

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.)
_____)

**JOINT STIPULATION OF AGREED MATERIAL FACTS
FOR THE PURPOSE OF SUMMARY JUDGMENT**

Pursuant to the Court’s Case Management and Scheduling Order [DE 88], Plaintiff Securities and Exchange Commission (“SEC” or “Commission”) and Defendant Michael Scott Williams (“Williams”) (collectively, the “Parties”), file this stipulation of agreed material facts for the purpose of summary judgment. This stipulation applies to the respective motions for summary judgment filed by the Commission [DE 200] and Williams [DE 202].

1. Kinetic Funds is a Delaware limited liability company. *See* the Commission’s Motion for Summary Judgment, Statement of Undisputed Material Facts ¶3, n. 14 (“SEC SF ¶___”).

2. Kinetic Funds filed a Form D with the Commission in October 2016 claiming an exemption under Rule 506(c) of the Securities Act for its pooled investment fund interests with a first sale date of October 2012. SEC SF ¶3, n. 16.

3. KIH is a Puerto Rico corporation formed by Williams as a purported Puerto Rico licensed international financial entity. SEC SF ¶7, n. 23.

4. Williams did not utilize a private placement memorandum to provide disclosures to potential investors. SEC SF ¶11, n. 32.

5. Exhibit C-1 contains this language: “All Funds may include a ‘Preferred Return’ investment. This investment is in a private sector funding company that offers fixed rate preferred interest returns” (“Preferred Return Provision”). SEC SF ¶12, n. 36.

6. Exhibit C-1 does not identify the “preferred return investment” or the “private sector funding company.” SEC SF ¶13, n. 37.

7. Exhibit C-1 does not identify Williams as the majority owner of Lendacy. SEC SF ¶13, n. 38.

8. Exhibit C-1 does not disclose that Williams or his entities would receive purported loans from Lendacy. SEC SF ¶13, n. 39

9. Exhibit B-1 omits the Preferred Return Provision. SEC SF ¶14, n. 41.
10. Williams told investors that their money would be invested in income-producing U.S. listed financial products. SEC SF ¶22, n. 58.
11. Exhibits B-1 and C-1 to the Operating Agreement likewise state that Kinetic Funds “will trade derivatives, but may also be invested in individual stocks, components of the indices, cash, and other exchange listed products” SEC SF ¶22, n. 59.
12. Lendacy is not a U.S. listed financial product. SEC SF ¶23, n. 62.
13. Williams advised investors that KFYield was a conservative blended fund, and that their principal would be secure because the KFYield portfolio would be hedged with listed options. SEC SF ¶24, n. 65.
14. Written marketing materials state that Kinetic Funds will “maintain 90% principle [sic] protection” and that “90% [of KFYield’s] portfolio [is] hedged using listed options against market volatility risk.” SEC SF ¶24, n. 66.
15. Written brochures claim: “Your money is always available The fund’s positions are hedged out to 90 days, so with a 30 day written notice prior to the quarter end, the fund can redeem 100% principal without penalties.” SEC SF ¶28, n. 75.
16. Williams had ultimate control over the contents of the account statements. SEC SF ¶30, n. 78.

17. The Bloomberg report as of December 29, 2017, the contents of which Williams had ultimate authority over, reflects that Kinetic Funds' total assets were \$31.78 million and its year-to-date performance was 1.04%. SEC SF ¶31, n. 80-81.

18. Williams kept a portion of investor capital in the [Kinetic Funds' bank account at BMO Harris Bank N.A.] ("Bank Account") and transferred the remainder to Kinetic Funds' brokerage account at Interactive Brokers LLC ("IB") ("Brokerage Account"). SEC SF ¶38, n. 91.

19. Securities for KFYield were then purchased with a combination of investor capital and margin, *i.e.*, funds borrowed from its broker, IB. SEC SF ¶39, n. 92.

20. For example, if an investor provided \$1 million for investment in Kinetic Funds, \$1 million worth of securities would be purchased for that investor with a combination of cash and portfolio margin. SEC SF ¶39, n. 93.

21. Margin is a debt that carries interest. SEC SF ¶40, n. 94.

22. If the Brokerage Account fell below the minimum maintenance margin, then IB, at its sole discretion, could issue a margin call, *i.e.*, require Kinetic Funds to put more cash into the Brokerage Account, purchase more options, or liquidate some of its positions. SEC SF ¶40, n. 95-96.

23. Williams created the investment strategy for Kinetic Funds. SEC SF ¶42, n. 98.

24. At the time of the purported loan [in the amount of \$2,755,000 made in May 2018], Scipio had not invested any money in Kinetic Funds. SEC SF ¶47, n. 117.

25. Paragraph 32 of the Complaint [D.E. 1] states: “Once investors invested in KFYield, Williams then misappropriated KFYield funds for the benefit of himself and other business ventures.” See Williams’ Motion for Summary Judgment, Undisputed Material Facts ¶1.

April 12, 2021

Respectfully submitted,

By: /s/ Christine Nestor & Stephanie N. Moot

Christine Nestor

Senior Trial Counsel

Fla. Bar No. 597211

Direct Dial: (305) 982-6367

E-mail: nestorc@sec.gov

Stephanie N. Moot

Senior Trial Counsel

Fla. Bar No. 30377

Direct Dial: (305) 982-6313

E-mail: moots@sec.gov

Attorneys for Plaintiff

Securities and Exchange Commission

801 Brickell Avenue, Suite 1950

Miami, FL 33131

Facsimile: (305) 536-4154

By: /s/ Timothy W. Schulz

Timothy W. Schulz, Esq., FBN
073024

TIMOTHY W. SCHULZ, P.A.
224 Datura Street, Suite 815
West Palm Beach, Florida 33401
Telephone: (561) 659-1167
Facsimile: (561) 659-1168
Email: schulzt@twslegal.com
Email: e-service@twslegal.com
Co-Trial Counsel for Defendants

By: /s/ Jon A. Jacobson

Jon A. Jacobson, Esq., FBN 155748
JACOBSON LAW P.A.

224 Datura St., Suite 812
West Palm Beach, FL 33401
Telephone: (561) 880-8900
Facsimile: (561) 880-8910
Email: jjacobson@jlpa.com
Email: e-service@jlpa.com
Co-Trial Counsel for Defendants