25.00 will be posted to your Account if a Request for Advance is presented for payment against your Account and you do not have sufficient available credit to cover the Advance and Lender refuses to honor the Request for Advance.
- d) A fee of \$10.00 will be posted to your Account whenever you request Lender to stop payment on a Request for Advance.
- e) A fee of \$25.00 will be posted to your Account whenever you request Lender to pay an Advance by wire transfer or disbursement check.
- f) Your Account will be charged a fee of \$25.00 per hour plus photocopy fees of \$5.00 per page whenever you request research or reconciliation services regarding your Account and/or photocopies of statements for purposes other than a billing error inquiry.
- g) If you fail to pay the Total Payment Due on or before the tenth day following your Payment Due Date, you will be charged a late charge equal to the greater of six percent of the portion of your Total Payment Due during the last billing cycle or \$5.00, whichever is greater.

## 16. YOUR OBLIGATIONS ARE UNSECURED

Your obligations under this Agreement are unsecured. Notwithstanding the foregoing sentence, you understand and agree that your obligations hereunder are at all times subject to the Lender's Managing Member's election, in its sole and absolute discretion, to take the actions described and set forth in Section 2 hereinabove.

## 17. SUSPENSION OF YOUR ACCOUNT AND REDUCTION OF YOUR CREDIT LIMIT

- a) Lender reserves the right, in its sole and absolute discretion, to dishonor your Requests for Advances or reduce the Credit Limit on your Account if:
  - i) Lender reasonably believes you will not be able to meet your payment obligations on the Account due to a material change in your financial circumstances.
  - ii) You are in default of a material obligation contained in this Agreement.
  - iii) Any form of government action prevents Lender from imposing the ANNUAL PERCENTAGE RATE calculated in accordance with the terms of this Agreement.
  - iv) A government regulatory agency has notified Lender that continuing to honor Requests for Advances would constitute an unsafe and unsound practice.
  - v) The maximum ANNUAL PERCENTAGE RATE that can be assessed in connection with your Account is reached.
- b) If Lender dishonors your Requests for Advances or reduces your credit limit in accordance with this Section 18, Lender will mail you a written notice not later than three business days after such action is taken. Lender will not be obligated to honor your Requests for Advances or reinstate your Credit Limit unless:
  - i) You notify Lender in writing that the basis upon which Lender elected to dishonor your Requests for Advances or reduce your Credit Limit has ceased to exist; and
  - ii) Lender independently verifies that the condition has in fact ceased to exist.
  - iii) Any form of government action prevents Lender from imposing the ANNUAL PERCENTAGE RATE calculated in accordance with the terms of this Agreement.
  - iv) A government regulatory agency has notified Lender that continuing to honor Requests for Advances would constitute an unsafe and unsound practice.

Lender will begin honoring your Requests for Advances and/or reinstate your Credit Limit as soon as reasonably possible after the conditions set forth in this Section 18(b) have been satisfied.





## 18. CHANGES IN THE TERMS OF YOUR ACCOUNT

After your Account is opened, Lender may:

- a) Change the Index and Margin if the Index becomes unavailable, as long as historical fluctuations in the two indices are substantially similar and as long as the new index and margin will produce a rate similar to the rate in effect at the time the original Index became unavailable.
- b) Change, eliminate and/or add a term or condition of or to this Agreement provided you have expressly agreed to the amendments in writing.
- c) Without your consent, change, eliminate or add any terms or conditions of or to this Agreement, which amendment will be unequivocally beneficial to you or constitute an insignificant change in terms.

## 19. CREDIT INFORMATION AND FINANCIAL STATEMENTS

You agree to provide to Lender upon Lender's reasonable request your current financial statement. Further, by maintaining this Account, you are authorizing Lender to release information to other persons such as credit bureaus, merchants and other financial institutions, about you and your Account, to obtain additional credit reports from time to time, and to request beneficiary statements from senior lienholders, if any.

## 20. EVENTS OF DEFAULT

Lender may, without notice to you, declare your Account to be in default if any of the following conditions exist:

- a) You fail to make required payments under the terms of this Agreement.
- b) You engage in fraud or misrepresentation in connection with your Account or this Agreement.
- c) You use any funds provided by Lender for any purpose other than as represented by you in your Application submitted to Lender to obtain the Credit Facility and that was approved by Lender based on the information submitted in said Application.

## 21. LENDER'S RIGHTS IN THE EVENT OF DEFAULT

Lender may, without notice to you, declare your Account to be in default if any of the following conditions exist:

- a) Upon Lender's notification to you that your Account is in default, Lender may immediately (a) refuse to honor any further Requests for Advances, (b) increase the Margin by two and one half (2.5) percentage points, (c) declare immediately due and payable the entire balance of your Account, and (d) exercise all of the rights or remedies provided under this Agreement and applicable law. After notification of default by Lender and any resulting increase in the Margin on your Account, and acceleration of the remaining balance on your Account, you shall have no further right to request disbursements under your Account. In the event Lender notifies you of a default and exercises any of the remedies set forth in this paragraph, and you exercise the rights provided to you under this Agreement, if any, to reinstate your Account, your Account shall be reinstated and the Margin will be reduced to the Margin in effect prior to Lender notifying you of a default.
- b) In addition to the foregoing, and without in any way limiting the foregoing, if the box in Section 26 hereinbelow is checked and the Borrower (or any of them if there is more than one Borrower) and Guarantor have initialed where indicated therein, the Guarantor shall be bound to all the provisions of the Guarantor Addendum attached hereto and by this reference made a part hereof.







## 22. TAX DEDUCTIBILITY

You should consult a tax advisor regarding the deductibility of interest and charges for your Account.

## 23. TERMINATION OF ACCOUNT AT YOUR ELECTION

You may terminate your Account at any time by providing written notice to Lender, whereupon you may:

- a) If not already done so, request Lender to convert your Account to a fully amortized twenty-five (25) year repayment obligation. If Lender grants this request, payment will be calculated in accordance with Section 12(b) of this Agreement; or
- b) Close your Account by immediately paying the total outstanding principal and interest balance on your Account.

If Lender does not grant your request pursuant to Section 24.(a) above, the total outstanding balance on your Account will be immediately due and payable.

## 24. MISCELLANEOUS PROVISIONS

You may terminate your Account at any time by providing written notice to Lender, whereupon you may:

- a) Lender may delay in enforcing any of its rights under this Agreement, but such a delay shall not constitute a waiver of Lender's right to enforce those rights in the future.
- b) If more than one person has signed this Agreement, then your liability shall be joint and several which means that each of you will be separately liable for the entire amount owing on your Account.
- c) Your Account and this Agreement will be governed by the laws of the State of Florida or \_\_\_\_\_, in Lender's sole and absolute discretion.
- d) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- e) Borrower agrees to pay all costs, including costs of collection, expenses, and attorneys' fees incurred in collecting any sum due under this Agreement, whether or not suit is filed, and including any proceedings in bankruptcy. Any proceeds from any such action(s) shall be applied first to any and all costs of collection, then to any due and unpaid interest outstanding, then to the principal amount of any and all Advances.
- f) The terms and provisions of this Agreement cannot be waived, altered, modified, amended or terminated except as the Lender may consent thereto in writing duly signed by Lender. Any action to enforce the terms contained herein shall be filed in the state courts of Florida in the County of Sarasota or the United States District Court for the Middle District of Florida in Tampa, and Borrower hereby agrees and consents to subject himself/herself to the jurisdiction of said courts, and further agrees to be bound by any judgment rendered therein.
- g) Borrower shall not, in any manner, directly or indirectly, assign its obligations hereunder to any other person or entity. Any attempt to do so shall render all sums due or to become due under this Agreement to be immediately due and payable in full. Lender shall be permitted to assign its rights under this Agreement to any person or entity it may choose, at any time it may choose, whereupon all obligations of Borrower hereunder will be due directly to such assignee in accordance with the terms and conditions of this Agreement.
- h) All agreements between the Borrower(s) and the Lender as set forth in this Agreement are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid or agreed to be paid to the Lender for the use, forbearance, or detention of the monies advanced to Borrower exceed the maximum permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision hereof, at the time such performance shall be due, shall be prohibited by law, the obligation to be fulfilled shall be reduced to the maximum not so prohibited, and if from any circumstance the Lender should ever receive as interest hereunder an amount which would exceed the highest lawful rate, such amount as would be excessive interest shall be applied to the reduction of the principal of then outstanding Advances under this Agreement and not to the payment of interest. This provision shall control every other provision of all agreements in this Agreement between the Borrower(s) and the Lender.
- i) If any one or more of the provisions of this Agreement shall, for any reason, be held or found by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable under the Employee Retirement Income Security Act of 1974 ("ERISA") or in any other material respect, (i) that invalidity, illegality or unenforceability will not affect any other provisions of this Agreement and (ii) this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been





contained herein, provided, however that if the invalidity of any part or provision of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, Lender shall, in good-faith, develop a structure, the economic effect of which is as close as possible to the economic effect of this Agreement, without regard to such invalidity.

j) Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and personally delivered or sent by overnight courier, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent by overnight courier, charges prepaid, addressed as follows: if to the Lender, at the address set forth in Section 1 of this Agreement, or to such other address as the Lender may from time to time specify by notice to the Borrower(s); if to a Borrower, to such Borrower at the address set forth beneath such Borrower's signature below or as such Borrower may from time to time specify by notice to the Lender in accordance with this Section 25. (i). Any such notice shall be deemed to be delivered, given and received as of the date so delivered.

25. GUARANTOR

If the box below is checked and Borrower and Guarantor (or any Borrower if there is more than one signatory to this Agreement) have initialed where indicated below, all of the Borrower's obligations set forth in this Agreement are guaranteed in accordance with the terms and provisions contained in the Guarantor Addendum attached hereto and by this reference made a part hereof.

A. BORROWER'S INITIALS: \_\_\_\_\_ B. GUARANTOR'S INITIALS: \_\_\_\_\_

26. BY SIGNING THIS AGREEMENT YOU AGREE TO BE BOUND TO ALL OF THE TERMS OF THIS AGREEMENT AND THE ADDENDA HERETO AS APPLICABLE AND YOU ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS AGREEMENT WITH APPLICABLE ADDENDA.

EXECUTED ON THE DATE OPPOSITE THE NAMES AND SIGNATURES BELOW:

BORROWER(S):  INDIVIDUAL  TRUST  LLC  PARTNERSHIP  CORPORATION  OTHER

ENTITY NAME (IF APPLICABLE) LF42, LLC

SIGNATURE  PRINTED NAME MICHAEL WILLIAMS DATE 04/15/2019

ADDRESS 1800 2ND STREET, SUITE 855 CITY SARASOTA STATE FL ZIP 34236

FAX \_\_\_\_\_ EMAIL M.WILLIAMS@KINETICBANK.COM HOME PHONE \_\_\_\_\_

BUSINESS PHONE 941-870-9544 CELL PHONE 415-559-7792

BORROWER(S):

SIGNATURE \_\_\_\_\_ PRINTED NAME \_\_\_\_\_ DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

FAX \_\_\_\_\_ EMAIL \_\_\_\_\_ HOME PHONE \_\_\_\_\_

BUSINESS PHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_







## YOUR BILLING RIGHTS—KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and Lender's responsibilities under the Fair Credit Billing Act.

**Notify Lender In Case Of Errors Or Questions About Your Bill.** If you think your bill is wrong, or if you need more information about a transaction on your bill, write Lender at the address listed on your bill. Write to Lender as soon as possible. Lender must hear from you no later than sixty (60) days after Lender sent you the first bill in which the error or problem appeared. You can telephone Lender, but doing so will not preserve your rights.

In your letter, give Lender the following information:

- i) Your name and account number.
- ii) The dollar amount of the suspected error.
- iii) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the items you are not sure about. If you have authorized Lender to pay your bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach Lender three (3) business days before the automatic payment is scheduled to occur.

**Your Rights And Lender's Responsibilities After Receipt Of Your Written Notice.** Lender must acknowledge your letter within thirty (30) days, unless Lender has corrected the error by then. Within ninety (90) days, Lender must either correct the error or explain why Lender believes the bill was correct.

After Lender receives your letter, Lender cannot try to collect any amount you question, or report you as delinquent. Lender can continue to bill you for the amount you question, including finance charges, and Lender can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while Lender is investigating, but you are still obligated to pay the parts of your bill that are not in question.

If Lender finds that Lender made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If Lender didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, Lender will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that Lender thinks you owe, Lender may report you as delinquent. However, if Lender's explanation does not satisfy you and you write to Lender within ten (10) days telling Lender that you still refuse to pay, Lender must tell anyone Lender reports you to that you have a question about your bill. And, Lender must tell you the name of anyone Lender reported you to. Lender must tell anyone Lender reports you to that the matter has been settled when it finally is.

If Lender doesn't follow these rules, Lender can't collect the first \$50.00 of the questioned amount, even if your bill is correct.





## YOUR BILLING RIGHTS—KEEP THIS NOTICE FOR FUTURE USE

If the box in Section 26 of the Agreement to which this Guarantor Addendum is appended is checked and the Borrower's (or any one of them if there is more than one) and the Guarantor's initials appear there, the following provisions are hereby incorporated into the Agreement and by this reference made a part thereof. Capitalized terms used herein have the meanings ascribed to them as set forth in the Agreement.

As a material inducement for Lender to fund an Advance or Advances, as the case may be, repayment of the Loan and all sums due hereunder and all sums which may become due hereunder (the "Guaranteed Obligations") will be personally guaranteed by the undersigned individual (the "Guarantor") and the Guarantor hereby agrees to personally guarantee all of the Guaranteed Obligations.

- a) Anything to the contrary herein notwithstanding, the liability of the Guarantor shall be direct and immediate as a primary and not a secondary obligation or liability, and is not conditioned or contingent upon the pursuit of any remedies against Borrower or any other person. Guarantor unconditionally waives any right which he/she may have to require that Lender first proceed against Borrower or any other person or entity with respect to the Guaranteed Obligations.
- b) Guarantor's obligations hereunder are an irrevocable, absolute, continuing agreement of payment and performance and not a guaranty of collection. Guarantor's obligations hereunder may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after Guarantor's death (in which event the Agreement and this Guarantor Addendum shall be binding upon such Guarantor's estate and Guarantor's legal representatives and heirs). The fact that at any time or from time to time the Guaranteed Obligations may be increased or reduced shall not release or discharge the obligations of Guarantor to Lender with respect to the Guaranteed Obligations. Guarantor's obligations hereunder may be enforced by Lender and any subsequent holder of this Promissory Note and shall not be discharged by the assignment or negotiation of all or part of this Promissory Note.
- c) If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at demand, maturity, acceleration or otherwise, Guarantor shall, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Guaranteed Obligations to Lender at Lender's address as set forth in the Agreement. Such demand(s) may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Obligations and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions of the Agreement.
- d) Guarantor hereby unconditionally agrees to waive and agrees not to assert or take advantage of any defense based upon:
  - i) The incapacity, lack of authority, death or disability of any Borrower, or any other person or entity;
  - ii) The failure of Lender to commence an action against Borrower at any time or to pursue any other remedy whatsoever at anytime;
  - iii) Any duty on the part of Lender to disclose to Guarantor any facts it may now or hereafter know regarding Borrower regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor, Guarantor acknowledging that it is fully responsible for being and keeping informed of the financial condition and affairs of Borrower;
  - iv) Lack of notice of default, demand of performance or notice of acceleration to Borrower or any other party with respect to the Loan or the Guaranteed Obligations;
  - v) The consideration for this Agreement; any acts or omissions of Lender which vary, increase or decrease the risk on any Guarantor; any statute of limitations affecting the liability of any Guarantor hereunder, the liability of Borrower or any Guarantor hereunder, or the enforcement hereof, to the extent permitted by law;
  - vi) The application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender or Guarantor;
  - vii) An election of remedies by Lender, whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Guarantor or the rights of Guarantor to proceed against Borrower by way of subrogation or for reimbursement or contribution, or all such rights;
  - viii) Any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a Guarantor; and
  - ix) Any other suretyship defense that might, but for the terms hereof, be available to Guarantor.







**GUARANTOR:**

SIGNATURE \_\_\_\_\_ PRINTED NAME \_\_\_\_\_ DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

FAX \_\_\_\_\_ EMAIL \_\_\_\_\_ HOME PHONE \_\_\_\_\_

BUSINESS PHONE \_\_\_\_\_ CELL PHONE \_\_\_\_\_



**THE PAYMENT OF PRINCIPAL OF AND INTEREST ON THIS NOTE IS SUBJECT TO PROVISIONS SET FORTH IN AN AGREEMENT OF SALE AND PURCHASE DATED January 11, 2019 (THE "AGREEMENT") AMONG THE ISSUER OF THIS NOTE, AND THE PERSON TO WHOM THIS NOTE WAS ORIGINALLY ISSUED. THIS NOTE WAS ORIGINALLY ISSUED ON January 11, 2019, AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.**

**NON-NEGOTIABLE PROMISSORY NOTE**

**\$2,000,000**

**Issued: April 15, 2019**

**FOR VALUE RECEIVED, ISX, LLC, a Puerto Rico limited liability company ("Maker"), promises to pay to LF42, LLC ("Payee"), in lawful money of the United States of America, the principal sum of two million dollars (\$ 2,000,000), together with interest in arrears on the unpaid principal balance hereof, such interest to commence to accrue on the second anniversary of the date of issue of this Note, at a rate equal to two percent (2%) per annum over current Fed Funds rate, payable in the manner provided below. Interest shall be calculated without compounding on the basis of a year of 365 or 366 days, as applicable, and charged for the actual number of days elapsed.**

**SECTION 1. PAYMENTS**

1. **Principal and Interest.** The principal amount of this Note and the interest thereon shall be due and payable, subject to reduction and postponement as provided in the Agreement, in twelve (12) equal consecutive quarterly installments pursuant to the outstanding balance, commencing on January 1<sup>st</sup>, 2020, and on April 1, July 1, and October 1 of each year thereafter until paid in full.

2. **Manner of Payment.** All payments of principal and interest on this Note shall be made by check mailed to such address as Payee shall designate to Maker in writing. If any payment of principal and interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall not be taken into account in calculating the amount of interest payable under this Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the Commonwealth of Puerto Rico.

3. **Prepayment.** Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Any partial prepayments shall be applied to installments of principal in order of their maturity.

4. **Restrictions on Transfer.** This Note is non-transferable.

## SECTION 2. DEFAULTS

1. Events of Default. The occurrence of any one or more of the following events with respect to Maker shall constitute an event of default hereunder ("Event of Default"):

a) If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for ten (10) days after Payee notifies Maker thereof in writing.

b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; or (iv) make an assignment for the benefit of its creditors.

c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker's properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

2. Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured or waived by Payee), Payee may, at its option, (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Payee in connection with Payee's exercise of any or all of its rights and remedies under this Note, including reasonable attorney fees and expenses.

## SECTION 3. MISCELLANEOUS

1. Waiver. The rights and remedies of Payee under this Note shall be cumulative and not alternative. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by Payee will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by Payee will be applicable except in the specific instance for which it is given, and (b) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Payee to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest and notice of dishonor and protest.

2. Notices. Any notice required or permitted to be given hereunder shall be given in accordance with Section 12.1 of the Agreement.



3. Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.


4. Governing Law. This Note will be governed by the laws of the Commonwealth of Puerto Rico without regard to conflicts of laws principles.

5. Assignment. This Note shall bind Maker and its successors and assigns. This Note shall not be assigned or transferred by Payee without the express prior written consent of Maker.


6. Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Note unless otherwise specified. All words used in this Note will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "hereof" and "hereunder" and similar references refer to this Note in its entirety and not to any specific section or subsection hereof.

**IN WITNESS WHEREOF**, Maker has executed and delivered this Note as of the date first stated above.

ISX, LLC

By:   
Name: Michael Williams  
Title: Administrator

On April 15, 2019, before me, Keli L. Pufahl, Notary Public, personally appeared Michael S. Williams, who is personally known to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument in Sarasota, Florida.

WITNESS my hand and official seal: 





# Delaware

PAGE 1

*The First State*


I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "LF42, LLC", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF APRIL, A.D. 2012, AT 9:10 O'CLOCK A.M.

5142105 8100

120447235

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9517430

DATE: 04-20-12

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 09:52 AM 04/19/2012  
FILED 09:10 AM 04/19/2012  
SRV 120447235 - 5142105 FILE

**State of Delaware**  
**Limited Liability Company**  
**Certificate of Formation**

**FIRST:** The name of the Limited Liability Company is **LF42, LLC**.

**SECOND:** The address of its registered office in the State of Delaware is 615 S. DuPont Highway, Dover, DE 19901, in the County of Kent. The name of its Registered Agent at such address is NATIONAL CORPORATE RESEARCH, LTD.

**THIRD:** The members agree to be bound by the signed operating agreement except as it may be contradicted by the General Corporation Laws of the State of Delaware.

**In Witness Whereof**, the undersigned has executed this Certificate of Formation of **LF42, LLC** this 18<sup>th</sup> day of April, 2012.

  
\_\_\_\_\_  
Authorized Person—Phillip E. Handin, Esq.

*Sent to Laura Plum 2/3/15*

Cincinnati Service Center  
CINCINNATI OH 45999-0046

In reply refer to: 0223653563  
Feb. 04, 2015 LTR 385C 0  
45-5270195 000000 00

00003790  
BODC: SB

LF42  
MICHAEL WILLIAMS MBR  
1800 2ND ST STE 955  
SARASOTA FL 34236

Employer identification number: 45-5270195  
17316-36112-500-4

Dear Taxpayer:

Thank you for your Form 2553 and Form 1120S for the period ending Dec.31, 2013.

We accepted your election to be treated as an S corporation with an accounting period ending Dec. 31, 2015, as of Jan. 01, 2015. Please keep this letter in your permanent records as proof of acceptance of your election. If we examine your return, we will verify this election is appropriate for your situation.

Because you didn't file your election on time, we changed the effective date to the earliest date for which it qualifies. If you believe you filed on time, send us a copy of the election with the IRS date-of-receipt stamp. If the copy doesn't have an IRS receipt stamp, your verification can be a copy of your Notice of Acceptance or a certified mail receipt.

You don't qualify for relief under any revenue procedure; therefore you can apply for a Private Letter Ruling (PLR). The procedural requirements for requesting a PLR are described in Internal Revenue Bulletin 2014-1 (or its successor). You can find more information about requesting a PLR on our website at [www.irs.gov](http://www.irs.gov), search term, "late election relief."

We can't accept your Form 1120S for 2013 as filed and will not process it. Your account may reflect incomplete or incorrect information.

We'd also like to take this opportunity to remind you of your tax obligations for the payment of compensation to shareholder-employees of S corporations.

When a shareholder-employee of an S corporation provides services to the S corporation, the S corporation must reasonably compensate the shareholder-employee. This compensation is subject to employment taxes.

The IRS may re-characterize distributions as salary. This position has been supported by Revenue Ruling 74-44 and in numerous court decisions.

16852

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Feb. 04, 2015 LTR 385C 0  
45-5270195 000000 00  
00003791

LF42  
MICHAEL WILLIAMS MBR  
1800 2ND ST STE 955  
SARASOTA FL 34236

S corporation shareholders must also know their stock and debt basis. The S corporation should notify each individual of the basis in his/her S corporation stock and debt when:

- The entity allocates a loss and/or deduction item to the individual
- The entity makes a (non-dividend) distribution to the individual
- The entity makes a loan repayment to the shareholder
- The individual disposes of his/her interest in the entity

For more information, see the instructions for Form 1120S, Schedule K-1.

You can get any of the forms or publications mentioned in this letter by calling 1-800-TAX-FORM (1-800-829-3676) or visiting our website at [www.irs.gov/formspubs](http://www.irs.gov/formspubs).

If you have questions, call Entity Team 306 at 859-669-5122 between 3:30 p.m. and 1:00 a.m. EST.

If you prefer, you can write to us at the address at the top of the first page of this letter.

When you write, include a copy of this letter and provide in the spaces below the contact name and telephone number with the hours we can reach him or her in case we need more information.

Telephone Number ( ) \_\_\_\_\_ Hours \_\_\_\_\_

Keep a copy of this letter for your records.

Thank you for your cooperation.



0223653563  
Feb. 04, 2015 LTR 385C 0  
45-5270195 000000 00  
00003792

LF42  
MICHAEL WILLIAMS MBR  
1800 2ND ST STE 955  
SARASOTA FL 34236



16852

Sincerely yours,

A handwritten signature in cursive script that reads "David Brian Stahley".

David Brian Stahley, Sr. Op. Mgr.  
Document Perfection Operation

Enclosures:  
Copy of this letter  
Envelope

DISTRIBUTION AGREEMENT AND MUTUAL RELEASE

This Distribution Agreement and Mutual Release is made this 3<sup>rd</sup> day of March, 2020 by and between Michael S. Williams (“Williams”) and Obsidian Technologies, LLC, f/k/a Silexx Financial Systems, LLC (“Silexx”).

Background

A. Michael S. Williams owns, directly or through LF42, LLC (“LF42”), a 40% equity interest in Silexx.

B. In 2017, Silexx sold substantially all of its assets to the Chicago Board of Exchange (“CBOE”), and distributed the net proceeds of such sale received at closing to its members on a pro rata basis in accordance with the Operating Agreement of Silexx.

C. A portion of the purchase price payable for the assets was structured as an earn-out, the conditions of which were recently satisfied. CBOE paid the earn-out payment to Silexx, and Silexx desires to distribute such amounts to its members on a pro rata basis.

D. Silexx understands that Greenberg Traurig (“Greenberg”) represents Williams and certain of his affiliated entities in connection with certain securities regulatory matters (“Regulatory Matters”).

Agreement

NOW, THEREFORE, in consideration of the promises of the parties herein, Williams and Silexx agree as follows:

1. At the direction of Williams, Silexx shall wire to Greenberg, for the benefit of Williams, LF42 and any other affiliate of Williams that may claim an ownership interest in Silexx, the amount of \$3,414,964 (“Sale Distribution”). Williams agrees, for himself and his affiliates, that the payment of the Sale Distribution to Greenberg shall satisfy any obligation to distribute the Sale Distribution to Williams or any affiliate of Williams.

2. Williams represents to Silexx that there are no court orders, regulatory rulings or other applicable authorities that prohibit the payment of the Sale Distribution as described herein.

3. Silexx represents to Williams that it withheld certain funds from the distribution of sales proceeds to the members that Silexx will use to pay expenses of winding down its business and pay any expenses incurred in connection with the Regulatory Matters. As a result, depending on the amount of such expenses, Silexx may make a final distribution to Williams of not more than \$50,000 at a future date (“Final Distribution”).

4. Williams, personally and on behalf of LF42 and all other Williams affiliates (“Williams Releasors”) hereby releases and forever discharges Silexx, and its officers and directors (“Silexx Releasees”), from and against any and all claims and demands any Williams Releasor

had, has or may have against any Silexx Releasee in connection with, or arising out of, the operation and sale of Silexx, including the distribution of proceeds from the sale of Silexx: except that the foregoing release shall not apply to the covenants and representations of Silexx in this agreement .

5. Silexx hereby releases and forever discharges Williams, LF42 and all other Williams affiliates ("Williams Releasees") from and against any and all claims and demands Silexx had, has or may have against any Williams Releasee in connection with, or arising out of, the operation and sale of Silexx: except that the foregoing release shall not apply to the covenants and representations of any Williams Releasee in this agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.



Michael S. Williams, individually and on behalf of LF42, LLC and all other affiliates

OBSIDIAN TECHNOLOGIES, LLC F/K/A  
SILEXX FINANCIAL SYSTEMS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_