UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KINETIC INVESTMENT GROUP, LLC et al.,

Defendants and Relief Defendants.

Defendant Williams' Response to Plaintiff's Motion for Summary Judgment

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Defendant MICHAEL SCOTT WILLIAMS ("Defendant"), submits this response to the *Motion for Summary Judgment* [D.E. 200] ("Motion") filed by Plaintiff SECURITIES AND EXCHANGE COMMISSION ("Plaintiff") and states as follows:

DISPUTED MATERIAL FACTS

In its Motion, Plaintiff lists 134 purportedly undisputed material facts.[1] As set forth below, the evidence presented by Plaintiff does *not* support 108 of those "facts," much less that there is an absence of a genuine dispute regarding them. In addition, record evidence also *contradicts* 61 of Plaintiff's "facts" and/or establishes there is a genuine dispute regarding them:

> **No. 2**: Plaintiff has *not* established Defendant is presently the managing member of Kinetic Investment Group, LLC ("KG") — and other evidence establishes Defendant is *not* presently KG's managing member.[2]
>
> **No. 3**: Plaintiff has *not* established Defendant is presently the managing member of Kinetic Funds I, LLC ("KF") — and other evidence establishes Defendant is *not* presently KF's managing member.[3]
>
> **No. 4**: Plaintiff has *not* established Defendant is presently the managing member of KCL Services, LLC d/b/a Lendacy ("Lendacy") — and other

[1] As Plaintiff's 134 material facts are each associated with a footnote (numbered 2 through 135) providing their support, they shall hereafter be identified and referred to by their associated footnote — *e.g.*, No. 2, No. 3, etc. For ease of reference, a table summarizing Plaintiff's material facts and the deficiencies discussed below is attached hereto as **Exhibit A**.

[2] Plaintiff's Exhibits 1-2 establish only that Defendant was KG's managing member on two dates in the past; however, other evidence establishes that Defendant is *not* presently KG's managing member. *See* Declaration of Michael Scott Williams dated April 12, 2021 at ¶¶ 5,7 attached here to **Exhibit B**; D.E. 34 at ¶ 2, 4-6; D.E. 200 at n.1.

[3] Plaintiff's Exhibits 1 and 3 establish only that Defendant was KF's managing member on two dates in the past; however, other evidence establishes that Defendant is *not* presently KF's managing member. *See* **Exhibit B** at ¶¶ 28, 34; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1.

evidence establishes Defendant is *not* presently Lendacy's managing member.[4]

No. 5: Plaintiff has *not* established Defendant is presently the managing member of LF42, LLC ("LF42") — and other evidence establishes Defendant is *not* presently LF42's managing member.[5]

No. 6: Plaintiff has *not* established Defendant is presently the president of Scipio, LLC ("Scipio") — and other evidence establishes Defendant is *not* presently Scipio's president.[6]

No. 7: Plaintiff has *not* established Defendant is presently the president of El Morro Financial Group, LLC ("El Morro") — and other evidence establishes Defendant is *not* presently El Morro's president.[7]

No. 8: Plaintiff has *not* established Defendant is presently a shareholder of KIH, Inc. f/k/a Kinetic International, LLC ("KIH") — and other evidence establishes Defendant is *not* presently a KIH shareholder.[8]

No. 9: Plaintiff has *not* established Defendant is presently the managing member of Kinetic Partners, LLC ("KP") or that KP is presently the managing member of KF — and other evidence establishes Defendant is *not* presently the managing member of KP and KP is *not* presently the managing member of KF.[9]

No. 10: Plaintiff has *not* established Defendant had an ownership interest in, control, and exercise ultimate authority over KG, KF, Lendacy,

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[4] Plaintiff's Exhibits 1 and 4-5 establish only that Defendant was Lendacy's managing member in the dates; however, other evidence establishes Defendant is *not* presently Lendacy's managing member. *See* **Exhibit B** at ¶¶ 19, 24; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1.

[5] Plaintiff's Exhibits 1 and 6 establish only that Defendant was LF42's managing member on two dates in the past; however, other evidence establishes that Defendant is *not* presently LF42's managing member. *See* **Exhibit B** at ¶¶ 14, 17; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1.

[6] Plaintiff's Exhibits 1 and 7 establish only that Defendant was Scipio's president on two dates in the past; however, other evidence establishes that Defendant is *not* presently Scipio's president. *See* **Exhibit B** at ¶¶ 41, 44; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1.

[7] Plaintiff's Exhibits 1 and 8 establish only that Defendant was El Morro's president on two dates in the past; however, other evidence establishes that Defendant is *not* presently El Morro's president. *See* **Exhibit B** at ¶¶ 46, 49; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1.

[8] Plaintiff's Exhibits 1 and 9 establish only that Defendant was a KIH shareholder on one date in the past; however, other evidence establishes that Defendant is *not* presently a KIH shareholder. *See* **Exhibit B** at ¶¶ 51-52; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1.

[9] Plaintiff's Exhibits 3 and 10 establish only that KP was a "Class A" member of KF and Defendant a manager or authorized member of KP on separate dates in the past; however, other evidence establishes that Defendant is *not* presently KP's managing member and KP is *not* presently KF's managing member. *See* **Exhibit B** at ¶¶ 10, 30, 36; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1.

LF42, Scipio, El Morro and KIH "at all relevant times" — and other evidence establishes that Defendant did *not*.[10]

No. 11: Plaintiff has *not* established that Defendant formed KG — and other evidence establishes KFG was formed by Defendant's *attorneys*.[11]

No. 12: Plaintiff has *not* established KF is a "private" pooled investment funds or that KG is presently manages KF — and other evidence establishes KG does *not* presently manage KF.[12]

No. 13: Plaintiff has *not* established KG presently charged KF a 1% management fee — and other evidence establishes KG does *not* presently charge KF a 1% management fee.[13]

No. 15: Plaintiff has *not* established Defendant formed and presently manages KF, which presently operates as a "private" pooled investment fund — and other evidence establishes that KF was formed by Defendant's *attorneys*, is *not* presently managed by Defendant, and does *not* presently operate as a private pooled investment fund.[14]

No. 17: Plaintiff has *not* established Defendant formed Lendacy, which is presently in the business of providing lines of credit to accredited investors — and other evidence establishes that Lendacy was formed by Defendant's *attorneys* and is presently *not* in any business.[15]

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[10] Plaintiff's Exhibits 1-12 establish only Defendant's title/role in and/or control over KG, KF, Lendacy, LF42, Scipio, El Morro and KIH on certain dates in the past; however, other evidence establishes that Defendant did *not* have an ownership interest in, control, and exercise ultimate authority over KG, KF, Lendacy, LF42, Scipio, El Morro and KIH "at all relevant times." *See* **Exhibit B** at ¶¶ 6, 16, 23, 35, 43, 48, 53.

[11] Plaintiff's Exhibits 12-13 establish only that Defendant's attorneys formed KG and Defendant filed KG's articles of organization; however, other evidence establishes that KG was formed by Defendant's *attorneys*. *See* **Exhibit B** at ¶ 4; Plaintiff's Exhibit 12 at 61:5-16.

[12] Plaintiff's Exhibits 12 and 14-16 establish only that KF is a "pooled investment fund" (*not* that it is private) and KG managed KF on three dates in the past; however, other evidence establishes that KG does *not* presently manage KF. *See* **Exhibit B** at ¶ 33; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1. Moreover, No. 12 is contradicted by No. 15, *infra*.

[13] Plaintiff's Exhibits 3 and 13 establish only that KG charged KF a 1% management fee in the past; however, other evidence establishes that KG does *not* presently charge KF a 1% management fee. *See* **Exhibit B** at ¶ 34; D.E. 34 at ¶¶ 2, 4-6; D.E. 200 at n.1.

[14] Plaintiff's Exhibits 11-14 and 17 establish only that Defendant controlled KF, which was a private equity fund and a pooled investment fund, in the past and Philip Handin filed KF's corporate papers; however, other evidence establishes that Defendant's *attorneys* formed KF, which does *not* presently operate and which Defendant does *not* presently manage. *See* **Exhibit B** at ¶¶ 27, 29, 36-39; D.E. 34 at ¶¶ 2, 4-6; D.E. 60 at 63-64; D.E. 200 at n.1; Plaintiff's Exhibit 12 at 53:17-54:19. Moreover, No. 15 is contradicted by No. 12, *supra*.

[15] Plaintiff's Exhibits 4 and 19 establish only that Defendant filed Lendacy's articles of organization and was its management on three dates in the past KF and a Lendacy brochure states it provided "investment opportunities" to accredited investors; however, other evidence

No. 18: Plaintiff *has* not established Lendacy received approximately $9.1 million of "investor assets" — and other evidence establishes that Lendacy did *not* receive any "investor assets."[16]

No. 19: Plaintiff has *not* established Scipio was formed by Defendant — and other evidence establishes Defendant's *attorneys* formed Scipio.[17]

No. 20: Plaintiff has *not* established that Scipio used "investor assets" to purchase a bank building — and other evidence establishes that Scipio did *not* use "investor assets" to purchase the bank building.[18]

No. 21: Plaintiff has *not* established El Morro was formed by Defendant — and other evidence establishes that Defendant's *attorneys* formed El Morro.[19]

No. 22: Plaintiff has *not* established El Morro received at least $565,000 of "investor assets" to purchase a bank building — and other evidence establishes that El Morro did *not* receive any "investor assets."[20]

No. 24: Plaintiff has *not* established that KIH used at least $1,380,000 of "investor assets" to fund its start-up costs — and other evidence establishes that El Morro did *not* use any "investor assets."[21]

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establishes that Defendant's *attorneys* formed Lendacy, which is *not* presently in the business of providing lines of credit. *See* **Exhibit B** at ¶¶ 18, 25-26; D.E. 34 at ¶¶ 2, 4-6; D.E. 60 at 62-63; D.E. 200 at n.1.

[16] Plaintiff's Exhibit 20 is a declaration by a non-fact witness (who is employed by Plaintiff and not identified as an expert) based on hearsay and unauthenticated documents and cannot be presented in a form that would be admissible in evidence. Putting aside its *inadmissibility*, Exhibit 20 establishes only that funds were transferred to Lendacy (*not* that they were "investor assets). Other evidence, however, establishes the funds received by Lendacy were *not* "investor assets." *See* **Exhibit B** at ¶¶ 140-142; Plaintiff's Exhibit 12 at 200:11-15.

[17] Plaintiff's Exhibits 7 and 16 establish only that Defendant was president of Scipio, which was Defendant's "personal LLC," on one date in the past; however, other evidence establishes that Defendant's *attorneys* formed Scipio. *See* **Exhibit B** at ¶ 40.

[18] Plaintiff's Exhibits 16, 21-24, and 44 establish only Scipio used funds transferred from KF's account to Lendacy's account to buy a bank building, LF42 wrote a check consistent with the purchase price, and funds were transferred to Scipio to buy a bank building; however, other evidence establishes that Scipio did *not* use "investor assets." *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[19] Plaintiff's Exhibits 8 and 25 establish only that Defendant was El Moros' president on one date in the past; however, other evidence establishes that Defendant's *attorneys* formed El Morro. *See* **Exhibit B** at ¶ 45.

[20] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; and Exhibit 26 establishes only that funds were transferred from KFYield to El Morro; however, other evidence establishes that El Morro did *not* receive any "investor assets." *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[21] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; and Exhibit 26 establishes only that funds were transferred from El Morro

No. 25: Plaintiff has *not* established LF42 was formed by Defendant — and other evidence establishes Defendant's *attorneys* formed LF42.[22]

No. 26: Plaintiff has *not* established El Morro, KIH, or LF42 used or retained any funds LF42 obtained through a Lendacy credit line.[23]

No. 27: Plaintiff has *not* established Defendant, through KG offered KF as an investment opportunity.[24]

No. 28: Plaintiff has *not* established KF employs yield, gold, growth, and inflation strategies or did so through sub-funds.[25]

No. 29: Plaintiff has *not* established KFYield accounted for "approximately 98%" of Kinetic Funds' assets as of January 2019.[26]

No. 30: Plaintiff has *not* established Defendant "initially offered KF to his friends, partners, and associates."[27]

No. 31: Plaintiff has *not* established Defendant "developed" marketing brochures and websites and used referrals to solicit investors.[28]

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and KF to KIH; however, other evidence establishes that KIH did *not* receive or use any "investor assets." *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[22] Plaintiff's Exhibit 29 establishes only that Philip Handin signed LF42's certificate of formation; however, other evidence establishes that Defendant's *attorneys* formed LF42. *See* **Exhibit B** at ¶ 13.

[23] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; Exhibit 28 establishes only that LF42 lent money to ISX, LLC (but *not* the source of those funds); and Exhibits 30-31 establish only that LF42 requested two credit lines totaling $2,550,000 from Lendacy (but *not* if those credit lines were drawn on).

[24] Plaintiff's Exhibit 14 establishes only that KF's first investor was irrevocably committed to invest in KF on October 1, 2012.

[25] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; Exhibit 12 establishes only that KF employed income, gold, S&P, and a unknown strategy, the first two involving "funds"; and Exhibit 16 establishes only that KF employed KFYield Fund, gold, growth, and inflation strategies, but not how. The *discrepancies* between Exhibit 12 and 16 create a genuine dispute regarding what strategies KF employed.

[26] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; Exhibits 16 and 32 establish only that KFYield was KF's primary strategy.

[27] Plaintiff's Exhibits 12 and 15 establish only that KFYield was "initially designed" for Defendant, his partner, and his close friends and family (*not* that it was offered to them) and that Defendant solicited investors with whom he "had already built relationships."

[28] Plaintiff's Exhibits 12, 15-16, and 33 establish only that Defendant solicited investors (but *not* how), investors were made aware of KFYield through meetings and brochures (but *not* who developed them), some brochure information appeared on KF's website, Defendant initially designed KFYield for himself, his partners and his close friends and family, every KF investor received a brochure (but *not* who developed them), third parties (*not* Defendant) referred investors to KF, KG worked with a marketing company, and Kelly Locke (*not* Defendant) used a referral to solicit an investor.

No. 33: Plaintiff has *not* established Defendant "typically" provided potential investors with a Subscription Agreement, Exhibit B-1 or C-1, an Offering Questionnaire, and marketing brochures.[29]

No. 34: Plaintiff has *not* established Defendant gave investors a copy of KF's Operating Agreement.[30]

No. 35: Plaintiff has *not* established Exhibit C-1 was signed by investors who had a relationship with Lendacy — and other evidence establishes that investors *who did not have a relationship with Lenacy* (but might in the future) signed Exhibit C-1.[31]

No. 40: Plaintiff has *not* established Exhibit B-1 was signed by investors who did not have a relationship with Lendacy.[32]

No. 42: Plaintiff has *not* established Defendant had "ultimate authority" over the contents of the Subscription Agreement, Operating Agreement, Exhibit B-1 and Exhibit C-2, and Offering Questionnaire.[33]

No. 43: Plaintiff has *not* established investors signed KFs Subscription Agreement and either Exhibit B-1 and Exhibit C-2 and completed the Offering Questionnaire "in most cases."[34]

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[29] Plaintiff's Exhibit 3 establishes only that Defendant sent a Subscription Agreement, Exhibits B and C (not B-1 and C-1), and Questionnaire to a referral agent (*not* a potential investor) on March 17, 2016 and stated KF used those document to "on-board" investors; Exhibits 12 establishes only that documents exist describing to investors how KF operates; and Exhibit 16 establishes only that: (1) KF investors sign a Subscription Agreement and Questionnaire and "should" be provided with an Operating Agreement; (2) marketing brochures exist; and (3) some marketing materials might have been provided to investors.

[30] Plaintiff's Exhibit 16 establishes only that Kelly Lock "believed" KF's Operating Agreement "should have been provided" to investors (but *not* by whom or that here belief was correct).

[31] Plaintiff's Exhibit 16 establishes only that Defendant "believed" Exhibit C-1 was signed by investors who had "or would have" a relationship with Lendacy (*not* that his belief was correct). Other evidence, however, establishes investors who *did not have a relationship with Lendacy* but might later signed Exhibit C-1. *See* Plaintiff's Exhibit 12 at 139:10-139:14.

[32] Plaintiff's Exhibit 12 establishes only that Defendant "believed" Exhibit B-1 was signed by investors who did not have a relationship with Lendacy (*not* that his belief was correct).

[33] Plaintiff's Exhibit 3 establishes only that Defendant sent an email transmitting the Subscription Agreement, Operating Agreement, Exhibits B-1 and C-1, and Questionnaire; and Exhibit 12 establishes only that Defendant approved the contents of those documents if his attorney approved them and so advised him first.

[34] Plaintiff's Exhibit 16 establishes only that *some* investors signed the Subscription Agreement and Exhibit B-1 or C-1 and completed the Questionnaire.

No. 44: Plaintiff has *not* established KF's Subscription Agreement provides that membership interests are "'restricted securities' as that term is defined in Rule 144 under the [Securities Act]."[35]

No. 45: Plaintiff has *not* established Exhibit B-1 and Exhibit C-1 state Defendant has "full and complete discretion to make any and all trading decisions and affect any strategies as [he] shall determine."[36]

No. 46: Plaintiff has *not* established Exhibit B-1 and Exhibit C-1 authorize KG to charge a 1% management fee.[37]

No. 47: Plaintiff has *not* established KF' marketing material were "expanded" in 2015 or that Defendant expanded them.[38]

No. 48: Plaintiff has *not* established KFYield's description, performance, assets, and holdings were available "on" Bloomberg and that Defendant "arranged" this.[39]

No. 49: Plaintiff has *not* established Defendant "arranged" to make KFYield's information available "on" Bloomberg "to make KFYield appear transparent and give it a measure of credibility."[40]

No. 50: Plaintiff has *not* established Defendant provided all potential investors with Bloomberg reports.[41]

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[35] Plaintiff's Exhibit 3 at SEC-Consultiva-E-0061271 does *not* state that membership interests are "'restricted securities' as that term is defined in Rule 144 under the [Securities Act]."

[36] Plaintiff's Exhibit 3 establishes only that Exhibits B-1 and C-1 state that KF's *Class A member*, defined as KP (*not* Defendant), has "full and complete discretion . . . ."

[37] Plaintiff's Exhibit 3 establishes only KF was charged a 1% management fee (not who charged the fee or whether KG was authorized to charge it).

[38] Plaintiff's Exhibit 19 establishes only that Kelly Locke emailed marketing materials to another person on September 9, 2015.

[39] Plaintiff's Exhibit 12 establishes only that Defendant "decided" to have KFYield listed on Bloomberg (an electronic portal); and Exhibits 16 and 34 establish only that Bloomberg generated a KFYield paper report based on information provided by Defendant.

[40] *See supra* n.39 (failing to establish Defendant "arranged" anything). Plaintiff's Exhibit 12 establishes only that Defendant "decided" to list KFYield on Bloomberg to be able to show what KFYield's holdings and dividends were and because Bloomberg could provide analytics; Exhibit 16 establishes only that Kelly Locke's "understanding" was Defendant "made the decision" (not "arranged") to list KFYield on Bloomberg to make it appear like a more legitimate fund (*not* that her understanding was correct). At a minimum, the *discrepancies* between Exhibits 12 and 16 create a genuine dispute.

[41] Plaintiff's Exhibit 12 establishes only that Defendant provided Bloomberg reports to *some* investors; and Exhibit 16 establishes only that Bloomberg reports were provided to everyone to whom Kelly Locke and *unidentified* others spoke.

No. 51: Plaintiff has *not* established Defendant was responsible for the content and accuracy of the information provided to Bloomberg.[42]

No. 52: Plaintiff has *not* established Defendant "marketed" KF and Lendacy together or started doing so in 2015.[43]

No. 53: Plaintiff has *not* established Lendacy was described as a real estate lending structure or Defendant described it that way.[44]

No. 54: Plaintiff has *not* established Defendant and his associate told prospective investors they would be eligible to receive a credit line from Lendacy if they invested in KF.[45]

No. 55: Plaintiff has *not* established Defendant and his associate "promoted" case studies of the uses of Lendacy credit lines.[46]

No. 56: Plaintiff has *not* established Defendant moved from Florida to Puerto Rico in 2016, opened a second office there, and began soliciting investors in Puerto Rico to invest in KF.[47]

No. 57: Plaintiff has *not* established Defendant raised $39 million from at least 30 investors located mostly in Florida and Puerto Rico.[48]

No. 60: Plaintiff has *not* established Defendant did not invest all investor funds in U.S. listed financial products — and other evidence

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[42] Plaintiff's Exhibits 12 and 16 establishes only that Defendant provided information to Bloomberg and had ultimate authority of the contents of the December 19, 2017 Bloomberg report (*not* of the information provided to Bloomberg to prepare that report).

[43] Plaintiff's Exhibit 3 establishes only that Defendant stated Exhibit C was for "onboarding" investors who were Lendacy members; Exhibit 15 establishes only that Defendant's bio at the back of a KFYield report states he created Lendacy; and Exhibits 16 and 37-38 establish only that Kelly Lock and *unidentified* others marketed KF and Lendacy together.

[44] Plaintiff's Exhibit 39 establishes only that a marketing piece identified Lendacy as being able to be used as a *component* in a real estate lending structure.

[45] Plaintiff's Exhibit 12 establishes only that Defendant told some investors they could borrow up to 70% of their KFYield investment; and Exhibits 16 and 39 establish only that a KF marketing piece states investors could receive a credit line for up to 70% of their investment.

[46] Plaintiff's Exhibits 12 and 39 establish only that a marketing piece describing potential uses of a Lendacy credit line was prepared and *might* have been provided to investors; and Exhibit 37 establishes only that Kelly Locke emailed an *unidentified* person a marketing piece containing case studies of how a Lendacy line of credit might be used (because the recipient is unknown, it is impossible to know if this was an investor solicitation).

[47] Plaintiff's Exhibit 16 establishes only that *Kelly Locke* and an *unidentified* person moved to Puerto Rico from an *unidentified* location and that *Kelly Lock* arrived in 2016.

[48] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; Exhibit 32 comprises 37 KF account statements generated in January 2019 without explanation but presumably evidencing the value of the investment in January 2019.

establishes that Defendant *did* invest all investor funds in U.S. listed financial products.[49]

No. 61: Plaintiff has *not* established Defendant diverted a substantial portion of "investor capital" to Lendacy — and other evidence establishes Defendant *never* diverted any of "investor capital" to Lendacy.[50]

No. 63: Other record evidence *contradicts* No. 63 and establishes that Defendant *never* used any "investor funds" to fund loans to himself, his business entities, or others.[51]

No. 64: Other record evidence *contradicts* No. 64 and establishes that Lendacy's loans to LF42 *required* interest if they were not paid in fully by December 27, 2019 and, in fact, LF42 *paid* interest on its loans.[52]

No. 67: Plaintiff has *not* established Defendant did not hedge at least 90% of KFYield's portfolio using listed options — and other evidence establishes that Defendant *did* hedge at least 90% of KFYield's portfolio using listed options.[53]

No. 68: Plaintiff has *not* established "KFYield assets" were diverted to Lendacy and accounted for more than 23% of KFYield's proceeds between January 2015 and September 2019 — and other evidence establishes that *no* "KFYield assets" were ever diverted to Lendacy.[54]

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[49] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16. Exhibit 16 establishes only that: (1) a loan to investors could only be funded by transferring their investment capital to Lendacy; and (2) the majority of KFYield's funds was used to fund Lendacy's loans. Other evidence, however, establishes that Defendant *invested all investor funds in U.S. listed financial products*. *See* **Exhibit B** at ¶¶ 134, 139, 151.

[50] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; Exhibit 12 establishes only that KF employed portfolio margin to obtain the funds it transferred to Lendacy; and Exhibit 16 establishes only that: (1) a loan to KF's investors could only be funded by transferring their investment capital to Lendacy; and (2) the majority of KFYield's funds was used to fund Lendacy's loans. Other evidence, however, establishes that Defendant *never* diverted any investor capital to Lendacy. *See* **Exhibit B** at ¶¶ 140-142, 209; Plaintiff's Exhibit 12 200:11-15.

[51] *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[52] *See* **Exhibit B** at ¶¶ 198, 207.

[53] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16. Other evidence, however, establishes that Defendant *did* hedge at least 90% of KFYield's portfolio using listed options. *See* **Exhibit B** at ¶¶ 131-133, 135.

[54] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16. Other evidence, however, establishes that *no* KFYield assets were ever diverted to Lendacy. *See* **Exhibit B** at ¶¶ 140-142, 209; Plaintiffs' Exhibit 12 at 200:11-15.

No. 69: Plaintiff has *not* established Lendacy could not be hedged using listed options — and other evidence establishes that Lendacy *could* be hedged using listed options.[55]

No. 70: Plaintiff has *not* established Defendant "led prospective investors to believe" Lendacy had a separate funding source and their entire capital would be invested in KFYield — and other evidence establishes that Lendacy *did* have a separate source of funding and all of the investor's funds *were* invested in KFYield. [56]

No. 71: Plaintiff has *not* established investors were given marketing materials stating: "You keep 100% of your capital working, generating dividends and interest with the opportunity for continued appreciation.[57]

No. 72: Plaintiff has *not* established Defendant used "KFYield assets" to fund Lendacy and its loans — and other evidence establishes that Defendant did *not* use "KFYield assets."[58]

No. 73: Plaintiff has *not* established that "most investors" were not told "KFYield assets" were used to fund Lendacy loans.[59]

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[55] Plaintiff's Exhibit 35 establishes only that Lendacy was not listed on a U.S. exchange; however, other evidence, establishes that Lendacy *could* be hedged using listed options. *See* **Exhibit B** at ¶ 152; Plaintiff's Exhibit 12 at 158:6-19.

[56] Plaintiff's Exhibit 16 establishes only that investors were told their funds would be invested in U.S.-listed securities, it was made clear to investors all of their funds would be invested, one investor was not told his investment would be used to fund Lendacy loans, and one investor understood 100% of his funds would be invested at KF and he would get a separate Lendacy line of credit (but not *who* made or omitted these disclosures); and Exhibit 45 establishes only that Kelly Locke or another *unidentified* person led Myrna Rivera (who is *not* identified as a prospective investor) to understand that Lendacy had access to "independent" capital that was something other than the funds invested in Kinetic Funds. Other evidence, however, establishes that Lendacy *did* have a separate source of funding and that *all* of the investor's funds were invested in KFYield. *See* **Exhibit B** at ¶¶ 134, 139, 144, 151.

[57] Putting aside the antecedent to "they" in No. 71 is unclear and creates a *genuine dispute*, Plaintiff's Exhibit 39 at SEC-Consultiva-E-0064938 establishes only that a marketing piece states: "You keep 100% of your capital working, generating dividends and interest with the opportunity for continued appreciation" (*not* that it was given to investors).

[58] Plaintiff's Exhibit 12 establishes only that Interactive Brokers, LLC ("IB") was the source of the funds transferred to Lendacy, Lendacy was funded using portfolio margin offered by IB, and the funds transferred to Lendacy came from KF's account; and Exhibit 16 establishes only that that "investor capital" (*not* KFYield assets) was used to fund Lendacy (but not by *whom*). Other evidence, however, establishes Defendant *did not* use KFYield assets to fund Lendacy and its loans. *See* **Exhibit B** at ¶¶ 140-142, 202; Plaintiff's Exhibit 12 at 200:11-15.

[59] *See supra* n.58 (KFYield assets were *not* used to fund Lendacy loans). Plaintiff's Exhibit 16 establishes only that it was not Kelly Locke's understanding that any investors were aware they were being lent the own capital (*not* that here non-understanding was correct); Exhibit 41 establishes only that Plan de Pensiones Ministerial, Inc. (*not* most investors) was not told its Kinetic Funds investment could be used to fund Lendacy loans; and Exhibit 45 establishes

No. 74: Plaintiff has *not* established that Defendant "touted" KFYield's liquidity.[60]

No. 76: Plaintiff has *not* established Lendacy's assets were "primarily" unsecured loans to Defendant that "significantly" limited KFYield's ability to honor redemption requests "equitably" — and other evidence establishes that Lendacy's loans to Defendant were *secured* and did *not* limited KFYield's ability to honor redemption requests.[61]

No. 77: Plaintiff has *not* established KF's known assets are less than the aggregate amount reflected on investor account statements — and other evidence establishes that the total value of Kinetic Funds' assets was *always equal* to the total value of its investors' investments reflected in their account statements.[62]

No. 79: Other record evidence *contradicts* No. 79 and establishes that KFYield's reported performance to investors *does* match its actual performance and the Bloomberg reports included the information in the Kinetic account statements.[63]

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only that Myrna Rivera (who is *not* identified as an investor) was not told that the investments in KF could be used to fund Lendacy loans.

[60] Plaintiff's Exhibit 16 establishes only that Defendant sent an email with an attached KFYield report that stated on page 3 of 10 "our funds can distribute liquidity" and "KFYIELD offers[] liquidity" and on page 4 of 10 "Liquidity and volume of products are in the top 20% of all listed securities. Analysis of these listed products reflect a very high liquidity factor . . . ," "The Portfolio contains[] liquid stocks . . . ," and "The products are all in the listed market and liquid . . . ."; and Exhibit 41 establishes only that Defendant "explained" (in the original Spanish: "explicó" — *not* touted) that KFYield has liquidity.

[61] Plaintiff's Exhibits 30-31 and 42-43 establish there were four lines of credit to Defendant and his entities (but *not* how much, if anything, was drawn on those lines or what percentage of Lendacy's loans they represented or whether they limited KFYield's ability to honor redemption requests). Other evidence, however, establishes that Lendacy's loans to Defendant were *secured* and did *not* limited KFYield's ability to honor redemption requests. *See* **Exhibit B** at ¶¶ 151-154, 171, 179-180, 190, 195, 197. In addition, Plaintiff's Exhibits 30 and 31 establish that LF42's line of credits *were* secured by collateral. *See* Plaintiff Exhibits 30 at § 3(a) (fine print) and 31 at § 3(a) (fine print).

[62] Putting aside No. 77 is so vague as to be impossible to verify or dispute (no dates are referenced; however, No. 77 uses the present tenses, so possibly it only concerns events as of the date of Plaintiff's Motion), Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. Other evidence, however, establishes that the aggregate value of all of Kinetic Funds investors' investments reflected in their account statements was *always equal* to the total value of Kinetic Funds' assets. *See* **Exhibit B** at ¶ 167.

[63] Plaintiff is comparing apples and oranges: KF's IB account statements reflected only KFYield's holdings *at IB*, whereas the Bloomberg report reflected *all* of KFYield's holdings — including those at IB, those held at BMO, and those lent to Lendacy. The information in the Bloomberg reports was always consistent with the information in the IB account statements

No. 82: Plaintiff has *not* established the Bloomberg report did not include KFYield's margin balance — and other evidence establishes that the Bloomberg report *did* include the margin balance.[64]

No. 83: Plaintiff has *not* established KFYield's annual statement as of December 31, 2017 reflects that KFYield's total net asset value was $4.7 million, its annual rate of return was -27.62%, and it had $439.632.20 in interest.[65]

No. 84: Plaintiff has *not* established Defendant failed to disclose to investors what portion of KF's portfolio was margined — and other evidence establishes that information regarding KF's use of margin *was* made available to investors upon request.[66]

No. 85: Plaintiff has *not* established Defendant failed to disclose to "most" investors that investor assets would be invested in a private sector funding company.[67]

No. 86: Plaintiff has *not* established Defendant failed to disclose to investors that Lendacy was the private sector funding company.[68]

No. 87: Plaintiff has *not* established Defendant failed to disclose that Scipio, LF42, and he received loans from Lendacy — and other evidence

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and matched KFYield's actual performance provided to investors in their Kinetic account statements. *See* **Exhibit B** at ¶¶ 165-167.

[64] Plaintiff's Exhibit 12 concerns a composite of KF account statement not made part of the record in this case (*not* the Bloomberg report) and establishes the account statements include the margin balance. *See* Plaintiff's Exhibit 12 at 274:6-10. Other evidence establishes that the Bloomberg report *included* the margin balance. *See* **Exhibit B** at ¶ 165.

[65] Plaintiff's Exhibit 47 establishes that KFYield had a total net asset value of $4,734,580.58 (*not* $4.7 million), its "time weighted" (*not* "annual") rate of return was -27.52% (*not* -27.62%), and it had "incurred" (*not* "had") -$439,632.20 in interest.

[66] Plaintiff's Exhibit 12 establishes only that investors were not made aware of the portion of KFYield's holdings that were "bought" on margin (*not* the amount that was presently margined or that Defendant unsuccessfully tried and "failed" to disclose the margin number or that he had a duty to disclose the margin and "failed" to comply with that duty). Other evidence, however, establishes that information regarding the amount of Kinetic Fund's portfolio that was margined *was* made available to investors upon request. *See* **Exhibit B** at ¶ 89.

[67] Plaintiff's Exhibits 3 and 12 establish only that Defendant: (1) sent an email with a copy of Exhibit C-1 stating all KF's funds "may" include a "private sector funding company . . . " and a copy of Exhibit B-1 that did not contain this language; and (2) did not "discuss" KFYield's holdings in private equity products with "all" investors.

[68] Plaintiff's Exhibit 12 establishes only that Defendant sent an email (which has *not* been made part of the record in this case) with a copy of Exhibit C-1 stating KF's funds "may" include a "private sector funding company . . . " but not that Lendacy was the private funding company (*not* that Defendant failed to disclose information to investors another time).

establishes that Defendant *did* disclose that Scipio, LF42, and he received Lendacy loans.[69]

No. 88: Plaintiff has *not* established Defendant failed to disclose he used at least $497,300 in "investor assets" to invest in Zephyr Aerospace, LLC ("Zephyr") — and other evidence establishes that Defendant did *not* use any "investor assets" to invest in Zephyr.[70]

No. 89: Plaintiff has *not* established Defendant had "ultimate authority" for "all" statements and omissions made to clients.[71]

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[69] Plaintiff's Exhibit 3 establishes only that Defendant sent an email with copies of Exhibits B-1 and C-1 that did not state Scipio, LF42, and he received Lendacy loans; Exhibit 11 establishes only that Defendant did not disclose that Scipio received "funds from Lendacy *at the time or before such funds were disbursed* to Scipio"; Exhibit 12 establishes only that Defendant disclosed Scipio's and his Lendacy loans to *some* investors but did not "discuss" KFYield's holdings in "private equity products" with "all" investors; Exhibit 16 establishes only that it was not Kelly Locke's understanding that any of the investors were aware that they were being lent their own capital back (*not* that her non-understanding was correct); Exhibit 41 establishes only that Plan de Pensiones Ministerial, Inc. was not told its investment could be used to fund Lendacy loans; and Exhibit 45 establishes only that Myrna Rivera was not told investors' KF investments could be used to fund Lendacy loans. Other evidence, however, establishes that Defendant *did* disclose that Scipio, LF42, and he received Lendacy loans. *See* **Exhibit B** at ¶ 210. In addition, Exhibit 41 is *contradicted* by Carla Mendez's testimony that Defendant did not attend the meeting it references. *See* Transcript of Carla Mendez Interview dated September 20, 2019 at 23:8-25:13, 27:22-28:5, attached hereto as **Exhibit C.**

[70] Plaintiff's Exhibit 3 establishes only that Defendant sent an email with copies of Exhibits B-1 and C-1 that did not state investor assets were used to invest in Zephyr; Exhibit 12 establishes only that: (1) a copy of Exhibit C-1 attached to an email (which has *not* been made part of the record in this case) did not identify Lendacy as the private sector funding company, (2) Zephyr was not listed on a U.S. exchange, and (3) Defendant *did* disclose KF invested in Zephyr but did not discuss KFYield's holdings in "private equity products"; Exhibit 26 establishes only that KFYield was the source of the funds invested in Zephyr and to Keli Pufhal's knowledge investors were not told of the Zephyr investment (but *not* that her non-understanding was correct); Exhibit 44 establishes only that that a ledger exists (without any context as to who created it or how to understand it) evidencing that a total of $497,300 was invested in Zephyr; Exhibit 48 establishes only that two deposits totaling $443,300 and identified as "Transfer for Zephyr Aerospace" were made into Lendacy's bank account; and Exhibit 49 establishes only that deposits were made into Lendacy's bank account, none of which referenced Zephyr Aerospace. Other evidence, however, establishes that Defendant did *not* use any investor assets to invest in Zephyr Aerospace. *See* **Exhibit B** at ¶¶ 140-143, 202, 209; Plaintiff's Exhibit 12 at 200:11-15.

[71] Plaintiff's Exhibit 12 establishes only that Defendant: (1) had "ultimate authority" over: (a) two KF reports emailed to an advisory firm on February 18, 2016; (b) the contents of a KG brochure Kelly Locke emailed on October 28, 2015; (c) the contents of a KG brochure; and (d) the contents of a KFYield brochure once it was reviewed and approved by legal; and (2) gave final approval to the contents of a Lendacy brochure Kelly Lock emailed on July 30, 2015. Plaintiff's Exhibit 16 establishes only that Defendant had "ultimate authority" over: (1) the

No. 90: Plaintiff has *not* established KF's bank account at BMO Harris Bank N.A. ("BMO") exclusively held "investor capital" — and other evidence establishes that Kinetic Fund's BMO bank account did *not* exclusively hold investor capital.[72]

No. 97: Plaintiff has *not* established Defendant chose to purchase securities for KFYield with a mix of cash and margin so that investor assets left behind could be directed to Lendacy and other private equity.[73]

No. 99: Plaintiff has *not* established Defendant controlled KF's account at Interactive Brokers, LLC ("IB").[74]

No. 100: Plaintiff has *not* established Defendant had "ultimate" authority over the investment decisions in KF's IB account or its investments outside of its IB account.[75]

No. 101: Plaintiff has *not* established Anadi Guar reported to Defendant or that they would assess KF's "portfolio" once a week.[76]

No. 102: Plaintiff has *not* established Defendant controlled KF's BMO account.[77]

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information provided in KF' marketing materials; (2) a Lendacy brochure; (3) a KF pitch that Kelly Locke gave; and (4) a KG brochure.

[72] Plaintiff's Exhibit 12 establishes only that all initial investor capital would go into KF's BMO account and Defendant "believed" investor capital are the only funds in that account (but *not* that Defendant's belief is correct); and while the referenced pages 87-88 are *not* among the excerpted pages comprising Exhibit 26, if they were, they would establish only that investor capital was deposited into a BMO account. Other evidence, however, establishes that KF's BMO bank account did *not* exclusively hold investor capital and also held other funds. *See* **Exhibit B** at ¶ 92.

[73] Plaintiff's Exhibit 12 establishes only that Defendant did not always use all of an investor's cash to purchase investments at IB and sometimes also used margin because: (1) the carry cost was negligible; and (2) the uninvested cash could be used to generate preferred returns through: (i) private equity, (ii) Lendacy, and (iii) other opportunities — *not* that Defendant chose to do this so that the unused cash could be directed to Lendacy or private equity.

[74] Plaintiff's Exhibit 12 establishes only that: (1) Defendant had ultimate signing authority over the IB account, co-equal authority with Anadi Guar over trading activity in the IB account, and ultimate authority over firing Anadi Guar; and (2) IB had *greater authority* than Defendant over KF's IB account; and Exhibit 50 establishes only that Defendant had authority over Kinetic Fund's *BMO* account.

[75] Plaintiff's Exhibit 12 establishes only that Defendant had authority (*not* "ultimate" authority) over the investment decisions *in KF's IB account* (*not* outside of it).

[76] Plaintiff's Exhibit 12 establishes only that Defendant had authority to fire Anadi Guar (*not* that Anadi Guar "reported" to him) and that he and Anadi Guar would do a weekly "assessment" to "discuss market conditions, situations regarding positions" (*not* KF's portfolio).

[77] Plaintiff's Exhibit 12 establishes only that Defendant signed documents (which have not been made part of the record in this case) concerning KF's BMO account, and Kelly Locke had a fob that gave her control to transfer funds out of KF's BMO account; and Plaintiff's

No. 103: Plaintiff has *not* established Defendant controlled Lendacy's two BMO accounts.[78]

No. 104: Plaintiff has *not* established Defendant used $37,000 of "KFYield funds" to pay off the mortgage on his relative's house — and other evidence establishes that Defendant did *not* use any "KFYield funds" to pay off the mortgage.[79]

No. 105: Plaintiff has *not* established that on April 29, 2015 Defendant executed a Lendacy "Credit Facility Agreement" dated April 29, 2015, reflecting a purported loan for $40,000.[80]

No. 106: Plaintiff has *not* established Defendant's relative did not grant Lendacy a mortgage or any other consideration to Lendacy or that the Credit Facility Agreement was unsecured — and other evidence establishes that Defendant's line of credit was *secured*.[81]

No. 107: Plaintiff has *not* established Defendant purchased three "luxury" apartments and two parking lots "for himself" in San Juan, Puerto Rico for $1,512,575.50.[82]

Exhibit 50 establishes only that KF authorized Defendant to act on its behalf with regard to its BMO account (suggesting *KF* controlled its BMO account).

[78] Plaintiff's Exhibit 12 establishes only that Defendant signed documents (which have not been made part of the record in this case) concerning Lendacys' two BMO accounts; and Exhibits 51-52 establish only that Lendacy authorized Defendant to act on its behalf with regard to its BMO accounts (suggesting *Lendacy* controlled its BMO accounts).

[79] Plaintiff's Exhibit 16 establishes only that Defendant took a credit line of approximately $40,000 to pay off his mother's house (but *not* the source of any funds borrowed on that line); and Exhibit 26 establishes only that Defendant took a credit line with a monthly payment of $750 possibly to refinance his mother's house. Other evidence, however, establishes that Defendant did *not* use any "KFYield funds" to pay off the mortgage on his mother's house. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-5.

[80] Plaintiff's Exhibit 53 establishes that on *April 30, 2015* (*not* April 29, 2015) Defendant executed a "Credit Facility Agreement and Federal Truth-in-Lending Disclosure" that reflected a $40,000 *line of credit* (*not* a loan).

[81] Plaintiff's Exhibit 53 establishes only that: (1) the "Credit Facility Agreement and Federal Truth-in-Lending Disclosure" executed by Defendant on April 30, 2015 does not state whether Defendant's relative granted Lendacy a mortgage or other consideration; and (2) Defendant's "obligations under" the Agreement were unsecured. Other evidence, however, establishes that the line of credit was *secured*. *See* **Exhibit B** at ¶ 171.

[82] Plaintiff's Exhibit 12 establishes only that Defendant's initials and signature are on a document (which has *not* been made a part of the record in this case) and another document (which has *not* been made part of the record in this case) evidences three withdrawals from a bank account; Exhibit 16 establishes only that "approximately $1.4 million" was used by an *unidentified* person to purchase an unspecified "house property" "in Villa Gabriella" and Defendant's initials and signature are on a document (which has *not* been made a part of the record in this case); Exhibit 27 establishes only that Defendant purchased one penthouse, one apartment, and two parking spaces in "Villa Gabriella" (*not* "three luxury apartments");

No. 108: Plaintiff has *not* established Defendant used "KFYield funds," to pay for the properties — and other evidence establishes that Defendant did *not* use "KFYield funds" to pay for the properties.[83]

No. 109: Plaintiff has not established Defendant titled the property in his name.[84]

No. 110: Plaintiff has *not* established employees raised concerns to Defendant about his use of KFYield funds to pay for the San Juan properties — and other evidence establishes that *no* employees raised such concerns to Defendant.[85]

No. 111: Plaintiff has *not* established Defendant responded to concerns raised to him by employees about his use of KFYield funds by stating that he was expecting a future payout from the sale of an unrelated company and would pay KFYield back at that time — and other evidence establishes that *no* employees raised concerns to Defendant about his use of KFYield funds.[86]

No. 112: Plaintiff has *not* established Defendant executed a Lendacy "Credit Facility Agreement" dated March 23, 2017 for a $1,517,000 loan after employees pressed their concerns about Defendant's use of

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Exhibits 55-56 establish only that various deposits and withdrawals were made into and out of Lendacy's and KFs' BMO accounts to and from *unidentified* third parties.

[83] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; and Exhibit 12 establishes only that Defendant did not instruct Kelly Locke to return to KF's BMO account the $1.5 million transferred out of it and to the owner of the properties Defendant purchased. Other evidence, however, establishes Defendant did *not* use KFYield funds to pay for the properties. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[84] Plaintiff's Exhibit 12 establishes only that Defendant purchased property in March 2017, Defendant's initials and signature are on a document (which has not been made a part of the record in this case), and the property Defendant purchased has not been retitled (but *not* in whose name it is titled); Exhibit 16 establishes only that the property Defendant purchased "was intended as a new residence from Michael Williams"; and Exhibit 54 establishes only that Defendant was the "purchaser" of the property (*not* that he titled it in his name).

[85] Plaintiff's Exhibit 26 establishes only that: (1) Keli Pufahl told Defendant Lendacy needed paperwork on every loan and had Defendant fill out and sign various forms; and (2) a Credit Facility Agreement (which has not been made a part of the record in this case) was prepared at Keli Pufahl's request. Other evidence, however, establishes that *no* employees raised concerns to Defendant about his use of KFYield funds. *See* **Exhibit B** at ¶¶ 182-183.

[86] Plaintiff's Exhibit 26 establishes only that, in response to a *question* (*not* a concern) by Kelly Pufhal about how he would pay off a credit line, Defendant stated that: (1) he was in the process of selling Silexx to the CBOE; (2) "quite a bit of money" was coming to him on November 1; and (3) as soon as he received the proceeds from the sale, he would repay the Lendacy loan. Other evidence, however, establishes that *no* employees raised concerns to Defendant about his use of KFYield funds. *See* **Exhibit B** at ¶¶ 182-183.

KFYield funds — and other evidence establishes that <u>no</u> employees pressed their concerns about Defendant's use of KFYield funds.[87]

<u>No. 113</u>: Plaintiff has *not* established Defendant did not grant Lendacy a mortgage on the properties and the Credit Facility Agreement is unsecured — and other evidence establishes that the $1,517,000 line of credit Defendant obtained from Lendacy was <u>*secured*</u>.[88]

<u>No. 114</u>: Plaintiff has *not* established used at least $2,755,000 of "KFYield funds" to purchase a historic bank building in Old San Juan, Puerto Rico — and other evidence establishes that Defendant did <u>*not*</u> use any "KFYield funds" to purchase a bank building.[89]

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[87] Plaintiff's Exhibit 12 establishes only that a document (which has not been made part of the record in this case) was created on March 23, 2017 used to purchase the property Defendant acquired; and Exhibit 42 establishes only that on March 23, 2017 Defendant executed a Credit Facility Agreement for a $1,517,000 credit line (<u>*not*</u> a loan). Other evidence, however, establishes that <u>*no*</u> employees raised or pressed their concerns to Defendant about his use of KFYield funds. *See* **Exhibit B** at ¶¶ 182-183.

[88] Plaintiff's Exhibit 12 establishes only that a document (which has not been made part of the record in this case) was created on March 23, 2017 and used to purchase the property Defendant acquired; and Exhibit 42 establishes only that: (1) on March 23, 2017 Defendant executed a Credit Facility Agreement for a $1,517,000 credit line (<u>*not*</u> a loan); (2) the Credit Facility Agreement does <u>*not*</u> evidence whether Defendant gave Lendacy a mortgage on the property he purchased; and (3) Defendant's "obligations under" the Credit Facility Agreement are unsecured. Other evidence, however, establishes that the $1,517,000 line of credit Defendant obtained from Lendacy was <u>*secured*</u>. *See* **Exhibit B** at ¶¶ 179-180.

[89] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16. Exhibit 12 establishes only that: (1) Defendant's initial and signature are on a document (which has not been made part of the record in this case); (2) a document (which has not been made part of the record in this case) reflects withdrawals from KF's BMO account that were authorized by Kelly Lock and delivered to Lendacy; and (3) a document (which has not been made part of the record in this case) reflects funds authorized by Lendacy's staff were deposited into Lendacy's BMO account, are the same funds transferred out of KF's BMO account, and were to fund a loan to Scipio. Exhibit 16 establishes only that: (1) Defendant's initials and signature are on a document (which has not been made part of the record in this case) reflecting Scipio purchased a bank building; (2) two documents (which have not been made part of the record in this case) reflect withdrawals "associated" with the bank building were made from KF's BMO account to Lendacy's BMO account, then to Lendacy, and then to third parties for the purchase the bank building; (3) a document (which has not been made part of the record in this case) reflects that LF42 paid $145,000 to Gandia Realty; and (4) Defendant's signature is on a document (which has not been made a part of the record in this case) that he signed on March 23, 2017 and became effective on 5/4/18. Exhibit 21 establishes only that on May 4, 2018 Defendant signed a "Purchase and Sale Deed" evidencing that Scipio purchased a property for $2,900,000 (<u>*not*</u> $2,755,000). Exhibits 22-23 establish only that deposits and withdrawals were made into and out of Lendacy's and KF's BMO accounts to and from *unidentified* third parties in May 2018. Exhibit 24 establishes only that LF42 issued a check to an *unidentified* third party. Exhibit 44 establishes only that

No. 115: Plaintiff has *not* established Defendant titled the Banco Espanol building in the name of Scipio.[90]

No. 116: Plaintiff has *not* established Scipio did not grant Lendacy a mortgage on the property and that its Lendacy loan was unsecured — and other evidence establishes that Scipio's line of credit was *secured*.[91]

No. 118: Plaintiff has *not* established Defendant used $2,050,000 of "KFYield funds" to support to his outside business ventures — and other evidence establishes that Defendant did *not* use any "KFYield funds" to support to his outside business ventures.[92]

No. 119: Plaintiff has *not* established Defendant used "KFYield funds" for the development of KIH, the development of an international exchange in Puerto Rico, and the payment of more than $600,000 for a multi-day event to introduce KIH to the public — and other evidence

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a ledger exists (without any context as to who created it or how to understand it) reflecting two wires to Scipio and referencing a Banco Espanol Purchase. Other evidence, however, establishes that Defendant did *not* use any KFYield funds to purchase an historic bank building. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[90] Plaintiff's Exhibit 12 establishes only that Defendant signed a document (which has not been made a part of the record in this case) and did not retitle the Banco Espanol building (but *not* in whose name it is titled); Exhibit 21 establishes only that on May 4, 2018 Defendant signed a "Purchase and Sale Deed"; and Exhibit 43 establishes only that on May 23, 2017 Defendant executed a Credit Facility Agreement on behalf of Scipio.

[91] Plaintiff's Exhibit 43 establishes only that: (1) on May 23, 2017 Defendant executed a Credit Facility Agreement for a $2,755,000 credit line (*not* a loan) to Scipio; (2) Defendant did not complete the Guarantor Page; (3) the Agreement does not evidence whether Scipio gave Lendacy a mortgage on the bank building; and (4) Scipio's "obligations under" the Agreement are unsecured. Other evidence, however, establishes that Scipio's $2,755,000 line of credit was *secured*. *See* **Exhibit B** at ¶ 190.

[92] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16. Exhibit 26 establishes only that: (1) it was Keli Pufahl's "understanding" the $750,000 used to pay for KF's Summit came from KF (*not* that her understanding was correct); (2) Defendant authorized the transfer of $497,300, originating from KF to Zephyr, and the transfer of $550,000, the source of which was either KF or KFYield, to KIH, and (3) a document (which has not been made a part of the record in this case) reflects that Defendant took "a million dollars" from KFYield and transferred it to Lendacy. Exhibit 28 establishes only that: (1) a document (which has not been made a part of the record in this case) reflects two wire transfers authorized by Defendant totaling $550,000 from an *unidentified* source to an *unidentified* recipient and $1 million transferred from KF to Lendacy "for operational"; and (2) KF was the source of "around $630,000" for an event to benefit entities. Exhibits 30-31 establishes only that on April 15, 2019 Defendant executed two Credit Facility Agreements for two credit lines to LF42 totaling $2,550,000. Other evidence, however, establishes that Defendant did *not* use any KFYield funds to provide support to his outside business ventures. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

establishes that Defendant did *not* use any "KFYield funds" to provide support to his outside business ventures.[93]

No. 120: Plaintiff has *not* established Defendant executed two "Credit Facility Agreements" dated April 15, 2019, reflecting a total loan in the amount of $2,550,000 — and other evidence establishes that Defendant executed two "Credit Facility Agreement and Disclosures" reflecting a total *line of credit* in the amount of $2,550,000.[94]

No. 121: Plaintiff has *not* established LF42's two "Credit Facility Agreements" dated April 15, 2019 were unsecured — and other evidence establishes that they were *secured*.[95]

No. 122: Plaintiff has *not* established Lendacy had at least $12.6 million in loans made with "KFYield assets" to Defendant, his entities, and other investors — and other evidence establishes that *none* of Lendacy's loans were made with "KFYield assets."[96]

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[93] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16. Exhibit 12 establishes only that: (1) LF42 loaned $250,000 to KIH, and KF invested $300,000 in KIH; (2) the source of the $300,000 was KF capital and KF investor capital (*not* KFYield funds), the $250,00 was working capital for KIH, and the $300,00 was issued as a bond for KIH; (3) the funds LF42 received in connection with ISX came from its line of credit; (4) LF42's line of credit was used to pay for expenses relating to the Summit; and (5) Defendant "believed" that $250,000 of LF42's credit line was used to pay KIH's expenses (*not* that Defendant's belief was correct). Exhibit 44 establishes only that a ledger exists (without any context as to who created it or how to understand it) reflecting various transfers from mostly *unidentified* sources to various recipients. Other evidence, however, establishes that Defendant did *not* use any KFYield funds to provide support to his outside business ventures. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[94] Exhibit 12 establishes only that Defendant's signature is on two documents (which have not been made part of the record in this case) reflecting a $550,000 and a $2,000,000 line of credit (*not* a loan). Exhibits 30-31 establish only that on April 15, 2019 Defendant executed two Credit Facility Agreement and Disclosures reflecting a total credit line (*not* a loan) in the amount of $2,550,000. Other evidence, however, establishes that Defendant executed two "Credit Facility Agreement and Disclosures" reflecting a total *line of credit* in the amount of $2,550,00. *See* **Exhibit B** at ¶¶ 194, 196; Plaintiff's Exhibits 30-31.

[95] Exhibit 12 establishes only that Defendant's signature is on two documents (which have not been made part of the record in this case) reflecting a $550,000 and a $2,000,000 line of credit to LF42. Exhibits 30 and 31, on the other hand, establish that LF42's lines of credit were *secured*, *see* Ex. 30 § 3(a) (fine print); Ex. 31 § 3(a) (fine print). In addition, other evidence establishes that LF42's two credit lines were *secured*. *See* **Exhibit B** at ¶¶ 195, 197.

[96] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16. Other evidence, however, establishes that *none* of Lendacy's loans to Defendant, his entities, or other investors were made with KFYield assets. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-5.

No. 123: Plaintiff has *not* established Defendant Williams repaid $2,354,399.21.[97]

No. 124: Plaintiff has *not* established Defendant executed the Credit Facility Agreement for a $1,517,000 credit line after he purchased his San Juan properties — and other evidence establishes that Defendant executed the Agreement *before* he purchased the properties.[98]

No. 125: Plaintiff has *not* established Defendant's $1,517,000 loan exceeded 70% of his investment in KF.[99]

No. 126: Plaintiff has *not* established the LF42 Credit Agreements were executed after Defendant used "investor assets" to fund KIH and the Summit — and other evidence establishes that Defendant did *not* use any "investor assets" to fund KIH or the Summit.[100]

No. 127: Plaintiff has *not* established LF42 did not invest in KF.[101]

No. 128: Plaintiff has *not* established Defendant "papered" a promissory note to make it look as though LF42's assets funded ISX — and other evidence establishes that Defendant did *not* do this.[102]

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[97] Plaintiff's Exhibit 12 establishes only that that Defendant "made [a] wire payment of roughly 2.6 million dollars to Lendacy" (*not* $2,354.399.21).

[98] Plaintiff's Exhibit 26 establishes only that: (1) Defendant used a bridge loan to purchase the property he acquired, evidenced by paperwork Keli Pufhal had Defendant sign; and (2) Keli Pufahl "believed" a document (which has *not* been made a record in this case) was created after the fact (*not* that her belief is correct). Other evidence, however, establishes that Defendant executed the Agreement *before* he purchased the properties. *See* **Exhibit B** at ¶¶ 176, 178; Plaintiff's Exhibit 42 (Credit Facility Agreement signed on March 23, 2017) and 55 (Purchase and Sale dated March 24, 2017).

[99] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16.

[100] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16. Exhibits 30 and 31 establish only that Defendant executed two Credit Facility Agreements for credit lines totaling $2,550,00 (but *not* how much, if anything, was drawn on those lines, how the funds were used, or the source of the funds). Other evidence, however, establishes that Defendant did *not* use any investor assets to fund KIH and the Kinetic International Summit. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[101] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16.

[102] Plaintiff's Exhibit 12 establishes only that LF42 used its Lendacy credit line to borrow $2 million and lend those funds to ISX; Exhibit 26 establishes only that Keli Pufahl had concerns regarding how she and *unidentified* others would pay for ISX's programmers; and Exhibit 57 establishes only that Defendant on behalf of ISX signed a $2 million promissory note in favor of LF42. Other evidence, however, establishes that Defendant did *not* "paper" a promissory note to make it look as though LF42's assets funded ISX. *See* **Exhibit B** at ¶ 206.

No. 129: Plaintiff has *not* established $2 million in "investor assets" were transferred to ISX — and other evidence establishes that *no* "investor assets" were transferred to Lendacy.[103]

No. 130: Plaintiff has *not* established LF42 agreed to use a future payout to Defendant to pay back Lendacy.[104]

No. 131: Plaintiff has *not* established ISX was responsible to repay LF42 the $2 million that LF42 borrowed from Defendant to repay Lendacy.[105]

No. 132: Plaintiff has *not* established Defendant purchased securities for the KFYield portfolio on margin so he could "divert investor capital" to Lendacy — and other evidence establishes that Defendant's use of margin was *not* for the purpose of diverting investor capital to Lendacy.[106]

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[103] Plaintiff's Exhibit 12 establishes only that LF42 used its credit line to borrow $2 million and lend those funds to ISX; Exhibit 58 establishes only that: (1) an updated $2 million promissory (which has not been made a part of the record in this case) was structured as a bridge loan; (2) Defendant put up the second payment he was to receive from the CBOE as collateral for something (it is unclear); (3) something (it is unclear) is to be paid back by someone not identified to Lendacy, which will then forward the funds to Kinetic Funds no later than December 27, 2019; and (4) ISX will be responsible for paying back to LF42 $2 million after December 27, 2019. Other evidence, however, establishes that *no* investor assets were transferred to ISX. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[104] Plaintiff's Exhibits 30-31 establish only that Defendant pledged a future payment he was to receive as collateral in the event LF42 did not repay the funds it borrowed (*no* limitation was placed on the source of funds LF42 could use to repay its loans). Exhibit 58 establishes only that: (1) an updated $2 million promissory (which has not been made a part of the record) was structured as a bridge loan; (2) Defendant put up the second payment he was to receive from the CBOE as collateral for something (it is unclear); (3) something (it is unclear) is to be paid back by someone not identified to Lendacy, which will then forward the funds to Kinetic Funds no later than December 27, 2019; and (4) ISX will be responsible for paying back to LF42 $2 million after December 27, 2019.

[105] Plaintiff's Exhibit 58 establishes only that: (1) a $2 million promissory (which has not been made a part of the record in this case) was structured as a bridge loan; (2) Defendant put up the second payment he was to receive from the CBOE as collateral for something (it is unclear); (3) something (it is unclear) is to be paid back by someone not identified to Lendacy, which will then forward the funds to Kinetic Funds no later than December 27, 2019; and (4) ISX will be responsible for paying back to LF42 $2 million after December 27, 2019.

[106] Plaintiff's Exhibit 12 establishes only that Defendant sometimes used margin to purchase investments in KFYield's IB account because the carry cost was negligible and the uninvested cash could be used for private equity, Lendacy and other opportunities to generate preferred returns. Other evidence, however, establishes that Defendant did *not* purchase securities for the KFYield portfolio on margin so he could divert investor capital to Lendacy or to conceal his or KF's transactions. *See* **Exhibit B** at ¶¶ 109, 116, 114-118, 211; Plaintiff's Exhibit 12 at 198:20-199:15.

No. 133: Plaintiff has *not* established Defendant transferred "investor capital" amounting to $9.1 million net to Lendacy — and other evidence establishes that *no* "investor capital" was transferred to Lendacy.[107]

No. 134: Plaintiff has *not* established Defendant and two of his entities took unsecured loans amounting to at least $6.8 million funded with "KFYield assets" — and other evidence establishes that all of Lendacy's loans to Defendant and his entities were *secured* and *none* of them were funded with "KFYield assets."[108]

No. 135: Plaintiff has *not* established Defendant used $30,872.44 of "investor funds" to pay Silexx — and other evidence establishes that *no* "investor funds" were used to pay Silexx.[109]

RESPONSE TO MOTION

I. Plaintiff Has *Not* Established the Absence of a Genuine Dispute Regarding the Predicate Facts of Its Securities Act and Exchange Act Claims

A. Plaintiff Has *Not* Established the Existence of the Alleged Misrepresentations and Omissions

For the reasons set forth above, the support proffered by Plaintiff does not establish the following "facts," which are the basis of Plaintiff's misrepresentation and omission allegations:

1. Defendant invested a substantial portion of investor capital in Lendacy — to the contrary, the evidence shows *no* investor capital was invested in Lendacy, *see supra* No. 61;
2. Lendacy's loans to Defendant impaired KFYield's liquidity and its ability to honor redemptions — to the contrary, the

[107] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. Other evidence, however, establishes that *no* investor capital was transferred to Lendacy. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

[108] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence. *See supra* n.16. Other evidence, however, establishes that all of Lendacy's loans to Defendant and his entities were *secured* and *none* of them were funded with KFYield assets. *See* **Exhibit B** at ¶¶ 140-143, 171, 179-180, 190, 195, 197, 209; Plaintiff's Exhibit 12 at 200:11-15.

[109] Plaintiff's Exhibit 20 cannot be presented in a form that would be admissible in evidence, *see supra* n.16; and Exhibit 12 establishes only that Defendant had a 40% ownership in Silexx. Other evidence, however, establishes that *no* investor funds were used to pay Silexx. *See* **Exhibit B** at ¶¶ 140-143, 209; Plaintiff's Exhibit 12 at 200:11-15.

evidence establishes Lendacy's loans did *not* impair KFYield's liquidity or redemptions, *see supra* No. 76;

3. Defendant failed to disclose to most investors KFYield would invest in a private sector funding company, which was Lendacy, *see supra* Nos. 85-86;
4. Defendant led investors to believe Lendacy had a separate funding source and their entire capital would be invested in KFYield — to the contrary, the evidence establishes: (1) Lendacy *did* have a separate funding source; and (2) all investor capital *was* invested in KFYield, *see supra* No. 70;
5. Defendant used investor capital to fund Lendacy loans to himself and his entities — to the contrary the evidence establishes Defendant did *not* use investor capital to fund Lendacy loans, *see supra* No. 72, 97, 104, 108, 114, 118-119;
6. Williams concealed his scheme by purchasing securities with investor capital and margin — to the contrary, the evidence establishes: (1) there was *no* scheme; and (2) trading and margin information was made *available* to investors upon request, *see supra* Nos. 84, 132;
7. The risk of margin increased the cost and risk of investment in KFYield — to the contrary, the evidence establishes margin did *not* affect KFYield's cost or risk, *see* **Exhibit B** at 212;
8. Defendant did not disclose the cost or extent of KFYield's margin position — to the contrary, the evidence establishes KFYield's use of margin *was* made available to investors, *see supra* No. 84;
9. Defendant presented a rosy picture of KFYield's performance that did not comport with the brokerage statements — to the contrary, the evidence establishes Defendant provided investors with *accurate* information regarding KFYield's performance, *see supra* Nos. 79, 82-83; and
10. Defendant "papered" credit agreements to hide his use of investor assets — to the contrary, the evidence establishes Defendant's documentation was prepared *properly* and for *legitimate* purposes, *see supra* Nos. 124, 126-132.

At a minimum, there is a genuine dispute regarding these purported facts upon which Plaintiff's Motion is predicated.

B. Plaintiff Has *Not* Established the Alleged Misrepresentation and Omissions Were Material

Materiality is measured by the "reasonable investor" standard.[110] In this case, all of KF's investors confirmed in writing they were sophisticated investors and experienced business people with substantial financial resources who consulted with their legal, tax, and investment advisors *prior* to making their investments and who were able to obtain information about KF and their investments upon request. *See* **Exhibit B** at ¶¶ 76-77, 89. This was a precondition to investing in KF. *See id.* at ¶ 69.

KF's investors were accurately and truthfully informed that: (1) all of their KF investments would be fully invested in U.S.-listed securities and hedged so that they could never lose more than 10% of their value (in many cases less); (2) they could borrow through Lendacy up to 70% of the value of their investments at a reduced rate without interfering with their investments' ability to generate income; and (3) even if every one of KF's investors borrowed 70% of the value of their investments *and* refused to repay their loan *and* the stock market collapsed, Kinetic Funds would *still have sufficient assets* to repay all of the investors their investments. *See id.* at ¶¶ 134-135, 139, 151-154.

Plaintiff has not provided any support (other than its say-so) that, based on these facts, it would be "material" to a reasonable investor in the KF

[110] *See Carvelli v. Ocwen Fin. Corp.*, 934 F.3d 1307, 1317 (11th Cir. 2019).

investors' shoes to know that Defendant and two of his entities obtained secured loans from Lendacy or that Defendant was able to offer the Lendacy loans by using margin at negligible cost and no additional risk. At a minimum, there is a genuine dispute whether such additional information would be material to a reasonable person in the KF investors' shoes.

C. Plaintiff Has *Not* Established the Existence of the Alleged Misappropriations

The support proffered by Plaintiff also does not establish the following "facts," which are the basis of Plaintiff's misappropriation allegations:

1. Defendant misappropriated at least $6.3 million of investor funds — to the contrary, the evidence establishes Defendant did *not* receive any investor funds, *see supra* Nos. 104-116, 118-121;
2. Defendant invested investor assets in Zephyr — to the contrary, the evidence establishes Defendant did *not* invest investor assets in Zephyr, *see supra* No. 88; and
3. Defendant controlled the relevant bank accounts, brokerage account and investment decision or Kinetic Funds and the relevant entities — to the contrary, the evidence establishes Defendant did *not* control any of those things, *see supra* Nos. 2-13, 15, 17-26, 99-103.

At a minimum, there is a genuine dispute regarding these purported facts upon which Plaintiff's Motion is predicated.

D. Plaintiff Has *Not* Established the Misrepresentations, Omissions, and Misappropriations Were Made "In Connection With" Securities Transactions

As a matter of law, a misrepresentation, omission, or misappropriation is not actionable under the Securities Act or the Exchange Act unless it is made

"in connection with" an offer, purchase, or sale of securities.[111]

If Defendant were to shout out to any empty canyon (or whisper under his breath in the shower) that KF would invest only in Spanish bonds and KF did not invest in Spanish bonds, that would *not* be actionable because no one would have heard it — and, thus, the statement would not been made "in connection with" a securities transaction. Likewise, if Defendant were to falsely say to the clerk in a convenience store that KF would invest only in Spanish bonds, that too would not be actionable — unless the clerk was at that moment considering making an investment in KF.

It is for this reason that the law requires Plaintiff to specifically plead and prove: (1) what misrepresentations or omissions were made; (2) by whom and to whom they were made; (3) when they were made; and (4) where and how they were made — so that Defendant and the trier of fact can determine whether the misrepresentations and omissions are, in fact, actionable.[112]

Plaintiff asserts generally that Defendant made alleged misrepresentations and omissions "to investors," but Plaintiff has not identified a specific investor to whom they were actually made, nor a specific date on which they were made, nor how they were communicated to their purported audiences (*e.g.*, at an in-person meeting, by phone, etc.).

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[111] *See* 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.
[112] *See Carvelli v. Ocwen Fin. Corp.*, 934 F.3d 1307, 1318 (11th Cir. 2019); *SEC v. Roanoke Tech. Corp.*, 2006 WL 3813755, at *3 (M.D. Fla. Dec. 26, 2006).

Plaintiff has identified record evidence of only nine specific emails that provide all of the requisite information. *See* Plaintiff's Exhibits 3, 15, 19, 33, 34, 36-38, 58. Six of those emails were *not* sent by Defendant, however, and therefore do *not* establish that *Defendant* made the alleged misrepresentations and omissions contained in them. *See* Plaintiff's Exhibits 19, 33, 36-38, 58. The other three emails were sent by Defendant, but they were sent to agents of Consultiva Wealth Management, Corp., *see* Plaintiff's Exhibit 15 and 19, and Lendacy, *see* Plaintiff's Exhibit 35 — *neither* of which was a KF investor. *See* **Exhibit B** at ¶¶ 62-63, 215-218. As such, Plaintiff has not established Defendant made any actionable misrepresentations or omissions.

Even if a general assertion that misrepresentations and omissions were made "to investors" was sufficient (it is not), because Plaintiff has not specifically identified when those misrepresentations and omission were made, it is impossible to know if they were made "in connection with" the offer, purchase, or sale of securities. For example, it is possible they were made three months *after* the investors had already invested or one year *before* they had even begun thinking of making an investment.

Similarly, although Plaintiff has identified fives lines of credit that it claims are "misappropriations," Plaintiff has not identified a specific securities transaction that the alleged misappropriations are "in connection with." Indeed, according to the Complaint, all of the alleged misappropriations occurred

after the KF investors had already invested in KF. [D.E. 1 at ¶ 32] Nor has Plaintiff identified a security that was bought or sold to facilitate any of the alleged misappropriations.

At a minimum, there is a genuine dispute whether the misrepresentations, omissions, and misappropriations upon which Plaintiff's Motion is based were made "in connection with" the offer, purchase, or sale of securities.

E. Plaintiff Has *Not* Established the Misrepresentations and Omissions Were Made By Means of Interstate Commerce or the Mails

Under the Securities Act and the Exchange Act, a misrepresentation or omission is not actionable unless it is made by the use of any means or instrumentality of interstate commerce or of the mails.[113]

Because Plaintiff's general allegations of misrepresentation and omissions made "to investors" do not identify a specific investor to whom they were made, nor a specific date on which they were made, nor how they were communicated to their purported audiences (*e.g.*, at an in-person meeting, by phone, etc.), it is impossible know if — much less establish the absence of a genuine dispute that — those misrepresentations and omissions were made by means of interstate commerce and or the mails.

[113] *See* 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

Plaintiff has identified record evidence of three emails sent by Defendant that could possibly satisfy the "interstate commerce or the mails" requirement; however, as noted above, *none* of those emails were sent to investors. *See* Plaintiff's Exhibit 15, 19, 35. Plaintiff has also identified alleged misrepresentations and omissions made to Wilmer Gonzalez Vargas; however, Mr. Vargas specifically alleges those misrepresentations and omissions were made *at an in-person meeting* and therefore did *not* involve "interstate commerce or the emails." *See* Plaintiff's Exhibit 41 at ¶¶ 6-9. In addition, Mr. Vargas' statement is *contradicted* by Carla Mendez's testimony that Defendant was *not* at the meeting Mr. Vargas references. *See* **Exhibit C** at 23:8-25:13, 27:22-28:5.

At a minimum, there is a genuine dispute whether the misrepresentations and omissions upon which Plaintiff's Motion is based were made by the use of any means or instrumentality of interstate commerce or of the mails.

F. Plaintiff Has *Not* Established Defendant Acted with Scienter or Negligence

Defendant relied on the advice and guidance of his attorneys and other professional advisers to make sure that all materials provided to potential and actual investors and all transactions between and among Kinetic Group, Kinetic Funds, Kinetic Partners, LF42, Lendacy, Scipio, El Morro, KIH, investors, members, shareholder, and/or himself contained all necessary disclosures

and fully complied with all laws and regulations. *See* **Schedule B** at ¶¶ 65-69, 213-214.

Plaintiff's has not disputed these facts nor established that Defendant's professional advisers were knowingly acting in concert with Defendant's alleged scheme to defraud (they were not). As such, Plaintiff has not established Defendant acted scienter. Nor has Plaintiff's established that Defendant acted negligently when he relied on his attorneys and other professional advisers for advice and guidance. At a minimum, there is a genuine dispute as to whether Defendant acted with scienter or negligently.

II. Plaintiff Has *Not* Established the Absence of a Genuine Dispute Regarding the Predicate Facts of Its Advisers Act Claims

A. Defendant is *Not* an "Investment Adviser"

To prevail on its Advisers Act claims, Plaintiff must prove Defendant was an "investment adviser," which is defined as "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 . . . ." [114]

Crucially, the undisputed record evidence establishes that Defendant did *not* engage in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; *nor* did

[114] *See* 15 U.S.C.§ 80b-6(1),(2),(4); 17 C.F.R. § 275.206(4)-8(a)(1),(2); *see* 15 U.S.C. § 80b-2(a)(11).

Defendant receive any compensation advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. *See* **Exhibit B** at ¶¶ 219-223. As such, Defendant was *not* an "investment adviser" as that term is defined for purposes of the Advisers Act.

Plaintiff attempts to side-step these fatal facts by asserting that the KG is the investment adviser of KF, Defendant carried out KG's responsibilities as investment adviser, and Defendant received through KG a 1% management fee for managing KF; however, the support proffered by Plaintiff does *not* establish these facts. *See supra* Nos. 2-16, 47-56, 70-71, 74, 77, 79-82, 97, 99-102. At a minimum, there is a genuine dispute as to whether Defendant was an investment adviser.

B. Plaintiff Has *Not* Established the Alleged Misrepresentations, Omissions, and Misappropriations

For the reasons set forth above, the support proffered by Plaintiff does not establish the following "facts," which are the basis of Plaintiff's misrepresentation, omission, and misappropriation allegations:

1. Defendant misappropriated investor funds to make loans to himself and others, to fund his other business ventures and to cover operating costs — to the contrary, the evidence establishes *no* investor funds were loaned to Defendant or others or used to fund Defendant's business ventures, *see supra* Nos. 88, 104-116, 118-123;
2. Defendant diverted investor funds to Lendacy and had Lendacy make unsecured loans funded with KFYield assets to himself, and also directed KF to pay fees to Silexx — to the contrary, the evidence establishes that: (1) *no* investor funds were transferred to Lendacy, loaned to

Defendant, or paid to Silexx: and (2) Defendant's loans were <u>secured</u>, *see supra* Nos. 60-61, 63-64, 85-87, 133-135; and

3. Defendant diverted a substantial portion of KFYield assets to Lendacy, which proceeded to make loans to Defendant, his entities and other investors — to the contrary, the evidence establishes <u>no</u> KYField assets were transferred to Lendacy or loaned to Defendant, his entities or other investors, *see supra* Nos. 60-64, 74, 104-116, 118-123.

At a minimum, there is a genuine dispute regarding these purported facts upon which Plaintiff's Motion is predicated.

C. <u>Plaintiff Has *Not* Established the Misrepresentations, Omissions, and Misappropriations Were Made "In Connection With" Securities Transactions, by Means of Interstate Commerce or the Mails, and With Scienter or Negligence</u>

For the reasons discussed above, Plaintiff has not established that the alleged misrepresentations, omissions, and misappropriations upon which its Advisers Act claims are based were made "in connection with" the offer, purchase, or sale of securities;[115] by the use of any means or instrumentality of interstate commerce or of the mails;[116] or with scienter or negligence. At a minimum, there is a genuine dispute that they were so made.

D. <u>Plaintiff Has Not Established Plaintiff Aided and Abetted Violations of the Advisers Act</u>

In its Motion, Plaintiff conflates Defendant and KG and now takes the position that if Defendant did not make the alleged misrepresentations and omissions in his personal capacity and cannot be held directly liable for them,

[115] *See* 15 U.S.C.§ 80b-6; 17 C.F.R. § 275.206(4)-8(a).
[116] *See* 15 U.S.C.§ 80b-6; 17 C.F.R. § 275.206(4)-8(a).

then he did so in his corporate capacity on behalf of KG and thus can be held liable for aiding and abetting KG.[117]

Fatally, however, Plaintiff has not presented any evidence that Defendant was acting on KG's behalf when he made the alleged misrepresentations and omissions, much less established there is no genuine dispute about this purported "fact." *See supra* Nos. 2, 10-13, 27, 40, 42, 47-51, 60-64, 72-74, 85-89, 97, 99-116, 118-123.

More importantly, as discussed above, the evidence proffered by Plaintiff does *not* establish the predicate facts necessary to prove a primary violation of the Advisers Act by KG — nor that Defendant substantially assisted KG's primary violation of the Advisers Act — much less that there is no genuine dispute regarding those "facts." *See supra* Nos. 2, 10-13, 27, 40, 42, 47-51, 60-64, 72-74, 85-89, 97, 99-116, 118-123.

Finally, Plaintiff has expressly alleged that Defendant (not KG) made the alleged misappropriations. [D.E. 1 at ¶¶ 32-37]. As a matter of law and

[117] Plaintiff does *not* allege Defendant acted on KG's behalf in its Complaint. Rather, Plaintiff alleges that Defendant and KG each acted (but *not* that they did so on the other's behalf) when they made the alleged misrepresentations and omissions and that Defendant acted on his own behalf (*no* mention is made of KG) when he made the alleged misappropriations. [D.E. 1 at ¶¶ 28-31, 32-37, 40] Plaintiff cannot amend his Complaint now, and this argument should be denied. *See Gilmour v. Gates, McDonald & Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004 ("At the summary judgment stage, the proper procedure for plaintiffs to assert a new claim is to amend the complaint in accordance with Fed.R.Civ.P. 15(a)."); *Manning v. St. Petersburg Kennel Club, Inc.*, 2015 WL 477364, at *5 (M.D. Fla. Feb. 5, 2015) (holding Plaintiff may not amend claim via opposition to summary judgment motion); *Petty v. United Plating, Inc.*, 2012 WL 2047532, *9 (N.D. Ala. May 31, 2012) ("[A] plaintiff cannot assert for the first time at the summary judgment stage a claim for relief that was not plead in his complaint.).

common sense, Plaintiff *cannot* aid and abet his *own* primary wrongdoing and summary judgment must denied as to those claims.

III. Plaintiff Has Not Negated Defendant's Affirmative Defenses

Defendant has asserted 13 affirmative defenses including, among others, statute of limitations (First Affirmative Defense);[118] and good faith reliance on advice of expert professionals (Second Affirmative Defense), statements made in good faith (Fourth Affirmative Defense), lack of scienter (Fifth Affirmative Defense), no fraudulent conduct (Sixth Affirmative Defense), compliance with laws (Eighth Affirmative Defenses), and no duty to disclose (Thirteen Affirmative Defense).[119] [D.E. 56 at 16-20]. Plaintiff has not addressed any of Defendant's affirmative defenses, much less disproved them by evidence or established they are legally insufficient or that there is a genuine issue of material fact regarding any of them. Accordingly, Plaintiff's Motion must be denied.[120]

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[118] According to the Complaint, the relevant time period began in 2012. [D.E. at ¶ 18]. The Complaint was file on February 20, 2020, however, and Plaintiff's claims are governed by a five-year statute of limitations. *See* 28 U.S.C. § 2462. Accordingly, any misrepresentations and omissions made before February 20, 2020 are time-barred.

[119] As discussed above, Defendant relied on the advice and guidance of his attorneys and other professional advisers to ensure that: (1) all materials provided to investors complied with all applicable laws and regulations and properly and adequately made all necessary disclosures; and (2) all transactions between and among Kinetic Group, Kinetic Funds, Kinetic Partners, LF42, Lendacy, Scipio, El Morro, KIH, investors, members, shareholder, and/or himself fully complied with all laws and regulations. *See* **Schedule B** at ¶¶ 65-69, 213-214.

[120] *See Pacific Emp'rs Ins. Co. v. Wausau Bus. Ins. Co.*, 508 F. Supp.2d 1167, 1180 (M.D. Fla. 2009) ("[I]n order for Plaintiffs to obtain summary judgment they must either disprove the affirmative defenses raised by evidence or establish the legal insufficiency of the defenses.); *see also High Bid, LLC v. Everett*, 2012 WL 12903788, at *1 (N.D. Fla. Nov. 30, 2012) ("In order to succeed on summary judgment, Plaintiff had to negate all of the affirmative defenses pled, and it did not do so."); *Lewis Commc'ns, Inc. v. Zohouri Seagrove, L.P.*, 2007 WL 2688521, at *5 n.14 (N.D. Fla. Sept. 11, 2007) ("[W]here a defendant pleads an affirmative

CONCLUSION

For all of the reasons discussed above, Plaintiff's Motion for Summary Judgment should be denied in its entirety.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 12, 2021, the foregoing document was filed with the Clerk of the Court using the CM/ECF system and served on all counsel of record.

By: /s/ Timothy W. Schulz

By: /s/ Jon A. Jacobson

defense and plaintiff does not, by affidavit or other sworn evidence, negate or deny that defense, plaintiff is not entitled to summary judgment.").

Exhibit A

Plaintiff's "Undisputed" Material Facts

Key

BMO = BMO Harris Bank, N.A.
Consultiva = Consultiva Wealth Management, Corp.
El Morro = Relief Defendant El Morro Financial Group, LLC
IB = Interactive Brokers, LLC
ISX = ISX, LLC
KF = Relief Defendant Kinetic Funds I, LLC
KG = Defendant Kinetic Investment Group, LLC
KIH = KIH, Inc. f/k/a Kinetic International, LLC
KP = Kinetic Partners, LLC
Lendacy = Relief Defendant KCL Services, LLC d/b/a Lendacy
LF42 = Relief Defendant LF42, LLC
MW = Defendant Michael Scott Williams
Plaintiff = Plaintiff Securities and Exchange Commission
Scipio = Relief Defendant Scipio, LLC
Silexx = Silexx Financial Systems, LLC

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
2	Williams is the managing member of Kinetic Group	Ex. 1, Michael Williams Decl. ("MW Decl.") at ¶ 3; Ex. 2, SEC-BMO-P 0000481-0000484	Disputed	• Ex. 1 establishes MW's status only on 3/4/20 — *not* that MW is *presently* KG's managing member • Ex. 2 establishes MW status only on 6/8/17 — *not* that MW is *presently* KG's managing member	MW is not presently the managing member of KG • Declaration of Michael Scott Williams dated 4/12/21 (hereinafter "Exhibit B") at ¶¶ 5,7 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1
3	Williams is the managing member of . . . Kinetic Funds	Ex. 1, MW Decl. at ¶ 3; Ex. 3, SEC-Consultiva-E-0061310 and 0061271	Disputed	• Ex. 1 establishes MW's status only on 3/4/20 — *not* that he is *presently* KF's managing member • Ex. 3 establishes only that: (1) MW sent an email on 3/10/16 with a signature block that identified him as "Managing Member" (but *not* of KF); (2) an unsigned, undated blank agreement contains a statement that MW is the managing member of KF; and (3) a document	MW is not presently the managing member of KF • Exhibit B at ¶¶ 28, 36 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				prepared for MW's signature (but *not* signed by MW) contains a statement that MW was the managing member of KF on 5/10/12 — *not* that MW is *presently* KF's managing member	
4	Williams is the managing member of . . . Lendacy . . .	Ex. 4, Lendacy corporate filing; Ex. 1, MW Decl. at ¶ 3; Ex. 5, SEC-BMO-P 0001407-0001409, 0000004-0000010	Disputed	• Ex. 1 establishes MW's status only on 3/4/20 — *not* that MW is *presently* Lendacy's managing member • Ex. 4 establish MW's status on 2/26/14, 4/27/15, 3/30/16 — *not* that MW is *presently* Lendacy's managing member • Ex. 5 establishes MW status only on 2/28/13 and 10/7/14 — *not* that MW is *presently* Lendacy's managing member	MW is not presently the managing member of Lendacy • Exhibit B at ¶¶ 19, 24 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1
5	Williams is the managing member of . . . LF42	Ex. 1, MW Decl. at ¶¶ 3, 40; Ex. 6, SEC-BMO-P 0000803-0000809	Disputed	• Ex. 1 establishes MW's status only on 3/4/20 — *not* that MW is *presently* LF42's managing member • Ex. 6 establishes MW's status only on 1/15/23 or an unspecified day in April 2012 (the document is conflicting) — *not* that MW is *presently* Lendacy's managing member	MW is not presently the managing member of LF42 • Exhibit B at ¶¶ 14, 17 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1
6	Williams is . . . the president of Scipio	Ex. 1, MW Decl. at ¶ 3; Ex. 7, Certificate of Formation for Scipio	Disputed	• Ex. 1 establishes MW's status only on 3/4/20 — *not* that MW is *presently* Scipio's president • Ex. 7 establishes MW's status only on 3/16/16 — *not* that MW is *presently* Scipio's president	MW is not presently the president of Scipio • Exhibit B at ¶¶ 41, 44 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
7	Williams is . . . the president of . . . El Morro	Ex. 1, MW Decl. at ¶ 3; Ex. 8, Certificate of Formation for El Morro	Disputed	• Ex. 1 establishes MW's status only on 3/4/20 — *not* that MW is *presently* El Morro's president • Ex. 8 establishes MW's status only on 3/16/16 — *not* that MW is *presently* El Morro's president	MW is not presently the president of El Morro • Exhibit B at ¶¶ 46, 49 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1
8	Williams is . . . a shareholder of KIH.	Ex. 1, MW Decl. at ¶ 3; Ex. 9, Unanimous Written Consent of the Board of Directors of KIH	Disputed	• Ex. 1 establishes only that MW was a shareholder of KIH on 3/4/20 — *not* that MW is *presently* a shareholder of KIH • Ex. 9 establishes on that MW became a shareholder of KIH after an unspecified date — *not* that MW is *presently* a shareholder of KIH	MW is not presently a shareholder of KIH; KIH no longer exists • Exhibit B at ¶¶ 51-52 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1
9	Williams is also the managing member of Kinetic Partners, LLC, which in turn is a managing member of Kinetic Funds.	Ex. 10, SEC-BMO-P0001198-0001204; Ex. 3 SEC-Consultiva-E-0061304	Disputed	• Ex. 3 establishes only that KP was a Class A member of KF on 5/10/12 — *not* that KP was a *managing member* of KF on 5/10/12 or that KP is *presently* the managing member of KF • SEC-Consultiva-E-0061304 (which Plaintiff does not cite) establishes that *MW* was the managing member of KF on 5/10/12 but it does *not* establish whether he is presently the managing member of KF • Ex. 10 establishes only that MW was either a manager or a duly authorized member of KP on 1/15/13 — *not* that MW is *presently* the managing member of KP	MW is not presently the managing member of KP • Exhibit B at ¶ 10 KP is not presently the managing member of KF • Exhibit B at ¶¶ 30, 36 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1
10	At all relevant times, Williams had an ownership interest in, controlled, and exercised ultimate authority over Kinetic Group, Kinetic	*See supra* n. 2-8; *see also* Ex. 11, MW's Responses to Requests for Admission ("RFAs") at	Disputed	• Fns. 2-8 only establish MW's status with respect to KG, KF, Lendacy, LF42, Scipio, El Morro, and KIH on various specific dates — *not* that MW had an ownership interest in, controlled, and exercised ultimate authority	MW did not have an ownership interest in, control, and exercise ultimate authority over KG, KF, Lendacy, LF42, Scipio, El Morro and KIH at all relevant times

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	Funds, Lendacy, LF42, Scipio, El Morro and KIH.	Nos. 1-2, 4, 6-7 (Kinetic Group, El Morro, Kinetic Funds, LF42 and Scipio); Ex. 12, MW Tr. at 49:14-52:5; 52:9-53:2 (RFAs); 145:16-24, 221:24-222:6, 224:24-225:7, 229:16-230:2, 233:24-234:7 (Lendacy), 256:25-257:9 (KIH), 363:12-14 (El Morro)		over those entities "at all relevant times" (which is not defined) • Ex. 11 establishes only that MW controlled KG, El Morro, KF, LF42, and Scipio at some unidentified time in the past — *not* that MW had such control "at all relevant times" • Ex. 12 establishes only that: (1) MW's answers to Plaintiff's Request for Admissions (Fns. 2-8) are correct (49:14-52:5); (2) it is MW's signature on his Declaration dated 3/4/20 (52:9-53:2); (3) MW was once a majority owner of Lendacy (145:16-24); (4) MW once owned 50%-60% of Lendacy (221:24-222:6); (5) originally Cliff could hire/fire Lendacy employees and later MW could do so (224:24-225:7); (6) MW had authority over Lendacy's marketing materials before Kelly Locke took over (229:16-230:2); (7) Tom and MW could remove Kelly Locke as president of Lendacy (233:24-234:7); (8) MW's signature is on a document (which has *not* been made part of the record in this case) evidencing MW was either a manger or an authorized member of Lendacy on 4/26/17 (256:25-257:9); and (9) MW controlled El Morro on 2/10/21 (363:12-14) — *not* that MW had an ownership interest in, controlled, and exercised ultimate authority over KF, KF, Lendacy, LF42, Scipio, El Morro and KIH at "all relevant times"	• Exhibit B at ¶¶ 6, 16, 23, 35, 43, 48, 53
11	Kinetic Group, formerly known as Kinetic Management Group, LLC, is a private Florida limited	Ex. 13, Kinetic Group corporate filing; Ex. 12, MW at 61:2-16	Disputed	• Ex. 12 establishes that MW's attorneys — *not* MW — formed KG	KG was formed by MW's attorneys • Exhibit B at ¶ 4 • Ex. 12 at 61:5-16

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	liability company formed by Williams.			• Ex. 13 establishes only that MW filed KG's Articles of Organization in Florida — *not* that MW "formed" KG	
12	Kinetic Group manages Kinetic Funds, a private pooled investment fund	*Id.*; Ex. 14 Form D; Ex. 15, SEC-Consultiva-E-0059619; Ex. 16, Kelly Locke Tr. at 26:24-27:8; Ex. 12, MW at 60:7-22	Disputed	• Ex. 12 establishes only that KG managed KF on 2/10/21 — *not* that KG *presently* manages KF • Ex. 14 establishes only that KF is a pooled investment fund — *not* that KF is a "private" pooled investment fund (notably, "private equity fund" is not checked on p. 2 of Ex. 14) • Ex. 15 establishes only that a Bloomberg report exists which contains a statement that: (1) KF is an open-end fund (but *not* a private pooled investment); and (2) KG was KF's management company on 1/29/16 — *not* that KG *presently* manages KF • Ex. 16 establishes only that KG was the managing entity for KF on 9/19/19 and at some time in the undefined past — *not* that KG *presently* manages KF • This Undisputed Fact No. 12 (stating that *KG* presently manages KF) is *contradicted* by Plaintiff's Undisputed Fact No. 15 (stating that *MW* presently manages KF)	KG does not presently manage KF • Exhibit B at ¶ 33 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1
13	Kinetic Group . . . charges Kinetic Funds a 1% management fee.	Ex. 3, SEC-Consultiva-E-0061263 and 0061268; Ex. 16, Locke at 186:17-20	Disputed	• Ex. 3 establishes only that KF was charged a 1% management fee in the past — *not* that *KG* charged KF a 1% management fee or that KG *presently* charges KF a 1% management fee • Ex. 13 establishes only that KG charged KF a 1% management fee in the past — *not* that KG *presently* charges KF a 1% management fee	KG does not presently charge KF a 1% management fee • Exhibit B at ¶ 34 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
14	Kinetic Funds is a Delaware limited liability company	Ex. 17, Kinetic Funds corporate filing; Ex. 14	Undisputed		
15	Kinetic Funds . . . [was] formed by Williams and operates as a private pooled investment fund managed by Williams.	*Id.*; Ex. 11 at No. 4; Ex. 12, MW at 53:8-55:17; 56:18-57:4	Disputed	• Ex. 11 establishes only that MW controlled KF at some time in the undefined past — *not* that MW "formed" KF or that MW *presently* operates KF as a private pooled investment fund • Ex. 12 establishes only that: (1) KF was a "private equity investment fund," which is contradicted by Plaintiff's Ex. 14 ("private equity fund" is *not* checked on p. 2 of Ex. 14); (2) MW's *lawyers* formed KF; and (3) MW had ultimate authority over KF but others managed KF — *not* that *MW* formed KF or that MW *presently* operates KF as a private pooled investment fund • Ex. 14 establishes only that KF is a pooled investment fund — *not* that KF is a "private" pooled investment fund (notably, "private equity fund" is not checked on p. 2 of Ex. 14) • Ex. 17 establishes only that P. Handin filed KF's corporate papers in Delaware — *not* that MW formed KF • This Undisputed Fact No. 15 (stating that *MW* presently manages KF) is *contradicted* by Plaintiff's Undisputed Fact No. 12 (stating that *KG* presently manages KF)	KF was formed by MW's attorneys • Exhibit B at ¶¶ 27, • Ex. 12 at 53:17-54:19 All of KF' investments have been liquidated and KF does not presently operate as a private pooled investment fund • Exhibit B at ¶¶ 37-39 • D.E. 60 at 63-64 • D.E. 111 at 21 MW does not presently manage KF • Exhibit B at ¶¶ 29, 36 • D.E. 34 at ¶¶ 2, 4-6 • D.E. 200 at n.1
16	Kinetic Funds filed a Form D with the Commission in October 2016 claiming an	Ex. 14	Undisputed		

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	exemption under Rule 506(c) of the Securities Act for its pooled investment fund interests with a first sale date of October 2012.				
17	Lendacy is a Florida limited liability company formed by Williams and is purportedly in the business of providing lines of credit to accredited investors.	Ex. 4; Ex. 19, E-mail enclosing Lendacy brochure, etc., at pp. 3-4	Disputed	• Ex. 4 establish only that MW: (1) filed Lendacy's Articles of Organization in Florida; and (2) was a managing member of Lendacy 2/26/14, 4/27/15, 3/30/16 — *not* that MW formed Lendacy or that Lendacy is presently in the business of providing lines of credit to accredited investors • Ex. 19 establishes only that a brochure emailed on 9/9/15 contained a statement that Lendacy offered "a variety of investment opportunities" to accredited investors — *not* that Lendacy is *presently* in the business of providing lines of credit to accredited investors	Lendacy was formed by MW's attorneys • Exhibit B at ¶¶ 18 Lendacy is not presently in the business of providing lines of credit to accredited investors • Exhibit B at ¶¶ 25-26 • D.E. 34 at ¶¶ 29-35 • D.E. 60 at 62-63 • D.E. 200 at n.1

18	Between January 2015 and September 2019, Lendacy received approximately $9.1 million net of investor assets.	Ex. 20, Crystal Ivory ("Ivory") Decl. at ¶ 11	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* what actually transpired at Lendacy
					The funds received by Lendacy were not investor assets
					• Exhibit B at ¶¶ 140-142

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 20 cannot be presented in a form that would be admissible in evidence • Putting aside its *inadmissibility*, Ex. 20 states that $9.1 million "(net)" was transferred — *not* that $9.1 million "net of investor assets" was transferred *nor* does it establish that the funds transferred were "investor assets"	
19	Scipio is a Puerto Rico limited liability company formed by Williams.	Ex. 7; Ex. 16, Locke at 83:11-25	Disputed	• Ex. 7 establishes only that MW was Scipio's president on 3/3/16 — *not* that MW formed Scipio • Ex. 16 establishes only that Kelly Locke understood Scipio to be MW's "personal LLC" — *not* that MW formed Scipio	Scipio was formed by MW's attorneys • Exhibit B at ¶ 40
20	Scipio used at least $2,755,000 of investor assets routed through Lendacy to purchase a historic bank building in San Juan, Puerto Rico	Ex. 16, Locke at 85:8-94:19; Ex. 21, Recorded deed; Ex. 22 and 23, fund transfers; Ex. 24, check payments; Ex. 44	Disputed	• Ex. 16 establishes only that Kelly Lock reviewed multiple documents (which have *not* been made a part of the record in this case) and concluded that the funds Lendacy obtained from KF's BMO account the funds that it lent to Scipio to purchase the bank building — *not* that those funds were "investor assets" • Ex. 21 establishes only that Scipio purchased a property on May 4, 2018 — *not* that the funds used to purchase that property were "investor assets" • Ex. 22 and Ex. 23 establishes only that funds were transferred from KF's BMO account to Lendacy's bank account in May 2018 and the amounts of those transfers were consistent with the price Scipio paid for the bank building — *not* that those funds were "investor assets"	The funds used by Scipio to purchase an historic bank building in San Juan, Puerto Rico were not investor assets • Exhibit B at ¶¶ 140-143, 209

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 24 establishes only that LF42 wrote a check in amount that was consistent with the price Scipio paid for the bank building — *not* that the funds for that check were "investor assets" • Ex. 44 establishes only that that a ledger exists (without any context as to who created it or how to understand it) evidencing that funds were transferred to Scipio to purchase a bank building — *not* that those funds were "investor assets"	
21	El Morro is a Puerto Rico limited liability company formed by Williams.	Ex. 8; Composite Ex. 25, Certificate of Existence, Certificate of Organization	Disputed	• Ex. 8 establishes only that MW was El Morro's president on 3/3/16 — *not* that MW formed El Morro • Ex. 25 establishes only that MW was El Morro's president on 3/3/16 — *not* that MW formed El Morro	El Morro was formed by MW's attorneys • Exhibit B at ¶¶ 45

22	El Morro received at least $565,000 of investor assets, routed through Lendacy, to fund general operating expenses for Williams' various entities and to partially fund a multi-day launch event for KIH.	Ex. 20, Ivory Decl. at ¶ 14; Ex. 26, Keli Pufahl Tr. at 109:21-111:9, 112:14-113:13	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* what actually transpired at El Morro, Lendacy, or KIH
					The funds received by El Morro were not investor assets
					• Exhibit B at ¶¶ 140-143, 209
					• Ex. 12 at 200:11-15

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 20 cannot be presented in a form that would be admissible in evidence • Ex. 26 establishes only that another document (which has *not* been made part of the record in this case) reflects that funds were transferred from Kinetic Yield to El Morro — *not* that those funds were "investor assets"	
23	KIH is a Puerto Rico corporation formed by Williams as a purported Puerto Rico licensed international financial entity.	Ex. 27, Certificate of Formation	Undisputed		
24	KIH used at least $1,380,000 of investor assets to fund its start-up costs.	Ex. 20, Ivory Decl. at ¶14; Ex. 25; Ex. 28, Carla Mendez Tr. at 77:15-80:3; 94:7-96:12	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents • Crystal Ivory is a CPA currently employed by Plaintiff • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case • Crystal Ivory has *not* been identified as an expert witness by any party • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* what actually transpired at KIH • Ex. 20 cannot be presented in a form that would be admissible in evidence	The funds used by KIH were not investor assets • Exhibit B at ¶¶ 140-143, 209 • Ex. 12 at 200:11-15

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 25 is a copy of El Morro's corporate filings and *irrelevant* to the asserted fact regarding KIH • Ex. 28 establishes only that another document (which has *not* been made part of the record in this case) reflects that an unidentified amount of funds were transferred from El Morro to KIH and $550,000 was transferred from KF to KIH — *not* that any of those funds were "investor assets" or that they totaled "at least $1,380,000"	
25	LF42 is a Delaware limited liability company formed by Williams.	Ex. 29, Certificate of Formation	Disputed	• Ex. 29 establishes only that P. Handin signed LF42's Certificate of Formation — *not* that MW formed LF42	LF42 was formed by MW's attorneys • Exhibit B at ¶¶ 13

26	LF42 executed a credit agreement with Lendacy reflecting a loan for $2,550,000, of which a substantial portion was used by El Morro and KIH and at least $100,000 was retained by LF42	Ex. 20, Ivory Decl. at ¶ 14; Ex. 30; Ex. 31; Ex. 28, Mendez Tr. at 104:12-20	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* what actually transpired at LF42, El Morro, or KIH
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 28 establishes only that a promissory note (which has *not* been made part of the record in this case) stating that LF42 was lending funds to ISX was prepared — *not* that El Morro, KIH, or LF42 used any funds that LF42 obtained through a line of credit from Lendacy or that LF42 retained $100,000 from it obtained from a line of credit with Lendacy • Ex. 30 and Ex. 31 establish that LF42 entered into *two* credit facility agreements for a $2,000,000 and a $550,000 "credit line" (*not* a loan) with Lendacy each of which was executed by *MW* — *not* that *LF42* executed *one* credit agreement with Lendacy for $2,550,000 *loan* or that LF42, El Morro, and KIH used any funds obtained through either of these credit lines • Ex. 30 establishes only that MW on behalf of LF42 signed the paperwork to obtain a $550,000 line of credit from Lendacy — *not* that LF42, El Morro, and KIH used any funds obtained through either of these credit lines • Ex. 31 establishes only that MW on behalf of LF42 signed the paperwork to obtain a $2,000,000 line of credit from Lendacy — *not* that LF42, El Morro, and KIH used any funds obtained through either of these credit lines	
27	Since 2012, Williams, through Kinetic Group, has offered Kinetic Funds as an investment opportunity	Ex. 14	Disputed	• Ex. 14 establishes only that on 10/1/12 KF's first investor was irrevocably committed to invest in KF — *not* that MW "offered" KF as an investment to the investor (as opposed to the investor approaching KF on his own and making an "unsolicited" investment in KF) or that	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				MW has offered KF as an investment opportunity at any time since 10/1/12	

28	Kinetic Funds employs four investment strategies through sub-funds characterized as yield, gold, growth, and inflation	Ex. 20, Ivory Decl. at ¶ 10; Ex. 12, MW at 57:5-58:1; Ex. 16, Locke at 33:22-34:8	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* how KF actually managed its investment strategies
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
				• Ex. 12 establishes only that: (1) KF employed an income (not yield) strategy, a gold strategy, an S&P (not growth) strategy, and an unknown strategy; and (2) the first two strategies involved "funds" — *not* that KF employed a yield or inflation strategy or that KF employed any of its strategies through "sub-funds"
				• Ex. 16 establishes only that: (1) KF employed a KF Yield Fund (not yield) strategy, an inflation strategy, a growth strategy, and a gold strategy; and (2) all four strategies involved "funds" — *not* that KF employed any of these strategies through "sub-funds"	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• At a minimum, the differences between Ex. 12 and Ex. 16 create a genuine dispute as to what kinds of sub-funds KF offered	

29	The yield strategy, known as KFYield, accounted for approximately 98% of Kinetic Funds' assets as of January 2019.	Ex. 20, Ivory Decl. at ¶ 10; Ex. 16, Locke at 33:22-34:8; Ex. 32	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* how KF actually managed its investment strategies or for what percentage of KF's assets KFYield accounted
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
				• Ex. 16 establishes only Kelly Locke understood the KF's primary strategy was the KF Yield Fund — *not* that KFYield accounted for approximately 98% of Kinetic Funds' assets as of January 2019	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 32 is a collection of 37 account statements apparently generated by KG in January 2019 — but Plaintiff has *not* provided any explanation or context for these statements or what they purport to evidence or how to interpret the information contained in them or even whether they represent statements for *all* of KG's investors or reflect *all* of KG's assets	
30	Williams initially offered Kinetic Funds to his friends, partners and associates.	Ex. 15, SEC-Consultiva-E-0059617; Ex. 12, MW at 100:20-101:14	Disputed	• Ex. 12 establishes only that at some time in the past MW solicited investors "that [MW] had already built relationships with or [who] were already acquainted with [MW]" (it does not qualify the nature of those relationship) — *not* that MW offered KF to "friends, or partner, or family" or that he "initially" did so • Ex. 15 establishes only that KFYield was "initially designed for [MW's] personal assets, his partner's money, and initially close friends and family" — not that it was initially "offered" to MW's friends, partners, and associates	
31	Over time, Williams developed marketing brochures, websites and used referrals to solicit additional investors.	*Id.*; Ex. 33, E-mail at p. 1; Ex. 16, Locke at 174:15-175:6, 190:21-191:20, 193:21-196:8; Ex. 12, MW at 118:14-119:1; 293:13-21	Disputed	• Ex. 12 establishes only that: (1) MW solicited some investors (100:20-101:14); (2) investors were made aware of KFYield through meetings and brochures (118:14-119:1); and (3) some of the information in KF's brochures appeared on KF's website (293:13-21) — *not* that MW "developed" any marketing brochures or website or that MW used referrals to solicit investors • Ex. 15 establishes only that KFYield was "initially designed for [MW's] personal assets, his partner's money, and initially close friends	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				and family" — *not* that MW developed any marketing brochures or website or that MW used referrals to solicit investors • Ex. 16 establishes only that: (1) every KF investor received a KF brochure (174:15-175:6); (2) Consultive referred investors to KF (190:21-191:20); and (3) Consultive, Eliseo Acosta, and Angelo Diaz referred investors to KF (193:21-196:8) — *not* that MW developed any marketing brochures or website or that *MW* used referrals to solicit investors • Ex. 33 establishes only that: (1) in September 2015, KG (*not* MW) was working with a marketing company; and (2) Kelly Locke (*not* MW) used a referral to solicit an investor— *not* that MW "developed" any marketing brochures or website or that *MW* used referrals to solicit investors	
32	Williams did not utilize a private placement memorandum to provide disclosures to potential investors.	Ex. 12, MW at 80:7-15; Ex. 16, Locke at 106:21-112:11; Ex. 3, SEC-Consultiva-E-0061256	Undisputed		
33	[W]illiams typically provided potential investors with (a) a copy of the Kinetic Funds Subscription Agreement ("Subscription Agreement"), (b) either Exhibit "B-1" or "C-1" to the Kinetic Funds Operating Agreement ("Operating Agreement"), which	Ex. 16, Locke at 106:21-112:11; Ex. 3 at SEC-Consultiva-E-0061256; Ex. 12, MW at 78:3-18	Disputed	• Ex. 3 establishes only that, on 3/17/16: (1) KF used an Offering Questionnaire, Exhibit B or C (*not* Exhibit B-1 or C-1), and Subscription Agreement to "on-board" investors; and (2) MW provided these documents to Consultiva (*not* a potential investor) — not that *MW* "typically provided potential investors" with those documents or with any brochures • Ex. 12 establishes only various documents exist that describe to investors how KF operates	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	investors used to designate the strategy they wanted to invest in, (c) the Kinetic Funds Offering Questionnaire ("Offering Questionnaire"), and (d) Kinetic Funds marketing brochures.			— *not* that MW "typically provided potential investors" with any of those documents • Ex. 16 establishes only that: (1) actual investors signed a Subscription Agreement and a Questionnaire and should have been provided an Operating Agreement; (2) marketing brochures exist; (3) after 2016, actual investors were provided with a Subscription Agreement and a Questionnaire; (4) after 2016, some marketing material might have been provided to investors — *not* that MW "typically provided potential investors" with Subscription Agreements, Exhibits B-1 or C-1, a Questions, or brochures	
34	Williams gave some investors a copy of the Operating Agreement.	Ex. 16, Locke at 106:21-112:11	Disputed	• Ex. 16 establishes only that Kelly Lock believed the Operating Agreement "should have been provided" to investors but that she did not "recall to what extent it was given to them" — *not* that *MW* gave any investors a copy of the Operating Agreement	
35	Exhibit C-1 was signed by investors who did have a relationship with Lendacy.	Ex. 12, MW at 138:5-139:15	Disputed	• Ex. 12 establishes only that MW "believe[d]" (with lots of qualifications) Exhibit C-1 was created for investors who had a relationship with Lendacy; and based on that belief, that Exhibit C-1 was signed by investors who had "*or would have*" a relationship with Lendacy — *not* that MW's belief was correct.	Investors who did not have a relationship with Lendacy but who might have such a relationship in the future also signed Exhibit C-1 • Ex. 12 at 139:10-139:14
36	Exhibit C-1 contains this language: "All Funds may include a 'Preferred Return' investment. This investment is in a private sector funding company that	Ex. 3, SEC-Consultiva-E-0061266; Ex. 12, MW at 141:16-142:7	Undisputed		

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	offers fixed rate preferred interest returns . . . ." ("Preferred Return Provision")				
37	Exhibit C-1 does not identify the "preferred return investment" or the "private sector funding company."	Ex. 3, SEC-Consultiva-E-0061261-0061265; Ex. 12, MW at 144:16-145:15	Undisputed		
38	Exhibit C-1 does not identify Williams as the majority owner of Lendacy.	Ex. 12, MW at 145:25-146:7	Undisputed		
39	Exhibit C-1 does not disclose that Williams or his entities would receive purported loans from Lendacy.	*Id.* at 147:3-17	Undisputed		
40	Exhibit B-1 was signed by investors who did not have a relationship with Lendacy.	*Id.* at 139:16-19	Disputed	• Ex. 12 establishes only that MW "believe[d]" (with lots of qualifications) that, once Exhibit C-1 was created, Exhibit B-1 was signed by investors who did not have a relationship with Lendacy —*not* that MW's belief was correct	
41	Exhibit B-1 omits the Preferred Return Provision.	Ex. 3, SEC-Consultiva-E-0061261; Ex. 12, MW at 141:16-143:22	Undisputed		
42	Williams had ultimate authority over the contents of the Subscription Agreement, Operating Agreement, Exhibit B-1 and	Ex. 3; Ex. 12, MW at 160:24-162:2, 164:11-17, 165:4-15, 126:18-127:13, 137:11-138:1, 163:18-164:6	Disputed	• Ex. 3 is an email dated 3/17/16 transmitting copies of KF's Subscription Agreement, Operating Agreement, Exhibits B-1 and C-1, and Questionnaire — it does *not* establish that Williams had "ultimate authority" over the contents of those documents	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	Exhibit C-2 thereto, and the Offering Questionnaire.			• Ex. 12 establishes only that MW approved: (1) the Subscription Instructions if his attorney approved it (160:24-162:2); (2) the Operating Agreement with his attorney's advice (165:4-15); (3) Exhibit B-1 under advisement of his attorney (126:18-127:13): (4) the contents of Exhibit C-1 based on the recommendation of his attorney (137:11-183:1); and (5) the Questionnaire with his attorney's advice (163:18-164:6) — *not* that MW had "ultimate authority" over the contents of those documents	
43	In most cases, investors signed the Subscription Agreement and either Exhibit B-1 or C-1 to the Operating Agreement, and completed the Offering Questionnaire.	Ex. 16, Locke at 106:21-112:11	Disputed	• Ex. 16 establishes only that some investors signed the Subscription Agreement, Exhibit B-1 or C-1, and completed the Questionnaire — *not* that investors signed those documents did so "in most cases"	
44	The Subscription Agreement provides that an investor "irrevocably subscribes for a membership interest" in Kinetic Funds and that such membership interests are "'restricted securities' as that term is defined in Rule 144 under the [Securities Act]."	Ex. 3, SEC-Consultiva-E-0061271	Disputed	• Ex. 3 at SEC-Consultiva-E-0061271 does *not* state that membership interests are "'restricted securities' as that term is defined in Rule 144 under the [Securities Act]"	
45	Exhibits B-1 and C-1 to the Kinetic Funds Operating Agreement state that an investor agrees to invest in at least one of the Kinetic Funds investment strategies	*Id.* at SEC-Consultiva-E-0061261 and 0061266	Disputed	• Ex. 3 establishes only that the Class A member has "full and complete discretion to make any and all trading decisions and affect any strategies as the Class a Member shall determine" and defines the Class A member as KP — *not*	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	and that Williams has "full and complete discretion to make any and all trading decisions and affect any strategies as [he] shall determine . . . ."			MW has "full and complete discretion to make any and all trading decisions and affect any strategies as [he] shall determine"	
46	It provides that KFYield focuses on "income generation" and that investors can make principal withdrawal requests under certain conditions, and authorizes Kinetic Group to charge an annual 1% management fee.	*Id.* at SEC-Consultiva-E-0061263 and 0061268	Disputed	• Ex. 3 establishes only that KF was charged a 1% management fee — *not* who charged the 1% fee or that *KG* was authorized to charge it	
47	In 2015, Williams expanded the marketing materials in order to attract more investors.	*See*, *e.g.*, Ex. 19	Disputed	• Ex. 19 establishes only that Kelly Locke emailed marketing materials to another person on 9/9/15 — *not* that those material were "expanded" or that *MW* expanded them or that they were expended "to attract more investors"	
48	He arranged to have, among other things, a description of KFYield and its performance information, assets under management and holdings available on Bloomberg.	Ex. 34, E-mail encl. Bloomberg reports; Ex. 16, Locke at 139:24-142:13; Ex. 12, MW at 286:16-22	Disputed	• Ex. 12 establishes only that MW "decided" to have KFYield listed on Bloomberg (an electronic financial information portal) — *not* that MW was the person who "arranged" to have KFYield listed on Bloomberg or that KFYield's description, performance, assets, and holdings were available on Bloomberg • Ex. 16 establishes only that Bloomberg generated a paper report regarding KFYield based on information provided by MW — *not* that the report or its contents were available "on" Bloomberg or that MW was the person who	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				"arranged" to have Bloomberg prepare the paper report • Ex. 34 establishes only that Bloomberg generated a paper report containing KFYield's description, performance information, and the value of its assets (but *not* what those specific assets were or if they were "under management") — *not* that the report or its contents were available "on" Bloomberg or that report identified the specific investments held by KFYield or that MW was the person who "arranged" to have Bloomberg prepare the paper report	
49	Williams took this step in order to make KFYield appear transparent and to give it a measure of credibility.	Ex. 16, Locke at 113:6-16; Ex. 12, MW at 286:16-22	Disputed	• The "step" referred to is MW arranging to have KFYield's information available on Bloomberg — which is a "fact" Plaintiff has *not* established, *see* Undisputed Fact No. 48 • Ex. 12 establishes only that MW decided to have KFYield listed on Bloomberg because he wanted to be able to show what KFYield's stockholdings and dividends were and because Bloomberg could provide some analytics — *not* because MW wanted to make KFYield "appear transparent and give it a measure of credibility" • Ex. 16 establishes only that Kelly Locke's "understanding" was that MW "made the decision" to have KFYield listed on Bloomberg to make KYYield appear like a more legitimate fund — *not* that Kelly Locke's understanding was correct or that MW "took this step" in order to make KFYield appear transparent and to give it a measure of credibility	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• At a minimum, the differences between Ex. 12 and Ex. 16 create a genuine dispute	
50	From that point on, Williams provided potential investors with Bloomberg reports about the KFYield strategy.	Ex. 16, Locke at 142:6-13; Ex. 12, MW at 286:7-15	Disputed	To the extent Plaintiff means to state or imply that MW provided *all* potential investors with Bloomberg reports, Plaintiff's "evidence" does not establish this "fact": • Ex. 12 establishes only that MW provided *some* investors with Bloomberg reports — *not* that MW provided *all* potential investors with Bloomberg reports • Ex. 16 establishes only that Bloomberg reports were provided to everyone Kelly Lock and one or more other unidentified people ("we") spoke to — *not* that *WM* provided the reports and *not* that the reports were provided to investors with whom Kelly Locke and the unidentified others did not speak (*e.g.*, with whom they communicated by email)	
51	Williams was responsible for the content and accuracy of the information provided to Bloomberg.	Ex. 16, Locke at 114:11-13, 140:9-142:1; Ex. 35, Anadi Guar Tr. at 266:12-267:10; Ex. 36, E-mail from K. Locke; Ex. 12, MW at 214:18-219:17, 287:12-21	Disputed	• Ex. 12 establishes only that: (1) MW and IB provided information to Bloomberg; and (2) MW had ultimate authority over the contents of the 12/19/17 Bloomberg report — *not* that MW was responsible for the content and accuracy of the information *provided to* Bloomberg before the reports were created • Ex. 16 establishes only that MW provided Bloomberg with the underlying data for its reports — *not* that MW was responsible for the content and accuracy of the information *provided to* Bloomberg	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 35 establishes only that Anadi Guar provided information to Bloomberg for its reports, including some information that MW provided to him — *not* that MW was responsible for the content and accuracy of the information provided to Bloomberg • Ex. 36 establishes only that Kelly Locke sent an email to another person on 10/28/15 in which she stated that the Bloomberg reports would continue to be available — *not* that MW was responsible for the content and accuracy of the information provided to Bloomberg	
52	Williams also began in 2015 to market Kinetic Funds with his other entity, Lendacy.	Ex. 15 at SEC-Consultiva-E-0059613; Ex. 16, Locke at 46:18-47:10, 223:3-224:18; Ex. 3; Ex. 37, Email encl. Lendacy brochure; Ex. 38, E-mail re: Lendacy and KFYield	Disputed	• Ex. 3 establishes only that MW sent an email on 3/17/16 in which he stated that Exhibit C of KF's Operating Agreement was to be used for "onboarding" new investors who were also Lendacy members — *not* that MW "marketed" KF and Lendacy together or that he started doing so in 2015 • Ex. 15 establishes only that MW's biography at the back of a KFYield report states that MW and his team created Lendacy — *not* that MW marketed KF and Lendacy together or that he started doing so in 2015 • Ex. 16 establishes only that Kelly Lock and one or more other unidentified people ("we") marketed KF and Lendacy together — *not* that *MW* did so or that he started doing so in 2015 • Ex. 37 establishes only that Kelly Lock marketed KF and Lendacy together — *not* that *MW* did so or that he started doing so in 2015	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 38 establishes only that Kelly Lock marketed KF and Lendacy together — *not* that *MW* did so or that he started doing so in 2015	
53	Williams sometimes described Lendacy as a "real estate lending structure" designed to meet credit demands of accredited investors.	Ex. 39, Brochures, SEC-Consultiva-E-0064920-0064947	Disputed	• Ex. 39 establishes only that a marketing piece exists in which Lendacy is identified as being able to be used as a component in a real estate lending structure — *not* that Lendacy itself was described as a real estate lending structure or that MW ever described Lendacy in that way	
54	Williams and his associate, who later became Lendacy's president, told prospective investors that if they invested in KFYield they were eligible to receive a Lendacy credit line of up to 70% of their investment in KFYield at low interest rates.	Ex. 16, Locke at 31:4-32:3, 40:14-19, 223:3-24; Ex. 39, SEC-Consultiva-E-0064920; Ex. 12, MW at 113:12-18; 262:8-20	Disputed	• Ex. 12 establishes only that MW told a couple of prospective KF investors they could borrow up to 70% of their investment in KFYield — *not* that the prospective investors were told they would be "eligible to receive a credit line from Lendacy" or that Lendacy was ever mentioned to a prospective investor or that MW's associate ever made such statements to a prospective investor • Ex. 16 establishes only that a KF investor could receive a credit line for up to 70% of his/her investment and that a marketing piece stating this was prepared — *not* that this fact was ever told to a prospective investor or that the marketing piece was ever provided to a prospective investor or that MW's associate ever made such statements to a prospective investor • Ex. 39 establishes only that a marketing piece exists which states that a KF investor could receive a Lendacy credit line of up to 70% of his/her investment — *not* that this marketing piece was ever provided to a prospective	

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				investor or that MW's associate ever made such statements to a prospective investor	
55	They promoted case studies with various scenarios regarding the potential use of drawing on the credit line, such as refinancing a home.	Ex. 39, SEC-Consultiva-E-0064942; Ex. 37 at pp. 6-9; Ex. 12, MW at 275:5-279:5, 280:21-24	Disputed	• Ex. 12 establishes only that: (1) a marketing piece was prepared describing scenarios regarding how a Lendacy credit line might be used; and (2) MW conceded it was possible that that marketing piece "might" have been provided to prospective investors — *not* that MW or his associate "promoted" those case studies or that *they* ever actually showed the marketing piece to a prospective investor • Ex. 37 establishes only that Kelly Locke emailed to an unidentified person a marketing piece containing case studies regarding how a Lendacy line of credit might be used (because the recipient is unidentified, it is impossible to know the reason for the email) — *not* that MW or his associated "promoted" those case studies • Ex. 39 establishes only that a marketing piece was prepared describing scenarios regarding how a Lendacy credit line might be used — *not* that that marketing material was ever actually provided to anyone or that MW or his associated "promoted" those scenarios	
56	In 2016, Williams moved from Florida to Puerto Rico, opened a second office there, and began soliciting investors in Puerto Rico to invest in Kinetic Funds.	Ex. 16, Locke at 20:12-15, 109:22-25, 110:1-8	Disputed	• Ex. 16 establishes only that: (1) Kelly Locke and one or more other unidentified people ("we") moved to Puerto Rico from an unidentified location (20:12-15); and (2) Kelly Lock got to Puerto Rico in 2016 (109:22-25 and 110:1-8) — *not* that MW moved from Florida to Puerto Rico in 2016, opened a second office	

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				there, and began soliciting investors in Puerto Rico to invest in Kinetic Funds	

57	William ultimately raised approximately $39 million from at least 30 investors located mostly in Florida and Puerto Rico.	Ex. 1, Ivory Decl. at ¶ 10; Ex. 32	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents [Plaintiff erroneously identifies Ex. 20 as Ex. 1]
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* how much money MW raised from investors
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
				• Putting aside its *inadmissibility*, Ex. 20 states only that the market value of KF's four funds was $39 million as of January 2019 — it does *not* establish that MW raised $39 million from at least 30 investors located mostly in Florida and Puerto Rico
				• Ex. 32 is a collection of 37 account statements apparently generated by KF in January 2019 — but Plaintiff has *not* provided any explanation or context for these statements or what they purport to evidence or how to interpret the information contained in them or even whether they represent statements for *all* of	

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				KG's investors or reflect *all* of KF's assets. At most, the account statements appear to identify only the current value of the investors' investments on the dates the statements were generated — *not* how much money MW raised from the investors	
58	Williams told investors that their money would be invested in income-producing U.S. listed financial products.	Ex. 15, SEC-Consultiva-E-0059606-0059607, 0059617; Ex. 33, pp. 5-7, Ex. 39, SEC-Consultiva-E-0064932-0064933; Ex. 16, Locke at 155:10-156:13, 174:15-175:6; Ex. 41, Decl. of Wilmer Gonzalez Vargas ("Vargas") at ¶¶ 8-9; Ex. 12, MW at 101:15-19; 102:9-16; 103:5-11	Undisputed		
59	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 . . . ."	Ex. 3, SEC-Consultiva-E-0061262, 0061267	Undisputed		
60	However, Williams did not invest all investor funds in	Ex. 20, Ivory Decl. at ¶¶ 11-14; Ex. 16, Locke at 32:9-25; 52:3-19; Ex. 12,	Disputed	• Ex. 12 establishes only that KF employed portfolio margin provided by IB to obtain the funds that KF transferred to Lendacy — *not*	MW invested all investor funds in U.S.-listed financial products

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	U.S. listed financial products.	MW at 200:11-201:12; 264:10-23; 267:20-268:3		that MW did not invest all investor funds in U.S.-listed financial products
				• Ex. 16 establishes only that Kelly Locke testified that: (1) the only way a loan to KF's investors could be funded was to transfer their investment capital over to Lendacy (32:9-25); and (2) the majority of KFYield's funds sat in a bank account and was used to fund Lendacy's loans (52:3-19) — *not* that MW failed to invest all investor funds in U.S.-listed financial products
				• Ex. 20 is hearsay based on hearsay/unauthenticated documents [Plaintiff erroneously identifies Ex. 20 as Ex. 1]
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that MW failed to invest all investor funds in U.S. listed financial products
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
				• Putting aside its *inadmissibility*, Ex. 20 does *not* establish that MW did not invest all investor funds in U.S. listed financial products
					• Exhibit B at ¶¶ 134, 139, 151

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts

61	Since at least 2013, Williams diverted a substantial portion of investor capital to Lendacy, Williams' entity.	*Id.*	Disputed	• Ex. 12 establishes only that KF employed portfolio margin provided by IB to obtain the funds that KF transferred to Lendacy — *not* that MW diverted "a substantial portion" of "investor capital" to Lendacy
				• Ex. 16 establishes only that Kelly Locke testified that: (1) the only way a loan to KF's investors could be funded was to transfer their investment capital over to Lendacy (32:9-25); and (2) the majority of KFYield's funds sat in a bank account and was used to fund Lendacy's loans (52:3-19) — *not* that MW "diverted" "a substantial portion" of "investor capital" to Lendacy
				• Ex. 20 is hearsay based on hearsay/unauthenticated documents [Plaintiff erroneously identifies Ex. 20 as Ex. 1]
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that MW failed to invest all investor funds in U.S diverted a substantial portion of investor capital to Lendacy
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
					MW never diverted any investor capital to Lendacy
					• Exhibit B at ¶¶ 140-142, 209
					• Ex. 12 at 200:11-15

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				• Putting aside its *inadmissibility*, Ex. 20 does *not* establish that MW diverted a substantial portion of investor capital to Lendacy	
62	Lendacy is not a U.S. listed financial product.	Ex. 35, Guar at 292:1-293:3; Ex. 12, MW at 158:3-5; 202:9-203:20; 310:5-7	Undisputed		
63	Williams then used the investor funds diverted to Lendacy to fund purported loans to himself, his business entities, and others.	Ex. 42 (MW); Ex. 43 (Scipio); Ex. 30-31 (LF42); Ex. 44, SEC-BishopJ-E 0000002, Summary of misappropriated funds	Disputed		MW never used any investor funds diverted to Lendacy to fund loans to himself, his business entities, or others • Exhibit B at ¶¶ 140-143, 209 • Ex. 12 at 200:11-15
64	Furthermore, the purported loans to LF42, Williams' personal LLC, did not require interest.	Exs. 30-31	Disputed		Lendacy's loans to LF42 required interest if they were not paid in fully by 12/27/19 and, in fact, LF42 paid interest on its loans • Exhibit B at ¶¶ 198, 207
65	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.	Ex. 39, SEC-Consultiva-E-0064932-0064933; Ex. 41, Vargas at ¶¶ 8-9; Ex. 12, MW at 103:5-104:2; 111:10-12; Ex. 15, SEC-Consultiva-E-0059606-0059607	Undisputed		
66	Written marketing materials state that Kinetic Funds	Ex. 33, p. 6; Ex. 41, SEC-Consultiva-E-	Undisputed		

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	will "maintain 90% principle [sic] protection" and that "90% [of KFYield's] portfolio [is] hedged using listed options against market volatility risk."	0064920, 0064932; Ex. 36, p. 6; Ex. 12, MW at 290:2-6; 291:15-292:1; Ex. 15, SEC-Consultiva-E-0059606			

67	However, Williams did not hedge at least 90% of KFYield's portfolio using listed options.	Ex. 20, Ivory Decl. at ¶¶ 11-14; Ex. 44	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* whether 90% of KFYield's portfolio was hedged using listed options
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
				• Putting aside its *inadmissibility*, Ex. 20 does *not* establish that MW did not hedge 90% of KFYiel's portfolio using listed options
					MW hedged at least 90% of KFYield's portfolio using listed options
					  • Exhibit B at ¶¶ 131-133, 135

68	KFYield assets diverted to Lendacy accounted for more than 23% of KFYield's proceeds between January 2015 and September 2019.	Ex. 20, Ivory Decl. at ¶¶ 8, 11	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
					KFYield assets were never diverted to Lendacy
					  • Exhibit B at ¶¶ 140-142, 209
					  • Ex. 12 at 200:11-15

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				• Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case • Crystal Ivory has not been identified as an expert witness by *any* party • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* whether assets transferred to Lendacy accounted for more than 23% of KFYield's proceeds between January 2015 and September 2019 • Ex. 20 cannot be presented in a form that would be admissible in evidence • Putting aside its *inadmissibility*, Ex. 20 does *not* establish that KFYield's assets were transferred to Lendacy or that the total value of such transfers accounted for more than 23% of KFYield's proceeds between January 2015 and September 2019	
69	And, Lendacy could not be hedged using listed options.	Ex. 35, Guar at 292:1-293:3	Disputed	• Ex. 35 establishes only that Lendacy was not listed on a U.S. exchange — *not* that Lendacy could not be hedged using listed options.	Lendacy could be hedged using listed options • Exhibit B at ¶ 152 • Ex. 12 at 158:6-19
70	With respect to the Lendacy credit line product, Williams 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	Ex. 16, Locke at 31:4-32:3-8, 126:24-127:17, 212:23-213:1-8; Ex. 45, Myrna Rivera Tr. at 51:8-52:25	Disputed	• Ex. 16 establishes only that: (1) investors were told their funds were going to be invested in U.S.-listed securities (but not *who* told them that) (31:4-32:3-8); (2) it was made clear to KF's investors that all of their funds would be invested (but not *who* made this clear to them) (126:24-127:17); and (3) one investor was not told his investment would be used to fund	Lendacy had a separate source of funding • Exhibit B at ¶ 144 All of the investor's funds were invested in KFYield

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	capital would be invested in KFYield.			Lendacy loans (but not *who* failed to make this disclosure) and another investor understood 100% of his funds would be invested at KF and he would get a separate line of credit from Lendacy (but not *who* led him to understand this) (212:23-213:1-8) — <u>not</u> that *MW* "led prospective investors to believe" Lendacy had a separate funding source and that their entire capital would be invested in KFYield • Ex. 45 establishes only that Kelly Locke or another unidentified person from Lendacy led Myrna Rivera (who is *not* identified as a prospective investor) to understand that Lendacy had access to "independent" capital that was something other than the funds invested in KF — <u>not</u> that *MW* led Myrna Rivera (or anyone else) to believe Lendacy had a separate funding source or that Ms. Rivera's entire capital would be invested in KFYield or that Myrna Rivera was even a prospective investor (her role is unidentified)	• Exhibit B at ¶ 134, 139, 151
71	They gave investors marketing materials stating: "[y]ou keep 100% of your capital working, generating dividends and interest with the opportunity for continued appreciation."	Ex. 39, SEC-Consultiva-E-0064938	Disputed	• Ex. 39 at SEC-Consultiva-E-0064938 establishes only that a marketing piece exists which contains the statement that "[y]ou keep 100% of your capital working, generating dividends and interest with the opportunity for continued appreciation" — <u>not</u> that that marketing piece (or any other marketing piece) was ever given to investors	
72	However, Williams used KFYield assets, not a separate funding source, to fund	Ex. 16, Locke at 32:9-25; 52:3-19; Ex. 12, MW at 200:11-201:12;	Disputed	• Ex. 12 establishes only that: (1) IB was the source of the funds transferred to Lendacy (200:11-201:12); (2) Lendacy was funded using the portfolio margin offered by IB (264:10-23); and (3) the funds transferred to	MW did not use KFYield assets to fund Lendacy and its loans • Exhibit B at ¶¶ 140-142, 202

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	Lendacy and its undisclosed loans.	264:10-23; 267:20-268:3		Lendacy were transferred from KF's bank account (267:20-268:3) — *not* that "KFYield assets" were used to fund Lendacy or that *MW* used KFYield assets to fund Lenacy or that Lendacy's loans were undisclosed • Ex. 16 establishes only that "investor capital" was used (but not by *whom*) to fund Lendacy — *not* that "KFYield assets" were used to fund Lendacy or that *MW* used either investor capital or KFYield assets to fund Lendacy or that Lendacy's loans were undisclosed	• Ex. 12 at 200:11-15
73	Most investors, such as CFSE, ACCA, FMB 1, LLC, EHRET, Inc. Pre-Need, Puerto Rico Community Foundation, Sacred Heart University, SPMT, LLC, and Plan de Pensiones Ministerial, Inc., were not told KFYield assets were used to fund their or others' Lendacy loans.	Ex. 16, Locke at 32:9-25; 52:3-19; Ex. 45, Rivera Tr. at 51:8-52:25; 87:5-89:4; Ex. 41, Vargas Decl. at ¶¶ 14-16	Disputed	• Ex. 16 establishes only that "it was not [Kelly Locke's] understanding that any of the investors were aware that they were being lent the own capital back" — *not* that Kelly Locke's non-understanding was correct or that "most investors" were not told "KFYield assets" were used to fund Lendacy loans. • Ex. 41 establishes only that Plan de Pensiones Ministerial, Inc. ("PdPM") was not told that the money PdPM invested in KF could be used to fund Lendacy loans — *not* that PdPM was not told that "KFYield assets" could be used to fund Lendacy loans or that "most investors" were not told "KFYield assets" were used to fund Lendacy loans • Ex. 45 establishes only that *Myrna Rivera* (who is *not* identified as an investor) was not told that the money investors invested in KF could be used to fund Lendacy loans — *not* that Myrna River was an investor KF (from the excerpted transcript it appears she was a broker with her own clients who invested in KF, which is what she was) or that "most	

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				investors" were not told "KFYield assets" were used to fund Lendacy loans	
74	Williams touted the liquidity of KFYield assets.	Ex. 41, Vargas Decl. at ¶¶ 8-9; Ex. 15, SEC-Consultiva-E-0059606-0059607	Disputed	• Ex. 15 establishes only that MW sent an email on 2/18/16 which included as an attachment a KFYield "report" which stated matter-of-factly on page 3 of 10 "our funds can distribute liquidity" and "KFYIELD offers[] liquidity" and on page 4 of 10 "Liquidity and volume of products are in the top 20% of all listed securities. Analysis of these listed products reflect a very high liquidity factor . . . ," "The Portfolio contains[] liquid stocks . . . ," and "The products are all in the listed market and liquid . . . ." — *not* that MW "touted" KFYield's liquidity. • Ex. 41 establishes only that MW "explained" (in the original Spanish: "explicó") that KFYield has liquidity — *not* that MW "touted" KFyield's liquidity or highlighted it or stressed its importance or value	
75	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."	Ex. 15, SEC-Consultiva-E-0059617	Undisputed		
76	KFYield's investment in Lendacy, the assets of which were unsecured loans primarily to	*See*, *e.g.*, Ex. 30-31, 42-43	Disputed	• Ex. 30 establishes that LF42's $550,000 line of credit *was* secured by collateral, *see* § 3(a) (fine print below "550,000") — and it does *not* establish how much, if anything, was drawn	Lendacy's loans to MW and his entities were secured

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	Williams, significantly limited its ability to honor redemption requests to all investors equitably.			on this credit line or that the funds transferred to Lendacy: (1) were "primarily" used to fund loans to MW; or (2) limited KF's ability to honor redemption requests equitably • Ex. 31 establishes that LF42's $2,000,000 line of credit *was* secured by collateral, *see* § 3(a) (fine print below "2,000,000") — and it does *not* establish how much, if anything, was drawn on this credit line or that the funds transferred to Lendacy: (1) were "primarily" used to fund loans to MW or (2) limited KF's ability to honor redemption requests equitably • Ex. 42 does *not* establish how much, if anything, was drawn on this credit line or that the funds transferred to Lendacy: (1) were "primarily" used to fund loans to MW or (2) limited KF's ability to honor redemption requests equitably • Ex. 43 does *not* establish how much, if anything, was drawn on this credit line or that the funds transferred to Lendacy: (1) were "primarily" used to fund loans to MW or (2) limited KF's ability to honor redemption requests equitably	• Exhibit B at ¶¶ 171, 179-180, 190, 195, 197 Lendacy's loans to MW did not limit KFYield's ability to honor redemption requests • Exhibit B at ¶¶ 151-154
77	Kinetic Funds' known assets are less than the aggregate amount reflected on investor account statements.	Ex. 20, Ivory Decl. at ¶¶ 5-9 and Ex. D; Ex. 16, Locke 61:9-62:13.	Disputed	• This "fact" is so vague as to be impossible not to dispute — it references "known assets" but does not identify *the date* on which they are "known"; and it references "investor account statements" but does not identify *which* investors or *the dates* of the account statements • Ex. 16 establishes only that investors' KF account statements did not reduce the value reported for the investment by the amount the	The aggregate value of all of KF investors' investments reflected in their KF account statements was always equal to the total value of KF's assets • Exhibit B at ¶ 167

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts

				investors borrowed from Lendacy — *not* that the value reported should have been so reduced or that the aggregate value of all of KF investors' KF account statement did not always equal the total value of KF's assets
				• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* whether KF's known assets are less than the aggregate amount reflected on investor account statements
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence	

78	Williams had ultimate control over the contents of the account statements.	Ex. 12, MW at 272:23-273:1	Undisputed		
79	KFYield's reported performance to investors does not match its actual performance. For example, the Bloomberg reports provided to investors and financial advisors excluded	*Compare* Ex. 46, SEC-KP-E-0264731-0264749 *with* Ex. 47, SEC-Receiver 000385-000997	Disputed		Plaintiff is comparing apples to oranges: The IB account statements reflect only KFYield's holdings at IB, whereas the Bloomberg report reflects *all* of KFYield's holdings — including those at IB, those held at BMO, those lent to Lendacy, etc. Nevertheless, the

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	the information contained in KFYield's brokerage statements.				information in the Bloomberg reports is consistent and in accordance with the information in the IB account statements and matches KFYield's actual performance • Exhibit B at ¶¶ 165-167
80	The Bloomberg report as of December 29, 2017, the contents of which Williams had ultimate authority over	*See supra* n. 51	Undisputed		
81	The Bloomberg report as of December 29, 2017, . . . reflects that Kinetic Funds' total assets were $31.78 million and its year-to-date performance was 1.04%.	Ex. 46 at 264740-264741	Undisputed		
82	[The Bloomberg report as of December 29, 2017] does not include the margin balance.	*Id.*; Ex. 12, MW at 274:6-24	Disputed	• Ex. 12 at 274:6-24 concerns a composite of Kinetic account statements dated 1/19 (which composite has *not* been made part of the record in this case but presumably is identical to Ex. 32) — *not* the referenced 12/29/17 Bloomberg report, see Ex. 12 at 27:13-20) • Ex. 12 establishes that the margin balance *is* included in the net asset value listed in the composite of Kinetic account statements, *see* Ex. 12 at 274:6-10	The Bloomberg report as of December 29, 2017 includes the margin balance in KFYield's IB account • Exhibit B at ¶ 165
83	The annual statement as of December 31, 2017 that KFYield received from its brokerage firm reflects that	Ex. 47, SEC-Receiver 000385-000997; Ex. 12, MW at 220:4-11	Disputed	• Ex. 47 reflects that KFYield had a total net asset value of $4,734,580.58 (*not* $4.7 million), that its "time weighted" (*not* "annual") rate of return was -27.52% (*not* -27.62%), and that it	

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	KFYield had a total net asset value of $4.7 million, which was a -27.62% annual rate of return from December 31, 2016, ($88,877,936.84) in cash, *i.e.*, margin, $439.632.20 in interest, and that KFYield incurred market-to-market losses of $3,154,506.38.			had "incurred" (*not* "had") -$439,632.20 in interest	
84	Williams failed to disclose to investors what portion of Kinetic Funds' portfolio was margined.	Ex. 12, MW at 274:6-24		• Ex. 12 establishes only that KF investors were not made aware of the portion of KFYield's holdings that were bought on margin because that number fluctuates regularly — *not* that MW unsuccessfully tried ("failed") to disclose the margin number or that he had a duty to disclose the margin number and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation)	Information regarding the amount of KF's portfolio was margined was made available to KF's investors upon request • Exhibit B at ¶ 89
85	Williams failed to disclose to most investors that investor assets would be invested "in a private sector funding company that offers fixed rate preferred interest returns."	*Compare* Ex. 3, SEC-Consultiva-E-0061261 *with* 0061266; Ex. 12, MW at 138:13-139:19; 144:2-15; 108:15-109:9	Disputed	• Ex. 3 establishes only that on 3/17/16 an email was sent with a copy of Exhibit C-1 that stated all KF's funds "may" include a "private sector funding company . . . " and a copy of Exhibit B-1 that did not contain this language — *not* that MW failed to disclose to KF investors that investor assets would be invested in a private sector funding company or that MW failed to disclose this to "most investors" or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation)	

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				• Ex. 12 establishes only that: (1) on 3/17/16 an email (which has not been made part of the record in this case but presumably is identical to Ex. was sent with a copy of Exhibit C-1 that stated all KF's funds "may" include a "private sector funding company . . . " and a copy of Exhibit B-1 that did not contain this language (138:13-139:19 and 144:2-15) (this email has *not* been made part of the record in this case but presumably is identical to Ex. 3); and (2) MW did not discuss KFYield's holdings in "private equity products" with "all" investors (108:15-109:9) — *not* that MW failed to disclose to KF investors that investor assets would be invested in a private sector funding company or that MW failed to disclose this to "most investors" or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation)	
86	[MW], in turn, failed to disclose to investors that the "private sector funding company" was Lendacy, a private company owned and controlled by Williams.	Ex. 12, MW at 144:2-146:7	Disputed	• Ex. 12 establishes only that on 3/17/16 an email was sent with a copy of Exhibit C-1 that stated all KF's funds "may" include a "private sector funding company . . . " but did not state that Lendacy was the private funding company or that MW was the majority owner of Lendacy (this email has *not* been made part of the record in this case but presumably is identical to Ex. 3) — *not* that MW failed to disclose to KF investors that Lendacy was the private sector funding company or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed"	

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				implies an attempt that was unsuccessful or a non-compliance with an obligation)	
87	Williams failed to disclose that he and his entities, Scipio and LF42, received purported loans from Lendacy.	*See supra* n. 73; Ex. 3, SEC-Consultiva-E-0061266-61269 (Exhibit C-1); Ex. 12, MW at 339:4-7 (MW), 352:8-10 (Scipio), Ex. 11 at No. 22 (Scipio)	Disputed	• Ex. 3 establishes only that on 3/17/16 MW sent an email with copies of Exhibits B-1 and C-1 that did not state that MW, Scipio, and LF42 received Lendacy loans — *not* that MW failed to disclose that MW, Scipio, and LF42 received Lendacy loans or that the loans were "purported" and not real loans or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 11 establishes only that MW did not disclose to KF investors that Scipio received "funds from Lendacy at the time or before such funds were disbursed to Scipio" — *not* that MW failed to disclose that *MW and LF42* received Lendacy loans or that MW never disclosed at *any other time* that Scipio received funds from Lendacy or that MW disclosed at any time that Scipio received *a Lendacy loan* or that MW never disclosed to *anyone other than KF investors* that Scipio received funds from Lendacy at the time or before such funds were disbursed to Scipio or that the loans were "purported" and not real loans or that MW unsuccessfully tried ("failed") to disclose that MW, Scipio, and LF42 received Lendacy loans or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation)	MW disclosed that he, Scipio, and LF42 received loans from Lendacy • Exhibit B at ¶¶ 210 Ex. 41 is contradicted by Carla Mendz's testimony that MW did *not* attend the meeting with PdPM • Transcript of Carla Mendez Interview dated 9/20/19 (hereinafter, "Exhibit C") at 23:8-25:13, 27:22-28:5

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 12 establishes only that MW did not disclose MW's and Scipio's Lendacy loans to "all" investors (339:4-7 and 352:8-10) but that MW *did* disclose the loans to some investors (338:19-339:3 and 351:15-352:2); and (2) MW did not discuss KFYield's holdings in "private equity products" with "all" investors (108:15-109:9) — *not* that MW failed to disclose that MW, Scipio, and LF42 received Lendacy loans or that the loans were "purported" and not real loans or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 16 establishes only that "it was not [Kelly Locke's] understanding that any of the investors were aware that they were being lent their own capital back" — *not* that Kelly Locke's non-understanding was correct or that MW failed to disclose that MW, Scipio, and LF42 received Lendacy loans or that the loans were "purported" and not real loans or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 41 establishes only that Plan de Pensiones Ministerial, Inc. ("PdPM") was not told that the money PdPM invested in KF could be used to fund Lendacy loans — *not* that MW failed to disclose that MW, Scipio, and LF42 received Lendacy loans or that the loans were "purported" and not real loans or that MW	

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				unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 45 establishes only that *Myrna Rivera* was not told that the money investors invested in KF could be used to fund Lendacy loans — *not* that MW failed to disclose that MW, Scipio, and LF42 received Lendacy loans or that the loans were "purported" and not real loans or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation)	
88	Williams failed to disclose that he used at least $497,300 in investor assets to invest in Zephyr Aerospace, a private company that was not listed on a U.S. exchange.	Ex. 3, SEC-Consultiva-E-0061261-0061265; Ex. 12, MW at 144:16-145:15, 373:5-25, 450:5-23; Ex. 26, Pufahl at 101:24-104:8; Ex. 44; Ex. 48, KCL 121-122, March 2019 Lendacy bank statement; Ex. 49, KFI 881-882, Dec. 2018 Lendacy bank statement	Disputed	• Ex. 3 establishes only that on 3/17/16 MW sent an email with copies of Exhibit B-1 and Exhibit C-1 that did not state that at least $497,300 in investor assets were used to invest in Zephyr — *not* that MW failed to disclose that MW used $497,300 in investor assets to invest in Zephyr Aerospace or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 12 establishes only that: (1) a copy of Exhibit C-1 attached to an email sent on 3/7/16 (which has *not* been made part of the record in this case but presumably is identical to Ex. 3) did not identify Lendacy as the private sector funding company referenced therein (144:16-	MW did not use any investor assets to invest in Zephyr Aerospace • Exhibit B at ¶¶ 140-143, 202, 209 • Ex. 12 at 200:11-15

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				145:15); (2) Zephyr Aerospace was not listed on a U.S. exchange (373:5-25); (3) MW *did* disclose that KF invested in Zephyr Aerospace (450:5-230); and (4) MW did not discuss KFYield's holdings in "private equity products" with "all" investors (108:15-109:9) — *not* that MW failed to disclose that MW used $497,300 in investor assets to invest in Zephyr Aerospace or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 26 establishes only that: (1) KFYield was the source of the $497,300 that was in Zephyr Aerospace; (2) Keli Pufahl did not know if Zephyr was listed on a U.S. exchange; and (3) "to [Keli Pufhal's] knowledge," KF investors were not told of the Zephyr investment — *not* that MW failed to disclose to anyone other than KF investors that MW used $497,300 in investor assets to invest in Zephyr Aerospace or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 44 establishes only that that a ledger exists (without any context as to who created it or how to understand it) evidencing that a total of $497,300 was invested in Zephyr Aerospace — *not* that MW failed to disclose that MW used $497,300 in investor assets to invest in Zephyr Aerospace or that MW unsuccessfully	

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				tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 48 establishes only that two deposits totaling *$443,300* and identified as "Transfer for Zephyr Aerospace" were made into Lendacy's bank account in March 2019 — *not* that MW failed to disclose that MW used $497,300 in investor assets to invest in Zephyr Aerospace or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation) • Ex. 49 establishes only that various deposits were made into Lendacy's bank account, none of which referenced Zephyr Aerospace — *not* that MW failed to disclose that MW used $497,300 in investor assets to invest in Zephyr Aerospace or that MW unsuccessfully tried ("failed") to disclose this or that MW had a duty to disclose this and "failed" to comply with that duty ("failed" implies an attempt that was unsuccessful or a non-compliance with an obligation)	
89	Williams had ultimate authority for the false and misleading statements and omissions made orally and in documents provided to	Ex. 16, Locke at 121:15-22, 132:19-22, 156:8-13, 172:13-174:8; Ex. 12, MW at 301:1-302:23 (Ex. 15); 291:15-23 (Ex. 36);	Disputed	• Ex. 12 establishes only that MW: (1) had "ultimate authority" (which is not defined) over: (a) two KF reports emailed to an advisory firm on 2/18/16 (301:1-302:23); (b) the contents of a KG brochure Kelly Locke emailed an advisory firm on 10/28/15 (291:15-23); (c) the contents of a KG brochure (308:1-15); and (d)	

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	clients and prospective clients.	277:24-278:24 (Ex. 37); 308:1-15; 313:9-314:6 (Ex. 39 as to SEC-Consultiva-E-0064922-0064928, 0064929-0064937)		the contents of a KFYield brochure once it was reviewed and approved by legal (313:9-314:6); and (2) gave final approval to the contents of a Lendacy brochure Kelly Lock emailed to person whose role is unidentified on 7/30/15 (277:24-278:24) — *not* that MW had "ultimate authority" for all false and misleading statements and omissions made to clients • Ex. 16 establishes only that MW had "ultimate authority" (which is *not* defined but appears to mean that nothing would be approved without his permission) over: (1) the information provided in the KF marketing materials (121:15-22); (2) a Lendacy brochure (132:19-22); (3) a KF pitch that Kelly Locke gave (156:8-13); and (4) a KG brochure (which has not been made a part of the record in this case) (172:13-174:8) — *not* that MW had "ultimate authority" for *all* false and misleading statements and omissions made to clients	
90	All investor capital was deposited into Kinetic Funds' bank account at BMO Harris Bank N.A. ("Bank Account") — a single account which held exclusively investor capital	Ex. 12, MW at 156:6-14; 157:18-158:2; Ex. 16, Locke at 36:15-37:7; Ex. 26, Pufahl at 87:22-88:14	Disputed	• Ex. 12 establishes only that: (1) all initial investor capital would go into KF's BMO account (156:6-14); and (2) MW "believe[d]" investor capital are the only funds in KF's BMO account (but *not* that MW's belief is correct) (157:18-158:2) — *not* that KF's BMO account *only* held investor capital • As to Ex. 26, Pages 87-88 are not included among the excerpted pages comprising Ex. 26. • Even if Pages 87-88 were included in Ex. 26, they would establish only that investor capital was deposited into a BMO account	KF's BMO bank account did not exclusively hold investor capital • Exhibit B at ¶¶ 92

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				— *not* that KF's BMO account *only* held investor capital	
91	Williams kept a portion of investor capital in the Bank Account and transferred the remainder to Kinetic Funds' brokerage account at Interactive Brokers LLC ("IB") ("Brokerage Account").	*Id.* at 167:2-17, 177:18-178:15; Ex. 20, Ivory Decl. at ¶¶ 4.a, 9	Undisputed		
92	Securities for KFYield were then purchased with a combination of investor capital and margin, *i.e.*, funds borrowed from its broker, IB.	*Id.* at 180:18-24	Undisputed		
93	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.	*Id.* at 198:2-19	Undisputed		
94	Margin is a debt that carries interest.	*Id.* at 181:4-12, 195:14-196:4	Undisputed		
95	If the Brokerage Account fell below the minimum maintenance margin	*Id.* at 196:22-24	Undisputed		

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
96	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.	*Id.* at 190:14-25, 196:22-198:1, 182:25-183:7	Undisputed		
97	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 and other private equity.	*Id.* at 198:20-199:15	Disputed	• Ex. 12 establishes only that MW did not always use all of an investor's cash to purchase investments at IB and sometimes also used margin because: (1) the carry cost was negligible; and (2) the uninvested cash could be used for: (i) private equity, (ii) Lendacy, and (iii) other opportunities to generate preferred returns — *not* that MW chose to do this only so that the unused cash could be directed to Lendacy or private equity	
98	Williams created the investment strategy for Kinetic Funds	*Id.* at 55:10-17, 87:12-20	Undisputed		
99	Williams . . . controlled the Brokerage Account, including its operation and trading activity.	*Id.* at 170:2-172:25; see also Ex. 50, SEC-BMO-P-0001198-0001204	Disputed	• Ex. 12 establishes only that: (1) MW had: (a) ultimate signing authority over KF's IB account and over anything to do with opening and closing accounts; (b) co-equal authority with Anadi Guar over trading activity in KF's IB account; (c) ultimate authority over firing Anadi Guar; and (2) IB had greater authority than MW over KF's IB account including trades in the account (*e.g.*, closing trades and	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				margin-related trades) — *not* that MW controlled KF's IB account • Ex. 50 establishes only that MW had authority over KF's BMO account — *not* that MW controlled KF's IB account	
100	Williams had ultimate authority over the investment decisions for Kinetic Funds with the assistance of Anadi Guar ("Guar"), to whom Williams delegated the duty of executing day-to-day trades in accordance with Williams' investment strategy.	Ex. 12, MW Tr. at 87:7-91:6; 96:5-97:10		• Ex. 12 establishes only that MW had authority over the investment decisions in KF's IB account — *not* that MW had "ultimate" authority over the investment decisions in KF's IB account or that MW had ultimate authority over any investments outside of KF's IB account	
101	Guar reported to Williams and the two would assess Kinetic Funds' portfolio once a week.	*Id.* at 71:24-72:1, 72:21-73:1, 86:21-22	Disputed	• Ex. 12 establishes only that: (1) MW had authority to fire Anadi Guar (71:24-72:1 and 86:21-22); and (2) MW and Anadi Guar would do an "assessment" once a week to "discuss market conditions, situations regarding positions" (72:21-73:1) — *not* that Anadi Guar reported to MW or that MW and Anadi Guar would assess KF's "portfolio" once a week	
102	Williams controlled the Bank Account	Ex. 50, SEC-BMO-P-0001198-0001204; Ex. 12, MW at 173:25-177:5, 366:2-367:17	Disputed	• Ex. 12 establishes only that: (1) MW signed various documents concerning KF's BMO account (those documents have *not* been made part of the record in this case but presumably are identical to Ex. 50) (173:25-177:5); and (2) Kelly Locke had a fob that gave her control to transfer funds from KF's BMO account to Lendacy's BMO account (366:2-367:17) — *not* that MW controlled KF's BMO account	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 50 establishes only that MW was authorized by KF to act *on behalf of KF* with regard to KF's BMO account — *not* that MW "controlled" KF's BMO account (to the contrary, Ex. 50 suggests that MW could only take action with regard to KF's BMO account to the extent that such action that *was authorized by KF*, which suggests that *KF* "controlled" its BMO account)	
103	Williams controlled . . . Lendacy's two bank accounts at BMO Harris Bank N.A.	Ex. 51 SEC-BMO-P-0000004-00000017 and Ex. 12, MW at 248:13-252:18 (account xx8676); Ex. 52 SEC-BMO-P-0001407-0001416 and Ex. 12, MW at 252:19-257:6 (account xx1081); 235:2-19 (wire authorization)	Disputed	• Ex. 12 establishes only that: (1) MW signed various documents concerning Lendacy's two BMO accounts (those documents have *not* been made part of the record in this case but presumably are identical to Ex. 51 and Ex. 52) (173:25-177:5) — *not* that MW controlled Lendacy's BMO accounts • Ex. 51 and Ex. 52 establishes only that MW was authorized by Lendacy to act *on behalf of Lendacy* with regard to Lendacy's BMO accounts — *not* that MW "controlled" Lendacy's BMO accounts (to the contrary, Ex. 51 and Ex. 52 suggests that MW could only take action with regard to Lendacy's BMO accounts to the extent that such action that *was authorized by Lendacy*, which suggests that *Lendacy* "controlled" its BMO accounts)	
104	In April 2015, Williams used $37,000 of KFYield funds, routed to Lendacy, to pay off the mortgage on his relative's house.	Ex. 16, Locke at 96:9-16; Ex. 26; Pufahl at 139:12-141:5	Disputed	• Ex. 16 establishes only that MW took a credit line for approximately $40,000 to pay off his mother's house — *not* that MW used $37,000 *of KFYield funds* to pay off the mortgage on his relative's house • Ex. 26 establishes only that MW took a credit line with a monthly payment of $750 possibly	MW did not use KFYield funds to pay off the mortgage on a relative's house • Exhibit B at ¶¶ 140-143,209 • Ex. 12 at 200:11-5

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				to refinance his mother's house — *not* that MW used $37,000 of KFYield funds to pay off the mortgage on his relative's house	
105	On April 29, 2015, Williams executed a Lendacy "Credit Facility Agreement" dated April 29, 2015, reflecting a purported loan for $40,000.	Ex. 53, Agreement between Lendacy and Williams for $40,000	Disputed	• Ex. 53 establishes that on 4/30/15 MW executed a "Credit Facility Agreement and Federal Truth-in-Lending Disclosure" that was deemed "effective" on 4/29/15 and which reflected a $40,000 "line of credit" — *not* that MW executed a "Credit Facility Agreement" or that that Credit Facility Agreement was "dated" 4/29/15 or that it reflected a "loan" for $40,000 (Ex. 53 does evidence how much, if any, of the credit line MW used)	
106	The relative did not grant Lendacy a mortgage or any other consideration to Lendacy, and the Credit Facility Agreement was unsecured.	*Id.*	Disputed	• Ex. 53 establishes only that the "Credit Facility Agreement and Federal Truth-in-Lending Disclosure" executed by MW on 4/30/15 does not state whether MW's relative granted Lendacy a mortgage or other consideration and that MW's "obligations under" the Agreement were unsecured — *not* that MW's relative did not grant Lendacy a mortgage or other consideration or that the Agreement itself was unsecured	The line of credit evidenced by the "Credit Facility Agreement and Federal Truth-in-Lending Disclosure" that MW executed on 4/30/15 was secured • Exhibit B at ¶¶ 171
107	In March 2017, Williams purchased for $1,512,575.50 three luxury apartments and two parking spaces for himself in San Juan, Puerto Rico.	Ex. 16, Locke at 67:19-79:18, Ex. 26, Pufahl at 24:23-27:1; Ex. 54, deed; Ex. 12, MW at 323:18-326:3; Exs. 55-56, fund transfers	Disputed	• Ex. 12 establishes only that MW's initials and signature are on a document (which has *not* been made a part of the record in this case but presumably is identical to Ex. 54) and that another documents (which has *not* been made part of the record in this case but presumably is identical to Ex. 67) evidences three withdrawals from a bank account — *not* that MW purchased three "luxury" apartments and two	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				parking lots "for himself" in San Juan, Puerto Rico for $1,512,575.50 • Ex. 16 establishes only that: (1) "approximately $1.4 million" was used by an unidentified person to purchase an unspecified "house property" "in Villa Gabriella"; and (2) MW's initials and signature are on a document (which has *not* been made a part of the record in this case but presumably is identical to Ex. 54) — *not* that MW purchased three "luxury" apartments and two parking lots "for himself" in San Juan, Puerto Rico for $1,512,575.50 • Ex. 27 establishes only that MW purchased *one* penthouse, one *apartment*, and two parking spaces in "Villa Gabriella" — *not* that MW purchased three "luxury" apartments and two parking lots "for himself" in San Juan, Puerto Rico for $1,512,575.50 • Ex. 55 establishes only that various deposits (totaling $1,511,151.01) and withdrawals (totaling $1,516.291.51) were made into and out of Lendacy's BMO account to and from unidentified individuals/entities in March 2017, including a $1,500,000 deposit and a $1,422,325.50 withdrawal — *not* that MW purchased three "luxury" apartments and two parking lots "for himself" in San Juan, Puerto Rico for $1,512,575.50 • Ex. 56 establishes only that various deposits (totaling $17,000.00) and withdrawals (totaling $1,606,016.93) were made into and out of KF's BMO account to and from unidentified individuals/entities in March 2017, including a $1,500,000 withdrawal — *not* that MW	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				purchased three "luxury" apartments and two parking lots "for himself" in San Juan, Puerto Rico for $1,512,575.50	

108	Williams used KFYield funds, diverted to Lendacy, to pay for the properties.	*Id.*; Ex. 20, Ivory Decl. at ¶ 14; Ex. 12, MW at 328:2-329:5, 325:7-326:3	Disputed	• Ex. 12 establishes only that: (1) MW did not instruct Kelly Locke to return to KF's BMO account the $1.5 million that had been transferred out of that account (328:2-329:5); and (2) $1.5 million that was transferred out of KF's BMO account was transferred to the owner of the property that MW purchased in March 2017 — *not* that MW used "KFYield funds" diverted to Lendacy to pay for the properties he purchased in March 2017
				• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* MW used KFYield funds, diverted to Lendacy, to pay for the properties that he purchased in March 2017
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
					MW did not use KFYield funds to pay for the properties he purchased in March 2017
					• Exhibit B at ¶¶ 140-143, 209
					• Ex. 12 at 200:11-15

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
109	Williams titled these properties in his name.	Ex. 54; Ex. 16, Locke at 64:23-65:2; Ex. 12, MW at 323:18-324:22, 337:2-6	Disputed	• Ex. 12 establishes only that: (1) MW purchased property in March 2017, and MW's initials and signature are on a document (which has *not* been made a part of the record in this case but presumably is identical to Ex. 54) (323:18-324:22); and (2) the property that MW purchased in March 2017 has not been retitled to anyone else (but it does not identify in whose name it was/is titled) (337:2-6) — *not* that MW *titled* the property in his name • Ex. 16 establishes only that the property MW purchased in March 2017 "was intended as a new residence from Michael Williams" — *not* that MW *titled* the property in his name • Ex. 54 establishes only that MW was the "purchaser" of the property he purchases in March 2017 — *not* that MW *titled* the property in his name	
110	Certain employees subsequently raised concerns to Williams about his use of KFYield funds to pay for the San Juan properties.	Ex. 26, Pufahl at 33:2-19, 141:20-142:24	Disputed	• Ex. 26 establishes only that: (1) Keli Pufahl told MW that Lendacy needed paperwork on every loan and had MW fill out and sign various forms (33:2-19) and (2) a credit facility agreement (which has *not* been made a part of the record in this case but presumably is identical to Ex. 42) was prepared at Keli Pufahl's request (141:20-142:24) — *not* that any employees raised "concerns" to MW about his use of KFYield funds to pay for the property he purchased in March 2017	No employees raised concerns to MW about his use of KFYield funds to pay for the properties he purchased in March 2017 • Exhibit B at ¶¶ 182-183
111	Williams responded by stating that he was expecting a future payout from the sale of an unrelated	*Id.* at 25:22-26:16	Disputed	• Ex. 26 establishes only that, in response to Kelly Pufhal's question about how MW would pay off a credit line, MW told Keli Pufahl that: (1) MW was in the process of selling Silexx to	No employees raised "concerns" to MW about his use of KFYield funds to pay for the properties he purchased in March 2017, and therefore MW did not

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	company and would pay KFYield back at that time.			the CBOE; (2) "quite a bit of money" was coming to MW on November 1; and (3) as soon as MW received the proceeds from the Silexx sale, MW would repay the loan Lendacy gave him — *not* that MW stated this *in response* to "concerns" raised by an employee about MW's use of KFYield funds to pay for the property he purchased on March 2017 or that MW stated he would pay any of the the funds he expected to receive on November 1 to *KFYield*	respond to the concerns that were not raised to him • Exhibit B at ¶¶ 182-183
112	After employees pressed the issue, Williams executed a Lendacy "Credit Facility Agreement" dated March 23, 2017, for a $1,517,000 loan ("Williams Credit Agreement").	Ex. 42; Ex. 12, MW at 333:14-334:21	Disputed	• Ex. 12 establishes only that a document (which has *not* been made part of the record in this case but is presumably identical to Ex. 42) was created on 3/23/17 and was used to purchase the property MW acquired in March 2017 — *not* that MW executed this document "after employees pressed the issue" regarding MW's use of KFYield funds to pay for the property he purchased on March 2017 • Ex. 42 establishes only that on 3/23/17 MW executed a Credit Facility Agreement and Disclosure for a $1,517,000 "credit line" — *not* that MW executed this document "after employees pressed the issue" regarding MW's use of KFYield funds to pay for the property he purchased on March 2017	No employees raised "concerns" to MW about his use of KFYield funds to pay for the properties he purchased in March 2017 or "pressed the issue" • Exhibit B at ¶¶ 182-183
113	Williams did not grant Lendacy a mortgage on the properties, and the Credit Facility Agreement is unsecured.	*Id.*	Disputed	• Ex. 12 establishes only that a document (which has *not* been made part of the record in this case but is presumably identical to Ex. 42) was created on 3/23/17 and was used to purchase the property MW acquired in March 2017 — *not* that MW did not grant Lendacy a mortgage on the property he purchased in	The $1,517,000 line of credit MW obtained from Lendacy was secured • Exhibit B at ¶¶ 179-180

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				March 2017 or that the Credit Facility is unsecured • Ex. 42 establishes only that: (1) on 3/23/17 MW executed a Credit Facility Agreement and Disclosure for a $1,517,000 "credit line"; (2) the Credit Facility Agreement does not evidence whether MW gave Lendacy a mortgage on the property he purchased on March 2017; and (3) MW's "obligations" under the Credit Facility are unsecured — *not* that MW did not grant Lendacy a mortgage on the property he purchased in March 2017 or that the *Credit Facility Agreement and Disclosure* is unsecured	
114	In May 2018, Williams used at least $2,755,000 of KFYield funds, routed to Lendacy in the form of a Lendacy loan, to purchase a historic bank building in Old San Juan, Puerto Rico.	*See supra* n. 20; Ex. 20, Ivory Decl. at ¶ 14; Ex. 12, MW at 342:14-343:22; 344:1-348:19. Ex. 16, Locke at 85:8-94:19; Ex. 21, Recorded deed; Ex. 22-23, fund transfers; Ex. 24, check payments for fees associated with purchase; Ex. 44	Dispute	• Ex. 12 establishes only that: (1) MW's initial and signature are on a document (which has *not* been made part of the record in this case but is presumably identical to Ex. 21) (342:14-343:22); (2) a document (which has *not* been made part of the record in this case but is presumably identical to Ex. 23) reflects a $78,464.64 and a $2,676,564.36 withdrawal from KF's BMO account, both of which were authorized by Kelly Lock and delivered to Lendacy and that MW was aware of the larger withdrawal "because [MW] was in the process of purchasing a building" (344:1-348:19); and (3) a document (which has *not* been made part of the record in this case but is presumably identical to Ex. 22) reflects that approximately $78,000 and approximately $2.6 million was deposited into Lendacy's BMO account, these deposits were authorized by Lendacy's staff, these are the same funds that were transferred out of KF's BMO account, these funds were to	MW did not use any KFYield funds to purchase an historic bank building in Old San Juan, Puerto Rico • Exhibit B at ¶¶ 140-143, 209 • Ex. 12 at 200:11-15

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				fund a loan to Scipio, MW was a majority owner in Scipio on 2/10/21, and MW "believe[d]" these funds were for Scipio's purchase of the Banco Espanol building (but *not* that MW's belief was correct) (344:1-348:19) — *not* that *MW* used at least $2,755,000 of "KFYield funds" to purchase an historic bank building in Old San Juan, Puerto Rico • Ex. 16 establishes only that: (1) MW's initials and signature are on a document (which has *not* been made part of the record in this case but is presumably identical to Ex. 21) reflecting MW, on behalf of Scipio, purchased a bank building; (2) two documents (which have *not* been made part of the record in this case but are presumably identical to Ex. 22 and Ex. 23) reflect a $78,464.64 and a $2,676,564.36 withdrawal from KF's BMO account, which account was used to "house" KF investor capital, to Lendacy's BMO account and which withdrawals were "associated" with the bank building purchase referenced in the document with MW's initials and signature, were transferred to Lendacy, and then transferred to the appropriate parties for the purchase the bank building; (3) a document (which has *not* been made part of the record in this case but is presumably identical to Ex. 24) reflects that LF42, which is MW's LLC, paid $145,000 to Gandia Realty, which is the same amount and entity referenced in the with MS's initials and signature; and (4) MW's signature is on a document (which has *not* been made a part of the record in this case but presumably is identical to Ex. 43) that he signed on 3/23/17, became effective on 5/4/18, and Kelly Locke had not	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts

				seen before — *not* that MW used at least $2,755,000 of KFYield funds to purchase an historic bank building in Old San Juan, Puerto Rico
				• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that MW used at least $2,755,000 of KFYield funds to purchase an historic bank building
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
				• Ex. 21 establishes only that on 5/4/18 MW signed a "Purchase and Sale Deed" evidencing that Scipio purchased a property in San Juan Puerto Rico for $2,900,000 — *not* that MW used at least $2,755,000 of KFYield funds to purchase an historic bank building in Old San Juan, Puerto Rico
				• Ex. 22 establishes only that various deposits (totaling $3,057,560.82) and withdrawals (totaling $2,837,000.00) were made into and out of Lendacy's BMO account to and from unidentified individuals/entities in May 2018,	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				including a $78,435.64 deposit and a $2,676,564.36 deposit — *not* that MW used at least $2,755,000 of KFYield funds to purchase an historic bank building in Old San Juan, Puerto Rico • Ex. 23 establishes only that various deposits (totaling $2,500,000.00) and withdrawals (totaling $2,853,260.45) were made into and out of KF's BMO account to and from unidentified individuals/entities in May 2018, including a $789,436.64 withdrawal and a $2,676,564.36 — *not* that MW used at least $2,755,000 of KFYield funds to purchase an historic bank building in Old San Juan, Puerto Rico • Ex. 24 establishes only that LF42 issued a check in the amount of $145,000 to a recipient whose name has been redacted — *not* that MW used at least $2,755,000 of KFYield funds to purchase an historic bank building in Old San Juan, Puerto Rico • Ex. 44 establishes only that a ledger exists (without any context as to who created it or how to understand it) that reflects two wires to Scipio in the amounts of $78,435.64 and $2,676,564.36 and referencing Banco Espanol Purchase — *not* that MW used at least $2,755,000 of KFYield funds to purchase an historic bank building in Old San Juan, Puerto Rico	
115	Williams titled the building in the name of his entity, Scipio, and executed a Lendacy "Credit Facility	Ex. 43; Ex. 12, MW at 348:23-350:22; Ex. 21	Disputed	• Ex. 12 establishes only that MW: (1) signed a document (which has *not* been made a part of the record in this case but presumably is identical to Ex. 21); and (2) did not retitle the	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
	Agreement" dated May 4, 2018 on Scipio's behalf.			Banco Espanol building from Scipio to something else — *not* that MW titled the Banco Espanol building in the name of Scipio or that MW executed a Lendacy "Credit Facility Agreement" dated May 4, 2018 *on Scipio's behalf* • Ex. 21 establishes only that on 5/4/18 MW signed a "Purchase and Sale Deed" evidencing that Scipio purchased a property in San Juan Puerto Rico for $2,900,000 — *not* that MW titled the Banco Espanol building in the name of Scipio or that MW executed a Lendacy "Credit Facility Agreement" dated May 4, 2018 on Scipio's behalf • Ex. 43 establishes only that on 3/23/17 MW executed a Credit Facility Agreement and Disclosure on behalf of Scipio which Credit Facility Agreement and Disclosure became effective on 5/4/18 — *not* that MW titled the Banco Espanol building in the name of Scipio or that MW executed a Lendacy Credit Facility Agreement "dated" May 4, 2018 on Scipio's behalf	
116	Scipio did not grant Lendacy a mortgage on the property, and Williams did not guarantee repayment of the purported loan, which is unsecured.	Ex. 43	Disputed	• Ex. 43 establishes only that: (1) on 3/23/17 MW executed a Credit Facility Agreement and Disclosure for a $2,755,000 "credit line" to Scipio; (2) MW did not complete the Guarantor Page of the Credit Facility Agreement and Disclosure; (3) the Credit Facility Agreement and Disclosure does not evidence whether Scipio gave Lendacy a mortgage on the bank building; and (4) Scipio's "obligations" under the Credit Facility Agreement and Disclosure are unsecured — *not* that Scipio did not grant Lendacy a mortgage on	The $2,755,000 line of credit Scipio obtained from Lendacy was secured • Exhibit B at ¶ 190

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				the bank building or that MW did not guarantee the line of credit or that the "loan" is unsecured	
117	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.	Ex. 12, MW at 350:23-351:2	Undisputed		

118	In April 2019, Williams used $2,050,000 of additional KFYield funds in the form of two Lendacy loans to provide financial support to his outside business ventures.	Ex. 20, Ivory Decl. at ¶ 14; Exs. 30-31; Ex. 26, Pufahl at 45:13-47:20, 101:24-118:2; Ex. 28, Mendez at 95:15-101:10, 99:21-100:10	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that MW used $2,050,000 of KFYield funds in the form of two Lendacy loans to provide financial support to his outside business ventures
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
				• Ex. 26 establishes only that: (1) it was Keli Pufahl's "understanding" that the $750,000 used to pay for KF's Financial Summit event came from *KF* (*not* that her understanding was correct) (45:13-47:20); (2) MW authorized the
					MW did not use any KFYield funds to provide support to his outside business ventures
					• Exhibit B at ¶¶ 140-143, 209
					• Ex. 12 at 200:11-15

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				transfer of $497,300, the source of which was *KF*, to Zephyr Aerospace, which was *not* MW's entity (101:24-118:2); (3) MW authorized the transfer $550,000, the source of which was *either KF or KFYield*, to KIH (101:24-118:2); and (4) a document (which has *not* been made a part of the record in this case) reflects that MW took "a million dollars" from the KFYield Fund and transferred it to Lendacy to service, per Kelly Locke's speculation, "all entity operations" (101:24-118:2) — <u>not</u> that MW used $2,050,000 of *KFYield funds* in the form of *two Lendacy loans* to provide financial support to MW's outside business ventures • Ex. 28 establishes only that a document (which has not been made a part of the record in this case) reflects: (1) two wire transfers authorized by MW totaling $550,000 from an unidentified source to an unidentified recipient (95:15-101:10); (2) $1 million was transferred from *KF* to Lendacy "for operational" (95:15-101:10); and (3) *KF* was the source of "around $630,000" for an event to benefit entities referenced in the document (95:15-101:10) — <u>not</u> that MW used $2,050,000 of "KFYield funds" in the form of two Lendacy loans to provide financial support to MW's outside business ventures • Ex. 30 establishes only that on 4/15/19 MW executed a Credit Facility Agreement and Disclosure for a $550,000 "credit line" to LF42 — <u>not</u> that MW used $2,050,000 of "KFYield funds" in the form of two Lendacy loans to provide financial support to MW's outside business ventures (Ex. 30 does not establish	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				how much, if anything, LF42 borrowed on its credit line how any borrowed funds were used) • Ex. 31 establishes only that on 4/15/19 MW executed a Credit Facility Agreement and Disclosure for a $2,000,000 "credit line" to LF42 — *not* that MW used $2,050,000 of KFYield funds in the form of two Lendacy loans to provide financial support to MW's outside business ventures (Ex. 31 does not establish how much, if anything, LF42 borrowed on its credit line or how any borrowed funds were used)	
119	These expenses included, among others, the development of KIH, an international financial entity in Puerto Rico, the development of an international exchange in Puerto Rico, and the payment of more than $600,000 for a multi-day event held to highlight and introduce KIH to the public at a luxury hotel in Puerto Rico.	Ex. 20, Ivory Decl. at ¶ 14; Ex. 44; Ex. 12, MW at 359:18-360:6, 360:21-24, 361:19-363:3, 363:23-364:20, 369:3-23, 379:2-13, 380:12-15, 446:7-9	Disputed	• Ex. 12 establishes only that: (1) LF42 loaned $250,000 to KIH and KF invested $300,000 in KIH (359:18-360:6); (2) KIH was not listed on a U.S. exchange (360:21-24); (3) the source of the $300,000 invested in KIH was KF capital and KF investor capital, the $250,00 was working capital for KIH, and the $300,00 was issued as a bond for KIH (361:19-363:3); (4) MW "believe[d] he had a 40% interest in ISX (*not* that MW's belief was correct) and the money LF42 received in connection with ISX came from the Lendacy line of credit (363:23-364:20); (5) LF42's Lendacy line of credit was used to pay for expenses relating to the Kinetic International Financial Summit (369:3-23 and 379:2-13); (6) MW "believe[d]" that $250,000 of LF42's Lendacy credit line was used to pay KIH's expenses (*not* that MW's belief was correct) (380:12-15); and (7) the Kinetical International Financial Summit took place in March 2019 (446:7-9) — *not* that MW used $2,050,000 of "KFYield funds" in the form of two Lendacy loans to pay for the development	MW did not use any KFYield funds to provide support to his outside business ventures • Exhibit B at ¶¶ 140-143,209 • Ex. 12 at 200:11-15

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts

				of KIH, an international exchange in Puerto Rico, and a multi-day event held to highlight and introduce KIH to the public at a luxury hotel in Puerto Rico
				• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that MW used $2,050,000 of KFYield funds in the form of two Lendacy loans to pay for the development of KIH, an international exchange in Puerto Rico, and a multi-day event held to highlight and introduce KIH to the public at a luxury hotel in Puerto Rico
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
				• Ex. 44 establishes only that a ledger exists (without any context as to who created it or how to understand it) reflecting various transfers from (in most cases) unidentified sources to various recipients along with a terse description — *not* that MW used $2,050,000 of "KFYield funds" in the form of two Lendacy loans to pay for the development of KIH, an	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				international exchange in Puerto Rico, and a multi-day event held to highlight and introduce KIH to the public at a luxury hotel in Puerto Rico	
120	Williams executed two "Credit Facility Agreements" dated April 15, 2019, reflecting a total loan in the amount of $2,550,000 on behalf of his entity, LF42 (the "LF42 Credit Agreements").	Exs. 30-31; Ex. 12, MW at 352:14-354:16	Disputed	• Ex. 12 establishes only that MW's signature is on two documents (which have *not* been made part of the record in this case but presumably are identical to Ex. 30 and Ex. 31) described by Plaintiff's counsel as "Lendacy credit facility agreements for LF42" dated 4/15/19 and reflecting a $550,000 and a $2,000,000 line of credit to LF42 — ***not*** that on 4/15/19 MW executed on behalf of LF42 two Credit Facility Agreements reflecting a total *loan* in the amount of $2,550,000 (Ex. 12 does not establish how much, if anything, LF42 borrowed on its credit lines) • Ex. 30 and Ex. 31 establish only that on 4/15/19 MW executed on behalf of LF42 two Credit Facility Agreement and Disclosures reflecting a total "credit line" in the amount of $2,550,000 — ***not*** that on 4/15/19 MW executed on behalf of LF42 two "Credit Facility Agreements" reflecting a total *loan* in the amount of $2,550,000 (Ex. 30 and Ex. 31 do not establish how much, if anything, LF42 borrowed on its credit lines)	On 4/15/19, MW executed on behalf of LF42 two "Credit Facility Agreement and Disclosures" reflecting a total line of credit in the amount of $2,550,000 • Exhibit B at ¶¶ 194, 196 • Ex. 30 • Ex. 31
121	Williams did not guarantee repayment of the purported loan, which is unsecured.	*Id.*	Disputed	• Ex. 12 establishes only that MW's signature is on two documents (which have *not* been made part of the record in this case but presumably are identical to Ex. 30 and Ex. 31) described by Plaintiff's counsel as "Lendacy credit facility agreements for LF42" dated 4/1/19 and reflecting a $550,000 and a $2,000,000 line of	LF42's two "Credit Facility Agreement and Disclosures" reflecting a total line of credit in the amount of $2,550,000 were secured • Exhibit B at ¶¶ 195, 197

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				credit to LF42 — *not* that MW did not guarantee repayment of the lines credit or that the lines of credit were unsecured • Ex. 30 and Ex. 31 establish only that: (1) MW did not complete the Guarantor Page of the two Credit Facility Agreement and Disclosures he executed on 4/15/19; and (2) LF42's "obligations" under the Credit Facility Agreement and Disclosures were not secured — *not* that MW did not guarantee repayment of the lines credit or that the *lines of credit* were unsecured • Ex. 30 establishes that LF42's $550,000 line of credit *was* secured by collateral, *see* § 3(a) (fine print below "550,000") • Ex. 31 establishes that LF42's $2,000,000 line of credit *was* secured by collateral, *see* § 3(a) (fine print below "2,000,000")	• Ex. 30 • Ex. 31

122	As of October 2019, Lendacy had at least $12.6 million in outstanding purported loans made with KFYield assets to Williams, his entities, and other investors.	Ex. 20, Ivory Decl. at ¶6 and Ex. B	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that Lendacy had at least $12.6 million in outstanding purported
					None of Lendacy's loans to MW, his entities, or other investors were made with KFYield assets
					• Exhibit B at ¶¶ 140-143, 209
					• Ex. 12 at 200:11-5

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				loans made with KFYield assets to MW, his entities, and other investors • Ex. 20 cannot be presented in a form that would be admissible in evidence	
123	After the SEC's Complaint was filed, Williams repaid $2,354,399.21.	Ex. 12, MW at 374:15-374:22	Disputed	• Ex. 12 establishes only that, after the SEC's complaint was filed, MW "made [a] wire payment of roughly 2.6 million dollars to Lendacy" to pay Lendacy's loans to LF42 in full — *not* that MW repaid *$2,354,399.21*	
124	The Williams Credit Agreement was executed after Williams purchased his San Juan properties with investor assets.	Ex. 26, Pufahl at 33:2-19, 141:20-142:24	Disputed	• Ex. 26 establishes only that: (1) MW used a bridge loan to purchase the property he acquired in March 2017, which loan was evidenced by paperwork that Keli Pufhal had MW fill out and sign (33:2-19); and (2) Keli Pufahl "believe[d]" a document (which has *not* been made a record in this case but presumably is identical to Ex. 42) was created after the fact (*not* that Keli Pufahl's belief is correct) (141:20-142:24) — *not* that MW executed the Credit Facility Agreement and Disclosure for his $1,517,000 credit line with Lendacy after MW had purchased the properties he acquired in March 2017 • Plaintiff's Undisputed Fact No. 124 is contradicted by Ex. 42, which establishes that MW executed the Credit Facility Agreement and Disclosure for his $1,517,000 credit line with Lendacy on *3/23/17*, and Ex. 54, which establishes that MW purchased the Puerto Rican properties on *3/24/17* (*i.e.*, one day *after* MW had executed the Credit Facility Agreement and Disclosure)	MW executed the Credit Facility Agreement and Disclosure for his $1,517,000 credit line with Lendacy before he purchased the Puerto Rican properties in March 2017 • Exhibit B at ¶¶ 176, 178 • Ex. 54 • Ex. 55

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts

125	Furthermore, the purported loan for $1,517,000 exceeded 70% of his $65,000 investment in Kinetic Funds at the time.	Ex. 20, Ivory Decl. at Exhibit A, p. 10 (reflecting a $65,000 investment by MW on May 4, 2015)	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* whether MW's $1,517,000 line of credit exceeded MW's investing in KF
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence	

126	The LF42 Credit Agreements were executed after Williams used investor assets to fund the development of KIH and the international exchange and to pay for the Kinetic International Summit.	*Compare* Ex. 20, Ivory Decl. at ¶ 14 *with* Exs. 30-31	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that the LF42 Credit Facility Agreement and Disclosures were executed
					MW did not use investor assets to fund the development of KIH and the international exchange and to pay for the Kinetic International Summit
					  • Exhibit B at ¶¶ 140-143, 209
					  • Ex. 12 at 200:11-15

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				after MW had used investor assets to fund the development of KIH and the international exchange and to pay for the Kinetic International Summit or that MW had used "investor assets" to fund the development of KIH and the international exchange and to pay for the Kinetic International Summit • Ex. 20 cannot be presented in a form that would be admissible in evidence • Ex. 30 establishes only that on 4/15/19 MW executed a Credit Facility Agreement and Disclosure for a $550,000 "credit line" to LF42 — *not* that MW executed the LF42 Credit Facility Agreement and Disclosure after MW had used investor assets to fund the development of KIH and the international exchange and to pay for the Kinetic International Summit or that MW had used "investor assets" to fund the development of KIH and the international exchange and to pay for the Kinetic International Summit • Ex. 31 establishes only that on 4/15/19 MW executed a Credit Facility Agreement and Disclosure for a $2,000,000 "credit line" to LF42 — *not* that MW executed the LF42 Credit Facility Agreement and Disclosure after MW had used investor assets to fund the development of KIH and the international exchange and to pay for the Kinetic International Summit or that MW had used "investor assets" to fund the development of KIH and the international exchange and to pay for the Kinetic International Summit	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts

127	LF42 did not invest in Kinetic Funds.	Ex. 20, Ivory Decl. at Exhibit A (showing no investment by LF42, and reflecting only a $65,000 investment by MW on May 4, 2015 and a $1,500,000 investment by him on May 3, 2018 at pp. 10, 12)	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does not have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has not been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that LF42 did not invest in KF
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence	

128	Moreover, Williams papered a promissory note to make it look as though LF42's assets funded ISX, LLC ("ISX"), the technology company Williams held a 40% interest in and was creating the software for the international exchange.	Ex. 57, $2 million promissory note signed by Williams as "Administrator" for ISX, in favor of LF42, on April 15, 2019; Ex. 12, MW at 363:23-364:20; Ex. 26, Pufahl at 37:20-38:15	Disputed	• Ex. 12 establishes only that LF42 used its Lendacy credit line to borrow $2 million and lend those funds to ISX — *not* that MW "papered" a promissory note "to make it look as though LF42's assets funded ISX" • Ex. 26 establishes only that Keli Pufahl had concerns regarding how she and one or more other unidentified people would pay for ISX's programmers — *not* that MW "papered" a promissory note "to make it look as though LF42's assets funded ISX" • Ex. 57 establishes only that MW, as Administrator of ISX, signed a $2 million promissory note in favor of LF42 — *not* that MW	MW did not "paper" a promissory note to make it look as though LF42's assets funded ISX • Exhibit B at ¶ 206

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				"papered" a promissory note "to make it look as though LF42's assets funded ISX"	
129	In reality, $2 million of investor's assets, routed through Lendacy, were transferred to ISX.	Ex. 58 (e-mail explaining transactions); Ex. 12, MW at 363:23-364:20	Disputed	• Ex. 12 establishes only that LF42 used its Lendacy credit line to borrow $2 million and lend those funds to ISX — *not* that $2 million of "investor's assets" were transferred to ISX • Ex. 58 establishes only that: (1) an updated $2 million promissory (which has *not* been made a part of the record in this case but presumably is identical to Ex. 57) was structured as a bridge loan; (2) MW put up the second payment he was to receive from the CBOE as collateral for something (possibly the promissory note, it is unclear, but that is the only logic antecedent in the preceding paragraph); (3) something (possibly the promissory note, it is unclear) is to be paid back by someone not identified (the document is vague) to Lendacy, which will then forward the funds to KF no later than 12/27/19; and (4) ISX will be responsible for paying back to LF42 $2 million after 12/27/19 — *not* that $2 million of investor's assets were transferred to ISX	No investor's assets were transferred to ISX • Exhibit B at ¶¶ 140-143,209 • Ex. 12 at 200:11-15
130	LF42 agreed to pay back the $2 million, from a future payout due to Williams, to Lendacy, which was to forward the amount to Kinetic Funds.	Ex. 58; Exs. 30-31	Disputed	• Ex. 30 establishes only that on 4/15/19 MW: (1) executed a Credit Facility Agreement and Disclosure for a $550,000 "credit line" to LF42; and (2) pledged $500,000 of a future payout to MW as *collateral* for the line of credit to LF42 — *not* that LF42 agreed to use a future payout to MW to pay back to Lendacy $2 million, which was to forward the amount to KF (Ex. 30 does not identify any specific source to be used by LF42 to repay its loan)	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Ex. 31 establishes only that on 4/15/19 MW: (1) executed a Credit Facility Agreement and Disclosure for a $2,000,000 "credit line" to LF42; and (2) pledged $2,000,000 of a future payout to MW as *collateral* for the line of credit to LF42 — ***not*** that LF42 agreed use a future payout to MW to pay back to Lendacy $2 million, which was to forward the amount to KF (Ex. 31 does not identify any specific source to be used by LF42 to repay its loan) • Ex. 58 establishes only that: (1) an updated $2 million promissory (which has *not* been made a part of the record in this case but presumably is identical to Ex. 57) was structured as a bridge loan; (2) MW put up the second payment he was to receive from CBOE as collateral for something (possibly the promissory note — it is unclear, but that is the only logic antecedent in the preceding paragraph); (3) something (possibly the promissory note, it is unclear) is to be paid back by someone not identified (the document is vague) to Lendacy, which will then forward the funds to KF no later than 12/27/19; and (4) *ISX* will be responsible for paying back to LF42 $2 million after12/27/19 — ***not*** that LF42 agreed use a future payout to MW to pay back to Lendacy $2 million, which was to forward the amount to KF	
131	ISX was then responsible to repay LF42 the $2 million.	Ex. 58	Disputed	• Ex. 58 establishes only that: (1) an updated $2 million promissory (which has *not* been made a part of the record in this case but presumably	

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				is identical to Ex. 57) was structured as a bridge loan; (2) MW put up the second payment he was to receive from CBOE as collateral for something (possibly the promissory note — it is unclear, but that is the only logic antecedent in the preceding paragraph); (3) something (possibly the promissory note, it is unclear) is to be paid back by someone not identified (the document is vague) to Lendacy, which will then forward the funds to KF no later than 12/27/19; and (4) *ISX* will be responsible for paying back to LF42 $2 million after 12/27/19 — *not* that ISX was responsible to repay LF42 the specific $2 million that LF42 borrowed from Lendacy	
132	Additionally, Williams purchased securities for the KFYield portfolio on margin so he could divert investor capital to Lendacy.	*See supra* n. 97	Disputed	Ex. 12 establishes only that MW did not always use all of an investor's cash to purchase investments at IB and sometimes also used margin because: (1) the carry cost was negligible; and (2) the uninvested cash could be used for: (i) private equity, (ii) Lendacy, and (iii) other opportunities to generate preferred returns — *not* that MW purchased securities for the KFYield portfolio on margin so he could "divert investor capital to Lendacy"	MW did not purchase securities for the KFYield portfolio on margin so he could divert investor capital to Lendacy • Exhibit B at ¶¶ 109, 114-118, 211 • Ex. 12 at 198:20-199:15
133	Williams transferred investor capital amounting to at least $9.1 million net to Lendacy, an entity owned by Williams.	Ex. 20, Ivory Decl. at ¶ 11	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents • Crystal Ivory is a CPA currently employed by Plaintiff	MW did not transfer any investor capital to Lendacy • Exhibit B at ¶¶ 140-143, 209 • Ex. 12 at 200:11-15

	Plaintiff's Undisputed Facts	Plaintiff's Record Evidence	Disputed/ Undisputed	Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute	There is a Genuine Dispute Regarding Plaintiff's Facts
				• Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case • Crystal Ivory has *not* been identified as an expert witness by any party • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that MW transferred "investor capital" amounting to at least $9.1 million net to Lendacy • Ex. 20 cannot be presented in a form that would be admissible in evidence	
134	Williams and two of his entities took unsecured loans amounting to at least $6.8 million funded with KFYield assets.	*Id.* at Exs. B and E; Exs. 30-31, 41-42	Disputed	• Ex. 20 is hearsay based on hearsay/unauthenticated documents • Crystal Ivory is a CPA currently employed by Plaintiff • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case • Crystal Ivory has *not* been identified as an expert witness by any party • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that MW and two of his entities took unsecured loans amounting to at least $6.8 million funded with KFYield assets • Ex. 20 cannot be presented in a form that would be admissible in evidence	MW and his entities did not take unsecured loans totaling at least $6.7 million • Exhibit B at ¶¶ __ None of the loans to MW and his entities were funded with KFYield assets • Exhibit B at ¶¶ __

	Plaintiff's Undisputed Facts	**Plaintiff's Record Evidence**	**Disputed/ Undisputed**	**Plaintiff's Evidence Does Not Support the Facts — Or the Absence of a Dispute**	**There is a Genuine Dispute Regarding Plaintiff's Facts**

135	Between January 2015 and October 2017, Williams used $30,872.44 of investor funds to pay Silexx Financial Systems, LLC ("Silexx"), another company that Williams partially owned and/or had a financial interest in.	Ex. 20, Ivory Decl. at ¶12; Ex. 12, MW at 398:7-15	Disputed	• Ex. 12 establishes only that MW had a 40% ownership in Silexx — *not* that MW used $30,872.44 of "investor funds" to pay Silexx
				• Ex. 20 is hearsay based on hearsay/unauthenticated documents
				  • Crystal Ivory is a CPA currently employed by Plaintiff
				  • Crystal Ivory does *not* have any direct, personal knowledge of the underlying facts in this case
				  • Crystal Ivory has *not* been identified as an expert witness by any party
				  • Ex. 20 establishes only what the documents reviewed by Crystal Ivory appear to reflect — *not* that MW used $30,872.44 of investor funds to pay Silexx
				  • Ex. 20 cannot be presented in a form that would be admissible in evidence
					MW did not use investor funds to pay Silexx
					• Exhibit B at ¶¶ __

Exhibit B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO.: 8:20-cv-394

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.
_____/

DECLARATION OF MICHAEL SCOTT WILLIAMS

I, Michael Scott Williams, pursuant to 28 U.S.C. § 1746, declare as follows:

1. My name is Michael Scott Williams. I am over eighteen years of age, and I suffer from no mental or legal disability. All statements contained in this declaration are based upon my personal knowledge.

2. I am a named Defendant in the above-styled action ("Action").

3. Based on my review of the Complaint [D.E. 1] filed in the Action, it is my understanding that the relevant time period in the Action runs from January 1, 2012 through February 20, 2020 ("Relevant Time Period").

The Kinetic Entities

4. I formed Kinetic Investment Group, LLC f/k/a Kinetic Management Group, LLC ("Kinetic Group") with the aid of — and in reliance on the advice, guidance, and expertise of — my attorneys, accounts, and other professional advisers. More specifically, it was my attorneys who literally and actually formed Kinetic Group when they drafted, revised, finalized, and filed the documentation that resulted in Kinetic Group being formed and coming into existence.

5. I am not presently the managing member of Kinetic Group.

6. I did not have an ownership interest in, control over, and exercise ultimate authority over Kinetic Group during the entirety of the Relevant Time Period.

7. On March 6, 2020, Mark A. Kornfeld was appointed as receiver for Kinetic Group, its managers and officers were dismissed, and their powers were suspended. *See* **Exhibit 1**, attached hereto.

8. Kinetic Partners, LLC ("Kinetic Partners") was the managing member of the Kinetic Group during part of — but not the entirety of — the Relevant Time Period.

9. My attorneys formed Kinetic Partners by drafting, revising, finalizing, and filing the documentation that resulted in Kinetic Partners being formed and coming into existence.

10. I am not presently the managing member of Kinetic Partners.

11. LF42 was the managing member of Kinetic Partners during part of — but not the entirety of — the Relevant Time Period.

12. LF42, LLC ("LF42") was the majority owner of Kinetic Partners.

13. My attorneys formed LF42 by drafting, revising, finalizing, and filing the documentation that resulted in LF42 being formed and coming into existence.

14. I am not presently the managing member of LF42.

15. I was the managing member of LF42 during part of — but not the entirety of — the Relevant Time Period.

16. I did not have an ownership interest in, control over, and exercise ultimate authority over LF42 during the entirety of the Relevant Time Period.

17. On March 6, 2020, Mark A. Kornfeld was appointed as receiver for LF42, its managers and officers were dismissed, and their powers were suspended. *See* **Exhibit 1**.

18. I formed KCL Services, LLC d/b/a Lendacy ("Lendacy") with the aid of — and in reliance on the advice, guidance, and expertise of — my attorneys, accounts, and other professional advisers. More specifically, it was my attorneys who literally and actually formed Lendacy when they drafted, revised, and finalized the documentation that resulted in Lendacy being formed and coming into existence.

19. I am not presently the managing member of Lendacy.

20. Kinetic Partners was the managing member of Lendacy during part of — but not the entirety of — the Relevant Time Period.

21. Kinetic Group was the managing member of Lendacy during part of — but not the entirety of — the Relevant Time Period.

22. LF42 was the majority owner of Lendacy during part of — but not the entirety of — the Relevant Time Period.

23. I did not have an ownership interest in, control over, and exercise ultimate authority over Lendacy during the entirety of the Relevant Time Period

24. On March 6, 2020, Mark A. Kornfeld was appointed as receiver for Lendacy, its managers and officers were dismissed, and their powers were suspended. *See* **Exhibit 1**.

25. Lendacy is not presently in the business of providing lines of credit to accredited investors.

26. Based on my review of the Receiver's First Interim Report [D.E. 60] filed in this Action, it is my understanding that Lendacy is not presently conducting any business.

27. My attorneys formed Kinetic Funds I, LLC ("Kinetic Funds") by drafting, revising, finalizing, and filing the documentation that resulted in Kinetic Funds being formed and coming into existence.

28. I am not presently the managing member of Kinetic Funds.

29. I do not presently manage Kinetic Funds.

30. Kinetic Partners is not presently the managing member of Kinetic Funds.

31. Kinetic Partners was the managing member of Kinetic Funds during part of — but not the entirety of — the Relevant Time Period.[1]

32. Kinetic Group managed Kinetic Funds during part of — but not the entirety of — the Relevant Time Period.

33. Kinetic Group does not presently manage Kinetic Funds.

34. Kinetic Group does not presently charge Kinetic Funds a 1% management fee.

[1] In my Declaration dated March 12, 2021, I misstated that "Kinetic Group" was the "managing manager" of Kinetic Funds [D.E. 202-1 at ¶ 5]. That was a typo.

35. I did not have an ownership interest in, control over, and exercise ultimate authority over Kinetic Funds during the entirety of the Relevant Time Period.

36. On March 6, 2020, Mark A. Kornfeld was appointed as receiver for Kinetic Funds, its managers and officers were dismissed, and their powers were suspended. *See* **Exhibit 1**.

37. Kinetic Funds does not presently operate as a private pooled investment fund.

38. Based on my review of the Receiver's Second Interim Report [D.E. 111] filed in this Action, it is my understanding that, as of March 20, 2020, all of Kinetic Funds' investments have been liquidated.

39. Based on my review of the Receiver's First Interim Report [D.E. 60] filed in this Action, it is my understanding that Kinetic Funds is not presently conducting any business.

40. My attorneys formed Scipio, LLC ("Scipio") by drafting, revising, finalizing, and filing the documentation that resulted in Scipio being formed and coming into existence.

41. I am not presently the president of Scipio.

42. I was the president of Scipio during part of — but not the entirety of — the Relevant Time Period.

43. I did not have an ownership interest in, control over, and exercise ultimate authority over Scipio during the entirety of the Relevant Time Period.

44. On March 6, 2020, Mark A. Kornfeld was appointed as receiver for Scipio, its managers and officers were dismissed, and their powers were suspended. *See* **Exhibit 1**.

45. My attorneys formed El Morro Financial Group, LLC ("El Morro") by drafting, revising, finalizing, and filing the documentation that resulted in El Morro being formed and coming into existence.

46. I am not presently the president of El Morro.

47. I was the president of El Morro during part of — but not the entirety of — the Relevant Time Period.

48. I did not have an ownership interest in, control over, and exercise ultimate authority over El Morro during the entirety of the Relevant Time Period.

49. On March 6, 2020, Mark A. Kornfeld was appointed as receiver for El Morro, its managers and officers were dismissed, and their powers were suspended. *See* **Exhibit 1**.

50. My attorneys formed KIH, Inc. f/k/a Kinetic International, LLC ("KIH") by drafting, revising, finalizing, and filing the documentation that resulted in KIH being formed and coming into existence.

51. I do not presently have stock in KIH.

52. In December 2019, KIH's directors dissolved and terminated KIH. As a result, KIH no longer exists.

53. I did not have an ownership interest in, control over, and exercise ultimate authority over KIH during the entirety of the Relevant Time Period.

54. On March 6, 2020, Mark A. Kornfeld was appointed as receiver for KIH, its managers and officers were dismissed, and their powers were suspended. *See* **Exhibit 1**.

Kinetic Funds

55. Kinetic Funds was a Delaware limited liability corporation. A copy of Kinetic Fund's Operating Agreement is attached hereto as **Exhibit 2**.

56. Kinetic Funds was an open-end investment fund.

57. Kinetic Group managed Kinetic Funds' day-to-day operations and charged a fee for the services it provided to Kinetic Funds.

58. Kinetic Group used the fee that it charged Kinetic Funds for its services to pay the various entities that Kinetic Group retained to aid it in providing services to Kinetic Funds.

59. For example, Kinetic Group used the fee it charged Kinetic Funds to pay Silexx Financial Systems, LLC ("Silexx") to license Silexx's software so that Kinetic Group could manage Kinetic Funds' investments.

60. Similarly, Kinetic Group used the fee it charged Kinetic Funds to pay El Morro for the services it provided in preparing the monthly account

statements that Kinetic Funds provided to its investors and offering translation services to Kinetic Funds' Spanish-speaking investors.

61. Kinetic Funds relied on a number of registered, third parties to identify and refer prospective investors to it.

62. One such third party was Consultiva Wealth Management, Corp. ("Consultiva"). Myrna Rivera, Eileen Rivera, Kitzy Sancez, and Evangeline Davila were employees of Consultiva.

63. Consultiva did not invest in Kinetic Funds, nor was it a Kinetic Funds investor.

64. Kinetic Funds' investors were given a copy of a Subscription Agreement, an Offering Questionnaire, and Kinetic Funds' Operating Agreement prior to investing in Kinetic Funds.

65. Kinetic Funds' attorneys drafted, reviewed, provided edits and comments, and approved all versions of the Subscription Agreements, Offering Questionnaires, and Operating Agreements before they were provided to Kinetic Funds' prospective and actual investors and to Kinetic Funds' third-party referral agents.

66. I never approved providing a Subscription Agreement, Offering Questionnaire, or Operating Agreement (including its exhibits) to a prospective or actual investor or to a third-party referral agent until I had first con-

firmed that that version of the Subscription Agreement, Offering Questionnaire, or Operating Agreement had been reviewed and approved by Kinetic Funds' attorneys. I relied on the advice and guidance of Kinetic Funds' attorneys and other professional advisers to make sure that all Subscription Agreements, Offering Questionnaires, and Operating Agreements that Kinetic Funds and I provided to potential and actual investors complied with all applicable laws and regulations and properly and adequately made all necessary disclosures.

67. Similarly, Kinetic Funds' attorneys reviewed, provided edits and comments, and approved the Kinetic Funds' marketing materials, brochures, newsletters, reports, and other information materials before they were provided to Kinetic Funds' prospective and actual investors and to Kinetic Funds' third-party referral agents.

68. I never approved providing any Kinetic Funds' marketing materials, brochures, newsletters, reports, or other information materials to a prospective or actual investor or to a third-party referral agent until I had first confirmed the Kinetic Funds' marketing materials, brochures, newsletters, reports, or other information materials had been reviewed and approved by Kinetic Funds' attorneys. I relied on the advice and guidance of Kinetic Funds' attorneys and other professional advisers to make sure that all marketing materials, brochures, newsletters, reports, and other information materials that

Kinetic Funds and I provided to potential and actual investors complied with all applicable laws and regulations and properly and adequately made all necessary disclosures.

69. Kinetic Funds' investors were required to complete and sign a Subscription Agreement, an Offering Questionnaire, and either Exhibit B-1 or Exhibit C-1 of Kinetic Funds' Operating Agreement prior to investing in Kinetic Funds.[2]

70. Kinetic Funds' investors who signed Exhibit B-1 of Kinetic Funds' Operating Agreement were referred to as "Class B Members."

71. Kinetic Funds' investors who signed Exhibit C-1 of Kinetic Funds' Operating Agreement were referred to as "Class C Members."

72. Kinetic Partners was referred to as the "Class A Member."

73. Class B and Class C Members were entitled to 100% of any dividends or other income generated by the investments held by the Kinetic Funds' sub-fund in which they invested and 80% of the "net profits" earned by the Kinetic Funds' sub-fund in which they invested.

74. The Class A Member was entitled to 20% of the "net profits" earned by Kinetic Funds and none of the dividends or other income generated by the investments held by Kinetic Funds.

[2] The exhibits attached to at least one version of Kinetic Funds' Operating Agreement were identified as "Exhibit B" and "Exhibit C."

75. The term "net profits" was defined as the total of all profits generated by a Kinetic Funds' sub-fund minus all expenses incurred by that Kinetic Funds' sub-fund.

76. By signing the Subscription Agreement, Kinetic Funds' investors acknowledged that they: (1) had received and read the Kinetic Funds' Operating Agreement; (2) understood the risk of investing in Kinetic Funds; (3) had consulted with their legal, accounting, tax, investment, and other advisers with respect the merits and risks of in Kinetic Funds; (4) understood that Kinetic Funds was highly speculative and that they were able to bear the risk of investing in it; (5) were "accredited investors" and had a net worth in excess of $1,500,000. *See* **Exhibit 3** at § 2(j)-(l).

77. By signing Exhibit B-1 or Exhibit C-1 of Kinetic Funds' Operating Agreement, Kinetic Funds' investors agreed to be bound by Kinetic Funds' Operating Agreement and confirmed that they: (1) were experienced in business matters; (2) regarded themselves as sophisticated investor who are able to evaluate investment and financial information and/or have chosen independent profession advisors to assist in such evaluation; and (3) had consulted their tax, investment, and legal advisors in determining whether to invest in Kinetic Funds. *See* **Exhibit 2** at § 14.1(a)(ii)-(iii); **Exhibit 4** at 1; **Exhibit 5** at 1.

78. Kinetic Funds' investors who executed Exhibit B-1 of Kinetic Funds' Operating Agreement could request to make a withdrawal of their investment at the end of a calendar quarter provided they gave Kinetic Funds 30-days prior written notice; however, such withdrawals were not a right, and Kinetic Funds' Managing Member had sole and absolute discretion to reject such a request to withdraw an investment. *See* **Exhibit 4** at 3.

79. Kinetic Funds' investors who executed Exhibit C-1 of Kinetic Funds' Operating Agreement could request to make withdrawal of their investment at the end of a calendar year provided they gave Kinetic Funds 30-days prior written notice; however, such withdrawals were not a right, and Kinetic Funds' Managing Member had sole and absolute discretion to reject such a request to withdraw an investment. *See* **Exhibit 5** at 3.

80. Kinetic Funds Operating Agreement expressly disclosed to Kinetic Funds' investors that Kinetic Funds' Managing Member had full, exclusive, and complete discretion to manage and control Kinetic Funds' business and affairs including, without limitation, the exclusive right and power to any time and without notice to the investors: (1) sell, transfer, assign, convey or exchange all or any part of Kinetic Funds' assets; (2) mortgage, pledge, or otherwise encumber all or any part of Kinetic Funds' assets; (3) borrow any money on behalf of Kinetic Funds; and (5) lend any of Kinetic Funds to any person or entity. *See* **Exhibit 2** at § 5.2(j).

81. Kinetic Funds' investors allocated the money they invested in Kinetic Funds to one or more of Kinetic Funds' "sub-funds," each of which was designed to pursue a different investment objective (*e.g.*, capital growth, income, etc.).

82. Kinetic Funds Yield ("KFYield") was one of the sub-funds offered to Kinetic Funds' investors. As such, KFYield was not an actual entity. Rather, it was more like a bookkeeping entry to keep track of which of the funds invested in Kinetic Funds were allocated to KFYield.

83. KFYield's primary investment objective was to generate income (*e.g.*, dividends, interest payments, etc.). To the extent that the price of KFYield's investments increased in value (*i.e.*, "capital appreciation" or "growth"), that was side a benefit but not a primary goal. KFYield was willing to forego such capital appreciation if an investment generated income consistent with KFYield's primary investment objective.

84. KFYield's goal was to generate 5.5% income on the funds allocated to it. This was not a contractual mandate or a guarantee, however, only an aspirational goal. KFYield's contractual mandate was only to invest in financial products that generated income of any amount.

85. Almost all of Kinetic Funds' investors elected to allocate the money they invested in Kinetic Funds to KFYield. As a result, almost all of the funds invested in Kinetic Funds were allocated to KFYield.

86. Every investor in Kinetic Funds is a "member" of Kinetic Funds. *See* **Exhibit 2** at 1 and §§ 1.10, 1.12, 1.13, 1.26.

87. A ledger was maintained by Kinetic Funds to keep track of each member's investments, withdrawals, profits, and losses in Kinetic Funds. This ledger is termed a "Capital Account," and each member was tracked in a separate Capital Account. *See* **Exhibit 2** at §§ 1.7, 1.8, 3.3.

88. A member's percentage interest in Kinetic Funds was determined by dividing the total value of that member's Capital Account by the total of all the Capital Accounts for all of the members. *See* **Exhibit 2** at § 1.30.

89. Under the plain language of Kinetic Fund's Operating Agreement and the governing law — and as a matter of Kinetic Funds' standard operating procedure — every member of Kinetic Funds was entitled to obtain from Kinetic Funds at any time full information regarding Kinetic Fund's activities, affairs, and financial information — including, but not limited to, the amount of Kinetic Funds' investments that was margined, the amount and kinds of assets Kinetic Funds held in its brokerage account and outside its brokerage account, the amount of funds it loaned to Lendacy, the status of those loans, etc. All that was required for a member to obtain such information was that the member request it.

Kinetic Fund's Operations

90. Kinetic Funds maintained a bank account at BMO Harris Bank, N.A. ("BMO").

91. All investments in Kinetic Funds were first deposited into Kinetic Funds' BMO account.

92. At different times, Kinetic Funds' BMO account held deposits from investors, Kinetic Funds' funds, KFYield's funds, funds loaned to Kinetic Funds by Interactive Brokers, LLC ("IB"), and/or funds earned by or owed to Kinetic Group and/or other third parties.

93. All of Kinetic Funds' expenses — *e.g.*, the management fee it paid to Kinetic Group, etc. — were paid out of Kinetic Funds' BMO account.

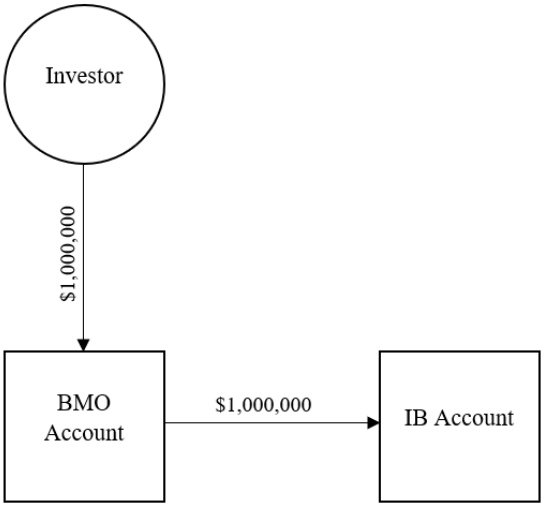
94. Similarly, all payments to customers — *e.g.*, redemptions and withdrawals of their investments, distributions of dividends, etc. — were paid from Kinetic Fund's BMO account.

95. Kinetic Funds also maintained a brokerage account at IB.

96. Kinetic Funds maintained all of its investments in U.S-listed financial products in its IB account.

97. After an investor's funds were received in Kinetic Funds' BMO account, Kinetic Funds would transfer sufficient funds from its BMO account to its IB account to invest in an amount of U.S-listed financial products equal in value to the investor's investment.

98. The following diagram illustrates the flow of a hypothetical investor's $1,000,000 investment in Kinetic Funds:



99. If this hypothetical investor were Kinetic Funds' only investor, then after the transfers were completed,

(i) Kinetic Funds' BMO account statement would reflect a balance of $0;

(ii) Kinetic Funds' IB account statement would reflect a balance of $1,000,000;[3]

(iii) The investor's Capital Account would reflect a total balance of $1,000,000, all of which was invested in U.S.-listed financial products; and

(iv) Kinetic Funds' Capital Account would reflect a total balance of $0.

[3] More precisely, Kinetic Funds' IB account statement would reflect the current market value of U.S.-listed financial products purchased with the investors $1,000,000, the values of which could rise or fall according to changes in the market.

100. If Kinetic Funds were closed at that point, the investor's $1,000,000 would be returned to the investor,[4] and all assets would be accounted for.

Kinetic Funds' Use of Margin

101. Many brokerage firms, including IB, allow their customers to use the assets in their accounts (*e.g.*, cash, stocks, bonds, mutual funds, etc.) as collateral to borrow additional funds from the brokerage firms to use however the customers might wish (*e.g.*, to buy more investments, to withdraw from their account and spend, etc.). This is referred as "margin." The customer pays interest on the funds borrowed from the brokerage firm ("margin interest") until the loan is repaid in full.[5]

102. Brokerage firms take on risk when they agree to let their customers borrow funds from them — *e.g.*, the risk the customers will not repay their loans, the risk the securities being used as collateral for the loan will decline in value, etc.

[4] More precisely, the investor's *pro rata* share of Kinetic Funds' investments (the values of which could rise or fall according to changes in the market) would be returned to the investor. Since the investor in this example is Kinetic Funds' only investor, the investor would be entitled to 100% of the value of Kinetic Funds' investments at the time it closed. If the value of Kinetic Funds' investments doubled between when the investor made his investment and when Kinetic Funds closed, the investor would receive $2,000,000. On the other hand, if the value of Kinetic Funds' investments had dropped by half, then the investor would receive $500,000.

[5] Due to the unique circumstances of the market during the Relevant Time Period, the margin interest charged by IB during the Relevant Time Period was negligible.

103. To protect themselves from these risks, brokerage firms limit the amount a customer can borrow to a percentage of the value of the assets in his account depending on various factors including, among other things, the nature of the brokerage firm's relationship with the customer (*e.g.*, is he a long-term customer or a new one), the financial resources of the customer (*e.g.*, is he wealthy, does he have many liquid assets, etc.), and the kinds of assets in the account to be used as collateral (*e.g.*, are they government bonds, blue chip stocks, penny stocks, etc.).

104. For example, a brokerage firm might limit the amount that a particular customer could borrow to 50% of the value of the assets in the customer's account. If the customer held only Apple stock worth a total of $1,000,000 in his account, then the brokerage firm would let the customer borrow up to $500,000 (*i.e.*, $1,000,000 x 50%). If the customer wanted to, he could borrow the full $500,000 and use those funds to buy another $500,000 of Apple stock. The customer's brokerage statement would then reflect that the customer owned $1,500,000 worth of Apple stock and also that he owed $500,000 to the brokerage firm.

105. Some brokerage firms, including IB, allow their larger and more sophisticated customers to employ "portfolio margin," which is essentially margin that relies on a more customized and fine-tuned analysis of the "net risk" of the individual assets in a customer's account (by taking into consideration

all of the customer's positions regarding each of the assets he owns) to determine the total percentage of the customer's assets that the customer can borrow from the brokerage firm.

106. For example, if a customer has Apple stock in his account, a brokerage firm using portfolio margin might add together the risk related to the customer's Apple stock with the risk related to the customer's other positions in Apple stock — *e.g.*, if the customer also sold Apple stock short in his account or if he also held Apple stock options, etc. — to calculate a total "net risk" for the customer's entire position relating to Apple.

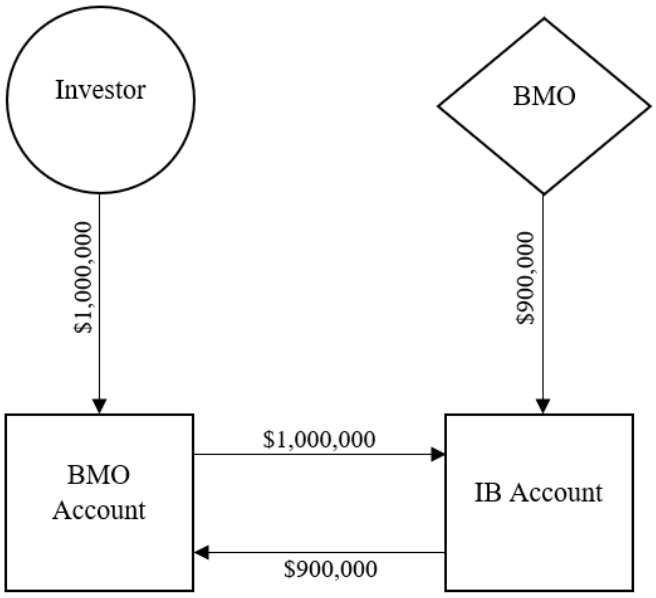
107. Similarly, if a customer has a sophisticated trade strategy in place in his account that locks in the value of a particular position, a brokerage firm using portfolio margin might be willing to let that customer borrow a greater percentage against the investments that are part of that strategy because — taken as a whole — the strategy locks in a fixed price that cannot change, which makes those investments that are part of the strategy very reliable as collateral.

108. By contrast, because Treasury bonds are issued and backed by the full faith and credit of the U.S. government and therefore are essentially considered to be "risk-free," a brokerage firm using portfolio margin might be willing to let a customer borrow a greater percentage against the Treasury bonds in his account.

109. Kinetic Funds employed portfolio margin at IB to increase its ability to pursue various investment strategies and to buy various investments and assets.

110. Through portfolio margin, Kinetic Funds was able to borrow from IB up to 90% of the value of the investments it held at IB.

111. As a result, if an investor invested $1,000,000 in Kinetic Funds, the investor would deposit $1,000,000 into Kinetic Funds' BMO account. Kinetic Funds would transfer that $1,000,000 to its IB account and invest in an equivalent amount of U.S. listed securities. If Kinetic Funds later needed $900,000 to pay various expenses from its BMO account, Kinetic Funds could use portfolio margin to borrow $900,000 from IB (*i.e.*, $1,000,000 x 90%), and then transfer that $900,000 its BMO account. In that way, the investor's $1,000,000 would remain fully invested in U.S. listed securities, and Kinetic Funds would also have the funds it needed to pay its expenses:



112. If this investor were Kinetic Funds' only investor, then after the transfers were completed:

(i) Kinetic Funds' BMO account statement would reflect a balance of $900,000;

(ii) Kinetic Funds' IB account statement would reflect a balance of $100,000 comprised of $1,000,000 invested in U.S.-listed financial products and a $900,000 margin debt (*i.e.*, the money Kinetic Funds borrowed from IB);

(iii) The investor's Capital Account would reflect a total balance of $1,000,000;

(iv) Kinetic Funds' Capital Account would reflect a total balance of $0 (comprised of $900,000 in cash held in Kinetic Funds' BMO account and a $900,000 loan owed by Kinetic Funds to IB); and

(v) The investor's Kinetic Funds account statement would reflect a total balance of $1,000,000.

113. If Kinetic Funds were closed at that point, the investor's $1,000,000 would be returned to the investor and IB's $900,000 would be returned to IB, and all assets would be accounted for.

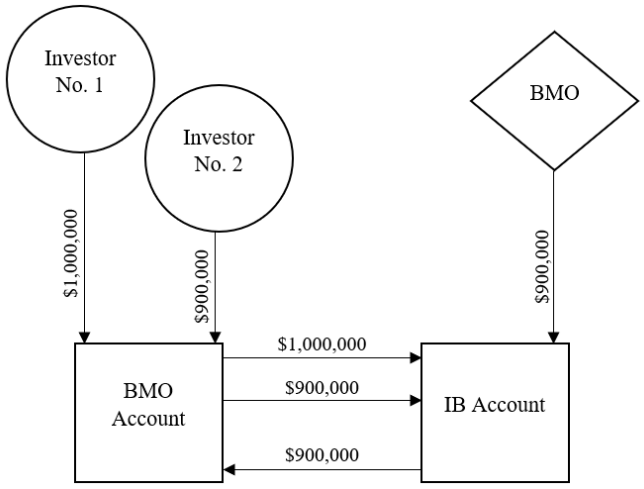
114. Kinetic Funds had to pay a fee each time it transferred funds to or from its BMO account and its IB account, which fees were passed on to Kinetic Funds' investors in the form of fund expenses that reduced Kinetic Funds' "net profits."

115. In the beginning, these transfer fees were nominal. Over time, however, as Kinetic Funds grew, Kinetic Funds began to have to make more and more transfers between its accounts, and the fees associated with those transfers began to add up.

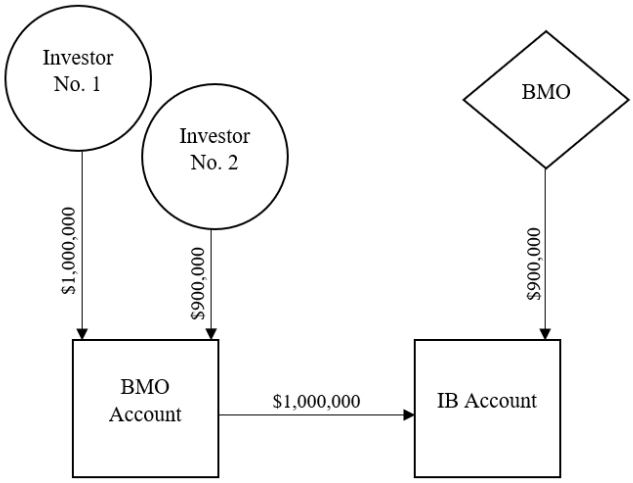
116. To reduce the transfer fees that it was incurring (and passing on to investors), Kinetic Funds used portfolio margin to reduce the number of transfers it needed to make.

117. To continue with the previous example, if a second investor invested an additional $900,000 in Kinetic Funds, those funds would be deposited into Kinetic Funds' BMO account, and Kinetic Funds could then transfer those funds to its IB account. If Kinetic Funds later needed $900,000 to pay various expenses from its BMO account, Kinetic Funds could use portfolio margin to borrow $900,000 from IB, and then transfer that $900,000 its BMO account. Investor No. 1's $1,000,000 and Investor No. 2's $900,000 would remain

fully invested in U.S. listed securities, and Kinetic Funds would have the funds it needed to pay its expenses — but that series of transactions would result in at least *three* separate fund transfers, each of which would be charged a separate transfer fee that would have to be passed on the Kinetic Funds' investors:



118. To reduce the number fund transfers (and the amount of transfer fees that would have to be passed on to its investors), rather than transfer Investor No. 2's $900,000 to its IB account, Kinetic Funds could leave those funds in its BMO account and instead use portfolio margin to borrow $900,000 from IB (using Investor No. 1's $1,000,000 in the IB account as collateral). Kinetic Funds could then use those borrowed funds to invest in $900,000 of U.S. listed securities on behalf of Investor No. 2. The end result would be the same, but getting there would involve only *one* transfer (instead of three):



119. After the transfers were completed,

(i) Kinetic Funds' BMO account statement would reflect a balance of $900,000;

(ii) Kinetic Funds' IB account statement would reflect a balance of $1,000,000 comprised of $1,900,000 invested in U.S.-listed financial products and a $900,000 margin debt (*i.e.*, the money Kinetic Funds borrowed from IB);

(iii) Investor No. 1's Capital Account would reflect a total balance of $1,000,000;

(iv) Investor No. 2's Capital Account would reflect a total balance of $900,000;

(v) Kinetic Funds' Capital Account would reflect a total balance of $0 (comprised of $900,000 in cash held in Kinetic Funds' BMO account and a $900,000 loan owed by Kinetic Funds to IB);

(vi) Investor No. 1's Kinetic Funds account statement would reflect a total balance of $1,000,000; and

(vii) Investor No. 2's Kinetic Funds account statement would reflect a total balance of $900,000.

120. If Kinetic Funds were closed at that point, Investor No. 1's $1,000,000 would be returned to Investor No. 1,[6] Investor No. 2's $900,000 would be returned to Investor No. 2,[7] IB's $900,000 would be returned to IB, and all assets would be accounted for.

121. Seen by someone outside of Kinetic Funds who did not have access to the full story, it might appear as though Investor No. 2's $900,000 had not been invested and was sitting, unused, in Kinetic Funds' BMO account. Appearances, however, can be deceiving, As explained above, $900,000 worth of U.S.-listed securities would have, in fact, been purchased in Kinetic Funds' IB account consistent with Investor No. 2's investment; and Kinetic Funds would be holding a total of $1,900,000 in U.S.-listed financial products, which is equal to total amount of money invested by Investor No. 1 and Investor No. 2.

Kinetic Funds' Hedging Strategies

122. A "hedge" is an investment that is made with the intention of reducing the risk of adverse price movements in another investment. More

[6] To be more precise, Investor No. 1 would receive his *pro rata* share of the value of Kinetic Funds' investments (whose values could rise or fall according to changes in the market). Since Investor No. 1's $1,000,000 investment represents 52.63% of the total $1,900,000 invested in Kinetic Funds in this example, Investor No. 1 would receive 52.63% of the value of Kinetic Funds' investments at the time it was closed. *See supra* n.4

[7] Since Investor No. 2's $900,000 investment represents 47.37% of the total $1,900,000 invested in Kinetic Funds in this example, Investor No. 2 would receive 47.37% of the value of Kinetic Funds' investments at the time it was closed. *See supra* n.4

simply, a hedge can be thought of as insurance to protect against the possibility that the value of an investment will decline.

123. Kinetic Funds employed various hedging strategies involving U.S.-listed options in its IB account to protect the value of the investments it held in its IB account so that those investments could never lose more than 10% of their value.

124. One of the simplest hedging strategies used by Kinetic Funds involved buying a put option on an investment that Kinetic Funds held in its IB account.

125. A put option is a contract giving the owner of the put option the right (but *not* the obligation) to sell a specified amount of an underlying security at a pre-determined price within a specified time frame.[8] The predetermined price is referred to as the "strike price." The deadline to exercise a put option is referred to as the "expiration date." The price of the put option is referred to as the "premium."[9]

[8] Conversely, a call option is a contract giving the owner the right (but not the obligation) to *buy* a specified amount of an underlying security at a pre-determined price within a specified time frame.

[9] Most put options represent a right to sell (and in the case of call options, the right to buy) 100 shares of the underlying security, and the premium is typically quoted as a dollar amount per share. Thus, if a put option has a premium of $1, that means it will cost $100 (*i.e.*, $1/share x 100 shares) to purchase the option.

126. If Kinetic Funds purchased 100 shares of XYZ stock at a price $100/share for a total cost of $10,000, it might simultaneously purchase one XYZ put option (representing the right for Kinetic Funds to sell 100 shares of XYZ stock to the person who sold the put option to it) with an expiration date 90 days in the future, a strike price of $91/share, and a premium of $1 for a total cost of $100 (*i.e.*, the $1 premium x 100 shares of underlying XYZ stock).

127. If the price of XYZ stock drops below $90 anytime within the next 90 days, Kinetic Funds could exercise its put option and force the person who sold it the option to purchase all 100 shares of its XYZ stock at price equal to $91/share for a total price of $9,100.[10]

128. In this example, Kinetic Funds originally paid $10,000 for its XYZ stock. After Kinetic Funds exercised its put option, it received $9,100 — for a net loss of $900. However, Kinetic Funds also paid $100 to buy its put option (*i.e.*, the cost of its insurance policy), which must be included in calculating its losses. Thus, Kinetic Funds lost a total of $1,000 (*i.e.*, $10,000 - $900 - $100) or 10% of the price it paid for XYZ stock.

[10] The person on the other side of this trade who originally sold the put option to Kinetic Funds presumably did so because he believed that the price of XYZ's stock would *not* drop below $91/share, in which case Kinetic Funds would not exercise the put option (because it would not make sense for Kinetic Funds sell a stock worth $92/share for $91/share) and the buyer of the put option would be able to keep as profit the $100 put option premium that Kinetic Funds paid to him.

129. Importantly, no matter how far below $91/share the price of XYZ's stock falls, Kinetic Funds can never lose more $1,000. Even if XYZ's stock falls all the way down to $0.50/share, Kinetic Funds can still exercise its put option and force the person who sold the option to it to buy its 50-cent XYZ stock for $91/share and thus recoup $9,000 of its original $10,000 investment.

130. Kinetic Funds also employed other, more complicated, hedging strategies that involved various combinations of one or more put options and/or call options, depending on the investment to be hedged, the risks it was attempting to hedge against, and the state of the market.

131. Every investment that Kinetic Funds held in its IB account was hedged with U.S.-listed options so that they could never lose more than 10% of their value due to adverse market movement.

132. Many of the investments that Kinetic Funds held in its IB account were hedged *beyond* this minimum protection — *e.g.*, so that they could never lose more than 7% or 5% or less due to adverse market movement.

133. In some cases, the investments that Kinetic Funds held in its IB account were hedged to the point that they could never lose anything and/or even *generate a profit* in declining market conditions.[11]

[11] In those cases where an investment was completely hedged so that it could never lose any value, the cost of the hedge (*i.e.*, the cost of the insurance) usually meant that that Kinetic Funds would not receive any benefit if the price of the underlying investment went up. This was acceptable because such investments were held in the KFYield sub-fund, the primary

Lendacy

134. For each investor who invested in Kinetic Funds, an amount of U.S.-listed financial products was purchased in Kinetic Funds' IB account equal in value to the investor's investment in Kinetic Funds.

135. All of the investments purchased in Kinetic Funds' IB account were hedged so that they could never lose more than 10% of their value due to adverse market movement. In many cases, the investments were hedged so that could never lose even less than 10% of their value. In some cases, they were hedged so that they could not lose any part of their value.

136. As a service and benefit to Kinetic Funds' investors, Kinetic Funds worked with Lendacy to offer Kinetic Funds' investors the ability to borrow up to 70% of the value of their investment in Kinetic Funds at substantially reduced interest rates to use however the investors might wish — *e.g.*, to buy a home, to invest in a business, to pay a debt, etc.

137. Kinetic Funds was able to offer this service to its investors because the U.S.-listed financial products that it held in its IB account — which financial products represented the investors' investments in Kinetic Funds — were

investment objective of which was income (*not* capital appreciation). Kinetic Funds was willing to forego participating in the increase in such an investment's price because that investment generated a fixed income (*e.g.*, it paid a dividend) — and once Kinetic Funds received that income, Kinetic Funds could sell the investment assured that it would receive the full price that Kinetic Funds had originally paid for it.

hedged and could never drop below 90% of the price at which they acquired. Thus, if an investor wanted to borrow 70% of the value of his investment in Kinetic Funds, the securities held at IB, which would be used as the collateral for the investor's loan, would always be sufficient to cover the loan in the event the investor failed to repay it.

138. In addition, Kinetic Funds was able to offer this service to its investors because it was able to use portfolio margin in its IB account to borrow from IB the funds that it would lend to Lendacy, which funds Lendacy would then lend to the investors. As result, Kinetic Funds never had to liquidate any of the U.S.-listed financial products in its IB account in order to loan funds to Lendacy so that Lendacy could loan funds to Kinetic Funds' investors.

139. Instead, Kinetic Funds could borrow the funds from IB and lend those borrowed funds to Lendacy, which in turn, lent those funds to Kinetic Funds' investors — which meant that the full value of the investors' investments in Kinetic Funds always remained fully invested in U.S.-listed financial products and continued to generate investment income for the investors consistent with KFYield's investment objective.

140. Stated another way, all of the funds transferred from Kinetic Funds' BMO account to Lendacy's BMO account were funds that were IB's funds which IB loaned to Kinetic Funds. Thus, Lendacy was lending only IB's funds to the customers to whom it extended loans.

141. None of the funds transferred from Kinetic Funds' BMO account to Lendacy's BMO account were investor funds, assets, or capital or KFYield funds, assets, or capital or Kinetic Funds funds, assets, or capital.

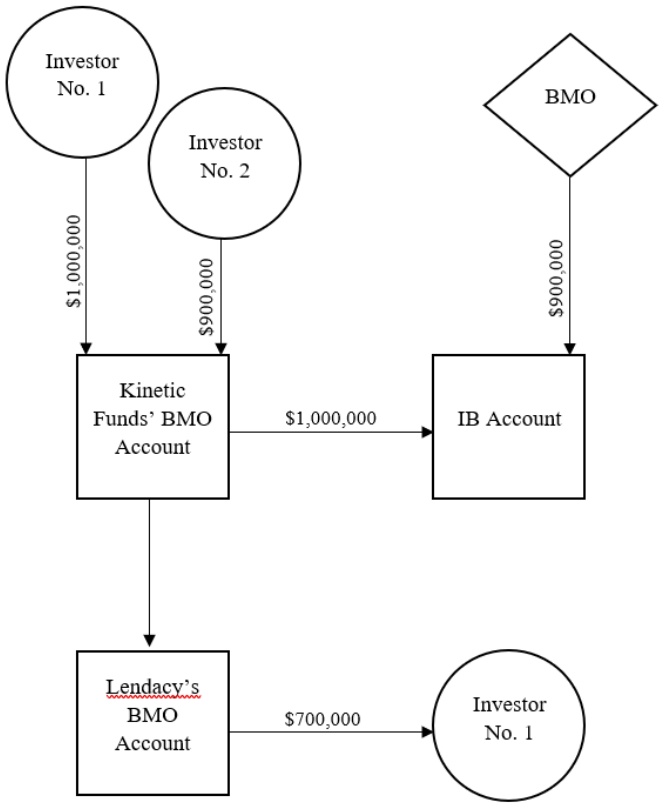
142. No investor funds, assets, or capital or KFYield funds, assets, or capital or Kinetic Funds funds, assets, or capital were transferred to, received by, used by, or invested in Lendacy.

143. No investor funds, assets, or capital or KFYield funds, assets, or capital or Kinetic Funds funds, assets, or capital were transferred to, received by, or used by, or invested in Kinetic Group, Kinetic Partners, LF42, Scipio, El Morro, KIH, ISX, LLC ("ISX"), Silexx, Zephyr Aerospace, LLC ("Zephyr"), or me.

144. Lendacy, Kinetic Funds, and IB were separate and distinct legal entities and separate and distinct from one another.

145. To continue with the previous example, if Investor No. 1 was Kinetic Funds' first investor and invested $1,000,000 in Kinetic Funds, those funds would be deposited into Kinetic Funds' BMO account, then transferred by Kinetic Funds to its IB account, and then be used to invest in U.S.-listed financial products with a total value of $1,000,000 in Kinetic Funds' IB account. If Investor No. 2 subsequently invested $900,000 in Kinetic Funds, those new funds would be deposited into Kinetic Funds' BMO account and remain there. Kinetic Funds would then use portfolio margin to borrow $900,000 from

IB (using Investor No. 1's $1,000,000 in the IB account as collateral), and then use those borrowed funds to invest in $900,000 of U.S. listed securities on behalf of Investor No. 2 in Kinetic Funds' IB account. If Investor No. 1 later decided to borrow $700,000 (*i.e.*, 70% of the value of his investment in Kinetic Fund), Kinetic would transfer $700,000 of the $900,000 in its BMO account to Lendacy's BMO account and then Lendacy would loan the $700,000 from it BMO account to Investor No. 1:



146. The transfer of funds from Kinetic Funds' BMO account to Lendacy's BMO account would be recorded as a loan from Kinetic Funds to Lendacy, and Lendacy would pay interest to Kinetic Funds while it borrowed

the funds. Kinetic Funds passed the interest that Lendacy paid to it on to Kinetic Funds' investors, which increased the income the investors received from their investments in Kinetic Funds.

147. Kinetic Funds typically charged Lendacy 1% interest *per annum* on the funds it loaned to Lendacy; and Lendacy in turn typically charged 2%-3% interest *per annum* on the funds it loaned to Kinetic Funds' investors (which was substantially lower than what the investors would otherwise be charged if they borrowed funds from anywhere else).

148. Since KFYields' mandate was to invest in U.S-listed financial products that generated a total annual return of 5.5% — and since KFYields always achieved this goal while it was active during the Relevant Time Period — Kinetic Funds' investors were able use a portion of the income they received from the funds they allocated to KFYield to pay the interest on their Lendacy loans and still have income left over to reinvest in Kinetic Funds or withdraw.

149. After all of the transfers were completed,

(i) Kinetic Funds' BMO account statement would reflect a balance of $200,000 (*i.e.*, the $900,000 deposited by Investor No. 2 minus the $700,000 loan to Lendacy);

(ii) Lendacy's BMO account statement would reflect a balance $0 (*i.e.*, the $700,000 loan it received from Kinetic Funds minus the $700,000 loan it made to Investor No. 1);

(iii) Investor No.1's personal bank account would reflect a balance of $700,000 (*i.e.*, the $700,000 loan from Lendacy);

(iv) Kinetic Funds' IB account statement would reflect a balance of $1,000,000 comprised of $1,900,000 invested in U.S.-listed financial products and a $900,000 margin debt (*i.e.*, the money Kinetic Funds borrowed from IB).

(v) Investor No. 1's Capital Account would reflect a total balance of $1,000,000;

(vi) Investor No. 2's Capital Account would reflect a total balance of $900,000;

(vii) Kinetic Funds' Capital Account would reflect a total balance of $0 (comprised of a $900,000 loan to Lendacy and a $900,000 loan owed by Kinetic Funds to IB).

(viii) Investor No. 1's Kinetic Funds' account statement would reflect a total balance of $1,000,000;

(ix) Investor No. 2's Kinetic Funds' account statement would reflect a total balance of $900,000; and

(x) Investor No. 1's Lendacy account statement would reflect an outstanding loan in the amount of $700,000.

150. If Kinetic Funds were closed at that point:

(i) Of Investor No. 1's original $1,000,000 investment in Kinetic Funds, $300,000 would be returned to Investor No. 1, Investor No. 1's $700,000 loan from Lendacy would be canceled, and Investor No. 1 would be permitted to keep the $700,000 that Lendacy had loaned to him (thus, Investor No. 1 would receive all of the $1,000,000 he had invested in Kinetic Funds: $300,000 + $700,000);

(ii) The full amount of Investor No. 2's $900,000 investment in Kinetic Funds would be returned to Investor No. 2;

(iii) IB's $900,000 would be returned to IB (the $900,000 worth of investments bought with margin in Kinetic Funds' IB account would be sold and the proceeds would be returned to IB; and the remaining the $1,000,000 worth of investments not bought with margin in Kinetic Funds' IB account would be sold, $900,000 would be returned to Investor No. 2, and $100,000 plus the $200,000 in Kinetic Funds' BMO account would be returned to Investor No. 1; and

(iv) All assets would be accounted for.

151. Since all of the funds that Kinetic Funds' investors invested in Kinetic Funds were invested in U.S.-listed financial products — and all of those investments were hedged and none of they could ever lose more 10% of their value (and therefore none of them would ever be worth less than 90% of the price Kinetic Funds paid to purchase them) — and since Kinetic Funds generally limited the amount that its investors could borrow from Lendacy to 70% of the value of their investments in Kinetic Funds, there was never any danger that the funds loaned by Kinetic Funds to Lendacy would jeopardize any of the investors' investments in Kinetic Funds.

152. Further, because the collateral supporting the funds that Lendacy loaned to its customers were U.S.-listed financial products held in Kinetic

Funds' IB account that were hedged with U.S.-listed options, Lendacy's loans were effectively hedged with U.S.-listed options.

153. If an investor invested $1,000,000 in Kinetic Funds, those funds were invested in U.S-listed financial products that were hedged and the values of which could never fall below $900,000. If Kinetic Funds then lent $700,000 to Lendacy to lend to that same investor, there would always be sufficient funds available to cover that loan (with a $200,000 cushion) — even if the investor skipped town and failed to repay any part of the loan and even if the stock market crashed and the value of U.S.-listed financial products fell to $0.50/share.

154. Since every loan made by Kinetic Funds to Lendacy to an investor was coordinated with any investment by the investor in Kinetic Funds and generally capped at a maximum of 70% of the investor's investment in Kinetic Funds, even if every one of Kinetic Funds' investors borrowed 70% of the value of each of their respective investments in Kinetic Funds and then they all skipped town and refused to repay their Lendacy loan and then the stock market collapsed, Kinetic Funds would still have sufficient assets to repay all of its investors their investments in the event Kinetic Funds was liquidated.

155. Although Kinetic Funds was able to use portfolio margin to borrow up to 90% of the value of the investments it held in its IB account, Kinetic Funds generally limited its investors to borrowing no more than 70% of the

value of their respective investments in Kinetic Funds (exceptions were made in a handful of cases).

156. To my knowledge, during the Relevant Time Period, Kinetic Funds never borrowed from IB — and, by extension, never lent to Lendacy — the maximum 90% of the total value of the assets Kinetic Funds held in its IB account that Kinetic Funds was able to borrow using portfolio margin.

157. Typically, Kinetic Funds never borrowed from IB — and, by extension, never lent to Lendacy — more than 75% of the total value of the assets Kinetic Funds held in its IB account.

158. There were many periods during the Relevant Time Period that Kinetic borrowed from IB — and, by extension, never lent to Lendacy — substantially less than 75% of the total value of the assets Kinetic Funds held in its IB account.

159. Kinetic Funds never received a margin call from IB.

The Account Statements

160. Each month, IB generated an account statement for Kinetic Funds' IB account ("IB Statement"), which account statement accurately reflected the current total value of all assets held by Kinetic Funds in its IB account offset by all margin loans owed by Kinetic Funds to IB. The IB Statement did not reflect the value of any assets held by Kinetic Funds outside of IB.

161. Each month, BMO generated an account statement for Kinetic Funds' BMO account, which account statement accurately reflected the current total value of all the funds held by Kinetic Funds in its BMO account.

162. Each month, BMO generated an account statement for Lendacy's BMO account, which account statement accurately reflected the current total value of all the funds held by Lendacy in its BMO account.

163. Kinetic Funds kept a running record of all funds loaned by it to Lendacy, the interest charged on those loans, the amounts repaid on those loans, and the amounts outstanding.

164. It is my understanding that Lendacy kept a running record of all funds it borrowed from Kinetic Funds, all loans it made to customers, the interest charged on those loans, the amounts repaid on those loans, and the amounts outstanding.

165. For a period of time during the Relevant Time Period, Kinetic Funds used Bloomberg to generate a report ("Bloomberg Report") that accurately reflected the current total value of all of the assets owned by Kinetic Funds (including those assets allocated to KFYield) and the performance of those assets — including the total value of all of the U.S.-listed financial products Kinetic Funds held in its IB account, the total value of the margin debt it owed to IB, the total value of the funds it held in its BMO account, and the total value of the loans it extended to Lendacy.

166. Each month, Kinetic Funds prepared an account statement for each of Kinetic Funds' investors ("Kinetic Funds Statement"), which account statement accurately reflected the current total value of each investor's respective investment in Kinetic Funds based on the current total value of all of the assets owned by Kinetic Funds — including the total value of all of the U.S.-listed financial products Kinetic Funds held in its IB account, the total value of the margin debt it owed to IB, the total value of the funds it held in its BMO account, and the total value of the loans it extended to Lendacy and deducting the Class A Member's share of Kinetic Funds' net profits and the expenses incurred by Kinetic Funds.

167. The total value of all of the Kinetic Funds' investors' investments in Kinetic Funds as reflected in the Kinetic Funds Statements was always equal to the total value of all of the assets owned by Kinetic Funds as reflected in the Bloomberg Report on that same date because the Kinetic Funds Statements and the Bloomberg Report took into account all of the Kinetic Funds' holdings at IB and outside of IB.[12]

[12] To the extent that the Kinetic Funds Statements and the Bloomberg Reports were generated on different days — even if just one day apart — the total value of the Kinetic Funds' investors' investments in Kinetic Funds as reflected in the Kinetic Funds Statements would not be equal to the total value of all assets owned by Kinetic Funds as reflected in the Bloomberg Reports due to market changes, investment transactions, etc., in the intervening time.

168. The total value of all of the Kinetic Funds' investors' investments in Kinetic Funds as reflected in the Kinetic Funds Statements was not equal to the total value of all of the assets owned by Kinetic Funds as reflected in the IB Statements because the Kinetic Funds Statements took into account all of the Kinetic Funds' holdings at IB and outside of IB whereas the IB Statements took into account only Kinetic Funds' holdings at IB.

Williams' Lendacy Loans

169. On April 30, 2015, I executed a Credit Facility Agreement and Federal Truth in Lending Disclosure ("First Credit Facility Agreement") with an effective date of April 29, 2015 pursuant to which I sought a $40,000 line of credit from Lendacy ("First Line of Credit") that I would pay off in payments equal to $750/month. A copy of the First Credit Facility Agreement is attached hereto as **Exhibit 6**.

170. I sought this $40,000 credit line to pay down a mortgage on my mother's house after she passed away.

171. On April 30, 2015, as collateral for this First Line of Credit, I executed the requisite paperwork — including Exhibit C to Kinetic Fund's Operating Agreement — to invest $65,000 in Kinetic Fund. A copy of the Exhibit C that I executed is attached hereto as **Exhibit 7**.

172. On May 4, 2015, I delivered $65,000 to Kinetic Funds in the form of a check issued by LF42. *See* **Exhibit 7.1**, attached hereto.

173. Lendacy approved my request for a $40,000 credit line; however, I do not know when Lendacy approved my request.

174. My $40,000 Lendacy credit line was equal to 70% of my investment in Kinetic Funds.

175. On March 5, 2020, I repaid the full amount of the funds I borrowed on the First Line of Credit (plus all outstanding interest) and no longer owe anything to Lendacy with regard to the First Line of Credit. *See* **Exhibit 8**, attached hereto.

176. On March 23, 2017, I executed a Credit Facility Agreement and Disclosure ("Second Credit Facility Agreement") with an effective date of March 23, 2017 pursuant to which I sought a $1,517,000 line of credit from Lendacy ("Second Line of Credit") that would be charged an annual interest rate equal to 2.79%. A copy of the Second Credit Facility Agreement is attached hereto as **Exhibit 9**.

177. I sought this $1,517,000 line of credit to purchase residential properties in Puerto Rico.

178. On March 24, 2017, I purchased the residential properties in Puerto Rico. *See* **Exhibit 10**, attached hereto.

179. As collateral for the Second Line of Credit, I pledged to Lendacy a security interest in my 40% interest in Silexx, which I was then in the process of selling to the Chicago Board of Options Exchange ("CBOE"). In the course of

my negotiations with the CBOE, the parties agreed that the value of Silexx was $20,000,000, which meant that my 40% interest in Silex was worth $8,000,000 — which was well more than the $1,517,000 line of credit I sought from Lendacy. A copy of the Collateral Pledge Agreement evidencing my pledge of my interest in Silexx is attached hereto as **Exhibit 11**.

180. In addition, I gave Lendacy a copy of the title documents and other paperwork related to the residential property that I purchased with the Second Line of Credit and agreed to assign full title to the residential property to Lendacy in the event I failed to repay the Second Line of Credit. I do not know what Lendacy did with the title documents and other paperwork that I gave it.

181. Lendacy approved my request for a $1,517,000 credit line; however, I do not know when Lendacy approved my request.

182. No employees ever raised any concerns to me about my use of the Second Line of Credit.

183. No employees ever pressed me with any concerns about my use of the Second Line of Credit.

184. The sale of Silexx closed on November 1, 2017, with the sale proceeds to be paid to me in two installments. *See* **Exhibit 12**, attached hereto.

185. On March 3, 2018, after the sale of Silexx was completed, I invested $1,500,000 of the proceeds I received from the sale into Kinetic Funds,

bringing my total investment in Kinetic Funds up to $1,565,000. *See* **Exhibit 13**, attached hereto.

186. The current total balance of the Second Line of Credit is $1,517,000, which I have not yet paid off. *See* **Exhibit 14**, attached hereto.

187. The total amount of $1,565,000 that I invested in Kinetic Funds remains invested in Kinetic Funds as collateral for the Second Line of Credit. According to the last Kinetic Funds account statement that I received, my investment was worth a total of $1,601,402.06 in January 2020. *See* **Exhibit 15**, attached hereto.

188. On March 23, 2017, I executed on behalf of Scipio a Credit Facility Agreement and Disclosure ("Third Credit Facility Agreement") with an effective date of May 4, 2018 pursuant to which Scipio sought a $2,755,000 line of credit from Lendacy ("Third Line of Credit") that would be charged an annual interest rate equal to 3.7%. A copy of the Third Credit Facility Agreement is attached hereto as **Exhibit 16**.[13]

189. Scipio sought this $2,755,000 credit line to purchase an historic bank building in Puerto Rico.

[13] Upon reviewing the documents to prepare this Declaration, I noticed for the first time that my signature on the Third Credit Facility Agreement is dated March 23, 2017. I believe this was a typo by Keli Pufahl, who prepared the Third Credit Facility Agreement for my signature. I believe I signed the Third Credit Facility Agreement on May 4,2018.

190. As collateral for the Third Line of Credit, Scipio pledged to Lendacy title to the historic bank building that it bought. To that end, Scipio gave Lendacy a copy of the title documents and other paperwork related to the bank building. I do not know what Lendacy did with the title documents and other paperwork that Scipio gave to it nor what steps Lendacy took to secure the title to the bank building as collateral for its loan to Scipio.

191. Lendacy approved Scipio's request for a $2,755,000 credit line; however, I do not know when Lendacy approved Scipio's request.

192. On March 5, 2020, Scipio repaid the full amount of the interest it owed to Lendacy on the funds it borrowed on the Third Line of Credit. *See* **Exhibit 17**, attached hereto.

193. Scipio has not yet repaid Lendacy the $2,755,000 it borrowed on the Third Line of Credit; however, Lendacy has title to the historic bank building that these borrowed funds were used to buy. *See* **Exhibit 17**.

194. On April 15, 2019, I executed on behalf of LF42 a Credit Facility Agreement and Disclosure ("Fourth Credit Facility Agreement") with an effective date of April 15, 2019 pursuant to which LF42 sought a $2,000,000 line of credit from Lendacy ("Fourth Line of Credit"). A copy of the Fourth Credit Facility Agreement is attached hereto as **Exhibit 18**.

195. As collateral for the Fourth Line of Credit, I pledged to Lendacy $2,000,000 of the second payment that I was to receive from the sale of Silexx. *See* **Exhibit 18** at 1.

196. On April 15, 2019, I also executed on behalf of LF42 a Credit Facility Agreement and Disclosure ("Fifth Credit Facility Agreement") with an effective date of April 15, 2019 pursuant to which LF42 sought a $550,000 line of credit from Lendacy ("Fifth Line of Credit"). A copy of the Fifth Credit Facility Agreement is attached hereto as **Exhibit 19**.[14]

197. As collateral for the Fifth Line of Credit, I pledged to Lendacy $500,000 of the second payment I was to receive from the sale of Silexx. *See* **Exhibit 19** at 1.

198. The Fourth Line of Credit and Fifth Line of Credit were to be paid in full by December 27, 2019, *see* **Exhibit 18** at 1; **Exhibit 19** at 1, and would incur annual interest equal to 2% over the current Fed Funds rate on all unpaid amounts thereafter.

[14] Upon reviewing the documents to prepare this Declaration, I noticed for the first time that the Fifth Credit Facility Agreement evidences a request for $550,000 line of credit. This was a mistake that I can only ascribe to being a typo as LF42 sought to obtain only a $500,000 line of credit (as evidenced by the $500,000 collateral I put up to support that line of credit). As a practical matter, however, this $50,000 discrepancy never became an issue because, although Lendacy apparently gave LF42 a credit line in the total amount of $2,550,000, LF42 only borrowed a total of $2,100,000 on its credit lines.

199. LF42 sought the Fourth Line of Credit and Fifth Line of Credit to pay the operational expenses of its various affiliate entities and various other purposes.

200. Lendacy approved LF42's requests for a $2,000,000 credit line and a $550,000; however, I do not know when Lendacy approved LF42's requests.

201. LF42 borrowed only $2,100,000 on its total credit line of $2,550,000.

202. LF42 used approximately $497,300 of the funds its borrowed on its credit lines to invest in Zephyr.

203. LF42 also used a portion of the funds it borrowed on its credit lines to pay El Morro's expenses, KIH's expenses, and ISX's expenses and to pay for the Kinetic International Summit and other expenses.

204. The only funds that LF42 used to pay El Morro's expenses, KIH's expenses, and ISX's expenses and to pay for the Kinetic International Summit and other expenses were funds that LF42 obtained through its credit lines with Lendacy.

205. The only funds that Kinetic Group used to pay El Morro's expenses and any of my other entities' expenses (including, but not limited to, KIH and ISX) and to pay for other expenses were funds that Kinetic Group earned from the services it provided to Kinetic Funds.

206. At one point, LF42 planned to use its credit lines to invest $2,000,000 in ISX. In anticipation of that investment, ISX executed a promissory note in favor of LF42. Ultimately, however, LF42 did not invest $2,000,000 in ISX.

207. LF42 incurred a total of $79,519.86 in interest on the $2,100,000 that it borrowed on its credit line. *See* **Exhibit 20**, attached hereto.

208. On March 5, 2020, LF42 repaid the full amount of the funds it borrowed on its Fourth Line of Credit and Fifth Line of Credit (plus all outstanding interest) and no longer owes anything to Lendacy with regard to the Fourth Line of Credit and Fifth Line of Credit. *See* **Exhibit 20**.

209. All of the funds Scipio, LF42, and I borrowed from Lendacy were borrowed by Lendacy from Kinetic Funds, which in turn used portfolio margin to borrow those funds from IB. Thus, the funds that Lendacy lent to Scipio, LF42, and me were IB's funds.

210. I personally disclosed to several Kinetic Funds investors and potential investors as well as to staff that Scipio, LF42, and I received loans from Lendacy.

Miscellany

211. As explained above, Kinetic Funds did not always use all of an investor's cash to purchase investments at IB and sometimes also used margin for a number of difference including to limit the number of transfer fees that

would have to be passed on to the investors (and reduce the return their investment generated), to keep a cash "cushion" available to be used in the event of new investment opportunities that could benefit the investors, to be able to have funds available for any unforeseen emergencies, and because the "carry cost" of using margin was negligible. Kinetic Funds did not use margin to hide or conceal its investments or transactions.

212. As explained above, Kinetic Funds' use of margin did not increase the cost and risk of investment in Kinetic Funds and KFYield. To the contrary, due to the unique circumstances of the market during the Relevant Time Period, the cost of using margin was negligible. In addition, because all of Kinetic Funds' investments were hedged so that they could never lose more than 10% of their value (in many cases they were hedged so that could never lose even less) and Kinetic Funds never borrowed through margin 90% of the value of its assets (typically it never borrowed more than 75% of the value of its asset, many times it borrowed substantially less), there was always more than sufficient collateral in its account to avoid a margin call; and in the event a margin call were ever issued, there was always more than sufficient collateral to satisfy a margin call. During the Relevant Time Period, Kinetic Funds never received a margin call.

213. I relied on the advice and guidance of my attorneys and other professional advisers to create and structure Kinetic Group, Kinetic Funds, Kinetic Partners, LF42, Lendacy, Scipio, El Morro, and KIH and to ensure that they fully complied with all laws and regulations.

214. I relied on the advice and guidance of my attorneys and other professional advisers to structure all transactions between and among Kinetic Group, Kinetic Funds, Kinetic Partners, LF42, Lendacy, Scipio, El Morro, KIH, investors, members, shareholder, and/or me and to ensure that all such transactions fully complied with all laws and regulations.

215. Lendacy did not invest in Kinetic Funds, nor was it a Kinetic Funds investor.

216. Based on my communications and dealings with Consultiva, it is my understanding that primary language of all of Consultiva's clients was Spanish and that they conducted business and investments exclusively in Spanish and that some of Consultiva's clients spoke no English at all.

217. All of the materials provided to Consultiva about Kinetic Funds and Lendacy were written in English.

218. Based on my communications and dealings with Consultiva, it is my understanding that Consultiva read and digested the material and other information it received about Kinetic Funds and Lendacy, then drafted its own

internal materials regarding Kinetic Funds which then it communicated through its agents to its clients in Spanish.

219. I did not advise Kinetic Group, Kinetic Funds, KFYield, Kinetic Funds' investors, or KFYield's investors as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

220. I have never engaged in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

221. I did not receive any compensation advising Kinetic Group, Kinetic Funds, KFYield, Kinetic Funds' investors, or KFYield's investors as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

222. I have never received any compensation advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

223. I did not receive any compensation from Kinetic Group, Kinetic Funds, KFYield, Kinetic Funds' investors, or KFYield's investors.

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FURTHER DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 4/12/2021

Michael Scott Williams

Exhibit 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 8:20-cv-00394- WFJ-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.

ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S EMERGENCY MOTION FOR APPOINTMENT OF RECEIVER

WHEREAS Plaintiff Securities and Exchange Commission has filed a motion for the appointment of a receiver over Defendant Kinetic Investment Group, LLC ("Defendant") and Relief Defendants 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 (collectively, "Relief Defendants"), with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, causes in action and any other

property of the Defendant and the Relief Defendants; marshal and safeguard all of their assets; and take whatever actions are necessary for the protection of the investors;

WHEREAS the Court finds that, based on the record in these proceedings, the appointment of a receiver in this action is necessary and appropriate for the purposes of marshaling and preserving all assets of the Defendant ("Receivership Assets") and those assets of the Relief Defendants that: (a) are attributable to funds derived from investors or clients of the Defendant; (b) are held in constructive trust for the Defendant; (c) were fraudulently transferred by the Defendant; and/or (d) may otherwise be includable as assets of the estates of the Defendant (collectively, the "Recoverable Assets"); and,

WHEREAS this Court has subject matter jurisdiction over this action and personal jurisdiction over the Defendant and the Relief Defendants, and venue properly lies in this district.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court hereby takes exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of Defendant and Relief Defendants (collectively, the "Receivership Defendants").

2. Until further Order of this Court, Mark A. Kornfeld is hereby appointed to serve without bond as receiver (the "Receiver") for the estates of the Receivership Defendants.

I. Asset Freeze

3. Except as otherwise specified herein, all Receivership Assets and Recoverable Assets are frozen until further order of this Court. Accordingly, all persons and entities with direct or indirect control over any Receivership Assets and/or any Recoverable Assets, other than the Receiver, are hereby restrained and enjoined from directly or indirectly transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing such assets. This freeze shall include, but not be limited to, Receivership Assets and/or Recoverable Assets that are on deposit with financial institutions such as banks, brokerage firms and mutual funds.

II. General Powers and Duties of Receiver

4. The Receiver shall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited partners of the Receivership Defendants under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. §§ 754, 959 and 1692, and Fed.R.Civ.P. 66.

5. The trustees, directors, officers, managers, employees, investment advisors, accountants, attorneys and other agents of the Receivership Defendants are hereby dismissed and the powers of any general partners, directors and/or managers are hereby suspended. Such persons and entities shall have no authority with respect to the Receivership Defendants' operations or assets, except to the extent as may hereafter be expressly granted by the Receiver.

The Receiver shall assume and control the operation of the Receivership Defendants and shall pursue and preserve all of their claims.

6. No person holding or claiming any position of any sort with any of the Receivership Defendants shall possess any authority to act by or on behalf of any of the Receivership Defendants.

7. Subject to the specific provisions in Sections III through XIV, below, the Receiver shall have the following general powers and duties:

A. To use reasonable efforts to determine the nature, location and value of all property interests of the Receivership Defendants, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, have a beneficial interest in, or control directly or indirectly ("Receivership Property" or, collectively, the "Receivership Estates");

B. To take custody, control and possession of all Receivership Property and records relevant thereto from the Receivership Defendants; to sue for and collect, recover, receive and take into possession from third parties all Receivership Property and records relevant thereto;

C. To manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;

D. To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;

E. To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Defendants;

F. To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;

G. To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;

H. The Receiver is authorized to issue subpoenas for documents and testimony consistent with the Federal Rules of Civil Procedure;

I. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging his duties as Receiver;

J. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates; and,

K. To take such other action as may be approved by this Court.

III. Access to Information

8. The Receivership Defendants and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants and employees of the Receivership Defendants, as well as those acting in their place, are hereby ordered and directed to preserve and turn over to the Receiver forthwith all paper and electronic information of, and/or relating to, the Receivership Defendants and/or all Receivership Property; such information shall include but not be limited to books, records, documents, accounts and all other instruments and papers.

9. The Receivership Defendants and the Receivership Defendants' past and/or present officers, directors, agents, attorneys, managers, shareholders, employees, accountants, debtors, creditors, managers and general and limited partners, and other appropriate persons or entities shall answer under oath to the Receiver all questions which the Receiver may put to them and produce all documents as required by the Receiver regarding the business of the Receivership Defendants, or any other matter relevant to the operation or administration of the receivership or the collection of funds due to the Receivership Defendants. In the event that the Receiver deems it necessary to require the appearance of the aforementioned persons or entities, the Receiver shall make its discovery requests in accordance with the Federal Rules of Civil Procedure.

10. The Receivership Defendants are required to assist the Receiver in fulfilling his duties and obligations. As such, they must respond promptly and truthfully to all requests for information and documents from the Receiver.

IV. Access to Books, Records and Accounts

11. The Receiver is authorized to take immediate possession of all assets, bank accounts or other financial accounts, books and records and all other documents or instruments relating to the Receivership Defendants. All persons and entities having control, custody or possession of any Receivership Property are hereby directed to turn such property over to the Receiver.

12. The Receivership Defendants, as well as their agents, servants, employees, attorneys, any persons acting for or on behalf of the Receivership Defendants, and any persons

receiving notice of this Order by personal service, facsimile transmission or otherwise, having possession of the property, business, books, records, accounts or assets of the Receivership Defendants are hereby directed to deliver the same to the Receiver, his agents and/or employees.

13. All banks, brokerage firms, financial institutions, and other persons or entities which have possession, custody or control of any assets or funds held by, in the name of, or for the benefit of, directly or indirectly, and of the Receivership Defendants that receive actual notice of this Order by personal service, facsimile transmission or otherwise shall:

A. Not liquidate, transfer, sell, convey or otherwise transfer any assets, securities, funds, or accounts in the name of or for the benefit of the Receivership Defendants except upon instructions from the Receiver;

B. Not exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court;

C. Within five (5) business days of receipt of that notice, file with the Court and serve on the Receiver and counsel for the Commission a certified statement setting forth, with respect to each such account or other asset, the balance in the account or description of the assets as of the close of business on the date of receipt of the notice; and,

D. Cooperate expeditiously in providing information and transferring funds, assets and accounts to the Receiver or at the direction of the Receiver.

V. Access to Real and Personal Property

14. The Receiver is authorized to take immediate possession of all personal property of the Receivership Defendants, wherever located, including but not limited to electronically stored information, computers, laptops, hard drives, external storage drives, and

any other such memory, media or electronic storage devices, books, papers, data processing records, evidence of indebtedness, bank records and accounts, savings records and accounts, brokerage records and accounts, certificates of deposit, stocks, bonds, debentures, and other securities and investments, contracts, mortgages, furniture, office supplies and equipment.

15. The Receiver is authorized to take immediate possession of all real property of the Receivership Defendants, wherever located, including but not limited to all ownership and leasehold interests and fixtures. Upon receiving actual notice of this Order by personal service, facsimile transmission or otherwise, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises.

16. In order to execute the express and implied terms of this Order, the Receiver is authorized to change door locks to the premises described above. The Receiver shall have exclusive control of the keys. The Receivership Defendants, or any other person acting or purporting to act on their behalf, are ordered not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession during the term of the receivership.

17. The Receiver is authorized to open all mail directed to or received by or at the offices or post office boxes of the Receivership Defendants, and to inspect all mail opened prior to the entry of this Order, to determine whether items or information therein fall within the mandates of this Order.

VI. Notice to Third Parties

18. The Receiver shall promptly give notice of his appointment to all known officers, directors, agents, employees, shareholders, creditors, debtors, managers and general and limited partners of the Receivership Defendants, as the Receiver deems necessary or advisable to effectuate the operation of the receivership.

19. All persons and entities owing any obligation, debt, or distribution with respect to an ownership interest to any Receivership Defendant shall, until further ordered by this Court, pay all such obligations in accordance with the terms thereof to the Receiver and its receipt for such payments shall have the same force and effect as if the Receivership Defendant had received such payment.

20. In furtherance of his responsibilities in this matter, the Receiver is authorized to communicate with, and/or serve this Order upon, any person, entity or government office that he deems appropriate to inform them of the status of this matter and/or the financial condition of the Receivership Estates. All government offices which maintain public files of security interests in real and personal property shall, consistent with such office's applicable procedures, record this Order upon the request of the Receiver or the Commission.

21. The Receiver is authorized to instruct the United States Postmaster to hold and/or reroute mail which is related, directly or indirectly, to the business, operations or activities of any of the Receivership Defendants (the "Receiver's Mail"), including all mail addressed to, or for the benefit of, the Receivership Defendants. The Postmaster shall not comply with, and shall immediately report to the Receiver, any change of address or other

instruction given by anyone other than the Receiver concerning the Receiver's Mail. The Receivership Defendants shall not open any of the Receiver's Mail and shall immediately turn over such mail, regardless of when received, to the Receiver. All personal mail of any Receivership Defendants, and/or any mail appearing to contain privileged information, and/or any mail not falling within the mandate of the Receiver, shall be released to the named addressee by the Receiver. The foregoing instructions shall apply to any proprietor, whether individual or entity, of any private mail box, depository, business or service, or mail courier or delivery service, hired, rented or used by the Receivership Defendants. The Receivership Defendants shall not open a new mailbox, or take any steps or make any arrangements to receive mail in contravention of this Order, whether through the U.S. mail, a private mail depository or courier service.

22. Subject to payment for services provided, any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Receivership Defendants shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver.

VII. Injunction Against Interference with Receiver

23. The Receivership Defendants and all persons receiving notice of this Order by personal service, facsimile or otherwise, are hereby restrained and enjoined from directly or indirectly taking any action or causing any action to be taken, without the express written agreement of the Receiver, which would:

A. Interfere with the Receiver's efforts to take control, possession, or

management of any Receivership Property; such prohibited actions include but are not limited to, using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any Receivership Property;

B. Hinder, obstruct or otherwise interfere with the Receiver in the performance of his duties; such prohibited actions include but are not limited to, concealing, destroying or altering records or information;

C. Dissipate or otherwise diminish the value of any Receivership Property; such prohibited actions include but are not limited to, releasing claims or disposing, transferring, exchanging, assigning or in any way conveying any Receivership Property, enforcing judgments, assessments or claims against any Receivership Property or any Receivership Defendant, attempting to modify, cancel, terminate, call, extinguish, revoke or accelerate (the due date), of any lease, loan, mortgage, indebtedness, security agreement or other agreement executed by any Receivership Defendant or which otherwise affects any Receivership Property; or,

D. Interfere with or harass the Receiver, or interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estates.

24. The Receivership Defendants shall cooperate with and assist the Receiver in the performance of his duties.

25. The Receiver shall promptly notify the Court and Commission counsel of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.

VIII. Stay of Litigation

26. As set forth in detail below, the following proceedings, excluding the instant proceeding and all police or regulatory actions and actions of the Commission related to the

above-captioned enforcement action, are stayed until further Order of this Court:

> All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Defendants, including subsidiaries and partnerships; or, (d) any of the Receivership Defendants' past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

27. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

28. All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Defendants against a third person or party, any applicable statute of limitation is tolled during the period in which this injunction against commencement of legal proceedings is in effect as to that cause of action.

IX. Managing Assets

29. For each of the Receivership Estates, the Receiver shall establish one or more custodial accounts at a federally insured bank to receive and hold all cash equivalent Receivership Property (the "Receivership Funds").

30. The Receiver's deposit account shall be entitled, together with the name of the action:

A. Receiver's Account, Estate of Kinetic Investment Group, LLC

B. Receiver's Account, Estate of Kinetic Funds I, LLC

C. Receiver's Account, Estate of KCL Services, LLC d/b/a Lendacy

D. Receiver's Account, Estate of Scipio, LLC

E. Receiver's Account, Estate of LF42, LLC

F. Receiver's Account, Estate of El Morro Financial Group, LLC

G. Receiver's Account, Estate of KIH, Inc. f/k/a Kinetic International, LLC

31. The Receiver may, without further Order of this Court, transfer, compromise, or otherwise dispose of any Receivership Property, other than real estate, in the ordinary course of business, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such Receivership Property.

32. Subject to Paragraph 33 immediately below, the Receiver is authorized to locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property.

33. Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property in the

Receivership Estates.

34. The Receiver is authorized to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including making legally required payments to creditors, employees, and agents of the Receivership Estates and communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate.

35. The Receiver shall take all necessary steps to enable the Receivership Funds to obtain and maintain the status of a taxable "Settlement Fund," within the meaning of Section 468B of the Internal Revenue Code and of the regulations, when applicable.

X. Investigate and Prosecute Claims

36. Subject to the requirement, in Section VIII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in his discretion, and in consultation with Commission counsel, be advisable or proper to recover and/or conserve Receivership Property.

37. Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the

imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and/or actions.

38. The Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all Receivership Defendants.

39. The receiver has a continuing duty to ensure that there are no conflicts of interest between the Receiver, his Retained Personnel (as that term is defined below), and the Receivership Estate.

XI. Bankruptcy Filing

40. The Receiver may seek authorization of this Court to file voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") for the Receivership Defendants. If a Receivership Defendant is placed in bankruptcy proceedings, the Receiver may become, and may be empowered to operate each of the Receivership Estates as, a debtor in possession. In such a situation, the Receiver shall have all of the powers and duties as provided a debtor in possession under the Bankruptcy Code to the exclusion of any other person or entity. Pursuant to Paragraph 4 above, the Receiver is vested with management authority for all Receivership Defendants and may therefore file and manage a Chapter 11 petition.

41. The provisions of Section VIII above bar any person or entity, other than the

Receiver, from placing any of the Receivership Defendants in bankruptcy proceedings.

XII. Liability of Receiver

42. Until further Order of this Court, the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary obligations in this matter.

43. The Receiver and his agents, acting within scope of such agency ("Retained Personnel") are entitled to rely on all outstanding rules of law and Orders of this Court and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel, nor shall the Receiver or Retained Personnel be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties.

44. This Court shall retain jurisdiction over any action filed against the Receiver or Retained Personnel based upon acts or omissions committed in their representative capacities.

45. In the event the Receiver decides to resign, the Receiver shall first give written notice to the Commission's counsel of record and the Court of its intention, and the resignation shall not be effective until the Court appoints a successor. The Receiver shall then follow such instructions as the Court may provide.

XIII. Recommendations and Reports

46. The Receiver is authorized, empowered and directed to develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and

recoverable Receivership Property (the "Liquidation Plan").

47. Within ninety (90) days of the entry date of this Order, the Receiver shall file the Liquidation Plan in the above-captioned action, with service copies to counsel of record.

48. Within thirty (30) days after the end of each calendar quarter, the Receiver shall file and serve a full report and accounting of each Receivership Estate (the "Quarterly Status Report"), reflecting (to the best of the Receiver's knowledge as of the period covered by the report) the existence, value, and location of all Receivership Property, and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Receivership Estates.

49. The Quarterly Status Report shall contain the following:

A. A summary of the operations of the Receiver;

B. The amount of cash on hand, the amount and nature of accrued administrative expenses, and the amount of unencumbered funds in the estate;

C. A schedule of all the Receiver's receipts and disbursements (attached as Exhibit A to the Quarterly Status Report), with one column for the quarterly period covered and a second column for the entire duration of the receivership;

D. A description of all known Receivership Property, including approximate or actual valuations, anticipated or proposed dispositions, and reasons for retaining assets where no disposition is intended;

E. A description of liquidated and unliquidated claims held by the Receivership Estate, including the need for forensic and/or investigatory resources; approximate valuations of claims; and anticipated or proposed methods of enforcing such claims (including likelihood of success in: (i) reducing the claims to judgment; and, (ii) collecting such judgments);

F. A list of all known creditors with their addresses and the amounts of their claims;

G. The status of Creditor Claims Proceedings, after such proceedings have been commenced; and,

H. The Receiver's recommendations for a continuation or discontinuation of the receivership and the reasons for the recommendations.

50. On the request of the Commission, the Receiver shall provide the Commission with any documentation that the Commission deems necessary to meet its reporting requirements, that is mandated by statute or Congress, or that is otherwise necessary to further the Commission's mission.

XIV. Fees, Expenses and Accountings

51. Subject to Paragraphs 52-58 immediately below, the Receiver need not obtain Court approval prior to the disbursement of Receivership Funds for expenses in the ordinary course of the administration and operation of the receivership. Further, prior Court approval is not required for payments of applicable federal, state or local taxes.

52. Subject to Paragraph 53 immediately below, the Receiver is authorized to solicit persons and entities ("Retained Personnel") to assist him in carrying out the duties and responsibilities described in this Order. The Receiver shall not engage any Retained Personnel without first obtaining an Order of the Court authorizing such engagement.

53. The Receiver and Retained Personnel are entitled to reasonable compensation and expense reimbursement from the Receivership Estates as described in the "Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange

Commission" (the "Billing Instructions") agreed to by the Receiver. Such compensation shall require the prior approval of the Court.

54. Within forty-five (45) days after the end of each calendar quarter, the Receiver and Retained Personnel shall apply to the Court for compensation and expense reimbursement from the Receivership Estates (the "Quarterly Fee Applications"). At least thirty (30) days prior to filing each Quarterly Fee Application with the Court, the Receiver will serve upon counsel for the Commission a complete copy of the proposed Application, together with all exhibits and relevant billing information in a format to be provided by Commission staff.

55. All Quarterly Fee Applications will be interim and will be subject to cost benefit and final reviews at the close of the receivership. At the close of the receivership, the Receiver will file a final fee application, describing in detail the costs and benefits associated with all litigation and other actions pursued by the Receiver during the course of the receivership.

56. Quarterly Fee Applications may be subject to a holdback in the amount of 20% of the amount of fees and expenses for each application filed with the Court. The total amounts held back during the course of the receivership will be paid out at the discretion of the Court as part of the final fee application submitted at the close of the receivership.

57. Each Quarterly Fee Application shall:

A. Comply with the terms of the Billing Instructions agreed to by the Receiver; and,

B. Contain representations (in addition to the Certification required by the Billing Instructions) that: (i) the fees and expenses included therein were incurred in the best interests of the Receivership Estate; and, (ii) with the exception of the Billing Instructions, the Receiver has not entered

into any agreement, written or oral, express or implied, with any person or entity concerning the amount of compensation paid or to be paid from the Receivership Estate, or any sharing thereof.

58. At the close of the Receivership, the Receiver shall submit a Final Accounting, in a format to be provided by Commission staff, as well as the Receiver's final application for compensation and expense reimbursement.

DONE AND ORDERED this 6th day of March 2020, in Tampa, Florida.

WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

cc: Counsel of record

Exhibit 2

OPERATING AGREEMENT
OF
KINETIC FUNDS I, LLC
A DELAWARE LIMITED LIABILITY COMPANY

This OPERATING AGREEMENT ("Agreement") of **KINETIC FUNDS I, LLC**, (the "Company") is made and entered into and shall be effective as of the 10th day of May, 2012 (the "Effective Date") by and among **KINETIC PARTNERS, LLC, a Delaware limited liability company,** the "Class A Member," and the additional Member(s), listed on Exhibit "B" and Exhibit "C" attached hereto and by this reference made a part hereof, as may be amended at any time and from time to time, hereinafter referred to as the "Capital Member(s)" or "Class B Member(s)" and/or "Class C Member(s)" as the context may dictate, and those other Persons who are or become "Capital Members" (as defined herein) and any other Persons who are admitted as Members of the Company in accordance with the provisions in this Agreement.

The Company is formed as a Delaware Limited Liability Company effective as of May 10, 2012 pursuant to, and in accordance with, the provisions of the Act (as defined herein). The Company's filing numbers with the Delaware Secretary of State are SRV 120542985 – 5152775.

ARTICLE I. DEFINITIONS.

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in Delaware Corporations Code § 18-101, as amended from time to time as of the date of this Agreement, or as otherwise defined in the Delaware Corporations Code.

1.1. "Act" means the Delaware Limited Liability Company Act (6 Delaware Code Annotated, §18-101 et seq.), as may be amended from time to time.

1.2. "Agreement" means this OPERATING AGREEMENT, as originally executed as of the Effective Date, and as may be amended from time to time.

1.3 "Applicable Law" means (i) the provisions of all applicable statutes and laws of the United States of America and the states thereof (including the Act) in which the Company is doing, or will determine to do, business and (ii) the constitution, by-laws, rules, regulations, orders, customs and usage of (a) any United States market (and its clearing house, if any) on which a transaction is executed on behalf of the Company and (b) any United States or state governmental, regulatory or self-regulatory authority having jurisdiction over the Company.

1.4. "Assignee" means a person who has acquired a Member's Economic Interest in the Company, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Member.

1.5. "Assigning Member" means a Member who by means of a permitted Transfer, if any, has transferred an Economic Interest in the Company to an Assignee.

1.6. "Bankrupt" or "Bankruptcy" with respect to any Member, means:

(a) an assignment for the benefit of creditors;
(b) the filing of a voluntary petition in bankruptcy;
(c) an adjudication of bankruptcy or insolvency;

(d) the filing of a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(e) the filing of an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any Bankruptcy proceeding;

(f) a Member's seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of the Member of all or any substantial part of the Member's assets; or

(g) the failure to dismiss, within sixty (60) days after its commencement, any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation.

1.7. "Capital Account" means, as to any Member, a separate account maintained and adjusted in accordance with Article III, Section 3.3.

1.8. "Capital Contribution" means, with respect to any Member, the amount of the money and the Fair Market Value of any property (other than money) contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take "subject to" under IRC section 752) in consideration of a Percentage Interest held by such Member. A Capital Contribution shall not be deemed a loan.

1.9. "Capital Event" means a sale or disposition of any of the Company's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets.

1.10. "Capital Member" is a Member who is an investor only, has no voting rights unless as may otherwise expressly be provided herein, and is more fully described in Section 2.8 below. A Capital Member may also be referred to herein as a "Class B" or "Class C" Member.

1.11. "Certificate of Formation" is defined at §18-201 of the Act. A copy of the Company's Certificate of Formation is attached hereto as Exhibit "A" and by this reference made a part hereof.

1.12. "Class A Member" means **KINETIC PARTNERS, LLC**

1.13. "Class B Members" refers to Capital Members, as defined in Section 1.10 above. "Class C Members" refers to a further class of Capital Member, as defined in Section 1.10 above.

1.14. "Code" or "IRC" means the Internal Revenue Code of 1986, as amended, and any successor provision(s).

1.15. "Company" means the company named in Article II, Section 2.2., having two or more Members.

1.16. "Distribution" means any distributions by the Company to the Members of cash, other assets or other amounts.

1.17. "Economic Interest" means a Person's right and obligation to share in the income, gains, losses, deductions, credit or similar items of, and to receive distributions from, the Company, but does not include any other rights of a Member, including the right to Vote or to participate in management.

1.18. "Encumber" means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.19. "Encumbrance" means, with respect to any Membership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.20. "Fair Market Value" means, with respect to any item of property of the Company, the item's adjusted basis for federal income tax purposes, except as follows:

(a) The Fair Market Value of any property contributed by a Member to the Company shall be the value of such property, as mutually agreed by the contributing Member and the Company;

(b) The Fair Market Value of any item of Company property distributed to any Member shall be the value of such item of property on the date of distribution, as mutually agreed by the distributee Member and Company; and

(c) Fair Market Value for purposes of Article VIII, Section **8.5** shall be as determined under that section.

1.21 "Investment" means (i) any security as defined in Section 2(1) of the Securities Act of 1933, as amended; (ii) any commodity, futures contract, forward contract, foreign exchange commitment, swap contract, exchange-for-physicals or spot (cash) commodity; (iii) any option, warrant or other right on or pertaining to any of the foregoing, whether in the United States of America or anywhere else throughout the world; or (iv) any other investment that the Managing Member deems, in its sole discretion, to be a reasonable investment.

1.22. "Involuntary Transfer" means, with respect to any Membership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

1.23. "Majority of Members" means a Member or Members whose Percentage Interests represent more than 50 percent (50%) of the Percentage Interests of Members of a particular membership class.

1.24. "Managing Member" or "Manager" means the Person(s) named as such in Article V., Section **5.1**, hereinbelow or the Persons who from time to time may succeed any such Person so identified.

1.25 "Meeting" is defined in Article V, Section **5.2**.

1.26. "Member" means the Class A Members and the Class B Members and/or a Person who otherwise acquires a Membership Interest (including a Capital Member), as permitted under this Agreement, and who remains a Member pursuant to the terms of this Agreement.

1.27. "Membership Interest" means a Member's rights in the Company, collectively, including the Member's Economic Interest, any right to Vote or participate in management, and any right to information concerning the business and affairs of the Company.

1.28. "Net Trading Profits" as used herein means gross profits from the Company's investments, minus any and all expenses incurred in connection with the trading activity in the Company's investment accounts, whether directly incurred or indirectly incurred via charges imposed by third parties, including, but not necessarily limited to, all of the following: option fees, quote service fees, seat lease

expenses, exchange fees, insurance, and any other fees or expenses associated with the Company's investments with the Members' capital, in the Managing Member's sole and absolute discretion.

1.29. "Notice" means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails: when delivered to Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, for overnight delivery, charges prepaid or charged to the sender's account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

1.30. "Percentage Interest" means a fraction, expressed as a percentage, the numerator of which is the total of a Member's Capital Account by class, and the denominator of which is the total of all Capital Accounts of all Members, by class.

1.31. "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

1.32. "Profits and Losses" means, for the Members and for each fiscal year or other period specified in this Agreement, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with IRC section 703(a). The term "profits" as used in this Agreement means profits calculated by the "marked to market" method, realized and unrealized, and is net of all standard commissions, fees, charges and expenses of the Company.

1.33. "Regulations" ("Reg") means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.34. "Successor in Interest" means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person, and/or a transferee of a Member's Membership Interest

1.35. "Transfer" means, with respect to a Membership Interest, or any element of a Membership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of a Membership Interest or any element of such a Membership Interest, directly or indirectly, other than an Encumbrance that may be expressly permitted under this Agreement.

1.36. "Vote" means a written consent or approval, a ballot cast at a Meeting, or a voice vote. Except as provided in Section **1.37.** below, only Class A Members have the right to Vote.

1.37. "Voting Interest" means, with respect to a Member, the right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member's Voting Interest shall be directly proportional to the Member's Percentage Interest. Except as specifically described in Section **15.2(b)** of this Agreement, Capital Members have no Voting Interest.

ARTICLE II: CERTIFICATE OF FORMATION; MEMBER DESIGNATIONS

2.1. Prior to the execution of this Agreement, the Class A Member has caused a CERTIFICATE OF FORMATION, in the form attached to this Agreement as Exhibit "A" and by this reference made a part hereof, to be filed with the Delaware Secretary of State.

2.2. The name of the Company is **Kinetic Funds I, LLC.**

2.3. The principal executive office of the Company shall be at 1800 2nd Street, Suite 955, Sarasota, Florida 34236, or such other place or places as may be determined from time to time by the Company's Managing Member.

2.4. The agent for service of process on the Company shall be National Corporate Research, Ltd. 615 South Dupont Highway, Dover, DE, County of Kent, Delaware 19901. The Managing Member may from time to time change the Company's agent for service of process.

2.5. The Company will be formed for the purposes of engaging in securities trading activities and ventures. The Managing Member may or may not, in its sole and absolute discretion, elect to engage in any other activity or activities not prohibited under the Act.

2.6. The Members intend the Company to be a limited liability company under the Act. Neither the Managing Member nor any Member shall take any action inconsistent with the express intent of the parties to this Agreement.

2.7 The term of existence of the Company shall commence on the effective date of filing of the Certificate of Formation with the Delaware Secretary of State, and shall continue until December 31, 2029, unless sooner terminated by the provisions of this Agreement or as provided by law (the "Term").

2.8. In addition to the Class A Member, there shall be two additional classes of members described as Class B Capital Members and/or Class B Members, and Class C Capital Members and/or Class C Members, as defined in Sections **1.10** and **1.13** above. Class B and Class C Members shall be investors in the Company and, except as expressly provided in Section **15.2(b)** hereinbelow, shall have no rights to Vote. Class B Members are those Capital Members who will invest strictly in the Funds as described in "Exhibit B-1" attached hereto and by this reference made a part hereof. Class C Members are those Capital Members who will invest in the Funds and private investments as described in "Exhibit C-1" attached hereto and by this reference made a part hereof. Unless otherwise expressly permitted by the Managing Member in writing, a Capital Member shall engage in no trading or any other investment activity in connection with or on behalf of the Company and in no event shall any Capital Member have any management rights or authority in connection with, or on behalf of, the Company.

ARTICLE III: CAPITALIZATION

3.1. Each Member has heretofore contributed to the initial capital of the Company as the Member's Capital Contribution the money and property specified in Exhibit B for each of the Class B Members, as and if amended from time to time, attached hereto and by this reference made a part hereof, and Exhibit C for the Class C Members, as may be amended from time to time, attached hereto and by this reference made a part hereof, and "Exhibit D" for the Class A Member, attached hereto and by this reference made a part hereof. Exhibit D may be redacted in the version of this Agreement provided to Class B and Class C Members. Exhibit C may be redacted from the version of this Agreement distributed to Class B Members. Exhibit B may be redacted from the version of this Agreement distributed to Class C Members. The Fair Market Value of each item of contributed property as agreed between the Company and the Member contributing such property is set forth in Exhibit B and B-1or Exhibit C and C-1 attached hereto, as the case may be. Unless otherwise agreed in writing by the Managing Member and any Capital Member, no Capital Member shall be required to make additional Capital Contributions.

3.2. If a Member fails to make a required Capital Contribution within sixty (60) days after the effective date of this Agreement, that Member's entire Membership Interest shall terminate and that Member shall indemnify and hold the Company and the other Members harmless from any loss, cost, or expense, including, but not limited to, reasonable attorneys' fees, caused by the failure to make such Capital Contribution.

3.3. An individual Capital Account shall be maintained for each Member, consisting of that Member's Capital Contribution, (1) increased by that Member's share of Profits, (2) decreased by that Member's share of Losses and Company expenses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

3.4. A Member shall not be entitled to withdraw any part of the Member's Capital Contribution or to receive any Distributions, whether of money or property from the Company, except as provided in this Agreement, but in no event shall the Capital Contribution of any Member be withdrawn if prohibited under the provisions of Securities and Exchange Commission Rule 15c3-1.

3.5. No interest shall be paid on funds or property contributed to the capital of the Company or on the balance of a Member's Capital Account.

3.6. A Member shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company except as otherwise provided in the Act or in this Agreement.

3.7. Except as may otherwise be described herein, no Member shall have priority over any other Member, with respect to the return of a Capital contribution, or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

ARTICLE IV: ALLOCATIONS AND DISTRIBUTIONS

4.1. (a) The Profits and Losses of the Company and all items of Company income, gain, loss, deduction, or credit shall be allocated, for Company book purposes and for tax purposes, to the Members in accordance with Exhibit B-1 and Exhibit C-1, as the case may be:

(b) Distributions to the Class A Member will be made quarterly unless otherwise permitted by the Managing Member in the Managing Member's reasonable discretion.

(c) No Member may withdraw any portion of their respective initial capital contributions to the Company sooner than one (1) year following their initial deposit with the Company, and then only upon written request therefore to the Managing Member at least thirty (30) days prior to the requested date of withdrawal, which withdrawal requires the written consent of the Managing Member, which consent will not be unreasonably withheld.

4.2. If any Member unexpectedly receives any adjustment, allocation, or distribution described in Reg sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), items of Company gross income and gain shall be specially allocated to that Member in an amount and manner sufficient to eliminate any deficit balance in the Member's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2. shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2. and the other provisions of this Agreement relating to the maintenance of Capital Accounts are

intended to comply with Reg sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

4.3. Any unrealized appreciation or unrealized depreciation in the values of Company property distributed in kind to the Members shall be deemed to be Profits or Losses, realized by the Company immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Members' Capital Accounts in the same proportions as Profits are allocated under Section 4.1 hereinabove. Any Property so distributed shall be treated as a distribution to the Members to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3., "unrealized appreciation" or "unrealized depreciation" shall mean the difference between the Fair Market Value of such property and the Company's basis for such property.

4.4. In the case of a permitted Transfer of an Economic Interest during any fiscal year, the Assigning Member and Assignee shall each be allocated a percentage of Profits or Losses based on the number of days each held the Economic Interest during that fiscal year.

4.5. All cash resulting from the normal business operations of the Company and from a Capital Event shall be distributed among the Members in proportion to their Percentage Interests in accordance with Section 4.1 hereinabove.

4.6. If the proceeds from a sale or other disposition of an item of Company property consist of property other than cash, the value of such property shall be as determined by the Managing Member. Such non-cash proceeds shall then be allocated among all the Members in accordance with Section 4.1. hereinabove. If such non-cash proceeds are subsequently reduced to cash, such cash shall be distributed to each Member entitled thereto in accordance with Section 4.1. hereinabove.

4.7. Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Company, or when any Member's interest is liquidated, all items of income and loss first shall be allocated to the Members' Capital Accounts under this Article IV, and other credits and deductions to the Members' Capital Accounts shall be made before the final distribution is made. The final distribution to the Members shall be made to the Members in accordance with Section 4.1. hereinabove.

ARTICLE V: MANAGEMENT; MEMBERS

5.1. The business of the Company shall be managed on a daily basis and as otherwise provided herein by the Company's Class A Member, **Michael S. Williams** (the "Managing Member").

5.2 Except as otherwise provided in this Agreement, the Managing Member shall have the full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company, and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Company as set forth herein and shall have all of the rights and powers which may be possessed by a "manager" under the Act including, without limitation, the exclusive right and power to:

(a) acquire by purchase, lease or otherwise any property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Company;

(b) make expenditures and incur obligations in the ordinary course of the Company's business;

(c) execute any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the conduct of the business and the affairs of the Company;

(d) on behalf of the Company, hire, direct and fire officers and other employees, and contract for the services of independent contractors, such as lawyers and accountants, and delegate such responsibilities to such Persons as the Managing Member deems necessary or appropriate;

(e) agree to the payment to such Persons hired or engaged pursuant to clause (d) above;

(f) to the extent funds are available therefore, and subject to subsections (a), (b), and (c) above, pay with Company funds all debts and other obligations of the Company;

(g) make any and all elections for federal, foreign, state and local tax purposes including, without limitation, any election, if permitted by applicable law: (i) to adjust the basis of Property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state or local law, in connection with transfers of Interests in the Company and Company distributions; (ii) to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to adjustments to the Company's federal, foreign, state or local tax returns; (iii) to the extent provided in Code Sections 6221 through 6231, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company and the Members in their capacity as such and to file any tax returns and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members; and (iv) to designate the person who shall act as the "Tax Matters Partner" under the Code and in any similar capacity under foreign, state or local law (which person may be the Managing Member);

(h) take, or refrain from taking, all other actions not expressly proscribed or expressly limited by this Agreement as may be necessary or appropriate to accomplish the purposes of the Company;

(i) if it chooses, to appoint one or more officers of the Company including, but not necessarily limited to, a President, Vice President, Chief Financial Officer and a Secretary; the Managing Member shall have the power and authority, at any time and from time to time, to designate the duties and obligations for any such officers of the Company; and

(j) to approve any "Major Decision." For purposes hereof, the term "Major Decision" will mean any decision to: (i) to sell, transfer, assign, convey or exchange all or any substantial part of its assets; (ii) to mortgage, pledge or otherwise encumber all or any substantial part of its assets; (iii) to borrow any money on behalf of the Company other than in connection with trade payables incurred in the ordinary course of business; (iv) to engage in any business or activity other than as set forth in Section 2.5 hereinabove; (v) to lend any of its funds to any person or entity; or (vi) to confess judgment on behalf of the Company.

5.3 Right to Rely on the Managing Member.

(a) Any person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Managing Member as to:

(i) the identity of any Member;

(ii) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the Managing Member or which are in any manner germane to the affairs of the Company;

(iii) the Persons who are authorized to execute and deliver any instrument or document of the Company; or

(iv) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

(b) The signature of the Managing Member or a designee of the Managing Member shall be necessary and sufficient to convey title to any Property or to execute any promissory notes, trust deeds, mortgages or other instruments of hypothecation, and all of the Members agree that a copy of this Agreement may be shown to the appropriate parties in order to confirm the same, and further agree that the signature of the Managing Member or a designee of the Managing Member shall be sufficient to execute any documents necessary to effectuate this or any other provision of this Agreement.

5.4. The Members are not required to hold meetings, and decisions may be reached through one or more informal consultations followed by agreement of the Managing Member, or by a written consent signed by the Managing Member. In the event that Members wish to hold a formal meeting (a "Meeting") for any reason, the following procedures shall apply:

(a) The Managing Member, or a Majority in Interest of the Capital Members with, and only with, the consent of the Managing Member, which consent may be granted or withheld in the Managing Member's sole and absolute discretion, may call a Meeting of the Members by giving Notice of the time and place of the Meeting at least seven (7) days prior to the date and time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Company.

(b) The Managing Member shall constitute a quorum for the transaction of business at any Meeting of the Members.

(c) The transactions of the Members at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if the Managing Member is present and if, either before or after the Meeting, the Managing Member signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

(d) Any action required or permitted to be taken by the Managing Member under this Agreement may be taken without a Meeting if the Managing Member consents in writing to such action.

(e) Members may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Members participating in the Meeting can hear one another.

(f) The Managing Member shall keep or cause to be kept with the books and records of the Company full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

5.5. All assets of the Company, whether real or personal, shall be held in the name of the Company.

5.6. All funds of the Company shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Company, at such locations as shall be determined by the Managing Member. Withdrawals from such account(s) shall require the signatures of such person or persons as the Managing Member may designate.

5.7 The Company shall indemnify and hold harmless the Managing Member and any of its managers, members, employees and agents from and against all losses, costs, damages, penalties, claims and expenses, including reasonable attorneys' fees, suffered or sustained by such indemnified parties by reason of any acts, omissions or alleged acts or omissions arising out of

such indemnified parties' activities on behalf of the Company or in furtherance of the interests of the Company, including without limitation any judgment, award or settlement incurred in connection with the defense of any actual or threatened action, proceeding or claim. Notwithstanding anything in this Agreement to the contrary, such indemnified parties shall not be indemnified for any liability or damage arising from any action by such indemnified parties constituting bad faith, willful misconduct or gross negligence.

5.8 The Managing Member may charge the Company, and shall be reimbursed, for any reasonable direct expenses incurred in connection with the Company's business. Without limiting the generality of the foregoing, the Managing Member may be reimbursed for the administrative services incurred by the Managing Member necessary to the prudent operation of the Company. No other Member shall be reimbursed for expenses unless (i) the Managing Member has authorized such Member to incur such expenditures on behalf of the Company and (ii) until such Member has presented to the Managing Member evidence of such expenditures which is satisfactory to the Managing Member in its sole discretion.

5.9 Removal of the Managing Member.

(a) The Managing Member may be removed only for cause upon the unanimous vote of the Class B Members. For purposes hereof, the term "cause" shall mean willful violation of any provision of the Operating Agreement, as and if amended, or the willful commission of an illegal act, the effect of which results in material harm to the business or property of the Company or the interest of the Members of the Company.

(b) The Managing Member shall automatically be deemed to have withdrawn as the Managing Member in the event of the Managing Member's Bankruptcy. The Managing Member may voluntarily withdraw as the Managing Member at any time upon Thirty (30) days written Notice to all other Members, which withdrawal could result in the dissolution of the Company.

(c) If the Managing Member withdraws or is removed from the Company and such withdrawal or removal does not result in dissolution and liquidation of the Company under Section 9.1 hereinbelow, the withdrawn or removed Managing Member shall not have any right to participate in the management of the Company. The Company shall have the option, but not the obligation, to terminate the interest of the withdrawn or removed Managing Member in Company Profits, Losses, distributions and capital by payment of an amount equal to the then present fair market value of the Managing Member's Interest determined by agreement of the withdrawing or removed Managing Member and a Majority in Interest of the Class B Members (each in their sole discretion). If the withdrawing or removed Managing Member and the a Majority in Interest of the Class B Members cannot reach agreement, the withdrawing or removed Managing Member shall retain all its Economic Interest under this Agreement.

5.10 Authority and Activities. A Member (other than the Managing Member) shall have only such authority to bind the Company, and shall perform only such duties with respect to the business and activities of the Company, as shall be expressly granted or assigned to the Member by the Managing Member. Members may engage in other activities; provided, however, that the Member must promptly notify the Managing Member of any activities involving transactions in, or otherwise relating to, securities, options, futures or commodities products. No Member shall have any interest in or rights with respect to the properties or assets of any other Member by virtue of holding a Membership Interest in the Company.

5.11 Indemnification by Members. Any Member who acts in contravention of the provisions of Section 5.10, engages in any criminal or fraudulent conduct (including, without

limitation, theft or embezzlement), or otherwise engages in conduct in connection with the Company or the Members that is reckless, grossly negligent or not in good faith shall personally indemnify and hold harmless the Company and the other Members against all losses, costs, damages, penalties, claims and expenses, including reasonable attorneys' fees, sustained by the Company by reason of such action. Except as provided in the preceding sentence, no Member shall be liable, responsible or accountable in damages or otherwise to the Company for any action taken or not taken within the scope of such Member's authority.

5.12 Right of Set Off. To secure the indemnification obligations of each Member under Section 5.11 or under any other provision of this Agreement, the Company shall have a right of set off against the Member's Capital Account and his right to distributions under this Agreement.

ARTICLE VI: ACCOUNTS AND RECORDS

6.1. Complete books of account of the Company's business, in which each Company transaction shall be fully and accurately entered, shall be kept at the Company's principal executive office and shall be open to inspection and copying by each Member or the Member's authorized representatives with respect to that Member's specific information and records only, on reasonable Notice during normal business hours. The costs of such inspection and copying shall be borne by the Member seeking the information contained therein.

6.2. Financial books and records of the Company shall be kept on the accrual method of accounting, which shall be the method of accounting followed by the Company for federal income tax purposes unless otherwise changed by the Managing Member in the Managing Member's sole and absolute discretion. A balance sheet and income statement of the Company shall be prepared promptly following the close of each fiscal year in a manner deemed by the Managing Member most appropriate and adequate for the Company's business and for carrying out the provisions of this Agreement. The fiscal year of the Company shall be January 1st to December 31st.

6.3. At all times during the term of existence of the Company, and beyond that term if a the Managing Member deem it necessary, the Members shall keep or cause to be kept the books of account referred to in Section 6.2 above, and the following:

(a) A current list of the full name and last known business and residence addresses of each Member, together with the Capital Contribution and the share in Profits and Losses of each Member:

(b) A copy of the Certification of Formation, as and if amended;

(c) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years:

(d) Executed counterparts of this Agreement, as and if amended;

(e) Financial statements of the Company for the six most recent fiscal years: and

(f) Books and Records of the Company as they relate to the Company's internal affairs for the current and past four fiscal years.

If the Managing Member deems that any of the foregoing items shall be kept beyond the periods described in this Section 6.3, the repository of said items shall be as designated by the Managing Member.

6.4. Within 90 days after the end of each taxable year of the Company, the Company shall send to each of the Members all information necessary for the Members to complete their respective federal and state income tax or information returns.

6.5. In the event a distribution of Company assets occurs which satisfies the provisions of Section 734 of the Code or in the event a transfer of an Interest occurs which satisfies the provisions of Section 743 of the Code, the Company shall elect, pursuant to Section 754 of the Code, to adjust the basis of the Company's property to the extent allowed by said Sections 734 of 743 and shall cause such adjustments to be made and maintained. Any additional accounting expenses incurred by the Company in connection with making or maintaining any such basis adjustment shall be reimbursed to the Company from time to time by the distributee or transferee who benefits from the making and maintenance of such basis adjustment.

ARTICLE VII: MEMBERS AND VOTING

7.1. Any actions and/or decisions requiring the approval of Members pursuant to any provision of this Agreement may be authorized or made either by vote or written consent without a meeting in accordance with Section 5.1 hereinabove required to approve such action or decision under any provision of this Agreement and who have the right to Vote. Except as may specifically be provided herein, Class B Members have no Voting Interest.

7.2. The record date for determining the Members entitled to Notice of any Meeting, to Vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by the Managing Member, provided that such record date shall not be more than sixty (60), nor less than ten (10), days prior to the date of the Meeting, nor more than sixty (60) days prior to any other action.

7.3. At all Meetings of Members, only the Class A Member may Vote in person or by proxy. Such proxy shall be filed with the Managing Member before or at the time of the Meeting, and may be filed by facsimile transmission to the Managing Member at the principal executive office of the Company or such other address as may be given by the Managing Member to the Members for such purposes.

ARTICLE VIII: TRANSFERS OF MEMBERSHIP INTERESTS

8.1. The Class A Member may withdraw from the Company in accordance with Section 9.1 of Article IX below, whereupon the Company shall be dissolved unless a Majority in Interest of the Class B Members elect to continue the Company's existence on the express condition precedent that any and all distributions of any manner and kind are first made to the withdrawing Class A Member. Withdrawal shall not release the Class A Member from any obligations and liabilities under this Agreement accrued or incurred before the effective date of withdrawal. The withdrawing Class A Member shall divest the Member's entire Membership Interest before the effective date of withdrawal in accordance with the transfer restrictions and option rights set forth in said Article IX.

8.2. The transferability of a Class B (Capital) Member's Interest, and the removal or incapacity of a Class B (Capital) Member shall be governed as follows.

(a) No Capital Member may assign, sell, transfer, pledge, hypothecate or otherwise dispose of his or her interest in the Company, in whole or in part, other than by last will and testament or by operation of law, unless expressly approved otherwise by the Managing Member, in its sole and absolute discretion. Any attempt to do so in violation of the above will be null and void ab initio.

(b) Subject to applicable law, a Capital Member may not withdraw from the Company sooner than twelve (12) months following its acceptance as Capital Member, and then only upon at least sixty (60) days' prior written notice to the Managing Member.

(c) A Capital Member may be removed when, in the Managing Member's determination, at any time, in its sole and absolute discretion, any particular Capital Member is acting in any manner deemed to be detrimental to the best interests of the other Members and/or the Company.

(d) Upon the withdrawal, removal or incapacity of a Capital Member, the Managing Member will proceed, as and if applicable, to liquidate positions and otherwise make trading decisions so as to provide funds to such removed or otherwise departing Capital Member without jeopardizing the capital accounts of the other Members and so as to minimize losses normally attendant upon a liquidation. In carrying out the business of liquidating positions and otherwise making trading decisions hereunder, the Managing Member or other liquidating trustee will have no liability for any liabilities (including but not limited to any damages and any net trading losses) relating to or arising from such trading activities unless such damage or loss related to or arose out of an act or failure to act by the liquidating trustee amounting to fraud or willful misconduct and bad faith.

(e) Upon the withdrawal, removal or incapacity of a Capital Member, the Company will distribute to such Capital Member the amount in his/her Capital Account as of the effective date of withdrawal, removal or incapacity, subject to the provision by the Managing Member for all liabilities of the Company and for reserves for contingencies as well as compliance with any net capital or similar requirements of any Applicable Law. The unused portion of any reserve will be distributed to such Capital Member after the need therefore has ceased, but in no case (other than compliance with Section 3.3 hereinabove) will the Managing Member withhold payment for more than ninety (90) days from the effective date of such Capital Member's withdrawal from the Company.

(f) The withdrawal, removal or incapacity of a Capital Member will not cause the business of the Company to be dissolved, wound up or terminated unless the failure to dissolve, wind up or terminate could cause the Company to be treated by the IRS as an "association" for tax purposes; rather, the Company will be continued by the remaining Members.

(g) The Members and the Company will give, or cause to be given, to the appropriate Exchanges, prompt notice of the withdrawal, removal or incapacity of a Capital Member, as and if required.

8.3. Notwithstanding any other provisions of this Agreement:

(a) If, in connection with the divorce or dissolution of the marriage of the Class A Member or a Class B Capital Member, any court issues a decree or order that transfers, confirms, or awards a Membership Interest, or any portion thereof, to that Member's spouse (an "Award"), then, notwithstanding that such transfer would constitute an unpermitted Transfer under this Agreement, that Member shall have the right to purchase from his or her former spouse the Membership Interest, or portion thereof, that was so transferred, and such former spouse shall sell the Membership Interest or portion thereof to that Member at the price set forth in Section 8.5 of this Agreement. If that Member has failed to consummate the purchase within fifteen (15) days after the Award (the "Expiration Date"), the Company shall have the option, for a period of thirty (30) days after the Expiration Date, to purchase from the former spouse the Membership Interest or portion thereof pursuant to Section 8.5 of this Agreement; provided that the option period shall commence on the later of (i) the day following the Expiration Date, or (ii) the date of actual notice of the Award. If said spouse's interest is not purchased by either the subject Member or the Company within the option periods provided, said spouse shall retain the subject Member's

Economic Interest, subject to all terms and conditions set forth in this Agreement, as and if amended at any time and from time to time.

(b) If, by reason of the death of a spouse of the Class A Member or a Class B Capital Member, any portion of a Membership Interest is transferred to a Transferee other than (i) that Member or (ii) a trust created for the benefit of that Member (or for the benefit of that Member and any combination between or among that Member and that Member's issue) in which that Member is the sole Trustee, then that Member shall have the right to purchase the Membership Interest or portion thereof from the estate or other successor of his or her deceased spouse or Transferee of such deceased spouse, and the estate, successor, or Transferee shall sell the Membership Interest or portion thereof at the price set forth in Section 8.5 of this Agreement. If the subject Member has failed to consummate the purchase within forty-five (45) days after the date of death (the "Expiration Date"), the Company shall have the option, for a period of forty-five (45) days following such Expiration Date, to purchase from the estate or other successor of the deceased spouse the subject Member's Membership Interest pursuant to Section 8.4 of this Agreement. If said interest is not purchased by either the subject Member or the Company within the option periods provided, the successor(s) to the deceased spouse shall retain the subject Member's spouse's Economic Interest, subject to all terms and conditions set forth in this Agreement, as and if amended at any time and from time to time.

8.4. If required pursuant to Section 8.3 (a) or (b) above, the Company shall, following the determination of the purchase price as provided in Section 8.5 hereinbelow, purchase the subject Membership Interest in the Company at the price and on the terms provided in said Section 8.5.

8.5. The purchase price of a Member's Membership Interest that is the subject of a purchase under Section 8.3 of this Agreement shall be the Fair Market Value of such Capital Member's Membership Interest as determined under this Section 8.5. The Fair Market Value shall be deemed to be the balance in the subject Member's Capital Account, if any, less any and all fees, charges, commissions and the like chargeable to the subject Member's capital account. If there is no positive balance, the subject Member's Membership Interest shall have no value and thereupon be terminated.

8.6 Except as may expressly be provided in this Agreement, a Member shall not Transfer any part of that Member's Membership Interest in the Company, whether now owned or hereafter acquired, unless (1) the Managing Member approves the transferee's admission to the Company as a Member upon such Transfer, and (2) the Membership Interest to be transferred, when added to the total of all other Membership Interests transferred in the preceding 12 months, will not cause the termination of the Company under the Code. No Member may Encumber or permit or suffer any Encumbrance of all or any part of the Member's Membership Interest in the Company unless such Encumbrance has been approved in writing by the Managing Member. Any Transfer or Encumbrance of a Membership Interest without such approval shall be void. Notwithstanding any other provision of this Agreement to the contrary, an Member who is a natural person may transfer all or any portion of his or her Membership Interest to any revocable trust created for the benefit of the Member, or any combination between or among the Member, the Member's spouse, and the Member's issue; provided that the Member retains a beneficial interest in the trust and all of the Voting Interest, if any, included in such Membership Interest. A transfer of a Member's entire beneficial interest in such trust or failure to retain such Voting Interest shall be deemed a Transfer of a Membership Interest in violation of this Agreement.

8.7 (a) On the happening of any of the following events ("Triggering Events") with respect to the Class A Member, the Company shall be dissolved unless a Majority in Interest of the Class B Members elect to continue the Company's existence:

(i) the death or incapacity of the Class A Member;

(ii) the Bankruptcy of the Class A Member; or

(iii) the withdrawal of the Class A Member.

(b) A Capital Member may be expelled from the Company for any reason or no reason, in the Managing Member's sole and absolute discretion and its, his or her Membership Interest will thereupon be terminated. Upon such an expulsion, the expelled Member shall be entitled to receive an amount calculated pursuant to Section 8.5 above. An expelled Capital Member shall receive prior written notice thereof, whereupon the effective date of such expulsion shall be the date of receipt of such notice, in accordance with Article I, Section 1.29 hereinabove. The Members of the Company expressly acknowledge and agree that the terms of this Section 8.7(b) are reasonable under the circumstances at the time each Member signs this Agreement. Notwithstanding any statutory presumption to the contrary, the expulsion of a Capital Member will not cause the dissolution of this Company.

8.8 No Capital Member shall participate in any Vote or decision in any matter pertaining to the disposition of that Member's Membership Interest in the Company under this Agreement

8.9 A Spousal Consent form is attached hereto as Exhibit "D" and by this reference made a part hereof.

ARTICLE IX: WITHDRAWAL, DISSOLUTION AND WINDING UP

9.1. Subject to Sections 4.1 (d) and 8.2(b) hereinabove, a Capital Member may withdraw from the Company at any time by giving Notice of withdrawal to the Managing Member at least sixty (60) calendar days before the effective date of the withdrawal. Subject to Section 4.1 (d), the Class A Member may withdraw from the Company at any time by giving Notice of withdrawal to the Managing Member and the Class B Member(s) at least thirty (30) calendar days before the effective date of the withdrawal. Withdrawal shall not release a Member from any obligations and liabilities under this Agreement accrued or incurred before the effective date of withdrawal. A withdrawing Member shall divest the Member's entire Membership Interest before the effective date of withdrawal in accordance with, and subject to, the provisions of Article VIII above. In the event that the Class A Member withdraws, the Company shall be dissolved unless a Majority in Interest of the Class B Members elect to continue the existence of the Company.

9.2. The Company shall be dissolved on the first to occur of the following events:

(a) The death, incapacity, or withdrawal of the Class A Member unless a Majority in Interest of the Class B Members elect to continue the Company's existence;

(b) The expiration of the term of existence of the Company;

(c) The election by the Managing Member to dissolve the Company;

(d) The sale or other disposition of substantially all of the Company assets; or

(e) Entry of a decree of judicial dissolution pursuant to the corporation laws of the State of Delaware or the State of Florida.

9.3. On the dissolution of the Company, the Company shall engage in no further business other than that which is necessary to wind up the business and affairs of the Company. The Members who have not wrongfully dissolved the Company shall wind up the affairs of the Company. The Persons winding up the affairs of the Company shall give written Notice of the

commencement of winding up by mail to all known creditors and claimants against the Company whose addresses appear in the records of the Company. After paying or adequately providing for the payment of all known debts of the Company (except debts owing to Members), the remaining assets of the Company shall be distributed or applied in the following order of priority:

(a) To pay the expenses of liquidation.

(b) To repay outstanding loans to Members, if any. If there are insufficient funds to pay such loans in full, each Member shall be repaid in the ratio that the Member's respective loan, together with interest accrued and unpaid thereon, bears to the total of all such loans from Members, including all interest accrued and unpaid on those loans. Such repayment shall first be credited to accrued and unpaid interest due and the remainder shall be credited to principal.

(c) Among the Members in accordance with the provisions of Article IV, Section 4.7, hereinabove.

9.4. Each Member shall look solely to the assets of the Company for the return of the Member's investment, and if the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the investment of any Member, such Member shall have no recourse against any other Member(s) or the Company for indemnification, contribution, or reimbursement.

ARTICLE X: ARBITRATION

10.1. Any action to enforce or interpret this Agreement or to resolve disputes between the Members or by or against any Member shall be settled by arbitration in accordance with the constitution and rules of the Financial Industry Regulatory Authority ("FINRA"). Arbitration shall be the exclusive dispute resolution process. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. Arbitration shall be conducted at the FINRA office located nearest to Sarasota, Florida, unless otherwise unanimously agreed by all parties to the proceedings. The substantive law of the State of Delaware and/or Florida shall be applied by the arbitrator to the resolution of the dispute, in the sole and absolute discretion of the Managing Member. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE XI. INDEMNIFICATION, INSURANCE

11.1 Except for actions for which a Member is obligated under Section 5.11 above to indemnify the Company, the Company may indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a Member, Managing Member, officer, employee or agent of the Company, he or she is or was serving at the request of the Company as a manager, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to hereinafter in this Article XI. as an "agent"), to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Managing Member shall be authorized, in its sole discretion, on behalf of the Company, to enter into indemnity agreements from time to time with any Person entitled to be indemnified by

the Company hereunder, upon such terms and conditions as the Managing Member deems appropriate in its reasonable business judgment.

11.2 The Company shall, in the Managing Member's sole discretion, have the power to purchase and maintain insurance on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such person in any such capacity, or arising out of such person's status as an agent, whether or not the Company would have the power to indemnify such person against such liability under the provisions of Section **11.1** above or under applicable law.

11.3 In the event that any individuals or entities are designated pursuant to Section **5.1** hereinabove, the Company shall indemnify it, them, him or her, as the case may be, and no person or entity so designated shall be liable or accountable in damages to Company, for any losses attributable to the operation of the Company's business, EXCEPT to the extent that any such losses are the result of its own willful misconduct, to the fullest extent allowed by law, from all claims brought by third parties relating to or arising out of the Company's business.

11.4 The indemnification provided for in this Article **XI** shall include, but not be limited to, payment by the Company of all judgments and proven claims against the indemnitee and all costs, including without limitation attorneys' fees, incurred in connection with the prosecution, defense, or compromise of any action, whether judicial, administrative or otherwise.

ARTICLE XII: RESTRICTIVE COVENANTS

12.1 Confidential Information. Each Member recognizes and acknowledges that he may be entrusted with or have access to confidential and proprietary information which is the property of the Company and/or its affiliates. Each Member therefore agrees that, during the time that he is a Member and at all times thereafter, he shall (i) not, without the Company's prior written consent, directly or indirectly use, copy or duplicate, or disclose or otherwise make available to any third party, any Confidential Information (as defined below) other than in the scope of Member's authority with respect to the Company or any affiliate of the Company; and (ii) take such protective measures as may be reasonably necessary to preserve the secrecy and interest of the Company in the Confidential Information. Upon ceasing to be a Member for any reason whatsoever, a Member shall promptly deliver or cause to be delivered to the Company any and all Confidential Information in his possession, custody or control. As used herein, the term "Confidential Information" shall mean all information of a confidential nature, whether tangible or intangible, in any form or medium provided, which is not generally known to the public and which relates to the business of the Company or any of its affiliates, whether information produced by the Company, third party information which the Company treats as confidential or otherwise, including, without limitation, software and enhancements thereto, know-how, techniques, systems, processes, trade secrets, manuals, confidential reports and client lists.

12.2 Non-Solicitation of Employees. Unless otherwise consented to in writing by the Managing Member, each Member agrees that, while a Member and for two (2) years thereafter, he shall not, directly or indirectly, whether for his account of for any other Person, (i) solicit for employment or hire, or attempt to solicit for employment or hire, any individual who is employed by (or, but for the violation of this Agreement, would have been employed by) the Company or any affiliate of the Company or (ii) otherwise interfere with the relationship between any such Person and the Company or any affiliate of the Company.

12.3 Remedies. The Members agree that it is impossible to measure monetarily the damages which will accrue to the Company by reason of a Member's failure to observe any of his obligations under this Article XII. Therefore, if the Company shall institute any action or proceeding to enforce such provisions, each Member hereby waives the claim or defense that there is an adequate remedy at law and agrees in any such action or proceeding not to interpose the claim or defense that such remedy exists at law. Without limiting any other remedies that may be available to the Company, each Member hereby specifically affirms the appropriateness of injunctive or other equitable relief in any such action.

ARTICLE XIII: POWER OF ATTORNEY

13.1 Each of the Members hereby irrevocably makes, constitutes and appoints the Managing Member as such Member's true and lawful agent and attorney-in-fact, with full power of substitution, and with full power and authority to act in such Member's name and on such Member's behalf, to make, execute, deliver, swear to, acknowledge, file and record: (i) copies of this Agreement, and any amendment, modification or change to this Agreement adopted as herein provided; (ii) the original Certificate of Formation of the Company and all amendments thereto required or permitted by law or the provisions of this Agreement; (iii) all certificates and other instruments deemed necessary by the Managing Member to carry out the provisions of this Agreement or applicable law, or to permit the Company to be treated as a partnership for federal income tax purposes, or to provide limited liability to Members in each jurisdiction in which the Company may be doing business; (iv) all conveyances and other instruments or documents deemed necessary by the Managing Member to effect the dissolution or termination of the Company; (v) any certificate of fictitious name, if required by law, for the Company; and (vi) such other certificates or instruments as may be required under the laws of the States of Delaware, Florida, or any other jurisdiction, or by any regulatory agency, as the Managing Member may deem necessary or advisable at any time and from time to time.

13.2. The power of attorney granted pursuant to Section **13.1** above:

a. is coupled with an interest, shall be irrevocable and shall survive and shall not be affected by the subsequent incapacity, disability, or death of any Member;

b. may be exercised by the attorney-in-fact, either by signing separately as attorney-in-fact for each Member or by a single signature of the attorney-in-fact, acting as attorney-in-fact for all Members; and

c. shall survive the assignment by a Member of the whole or any fraction of its Membership Interest; except that, where the assignee of the whole of such Member's Membership Interest has been approved by the Managing Member for admission to the Company as a Successor-in-Interest to a Member's Membership Interest, the power of attorney of the assignor shall survive the delivery of such assignment for the sole purpose of enabling the attorney-in-fact to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such substitution.

ARTICLE XIV: INVESTMENT REPRESENTATIONS

14.1 Each Member hereby represents and warrants to, and agrees with, the Members and the Company as follows. Each Member has been provided with a copy of this Operating Agreement, has read it, and has completed all information requested, has signed it and delivered a signed copy of same to the Managing Member.

a. The Members acknowledge that the Membership Interests are being offered and sold without registration under the Securities Act of 1933 (the "**Securities Act**") in reliance upon the exemption provided in Section 4(2) of the Securities Act and/or Regulation D

promulgated under the Securities Act and that the availability of such exemption is based in material respects upon the truth of the following representations. Each Member hereby represents and warrants to the Company, and to each other, the following.

i. The Member has carefully read and considered the terms of the Operating Agreement, and recognizes that (i) an investment in the Company involves a high degree of risk, and (ii) no assurance or guarantee of any nature or kind has or can be given in any form, and none has been provided, that a Member will receive a return of all or any of his or her capital or that he or she will realize any measure of profit on such Member's investment in the Company;

ii. the Member is experienced in business matters and regards himself as a sophisticated investor who is able to evaluate investment and financial information and/or the Member has chosen independent professional advisors who are unaffiliated with, have no equity interest in and are not compensated by the Company or any affiliate of the Company, directly or indirectly, to assist in such evaluation and, either independently or along or with such advisors, has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Company and has the capacity to protect his own interests in connection with his proposed investment in the Company;

iii. the Member has consulted with his or her own tax, investment and legal advisors to the extent the Member has determined necessary to protect such Member's own interest in connection with this Agreement in view of the undersigned's prior financial experience and present personal financial condition, and has relied on his or her own analysis and investigation and that of the undersigned's advisors in determining whether to invest in the Company;

iv. the Member is contributing its capital for a Membership Interest in the Company solely for its own account for investment (not for the account of any other person unless such fact has been fully disclosed to the Managing Member), and not with a view to, or for, any resale, distribution, fractionalization, or other transfer thereof, and the undersigned has no present plans to enter into any contract, undertaking, agreement, or arrangement for any such resale, distribution, fractionalization or transfer;

v. the Member understands the meaning and legal consequences of the representations contained in this Agreement, and understands that the Company and each other Member is relying upon such representations;

vi. the Member understands that there are substantial restrictions on the transferability of the Membership Interests; that any certificate evidencing the undersigned's ownership of such Membership Interests, if any, may be imprinted with legends indicating that the transfer of such Membership Interests may be restricted under the Securities Act; that the Membership Interests have not been, and the undersigned has no rights to require that the Membership Interests be, registered or qualified under the Securities Act; that there is not now any public market for the Membership Interests and none is anticipated; that the Membership Interests will not be readily accepted as collateral for a loan; and that it may be extremely difficult to sell the Membership Interests in the event of a financial emergency;

vii. the Member is aware and understands that no federal or state agency has made any recommendation or endorsement of the Membership Interests as an investment, nor has any such governmental agency reviewed or passed upon the adequacy of information disclosed to the undersigned, and the Membership Interests are being issued without registration under the Securities Act;

viii. the Member has been advised and understands that all copies of this Agreement, and any other documents which evidence ownership of the Interests, will bear a legend substantially as follows:

THE INITIAL SALE OF MEMBERSHIP INTERESTS IN THE COMPANY TO THE MEMBERS HAS NOT BEEN QUALIFIED OR REGISTERED UNDER THE SECURITIES LAWS OF ANY STATE, OR REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION PROVISIONS OF THOSE LAWS. NO ATTEMPT HAS BEEN MADE TO QUALIFY THE OFFERING AND SALE OF MEMBERSHIP INTERESTS TO MEMBERS UNDER THE LAWS OF THE STATE OF FLORIDA, DELAWARE OR ANY OTHER STATE, AS MAY HAVE BEEN AMENDED FROM TIME TO TIME, ALSO IN RELIANCE UPON AN EXEMPTION FROM THE REQUIREMENT THAT A PERMIT FOR ISSUANCE OF SECURITIES BE PROCURED. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MEMBERSHIP INTERESTS MAY NOT BE TRANSFERRED OR ENCUMBERED UNLESS REGISTERED OR QUALIFIED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAW OR UNLESS, IN THE OPINION OF LEGAL COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION OR REGISTRATION IS NOT REQUIRED. THE MEMBER WHO DESIRES TO TRANSFER A MEMBERSHIP INTEREST SHALL BE RESPONSIBLE FOR ALL LEGAL FEES INCURRED IN CONNECTION WITH PROCURING AND DELIVERING SAID OPINION.

ix. the Member has not relied on any information or representations with respect to offering of the Membership Interests, other than such information or representations set forth in this Operating Agreement. The undersigned understands that no person has been authorized to give any information or to make any representations other than those contained in this Operating Agreement;

x. the Member has sufficient business and other experience, alone or with his/her professional advisor, to evaluate and appreciate the risks and merits of investments in the Company; and

xi. the Member is a "qualified client" within the meaning of Code of Federal Regulations §17CFR275.205-3(d), or has expressly notified the Managing Member that such is not the case.

14.2 The Company may invest in companies that, among other securities, trades in options. Options involve a high degree of risk and are not suitable for all investors. For more information, please read Characteristics and Risks of Standardized Options, available as of the Effective Date of this Agreement, at: www.optionsclearing.com/publications/risks/riskstoc.pdf.

Any questions concerning investments involving options should be directed to the Company's Managing Member.

ARTICLE XV: GENERAL PROVISIONS

15.1 This Agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this Agreement. This Agreement replaces and supersedes all prior written and/or oral agreements by and among the Members or any of them.

15.2 This Agreement may be amended in accordance with the following procedures:

(a) The Managing Member, acting without the consent of any other Member, may adopt any amendment:

(i) which is required to cure any ambiguity or to correct or supplement any provision which is inconsistent in any respect with any other provision hereof;

(ii) which, in the opinion of counsel for the Company, will not affect the rights, obligations or liabilities of any Member in any material respect;

(iii) which is necessary or desirable to satisfy any requirement or condition contained in any applicable statute or in any opinion, directive, order, ruling or regulation of any governmental agency; or

(iv) which is required to conform this Agreement to the requirements of the Code and Regulations, including any Regulations relating to the allocation of profits and losses among Members, and the administrative and judicial interpretations thereof.

(b) The Managing Member may adopt any other amendment, provided, however, approval of those Class B (Capital) Members holding Seventy-Five (75%) or more of the Percentage Interests of the Class B Members shall be required for any amendment that would:

(i) increase the liability of the Class B Members under this Agreement; or

(ii) materially and adversely affect the rights of the Class B Members to allocations and distributions under Articles III and IV, except to the extent reasonably required in connection with the admission of additional Class B Members to the Company.

15.3 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.4. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Florida and/or the State of Delaware, in the Managing Member's sole and absolute discretion. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

15.5. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

15.6. Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, the male shall include the female, and the neuter gender shall include the male and female as well as trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

15.7. The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties.

15.8. Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Members in the carrying on of their own respective businesses or activities.

15.9. Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Member, in the Member's capacity as such, the agent of any other Member.

15.10. Each Member represents and warrants to the other Members that the Member has the capacity and authority to enter into this Agreement.

15.11. The article, section, and paragraph titles and headings contained in this Agreement, if any, are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

15.12. Time is of the essence of every provision of this Agreement that specifies a time for performance.

15.13. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

15.14. The Members agree that the contents of this Agreement and of any other instruments associated with the relationship hereby created pursuant to this Agreement shall be kept strictly confidential and no party shall discuss or divulge the contents hereof or thereof to any third parties, except as may be required by various regulatory agencies having jurisdiction over the parties, and further except as may be necessary to the Members' communications with their respective accountants and attorneys.

IN WITNESS WHEREOF, the Class A Member and the (initial) Class B Member identified below have executed this Agreement as of the Effective Date. Additional Class B and Class C Members will evidence their respective agreements with this Agreement by executing their respective Exhibit B-1 and C-1 addenda accordingly.

CLASS A MEMBER
KINETIC PARTNERS, LLC

by: _____
Michael S. Williams, Managing Member
of its Managing Member, LF42, LLC

INITIAL CLASS B MEMBER

by: _____
Michael S. Williams

Exhibit 3

KINETIC FUNDS I, LLC

SUBSCRIPTION INSTRUCTIONS

An investor desiring to subscribe for limited liability company interests in KINETIC FUNDS I, LLC ("Interests") must do the following:

1. Complete, date and sign a Subscription Agreement in the attached form. Have your signature notarized in the Acknowledgement form.

2. Complete, date and sign an Offering Questionnaire in the form appearing as Appendix I to the Subscription Agreement.

3. Complete, date and sign the Form W-9 attached to the Subscription Agreement.

4. Keep copies of the completed, dated, signed and notarized Subscription Agreement, Offering Questionnaire and Form W-9 for your records.

5. Send the completed, dated and originally signed Subscription Agreement, Offering Questionnaire and Form W-9 to:

KINETIC FUNDS I, LLC
1800 2nd Street, Suite 955
Sarasota, FL 34236

6. Unless the Managing Member otherwise agrees, payment of the subscription amount must be made by check or wire transfer through or from a U.S. bank or a banking institution.

(a) Send a cashier's check in payment for the amount subscribed (as indicated on the signature page of the Subscription Agreement) payable to "KINETIC FUNDS I, LLC", to:

KINETIC FUNDS I, LLC
[redacted]
Sarasota, FL [redacted]

OR

(b) Wire transfer that amount to:

BMO Harris
111 West Monroe
Chicago. IL 60603

Routing #: [redacted]
Swift Code [for international]: [redacted]

Further Credit To: KINETIC FUNDS I, LLC
Account #[redacted]4255

KINETIC FUNDS I, LLC

SUBSCRIPTION AGREEMENT

1. SUBSCRIPTION. The undersigned (the "Subscriber") hereby irrevocably subscribes for a membership interest ("Interests") in KINETIC FUNDS I, LLC, a Delaware limited liability Company (the "Company"), in the amount indicated on the signature page of this Subscription Agreement. In payment for the Interests, the Subscriber is concurrently sending a check in that amount payable in immediately available funds or is wire transferring that amount to the custodian for the Company in accordance with the Subscription Instructions furnished by the Company to the Subscriber. Such subscription, when and if accepted by the Managing Member of the Company, Michael S. Williams (the "Managing Member"), will constitute the initial Capital Contribution by the Subscriber to the Company, in accordance with the Company's Operating Agreement, as amended and as and if amended in the future (the "AGREEMENT") relating to the Company and its business. Capitalized terms used and not otherwise defined in this Subscription Agreement have the meanings respectively ascribed to them in the AGREEMENT.

2. REPRESENTATIONS, WARRANTIES AND AGREEMENTS BY SUBSCRIBER. The Subscriber hereby represents, warrants and agrees as follows:

(a) The Interests are being purchased by the Subscriber and not by any other person, with the Subscriber's own funds and not with the funds of any other person, and for the account of the Subscriber, not as a nominee or agent and not for the account of any other person. On acceptance of this Subscription Agreement by the Managing Member, no person other than the Subscriber will have any interest, beneficial or otherwise, in the Interests. The Subscriber is not obligated to transfer Interests or any part thereof or interest therein to any other person nor does the Subscriber have any agreement or understanding to do so. The Subscriber is purchasing the Interests for investment for a period described in the Company's Operating Agreement, as and if amended, which has been delivered to you, and not with a view to the sale or distribution of any part or all thereof by public or private sale or other disposition. The Subscriber has no intention of selling, granting any participation in or otherwise distributing or disposing of any Interests. The Subscriber does not intend to subdivide the Subscriber's purchase of Interests with any person.

(b) The Subscriber understands that the Interests have not been registered or qualified under the 1933 Act or any other securities law or regulation, on the ground, among others, that there will be no distribution or public offering of the Interests. The Subscriber understands that the Interests will be issued by the Company in connection with a transaction that does not involve any public offering within the meaning of section 4(2) of the 1933 Act or applicable provisions of other securities laws and regulations, under the respective rules and regulations of the SEC and the administrators of such other laws and regulations thereunder. The Subscriber understands that the Company is relying in part on the Subscriber's representations herein for purposes of claiming such exemptions and that such exemptions may not be available if, notwithstanding the Subscriber's representations, the Subscriber has in mind merely acquiring Interests for resale on the occurrence or non-occurrence of some predetermined event. The Subscriber has no such intention.

(c) The Subscriber, either alone or with the Subscriber's professional advisers who are unaffiliated with, have no equity interest in and are not compensated by the Company or any affiliate of the Company ("Affiliate") or selling agent of the Company, directly or indirectly, has such knowledge and experience in financial and business matters that the Subscriber is capable of evaluating the merits and risks of an investment in Interests and has the capacity to protect the Subscriber's own interests in connection with the Subscriber's proposed investment in Interests.

(d) The Subscriber either has previously furnished to the Managing Member a completed and signed Offering Questionnaire attached hereto as Appendix I or is doing so contemporaneously with the submission of this Subscription Agreement. The information in the Subscriber's most recently completed and signed Offering Questionnaire previously delivered or being delivered to the Managing Member, which is incorporated herein by reference, is true, correct and complete in all respects as of the date hereof.

(e) The Subscriber acknowledges that under U.S., international and other antimoney laundering laws, rules, regulations, treaties or other restrictions, the Managing Member or the Company (as the case may be) may require further identification of the Subscriber before they will process a subscription or withdrawal and that the Subscriber's subscription or withdrawal may be delayed if the Subscriber does not provide such required information on a timely basis. The Subscriber agrees to provide to the Managing Member any additional information regarding the Subscriber that the Managing Member or the Company deems necessary or convenient to ensure compliance with all applicable laws concerning money laundering and similar illicit activities.

(f) The Subscriber understands that the Company is prohibited from accepting subscriptions for Interests by any person or entity that is acting, directly or indirectly, in violation of any anti-money laundering laws, rules, regulations, treaties or other restrictions, or on behalf of any suspected terrorist or terrorist organization, including any person, entity or organization that is included on any so-called "watch list" maintained by any governmental agency of the U.S. (including, but not limited to, the U.S. Central Intelligence Agency, the U.S. Department of the Treasury, the U.S. Federal Bureau of Investigation, the IRS, the U.S. Office of Foreign Assets Control and the SEC) (each such person or entity being called herein a "Prohibited Investor"):

(1) The Subscriber is not (A) acting as an agent, representative, nominee or intermediary for any other person, entity or other beneficial owner (each such person or entity being called herein an "Underlying Beneficial Owner") and no Underlying Beneficial Owner has any beneficial or economic interest in the Interests, (B) a Prohibited Investor or (C) a senior foreign political figure,[1] an immediate family member[2] of a senior foreign political figure or a close associate[3] of a senior foreign political figure.

(2) If the Subscriber is a corporation, Company, limited liability company, trust, association or other entity, the Subscriber (A) has established the identity of each director, officer and beneficial owner of the Subscriber (including, but not limited to, each shareholder, member, partner, trustee and beneficiary), (B) will maintain all evidence identifying such persons for at least five years after the date the Subscriber terminates its entire interest in the Company, (C) has made such information available to the Managing Member in the Offering Questionnaire or will provide such information to the Managing Member immediately on the Managing Member's request and (D) has no intention or obligation to distribute, assign, transfer or sell all or any portion of the Interests to any underlying beneficial owner.

1 A "senior foreign political figure" is a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a "senior foreign political figure" includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure.

2 The "immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children and inlaws.

3 A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure

(3) If the Subscriber is an investment entity (such as an investment pool organized as a limited Company, limited liability company, corporation or other entity), (A) the Subscriber has established and applies anti-money laundering practices and procedures that comply with all applicable laws, rules and regulations and are designed to detect and report any activity that raises suspicion of money laundering activities and (B) none of the Subscriber's directors, officers, managers, members, partners, shareholders or other beneficial owners is a Prohibited Investor, a senior foreign political figure, an immediate family member of a senior foreign political figure or a close associate of a senior foreign political figure.

(4) The assets used to subscribe for the Interests hereby were not derived, directly or indirectly, from any illegal activity or source.

(g) If the Subscriber is a bank organized under non-U.S. law or is an agency, branch or office located outside the U.S. of a U.S. bank (a "Foreign Bank"), or if the Subscriber receives deposits from, makes payments on behalf of, or handles other financial transactions related to a Foreign Bank:

(1) The Foreign Bank maintains a place of business that is located at a fixed address, other than solely an electronic address or a post-office box, in a country in which the Foreign Bank is authorized to conduct banking activities, at which location the Foreign Bank (A) employs one or more individuals on a full-time basis and (B) maintains operating records related to its banking activities;

(2) The Foreign Bank is subject to inspection by the banking authority that licensed the Foreign Bank to conduct banking activities;

(3) The Foreign Bank does not provide banking services to any other Foreign Bank that does not have a physical presence in any country and that is not a regulated affiliate (as that term is defined in 31 C.F.R. §103.175); and

(4) The Subscriber agrees to furnish such other documentation that the Managing Member or the Company may request at any time, including, but not limited to, any certification or recertification provided for by 31 C.F.R. §103.177(b).

(h) The Subscriber agrees to notify the Managing Member immediately if any of the representations, warranties or agreements in section 2(e), (f) or (g) becomes false, inaccurate or incomplete in any respect at any time that the Subscriber holds any Interests. The Subscriber understands and agrees that if the Managing Member believes that any of the representations, warranties or agreements in section 2(e), (f) or (g) or any other information that the Subscriber has supplied to the Managing Member or the Company is or becomes false, inaccurate or incomplete in any respect, the Managing Member or the Company may be required to expel the Subscriber from the Company, freeze the assets of the Subscriber, suspend the Subscriber's withdrawal rights, request additional information or recertification, deliver the Subscriber's assets invested in the Company to a governmental agency, report any such action and the Subscriber's identity to a governmental agency or take any combination of the foregoing actions or any other action as required by applicable law. The Subscriber hereby (1) waives and releases any known or unknown claim that the Subscriber might now or at any future time have against the Company, the Managing Member or any of their respective Affiliates, controlling persons, shareholders, members, managers, partners, directors, officers, employees, attorneys and agents in connection with such action by the Managing Member or the Company and (2) agrees that, in connection with such action by the Managing Member or the Company, the Managing Member may segregate and manage any portion or all of the Subscriber's investment in the Company separate and apart from the Company's assets, in the Managing Member's absolute discretion, including without limitation, by selling or otherwise disposing of such assets of the Subscriber and reinvesting the proceeds there from.

The rights and obligations of the Managing Member under this section 2(h) shall supersede any duties that the Managing Member may have to the Subscriber under the Agreement or otherwise.

(i) Unless otherwise approved by the Managing Member, distributions of the Company's assets to the Subscriber (whether as a result of a distribution to all Capital Class Members or in connection with a withdrawal by the Subscriber) shall be made (1) only to the Subscriber (as reflected on the Company's books and records) and (2) only through accounts held at a U.S. bank.

(j) The Subscriber acknowledges receipt of the AGREEMENT and acknowledges that the Subscriber has been furnished with such financial and other information concerning the Company, the Managing Member and the business and proposed business of the Company as the Subscriber considers necessary in connection with the Subscriber's investment in Interests. The Subscriber has carefully reviewed the AGREEMENT and is thoroughly familiar with the existing and proposed business, operations, management, properties and financial condition of the Company and has discussed with representatives of the Managing Member any questions the Subscriber may have had with respect thereto. The Subscriber understands:

(1) The risks involved in this offering, including the speculative nature of the investment;

(2) The financial hazards involved in this offering, including the risk of losing the Subscriber's entire investment;

(3) The lack of liquidity and restrictions on transfers of Interests; and

(4) The tax consequences of this investment.

The Subscriber has consulted with the Subscriber's own legal, accounting, tax, investment and other advisers with respect to the tax treatment of an investment by the Subscriber in Interests and the merits and risks of an investment in Interests.

(k) The Subscriber understands that the investment in Interests is highly speculative, and is able to bear the economic risk of such investment. The Subscriber is an "accredited investor" as defined in the Offering Questionnaire attached hereto as Appendix I. If the Subscriber has indicated category (13) in Part E of such Offering Questionnaire, all direct and indirect equity owners of the Subscriber are also accredited investors.

(l) The Subscriber has a net worth in excess of $1,500,000. Each direct or indirect ultimate equity owner of the Subscriber has a net worth in excess of $1,500,000, if the Subscriber is (1) a private investment company (a company that would be defined as an investment company under the ICA, but for the exception from that definition provided by ICA section 3(c)(1)), (2) an investment company registered under the ICA or (3) a business development company as defined in Advisers Act section 202(a) (22).

(m) If the Subscriber is an individual, the Subscriber is a citizen of the U.S., or a resident alien taxable as a citizen of the U.S., over twenty-one years of age (or the age of majority in the Subscriber's state of residence) and if the Subscriber is an unincorporated association, all of its members are such citizens or resident aliens of such age. The requirements of the preceding sentence will be deemed met if the Subscriber is such a citizen or resident alien of such age who is acting as a custodian, trustee or legally appointed personal representative for the beneficial investor (who may be under such age). The Subscriber agrees to notify the Company within sixty days of becoming a nonresident alien.

(n) If the Subscriber is a corporation, limited liability company, Company, trust or other entity:

(1) Unless otherwise indicated on the Subscriber's Offering Questionnaire, the Subscriber is not a foreign corporation, foreign limited liability company, foreign Company, foreign trust or foreign estate (as those terms are defined in the Code and the Regulations). The Subscriber agrees to notify the Company within sixty days of the date that the Subscriber becomes any such foreign person.

(2) The Subscriber was not formed for the purpose of investing in Interests. Less than forty percent of the Subscriber's total assets will be invested in the Company. The Subscriber has or will have other substantial business or investments.

(3) If the Subscriber is an "investment company", as that term is defined in the Investment Company Act of 1940, as amended, (the "ICA") or it relies on the exclusion from the definition of "investment company" provided by ICA section 3(c)(1) or 3(c)(7), the Subscriber understands and agrees that the Subscriber's subscription hereby may be reduced by the Managing Member to an amount that is less than ten percent of the total amount of interests in the Company held by all Capital Class Members.

(4) Other than as may be required with respect to the allocation of profits and losses from New Issue securities (under Rule 2790 of the National Association of Securities Dealers, Inc. (the "NASD"), as such Rule may be amended or replaced from time to time by the NASD or any similar rule or interpretation of any self-regulatory organization or governmental agency or official having similar authority), the governing documents of the Subscriber require that each beneficial owner of the Subscriber, including, but not limited to, shareholders, members, partners and beneficiaries, participate through such beneficial owner's interest in the Subscriber in all of the Subscriber's investments and that the profits and losses from each such investment are shared among such beneficial owners in the same proportions as all other investments of the Subscriber. No such beneficial owner may vary such beneficial owner's share of profits and losses or the amount of such beneficial owner's contribution for any particular investment made by the Subscriber.

The Subscriber understands that the Subscriber's certification in section 2(m) or (n)(1) above regarding non-foreign status may be disclosed to the IRS by the Company, and any false statement may be punishable by fine, imprisonment or both.

(o) If the Subscriber is a corporation, limited liability company, Company, trust or other entity and is not an Employee Benefit Plan, less than twenty-five percent of the value of each class of equity interests in the Subscriber (excluding from the computation non-Employee Benefit Plan interests of any individual or entity with discretionary authority or control over the assets of the Subscriber) is held by benefit plan investors, as defined in the Department of Labor's "plan asset" regulations at 29 C.F.R. §2510.3-101 ("Benefit Plan Investors"). If the Subscriber is as described in the preceding sentence and at any time twenty-five percent or more of the value of any class of equity interests in the Subscriber (computed as described in the preceding sentence) is or becomes held by Benefit Plan Investors (in which event, the Subscriber shall be or become a "25% Subscriber"), the Subscriber shall immediately disclose such fact to the Company. If the Subscriber is or becomes a 25% Subscriber or an Employee Benefit Plan, the person signing this Subscription Agreement on behalf of the Subscriber hereby represents and warrants as follows:

(1) If the Subscriber is an Employee Benefit Plan that is subject to Title I of ERISA, such person is either a named fiduciary of the Employee Benefit Plan (as defined in ERISA section 402(a)(2)) or an investment manager of the Employee Benefit Plan (as defined in ERISA section 3(38)) with

full authority under the terms of the Employee Benefit Plan and full authority from all Employee Benefit Plan beneficiaries, if required, to cause the Employee Benefit Plan to invest in the Company. Such investment has been duly approved by all other named fiduciaries whose approval is required, if any, and is not prohibited or restricted by any provision of the Employee Benefit Plan or of any related instrument.

(2) If the Subscriber is an Employee Benefit Plan that is subject to Title I of ERISA or a 25% Subscriber whose assets include assets of an Employee Benefit Plan under the "plan asset" regulations, such person has determined independently that the investment by the Employee Benefit Plan or 25% Subscriber in the Company satisfies all requirements of ERISA section 404(a)(1), specifically including the "prudent man" standards of ERISA section 404(a)(1)(B) and the "diversification" standard of section 404(a)(1)(C), and will not be prohibited under any provision of ERISA section 406 or Code section 4975(c)(1). Such person has requested and received all information from the Managing Member that such person, after due inquiry, considered relevant to such determinations. In determining that the requirements of ERISA section 404(a)(1) are satisfied, such person has taken into account the risk of loss of part or all of the Employee Benefit Plan's or 25% Subscriber's investment and that an investment in the Company will be relatively illiquid, and funds so invested will not be readily available for the payment of employee benefits. Taking into account these factors and all other factors relating to the Company, the undersigned has concluded that investment in the Company constitutes an appropriate part of the Employee Benefit Plan's or 25% Subscriber's overall investment program.

(3) Such person will notify the Managing Member, in writing, of any alteration in the identity of any named fiduciary or investment manager, including such person, who has the authority to approve investments in the Company.

(4) Neither the Managing Member nor any Affiliate of the Managing Member has rendered any investment advice (within the meaning of ERISA section 3(21) and the regulations thereunder) to the Subscriber (or, if the Subscriber is a 25% Subscriber, to any Employee Benefit Plan investing in the 25% Subscriber) with respect to the assets that will be invested in the Company on a regular basis pursuant to a mutual understanding, arrangement or agreement, written or otherwise, between the Subscriber (or, if the Subscriber is a 25% Subscriber, between any Employee Benefit Plan investing in the 25% Subscriber) and any of such parties who will act in regard to the Company, and none of such parties renders any investment advice to the Subscriber or to any such Employee Benefit Plan that furnishes a primary basis for investment decisions with respect to assets of the Subscriber or of any such Employee Benefit Plan.

If the Managing Member or any Affiliate, director, officer, member, manager, partner, employee or agent of the Managing Member is ever held to be a fiduciary, it is agreed that, in accordance with ERISA sections 405(c)(1), 405(c)(2) and 405(d) and any successor sections thereto, the fiduciary responsibilities of that person shall be limited to such person's duties in administering the business of the Company, and such person shall not be responsible for any other duties with respect to any Employee Benefit Plan or any Employee Benefit Plan investing in the 25% Subscriber (specifically including evaluating the initial or continued appropriateness of any such Employee Benefit Plan's investment in the Company under ERISA section 404(a)(1)). The Managing Member may, but shall not be required to, elect to report the Company's underlying assets directly to the DOL pursuant to 29 C.F.R. 2520.103-12.

(p) This Subscription Agreement constitutes a legal, valid and binding agreement of the Subscriber enforceable against the Subscriber in accordance with its terms. The Subscriber, if not an individual, is empowered and duly authorized to enter into this Subscription Agreement (including the power of attorney herein) under any governing document, operating agreement, Company agreement, trust instrument, pension plan, charter, articles or certificate of incorporation or organization, bylaw provision or the like. The person, if any, signing this

Subscription Agreement on behalf of the Subscriber is empowered and duly authorized to do so by the governing document, trust instrument, operating agreement, Company agreement, pension plan, charter, articles or certificate of incorporation or organization, bylaw provision, board of directors or stockholder resolution, or the like.

(q) The offer to sell Interests was directly communicated to the Subscriber by the Company in a manner such that the Subscriber was able to ask questions of and receive answers from the Managing Member concerning the terms and conditions of this transaction. At no time was the Subscriber presented with or solicited by any leaflet, public promotional meeting, newspaper, magazine or similar media (including, without limitation, any internet site that does not comply with procedures required to prevent a public solicitation of Interests), or radio or television article or advertisement, or any other form of advertising or general solicitation. The Subscriber has not reproduced, duplicated or delivered to any other person the AGREEMENT or any part thereof or excerpt therefrom, including, without limitation, this Subscription Agreement, except to the Subscriber's own advisers, and shall not do so without the Managing Member's prior consent.

(r) The Subscriber understands that insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or persons controlling the Company pursuant to the AGREEMENT or this Subscription Agreement, the Company has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the 1933 Act and is therefore unenforceable.

(s) The Subscriber understands and agrees that the Managing Member and the Company may release and disclose to proper governmental authorities confidential information about the Subscriber and, if applicable, its directors, officers and beneficial owners, if the Managing Member is required to do so by applicable law, rule, regulation, subpoena or court order or if the Managing Member believes it is in the best interest of the Company in light of the applicable laws, rules and regulations regarding Prohibited Investors.

3. AGREEMENT TO REFRAIN FROM RESALES. The Subscriber agrees that the Subscriber shall in no event pledge, hypothecate, sell, transfer, assign or otherwise dispose of any Interests, nor shall the Subscriber receive any consideration for Interests from any person, unless and until prior to any proposed pledge, hypothecation, sale, transfer, assignment or other disposition, the Subscriber shall have complied with all requirements and conditions in the AGREEMENT.

4. CERTIFICATES TO BE LEGENDED. The Subscriber understands and agrees that any instrument or certificate representing or relating to Interests may bear such legends as the Company may consider necessary or advisable to facilitate compliance with the 1933 Act and any other applicable securities law or regulation, including, without limitation, legends stating that the Interests have not been registered or qualified under the 1933 Act or any other securities law and setting forth the limitations on dispositions imposed hereby and by the Agreement.

5. INTERESTS WILL BE RESTRICTED SECURITIES. The Subscriber understands that the Interests will be "restricted securities" as that term is defined in Rule 144 under the 1933 Act and, accordingly, that the Subscriber must hold the Interests indefinitely unless they are subsequently registered or qualified under the 1933 Act and any other applicable securities law or exemptions from such registration and qualification are available. The Subscriber understands that the Company is under no obligation so to register or qualify Interests under the 1933 Act or any other securities law, or to comply with Regulation A or any other exemption under the 1933 Act or any other law. The Subscriber understands that Rule 144 is not available for any sale of Interests and will not be available for at least several years.

6. COMPANY MAY REFUSE TO TRANSFER. If, in the opinion of counsel for the Managing Member or a manager of the Managing Member, the Subscriber has acted or at any time hereafter shall have acted in a manner inconsistent with the representations and warranties in this Subscription Agreement, the Managing Member may refuse to transfer the Interests until such time as such counsel is of the opinion that such transfer will not require registration or qualification of Interests under the 1933 Act or any other securities law or registration of the Company under the ICA. The Subscriber understands and agrees that the Company may refuse to acknowledge or permit any disposition of Interests that does not comply in all respects with the Agreement and this Subscription Agreement and that the Company intends to make an appropriate notation in its records to that effect.

7. INDEMNIFICATION. The Subscriber agrees to indemnify and defend the Company, the Managing Member, each person, if any, who controls the Managing Member within the meaning of the 1933 Act or the 1934 Act, and each of their respective Affiliates, controlling persons, shareholders, members, managers, partners, directors, officers, employees, attorneys and agents and hold them harmless from and against any and all claims, liabilities, losses, damages, settlements and expenses (including, without limitation, attorneys' fees and expenses, expert witnesses' fees and expenses and court costs) as and when suffered or incurred on account of or arising out of:

(a) Any breach of or inaccuracy in the Subscriber's representations, warranties or agreements herein, including, without limitation, the defense of any claim based on any allegation of fact inconsistent with any of such representations, warranties or agreements;

(b) Any disposition of Interests contrary to any of such representations, warranties or agreements;

(c) Any action, suit or proceeding based on (1) a claim that any of such representations, warranties or agreements were inaccurate or misleading or otherwise cause for obtaining damages or redress under the 1933 Act or any other securities law, or (2) any disposition of any Interests or any part thereof or interest therein; or

(d) Any delay in the Subscriber's subscription, any freezing of the assets of the Subscriber, any suspension or delay of the Subscriber's withdrawal rights, any delivery of the Subscriber's assets invested in the Company to a governmental agency, or any other action, delay or disclosure, pursuant to section 2(e), (f), (g), (h) or (s).

8. POWER OF ATTORNEY. The Subscriber hereby irrevocably constitutes and appoints the Managing Member, with full power of substitution and re-substitution, the Subscriber's true and lawful attorney, for the Subscriber and in the Subscriber's name, place and stead and for the Subscriber's use and benefit to sign, execute, deliver, certify, acknowledge, swear to, file, record and publish:

(a) The AGREEMENT and the Company's Certificate of Formation, and any amendments to either of such documents in accordance with the AGREEMENT;

(b) Any other certificates, instruments, agreements and documents necessary to qualify or continue the Company as a limited liability company or a Company wherein members have limited liability in the states or other jurisdictions where the said attorney-in-fact deems necessary or advisable;

(c) All conveyances, assignments, documents of transfer or other instruments and documents necessary to effect the assignment of Interests or the dissolution and termination of the Company in accordance with the Agreement; and

(d) All filings and submissions pursuant to any applicable law, regulation, rule, order, decree or judgment which, in the opinion of said attorney-in-fact, may be necessary or advisable in connection with the business of the Company.

The power of attorney granted herein is coupled with an interest, shall be irrevocable, shall survive the death, disability or incapacity of the Subscriber, shall be deemed given by each and every assignee and successor of the Subscriber and may be exercised by said attorney-in-fact by listing, or attaching a list of, the names of the Subscriber and other persons for whom the said attorney-in-fact is acting and signing the Agreement and such other certificates, instruments and documents with the single signature of an authorized signatory on behalf of the said attorney-in-fact acting as such for all of the persons whose names are so listed.

9. ARBITRATION. The parties waive their right to seek remedies in court, including any right to a jury trial. The parties agree that any dispute between or among any of the parties or any of their Affiliates arising out of, relating to or in connection with this Subscription Agreement or the Company or its formation, organization, capitalization, business or management, shall be resolved exclusively through binding arbitration conducted under the rules and before the facilities of any self-regulatory organization of which the Company is a member at the time of such dispute, or of the Judicial Arbitration and Mediation Service in or nearest in geographic proximity to Sarasota, Florida, ("JAMS") if the Company is not a member of any such self-regulatory organization at the time of such dispute. The arbitration hearing shall be held in the county and state of the principal office of the Company at the time the dispute arises, unless required to be held elsewhere by the rules of the organization before which the arbitration is conducted. Disputes shall not be resolved in any other forum or venue. If conducted under the auspices of JAMS, (a) the arbitration shall be conducted by a retired judge who is experienced in resolving disputes regarding the securities business, (b) the arbitrator shall apply the substantive law of the state of Florida to all state law claims, (c) limited discovery shall be conducted in accordance with JAMS' Arbitration Rules and Procedures, (d) the arbitrator may not award punitive or exemplary damages, unless (but only to the extent that) such damages are required by law to be an available remedy for the specific claim(s) asserted, (e) the arbitrator's award shall consist of a written statement as to the disposition of each claim and the relief, if any, awarded on each claim and (f) the award shall not include or be accompanied by any findings of fact, conclusions of law or other written explanation of the reasons for the award. The parties understand that the right to appeal or to seek modification of any ruling or award by the arbitrator is severely limited under state and federal law. Any award rendered by the arbitrator shall be final and binding, and judgment may be entered thereon in any court of competent jurisdiction in the county and state of the principal office of the Company at the time the award is rendered or as otherwise provided by law.

10. SUCCESSORS. The representations, warranties and agreements in this Subscription Agreement shall be binding on the Subscriber's successors, assigns, heirs and legal representatives and shall inure to the benefit of the respective successors and assigns of the Company and the Managing Member, any other person that shall hereafter be admitted to the Company as a Managing Member thereof in accordance with the Agreement, and their respective Affiliates.

11. GOVERNING LAW. This Subscription Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida.

12. NUMBER AND GENDER. The use of the singular number shall be deemed to include the plural and vice versa, and each gender shall be deemed to include each other gender, as the context may require, and "person" shall be deemed to include natural person, corporation, limited liability company, Company, trust or other legal entity.

13. ENTIRE AGREEMENT. This Subscription Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by all parties. The representations, warranties, covenants and agreements in this Subscription Agreement shall survive the execution and delivery of this Subscription Agreement and the AGREEMENT and shall continue in full force and effect notwithstanding anything to the contrary in the AGREEMENT, except only to the extent otherwise provided in a written amendment of this Subscription Agreement, specifically referring hereto, that is signed by or on behalf of the Managing Member and the Subscriber.

14. SEVERABILITY. If any provision of this Subscription Agreement or the application thereof to any person or in any circumstances shall be held to be invalid, unlawful, or unenforceable to any extent, the remainder of this Subscription Agreement, and the application of such provision other than to the persons or in the circumstances deemed invalid, unenforceable or unlawful, shall not be affected thereby, and each remaining provision hereof shall continue to be valid and may be enforced to the fullest extent permitted by law.

KINETIC FUNDS I, LLC

SUBSCRIPTION AGREEMENT SIGNATURE PAGE

AMOUNT OF CHECK OR SIMULTANEOUS WIRE TRANSFER:

TYPE OF OWNERSHIP: **(Check One):**

Check One	TYPE OF OWNERSHIP	SIGNATURE PAGE
	INDIVIDUAL OWNERSHIP	PAGE 13
	JOINT TENANTS WITH RIGHT OF SURVIVORSHIP	PAGE 13
	COMMUNITY PROPERTY	PAGE 13
	TENANTS-IN-COMMON	PAGE 13
	CORPORATION	PAGE 14
	COMPANY OR LIMITED LIABILITY COMPANY	PAGE 15
	TRUST (Including employee benefit plan and individual retirement account trusts)	PAGE 16
	CUSTODIAN FOR MINOR	PAGE 17
	CUSTODIAN FOR PENSION PLAN/RETIREMENT FUNDS	PAGE 18
	OTHER (Please specify and include appropriate documentation)	NA

KINETIC FUNDS I, LLC

INDIVIDUAL(S):

The Managing Member may require that you furnish a certified or notarized copy of your driver's license or passport.

Dated: _____, 200__

Investor #1:
Print or Type Name:

_____

Signature: _____

Address:

_____

_____

Social Security No. _____

Investor #2 (if any):
Print or Type Name:

_____

Signature: _____

Address:

_____

_____

Social Security No. _____

KINETIC FUNDS I, LLC

CORPORATION:

The Managing Member may require that you furnish articles or certificate of incorporation, bylaws and corporate resolution certified by the secretary of the corporation authorizing execution of this Subscription Agreement by the person signing below.

Dated:_____, 20___

Name of Corporate Investor:

_____

_____

State of Incorporation

_____

Address:

_____

_____

_____

By:

_____

Authorized Signature

Print Name and Title of Signatory _____

Tax Identification Number _____

KINETIC FUNDS I, LLC

COMPANY OR LIMITED LIABILITY COMPANY:

The Managing Member may require that you furnish a certified copy of the statement of Company or Company agreement or the operating agreement and articles or certificate of organization or formation authorizing execution of this Subscription Agreement by the person signing below.

Dated:_____, 20___

Name of Company or Limited Liability Company _____ State of Formation _____

Address:

_____

_____

By:

_____

Authorized Signature

Print Name and Title of Signatory _____

Tax Identification Number _____

KINETIC FUNDS I, LLC

TRUST:

The Managing Member may require that you furnish a certified copy of the trust agreement or other instrument and any other documentation necessary to establish the authority of the person signing this Subscription Agreement.

Dated: _____ , 20___

Name of Trust _____ State and Date of Formation _____

Address:

_____

_____

By:

_____

* Signature of Trustee or Other Authorized Person

Print Name and Title of Signatory _____

Tax Identification Number _____

* All documents must be signed by or on behalf of the trustee or, in the case of an individual retirement account, the custodian, not by or on behalf of a participant or beneficiary.

KINETIC FUNDS I, LLC

CUSTODIAN FOR MINOR:

Dated: _____, 20____

Print Name of Custodian: _____

Address:

_____

_____

_____

Signature of Custodian

Custodian for:

Print Name of Minor _____

under the Florida Uniform Transfers to Minors Act

Social Security Number of Minor: _____

KINETIC FUNDS I, LLC

CUSTODIAN FOR PENSION PLAN/RETIREMENT FUNDS:

For non-self-directed Pension Plans and/or Retirement Funds or plans that are not in a trust, a signature from the authorized person for the custodian of the pension plan / retirement fund is required.

Dated:_____, 20___

Name of Pension Plan / Retirement Fund / IRA:

_____ FBO _____, IRA

Name of Custodian:

_____

State of Incorporation

_____

Address:

_____

By:

_____

Authorized Signature

Print Name and Title of Signatory _____

By:

_____

Authorized Signature

Print Name and Title of Signatory _____

KINETIC FUNDS I, LLC

ACKNOWLEDGMENT

STATE OF FLORIDA) COUNTY OF SARASOTA)	CAPACITY CLAIMED BY SIGNER ___INDIVIDUAL _X__CORPORATE OFFICER(S)
On _____, before me, _____, Notary Public, personally appeared MICHAEL S WILLIAMS	TITLE(S) PARTNER(S) __X_ GENERAL ____ LIMITED
personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument WITNESS my hand and official seal.	___ ATTORNEY-IN-FACT ___ TRUSTEE(S) GUARDIAN/CONSERVATOR ___ OTHER: SIGNER IS REPRESENTING: (Name of Person(s) or Entity(ies)
(SIGNATURE OF NOTARY)	

COMPANY'S ACCEPTANCE

KINETIC FUNDS I, LLC, the Company named above, hereby accepts the foregoing Subscription Agreement as of _____, 20___.

by: _____
Michael S. Williams,
Managing Member of LF 42, LLC,
Managing Member, Kinetic Partners, LLC

KINETIC FUNDS I, LLC

Exhibit 4

EXHIBIT "B-1"
TO
Kinetic Funds I, LLC
OPERATING AGREEMENT

Class B Member Addendum

This Addendum, consisting of three (3) pages, is entered into as of _____ ___, 20___ in connection with the admission of _____ as a Class B Member of KINETIC FUNDS I, LLC (the "Class B 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 B Member at the Company.

The Class B 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 B Member will contribute _____ ($_____) 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 B Member. Please check the box below corresponding to the Funds that the Class B Member will participate in and indicate the amount to be initially allocated to each.

☐ KFINFLT (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: _____

☐ KFYIELD (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: _____

☐ KFVALUE (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: _____

☐ KFMETAL (Gold) – Fund focuses on investing in the listed gold market. Profits are removed monthly and used to purchase physical gold, which is then stored in vaults for the Class B Members. All Class B Members' physical gold holdings are stored at the BB&T bank vaults located at 1800 2nd St. #100, Sarasota, FL 34236. The Class A Member may, in its sole discretion, change the gold storage facility and will notify the Class B Member(s) if/when this change occurs. Gold storage is charged One Percent (1%) of net gold value on a per year basis and charged monthly. A Class B Member may take physical possession of the gold held for that Member at the end of a calendar quarter with a thirty (30) day prior written notice. Physical gold can be received at the Company offices or shipped to the Class B Member. The Class B Member will be responsible for the shipping arrangements and costs. The Class B Member will own either listed gold or physical gold. Assets in the Fund include, but are not necessarily limited to, ETFs and listed options. Assets may be long and/or short. This Fund is not eligible to accept qualified monies.
Amount: _____

☐ KFGAINS (Risk / Reward) – fund focuses on leveraging position in the index markets to generate the highest rate of return. This is a high-risk fund with the expectations of generating 20% returns per year. Assets in the fund include, but are not necessarily limited to, index based listed options. Assets may be long and/or short. This Fund is not eligible to accept qualified monies.

Amount: _____

The Class B 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.

REPORTING:

The Class B Member will receive a monthly statement of its selected Fund(s)' investments. The report will be sent by email on the 15th of each month for the preceding month's activity. The Fund(s) report Profit distributions on realized returns and mark to market value 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 B 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 15th 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 B 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 B 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 profits 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 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 realized and unrealized accounting; this may change due to regulatory changes or requirements. Changes, if any, may affect realized returns and tax reporting. The Class B member will be notified as to any changes, when and if they occur. It is the Class B Member's responsibility to contact its tax professional to see how it may or may not affect its tax reporting. Net Profits shall be calculated and distributed on a monthly basis.

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 B Member will be issued to the Class B Member.

HIGHWATER MARK:

A Class B Member will have a high-water mark that is based on the profits and losses 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". Any realized Losses in the account must be made up in full with realized gains prior to the Class A Member's receipt of any Profits. The high-water market is reset at fiscal year-end of the Class B Members' profit/loss at year-end.

REINVESTMENT / DIVIDEND DISTRUBTIONS

A Class B Member may reinvest up to One Hundred Percent (100%) of any/all net dividends generated in any Fund selected on the previous page hereof, or receive a distribution of net dividends on a monthly basis. Dividend distributions are sent out on the 10th business day for any/all dividends that that are generated in the fund(s) from the preceding month.

☐ Yes, Class B member wishes to reinvest all (or ___% of net dividends).

PRINCIPAL WITHDRAWALS:

The Class B Member may make a Principal Withdrawal request at the end of a calendar quarter, provided that thirty (30) days' prior written notice is provided to Company and that said Class B Member's capital contribution has been deposited with the Company for at least ninety (90) days. Principal Withdrawals are not a right and are at all times subject to regulatory and Company approvals. 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 B 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.

TERMINATION:

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

The Class B Member may terminate its Class B 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 / DIVIDEND DISTRUBTIONS and PRINCIPAL WITHDRAWALS sections hereinabove.

FEES AND EXPENSES:

The Fund(s) is/are charged an annual One Percent (1%) expense ratio. The 1% expense ratio 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 B 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 B Member's capital contribution and the Class B Member expressly understands and agrees that its entire capital contribution may be lost, in which case the Class B 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.

[SIGNATURES ON FOLLOWING PAGE]

AGREED AND ACKNOWLEDGED THIS ____ DAY OF _____, 20___:

CLASS B MEMBER

_____ (print name)

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

By: _____ Office/Residence Phone: _____

Address: _____ Cellphone: _____

_____ 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

Exhibit 5

EXHIBIT "C-1"
TO
Kinetic Funds I, LLC
OPERATING AGREEMENT

Class C Member Addendum

This Addendum, consisting of three (3) pages, is entered into as of _____ in connection with the admission of _____ 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 _____ ($_____) 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. The "Preferred Return" investment may encumber Class C member investments for a period of time based on maturity.

☐ KFINFLT (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: _____

☐ KFYIELD (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: _____

☐ KFVALUE (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 15th 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 15th 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.

REINVESTMENT/DIVIDENDDISTRIBUTIONS:

A Class C Member may reinvest up to One Hundred Percent (100%) of any/all net dividends generated in any Fund selected on the previous page hereof, or receive a distribution of net dividends on a monthly basis. Dividend distributions are made on the 10th business day for any/all dividends that are generated in the Fund(s) from the previous month.

☐ Yes, Class C Member hereby elects to reinvest all (or _____%) of its share of net dividends.

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 profits 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 realized and unrealized 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 its tax reporting. Net Profits shall be calculated and distributed on a monthly basis.

The Class A Member will receive 20% of the net profits. The Class A Member will <u>not</u> 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.

Preferred Return Investment profits and losses, if any, will be allocated to the Class C member investments at the absolute and sole discretion of the Class A Member.

HIGHWATER MARK:

A Class C Member will have a high-water mark that is based on the profits and losses 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". Any realized losses in the account must be made up in full with realized gains, prior to the Class A member receiving any profits. The high-water market is reset at fiscal year-end of the Class C Members' realized profit/loss at year-end.

The high-water mark only pertains to returns generated in the fund/s and not the preferred return investment.

PRINCIPAL 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. Class C Member assets may also be invested in "preferred return" investments (INVESTMENT SECTION), which may not be fully liquid in order to accommodate principal withdrawal requests. The Company will inform Class C Members as/if any principal capital that maybe available at year-end for principal redemptions. 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 PRINCIPAL 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 / DIVIDEND DISTRUBTIONS and PRINCIPAL WITHDRAWALS sections hereinabove.

FEES AND EXPENSES:

The Fund(s) is/are charged an annual One Percent (1%) expense ratio. The 1% expense ratio 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 ____ DAY OF _____, 20___:

CLASS C MEMBER

_____ (print name)

_____ (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: _____ Cellphone: _____

_____ 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

Exhibit 6

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 2nd 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 15th 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."

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 Section3(c), Lender is under no obligation to honor a Request for Advance for less than $5,000.00.

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 FINANCECHARGE 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 Section11 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.

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 Section16 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.

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.

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:

1800 SECOND ST #955
SARASOTA FL 34236

Fax: _____

Phone:

_____ **(home)**

_____ **(business)**

_____ **(cell)**

_____ **(home)**

_____ **(business)**

Email: _____

[signatures continued on following page, as applicable]

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 err 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;

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)**

Exhibit 7

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 5/4/18, 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 15th 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 15th 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 Apr. C, 20 15.

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: _____

Address: 1800 SECOND ST

SARASOTA FL 34236

_____

Office/Residence Phone: _____

Cellphone: _____

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

Exhibit 7.1

BMO Harris Bank
A part of BMO Financial Group

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

ACCOUNT NUMBER: [redacted]247

Statement Period
05/01/15 TO 05/31/15
IM009900290000 0

01 09837

LF42
1800 SECOND ST #955
SARASOTA FL 34236

0

0000

APPLE PAY(TM) IS HERE! NOW MAKE PURCHASES IN-STORE OR IN-APP USING YOUR BMO HARRIS CARD WITH A SINGLE TOUCH. IT'S EASY AND CONVENIENT - ALL YOU NEED IS YOUR COMPATIBLE APPLE DEVICE. TO GET STARTED, SIMPLY GO TO SETTINGS, SELECT PASSBOOK(R) & APPLE PAY AND FOLLOW THE INSTRUCTIONS TO ADD YOUR BMO HARRIS CARDS. FOR MORE INFORMATION, VISIT BMOHARRIS.COM/APPLEPAY.

MESSAGE AND DATA RATES MAY APPLY. CONTACT YOUR WIRELESS CARRIER FOR DETAILS. APPLE AND PASSBOOK ARE TRADEMARKS OF APPLE INC., REGISTERED IN THE U.S. AND OTHER COUNTRIES. APPLE PAY IS A TRADEMARK OF APPLE INC.

IF YOU HAVE QUESTIONS ABOUT ANY OF YOUR BMO HARRIS ACCOUNTS, PLEASE CALL US TOLL-FREE AT 1-888-340-2265. BMO HARRIS BANK(R) IS A TRADE NAME USED BY BMO HARRIS BANK N.A. MEMBER FDIC. EQUAL HOUSING LENDER. NMLS401052 VISIT US ONLINE AT WWW.BMOHARRIS.COM.

CHECKING ACCOUNTS

ESSENTIAL BUSINESS CKG **LF42**
ACCOUNT NUMBER [redacted]247 (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	DEPOSIT

Withdrawals and Other Debits

Date	Amount	Description
May		ACH DEBIT CCD ADP PAYROLL FEES ADP - FEES
May 29		CH DEBIT CCD ADP TX/FINCL SVC ADP - TAX
May 29		CH DEBIT CCD ADP TX/FINCL SVC ADP - TAX

Checks by Serial Number

Date	Serial #	Amount	Date	Serial #	Amount
May 04	554	65,000.00	M		0

Exhibit 8

LENDACY

Account Title:	Michael Williams
Mailing Address:	7644 Sandalwood Way
	Sarasota, FL 34231
Statement Period:	02/01/2020 - 03/05/2020
Account Number:	[redacted]0002
Credit Limit:	**15,000.00**
Available Balance:	**15,000.00**

Account Summary:

	Month	Year-to-Date
Beginning Period Debt	(7,482.42)	(7,482.42)
Current Period Adjustments:		
+ Payments	7,482.42	7,482.42
- Withdrawals	-	-
Total Period Charge(s)	-	-
Ending Debt Balance	**-**	**-**

Transaction History:

Date	Credit	Debit
3/5/2020	7,482.42	-

Client Director:

APR:	**4.10%**
Mimimum Due:	**0.00**
Due Date:	**3/31/2020**

Lendacy is a division of KCL Services, LLC. Total Periodic Charge(s) is(are) based on the current Federal Funds rate (Index) plus interest (Margin) in accordance with your Credit Facility Agreement and Truth in Lending Disclosure (CFA). Beginning Credit Line balance is based on KCL Services, LLC's approval process and may be changed with or without notice in KCL Services, LLC's sole and absolute discretion. No funds held by KCL Services, LLC are insured by any federal agency, other person, agency or entity. Past due amounts are subject to additional interest charges. Please refer to your CFA and contact your Client Director for additional information.

Exhibit 9

LENDACY

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 15th 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 thepayment 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."

LENDACY

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 ordelayed.

d) You acknowledge and agree that Lender shall havethe unfettered right to aggregate and securitize itsloans inany 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.

LENDACY

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 resultinincreasesinthe Periodic FINANCECHARGERateandyourminimummonthlypayment. Asandwhenthe Indexdecreases, there will be corresponding decreases to the Periodic FINANCE CHARGE and your minimum monthly payment. To determine the Periodic FINANCECHARGEforeachdayinthebillingcycle, Lenderwillmultiplytheapplicable Daily Periodic FINANCECHARGERate 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.

LENDACY

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 Section3(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.

LENDACY

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 yourcredit 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 accountnumber;
(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.

LENDACY

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.

LENDACY

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.

LENDACY

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 theamountpaid or agreed to bepaid 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

LENDACY

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 **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** _____

LENDACY

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 err 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.

LENDACY

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 theAgreement.

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 theAgreement.

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) Thefailure of Lender to commence an action against Borrower at anytime 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 ofremedies by Lender, whether or notanysuch election ofremediesdestroys or otherwise impairsthesubrogation 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.

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GUARANTOR:

SIGNATURE_____ **PRINTED NAME**_____ **DATE** _____

ADDRESS_____ **CITY**_____ **STATE**_____ **ZIP** _____

FAX_____ **EMAIL**_____ **HOME PHONE** _____

BUSINESS PHONE_____ **CELL PHONE** _____

Exhibit 10

---CERTIFICO: Que el---- día del otorgamiento---- expedí Primera Copia Certificada a favor de **MICHAEL SCOTT WILLIAMS**, parte interesada, DOY FE.----------

NOTARIO PÚBLICO

ANA L. TOLEDO DÁVILA
ABOGADA-NOTARIO

----------**DEED NUMBER TWO (2)**----------

---------- **PURCHASE AND SALE** ----------

-----In the City of San Juan, Puerto Rico, this twenty-fourth (24th) day of March, two thousand seventeen (2017).----------

----------**BEFORE ME**----------

-----**ANA L. TOLEDO DÁVILA**, Attorney-at-Law and Notary Public, with notary office and residence in San Juan, Puerto Rico. ----------

----------**COMPARECEN**----------
----------**APPEAR**----------

-----**AS PARTY OF THE FIRST PART AND AS SELLERS: RAMIRO MILLÁN CATASUS** and **HIS WIFE MARGARITA MILLÁN TORRES**, also known as Margarita Torres Rodriguez, of legal age, married, property owners and residents of San Juan, Puerto Rico. Hereinafter designated as "THE SELLERS". ----------

-----**AS A PARTY OF THE SECOND PART AND AS PURCHASER: MICHAEL SCOTT WILLIAMS**, of legal age, single, property owner, and resident of San Juan, Puerto Rico, United States of America. Hereinafter referred to as "THE PURCHASER".----------

----------**I ATTEST**----------

-----That I have identified all of the parties by means of their driver's licenses that contain their photoraphs and signatures as required in Article 17 of the Puerto Rico Notary Law.----------

-----I attest as to their personal circumstances and they assure me and in my opinion, they have the necessary legal capacity to execute this deed and consequently they freely and voluntarily:----------

----------**SET FORTH**----------

-----**FIRST**: The Sellers express that they are the the owners in fee simple of the properties described below in the Spanish language:----------

-----**URBANA:** APARTAMENTO PENTHOUSE "A" (PH-A) URBANA: PROPIEDAD HORIZONTAL. Apartamento PH A, localizado en el tercer piso del Condominio Gabriela's House, con una cabida superficial de tres mil dieciocho punto siete pies cuadrados (3,018.7 pc), equivalentes a doscientos ochenta punto cuatro metros cuadrados (280.4 mc). Colinda por el **Norte**, en una distancia de setenta y un

EXHIBIT 7
9/19/19

pies nueve pulgadas (71'9"), equivalentes a veintiún punto nueve metros (21.9 m) con la pared exterior del Condominio que da hacia la colindancia con la propiedad marcada con el número 107 de la Calle Cruz; por el **Sur**, en una distancia de setenta y un pies nueve pulgadas (71'9"), equivalentes a veintiún punto nueve metros (21.9 m), con la pared exterior del Condominio que da hacia la colindancia con la Calle Luna; por el **Este**, en una distancia de cincuenta y dos pies con seis pulgadas (52'6"), equivalentes a dieciséis metros (16.00 m) con el Apartamento Penthouse B ("PH-B") y por el **Oeste**, en una distancia de cincuenta y dos pies con seis pulgadas (52'56"), equivalentes a dieciséis metros (16.00 m) con la pared exterior del Condominio que da hacia la colindancia con la Calle Cruz.----------

------A este apartamento le corresponde un dieciséis punto nueve, nueve, cinco, ocho porciento (16.9958%) de los elementos Comunes del Condominio.----------

-----Recorded in page 122 of volume 195 of San Juan, Property number 5231, Registry of the Property of San Juan, First Section.----------

-----Cadaster number: 040-002-026-15-012.----------

----B. APARTAMENTO PENTHOUSE "B" (PH-B) URBANA: PROPIEDAD HORIZONTAL. Apartamento PH B, localizado en el tercer piso del Condominio Gabriela's House, con una cabida superficial de dos mil cuarenta y dos punto ocho pies cuadrados (2,042.8 pc), equivalentes a ciento ochenta y nueve punto ocho metros cuadrados (189.8 mc). Colinda por el **Norte**, en una distancia de cincuenta y nueve pies nueve punto cinco pulgadas (59'9.5") equivalentes a dieciocho punto dos metros (18.2 m), con la pared exterior del Condominio que da hacia la colindancia con la propiedad marcada con el número ciento siete (107) de la Calle Cruz; por el **Sur**, en una distancia de cincuenta y siete pies nueve punto cinco pulgadas (57'9.5"), equivalentes a dieciocho punto dos metros (18.2 m), con la pared exterior del Condominio que da hacia la colindancia con la Calle Luna; por el **Este**, en una distancia de cincuenta y dos pies con seis pulgadas (52'6"), equivalentes a dieciséis metros (16.00) con la pared exterior del Condominio que da hacia la colindancia con la propiedad marcada con el doscientos uno (201) de la Calle Luna y por el **Oeste**, en una distancia de cincuenta y dos pies con seis pulgadas (52'6"), equivalentes a dieciséis metros (16.00 m) con la pared exterior del Condominio que da hacia la colindancia con el apartamento Penthouse "B" ("PH-B").----------

-----A este apartamento le corresponde un once punto cinco, cero, uno, tres porciento (11.5013%) de los elementos Comunes del Condominio.----------

-----Recorded in page 124 of volume 195 of San

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Juan, Property number 5232, Registry of the Property of San Juan, First Section.----------

-----Cadaster number: 040-002-026-15-013.----------

-----C. APARTAMENTO NUMERO DOS "E" (2E): URBANA: PROPIEDAD HORIZONTAL: Apartamento dos "E" (2E) localizado en el segundo piso del Condominio Gabriela's House con una cabida superficial de mil doscientos treinta y uno punto nueve pies cuadrados (1,231.9 pc), equivalentes a ciento catorce punto cuatro metros cuadrados (114.4 mc). Colinda por el **Norte**, en una distancia de veinticuatro pies cinco punto cinco pulgadas (24'5.5"), equivalentes a siete punto cuarenta y cinco metros (7.45 m), con la pared exterior del Condominio que da hacia la colindancia con la propiedad marcada con el numero ciento siete (107) de la Calle Cruz; por el **Sur**, en una distancia de veinticuatro pies cinco punto cinco pulgadas (24'5.5"), equivalentes a siete punto cuarenta y cinco metros (7.45 m), con el Apartamento dos "D") (2-D); por el **Este**, en una distancia de treinta y siete pies una pulgada (37'1"), equivalentes a once punto tres metros (11.3 m), con la pared exterior del Condominio que da hacia la propiedad marcada con el numero doscientos uno (201) de la Calle Luna y por el **Oeste**, en una distancia de treinta y siete pies una pulgada (37'1"), equivalentes a once punto tres metros (11.3 m), con el Apartamento dos "C"(2C) y con el Apartamento dos "D" (2D).----------

------A este apartamento le corresponde un seis punto nueve, tres, cinco ocho porciento (6.9358%) de los elementos Comunes del Condominio.

-----Recorded in page 118 of volume 195 of San Juan, Property number 5229, Registry of the Property of San Juan, First Section.----------

-----Cadaster number: 040-002-026-15-011.----------

-----D. **PROPIEDAD HORIZONTAL: APARTAMIENTO DIECISÉIS (16):** Unidad comercial de estacionamiento localizada en el tercer nivel del Edificio A del Condominio Cochera San Francisco ubicado en el doscientos cuatro (204) de la Calle Luna, Viejo San Juan, con un área superficial de ciento cuarenta y ocho punto cincuenta pies cuadrados (148.50 pc), (no está cantidad en metros en descripción), y en lindes por el Norte: con el apartamento diecisiete (17); por el Sur, con área comunal, por el Este, con área comunal y por el Oeste, con área comunal. Tiene acceso por el tramo de tránsito vehicular central comunal del tercer nivel que conecta con la rampa desembocando en el antiguo Pasaje Matienzo, hoy área comunal de tránsito vehicular y peatonal y finalmente a la vía pública Calle Luna. La unidad tiene acceso peatonal a la Calle San Francisco a través de las escaleras y ascensor común.----------

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-----Corresponde a dicho apartamento una participación indivisa en los elementos comunes generales del Condominio equivalentes al cero punto seis, seis cero tres porciento (0.6603%).---

-----Recorded in page 32 of volume 199 of San Juan, Property number 5434, Registry of the Property of San Juan, First Section.----------

-----Cadaster number: 040-002-035-17-040.----------

-----E. **PROPIEDAD HORIZONTAL: APARTAMIENTO DIECINUEVE (19):** Unidad comercial de estacionamiento localizada en el tercer nivel del Edificio A del Condominio Cochera San Francisco ubicado en el doscientos cuatro (204) de la Calle Luna, Viejo San Juan, con un área superficial de ciento cuarenta y ocho punto cincuenta pies cuadrados (148.50 pc), (no está cantidad en metros en descripción), y en lindes por el Norte: con área comunal; por el Sur, el apartamento dieciocho (18); por el Este, con área comunal y por el Oeste, con área comunal. Tiene acceso por el tramo de tránsito vehicular central comunal del tercer nivel que conecta con la rampa desembocando en el antiguo Pasaje Matienzo, hoy área comunal de tránsito vehicular y peatonal y finalmente a la vía pública Calle Luna. La unidad tiene acceso peatonal a la Calle San Francisco a través de las escaleras y ascensor común.----------

----Corresponde a dicho apartamento una participación indivisa en los elementos comunes generales del Condominio equivalentes al cero punto seis, seis cero tres porciento (0.6603%).---

-----Recorded in page 28 of volume 199 of San Juan, Property number 5432, Registry of the Property of San Juan, First Section.----------

-----Cadaster number: 040-002-035-17-043.----------

----**SEGUNDA:** SELLER purchased the properties described in the preceding paragraph as follows:

------PROPERTY "A" - APARTMENT PENTHOUSE "A" Purchased from Gabriela's House, S.E., for the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00), as per deed number four (4) executed in San Juan, Puerto Rico, on August twenty-first (21), two thousand three (2003), before the notary Santiago Cordero Osorio.----------

------PROPERTY "B" - APARTMENT PENTHOUSE "B": Purchased from Gabriela's House, S.E., for the amount of THREE HUNDRED SEVENTY-SIX THOUSAND DOLLARS ($376,000.00), as per deed number four (4) executed in San Juan, Puerto Rico, on August twenty-first (21), two thousand three (2003), before the notary Santiago Cordero Osorio.---------

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------PROPERTY "C" - APARTMENT TWO E: Purchased from Gabriela's House, S.E., for the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00), as per deed number ten (10), executed in San Juan, Puerto Rico, on September sixteen (16), two thousand three (2003), before the notary Santiago Cordero Osorio.----------

------PROPERTY "D" - (La Cochera Apartment sixteen 16) and PROPERTY "E" (La Cochera Apartment 19): Purchased from Cochera, S.E., each for the amount of ONE HUNDRED TEN THOUSAND DOLLARS ($110,000.00), as per deed number 2 executed in San Juan, Puerto Rico on December twenty-first (21st), two thousand seven (2007) before the notary Jose A. Axtmayer.--

----**THIRD:** The properties described above are subject to the following recorded liens and encumbrances:----------

------**PROPERTY "A" (APARTMENT PENTHOUSE-A,)** and **PROPERTY "B" (APARTMENT PENTHOUSE B):** Mortgage to guarantee note in favor of Santander Mortgage Corporation or to its order, for the amount of EIGHT HUNDRED SEVENTY-SIX THOUSAND DOLLARS ($876,000.00), plus six percent (6%) per annum interest, of which apartment PENTHOUSE "A" is encumbered with a portion equivalent to FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) and PENTHOUSE "B" is encumbered with a portion equivalent to THREE HUNDRED SEVENTY-SIX THOUSAND DOLLARS ($376,000.00), as per deed number two hundred sixty-nine (269), executed in San Juan, Puerto Rico, on August twenty-first (21st), two thousand and three (2003) before the notary Orlin P. Goble and recorded in page 122 of volume 195 of San Juan for property "A", number 5231 and page 124 of volume 195 of San Juan for property "B", number 5232, Registry of the Property of San Juan, First Section.----------

------**PROPERTY "C" - APARTMENT TWO "E":** Mortgage to guarantee note in favor of Santander Mortgage Corporation or to its order, for the amount of TWO HUNDRED THOUSAND DOLLARS ($200,000.00) plus five and seven eighths percent (5 7/8%) per annum interest, as per deed number 466 executed in San Juan, Puerto Rico, on December sixteen (16) two thousand twelve (2012), before the notary Orlin P. Goble and recorded in page 118 of volume 195 of San Juan, Registry of the Property of San Juan, First Section.----------

-----**FOURTH:** The SELLER has agreed to sell the property described in the FIRST expositive paragraph pursuant to the following:----------

----------**CLAUSES AND CONDITIONS**----------

----**FIRST:** By means of this deed, the SELLERS sell, transfer and convey to the PURCHASER its

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rights over the non-movable properties described the FIRST expositive paragraph of this deed, with all of its uses, annexes, servitudes, and all that which forms part of the property, so that the PURCHASER can enjoy and possess it as its sole owner, as the SELLERS have done until now, without any limitation, except those that may arise from the Registry's records.----------

----**SECOND**: The total price agreed upon for this PURCHASE AND SALE is the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ($1,500,000.00), which SELLER recognizes having received a check for the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00) prior to this act as deposit, remaining a balance of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS of which SELLER retains the necessary amount to pay the liens set forth in the THIRD expositive paragraph as well as the funds required to cancel the mortgages at the Registry of the Property. The remaining amount SELLERS acknowledge receiving on this act.----------

------The global sale price set forth above is divided among the properties described in the first expositive paragraph as follows:----------

-----**PROPERTY "A" (APARTMENT PENTHOUSE "A")**: SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS ($625,000.00).----------

----- **PROPERTY "B" (APARTMENT PENTHOUSE "B")**: FOUR HUNDRED SEVENTY-FIVE THOUSAND DOLLARS ($475,000.00).----------

-----**PROPERTY "C" (APARTMENT TWO-"E")** TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00).----------

-----**PROPERTY "D" (PROPIEDAD HORIZONTAL: APARTAMIENTO DIECISEIS (16))** SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00).----------

-----**PROPERTY "E" (PROPIEDAD HORIZONTAL: APARTAMIENTO DIECINUEVE (19))**: SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00).----------

------SELLERS ATTEST that they acquired properties "D" and "E" for a higher amount than what they are being sold for and assure the notary that the price reduction does not entail a donation. Rather, it is due to the prevailing real estate market conditions in Puerto Rico.----------

------ Sellers further attest that the outstanding balance of the promissory note secured by the

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mortgage encumbering Property "A" and Property "B" as of March thirty-first (31st), two thousand seventeen (2017), is SIX HUNDRED SIXTY-TWO THOUSAND SIX HUNDRED FIFTEEN DOLLARS AND TWENTY-ONE CENTS ($662,615.21) and that that the outstanding balance of the promissory note secured by the mortgage encumbering Property "C" as of March thirty-first (31st), two thousand seventeen (2017) is ONE HUNDRED FIFTY-TWO THOUSAND THREE HUNDRED SIXTY EIGHT DOLLARS AND NINE CENTS ($152,368.09). Therefore, Sellers represent to Purchaser and hereby covenant that the amount of EIGHT HUNDRED FOURTEEN THOUSAND NINE HUNDRED EIGHTY DOLLARS AND THIRTY CENTS ($814,980.30) of the Purchase Price paid by Purchaser hereunder shall be used by Sellers to pay and cancel the outstanding balances described herein.----------

-----**THIRD**: Upon the purchase of the Properties described in the FIRST expositive paragraph, seller acquired the exclusive rights of use of the limited common element consisting of the rooftop terrace of the building.----------

----**FOURTH**: All of the properties have a property tax exemption pursuant to Law Number 374 of May fourteenth (14) of nineteen forty-nine (1949), as amended. On the date of the closing, PURCHASER has been handed a copy of the tax exemption certifications issued by the Puerto Rico Institute of Culture for both Condominiums where the properties are located.----------

------Although there are no outstanding taxes assessed against any of the properties as of the date of the closing, the parties agree that the should any property tax debt arise as to any of the properties to the date of this execution will be the responsibility of THE SELLERS, and thereafter the responsibility of THE PURCHASER.---

------The notary has shown the parties the value and debt certification issued by the Center for Municipal Collections and the Department of Treasury reflecting the status of the properties object of this deed.----------

----Likewise, the parties also acknowledge, and particularly the PURCHASER, that the CRIM could retroactively impose taxes prior to the date that SELLER acquired the property, which could include the imposition of interests, late fees and penalties. Seller shall be responsible for any and all taxes, late fees, interest and penalties that may be assessed for periods prior to the date of

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execution of this Deed and shall indemnify, defend and hold harmless Purchaser from any such taxes, assessments, penalties, interests and other expenses incurred by Purchaser in connection therewith. The PURCHASER has been apprised by the notary of this possibility and insists in executing this purchase and sales deed assuming the risk of having those property taxes imposed retroactively on the property object of this deed.----------

----**FIFTH**: The PURCHASER expressly states that he has made a thorough examination of the properties object of this deed and is fully aware of the status of the each one's current conditions; that he finds the properties to be suitable for the purpose for which they are intended and shall accept and acquire all rights transferred herein for the price agreed upon as is, and exonerates the SELLERS of any apparent or hidden defect either in the ground or in any structure that may be located on it, of design and/or construction and of any defect in the property caused by the passage of time, erosion, mechanical defects, as well as, but without limitation to: crevices, leaks on walls, roofs, floors, etcetera or loosening of plastering, loose tiles, recessed floors, blocked sanitary lines and/or aqueducts, or any other class; damage to power lines, etcétera.----------

----**SIXTH**: The PURCHASER enters into the immediate possession of the non-movable properties acquired by means of this deed, without any other formality that the execution of this deed, and the SELLERS recognize they is bound by eviction and clearing according to law. Specifically, the SELLERS guarantee to PURCHASER the validy of this act, and extends a warranty as to the validity of this transaction and the titles that are being transferred to PURCHASER.----------

-----**SEVENTH**: By means of this document, the appearing parties agree and oblige to execute any other document that may be required from them so that this deed gets recorded at the Registry of the Property, as well as pay for any additional fee that the Registry of the Property may demand, to be paid for the recording of this deed at the Registry of the Property.----------

----------**WARNINGS**----------

----**I**, the Notary, **ATTEST** of having made to the appearing parties the pertinent legal warnings and

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particularly warned of the following:----------

----**(A)** The title and lien reports for each property were prepared by CENTURION INSURANCE COMPANY INC., a company unrelated to the Notary authorizing this deed, dated March twenty-first (21), two thousand seventeen (2017), which covers to the entries in the daily Journal and reflect the status of the properties at the Registry of the Property and the liens and encumbrances reflected therein and set forth above. The notary has also advised PURCHASER of the convenience of obtaining a registry certification of the properties object of this deed, that specifies in detail the status of the properties at the Registry of the Property. Furthermore, the notary has advised the PURCHASER of the convenience that he himself check the status of the properties since the Title and Lien Report or a Certfication issued by the Registry of the Property does not close the access to the Registry's records and, therefore, there may be liens presented after the date of their issuance, regardless of how recent the title and lien report or certification is. Despite this warning, the appearing parties proceed to execute this deed relying on the title and lien reports specified herein.----------

------**(B)** Of the possibility of additional statutory charges or liens and unregistered property taxes levied on each property up to the date of the execution of this deed, for which the property and the PURCHASER would be liable, but SELLERS qould be bound to reimburse PURCHASER for any such payment.----------

-----**(C)** I warned the PURCHASER of the possibility that the real size of the properties may result to be less than the ones described in the Registry of the Property and that he has a right to carry out a survey prior to the execution of this deed. The PURCHASER states that it is aware of this possibility and decided to continue with the execution of this deed, releasing the SELLERS, the real estate broker and the notary of any liability resulting from any discrepancy between the physical reality and the legal description of the property registered at the Registry of the Property.----------

-----SELLERS have given PURCHASER a copy of the plot plan of each of the properties handed to them upon their purchase of each property.----------

----**(D)** I also warned the PURCHASER that if the

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property is located within a Floodable Zone, any owner or occupant in the present or future, is bound by law to observe and comply with the requirements and provisions of the Regulation on Flood-prone areas, warning that non-compliance with its provisions would constitute an illegal act pursuant to section three (3) of law eleven (11) of March eight (8) nineteen eighty-eight (1988) about Floodable zones, contained in volume twenty-three of the Puerto Rico Annotated Laws, section two hundred twenty five "g" (23 L.P.R.A. Sec. 225g). The appearing party recognizes this and agrees to engage in strict compliance of these provisions if the statute is applicable.----------

----**(F)** The parties are advised, particularly the PURCHASERS, that if there is any structure in any of the parcel number object of this deed that has been used as a residence prior to the year nineteen seventy-eight (1978), the Residential Lead-Based Paint Hazard Reduction Act, contained in volume forty-two of the United States Code, Section 851 and subsequent sections is applicable. This statute and its Regulation impose a duty on the SELLER and/or its agent or real estate broker if there is one, and before the PURCHASER becomes bound by a contract, to inform of its knowledge of the presence of any lead-based paint or any danger in the property associated with it; provide any report or evaluation regarding lead that they could have access to and give the PURCHASER time to inspect the property to determine the existence or non existence of lead-based paint or surrender its rights under the law; provide an informative booklet prepared by the Environmental Protection Agency. It is required that the parties and the agent or broker, if any, complete a document with their signatures confirming compliance with the requirements of that federal law. THE PURCHASER is also warned of the fact that non-compliance with that statute's requirements exposes the SELLER and its agent to be liable for any damages that may result. Aware of this warning, both parties express their acceptance and proceed with the execution of this deed, relieving the Notary of liability as to the requirement of disclosure regarding lead-based paint. ----------

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-----**(G)** I warned the parties, and particularly the PURCHASER, of the need to present a certified copy of this deed at the Registry of the Property, so that PURCHASER'S rights over the property are duly recorded.----------

-----**(H)** There is a possibility that other

documents that affect the rights created herein have been presented for their recording prior to the execution of this deed but after the date that the tile and lien report was prepared, as well as the date of the execution of this deed, and/or the presentation of the certified copy of this deed which may result in a preferential or priority right or claim as to the recording of this deed, due to the prior execution and presentation of the document at the Registry of the Property.---------

----**(I)** The PURCHASER recognizes that pursuant to Law seventy-five (75) of July second (2nd) nineteen eighty-seven (1987) as amended by Law two hundred fifty (250) of September four (4), two thousand four (2004), hereinafter referred to as "Law 75", in case there is a structure dedicated to residence in the parcel number object of this deed which the PURCHASER decides to use as its principal residence, it must fill out and submit to the CRIM the Application for Tax Exemption and submit it to that entity. In spite of this, the PURCHASER understands that the submittal of the application does not mean that the exemption is granted automatically; since its approval is subject to the time it may take the CRIM to process it. ----------

-----**(J)** I specifically warned the SELLER as to the consequences of sending the Informative Form regarding the Transfer of Non-Movable Property to be submitted to the Puerto Rico Department of Treasury as well as the CRIM, in which the SELLER has to certify under its signature of the meaning of its responsibility in case of eviction.--------

----**(K)** I also warned the PURCHASER of its right as owner to purchase an Owner's Title Insurance Policy that will guarantee its title and provide restitution in case it sustains a loss or reduction in its property rights.----------

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----**(L)** The parties were also informed that the CRIM may retroactively impose taxes on the property should the property had enjoyed an improper tax exemption, in which case those taxes will constitute a lien against the property if they are not paid on time. The parties understand the scope of this warning. The parties exonerate the notary of any liability as to the property taxes on the properties object of this deed.------

-----**(M)** The appearing parties are warned that pursuant to law seven (7) of March nine (9) two thousand nine (2009), known as the "Special Law

Declaring Fiscal Emergency Status and Establishing an Integral Plan to Save the Credit of Puerto Rico", a special tax was levied on non-movable property that is equal to one hundred percent (100%) of the tax determined by the CRIM. This tax was only in effect for the tax years two thousand nine-two to thousand ten (2009-2010) and two thousand ten to two thousand eleven (2010-2011). In spite of the fact that the law has been repealed and thus there is no obligation to pay the additional property tax, once this property is assessed for tax purposes, the Puerto Rico Department of Treasury can retroactively impose taxes under this law for the period it was in effect. In such case, the SELLER will be responsible to the PURCHASER for any debt for this concept that becomes due and payable. ----------

----(N) I warned the parties, and especially the PURCHASER of their right to have the mortgages that encumber some of the properties cancelled as part of this act and PURCHASER chose to proceed with the purchase. On the date of the closing, SELLERS have shown PURCHASER the certified checks issued for the payment of the two liens that encumber properties described under "A", "B" and "C" of the FIRST expositive paragraph. Sellers hereby covenant that they shall be responsible for the payment and cancellation of the mortgages encumbering any of the properties existing immediately after the execution of this deed and that SELLERS would be liable to PURCHASER should they fail to pay the mortgages immediately after the closing and cancel the mortgages as soon as the mortgage Banks make the notes available to do so.----------

---(O) I warned the PURCHASER that all properties comprised in this deed are subject to the Puerto Rico Horizontal Property Law as amended by the Law of Condominiums, and, as such, he is bound to comply with the regulations of the Condominium where each property is located, as well as the Puerto Rico Horizontal Property Law as amended by the Law of Condominiums, and the Department of Consumer Affairs regulation enacted pursuant to both statutes.----------

-----(P) PURCHASER has the duty to inform the administration of both Condominiums where the properties are located that he has become the new owner, and register his information at each one accordingly.----------

-----Having understood the scope and meaning of

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these warnings and explanations, to the satisfaction of the appearing parties, they Express their intent to proceed with the execution of this deed. ----------

----------ACCEPTANCE----------

------The Appearing parties accept this deed as it has been drafted since it adheres to what has been agreed upon.----------

----------EXECUTION AND READING----------

----Such is the deed that before me the appearing parties formalize, accept in its entirety and ratify it, manifesting having being well-informed of its contents, without the intervention of witnesses that the law does not require but that nor the parties or the Notary have required.------

-----The appearing parties who write their initials in each and every one of the pages and sign with me, the Notary.----------

----And of everything contained in this Public Instrument, and of the fact that adhered to the original of this deed are the required Puerto Rico Internal Revenue Stamps, Notary Stamps from the Puerto Rico Bar Association, and/or any stamps for the Puerto Rico Legal Assistance Society, I, the Notary who signs, initializes and places her sign and stamp on this deed, ATTEST. ----------

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Exhibit 11

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 2nd 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 Finanical 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

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

Exhibit 12

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and among

CBOE GLOBAL MARKETS, INC. (solely for the purpose of Section 12.16 hereof)

CBOE SILEXX, LLC

SILEXX FINANCIAL SYSTEMS, LLC

and

FREY FINANCIAL LLC, LF42, LLC, THOMAS J. FREY AND MICHAEL S. WILLIAMS

(solely for the purposes of Section 7.5, Section 7.8 and ARTICLE X)

Dated as of November 1, 2017

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Exhibits

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of November 1, 2017, by and among, solely for the purpose of **Section 12.16** hereof, Cboe Global Markets, Inc., a Delaware corporation ("Parent Guarantor"), Cboe Silexx, LLC, a Delaware limited liability company ("Purchaser"), Silexx Financial Systems, LLC, a Delaware limited liability company ("Seller"), and, solely for the purposes of **Section 7.5**, **Section 7.8** and **ARTICLE X**, Frey Financial, LLC, LF42, LLC, Thomas J. Frey and Michael S. Williams (collectively, the "Seller Equityholders").

WHEREAS, Seller is engaged in the business of developing, making, marketing, using, selling and licensing its OEMS broker-neutral, multi-asset class trading platform, designed to provide securities traders with execution, analytics and risk management tools for market transactions (the "Business");

WHEREAS, this Agreement contemplates a transaction in which Purchaser will acquire the Business and substantially all of the rights, assets and properties of the Business and will assume certain specified liabilities of the Business, all on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, the Seller Equityholders are owners of Seller and will derive substantial benefits from the consummation of the transactions contemplated by this Agreement; and

WHEREAS, Purchaser would not have entered into this Agreement and would not consummate the transactions contemplated hereby unless the Seller Equityholders agreed to the covenants and agreements set forth in Sections 7.5, Section 7.8 and ARTICLE X hereof and accordingly, the Seller Equityholders desire to enter into this Agreement for purposes of Sections 7.5, Section 7.8, and ARTICLE X in order to induce Purchaser to enter into this Agreement and consummate the transactions contemplated hereby.

NOW THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.1 Definitions. For all purposes of this Agreement, the following terms shall have the following respective meanings:

"Accounting Principles" means tax basis accounting using the cash basis.

"Accounts Receivable" has the meaning set forth in Section 2.2(a).

"Actions" has the meaning set forth in Section 4.12.

"Actual Business Revenue" has the meaning set forth in Section 3.5(b)(iv).

"Affiliate" when used with respect to any party shall mean any Person who is an "affiliate" of that party within the meaning of Rule 405 promulgated under the Securities Act.

"Affiliate Agreements" has the meaning set forth in Section 2.2(b)(iii).

"Agreement" has the meaning set forth in the Recitals.

"Allocation" has the meaning set forth in Section 3.4(a).

"Ancillary Documents" shall mean, collectively, the Escrow Agreement, the Bill of Sale, the IP Assignment, the Sublease Agreement and any certificates delivered pursuant to ARTICLE IX.

"Applicable Law" shall mean the applicable provisions of all (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, codes or orders of any Governmental Entities, including any building, zoning, subdivision, health, safety and other land use statutes, laws, codes, ordinances, rules, orders and regulations, (b) any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, certificate, exemption, registration, clearance, declaration or filing with, or report or notice to, any Governmental Entity, and (c) orders, decisions, directions, summons, rulings, demands, subpoenas, verdicts, writs, injunctions, judgments, awards (including the award of any arbitrator to the extent enforceable by a Governmental Entity) and decrees of or agreements with any Governmental Entity.

"Approved Indemnification Claim" has the meaning set forth in Section 10.5(b).

"Arbiter" has the meaning set forth in Section 3.4(d).

"Assets" shall mean all assets, properties and rights of every kind (whether tangible or intangible), including real and personal property.

"Assumed Liabilities" has the meaning set forth in Section 2.3(a).

"Bill of Sale" has the meaning set forth in Section 9.2(i).

"Books and Records" shall mean all books and records, including all manuals, data, data models, reports, surveys, invoices, customer and supplier lists and reports, financial data and information, sales, distribution and purchase correspondence, repair logs and other notebooks and logbooks, all original and duplicate copies of the foregoing and computer Software and data in computer readable and human readable form used to maintain such books and records, together with the media on which such software and data are stored and all documentation relating thereto.

"Book Trader Module" means computer code that provides for an order ticket with a horizontal price axis that allows the user to place, modify and cancel orders with the click of a mouse button.

"Business" has the meaning set forth in the Recitals.

"Business Day(s)" shall mean each day that is not a Saturday, Sunday or other day on which banking institutions located in New York, New York are authorized or obligated by law or executive order to close.

"Business Revenue" shall mean, for a given period, the gross revenue (inclusive of pass-through costs and fees) resulting solely from the operation of the Business during such period, determined in accordance with GAAP (except for the inclusion of pass-through costs and fees).[1]

"Business Revenue Earn-out Payment" has the meaning set forth in Section 3.5(c)(ii).

"Business Revenue Objection Notice" has the meaning set forth in Section 3.5(b)(ii).

"Cap" has the meaning set forth in Section 10.2(b).

"Cause" means (i) Thomas Frey is convicted of, or pleads guilty or nolo contendere to, any felony crime (other than a misdemeanor traffic related offense), (ii) Thomas Frey (A) fails to perform the material duties assigned to him or engages in gross neglect with respect thereto (except that the failure to meet Development Milestones by itself shall not be considered a failure to perform material duties), in each case at least ten (10) days after written notice to Thomas Frey describing in reasonable detail the offending conduct and the intention to terminate his employment for cause if such conduct is not cured, and the failure of Thomas Frey to cure such conduct, if curable, within ten (10) days after such notice, (B) engages in fraud, embezzlement, or any other act of dishonesty in the performance of the Thomas Frey's duties, (C) engages in acts evidencing moral turpitude of such a level as to interfere with the ability of Thomas Frey to perform his duties or otherwise to affect adversely the reputation of Purchaser (or its Affiliates) or to cause other harm to Purchaser (or its Affiliates) or (D) refuses to faithfully and diligently perform the duties assigned to Thomas Frey, or engages in a course of conduct which amounts to intentional avoidance or refusal to comply with the practices, policies, standards, rules and regulations of Purchaser (or its Affiliates), or violates that certain memorandum re "Resolution of Potential Conflicts of Interest – Kinetic", executed by Thomas Frey as of the date hereof (as may be amended or supplemented), in each case at least ten (10) days after written notice to Thomas Frey describing in reasonable detail the offending conduct and the intention to terminate his employment hereunder for cause if such conduct is not cured, and the failure of Thomas Frey to cure such conduct, if curable, within ten (10) days after such notice, or (iii) Thomas Frey fails to be physically present in Chicago, Illinois at Purchaser's headquarters (or at such other corporate office of Purchaser as Purchaser may designate), at least two-thirds (⅔) of the Business Days in a consecutive three (3) month period, not counting absences for vacation or short term disability up to thirty (30) days. For the avoidance of doubt, no action, statement or omission by Michael S. Williams or any other employee of Kinetic shall, in and of itself, constitute "Cause" within the meaning of this definition.

"Closing" has the meaning set forth in Section 3.1.

[1] Note to Draft: the definition of business revenue remains an open issue.

"Closing Date" has the meaning set forth in Section 3.1.

"COBRA" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Confidential Disclosure Agreement" has the meaning set forth in Section 6.2.

"Contingent Payments" shall mean the payments, if any of the Development Milestones Payment or the Business Revenue Earn-out Payment, as applicable.

"Continuation Period" has the meaning set forth in Section 7.6(b).

"Contract" shall mean any loan agreement, mortgage, indenture, deed of trust, Lease, sublease, contract, covenant, plan, insurance policy or other agreement, instrument, arrangement, obligation, understanding or commitment, permit, concession, franchise or license, whether oral or written, expressed or implied.

"Controlled Group" has the meaning set forth in Section 4.13(a).

"Deductible Amount" has the meaning set forth in Section 10.2(b).

"Development Milestones" has the meaning set forth in Section 3.5(a)(i).

"Development Milestones Arbiter" has the meaning set forth in Section 3.5(a)(v).

"Development Milestones Due Date" shall mean the two (2) year anniversary of the commencement of full time employment or consulting engagement by Purchaser of two (2) software developers reporting to Thomas Frey and dedicated to the completion of the Development Milestones; provided that in the event the equipment or software necessary for the completion of the Development Milestones experiences material downtime or suffers a material malfunction or the number of dedicated employees or consultants drops below two (2), in either case for a period that exceeds four (4) consecutive Business Days, the "Development Milestones Due Date" shall be extended by the number of Business Days such downtime or malfunction or labor shortfall exists. The Development Milestones Due Date may be extended as set forth in this definition, Section 3.5(a)(ii) and Section 3.5(a)(iii); provided that in no event shall the Development Milestones Due Date extend beyond the thirty-six (36) month anniversary of the Closing Date.

"Development Milestones Final Completion" shall mean Development Milestones categories 1-5 on Exhibit D have all been met and, at such time, Thomas Frey has made a reasonable effort to meet Development Milestone category 6.

"Development Milestones Final Payment" shall mean the amount of $4,250,000 for total payments, including all Development Milestones Progress Payments, not to exceed $6,750,000.

"Development Milestones Objection Notice" has the meaning set forth in Section 3.5(a)(iv).

"Development Milestones Objection Period" has the meaning set forth in Section 3.5(a)(iv).

"Development Milestones Payments" shall mean the Development Milestones Progress Payments and/or the Development Milestones Final Payment, as applicable.

"Development Milestones Progress Payment" shall mean the amount of $500,000 for each of the Milestone Development categories listed on Exhibit D hereof numbered 1 through 5, for a total of $2,500,000.

"Development Milestones Purchaser Notice" has the meaning set forth in Section 3.5(a)(i).

"Development Milestones Realization Date" has the meaning set forth in Section 3.5(a)(v).

"Development Milestones Seller Notice" has the meaning set forth in Section 3.5(a)(iv).

"Disability" shall mean disability within the meaning of the Americans with Disabilities Act Title 3, Regulation 28 CFR Part 36.

"Disclosure Schedules" shall mean the disclosure schedules corresponding to the section references of ARTICLE IV of this Agreement.

"Dispute Notice" has the meaning set forth in Section 10.5(b).

"Dispute Period" has the meaning set forth in Section 10.5(b).

"Dollars" or "$" shall mean United States Dollars.

"Earn-out Measurement Period" has the meaning set forth in Section 3.5(b)(i).

"Effect" has the meaning set forth below in the definition of "Seller Material Adverse Effect."

"ERISA" has the meaning set forth in Section 4.13(a).

"Escrow Agent" has the meaning set forth in Section 3.2(b).

"Escrow Agreement" has the meaning set forth in Section 3.2(b).

"Escrow Amount" has the meaning set forth in Section 3.2(b).

"Escrow Fund" has the meaning set forth in Section 3.2(b).

"Excluded Assets" has the meaning set forth in Section 2.2(b).

"Excluded Liabilities" has the meaning set forth in Section 2.3(b).

"Final Purchase Price" has the meaning set forth in Section 3.2(a)(ii).

"Financials" has the meaning set forth in Section 4.3.

"Fundamental Representations" has the meaning set forth in Section 10.1.

"GAAP" shall mean United States generally accepted accounting principles, consistently applied.

"Governmental Entity" shall mean any federal, state, provincial or local, U.S. or foreign government, court, arbitrational tribunal, administrative agency, department or commission or other governmental or regulatory authority, agency or instrumentality.

"Guarantee" shall mean (a) any guarantee of the payment or performance of any Indebtedness or other obligation of any other Person, including bonds and letters of credit provided in respect of an obligation of another Person, (b) any other arrangement whereby credit is extended to one obligor on the basis of any Contract of another Person (i) to pay the Indebtedness of such obligor, (ii) to purchase any Indebtedness owed by such obligor or (iii) to maintain the capital, working capital, solvency or general financial condition of such obligor (including any agreement of one Person to maintain the solvency, net worth or financial condition of another Person) and (c) any liability as a venturer in a joint venture in respect of Indebtedness or other obligations of such partnership or venture.

"Indebtedness" shall mean: the aggregate amount of all borrowings, indebtedness, obligations and other liabilities (including financing, acceptance credits, discounting or similar facilities, finance or capital leases, bonds, debentures, notes, sale and lease back arrangements, obligations incurred in connection with the acquisition of, or as the deferred purchase price for, property, services, assets or businesses, overdrafts, net obligations under any accounts receivable financing or securitization transactions or net obligations arising from hedging arrangements in respect of interest rates, currencies or raw materials or other commodities, whether or not accounted for on the balance sheet), together with accrued interest on such amounts and all fees, expenses, penalties and premiums payable in connection with the repayment or settlement of the foregoing; but excluding trade payables incurred in the ordinary course of business.

"Indemnified Party" has the meaning set forth in Section 10.5(a).

"Indemnifying Party" has the meaning set forth in Section 10.5(a).

"Initial Purchase Price" has the meaning set forth in Section 3.2(a).

"Intellectual Property" shall mean any or all of the following and all rights arising out of or associated therewith, in each case, in any jurisdiction in the world: (a) patents and patent applications (including reissues, reexaminations, divisions, renewals, extensions, provisionals, continuations and continuations-in-part), inventions (whether or not patentable and whether or not reduced to practice), invention or patent disclosures and inventor's certificates; (b) trade secrets, proprietary information and know-how, including methods, processes, designs, drawings, technical data and customer lists; (c) original works of authorship (whether copyrightable or not), copyrights, copyright registrations and copyright applications; (d) industrial designs and all registrations and applications thereof; (e) Marks; (f) Software; (g) moral and economic rights of

authors and inventors, however denominated; and (h) all other intellectual property or industrial property rights.

"Interim Balance Sheet" has the meaning set forth in Section 4.3.

"Interim Financials" has the meaning set forth in Section 4.3.

"IP Assignment" has the meaning set forth in Section 9.2.

"Kinetic" means Kinetic Strategic Group, LLC and its Affiliates.

"Knowledge of Seller" shall mean all facts that any of Thomas J. Frey or Michael S. Williams knows with respect to the matter at issue.

"Lease" or "Leases" has the meaning set forth in Section 4.7.

"Lease Agreement" means the lease agreement dated June 1, 2016, entered into by and between The Spector Building, LLC, as landlord, and Kinetic, as tenant, in respect of premises located at Suite No. 955, 1800 Second Street, Sarasota, Florida, 34236.

"Leased Real Property" has the meaning set forth in Section 4.7.

"Liability" or "Liabilities" shall mean any and all debts, liabilities, Taxes, guarantees, assurances, commitments and obligations, whether fixed, contingent or absolute, asserted or unasserted, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, due or to become due, whenever or however arising (including whether arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required to be stated or disclosed in financial statements prepared in accordance with GAAP or in the notes thereto.

"Licensed IP" shall mean the Intellectual Property licensed to Seller pursuant to a Purchased Contract.

"Lien" shall mean any lien (including for Taxes), pledge, hypothecation, right of others, ownership interest of others, charge, claim, mortgage, security interest, encumbrance, lease, sublease, license, occupancy agreement, adverse claim or interest, easement, covenant, encroachment, burden, title defect, title retention agreement, voting trust agreement, interest, equity, option, lien, right of first refusal, charge or other restrictions or limitations of any nature whatsoever, including such as may arise under any Contract.

"Loss" and "Losses" have the meanings set forth in Section 10.2(a).

"Marks" shall mean any and all trademarks, service marks, certification marks, trade names, corporate names, domain names, logos, trade dress or other indicia of source or origin, including unregistered and common law rights in the foregoing, and all registrations of and applications to register the foregoing, in each case in any jurisdiction throughout the world.

"Multiemployer Plan" shall mean a multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA.

"Open Source Software" shall mean Software distributed pursuant to a license or other agreement that requires licensees to disclose or otherwise make available the Source Code for any Software incorporating or using such licensed Software or developed using such licensed Software or to distribute or make available such Software on terms specified in such license or agreement, including the GNU General Public License or the GNU Lesser General Public License.

"Permits" shall mean all licenses, permits, franchises, registrations, approvals, authorizations, certifications, permissions, directives, qualifications, consents, waivers, exemptions, releases, variances or orders of, or filings, notices or recordings with, or issued by, any Governmental Entity.

"Person" shall mean an individual or entity, including a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity (or any department, agency, or political subdivision thereof).

"Personal Information" has the meaning set forth in Section 4.23.

"Pre-Closing Period" has the meaning set forth in Section 6.1.

"Pre-Closing Tax Periods" has the meaning set forth in Section 8.1(a).

"Purchased Assets" has the meaning set forth in Section 2.2(a).

"Purchased Contracts" has the meaning set forth in Section 2.2(a).

"Purchased IP" has the meaning set forth in Section 2.2(a).

"Purchaser" has the meaning set forth in the Recitals.

"Purchaser 401(k) Plan" has the meaning set forth in Section 7.6(g).

"Purchaser Indemnified Parties" has the meaning set forth in Section 10.2(a).

"Purchaser Milestone Delay Notice" has the meaning set forth in Section 3.5(a)(iii).

"Purchaser Plans" has the meaning set forth in Section 7.6(b).

"Purchaser Resource" has the meaning set forth in Section 3.5(a)(iii).

"Revenue Finalization Date" has the meaning set forth in Section 3.5(b)(iv).

"Revenue Statement" has the meaning set forth in Section 3.5(b)(i).

"Revenue Statement Review Period" has the meaning set forth in Section 3.5(b)(ii).

"Schedules" means the Disclosure Schedules, which are incorporated herein by reference.

"Seller" has the meaning set forth in the Recitals.

"Seller 401(k) Plan" has the meaning set forth in Section 7.6(g).

"Seller Contract" shall mean any Contract: (a) to which Seller is a party; (b) by which Seller, or any Asset of Seller, is or may become bound or under which Seller is or may become subject to any liability or obligation; or (c) under which Seller has or may acquire any right or interest.

"Seller Employees" has the meaning set forth in Section 7.6(a).

"Seller Equityholders" has the meaning set forth in the Recitals.

"Seller Indemnified Parties" has the meaning set forth in Section 10.3.

"Seller Material Adverse Effect" shall mean any state of facts, change, event, violation, inaccuracy, effect, condition, circumstance, occurrence or development (any such item, an "Effect") that, individually or taken together with all other Effects, (a) is materially adverse to the business, operations, properties, financial condition, results of operations, prospects, assets or liabilities of the Business or Seller, taken as a whole, (b) is materially adverse to the Purchased Assets, or (c) prevents the performance by Seller or any Seller Equityholder of any of its obligations under this Agreement or any Ancillary Document to which it is a party or the consummation of the transactions contemplated hereby or thereby; provided, however, that no Effects (by themselves or when aggregated with any other Effects) primarily resulting from, or arising out of, the following shall be deemed to be or constitute a Seller Material Adverse Effect, and no Effects (by themselves or when aggregated with other Effects) primarily resulting from or arising out of the following shall be taken into account when determining whether a Seller Material Adverse Effect has occurred or could reasonably be expected to occur: (i) general changes in the general economic, financial or political conditions or in the financial markets in the United States (including any changes arising out of acts of terrorism, international hostilities, war or natural disasters); (ii) general changes in the conditions in the industry in which the Business operates (including any changes arising out of acts of terrorism, international hostilities, war or natural disasters); or (iii) changes in any statute, law, ordinance, rule or regulation applicable to the Business or any of Seller's properties or assets used in connection with the Business (in each case under clauses (i), (ii) and (iii) above, except to the extent that such conditions have a disproportionate impact on the Business, Seller or the Purchased Assets relative to other companies in the industry or regions in which the Business operates).

"Seller Material Contract" has the meaning set forth in Section 4.11(a).

"Seller Organizational Documents" has the meaning set forth in Section 4.1(b).

"Seller Plans" has the meaning set forth in Section 4.13(a).

"Software" shall mean all software of any type (including programs, applications, middleware, interfaces, utilities, tools, drivers, firmware, microcode, scripts, batch files, JCL files,

instruction sets and macros) and in any form (including Source Code, object code and executable code or files), databases, associated data and related documentation, and all rights therein.

"Source Code" shall mean software or code, which may be printed or displayed in human readable form or from which object code or machine code can be derived by compilation or otherwise.

"Straddle Period" has the meaning set forth in Section 8.3(c).

"Sublease Agreement" has the meaning set forth in Section 9.2(f).

"Target Business Revenue" shall mean $2,340,693.84.

"Tax" or "Taxes" shall mean all taxes, charges, fees, levies or other assessments imposed by and required to be paid to any federal, state, local, municipal, territorial, provincial or foreign taxing authority, including, without limitation, income, gross receipts, excise, capital gains, real property, personal property, stamp, value added, withholding, employment, unemployment, health, insurance, social security, workers' compensation, profits, customs, duties, alternative or add-on minimum, sales, use, goods and services, transfer, ad valorem, payroll, franchise or other taxes of any kind (including any interest, penalties or additions attributable to or imposed on or with respect to any such assessment) and any estimated payments or estimated taxes, including any transferee or secondary Liability for a tax and any Liability assumed by agreement or arising as a result of being or ceasing to be a member of any affiliated group or being included or required to be included in any tax return relating thereto.

"Tax Returns" means, with respect to any Tax, any information return for such Tax and any return, report, statement, declaration, claim for refund or document filed or required to be filed under law for such Tax, including any amendments thereof.

"Taxing Authority" means any Governmental Entity having the power to regulate, impose or collect Taxes, including the IRS and any state or local Department of Revenue.

"Third Party Claim" has the meaning set forth in Section 10.5(a).

"Third Party Milestone Delay Notice" has the meaning set forth in Section 3.5(a)(ii).

"Trade Payables" has the meaning set forth in Section 2.3(a)(ii).

"Transfer Taxes" shall mean all foreign, federal, state and local sales, use, transfer, documentary transfer, excise, value-added, registration, recording, direct and indirect real estate transfer, stamp, documentation or similar Taxes that may be imposed by reason of the sale, assignment, transfer and delivery of the Purchased Assets, as well as any penalties and interest thereon.

"Transferred Employees" has the meaning set forth in Section 7.6(a).

"Trial Price Allocation" has the meaning set forth in Section 3.4(a).

"Year-End Financials" has the meaning set forth in Section 4.3.

ARTICLE II.

PURCHASE AND SALE OF ASSETS AND ASSUMPTION OF LIABILITIES

Section 2.1 Purchase of Assets. Upon the terms and subject to the conditions of this Agreement and the other Ancillary Documents (including all representations, warranties and indemnification obligations of Seller and the Seller Equityholders to Purchaser and/or its Affiliates and the Purchaser Indemnified Parties in this Agreement and the other Ancillary Documents), on the Closing Date, Seller shall sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, all right, title and interest in and to the Purchased Assets, free and clear of all Liens.

Section 2.2 Purchased and Excluded Assets.

(a) The "Purchased Assets" shall include all of the Assets that are owned by Seller and used, held or intended for use, in connection with the Business (other than the Excluded Assets), in each case wherever located, including the following:

(i) all of the IP Assignments and the Seller Contracts relating to the Business and set forth on Schedule 2.2(a)(i) (all of the foregoing, collectively, the "Purchased Contracts");

(ii) all equipment, office equipment and supplies, computer hardware (including computers, servers, peripherals and networking devices), telephone and communications equipment, furniture, furnishings, fixtures, leasehold improvements and any other fixed assets or tangible personal property, including the items set forth on Schedule 2.2(a)(ii);

(iii) all accounts and notes receivable and other claims for money due to Seller, however arising, in connection with the Business, including all rights, claims and remedies relating thereto and any related deposits, security and collateral therefor (the "Accounts Receivable");

(iv) all Intellectual Property used, held or intended for use in connection with the Business, including in each case all goodwill associated therewith, and rights and remedies against past, present and future infringements, misappropriation or any other unauthorized use thereof, rights to protection of interests therein under the laws of all jurisdictions and all copies and tangible embodiments thereof (the "Purchased IP");

(v) all Permits used, held or intended for use by Seller in connection with the Business;

(vi) any credits, prepaid expenses or items, deferred charges, advance payments, security or other deposits, claims for refunds or reimbursements (including with respect to Taxes), claims, causes of action, rights of recovery, setoff, recoupment or indemnification, attorney-client work product and other rights and remedies of Seller against any third parties arising out of or relating to any of the Purchased Assets or Assumed Liabilities;

(vii) all insurance proceeds or rights to insurance proceeds under any insurance policies of Seller with respect to any loss of or damage to the Purchased Assets or Assumed Liabilities;

(viii) all Books and Records and other documents or correspondence relating to the Business, including copies of Tax books and records and Tax Returns of Seller relating to the Business or to any of the Purchased Assets, in each case, as in existence as of the Closing Date; provided, that Seller may retain, subject to Section 7.9, copies of the foregoing for administrative purposes;

(ix) all attorney-client privilege and attorney work product related to the Purchased Assets and Assumed Liabilities, other than attorney-client privilege and attorney work product relating directly to the negotiation and consummation of the transactions contemplated by this Agreement; and

(x) all goodwill associated or arising in connection with the Business or any of the Purchased Assets.

(b) Excluded Assets. Notwithstanding the foregoing, Seller will retain all right, title and interest in and to, and the Purchased Assets will not include, the following assets, rights or properties of Seller (the "Excluded Assets"):

(i) any cash or cash equivalents at the time of the Closing and any insurance policies of Seller or rights to or under such insurance policies, except to the extent that any of the foregoing are included in the Purchased Assets under Section 2.2(a)(vi) or Section 2.2(a)(vii);

(ii) any Seller Plans, underlying Assets or rights of Seller in the Seller Plans and any Contracts that constitute (or provide for services under) Seller Plans;

(iii) all Contracts other than the Purchased Contracts, including (A) all Contracts or other instruments, arrangements, relationships and understandings between the Business, on the one hand, and Seller or its Affiliates (other than the Business), on the other hand (the "Affiliate Agreements") and (B) those contracts set forth on Schedule 2.2(b)(iii);

(iv) the charters, seals, minute books, equity record books and other similar documents relating to the organization, governance, existence and qualification to do business of Seller;

(v) any claim, right or interest of Seller in or to any refund, credit, rebate, abatement or other recovery for Taxes attributable to the Business, together with any interest due thereon or penalty rebate arising therefrom, the basis of which arises, accrues or relates to any taxable period (or portion thereof) ending at or prior to the Closing;

(vi) any Contract evidencing any Indebtedness of Seller;

(vii) all rights of Seller arising under this Agreement and under any other agreement between Purchaser and Seller entered into in connection with the transactions contemplated hereby; and

(viii) the assets, rights and interests set forth on Schedule 2.2(b)(viii).

Section 2.3 Assumed and Excluded Liabilities.

(a) The "Assumed Liabilities" shall consist of only the following liabilities of Seller:

(i) any obligations arising under the Purchased Contracts from and after the Closing, but excluding any Liability, whether incurred or arising prior to, on or after the Closing Date, in connection with any actual or alleged breach, default or other failure to perform under any such Purchased Contract occurring or alleged to have occurred at or prior to the Closing; and

(ii) all trade payables of Seller ("Trade Payables") incurred in the ordinary course of business consistent with past practice and not unpaid for a period in excess of thirty (30) days from the date of the receipt of the invoice giving rise thereto.

(b) Excluded Liabilities. Notwithstanding anything to the contrary, Purchaser shall not assume or otherwise be obligated to pay, perform or discharge any Liabilities of Seller other than the Assumed Liabilities (all of such Liabilities not so assumed by Purchaser collectively, the "Excluded Liabilities"), including the following:

(i) any Liabilities arising out of or relating to Seller's ownership or operation of the Business and/or the Purchased Assets on or prior to the Closing Date;

(ii) any Indebtedness or Liens and any Liabilities arising out of or related to the Actions set forth on Schedule 4.12 and any payments required under the IP Assignments;

(iii) any Liability arising out of or relating to a breach or violation by Seller of, or a delinquency of Seller under, any Applicable Law or any contract or other arrangement with a third party, including the Purchased Contracts, that occurred in whole or in part at any time prior to the Closing, including any failure of Seller to pay for the accurate number of users of a provider's market data on or prior to the Closing Date, whether such failure becomes known prior to, or after, the Closing; and

(iv) any Liabilities arising out of or relating to Seller or its products or services (including the use thereof by customers or end users) infringing, misappropriating or otherwise making unlawful or unauthorized use of any Intellectual Property of any Person.

ARTICLE III.

PURCHASE PRICE AND CLOSING

Section 3.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place simultaneously with the execution of this Agreement on the date hereof at the offices of Jenner & Block LLP, 353 N. Clark Street, Chicago, Illinois 60654, or at such other place as the parties may mutually agree (the date on which the Closing actually occurs, the "Closing Date"). The Closing shall be deemed effective for all purposes at 11:59 p.m. (Central Time) on the Closing Date.

Section 3.2 Purchase Price; Escrow.

(a) Purchase Price.

(i) The aggregate consideration payable by Purchaser to Seller at the Closing shall be an amount (the "Initial Purchase Price") equal to (A) $9,000,000, minus (B) the Escrow Amount.

(ii) The sum of the Initial Purchase Price and the Escrow Amount, as such sum may be adjusted in accordance with Section 3.5, Section 10.4 and/or Section 12.11, is referred to herein as the "Final Purchase Price".

(iii) At the Closing, Purchaser shall pay to Seller an amount equal to the Initial Purchase Price, in cash by wire transfer of immediately available funds, to such bank account(s) as shall be designated by Seller. If wire transfer instructions are not provided to Purchaser, such amount shall be paid to Seller by check.

(b) Escrow Deposit. At the Closing, the amount of $625,000 (the "Escrow Amount") shall be deposited by Purchaser with JPMorgan Chase Bank, N.A. (the "Escrow Agent"), to be held in an escrow account to satisfy any payment obligation of Seller pursuant to ARTICLE VIII and any indemnity obligations payable out of the Escrow Fund pursuant to ARTICLE X, all pursuant to the terms and conditions of an escrow agreement substantially in the form attached hereto as Exhibit A (the "Escrow Agreement"). The escrow fund (the "Escrow Fund") established pursuant to the Escrow Agreement shall be released to Seller and/or to Purchaser, as the case may be, only in accordance with the terms of this Agreement and the Escrow Agreement.

Section 3.3 Intentionally Omitted.

Section 3.4 Allocation of Purchase Price.

(a) Within ninety (90) days after the Closing, Purchaser shall prepare and provide to Seller copies of IRS Form 8594 and any required exhibits thereto, prepared in accordance with Section 1060 of the Code, with Purchaser's proposed allocation of the Initial Purchase Price and all other capitalizable costs among the Purchased Assets as of such time among the Purchased Assets (the "Allocation"). The Allocation shall be consistent with the parameters set forth on attached Schedule 3.4(a) (the "Trial Price Allocation").

(b) Seller shall review the Allocation and Purchaser shall consider all reasonable comments of Seller with respect to the preparation of the Allocation that are provided to Purchaser within twenty (20) days of Seller's receipt of the Allocation.

(c) Purchaser and Seller shall timely file an IRS Form 8594 and any applicable schedules or attachments reflecting the Allocation for the taxable year that includes the Closing Date and timely make any filing required by applicable state or local laws. The Allocation shall be binding on Purchaser and Seller for all tax purposes, and Purchaser and Seller shall each timely file all Tax Returns (including amended returns and claims for refunds) and information reports in a manner consistent with such Allocation. Neither Purchaser nor Seller shall take any position inconsistent with the Allocation in connection with any tax proceeding, except that Purchaser's cost for the Purchased Assets may differ from the amount so allocated to the extent necessary to reflect its capitalized acquisition costs not included in the amount realized by Seller. If any Taxing Authority disputes the Allocation, the party receiving notice of the dispute shall promptly notify the other party hereto of such dispute, and the parties hereto shall cooperate in good faith in responding to such dispute in order to preserve the effectiveness of the Allocation.

(d) If Seller and Purchaser are unable to reach a good faith agreement as to the content of the Allocation within one-hundred fifty (150) days after the Closing, then the Allocation will be determined by an independent accounting firm of recognized national standing ("Arbiter") selected by Purchaser and Seller. Promptly, but not later than thirty (30) days after acceptance of its appointment as Arbiter, the Arbiter will determine (based solely on written and, if requested by the Arbiter, oral presentations and a review of working papers of Purchaser, Seller and its independent accountants, as applicable, and not by independent review) only those matters in dispute and will render a written report as to the disputed matters and any disputed calculations included in the Allocation, which written report of the Arbiter will be final and binding upon Purchaser and Seller, absent manifest error, deviation from the terms hereof or fraud. In resolving any disputed item, the Arbiter may only assign a value for such item within the range of difference between Purchaser's position with respect thereto and Seller's position with respect thereto. The fees and expenses of the Arbiter will be borne 50% by Seller and 50% by Purchaser. The Arbiter's decision must be consistent with the Trial Price Allocation.

(e) Any adjustments to the Initial Purchase Price or Final Purchase Price, including any indemnification payments or Contingent Payments treated as such, shall be reflected as an adjustment to the price allocated to the specific asset, if any, giving rise to the adjustment, and if any such adjustment does not relate to a specific asset, such adjustment shall be allocated among the Purchased Assets in a manner consistent with the Allocation. The preparation of and comments on any materials prepared with respect to the adjustment shall be conducted in the same manner as that described in this Section 3.4 herein.

Section 3.5 Earn-out. Seller believes the value of the Business is equal to the Initial Purchase Price plus the Contingent Payment. Subject to the accuracy of the representations and warranties of Seller set forth herein and the terms and conditions of this Agreement, Purchaser believes the value of the Business is the Initial Purchase Price plus the Contingent Payment only in the event that (i) the Business achieves the Development Milestones on or prior to the Development Milestones Due Date and (ii) the Business Revenues during the Earn-out Measurement Period meets or exceeds the Target Business Revenue. The Contingent Payments

described in this Section 3.5 provides Purchaser with security for only accepting Seller's valuation to the extent the conditions to such payments have been met.

(a) Determination of Development Milestones.

(i) For purposes of this Agreement, "Development Milestones" shall mean the six separately numbered categories of development milestones set forth on, and achieved in the manner described on, Exhibit C (the "Development Milestones"). Within ten (10) Business Days after any category of the Development Milestones are met, Purchaser shall notify Seller in writing that such category of Development Milestones has been met (the "Development Milestones Purchaser Notices"); provided that, if any category of Development Milestones is not met by the Development Milestones Due Date, Purchaser shall notify Seller in writing that such Development Milestones have not been met as of the Development Milestones Due Date and shall have no further notification obligations under this Section 3.5(a).

(ii) If completion of a Development Milestone is delayed because of the failure of a third party (which, for the avoidance of doubt, excludes Purchaser and its Affiliates) to provide required cooperation or work, then the Development Milestones Due Date shall be extended by the duration of such third party's failure to provide such cooperation or work, but only if Seller (A) provides notice of such failure to Purchaser promptly after such failure first began, which notice shall conspicuously and expressly state that it is a "Third Party Milestone Delay Notice" and reference this Section 3.5(a)(ii), (B) uses commercially reasonable efforts to obtain the required cooperation or work from such third party, (C) uses commercially reasonable efforts to work around such failure (including through the use of substitutes where appropriate), and (D) keeps Purchaser reasonably apprised of the status and duration of such failure, and of such efforts described in items (B) and (C); provided that in no event shall the Development Milestone Due Date be extended past the date that is thirty-six (36) months after the Closing Date.

(iii) If completion of a Development Milestone depends on a Purchaser Resource (as defined below) and such Development Milestone is unable to be completed because Purchaser failed to provide such Purchaser Resource when required, then such Development Milestone shall be deemed to have been completed, but only if (A) Seller provides notice of such failure to Purchaser promptly after such failure first began, which notice shall conspicuously and expressly state that it is a "Purchaser Milestone Delay Notice" and reference this Section 3.5(a)(iii), (B) Seller uses commercially reasonable efforts to work around such failure (including through the use of substitutes where appropriate), (C) Purchaser fails to cure such failure within a reasonable time period (which shall be at least thirty (30) days), and (D) all other aspects of the Development Milestone not dependent on such Purchaser Resource have been fully met, as determined pursuant to item (iv) below. The Development Milestone Due Date shall be extended by the duration of Purchaser's cure efforts. "Purchaser Resource" means the following to be provided by Purchaser or its Affiliates as contemplated by (or necessary to complete) the Development Milestones: hardware procurement; DR site buildout; networking connectivity; availability and provisioning of APIs and corresponding specifications; market data; exchange connectivity; broker connectivity; functional regulatory requirement specifications; and floor system access.

(iv) If at any time prior to the Development Milestones Due Date, Seller believes any category of Development Milestones has been met, Seller may provide written notice to Purchaser indicating such and the written notice shall include a reasonably detailed explanation regarding why Seller believes such category of Development Milestones has been met (each a "Development Milestones Seller Notice"). If Purchaser does not agree with Seller that such category of Development Milestones has been met, Purchaser shall so notify Seller in writing within fifteen (15) Business Days after receipt of the Development Milestones Seller Notice (the "Development Milestones Objection Period"), which written notice shall specify the rationale for such disagreement (each a "Development Milestones Objection Notice"). Purchaser and Seller shall attempt in good faith to reach an agreement as to any matters in dispute. If the parties are able to resolve the dispute within thirty (30) days (or such longer period as Purchaser and Seller may agree) after delivery of a Development Milestones Objection Notice to Seller, the parties shall agree in writing that the Development Milestones in question have been met, and such written agreement shall be final and binding upon Seller and Purchaser. If Purchaser does not deliver a Development Milestones Objection Notice within a Development Milestone Objection Period, the Development Milestones that were the subject of such Development Milestone Seller Notice shall be deemed to have been met at the time of delivery of the Development Milestone Seller Notice.

(v) If Purchaser and Seller fail to resolve all such matters in dispute within thirty (30) days after delivery of a Development Milestones Objection Notice to Seller, then any matters identified in such written notice that remain in dispute will be determined by an independent technology consulting firm of recognized national standing with expertise in the relevant subject matter area (the "Development Milestones Arbiter") selected by Purchaser and Seller. Promptly, but not later than thirty (30) days after acceptance of its appointment as Development Milestones Arbiter, the Development Milestones Arbiter will determine only those matters in dispute and will render a written report as to the disputed matters, including the date on which the category of Development Milestones in question was met, if applicable, which written report of the Development Milestones Arbiter will be final and binding upon Purchaser and Seller, absent manifest errors, deviation from the terms hereof or fraud. The fees and expenses of the Development Milestones Arbiter will be borne by the non-prevailing party. Each date that the parties agree or that the category of Development Milestones is deemed to have been met pursuant to Section 3.5(a)(iv) or pursuant to a decision by the Development Milestones Arbiter, is referred to as the "Development Milestones Realization Date".

(vi) Notwithstanding any of the foregoing, Purchaser's obligations under this Section 3.5(a) shall terminate for all or any categories of the Development Milestones Payments not met at such time as Thomas Frey ceases to be continuously employed by Purchaser or one of its Affiliates; provided, however, that if Thomas Frey's employment is terminated prior to the Development Milestones Due Date by Purchaser or one of its Affiliates without Cause, all remaining Development Milestones shall be deemed for all purposes herein to have been met and all Development Milestone Payments shall be deemed for all purposes herein to have been earned, as of the effective date of such termination.

(b) Determination of Business Revenue.

(i) Not later than sixty (60) days following the two (2) year anniversary of the Closing Date, Purchaser shall prepare and deliver to Seller a statement (the "Revenue Statement") setting forth the Business Revenue for the twelve (12) month period ending on the two (2) year anniversary of the Closing Date (the "Earn-out Measurement Period"). The Revenue Statement shall be prepared in good faith from the Books and Records of Purchaser (and Seller's Books and Records to the extent necessary) in a manner consistent with the calculation of the Target Business Revenue.

(ii) If, in connection with the delivery of the Revenue Statement, Seller disputes the calculation of the Business Revenue in connection therewith, Seller may within thirty (30) days after the receipt of the Revenue Statement (the "Revenue Statement Review Period"), deliver written notice to Purchaser of any objections thereto, which written notice shall specify the rationale for such disagreement and the amount in dispute (a "Business Revenue Objection Notice"). Any Business Revenue Objection Notice shall specify in detail any adjustment to the Business Revenue for the respective period covered by the Revenue Statement that is being proposed by Seller and the basis therefor, including in each case, the specific items proposed to be adjusted and the specific amount of each such adjustment; provided that Seller may so object to the Business Revenue and the Revenue Statement based only on the existence of mathematical errors therein or on the failure of the Business Revenue to be prepared on a basis consistent with this Agreement, and on no other basis. Failure of Seller to provide a Business Revenue Objection Notice within the Revenue Statement Review Period shall be deemed an acceptance of the Revenue Statement and, accordingly, the Revenue Statement shall be final and binding upon Purchaser and Seller. If Seller delivers a timely Business Revenue Objection Notice to Purchaser, then Purchaser and Seller will attempt in good faith to reach an agreement as to any matters identified in such written notice as being in dispute. If the parties are able to resolve the dispute within thirty (30) days (or such longer period as Purchaser and Seller may agree) after delivery of a Business Revenue Objection Notice to Purchaser, the parties shall set forth the agreed upon Business Revenue in a written agreement signed by Purchaser and Seller, and such written agreement shall be final and binding upon Seller and Purchaser.

(iii) In connection with its review of the Revenue Statement during the Revenue Statement Review Period, Seller and its representatives shall have reasonable access, during normal business hours and upon reasonable notice, to the Books and Records, finance personnel and any other information of the Business that Seller reasonably requests in order to confirm the aggregate Business Revenue for the respective period covered by the Revenue Statement, and Purchaser shall cooperate reasonably with Seller and its representatives in connection therewith; provided, however that (1) such access does not unreasonably disrupt the normal operations of Purchaser or the Business and (2) neither Purchaser nor the Business is under any obligation to disclose to Seller any information the disclosure of which is prohibited by Applicable Law or that would result in the waiver of any attorney-client, work-product or other applicable privilege.

(iv) If Purchaser and Seller fail to resolve all such matters in dispute within thirty (30) days after delivery of a Business Revenue Objection Notice to Purchaser, then any matters identified in such written notice that remain in dispute will be determined by the

Arbiter. Promptly, but not later than thirty (30) days after acceptance of its appointment as the Arbiter, the Arbiter will determine (based solely on written and, if requested by the Arbiter, oral presentations and a review of working papers of Purchaser, Seller and its independent accountants, as applicable, and not by independent review) only those matters in dispute and will render a written report as to the disputed matters and any disputed calculations included in the Revenue Statement, which written report of the Arbiter will be final and binding upon Purchaser and Seller, absent manifest error, deviation from the terms hereof or fraud. In resolving any disputed item, the Arbiter may only assign a value for such item within the range of difference between Purchaser's position with respect thereto and Seller's position with respect thereto. The fees and expenses of the Arbiter will be borne 50% by Seller and 50% by Purchaser. The date that the Revenue Statement becomes final and binding on the parties pursuant to this Section 3.5(b)(iv) is referred to as the "Revenue Finalization Date", and the Business Revenue determined to be final and binding on the parties pursuant to the Revenue Statement is referred to as the "Actual Business Revenue" for the time period covered by the Revenue Statement.

(v) Notwithstanding any of the foregoing, Purchaser shall have no obligations under this Section 3.5(b) if Thomas Frey is not continuously employed by Purchaser or one of its Affiliates from the Closing Date until the date on which the Earn-out Measurement Period ends; provided, however, that if Thomas Frey's employment is terminated prior to the conclusion of the Earn-out Measurement Period (A) by Purchaser or one of its Affiliates without Cause, (B) as a result of Thomas Frey's death, or (C) as a result of Thomas Frey being Disabled, Seller shall still be eligible to receive the Business Revenue Earn-out Payment, if such payment becomes due and payable, pursuant to the terms of Section 3.5(c)(ii) below.

(c) Contingent Payments.

(i) Development Milestones Payment. Subject to Section 10.4 and Section 12.11 hereof, simultaneously with delivery of each Development Milestones Purchaser Notice or within fifteen (15) days after each Development Milestones Realization Date corresponding to a category of Development Milestones being met, whether or not Thomas Frey is employed on such payment date, Purchaser shall pay to Seller a Development Milestone Progress Payment. Subject to Section 10.4 and Section 12.11 hereof, simultaneously with the delivery of the Development Milestones Purchaser Notice or within fifteen (15) days after the Development Milestone Realization Date corresponding to Development Milestones Final Completion, whether or not Thomas Frey is employed on such payment date, Purchaser shall pay to Seller the Development Milestones Final Payment. Purchaser's obligation to make any Development Milestones Payment above shall be subject to Section 3.5(a)(vi) above.

(ii) Business Revenue Earn-out Payment. Subject to Section 10.4 and Section 12.11 hereof, and subject to Section 3.5(b)(v) above, within fifteen (15) days of the Revenue Finalization Date, Purchaser shall pay to Seller, an amount, if any, opposite the range in the table set forth below in which Actual Business Revenue for the Earn-out Measurement Period falls as a percentage of the Target Business Revenue, up to a maximum of two million, two hundred and fifty thousand dollars (US $2,250,000) (the "Business Revenue Earn-out Payment"):

Percentage of Target Business Revenue	Business Revenue Earn-Out Payment
less than 91%	$0
equal to or greater than 91% and less than 92%	$0.225 million
equal to or greater than 92% and less than 93%	$0.45 million
equal to or greater than 93% and less than 94%	$0.675 million
equal to or greater than 94% and less than 95%	$0.9 million
equal to or greater than 95% and less than 96%	$1.125 million
equal to or greater than 96% and less than 97%	$1.35 million
equal to or greater than 97% and less than 98%	$1.575 million
equal to or greater than 98% and less than 99%	$1.8 million
equal to or greater than 99% and less than 100%	$2.025 million
equal to or greater than 100%	$2.25 million

(iii) All payments shall be paid by wire transfer of immediately available funds to the accounts designated in writing by Seller, and if wire transfer instructions are not provided to Purchaser, such amount shall be paid to Seller by check. If no payment is due pursuant to Section 3.5(c)(i) or Section 3.5(c)(ii), respectively, Purchaser shall provide Seller with notice of such in lieu of payment. Any payments under this Section 3.5 shall be treated by the parties as an adjustment to the Initial Purchase Price.

(d) Maximum Contingent Payment. Notwithstanding anything to the contrary herein or otherwise, in no event shall Purchaser be obligated pursuant to this Section 3.5 to pay to Seller aggregate payments in excess of $9,000,000.

(e) Unrestricted Rights; No Implied Duties.

(i) Seller acknowledges and agrees that as of, and following, the Closing, subject to Section 3.5(e)(ii), (A) Purchaser has sole discretion with regard to all matters relating to the operation of its business, including the Business; (B) Purchaser has the unrestricted right to make use of the Purchased Assets in any manner that it sees fit; (C) Purchaser has no obligation to make use of the Purchased Assets in a way that generates or maximizes Contingent Payments; (D) Purchaser does not undertake, covenant or agree to operate the Business in any manner, or commit any resources to the Business; (E) there is no assurance that Seller will receive any Contingent Payments and Purchaser has not promised nor projected any Contingent Payments; (F) Purchaser owes no fiduciary duty or express or implied duty, including any implied duty of good faith and fair dealing, to Seller with respect to the Contingent Payments other than as may

be required to be owed pursuant to Applicable Law; (G) Purchaser is under no obligation to employ or continue the employment of any person, offer any products for sale, continue to conduct business with any customer or under any particular terms and conditions, or serve any customer from any particular location, in each case, except that Purchaser shall not take any actions that have the primary purpose of reducing the likelihood of Seller being due the Contingent Payments; (H) the Business Revenue and the Contingent Payments are speculative and subject to numerous factors outside the control of Purchaser and (I) Purchaser and/or its Affiliates maintain, and anticipate continuing to maintain, trading platforms, including PULSe™ trader workstation, which may, either directly or indirectly, compete with the Business or otherwise replicate the general functionality of the product lines of the Business. Nothing in this Agreement shall limit the right of Purchaser or any of its Affiliates to engage in development, sales and marketing of such products as long as those efforts do not violate this Section 3.5. Purchaser has the unrestricted right to modify the pricing of the products or services sold or licensed by the Business, including by eliminating customer discounts and/or otherwise standardizing pricing across the customer base (whether for purposes of compliance with Applicable Law or applicable guidance of the SEC or for any other bona fide business purpose).

(ii) Until the last day of the Earn-out Measurement Period, or the Development Milestones Due Date, whichever is later, Purchaser shall (1) act in good faith and not take any actions or omit to take any actions for the primary purpose of reducing the amount of the Business Revenue Earn-out Payment or impeding the ability of Seller to earn the Development Milestones Payments, (2) maintain external sales effort, (3) not materially reduce the project or support staffing for the Business as compared to historical pre-Closing Date levels, and (4) until the Development Milestones Realization Date, not deploy Thomas Frey on tasks other than the completion of the Development Milestones in any material way.

(iii) Notwithstanding anything herein to the contrary, and whether or not the Development Milestones have been met or Actual Business Revenue exceeds the Target Business Revenue, 100% of the Business Revenue Earn-out Payment shall be made to Seller simultaneously with the closing of any sale of all or part of the assets of the Business completed prior to the end of the Earn-out Measurement Period and any unpaid portion of the Development Milestones Payment shall be made to Seller simultaneously with the closing of any sale of all or part of the assets of the Business completed prior to the end of the Development Milestones Due Date; provided, that, no such payments shall be due as a result of any change of control of Parent Guarantor, whether by merger, equity sale or sale of all or substantially all of the assets of Parent Guarantor. Purchaser represents and warrants that Purchaser is a direct or indirect wholly-owned subsidiary of Cboe Global Markets, Inc.

(f) Nothing in this Section 3.5 shall preclude any party hereto from exercising, or shall adversely affect or otherwise limit in any respect the exercise of, any right or remedy available to it hereunder or otherwise for any breach of representation or warranty hereunder, but neither Purchaser nor Seller shall have any right to dispute any calculation of the Business Revenue or any portion thereof or the applicability of any payment pursuant to this Section 3.5 once it has been finally determined in accordance with this Section 3.5.

(g) The parties hereto acknowledge and agree that any Contingent Payments paid to Seller is part of the aggregate consideration (i.e. Final Purchase Price) payable

to Seller pursuant to this Agreement for all Tax purposes, with a portion of each such payment being treated as interest as determined in accordance with Section 483 of the Code and the Treasury Regulations promulgated thereunder, and the parties hereto shall not take any reporting position inconsistent with such treatment unless required by a determination as defined in Section 1313(a) of the Code (or other comparable provision of federal, state, local or foreign tax law).

Section 3.6 Withholding. Notwithstanding any other provision in this Agreement, to the extent required by applicable Law, Purchaser and other payors hereunder shall have the right to deduct and withhold any Taxes from any payments to be made hereunder; provided, however, except with respect to payments in the nature of compensation to be made to employees or former employees, Purchaser shall provide Seller with a written notice of Purchaser or any such payor's intention to withhold prior to any such withholding and a reasonable opportunity to take such actions (including providing certificates or Tax forms) as may eliminate, mitigate or otherwise reduce any potential withholding or deduction requirement. To the extent that amounts are so withheld and paid to the appropriate taxing authority, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to Seller or any other recipient of payment in respect of which such deduction and withholding was made.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser as of the date hereof and as of the Closing Date as follows:

Section 4.1 Organization, Standing and Power; Investments; Capital Stock.

(a) Seller (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, (ii) has all requisite power and authority to own, lease, license and operate the Purchased Assets and to carry on the Business as currently conducted and (iii) is duly qualified and registered to do business and is in good standing as a foreign corporation in each jurisdiction in which the ownership, possession or use of the Purchased Assets or the conduct of the Business requires such qualification or registration, except where the failure to be so qualified or registered could not reasonably be expected to have a material impact on the Business.

(b) Seller has delivered or made available to Purchaser complete and accurate copies of the certificate of formation, operating agreement and any similar governing documents of Seller, each as amended to date (together, the "Seller Organizational Documents"), and each such instrument is in full force and effect and no other organizational documents are applicable to or binding upon Seller. Seller is not in violation of any of the provisions of the Seller Organizational Documents.

(c) Schedule 4.1(c) sets forth a complete and accurate list of all capital stock or other equity securities owned, directly or indirectly, by Seller.

(d) Schedule 4.1(d) sets forth the issued and outstanding membership interests of Seller, which membership interests comprise all of the equity securities of Seller. All

of the outstanding membership interests of Seller have been duly authorized, validly issued, fully paid and are nonassessable, free of any Liens and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the Seller Organizational Documents, any Contract to which Seller is a party or Applicable Law. Schedule 4.1(d) also sets forth the complete and accurate name of each record holder of the issued and outstanding membership interests of Seller and the number and class of membership interests of Seller owned by such record holder.

Section 4.2 Authority; Binding Agreement; No Conflict.

(a) Seller has the requisite power and authority to execute and deliver this Agreement and the Ancillary Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Ancillary Documents to which Seller is a party, and consummation of the transactions contemplated hereby and thereby, have been duly authorized by all requisite action of Seller.

(b) This Agreement has been duly executed and delivered by Seller, and each Ancillary Document to which Seller is a party, when executed and delivered by Seller, will be duly executed and delivered. This Agreement constitutes (and each of the Ancillary Documents to which Seller is a party, when executed, will constitute) (assuming, in each case, the due authorization, execution and delivery by each other party thereto) a legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general equitable principles.

(c) The execution, delivery and performance of this Agreement and the Ancillary Documents to which Seller is a party and the consummation of the transactions contemplated hereby and thereby by Seller do not and will not (i) violate or conflict with the Seller Organizational Documents, (ii) result in any failure to comply in all material respects with any Applicable Law to which Seller or any Asset of Seller is subject or may be bound or (iii) except as set forth on Schedule 4.2(c), conflict with, result in any violation or breach of or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation, modification, notice or acceleration of any obligation or loss of any benefit) under, require, a consent, notice or waiver under, require the payment of a penalty or increased liabilities, fees or the loss of a benefit under or result in the imposition of any Lien with respect to, the Business or any of the Purchased Assets under, any of the terms, conditions or provisions of any Seller Material Contract.

(d) No Permit, Action, concession of, or registration, declaration, notice or filing with, any Governmental Entity is required by or with respect to Seller in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

Section 4.3 Financial Statements.

(a) Schedule 4.3 sets forth complete and accurate copies of (i) the unaudited balance sheet of Seller as of each of the years ended December 31, 2014, December 31, 2015 and December 31, 2016 and the related profit and loss statement for the twelve (12) month periods then ended (the "Year-End Financials"), and (ii) the internal balance sheet of Seller as of June 30, 2017 (the "Interim Balance Sheet") and the related profit and loss statement for the six (6) month period then ended June 30, 2017 (together with the Interim Balance Sheet, the "Interim Financials"). The Year-End Financials and the Interim Financials (collectively referred to as the "Financials") have been prepared, (X) except as set forth on Schedule 4.3 in accordance with the Accounting Principles consistently applied throughout the periods indicated, (Y) in a manner consistent with each other, and (Z) from and in accordance with the Books and Records of Seller, which Books and Records are, except as set forth on Schedule 4.3, maintained in accordance with the Accounting Principles consistently applied throughout the periods indicated. The Financials present fairly, in all material respects, the financial condition, operating results and cash flows of Seller as of the dates and during the periods indicated therein, subject in the case of the Interim Financials to normal year-end adjustments, which will not be material in amount or significance in any individual case or in the aggregate.

(b) All Trade Payables of Seller (i) arose from bona fide, arms-length transactions in the ordinary course of business for services performed for, or goods sold to, Seller, for which Seller obtained substantially equivalent value, and (ii) have been incurred in accordance with applicable payment or credit terms imposed by the vendors of such services or goods. None of the Trade Payables or Accounts Receivable were incurred as result of a change or modification in Seller's credit, collection or payment policies, procedures or practices from Seller's policies, procedures or practices in place prior to January 1, 2017, including by accelerating the collections or receivables (whether or not past due) or the failing to pay or delaying payment of payables.

Section 4.4 No Undisclosed Liabilities. Seller has no Liabilities related to the Business or the Purchased Assets of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such Liabilities, in each case, other than those (i) set forth on the face of the Financials or (ii) that have been incurred since June 30, 2017 and do not exceed $5,000.

Section 4.5 Absence of Certain Changes or Events. Except as described on Schedule 4.5, since January 1, 2017, (i) Seller has conducted its business only in the ordinary course of business consistent with past practice, (ii) Seller has not suffered any material damage, destruction or loss (whether or not covered by insurance), other than in the ordinary course of business consistent with past practice, (iii) there has not been any Seller Material Adverse Effect, and (iv) Seller has not taken any of the following actions:

(a) amended, adopted, authorized or proposed any amendments to the Seller Organizational Documents;

(b) proposed, adopted or entered into any Contract or plan with respect to or consummated (i) any plan of liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of Seller or (ii) (A) any merger, consolidation or other business combination with, or (B) acquisition of any assets (other than acquisitions in the ordinary

course of business consistent with past practice), securities or any capital stock of or interest in, any Person;

(c) sold, licensed, mortgaged, transferred, leased, assigned, pledged, subjected to any Lien or otherwise disposed of or encumbered any Purchased Assets or any interest (other than the license of Intellectual Property to customers in the ordinary course of business consistent with past practice);

(d) disclosed any Source Code included in the Purchased IP to any other Person;

(e) (i) incurred or assumed any Indebtedness or issued any debt securities, (ii) assumed, guaranteed, endorsed or otherwise became liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person or (iii) made any loans, advances or capital contributions to or investments in any other Person except for advances for travel and other miscellaneous expenses in the ordinary course of business consistent with past practice to employees of Seller;

(f) changed or modified its credit, collection, or payment policies, procedures or practices, including by accelerating collections or receivables (whether or not past due) or failing to pay or delaying payment of payables or other Liabilities;

(g) made any changes in accounting methods, procedures, principles or practices or changed any assumption underlying, or method of calculating, any bad debt, contingency or other reserve;

(h) increased benefits payable under any existing severance or termination pay policies or employment agreements; entered into any employment, deferred compensation or other similar agreement (or amended any such existing agreement) with any director, officer, manager or employee of Seller; altered, established, adopted, or amended (except as required by Applicable Law) any collective bargaining agreement, bonus, profit-sharing, thrift, pension, retirement, deferred compensation, compensation, change of control payment, severance, equity option, restricted equity or other benefit plan or arrangement covering any past or present director, officer, manager, employee, contractor or consultant of Seller; or increased compensation, bonus or other benefits payable to any director, officer, manager or employee of Seller;

(i) (i) modified, amended, terminated or assigned any Lease, (ii) waived, released, relinquished or assigned any rights of Seller under any Lease or (iii) taken any action that could adversely affect the term, validity or enforceability of any Lease;

(j) made or changed any Tax election, settled or compromised any Tax liability, amended any Tax Return, changed any method of Tax accounting, entered into any closing agreement with respect to any Tax, surrendered any right to claim a Tax refund or consented to any extension or waiver of the limitation period applicable to any claim or assessment in respect of any Taxes;

(k) initiated, compromised or settled any Action relating to the Business or any of the Purchased Assets;

(l) amended, modified, terminated, canceled or permitted to lapse any insurance policies maintained by Seller (other than in the ordinary course of business);

(m) entered into any Contract with any Affiliate, equityholder, officer, director, manager, employee or consultant of Seller, other than with respect to the payment or provision of salary, benefits or other compensation to officers, directors, managers, employees or consultants of Seller;

(n) canceled any debts or waived any claims or rights of substantial value (including the cancellation, compromise, release or assignment of any Indebtedness owed to or claims held by Seller); or

(o) authorized any of, or committed or agreed, in writing or otherwise, to take any of the foregoing actions.

Section 4.6 Tax.

(a) Seller has timely filed (taking into account any valid extension) all Tax Returns required to be filed by Seller with regard to the Purchased Assets and the Business. All Tax Returns which have been filed by Seller are true, correct and complete in all respects. To the Knowledge of Seller, all Taxes (whether or not shown on any such Tax Return) have been timely paid (including installment payments of Taxes). Schedule 4.6(a) contains a complete and accurate list of all jurisdictions in which Tax Returns are filed by or with respect to Seller.

(b) No deficiencies for any Taxes have been asserted or assessed, or to the Knowledge of Seller, proposed, against Seller, and Seller has not executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(c) Seller has timely withheld and paid over to the appropriate Taxing Authority and have properly reported all Taxes that it is required to withhold from amounts paid or owing to any employee, independent contractor, creditor or other third party.

(d) No audit or other examination of any Tax Return of Seller is presently in progress. Seller has not received from any Taxing Authority (including jurisdictions where Seller has not filed Tax Returns) any (i) notice indicating an intent to open an audit or other review; (ii) request for information related to Tax matters; or (iii) any written claim that Seller or the Business is subject to Tax in a jurisdiction in which Seller does not file Tax Returns with respect to the Business. There are no Liens for Taxes (other than for current Taxes not yet due and payable) upon any of the Purchased Assets.

(e) Seller is not liable for Taxes of any other Person by operation of Applicable Law or otherwise, or is currently under any contractual obligation to indemnify any Person with respect to Taxes, or is a party to any Tax sharing agreement or any other agreement providing for payments by Seller with respect to Taxes.

(f) Seller has not filed, and does not have pending, any ruling requests with any taxing authority, including any requests to change any accounting method.

(g) Seller has not engaged in a "reportable transaction," as set forth in Treasury Regulation Section 1.6011-4(b), or any transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a Tax avoidance transaction and identified by notice, regulation or other form of published guidance as a "listed transaction," as set forth in Treasury Regulation Section 1.6011-4(b)(2). Seller has disclosed on its Tax Returns all positions taken therein that could give rise to a substantial understatement penalty under Section 6662 of the Code or any similar provision of other Applicable Law, and is in possession of supporting documentation as may be required under any such provision.

(h) None of the Purchased Assets are required to be depreciated under the alternative depreciation system under Section 168(g)(2) of the Code or are "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(i) Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

Section 4.7 Real Estate. Seller owns no real property. Schedule 4.7 sets forth a true, correct and complete list of each lease, sublease, license or occupancy or use agreement or similar Contract, written or oral under which Seller is lessee of or holds, uses or operates any real property owned by any Person (such leases or Contracts, the "Leases", and such real property, the "Leased Real Property"). Seller has not conveyed its interest under or subleased, licensed or otherwise granted any Person the right to use or occupy the Leased Real Property or any portion thereof. There are no pending or, to the Knowledge of Seller, threatened condemnation proceedings, lawsuits or administrative actions relating to the Leases or the Leased Real Property. Seller has not received any notice that a security deposit or portion thereof deposited with respect to any Lease has been applied in respect to a breach or default under any Lease that has not been redeposited in full.

Section 4.8 Title, Sufficiency and Condition of Assets.

(a) Seller has, and Purchaser will receive at the Closing, good and marketable title to or valid and enforceable rights to use or interests in, all of the Purchased Assets, free and clear of all Liens.

(b) Other than the assets listed on Schedule 4.8(b), which are owned by Kinetic and used by Seller, the Purchased Assets constitute all of the Assets that are necessary to or used in the operation of the Business as is being conducted as of the date hereof and as presently contemplated to be conducted. The Purchased Assets are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, and are usable in the regular and ordinary course of business consistent with past practice.

Section 4.9 Accounts Receivable. All Accounts Receivable of Seller, whether reflected on the Interim Balance Sheet or subsequently created, are valid receivables that have arisen from bona fide transactions in the ordinary course of business consistent with past practice. All such Accounts Receivable are good and collectible (and subject to no setoffs or counterclaims) at the aggregate recorded amounts thereof, net of any applicable reserves for doubtful accounts reflected

on the Interim Balance Sheet. Seller has good and marketable title to their accounts receivable, free and clear of all Liens. Since January 1, 2017, there have not been any write-offs as uncollectible of any notes or Accounts Receivable of Seller.

Section 4.10 Intellectual Property/IT.

(a) Schedule 4.10(a) sets forth a complete and accurate list of all of the following Intellectual Property owned by Seller and used, held or intended for use in connection with the Business: (i) all patents, patent applications, material patent disclosures and material unpatented inventions; (ii) all registrations for and applications to register Marks and all material unregistered Marks; (iii) all copyright registrations and applications and all material unregistered copyrights; (iv) all material Software; and (v) all other material Intellectual Property.

(b) Seller owns all right, title and interest in and to all of the Intellectual Property set forth on Schedule 4.10(a) and all other Purchased IP, free and clear of all Liens. The Purchased IP (other than the Book Trader Module) and the Licensed IP together include all of the Intellectual Property necessary to or used in connection with the operation of the Business as it is now and is presently contemplated to be conducted. The Purchased IP (other than the Book Trader Module) is not subject to any restrictions or limitations regarding ownership, use, license or disclosure. Seller has not assigned or otherwise transferred ownership of any Software or other Intellectual Property used in or related to the Business to any Person. None of Seller's Affiliates and none of the Seller Equityholders own any Software or other Intellectual Property used in or related to the Business. All of the Purchased IP (other than the Book Trader Module) and Licensed IP will be available for use by Purchaser immediately after the Closing on the same terms as it was available for use by Seller immediately prior to the Closing.

(c) Seller is not infringing, misappropriating or otherwise making unlawful or unauthorized use of any Intellectual Property of any Person, and the operation of the Business (including using, selling, licensing, distributing and otherwise making available the Business' products and services) in the manner conducted on the date hereof and on the date of Closing does not and will not infringe, misappropriate or otherwise make any unlawful or unauthorized use of any Intellectual Property of any Person. Seller has not received any notice or other communication from any Person (excluding Purchaser and its representatives) claiming, alleging or suggesting that Seller has infringed, misappropriated or otherwise made any unlawful or unauthorized use of any Intellectual Property and, to the Knowledge of Seller, no other Person has threatened to make any such claims. To the Knowledge of Seller, no other Person is infringing, misappropriating or otherwise making any unlawful or unauthorized use of any Purchased IP.

(d) All of the Purchased IP was developed entirely by: (i) employees of Seller acting within the scope of their employment and who have assigned, whether by operation of law or pursuant to written assignments, all right, title and interest in and to such Purchased IP, and any Intellectual Property incorporated therein, to Seller or (ii) independent contractors who have assigned, pursuant to written assignments, all right, title and interest in and to such Purchased IP, and any Intellectual Property incorporated therein, to Seller; in either case, such assignment being valid and enforceable and free and clear of all Liens. Seller has obtained from its current and former employees and independent contractors who have conceived, reduced to practice, authored or otherwise created or developed any Intellectual Property for Seller all of their right, title and

interest in and to all such Intellectual Property. Seller does not use or license any Intellectual Property owned by any current or former employee or independent contractor.

(e) Schedule 4.10(e) sets forth a complete and accurate list of all Open Source Software that Seller uses in the operation of the Business. None of the Purchased IP is subject to a license for Open Source Software that requires or will require any Source Code to be disclosed or otherwise made available to any other Person, whether currently or upon the occurrence of a condition (including the distribution of any Software).

(f) Seller has taken commercially reasonable steps to maintain and protect the Purchased IP so as not to adversely affect the validity or enforceability thereof. Seller has not disclosed, escrowed or otherwise provided, and is not obligated to disclose, escrow or otherwise provide, any Source Code that is Purchased IP to any Person (other than Source Code that has been made available to its employees pursuant to a written confidentiality and intellectual property assignment agreement and in connection with their employment).

(g) Any documentation existing on the date of Closing and accompanying Software or Source Code that is Purchased IP correctly describes the material features and functions of such Software or Source Code, and there are no material errors in such documentation. When used in accordance with its instructions and requirements, all Software and Source Code that is Purchased IP correctly performs the material features and functions described in its documentation, free of significant errors and bugs and contains no virus, worm, back door, Trojan horse or other malicious component. The Purchased Assets include, and Seller has possession of, complete copies of all versions, updates, upgrades and improvements, including all Source Code, of the Software included in the Purchased IP.

(h) Seller has modified all of its products and services that include or use the Book Trader Module such that they no longer use or access, and no user can use or access, the Book Trader Module, or any subsequent iteration thereof, or any feature or function of the Book Trader Module (which includes viewing market information such as bid data, ask data, and price data, and use of the Book Trader Module to enter an order).

(i) As of the Closing Date, Seller has completed the steps set forth on Schedule 4.10(i).

Section 4.11 Contracts.

(a) Schedule 4.11(a) sets forth a complete and accurate list, or, if oral, an accurate and complete description of all material terms, of each of the following Seller Contracts (each, regardless of whether or not set forth on Schedule 4.11(a), a "Seller Material Contract" and collectively, the "Seller Material Contracts"):

(i) any Contract restricting the business activities of or limiting the freedom of Seller or Seller's employees, former employees, consultants or former consultants to engage in any line of business, to sell, supply or distribute any service or product, to compete with any Person, to conduct business in any geographic place or to solicit the services or employment of or hire any individual or group of individuals;

(ii) any Contract containing a most-favored-nation, best pricing or other similar term or provision or any Contract containing a requirement to deal exclusively with or grant exclusive rights or rights of first refusal to any customer, vendor, supplier, distributor, contractor or other Person;

(iii) all Contracts or commitments (A) requiring payment to Seller in an amount in excess of $10,000 per annum, (B) with a customer of the Business, (C) pursuant to which Seller has agreed to purchase all of its requirements for the goods and/or services in question, (D) which contain minimum volume or Dollar guarantees, (E) which require payments by Seller in an amount in excess of $5,000 per annum or (F) which require any capital expenditures by Seller;

(iv) any Contract (including licenses and covenants not to sue) pursuant to which Seller is using or is authorized to use any Intellectual Property, pursuant to which any Person is using or is authorized to use any Purchased IP or pursuant to which any Person is authorized by Seller to use any Licensed IP;

(v) any Contract pursuant to which Seller developed, had developed or collaborated in the development of any Intellectual Property, any Contract pursuant to which Seller assigned or agreed to assign or another Person assigned or agreed to assign to Seller, ownership of any Intellectual Property and any settlement agreement or any other Contract restricting Seller's right to use, sell, license, sublicense, transfer or otherwise dispose of all or part of any Intellectual Property;

(vi) any Contract (A) relating to an acquisition, disposition, merger or corporate reorganization involving Seller, (B) pursuant to which Seller has any ownership interest in any other Person or (C) providing for an advance or capital contribution to or investment in any other Person;

(vii) any loan agreements, lines of credit, notes, indentures, mortgages, trusts, installment arrangements, capital leases, letters of credit, bonds or other Contracts relating to Indebtedness (or any Contract of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment by Seller to become liable for the obligations or liabilities thereof);

(viii) any settlement Contract;

(ix) any partnership, joint venture or similar Contract to which Seller is a party;

(x) any Contract obligating Seller to provide indemnification, other than indemnification contained in a standard sales agreement or purchase order, the form of which has been provided to Purchaser;

(xi) (A) any employment, independent contractor, consulting or severance Contract with any current or former employee, manager, executive officer, contractor or consultant of Seller or any other Person or (B) any Contract or employee benefit plan, including any equity option plan, equity appreciation right plan or equity purchase plan, change-in-control

Contract or plan or retention Contract or plan, for which any of the benefits, compensation or payments will be increased, the vesting of benefits will be accelerated or a payment will be required, as a result of the consummation of the transactions contemplated hereby;

(xii) any Lease, and any Contract pursuant to which Seller has granted to any Person the right to use or occupy any portion of the property leased under any such Lease;

(xiii) any Contract limiting the right of Seller to encumber or transfer any of its Assets; and

(xiv) any Contract that is outside of the ordinary course of Seller's business.

(b) Complete and accurate copies of each of the Seller Material Contracts, or, if oral, an accurate and complete description of all material terms thereof, have been made available to Purchaser. All electronic services agreements between Seller and a customer of the Business are substantially in the form attached to Schedule 4.11(b)(i). All master licensing and services agreements between Seller and a customer of the Business are substantially in the form attached to Schedule 4.11(b)(ii).

(c) Each Seller Material Contract is valid and binding on Seller and, to the Knowledge of Seller, each other party thereto, is in full force and effect and is enforceable by Seller in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies and to general principles of equity. Seller has performed in all material respects all obligations required to be performed by it under each Seller Material Contract and, to the Knowledge of Seller, each other party to each Seller Material Contract has performed in all material respects all obligations required to be performed by it under such Seller Material Contract. Seller does not know of, nor has it received written notice of, any violation, breach or default under (or any condition that with the passage of time or the giving of notice or both, would cause such a violation of, breach of or default under) any Seller Material Contract and Seller has not received notice from any party to a Seller Material Contract that such party intends either to modify, cancel or terminate a Seller Material Contract. Seller has complied with all material terms contained in any Seller Material Contract that provide for pricing or other contract terms on a "most favored nation" or similar basis, and no material refunds of any past payments arising under any such Seller Material Contracts are or are expected to become due, except as may have been reserved in the Financials. To the Knowledge of Seller, no circumstances exist that would reasonably be expected to adversely affect Seller's ability to perform its material obligations under the Seller Material Contracts in all material respects or result in a material breach or default under any Seller Material Contract.

Section 4.12 Litigation. Except as set forth on Schedule 4.12, since January 1, 2014 there has not been any action, suit, proceeding, claim, arbitration, charge or investigation (collectively, "Actions") pending or, to the Knowledge of Seller, threatened, against or involving the Business or any of the Purchased Assets or any of Seller's officers, directors, managers or employees in their capacities as such, including any Action questioning, challenging or seeking to

prevent, hinder or delay the transactions contemplated by this Agreement. There are no facts or circumstances existing that could reasonably be expected to give rise to or serve as a basis for any material Actions against or involving the Business or any of the Purchased Assets, the transactions contemplated by this Agreement or any of Seller's officers, directors, managers or employees in their capacities as such. No material citations, fines or penalties have been asserted against Seller under any Applicable Law that remain outstanding. There are no judgments, orders, settlements or decrees outstanding against Seller, the Business or any of the Purchased Assets.

Section 4.13 Employee Benefit Plans.

(a) Schedule 4.13(a) contains a complete and accurate list of each "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), including, Multiemployer Plans, and all pension, retirement, defined contribution, profit sharing, equity, equity purchase, equity option, severance, employment, change-in-control, termination, retention, health and welfare (including any retiree health or retiree life benefits), fringe benefit, collective bargaining, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise), whether formal or informal, oral or written, legally binding or not, under which (i) any current, former or retired employee, director, manager or consultant of Seller, its Affiliates or any members of its "Controlled Group" (defined as any organization which is a member of a controlled group of organizations within the meaning of Section 414(b), (c), (m) or (o) of the Code) has any present or future right to benefits and which are contributed to, required to be contributed to, sponsored by or maintained by Seller, its Affiliates or any member of its Controlled Group or (ii) Seller, its Affiliates or any member of its Controlled Group has any present or future liability. All such plans, agreements, programs, policies and arrangements shall be collectively referred to as the "Seller Plans."

(b) None of Seller, its Affiliates or any member of its Controlled Group maintains, contributes to or has any liability with respect to any employee benefit plan, program, policy or arrangement maintained outside the jurisdiction of the United States or that covers any Seller Employee who performs services outside the United States.

(c) Each Seller Plan has been established, maintained and administered in accordance with its terms, and in compliance with the applicable provisions of ERISA, the Code and other Applicable Laws. Each Seller Plan that is intended to be qualified within the meaning of Section 401(a) of the Code has received a favorable determination letter or opinion letter as to its qualification, and nothing has occurred, whether by action or failure to act, that could be expected to cause such determination letter to be revoked. Neither this Agreement nor the consummation of any of the transactions contemplated hereby will cause Purchaser to assume any liabilities for any Tax, fine, lien, penalty or other liability imposed by ERISA, the Code or other Applicable Laws with respect to any Seller Plan.

(d) No Seller Plan exists that, as a result of the execution of this Agreement or the transactions contemplated by this Agreement (whether alone or in connection with any subsequent event(s)), (i) will result in severance pay or any increase in severance pay

upon any termination of employment after the date hereof pursuant to any Contract or Seller Plan or (ii) will accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other obligation pursuant to, any of the Seller Plans.

(e) No individual classified as a non-employee, including any independent contractor, leased employee or consultant, for purposes of receiving employee benefits regardless of treatment for other purposes, is eligible to participate in or receive benefits under any Seller Plan that does not specifically provide for their participation.

Section 4.14 Compliance With Laws. Seller has conducted and is conducting the Business in material compliance with all Applicable Laws and no written notice, action or assertion has been received by Seller or, to the Knowledge of Seller, has been filed, commenced or threatened against Seller alleging any violation of any Applicable Law.

Section 4.15 Permits. Seller has all material Permits required to conduct the Business in the ordinary course consistent with past practice, and a complete and accurate list of all such Permits is set forth on Schedule 4.15. All of such material Permits are included in the Purchased Assets. Seller is in compliance, and has been in compliance, in all material respects with the terms of such material Permits, such material Permits are in full force and effect, and no suspension or cancellation of any such material Permits is pending, or to the Knowledge of Seller, threatened.

Section 4.16 Labor and Employees.

(a) Schedule 4.16(a) sets forth a complete and accurate list of the names and titles of all of the directors, managers or similar governing Persons or bodies, each officer of Seller and a complete and accurate list of all other employees who are working for Seller as of the date hereof, including in each case, their name, title, hire date, full time/part time status, salaried/hourly status, active or leave status (if on leave, with type of leave indicated), exempt/non-exempt status, work location, base salary/wage, bonus entitlement, commission entitlement and union affiliation.

(b) Schedule 4.16(b) sets forth a complete and accurate list of all temporary employees, consultants and independent contractors who are currently providing services to Seller as of the date hereof and includes their name, work location, position description or service performed, date initially contracted, hours worked, term of assignment and fee structure.

(c) Seller is not a party to any Contract or arrangement between or applying to one or more employees and a trade union, works council, group of employees or any other employee representative body, for collective bargaining or other negotiating or consultation purposes or reflecting the outcome of such collective bargaining or negotiation or consultation with respect to their respective employees with any labor organization, union, group, association, works council or other employee representative body or is bound by any equivalent national or sectoral agreement. There are no activities or proceedings by any labor organization, union, group or association or representative thereof to organize any such employees or any threats thereof. There are no lockouts, strikes, slowdowns, pickets, work stoppages or, to the Knowledge of Seller,

threats thereof by or with respect to any employees of Seller nor have there been any such lockouts, strikes, slowdowns, pickets or work stoppages.

(d) Seller is in compliance with all Applicable Laws with respect to employment, employment practices, immigration matters, terms and conditions of employment and wages and hours, in each case, with respect to any current or former employee of Seller. Neither Seller nor any member of its Controlled Group has any direct or indirect liability with respect to any misclassification of any Person as an independent contractor, rather than as an employee, or with respect to any employee leased from another employer.

(e) Each current employee of Seller is (i) a United States citizen or lawful permanent resident of the United States or (ii) an alien authorized to work in the United States either specifically for Seller or for any United States employer, and Seller has completed a valid Form I-9 (Employment Eligibility Verification) for any current employee of Seller. With the exception of Michael S. Williams, who resides in Puerto Rico, no current employee of Seller has a principal place of employment outside the United States or is subject to the labor and employment laws of any country other than the United States.

Section 4.17 Insurance. Schedule 4.17 contains a list of, and Seller has furnished to Purchaser true and complete copies of, all insurance policies and bonds maintained by Seller. There is no claim by Seller pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed. All premiums payable under all such policies and bonds have been timely paid and Seller has complied fully with the terms and conditions of all such policies and bonds, and such policies and bonds are in full force and effect. After the Closing, Seller will continue to have coverage under such policies and bonds with respect to events occurring prior to the Closing.

Section 4.18 Brokers; Fees. Except as set forth on Schedule 4.18, no agent, broker, investment banker, financial advisor or other firm or Person is or shall be entitled, as a result of any action, agreement or commitment of Seller or any of its respective Affiliates, to any broker's, finder's, financial advisor's or other similar fee or commission in connection with any of the transactions contemplated by this Agreement or the Ancillary Documents.

Section 4.19 Transactions with Affiliates. Except as set forth on Schedule 4.19, none of the Seller Equityholders, consultants, officers, directors, managers or employees of Seller or, to the Knowledge of Seller, any of its respective Affiliates, (a) is a director, manager, officer or employee of or consultant to, or owns, directly or indirectly, any interest in, any competitor, franchisee, vendor, supplier or customer of the Business, or is in any way associated with or involved in the Business (except in his or her official capacity as a director, manager, officer or employee of Seller, as the case may be); (b) owns, directly or indirectly, in whole or in part, any Asset that is associated with any Purchased Asset or that is used or held for use in connection with the Business; or (c) is a party to any transaction or Contract with Seller in connection with the Business, including any Contract providing for any loans or advances to, the employment of, the furnishing of services by or the rental of Assets from or to or otherwise requiring payments to, any such Person. Seller, nor any Affiliate of Seller owns, directly or indirectly, any interest in any competitor, franchise, supplier or customer of the Business.

Section 4.20 Customers; Suppliers.

(a) Schedule 4.20(a) sets forth a complete and accurate list of all of the customers of the Business and, to the Knowledge of Seller, the respective end-users of such customers, including the aggregate revenue received from each such customer during the year ended December 31, 2016 and the six (6) month period ended June 30, 2017.

(b) Schedule 4.20(b) sets forth a complete and accurate list of all of the suppliers and vendors of the Business, including the aggregate value of purchases from each such supplier or vendor during the year ended December 31, 2016 and the six (6) month period ended June 30, 2017.

(c) Except as set forth on Schedule 4.20(c), none of the customers disclosed on Schedule 4.20(a) or suppliers/vendors disclosed on Schedule 4.20(b) have cancelled or terminated, or provided written notice that they intend to cancel or otherwise terminate their relationship with the Business, or have during the last twelve (12) months provided notice that they will, as applicable, materially decrease or materially limit, their services, supplies or products for use by the Business or their usage or purchase of the services and products of the Business, whether prior to, on or after the Closing Date. There is no pending dispute with any such customers or suppliers/vendors, and to the Knowledge of Seller, no dispute is threatened by or against any such customers or suppliers/vendors.

Section 4.21 Insolvency. Neither Seller nor any of the Purchased Assets are the subject of any pending, rendered or threatened insolvency proceedings of any character. No Seller has made an assignment for the benefit of creditors or taken any action with a view to or that would constitute a valid basis for the institution of any such insolvency proceedings. Seller is not insolvent, nor will it become insolvent as a result of entering into this Agreement.

Section 4.22 No Other Agreement to Sell. Except for the transactions contemplated by this Agreement and the Ancillary Documents, no Seller has a legal obligation, absolute or contingent, to any other Person to sell, encumber or otherwise transfer the Purchased Assets or the Business (in whole or in part) or effect any merger, consolidation, combination, share exchange, recapitalization, liquidation, dissolution or other reorganization of such Seller or to enter into any agreement with respect thereto.

Section 4.23 Data Privacy. In connection with its collection, storage, transfer (including any transfer across national borders) and/or use of any personally identifiable information from any Person, including any customers, prospective customers, employees and/or other third parties (collectively, "Personal Information"), Seller is and has been in compliance with (a) all Applicable Laws in all relevant jurisdictions, (b) Seller's written privacy policies or protocols and (c) the requirements of any Contract or codes of conduct to which Seller is a party. Seller has commercially reasonable physical, technical, organizational and administrative security measures and policies in place to protect all Personal Information collected by them or on their behalf from and against unauthorized access, use and/or disclosure. Seller is and has been in compliance in all material respects with all Applicable Laws relating to data loss, theft and breach of security notification.

Section 4.24 Complete Copies of Materials. Seller has delivered or made available to Purchaser complete and accurate copies of each document that is referenced in the Disclosure Schedules.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as of the date hereof and as of the Closing Date as follows:

Section 5.1 Organization, Standing and Power. Purchaser is a limited liability company organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

Section 5.2 Authority; Binding Agreement. Purchaser has all requisite power and authority to execute and deliver this Agreement and the Ancillary Documents to which it is a party, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Ancillary Documents to which Purchaser is a party, and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action of Purchaser. This Agreement has been duly executed and delivered by Purchaser, and each Ancillary Document to which Purchaser is a party, when executed and delivered by Purchaser, will be duly executed and delivered, by Purchaser. Assuming in each case the due authorization, execution and delivery by each other party thereto, this Agreement constitutes, and each Ancillary Document to which Purchaser is a party when executed will constitute, a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general equitable principles.

Section 5.3 No Conflicts; Required Filings and Consents.

(a) The execution, delivery and performance by Purchaser of this Agreement and the Ancillary Documents to which it is a party do not, and the consummation by Purchaser of the transactions contemplated by this Agreement and the Ancillary Documents to which it is a party does not and will not, (i) conflict with, or result in any violation or breach of, any provision of the certificate of incorporation or bylaws of Purchaser, (ii) result in any failure to comply in all material respects with any Applicable Law to which Purchaser is subject or may be bound or (iii) conflict with, or result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit) under, require a consent or waiver under, require the payment of a penalty or increased liabilities, fees or the loss of a benefit under or result in the imposition of any Lien on Purchaser's assets under, any of the terms, conditions or provisions of any Contract to which Purchaser is a party or by which it or any of its properties or assets may be bound.

(b) Except as set forth on Schedule 5.3(b), no material Permit, Action, concession of, or registration, declaration, notice or filing with, any Governmental Entity is required by or with respect to Purchaser in connection with the execution, delivery and performance of this Agreement by Purchaser or the consummation of the transactions contemplated hereby.

Section 5.4 Brokers; Fees. No agent, broker, investment banker, financial advisor or other firm or Person is or shall be entitled, as a result of any action, agreement or commitment of Purchaser or any of its Affiliates, to any broker's, finder's, financial advisor's or other similar fee or commission in connection with any of the transactions contemplated by this Agreement.

ARTICLE VI.

CONDUCT OF BUSINESS

Section 6.1 Intentionally Omitted.

Section 6.2 Confidential Disclosure Agreement. The parties acknowledge that Cboe Exchange, Inc. and Seller have previously executed that certain Confidential Disclosure Agreement, dated as of December 13, 2016, as may be further amended or supplemented (the "Confidential Disclosure Agreement"), which Confidential Disclosure Agreement shall automatically terminate on the date hereof and be of no further force or effect.

ARTICLE VII.

ADDITIONAL AGREEMENTS

Section 7.1 Access to Information. Purchaser and Seller shall preserve and keep all Books and Records that they own immediately after the Closing relating to the Business or the Purchased Assets for a period of six (6) years following the Closing Date or for such longer period as may be required by Applicable Law. During such retention period, upon reasonable prior written notice, Seller on the one hand, and Purchaser on the other hand, shall furnish or cause to be furnished to the other and its employees, agents, auditors and representatives access, during normal business hours, such information, books and records in its possession relating to the Business as is reasonably necessary for financial reporting and accounting matters, for reports or filings with any Governmental Entities or for the preparation and filing of Tax Returns, reports or forms for the defense of any Tax Claims, provided that with respect to any Tax Returns or other records relating to Tax matters or any other action, either party shall have reasonable access to such information until the applicable statute of limitations, if any, shall have expired. Except as otherwise agreed in writing, Seller on the one hand, and Purchaser on the other hand, shall reimburse the other for reasonable out-of-pocket costs and expenses incurred in assisting the other pursuant to this Section 7.1(b). Seller on the one hand, and Purchaser on the other hand, shall have the right to copy any of such records at its own expense. Neither Seller nor Purchaser shall be required by this Section 7.1(b) to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations.

Section 7.2 Further Assurances. Subject to the terms hereof, each of Seller and Purchaser shall at any time and from time to time after the Closing, at the request and expense of the other party, execute and deliver, or cause to be executed and delivered, all such deeds, assignments, and other documents, and take or cause to be taken all such other actions, as the requesting party reasonably deems necessary or advisable in order to complete, perfect or evidence any of the transactions contemplated by this Agreement

Section 7.3 Public Disclosure. After the Closing, the Purchaser may issue any press release or make any public statement with respect to the Agreement or the transactions contemplated hereby, provided that no public statement concerning the amount of the Initial Purchase Price or Final Purchase Price shall be made, except as required by Applicable Law. After the Closing, the Seller may not make a public statement with respect to the terms of the Agreement without the prior written consent of Purchaser.

Section 7.4 Intentionally Omitted.

Section 7.5 Intentionally Omitted.

Section 7.6 Employee Matters.

(a) Purchaser will offer to employ the individuals set forth on Schedule 7.6(a) who are actively employed by Seller on the Closing Date (the "Seller Employees") at base salary no less favorable than in place on the Closing Date (except with respect to Thomas Frey) and employee benefits no less favorable than those provided to similarly situated employees of Purchaser and its Affiliates. Seller Employees who accept offers of employment from the Purchaser and commence employment with Purchaser as of the Closing Date shall be referred to as "Transferred Employees." Notwithstanding the foregoing, nothing in this Agreement will, after the Closing Date, impose on Purchaser any obligation to retain any employee in its employment or any restriction on Purchaser's ability to condition employment of any individual on compliance with Purchaser's hiring and employment policies (including background check requirements).

(b) As of the Closing Date, (i) all Transferred Employees will cease participation in all Seller Plans and (ii) such Transferred Employees will be eligible to participate in employee benefit plans and fringe benefit plans provided by Purchaser or one of its Affiliates (collectively, "Purchaser Plans"); provided, however, that for the period commencing on the Closing Date and ending at 11:59 pm on December 31, 2017 (the "Continuation Period"), and to the extent permitted by Applicable Law and the respective plan, Seller shall, and shall cause the Seller's Florida Blue BlueOptions Everyday Health 14103 Plan, to treat Transferred Employees and their eligible dependents as electing health continuation coverage under COBRA. During the Continuation Period, such Transferred Employees and their eligible dependents shall receive the same health coverage as provided immediately prior to the Closing Date. Seller shall provide Purchaser with an invoice for the applicable COBRA premiums (not to exceed 102% of the actual cost of such premiums) within fifteen days after the end of each calendar month. Purchaser shall remit such COBRA premiums to Seller within fifteen days of receipt of such invoice. Other than payment of the applicable COBRA premiums, Purchaser shall have no liability or obligations with respect to any Seller Plan. In the event a Transferred Employee or eligible dependent incurs a qualifying event as defined under COBRA, such Transferred Employee or eligible dependent shall

continue to receive continuation coverage under the applicable Seller Plan past December 31, 2017, but only to the extent such Transferred Employee or eligible dependent affirmatively elects continuation coverage under COBRA and timely remits to Seller the applicable COBRA premium.

(c) Nothing contained in this Agreement, express or implied, (i) is intended to confer or shall confer upon any individual or any legal representative of any individual (including employees, retirees or dependents or beneficiaries of employees or retirees) any right as a direct party to, or a third party beneficiary of, this Agreement or (ii) shall be deemed to confer upon any such individual or legal representative any rights under or with respect to any plan, program or arrangement described in or contemplated by this Agreement, and each such individual or legal representative shall be entitled to look only to the express terms of any such plan, program or arrangement for his or her rights thereunder.

(d) Nothing in this Agreement, express or implied, shall require Purchaser to provide Transferred Employees with benefits comparable to those received while such Transferred Employees were employed by Seller. Nothing contained in this Agreement, express or implied, shall prohibit Purchaser from, subject to Applicable Law, adding, deleting or changing providers of benefits, changing, increasing or decreasing co-payments, deductibles or other requirements for coverage or benefits (*e.g.*, utilization review or pre-certification requirements) and/or making other changes in the administration or in the design, coverage and benefits provided to Transferred Employees. No provision of this Agreement shall be construed as a limitation on the right of Purchaser to suspend, amend, modify or terminate any Purchaser Plan. Further, (i) no provision of this Agreement shall be construed as an amendment to any employee benefit plan and (ii) no provision of this Agreement shall be construed as limiting Purchaser's discretion and authority to interpret its respective employee benefit and compensation plans, agreements, arrangements and programs, in accordance with their terms and Applicable Law.

(e) As of the Closing Date, Purchaser will assume the liability for providing and administering all required notices and benefits under COBRA and all liabilities and obligations under COBRA with respect to Transferred Employees and their dependents for qualifying events that occur after the Closing Date. Seller will retain any and all obligations and liabilities under COBRA for qualifying events that occurred on or prior to the Closing Date or as a result of the consummation of the actions contemplated by this Agreement.

(f) For the avoidance of doubt, Seller shall retain responsibility for each Seller Plan and each employment agreement or independent contractor agreement with any current or former employee or independent contractor of Seller, and Purchaser shall have no liability or obligation with respect to any such Seller Plan, employment agreement or independent contractor agreement.

(g) Effective as of the Closing Date, Transferred Employees shall cease participation in the applicable Seller Plan that is a defined contribution plan intended to be qualified under the Code (the "Seller 401(k) Plan") and such Transferred Employees will be eligible to participate in a defined contribution plan of Purchaser (the "Purchaser 401(k) Plan"). As soon as practicable following the Closing Date, each Transferred Employee will be permitted to elect to roll over his or her account balance (but not including any outstanding loan) in such

Seller 401(k) Plan (or any portion thereof) to the Purchaser 401(k) Plan for sixty (60) days after the Closing Date.

Section 7.7 Consents; Limitations on Assignability. Notwithstanding any other provisions in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Purchased Contract if an attempted assignment thereof, without the consent of another party thereto or any Governmental Entity, would constitute a breach or violation of any such Purchased Contract. Seller shall, at its expense, use commercially reasonable efforts and Purchaser shall, at Purchaser's expense, use commercially reasonable efforts to assist Seller in obtaining all consents and novations and to resolve all impracticalities of assignments, novations or transfers necessary to convey the Purchased Contracts to Purchaser at the earliest practicable date after the Closing. In the event that such consents or novations are not obtained on or prior to the Closing Date, or if an attempted assignment would be ineffective, Seller shall use commercially reasonable efforts to (i) provide to Purchaser the benefits of each such Purchased Contract; (ii) cooperate in any reasonable and lawful arrangement designed to provide such benefits to Purchaser and (iii) enforce, at the request and expense of Purchaser and for the account of Purchaser, any rights of Seller arising from any such Purchased Contract (including the right to elect to terminate such Contract in accordance with the terms thereof upon the request of Purchaser); and Seller shall promptly pay to Purchaser when received all monies received by Seller under such Purchased Contracts. To the extent Purchaser is provided the benefit of any such Purchased Contract, Purchaser shall perform or discharge, in all material respects, Seller's obligations under each such Purchased Contract, and pay all amounts due and owing under such Purchased Contracts, in accordance with the provisions thereof. This Section 7.7 shall not be construed to require Seller or Purchaser to assume any additional liability hereunder or to perform under or assume any obligations with respect to such Purchased Contracts in excess of those currently required by such Purchased Contracts. Once a necessary consent or novation is obtained, the applicable Purchased Contract shall be deemed to have been automatically transferred to Purchaser on the terms set forth in this Agreement with respect to the other Purchased Contracts transferred and assumed at the Closing, and consistent with the foregoing, the rights pursuant to the applicable Purchased Contract shall be deemed to be Purchased Assets.

Section 7.8 Restrictive Covenants.

(a) At all times after the Closing Date, Seller and each Seller Equityholder shall, and shall cause its Affiliates to, keep confidential (except as may be disclosed to its Affiliates, attorneys, accountants, financial advisors or other representatives) and not use or disclose any and all confidential information relating to Purchaser, the Business, the Purchased Assets or the Purchased IP. The foregoing will not preclude Seller, each Seller Equityholder and its Affiliates from (a) discussing or using such confidential information if the same hereafter is publicly known or available (other than as a result of a breach of this Section 7.8(a)) or (b) discussing or using such confidential information if the same is acquired from a Person that is not, to the disclosing Person's knowledge, after reasonable inquiry, under an obligation to keep such information confidential. If Seller or any Seller Equityholder is requested or required (by oral questions, interrogatories, requests for information or documents in legal, administrative, arbitration or other formal proceedings or by subpoena, civil investigative demand or other similar process) to disclose any such confidential information, Seller and any such Seller Equityholder shall promptly notify Purchaser of any such request or requirement so that Purchaser may seek a

protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 7.8(a). If, in the absence of a protective order or other remedy or the receipt of a waiver by Purchaser, Seller or any Seller Equityholder is required to disclose such information, Seller or any such Seller Equityholder, without liability hereunder, may disclose that portion of such information that it believes in good faith it is legally required to disclose. Notwithstanding the first sentence of this Section 7.8(a), Seller and any Seller Equityholder may only disclose such confidential information after Closing to those of its Affiliates, attorneys, accountants, financial advisors or other representatives that (i) need to know such information and (ii) agree to maintain the confidentiality of such information pursuant to the terms of this Section 7.8(a). Seller and Seller Equityholders shall be liable to Purchaser for breach of this Section 7.8(a) by Seller or any Seller Equityholder or by any other Person to whom Seller or Seller Equityholder has disclosed confidential information pursuant to the foregoing sentence, and such other Person shall be liable to Purchaser for its breach of this Section 7.8(a).

(b) For a period of five (5) years from and after the Closing Date, Seller and each Seller Equityholder agrees that it shall not, and shall cause its Affiliates not to, directly or indirectly, whether as principal, partner, officer, director, employee, consultant, manager, member or stockholder, own, manage, operate, participate in, control or acquire more than one percent (1%) of (or the right to acquire more than one percent (1%) of) any class of voting securities of, perform services for or otherwise carry on or engage in, a business that engages, anywhere in the world, in the Business. Nothing in this Section 7.8(b) shall be construed to prohibit the Seller or Seller Equityholders from owning, being employed by or operating Kinetic, so long as Kinetic does not own, manage, operate, participate in, control or otherwise carry on or engage in a business that competes with the Business.

(c) For a period of three (3) years from and after the Closing Date, Seller and each Seller Equityholder agrees that, without the consent of Purchaser, it shall not, and shall cause their Affiliates not to, directly or indirectly hire, solicit to (or assist or encourage others to) hire or in any way interfere with the employment relationship of any individual who is an employee of Purchaser or any of its Affiliates or who was an employee of Seller or its Affiliates within the twelve (12) months prior to the Closing Date. Notwithstanding the foregoing, Seller shall not be precluded from engaging in general solicitation or advertising for personnel, including advertisements and searches conducted by a headhunter agency; provided that such solicitation, advertising or searches are not directed in any way at the employees of Purchaser. Nothing in this Section 7.8(c) shall be construed to prohibit the Seller Equityholders from owning, being employed by or operating Kinetic, so long as Kinetic does not own, manage, operate, participate in, control or otherwise carry on or engage in a business that competes with the Business.

(d) Seller acknowledges and agrees that the scope and duration of the restrictive covenants set forth in this Section 7.8 are reasonably tailored, and not broader than necessary, to protect the legitimate business interests of Purchaser and do not prevent or preclude Seller or any Seller Equityholder from earning a suitable livelihood.

(e) If any term or provision of this Section 7.8 shall be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable, in whole or in part, and such determination shall become final, such provision or portion shall be deemed to be severed or limited, but only to the extent required to render the remaining terms and provisions of this Section

7.8 enforceable. This Section 7.8 as thus amended shall be enforced so as to give effect to the intention of the parties insofar as that is possible. In addition, the parties hereby expressly empower a court of competent jurisdiction to modify any term or provision of this Section 7.8 to the extent necessary to comply with any Applicable Law and to enforce this Section 7.8 as modified.

(f) Seller and each Seller Equityholder acknowledges and agrees that money damages would not be an adequate remedy for breach of the provisions of this Section 7.8. In the event of an actual or threatened breach by Seller or any Seller Equityholder of any of the provisions of this Section 7.8, Purchaser, in addition to any other remedies available to it, may obtain from a court of competent jurisdiction specific performance and/or injunctive relief in order to enforce, or prevent any breach of, the provisions of this Section 7.8 without the requirement of posting any bond or other indemnity.

Section 7.9 Post-Closing Maintenance. Until the later of three (3) years after the Closing Date and the date on which all funds are released from the Escrow Fund, Seller may not dissolve, liquidate or otherwise terminate its status as a legal entity in the State of Delaware, and Seller shall make all required filings and payments with all Governmental Entities or other Persons, remain in good standing in the State of Delaware and comply with its certificate of incorporation, bylaws, other governing documents and documents governing Seller's securities.

Section 7.10 Seller's Names; Trademarks. Seller will take any and all action necessary to change or cause to be changed the name of Seller, effective no later than immediately following the Closing, to names that do not include or relate to and are not based on or likely to be confused with the name "Silexx." Seller hereby agrees to terminate, and to cause its Affiliates to terminate, effective as of the Closing Date, any and all license rights or other similar authorizations (including covenants not to sue) it may have to use any of the Purchased IP, whether express or implied. Beginning immediately following the Closing, Seller will cease using all Marks that are included in the Purchased Assets or that are confusingly similar thereto.

Section 7.11 Payment Received.

(a) Seller agrees that, after the Closing Date, it shall hold and shall promptly (within thirty (30) days) transfer and deliver to Purchaser, from time to time as and when received by it and in the currency received by it, any cash, checks with appropriate endorsements (using commercially reasonable efforts not to convert such checks into cash) or other property that it may receive, if, in each case, such cash, checks or property properly belongs to Purchaser, pursuant to the terms hereof, including any payments of relevant accounts receivable and insurance proceeds, and shall account to Purchaser for all such receipts. In the event of a dispute between the parties regarding any of Seller's obligations hereunder, the parties shall cooperate and act in good faith to promptly resolve such dispute and, in connection with such cooperation, allow each other reasonable access to the records of the other relating to such disputed item.

(b) Purchaser agrees that, after the Closing Date, it shall hold and shall promptly (within thirty (30) days) transfer and deliver to Seller, from time to time as and when received by it and in the currency received by it, any cash, checks with appropriate endorsements (using commercially reasonable efforts not to convert such checks into cash) or other property that it may receive after the Closing Date if, in each case, such cash, checks or property properly

belongs to Seller, pursuant to the terms hereof, and does not constitute a Purchased Asset, and shall account to Seller for all such receipts. In the event of a dispute between the parties regarding Purchaser's obligations hereunder, the parties shall cooperate and act in good faith to promptly resolve such dispute and, in connection with such cooperation, allow each other reasonable access to the records of the other relating to such disputed item.

ARTICLE VIII.

CERTAIN COVENANTS REGARDING TAX MATTERS

Section 8.1 Tax Returns.

(a) Purchaser shall prepare and file, when due, any Tax Returns with respect to the Business or the Purchased Assets for the Straddle Period (other than Tax Returns of Seller described in Section 8.1(b)) that are required to be filed after the Closing Date. To the extent such Tax Returns relate to periods preceding the Closing Date, Purchaser shall provide Seller with reasonable opportunity to review and comment on each such Tax Return prior to filing. Not less than five (5) days prior to the filing of such Tax Return, Purchaser shall be entitled to receive from the Escrow Fund or Seller, at Purchaser's election, an amount equal to the Taxes required to be paid in connection with such Tax Returns for the Straddle Period that are allocated to Seller pursuant to Section 8.3.

(b) Seller shall hold Purchaser harmless from and shall be responsible for filing (i) all Tax Returns of Seller (other than Straddle Period returns filed by Purchaser) and (ii) all Tax Returns in respect of income, gross receipts and similar Taxes with respect to the Business for all periods ending on or prior to the Closing Date ("Pre-Closing Tax Periods"). Seller shall pay all Taxes reported on Tax Returns prepared by Seller pursuant to this Section 8.1(b). Purchaser shall hold Seller harmless from and shall be responsible for filing all Tax Returns with respect to the Business or the Purchased Assets for all taxable periods beginning after the Closing Date and for all Straddle Period Tax Returns filed by Seller late or in contravention of any comment by Seller.

Section 8.2 Cooperation on Tax Matters. Purchaser and Seller shall cooperate fully, as and to the extent reasonably requested by one another, in connection with the filing of Tax Returns pursuant to ARTICLE VIII and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include retaining and, upon the other party's request, providing, records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Purchaser and Seller further agree, upon request, to cooperate in good faith to mitigate, reduce or eliminate any Tax that could be imposed by the transactions contemplated hereby. In addition, Purchaser and Seller agree to cooperate in good faith in obtaining any certificate or other document from any Governmental Entity or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed by the transactions contemplated hereby.

Section 8.3 Tax Indemnification.

(a) Seller shall be liable for, and shall jointly and severally indemnify and hold Purchaser harmless against, (i) all Taxes imposed on Seller with respect to the operation of the Business or the Purchased Assets for all taxable periods (or portions thereof) ending on or prior to the Closing Date, including any Taxes paid in arrears and (ii) all Taxes imposed on or with respect to payments made to Seller pursuant to this Agreement.

(b) Purchaser shall be liable for, and shall indemnify and hold Seller harmless against, all Taxes relating to the operation of the Business or the ownership of the Purchased Assets for all taxable periods (or portions thereof) beginning after the Closing Date.

(c) For purposes of Section 8.1 and this Section 8.3, the portion of any Taxes that are payable with respect to a taxable period beginning on or before the Closing Date and ending after the Closing Date (a "Straddle Period") that shall be allocated to Seller is:

(i) In the case of Taxes that are either (A) based upon or related to income or receipts or (B) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible); other than conveyances pursuant to this Agreement, deemed equal to the amount which would be payable if the taxable year ended on the Closing Date; and

(ii) In the case of Taxes imposed on a periodic basis with respect to the assets or otherwise measured by the level of any item, shall be the product of (A) the amount of such Taxes for the entire period and (B) a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period.

Any credit or refund resulting from an overpayment of Taxes for a Straddle Period shall be prorated based upon the method employed in this Section 8.3(c) taking into account the type of the Tax to which the refund relates. In the case of any Tax based upon or measured by capital (including net worth or long term debt) or intangibles, any amount thereof required to be allocated under this Section 8.3(c) shall be computed by reference to the level of such items on the Closing Date. All determinations necessary to effect the foregoing allocations shall be made in a manner consistent with prior practice of Seller.

(d) For the avoidance of doubt, the rules, limitations and procedures of ARTICLE X and the right of setoff described in Section 12.11 shall apply to the indemnification covenants set forth in this Section 8.3 and Section 8.1(b).

Section 8.4 Certain Taxes. All Transfer Taxes incurred in connection with this Agreement shall be borne fifty percent (50%) by Seller and fifty percent (50%) by Purchaser. Purchaser and Seller will cooperate in the preparation and filing of all necessary Tax Returns with respect to all such Transfer Taxes.

ARTICLE IX.

CLOSING DELIVERIES

Section 9.1 Intentionally Omitted.

Section 9.2 Seller's Closing Deliveries. Simultaneously with the execution of this Agreement:

(a) Required Consents Seller shall have obtained and delivered to Purchaser evidence, in form and substance satisfactory to Purchaser, that Seller has obtained or delivered, as applicable, all consents, authorizations, notices and approvals set forth on Schedule 9.2(a), and to the extent not delivered, such items shall be addressed post-Closing in accordance with Section 7.7.

(b) Bill of Sale/Assignment. Seller shall deliver to Purchaser a duly executed counterpart of the bill of sale and assignment and assumption agreement in substantially the form attached hereto as Exhibit B (the "Bill of Sale"), executed by Seller.

(c) Escrow Agreement. Seller shall deliver to Purchaser a duly executed counterpart of the Escrow Agreement, executed by Seller.

(d) Sublease Agreement. Seller shall deliver to Purchaser (i) a duly executed counterpart of the sublease agreement in substantially the form attached hereto as Exhibit E (the "Sublease Agreement"), executed by Kinetic and (ii) evidence, in form and substance satisfactory to Purchaser and, in accordance with the terms of the Lease Agreement, that the landlord under the Lease Agreement consented to, and approved, the Sublease Agreement.

(e) IP Assignments. Seller shall deliver to Purchaser an intellectual property assignment in favor of Seller in the form attached as Exhibit D hereto (an "IP Assignment"), duly executed by each of Thomas J. Frey and Michael Williams, on the one hand, and Seller on the other hand, and Purchaser shall have received evidence, reasonably satisfactory to Purchaser, that Seller has made all payments required to be made under the IP Assignments.

(f) Tax Certificate. Seller shall deliver to Purchaser a duly executed certificate of non-foreign status from Seller in the form and substance satisfactory to Purchaser and consistent with the provisions of Treasury Regulation Section 1.1445-2(b)(2)(iv).

(g) Data Room. Seller shall deliver to Purchaser an electronic copy of the data room located at www.vroomsproplus.com.

(h) Employment Letter. Seller shall deliver to Purchaser an employment agreement on terms and conditions acceptable to Purchaser, duly executed by Thomas Frey.

(i) Additional Documents. Seller shall deliver to Purchaser such other agreements, documents, instruments or certificates of transfer and conveyance as Purchaser may reasonably request in connection with the consummation of the transactions contemplated hereby.

Section 9.3 Purchaser's Closing Deliveries. Simultaneously with the execution of this Agreement:

(a) Bill of Sale. Purchaser shall deliver to Seller a duly executed counterpart of the Bill of Sale, executed by Purchaser.

(b) Employment Letter. Purchaser shall deliver to Thomas Frey an executed employment letter on terms and conditions acceptable to Mr. Frey.

(c) Escrow Agreement. Purchaser shall deliver to Seller a duly executed counterpart of the Escrow Agreement, executed by Purchaser.

(d) Sublease Agreement. Purchaser shall deliver to Seller a duly executed counterpart of the Sublease Agreement, executed by Purchaser.

(e) Payment. Purchaser shall deliver to Seller payment of the Initial Purchase Price.

ARTICLE X.

SURVIVAL; INDEMNIFICATION

Section 10.1 Survival of Representations, Warranties and Covenants. The representations and warranties of Seller and Purchaser contained in this Agreement or in any certificates delivered pursuant to ARTICLE IX shall survive the Closing until the two (2) year anniversary of the Closing Date, except that (a) the representations and warranties set forth in Section 4.6 (Tax), Section 4.14 (Compliance with Laws) and Section 4.23 (Data Privacy) shall survive until thirty (30) days after the expiration of the applicable statute of limitations (including any waivers or extensions thereof) to which the underlying matter relates, (b) the representations and warranties set forth in Section 4.1 (Organization, Standing and Power; Investments; Capital Stock), Section 4.2 (Authority; Binding Agreement; No Conflict), Section 4.8(a) (Title), Section 4.18 (Brokers; Fees), Section 4.19 (Transactions with Affiliates) and Section 4.10(h) (Intellectual Property) shall survive forever, (c) the representations and warranties set forth in clauses (a) through (g) of Section 4.10 (Intellectual Property) shall survive the Closing until the three (3) year anniversary of the Closing Date and (d) the representations and warranties set forth in Section 5.1 (Organization, Standing and Power), Section 5.2 (Authority; Binding Agreement), Section 5.3 (No Conflict; Required Filings and Consents) and Section 5.4 (Brokers; Fees) shall survive forever. The representations and warranties identified in clause (b) of the first sentence of this Section 10.1 are referred to herein as the "Fundamental Representations". The covenants and agreements contained herein or in the Ancillary Documents which by their terms contemplate performance prior to the Closing will survive until the two (2) year anniversary of the Closing Date. All covenants and agreements contained herein or in the Ancillary Documents which by their terms contemplate actions or impose obligations following the Closing shall survive the Closing and remain in full force and effect until the date that is two (2) years following the latest date with respect to which performance of such covenant is required. Notwithstanding the foregoing, any claim made under and in accordance with this ARTICLE X prior to the expiration of the applicable period set forth above shall survive until such claim is finally resolved. No knowledge of, or investigation by or on behalf of, any party hereto will constitute a waiver of such party's right to enforce any covenant, representation or warranty contained herein or in any Ancillary Documents against any of the other parties or affect the right of a party to indemnification.

Section 10.2 Purchaser Indemnification.

(a) Subject to the provisions of this ARTICLE X, from and after the Closing, Seller and Seller Equityholders shall jointly and severally indemnify Purchaser, its Affiliates and their respective officers, directors, attorneys, accountants, representatives and agents (the "Purchaser Indemnified Parties") for all losses, liabilities, Taxes, damages, costs, interest, awards, judgments, penalties and expenses, including reasonable attorneys' and accountants' fees and expenses, (hereinafter individually a "Loss" and collectively, "Losses") that any Purchaser Indemnified Party may suffer, sustain or incur and that result from, arise out of, relate to or are caused by, any of the following:

(i) any breach or inaccuracy of any representation or warranty of Seller (disregarding all materiality and Seller Material Adverse Effect qualifications for purposes of determining a breach and calculating applicable Losses) contained in this Agreement or in any certificates delivered pursuant to ARTICLE IX, other than the Fundamental Representations;

(ii) any breach or inaccuracy of any of the Fundamental Representations (disregarding all materiality and Seller Material Adverse Effect qualifications for purposes of determining a breach and calculating applicable Losses);

(iii) any failure by Seller or any Seller Equityholder to perform or comply with any covenant or agreement contained in this Agreement;

(iv) any of the Excluded Liabilities;

(v) any failure by Seller to comply with the bulk sales or similar laws of the State of Florida; and

(vi) any fraud or criminal acts committed by or on behalf of Seller or any Seller Equityholder in connection with the Closing of the transactions contemplated herein.

(b) Notwithstanding anything in this Agreement to the contrary, in the absence of a showing of fraud or criminal acts by or on behalf of Seller or any Seller Equityholder, (i) no Purchaser Indemnified Party shall be entitled to indemnification for any Losses under Section 10.2(a)(i) unless and until one or more claims identifying such Losses in excess of $20,000 in the aggregate (the "Deductible Amount") has or have been delivered to Seller, and such amount is payable in accordance with this ARTICLE X, whereupon only the aggregate amount of such Losses in excess of the Deductible Amount shall thereafter be recoverable in accordance with the terms hereof, (ii) Seller and Seller Equityholders shall have no obligation to indemnify any Purchaser Indemnified Party under Section 10.2(a)(i) with respect to any Losses of less than $2,500 per occurrence (or series of occurrences), (iii) the aggregate amount of Losses in excess of the Deductible Amount for which the Purchaser Indemnified Parties shall be entitled to indemnification pursuant to Section 10.2(a)(i) shall not exceed $2,000,000 (the "Cap"),and (iv) the individual liability to the Seller Equityholders for all indemnity claims under Section 10.2 shall not exceed the Final Purchase Price times sixty percent (60%) for Frey Financial, LLC and Thomas J. Frey in the aggregate and the Final Purchase Price times forty percent (40%) for LF42, LLC and Michael S. Williams in the aggregate.

Section 10.3 Indemnification by Purchaser. Subject to the provisions of this ARTICLE X, from and after the Closing, Purchaser shall indemnify Seller and its respective officers, directors, Affiliates, attorneys, accountants, representatives and agents (the "Seller Indemnified Parties") for all Losses that any Seller Indemnified Party may suffer, sustain or incur and that result from, arise out of, relate to or are caused by any of the following:

(a) any breach or inaccuracy of any representation or warranty of Purchaser contained in this Agreement;

(b) any failure by Purchaser to perform or comply with any covenant or agreement contained in this Agreement;

(c) any Assumed Liability; and

(d) any fraud or criminal acts committed by or on behalf of Purchaser in connection with the Closing of the transaction contemplated herein.

Section 10.4 Payment Source. All amounts owing to the Purchaser Indemnified Parties pursuant to this ARTICLE X shall first be made to the extent possible from the Escrow Fund (and the parties shall take all actions reasonably necessary to cause the Escrow Agent to release the funds necessary to satisfy such indemnification claim within ten (10) days of the final determination thereof), and thereafter shall be effected, at the option of Purchaser, either by wire transfer of immediately available funds from Seller to the account(s) designated by the applicable Purchaser Indemnified Parties within ten (10) days after the final determination thereof or Purchaser's exercise of its rights under Section 12.11 to withhold and setoff against amounts due to Seller hereunder. Any amounts owing from Purchaser to the Seller Indemnified Parties for indemnification pursuant to this ARTICLE X shall be effected by wire transfer of immediately available funds from Purchaser to the account(s) designated by the applicable Seller Indemnified Party within ten (10) days after the final determination thereof. All indemnification payments made hereunder shall be treated by the parties hereto as an adjustment to the Final Purchase Price.

Section 10.5 Procedures for Indemnification.

(a) No party hereto shall be liable for any claim for indemnification under this ARTICLE X unless written notice of a claim for indemnification is delivered by the party seeking indemnification (the "Indemnified Party") to the party from whom indemnification is sought (the "Indemnifying Party") prior to the expiration of any applicable survival period set forth in Section 10.1 (in which event the claim shall survive until resolved). If any third party notifies the Indemnified Party with respect to any matter which may give rise to a claim for indemnification (a "Third Party Claim") against the Indemnifying Party under this ARTICLE X, then the Indemnified Party shall notify the Indemnifying Party reasonably promptly thereof in writing; provided that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder except to the extent that the Indemnifying Party is actually and materially prejudiced thereby. All notices given pursuant to this Section 10.5(a) shall describe with reasonable specificity the nature of the claim, the amount of the claim (to the extent then known) and the basis of the Indemnified Party's claim for indemnification.

(b) Following receipt of notice in accordance with Section 10.5(a) (other than a notice of a Third Party Claim against the Indemnified Party, in which case Section 10.5(c) below shall apply), the Indemnifying Party shall have thirty (30) days from the date it receives such notice (the "Dispute Period") to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For purposes of such investigation, the Indemnified Party shall make available to the Indemnifying Party all the material information related to such claim relied upon by or in possession or control of, the Indemnified Party. If the Indemnifying Party disagrees with the validity or amount of all or a portion of such claim made by the Indemnified Party, the Indemnifying Party shall deliver to the Indemnified Party written notice thereof (the "Dispute Notice") prior to the expiration of the Dispute Period. If no Dispute Notice is received by the Indemnified Party within the Dispute Period or the Indemnifying Party provides notice that it does not have a dispute with respect to such claim, such claim shall be deemed approved and consented to by the Indemnifying Party (such claim, an "Approved Indemnification Claim"). If a Dispute Notice is received by the Indemnified Party within the Dispute Period and the Indemnified Party and the Indemnifying Party do not agree to the validity and/or amount of such disputed claim, no payment shall be made until such disputed claim is resolved, whether by adjudication of such matter, agreement between the Indemnified Party and the Indemnifying Party or otherwise (and upon any such resolution, such claim shall be deemed to be an Approved Indemnification Claim). Each Approved Indemnification Claim shall be paid no later than three (3) Business Days after the date on which the subject claim became an Approved Indemnification Claim, in each case by wire transfer of immediately available funds to the account designated in writing by the party entitled to such payment.

(c) After the Indemnified Party has given notice of a Third Party Claim to the Indemnifying Party pursuant to Section 10.5(a), the Indemnifying Party may, at its election, undertake and conduct the defense of such Third Party Claim; provided that the Indemnifying Party fully acknowledges in writing its indemnification obligations to the Indemnified Party. In such case, the Indemnified Party may continue to participate in the defense of such Third Party Claim; provided, however, that following the Indemnifying Party's assumption of the defense of such Third Party Claim, all legal or other expenses subsequently incurred by the Indemnified Party shall be borne by the Indemnified Party unless the Indemnified Party reasonably concludes that the Indemnifying Party and the Indemnified Party have conflicting interests or different defenses available with respect to such legal proceeding, in which case the Indemnified Party shall be indemnified for the reasonable fees and expenses of counsel to the Indemnified Party (including local counsel). If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall not settle or consent to a judgment with respect to such Third Party Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided however, that consent of the Indemnified Party shall not be required for any such settlement if (i) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party, and no payment is required of the Indemnified Party, (ii) such settlement does not permit any order, injunction or other equitable relief to be entered, directly or indirectly, against the Indemnified Party, and (iii) such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Third Party Claim and does not include any statement as to or any admission of fault, culpability or failure to act by or on behalf of any Indemnified Party. Notwithstanding anything to the contrary, the Indemnifying Party shall not be entitled to assume or continue the defense of a Third Party Claim if (i) such Third Party Claim involves any customer or supplier of Seller, (ii) the

Indemnifying Party has failed to assume the defense of such Third Party Claim within twenty (20) days of the Indemnified Party's delivery of notice of such Third Party Claim to the Indemnifying Party, (iii) the aggregate amount reasonably expected to be incurred in connection with such Third Party Claim and all other outstanding claims exceeds the amount remaining in the Escrow Fund or exceeds the Cap, (iv) such Third Party Claim involves criminal or quasi-criminal allegations or (v) the Third Party Claim includes a claim for injunctive relief. In such case, the Indemnified Party shall have the right to assume the defense of such Third Party Claim. The Indemnified Party and the Indemnifying Party shall render to each other such assistance as may reasonably be required of each other in order to ensure proper and adequate defense of any Third Party Claim subject to this Section 10.5. To the extent that the Indemnified Party or the Indemnifying Party does not participate in the defense of a particular Third Party Claim, the party so proceeding with such Third Party Claim shall keep the other party informed of all material developments and events relating to such Third Party Claim. If the Indemnifying Party has elected not to assume the defense of a Third Party Claim, then the Indemnified Party may settle or consent to judgment with respect to such Third Party Claim without the written consent of the Indemnifying Party. In the event that the Indemnifying Party has consented to any settlement or consented to any judgment and except as otherwise provided in such settlement or judgment, such Indemnifying Party shall not have any power or authority to object to any claim by any Indemnified Party under this ARTICLE X or against the Escrow Amount for indemnity in the amount of such settlement or judgment. Until such time as the Indemnifying Party has delivered a notice of intent to defend a Third Party Claim to the Indemnified Party, the Indemnified Party may, at the expense of the Indemnifying Party, undertake any defense of such Third Party Claim that is necessary during such period.

Section 10.6 Determination of Loss Amount. If an indemnifiable matter is identified and noticed prior to the end of any applicable period set forth in Section 10.1, all Losses incurred or paid in connection with such matter shall remain subject to indemnification hereunder.

Section 10.7 Tax Treatment. Any payment under ARTICLE X of this Agreement shall be treated by the parties for federal, state, local and foreign income Tax purposes as an adjustment to the Final Purchase Price unless otherwise required by Applicable Law.

Section 10.8 Election of Claims. In the event that any Person alleges that it is entitled to indemnification hereunder, and such Person's claim is covered under more than one provision of this Agreement, such Person shall be entitled to elect the provision or provisions under which it may bring a claim for indemnification.

Section 10.9 Exclusive Remedy. Except (a) for remedies that cannot be waived as a matter of Applicable Law, (b) for specific performance, injunctive relief or other equitable remedies or (c) in respect of claims based on fraud or criminal acts committed by or on behalf of Seller as of or prior to the Closing, the indemnification provisions of this ARTICLE X shall be the sole and exclusive remedy for any breach of this Agreement from and after the Closing; provided, however, that, for the avoidance of doubt, there are no time or monetary limitations in ARTICLE X to a claim for breach of Purchaser's covenant to pay Contingent Payments in accordance with Section 3.5(c).

Section 10.10 Third Party Recoveries. The amount of any Losses subject to indemnification under this ARTICLE X shall be calculated net of any insurance proceeds and other

third party recoveries (including through indemnification, counterclaim, reimbursement arrangement, contract or otherwise) actually received by the Indemnified Party on account of such Losses, net of all reasonable costs and expenses associated with pursuing such insurance recoveries or other third party recoveries. The parties each agree to use commercially reasonable efforts to collect insurance proceeds and other third party recoveries to which an Indemnified Party is entitled relating to Losses; provided, however, that the Indemnified Party shall have no obligation to litigate against the applicable third party, including any insurance company, to obtain any such proceeds, payments or recoveries.

Section 10.11 No Windfalls. If an Indemnified Party receives any payment under an applicable insurance policy in respect of Losses for which such Indemnified Party has been indemnified hereunder, or from or on behalf of any other Person alleged or found to be responsible for such Losses, subsequent to receipt of an indemnification payment in respect of such Losses, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made by such Indemnifying Party in connection with providing such indemnification payment; provided, however, that such payment obligation shall not exceed the amount paid by the Indemnifying Party to the Indemnified Party with respect to such Loss pursuant to this ARTICLE X.

ARTICLE XI.

INTENTIONALLY OMITTED

ARTICLE XII.

MISCELLANEOUS

Section 12.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (a) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service or (b) on the date of confirmation of receipt (or, the first Business Day following such receipt if the date of such receipt is not a Business Day) of transmission by facsimile or electronic mail, in each case to the intended recipient as set forth below:

(i) if to Purchaser, to:

Cboe Silexx, LLC
400 South LaSalle Street
Chicago, IL 60605
Attention: Adam Kreis
Email: kreis@cboe.com

and

Cboe Silexx, LLC
400 South LaSalle Street

Chicago, IL 60605
Attention: John Deters
Email: deters@cboe.com

with a copy to (which shall not constitute notice):

Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456
Attention: Mercedes M. Hill
Telecopy: (312) 840-7333
Email: mhill@jenner.com

(ii) if to Parent Guarantor, to:

Cboe Global Markets, Inc.
400 South LaSalle Street
Chicago, IL 60605
Attention: Adam Kreis
Email: kreis@cboe.com

with a copy to (which shall not constitute notice):

Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456
Attention: Mercedes M. Hill
Telecopy: (312) 840-7333
Email: mhill@jenner.com

(iii) if to Seller, to:

Silexx Financial Systems, LLC
300 S. Pineapple Avenue, Unit 402
Sarasota, FL 34236
Attention: Thomas J. Frey
Tel No.: 941-350-1281
Email: tfrey@live.com

with a copy to (which shall not constitute notice):

Broad and Cassel LLP
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Douglas E. Starcher, P.A.
Telecopy: (407) 650-0943
Email: dstarcher@broadandcassel.com

(iv) if to the respective Seller Equityholder, to:

Frey Financial, LLC
300 S. Pineapple Avenue, Unit 402
Sarasota, FL 34236
Attention: Thomas J. Frey
Tel No.: 941-350-1281
Email: tfrey@live.com

LF42, LLC
7644 Sandalwood Way
Sarasota, FL 34231
Attention: Michael Williams
Email: mwilliams@kineticfunds.com

with a copy to (which shall not constitute notice):

Broad and Cassel LLP
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Douglas E. Starcher, P.A.
Telecopy: (407) 650-0943
Email: dstarcher@broadandcassel.com

Any party to this Agreement may change the address to which notices and other communications hereunder are to be delivered by giving the other parties to this Agreement notice in the manner herein set forth.

Section 12.2 Fees and Expenses. Except as otherwise specifically provided herein, all fees, costs and expenses, including fees and disbursements of counsel, advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

Section 12.3 Amendment. This Agreement may be amended, modified or supplemented at any time by mutual written agreement of Seller and Purchaser.

Section 12.4 Extension; Waiver. At any time the parties hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. Such extension or waiver shall not be deemed to apply to any time for performance, inaccuracy in any representation or warranty, or noncompliance with any agreement or condition, as the case may be, other than that which is specified in the extension or waiver. A waiver by any party of the performance of any act will not constitute a waiver of the performance of any other act or an identical act required to be performed at a different time. The failure of any party to this Agreement

to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 12.5 Entire Agreement. This Agreement (including the Ancillary Documents, the Exhibits hereto, the Disclosure Schedules and the documents and instruments referred to herein that are to be delivered at the Closing) constitutes the entire agreement among the parties to this Agreement and supersedes any prior understandings, agreements or representations by or among the parties hereto, or any of them, written or oral, with respect to the subject matter hereof.

Section 12.6 No Third Party Beneficiaries. Except as set forth in ARTICLE X, this Agreement is not intended, and shall not be deemed, to (a) confer any rights or remedies upon any Person other than the parties hereto and their respective successors and permitted assigns, (b) create any agreement of employment with any Person, or (c) otherwise create any third-party beneficiary hereto.

Section 12.7 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties hereto without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void; provided that notwithstanding the foregoing, Purchaser may assign any or all of its rights and/or obligations hereunder to any Affiliate or to any subsequent purchaser of Purchaser, the Business or all or substantially all of the assets comprising the Business, without the prior written consent of the other parties hereto; provided further that no such assignment shall relieve Purchaser of its obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by, the parties hereto and their respective successors and permitted assigns.

Section 12.8 Severability. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Agreement shall remain in full force and effect. Upon such determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to give effect to the original intent of the parties to the fullest extent permitted by Applicable Law.

Section 12.9 Counterparts and Signature. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile or electronic transmission.

Section 12.10 Interpretation. When reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or Section of this Agreement, unless otherwise indicated. The table of contents and headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Whenever the context may require, any pronouns used in this Agreement shall include the

corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." No summary of this Agreement prepared by any party shall affect the meaning or interpretation of this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken, the date that is the reference date in beginning the calculation of such period shall be excluded (for example, if an action is to be taken within two (2) days of a triggering event and such event occurs on a Tuesday, then the action must be taken by the end of the day on Thursday). If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Section 12.11 Right of Setoff. Purchaser shall have the right to withhold and setoff against any amount due to Seller or its Affiliates the amount of any claim(s) for indemnification or payment of damages to which Purchaser is entitled under this Agreement or any of the Ancillary Documents. For the avoidance of doubt and in furtherance of the foregoing, the parties agree that Purchaser may withhold and retain any payments with respect to the Contingent Payments to offset any claim(s) for indemnification pursuant to ARTICLE X or payment of any damages to which Purchaser is entitled under this Agreement or any of the Ancillary Documents. Neither the exercise nor the failure to exercise such rights of setoff will constitute an election of remedies or limit Purchaser in any manner in the enforcement of any other remedies that may be available to it.

Section 12.12 Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the conflict of law provisions thereof.

Section 12.13 Consent to Jurisdiction. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any state court located within New Castle County, State of Delaware in connection with any matter based upon or arising out of this Agreement or the transactions contemplated hereby, agrees that process may be served upon them in any manner authorized by the laws of the State of Delaware for such persons, and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and process. Each party hereto hereby agrees not to commence any legal proceedings relating to or arising out of this Agreement or the transactions contemplated hereby in any jurisdiction or courts other than as provided herein.

Section 12.14 Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

Section 12.15 Waiver of Jury Trial. PURCHASER AND SELLER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF PURCHASER OR

SELLER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

Section 12.16 Guarantee. Parent Guarantor hereby absolutely and irrevocably guarantees the payment to Seller of any and all amounts due under this Agreement, in each case, taking into account any other provisions of this Agreement that limit any such obligations. Parent Guarantor has full power and authority to execute, deliver and perform this guarantee and its obligations hereunder. The execution and delivery of this guarantee by Parent Guarantor and the performance by Parent Guarantor of its obligations hereunder have been duly authorized by all requisite action of Parent Guarantor. This guarantee constitutes a valid and binding legal obligation of Parent Guarantor, enforceable against Parent Guarantor in accordance with its terms. Notwithstanding anything to the contrary in this Section 12.16, the parties hereto agree that this guarantee is a guarantee of collectability, and Seller shall not instigate any actions for collection with respect to all or any portion of the guarantee against Parent Guarantor unless Purchaser shall have continued to breach its payment obligations under this Agreement for a period of thirty (30) days following written notice of such breach delivered by Seller to Purchaser and Parent Guarantor. The agreements of Parent Guarantor set forth above shall not operate to waive, affect, impair or prejudice (a) any right of Purchaser or Parent Guarantor to receive notice under this Agreement or (b) any of the other rights of Purchaser or Parent Guarantor under this Agreement or otherwise, including any right of Purchaser or Parent Guarantor to assert any defense, counterclaim or setoff otherwise applicable to any of the guaranteed obligations. Parent Guarantor agrees that obligations guaranteed under this Section 12.16 shall not be released or discharged, in whole or in part, or otherwise affected by: (i) extensions of time granted to Purchaser to perform its obligations; (ii) agreements by Purchaser to incur additional monetary obligations under this Agreement; (iii) any waiver of any claim against Purchaser unless Seller also waives that claim against Parent Guarantor; (iv) any bankruptcy or insolvency of Purchaser that would otherwise limit the right of Seller to enforce the Agreement against Purchaser. The obligations of Purchaser guaranteed by Purchaser or Parent Guarantor shall be determined solely by reference to and in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, if a guaranteed obligation is compromised in accordance with the provisions of this Agreement, such obligation shall be compromised for purposes of this guarantee, subject to the limitations set forth in clause (iii) of the previous sentence.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

PURCHASER:

CBOE SILEXX, LLC

By: _____
Name: John Deters
Title: Vice President

PARENT GUARANTOR:

CBOE GLOBAL MARKETS, INC.

By: _____
Name: John Deters
Title: Chief Strategy Officer and Head of Corporate Initiatives

SELLER:

SILEXX FINANCIAL SYSTEMS, LLC

By: _____
Name: THOMAS FREY
Title: PRESIDENT

SELLER EQUITYHOLDERS: (solely for the purposes of **Section 7.5**, **Section 7.8** and **ARTICLE X**):

FREY FINANCIAL, LLC

By: _____
Name: THOMAS FREY
Title: PRESIDENT

LF42, LLC

By: _____
Name: Michael S. Williams
Title: MANAGER

By: _____
Name: Thomas J. Frey

By: _____
Name: Michael S. Williams

Exhibit 13

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

BMO Harris Bank
A part of BMO Financial Group

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

ACCOUNT NUMBER: [redacted]255

Statement Period
05/01/18 TO 05/31/18
IM00990029000000000

90 09837

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

PAGE 1 OF 2

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IF YOU HAVE QUESTIONS ABOUT ANY OF YOUR BMO HARRIS ACCOUNTS, PLEASE CALL US 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

SINESS ADVANTAGE CKG **KINETIC FUNDS I, LLC**
COUNT NUMBER [redacted]255 **(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 14

LENDACY

Account Title:	Michael Williams
Mailing Address:	7644 Sandalwood Way
	Sarasota, FL 34231
Statement Period:	02/01/2020 - 03/05/2020
Account Number:	**1304300001**
Credit Limit:	**1,517,000.00**
Available Balance:	**-**

Account Summary:

	Month	Year-to-Date
Beginning Period Debt	(1,601,875.35)	(1,601,875.35)
Current Period Adjustments:		
+ Payments	84,875.35	84,875.35
- Withdrawals	-	-
Total Period Charge(s)	-	-
Ending Debt Balance	**(1,517,000.00)**	**(1,517,000.00)**

Transaction History:

Date	Credit	Debit
3/5/2020	(84,875.35)	-

Client Director:

APR:	**4.10%**
Mimimum Due:	**0.00**
Due Date:	**3/31/2020**

Lendacy is a division of KCL Services, LLC. Total Periodic Charge(s) is(are) based on the current Federal Funds rate (Index) plus interest (Margin) in accordance with your Credit Facility Agreement and Truth in Lending Disclosure (CFA). Beginning Credit Line balance is based on KCL Services, LLC's approval process and may be changed with or without notice in KCL Services, LLC's sole and absolute discretion. No funds held by KCL Services, LLC are insured by any federal agency, other person, agency or entity. Past due amounts are subject to additional interest charges. Please refer to your CFA and contact your Client Director for additional information.

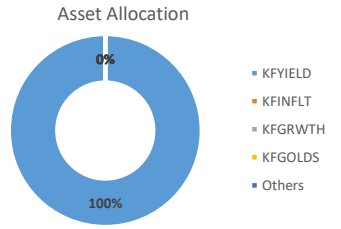
Exhibit 15

Statement Summary: January-20
Account Number: 150504
Account Title: Michael Williams
Mailing Address: 7644 Sandalwood Way
Sarasota, FL 34231

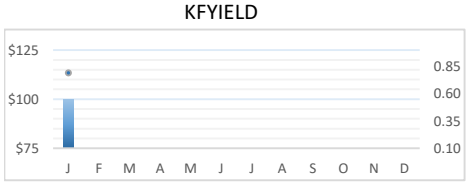
KINETIC INVESTMENT GROUP

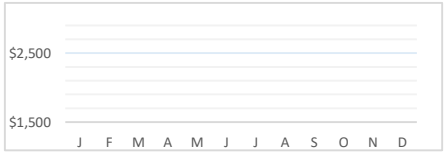
Portfolio Summary:

Fund	Price $	Shares	Div per $	Div Cash $	Buy/Sell	Total Shares	Mkt Value $
KFYIELD	113.46	14,114.08	0.550	7,761.26	-	14,114.08	1,601,402.06
Total				7,761.26			1,601,402.06



Market Performance:





Transactions:

	Fund Transactions			Dividend Reinvestment			Total	Cash Transactions	
Fund	Price $	$	Shares	%	$	Shares	Shares	Deposit $	Withdrawal $
KFYIELD	113.46	-	-	0%	-	-	-	-	(7,761.26)

KINETIC INVESTMENT GROUP, LLC
1800 2nd Street Suite 955
Sarasota, FL 34236
+1.941.870.9544
www.kineticfunds.com

Kinetic Funds I, LLC clears Interactive Brokers Group, Inc. Prime Services.

Exhibit 16

LENDACY

1. YOUR AGREEMENT

This Agreement is effective as of 05/04/2018, (the "Effective Date") by Scipio, 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 $ 2,755,000.00

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 15th 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 thepayment 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."

LENDACY

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 ordelayed.

d) You acknowledge and agree that Lender shall havethe unfettered right to aggregate and securitize itsloans inany 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.

LENDACY

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 170 basis points (Federal Funds Rate). Based on the Fed Funds rate in effect on 05/03/2018.

b) Your Margin is 200 basis points.

c) Your initial ANNUAL PERCENTAGE RATE (INDEX plus the MARGIN) is 3.7 %

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 resultinincreasesinthe Periodic FINANCECHARGERateandyourminimummonthlypayment. Asandwhenthe Indexdecreases, there will be corresponding decreases to the Periodic FINANCE CHARGE and your minimum monthly payment. To determine the Periodic FINANCECHARGEforeachdayinthebillingcycle, Lenderwillmultiplytheapplicable Daily Periodic FINANCECHARGERate 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.

LENDACY

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 Section3(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.

LENDACY

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 yourcredit 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 accountnumber;
(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.

LENDACY

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.

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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.

LENDACY

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 theamountpaid or agreed to bepaid 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

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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) Scipio, LLC

SIGNATURE _____ PRINTED NAME Michael Williams DATE 3/23/2017

ADDRESS 53 Calle Palmeras, Suite 903 CITY San Juan STATE PR ZIP 00901

FAX _____ EMAIL lionfish42@gmail.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 _____

LENDACY

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 err 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.

LENDACY

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 theAgreement.

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 theAgreement.

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) Thefailure of Lender to commence an action against Borrower at anytime 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 ofremedies by Lender, whether or notanysuch election ofremediesdestroys or otherwise impairsthesubrogation 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.

LENDACY

GUARANTOR:

SIGNATURE_____ **PRINTED NAME**_____ **DATE** _____

ADDRESS_____ **CITY**_____ **STATE**_____ **ZIP** _____

FAX_____ **EMAIL**_____ **HOME PHONE** _____

BUSINESS PHONE_____ **CELL PHONE** _____

Exhibit 17

LENDACY

Account Title:	Scipio, LLC
Mailing Address:	53 Calle Palmeras, Suite 903
	San Juan, PR 00901
Statement Period:	02/01/2020 - 03/05/2020
Account Number:	**1805040001**
Credit Limit:	**2,755,000.00**
Available Balance:	**-**

Account Summary:

	Month	Year-to-Date
Beginning Period Debt	(2,837,521.58)	(2,837,521.58)
Current Period Adjustments:		
+ Payments	82,521.58	82,521.58
- Withdrawals	-	-
Total Period Charge(s)	-	-
Ending Debt Balance	**(2,755,000.00)**	**(2,755,000.00)**

Transaction History:

Date	Credit	Debit
3/5/2020	82,521.58	-

Client Director:

APR:	**4.10%**
Mimimum Due:	**0.00**
Due Date:	**3/31/2020**

Lendacy is a division of KCL Services, LLC. Total Periodic Charge(s) is(are) based on the current Federal Funds rate (Index) plus interest (Margin) in accordance with your Credit Facility Agreement and Truth in Lending Disclosure (CFA). Beginning Credit Line balance is based on KCL Services, LLC's approval process and may be changed with or without notice in KCL Services, LLC's sole and absolute discretion. No funds held by KCL Services, LLC are insured by any federal agency, other person, agency or entity. Past due amounts are subject to additional interest charges. Please refer to your CFA and contact your Client Director for additional information.

Exhibit 18

LENDACY

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 15th 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."

LENDACY

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.

LENDACY

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.

LENDACY

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 Section3(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.

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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.

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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.

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.

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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.

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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

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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** _____

LENDACY

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 err 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.

LENDACY

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.

LENDACY

GUARANTOR:

SIGNATURE _____ **PRINTED NAME** _____ **DATE** _____

ADDRESS _____ **CITY** _____ **STATE** _____ **ZIP** _____

FAX _____ **EMAIL** _____ **HOME PHONE** _____

BUSINESS PHONE _____ **CELL PHONE** _____

Exhibit 19

LENDACY

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 $ 550,000

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 15th 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 $ 550,000

Michael Williams, managing member of LF42, LLC agrees to pledge, as collateral, up to $500,000 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."

LENDACY

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.

LENDACY

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.

LENDACY

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 Section3(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.

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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.

LENDACY

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.

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.

LENDACY

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.

LENDACY

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

LENDACY

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** _____

LENDACY

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 err 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.

LENDACY

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.

LENDACY

GUARANTOR:

SIGNATURE _____ **PRINTED NAME** _____ **DATE** _____

ADDRESS _____ **CITY** _____ **STATE** _____ **ZIP** _____

FAX _____ **EMAIL** _____ **HOME PHONE** _____

BUSINESS PHONE _____ **CELL PHONE** _____

Exhibit 20

LENDACY

Account Title:	LF42
Mailing Address:	1800 2nd Street, Suite 855
	Sarasota, FL 34236
Statement Period:	02/01/2020 - 03/05/2020
Account Number:	**1901010001**
Credit Limit:	**2,550,000.00**
Available Balance:	**2,550,000.00**

Account Summary:

	Month	Year-to-Date
Beginning Period Debt	(2,179,519.86)	(2,179,519.86)
Current Period Adjustments:		
+ Payments	2,179,519.86	2,179,519.86
- Withdrawals	-	-
Total Period Charge(s)	-	-
Ending Debt Balance	**(0.00)**	**(0.00)**

Transaction History:

Date	Credit	Debit
3/5/2020	2,179,519.86	-

Client Director:

APR:	**4.10%**
Mimimum Due:	**0.00**
Due Date:	**3/31/2020**

Lendacy is a division of KCL Services, LLC. Total Periodic Charge(s) is(are) based on the current Federal Funds rate (Index) plus interest (Margin) in accordance with your Credit Facility Agreement and Truth in Lending Disclosure (CFA). Beginning Credit Line balance is based on KCL Services, LLC's approval process and may be changed with or without notice in KCL Services, LLC's sole and absolute discretion. No funds held by KCL Services, LLC are insured by any federal agency, other person, agency or entity. Past due amounts are subject to additional interest charges. Please refer to your CFA and contact your Client Director for additional information.

Exhibit C

FL-04184

MENDEZ_CARLA_20190920

9/20/2019 9:10 AM

Condensed Transcript

Prepared by:

FL-04184

Thursday, October 3, 2019

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. FL-04184-A
KINETIC FINANCIAL ADVISORS, LLC)

WITNESS: Carla Mendez
PAGES: 1 through 149
PLACE: Securities and Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33141
DATE: Friday, September 20, 2019

The above entitled matter came on for hearing, pursuant to notice, at 9:10 a.m.

Diversified Reporting Services, Inc.
(202) 467-9200

APPEARANCES:

On behalf of the Securities and Exchange Commission:
JOHN HOUCHIN
ERIC BUSTO
BARBARA VINIEGRA
CRYSTAL IVORY
Securities and Exchange Commission
Division of Enforcement
801 Brickell Avenue
Suite 1800
Miami, FL 33141

On behalf of the Witness:
MARY INMAN
CAROLINA GONZALEZ
HAMSA MAHENDRANATHAN
Constantine Cannon, LLP
1 Paternoster Square
London EC4M 7DX

CONTENTS

PROCEEDINGS

MR. HOUCHIN: It is 3:24 p.m., September 20th, 2019.

Good afternoon, Ms. Mendez. My name is John Houchin, with me are Barbara Viniegra, Crystal Ivory and Eric Busto; we are all members of the staff of the Miami Regional Office of the United States Securities and Exchange Commission, and are officers of the Commission for purposes of this proceeding. Will you please raise your right hand.

Whereupon,

CARLA MENDEZ

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. HOUCHIN:

Q You may lower your hand.

Can you please state your full name and spell it for the record.

A Carla Patricia Mendez Irizarry. I'm going to spell the first name. It's C-A-R-L-A, my second name is Patricia, P-A-T-R-I-C-I-A, last name Mendez, M-E-N-D-E-Z, second last name is Irizarry, I-R-I-Z-A-R-R-Y.

Q Ms. Mendez, your testimony today has been

requested by the staff as part of a formal inquiry by the United States Securities and Exchange Commission in the matter of Kinetic Financial Advisors, LLC FL-04184 to determine whether there have been violations of certain provisions of the federal securities laws. However, the facts developed in this investigation might constitute violations of other federal or state, civil, or criminal laws.

Prior to the opening of the record, you were provided with a copy of the formal order of investigation in this matter, it will be available for your review throughout your time here today.

A Okay.

Q Have you had an opportunity to review the formal order?

A Yes, I have.

Q And also prior to the opening of the record you were provided with a document that's been previously marked as Kinetic Exhibit 1, which is the SEC Form 1662 in front of you.

Have you had an opportunity to review Exhibit 1?

A Yes, I have.

Q Do you have any questions about Exhibit 1?

A I don't at this moment.

Q Okay. Ms. Mendez, are you represented by counsel?

A Yes.

MR. HOUCHIN: Would counsel please identify themselves and state your names, and your firm's address, and the phone number.

MS. INMAN: Yes. Mary Inman. I'm a partner in the London office of Constantine Cannon, LLP and my number is +44 0 7523 507532.

MS. GONZALEZ: Carolina Gonzalez, senior associate at Constantine Cannon, LLP London office. My number is +44 02039 590640.

MS. MAHENDRANATHAN: My name is Hamsa Mahendranathan. I'm an attorney at Constantine Cannon in the New York office. My phone number is (212)350-2730.

MR. HOUCHIN: Are you representing Ms. Mendez as her counsel today?

MS. INMAN: Yes.

MS. GONZALEZ: Yes, we are.

MR. HOUCHIN: Hamsa?

MS. INMAN: Hamsa?

MS. MAHENDRANATHAN: Yes. Sorry about that. I was on mute.

MR. HOUCHIN: That's okay. Do you or your

firm represent anyone else in this investigation?

MS. INMAN: Yes, we do. We also represent Keli Pufahl and Kelly Locke.

BY MR. HOUCHIN:

Q Ms. Mendez, you may be represented by counsel who also represents other persons or entities involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interest are or maybe adverse to another's. If you are represented by counsel who also represents other persons or entities involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel and the responsibility for that choice is yours.

If you could mark this as Kinetic Exhibit 47.

(SEC Exhibit No. 47 was marked for identification.)

BY MR. HOUCHIN:

Q Ms. Mendez, I'm showing you what's been marked as Kinetic Exhibit 47, take a moment, review the document and let me know if you recognize it.

A Yes, I recognize this document.

Q Ms. Mendez, what is Exhibit 47?

A It's the subpoena sent to our counsel's office.

Q And is this the subpoena you're appearing pursuant to here today?

A Yes, correct.

Q You can set that aside. Please mark that as Kinetic Exhibit 48.

(SEC Exhibit No. 48 was marked for identification.)

BY MR. HOUCHIN:

Q Ms. Mendez, I'm showing you what's been marked as Kinetic Exhibit 48, please take a moment and review the document, and let me know if you recognize it.

A Yes, I recognize this document.

Q What is Exhibit 48?

A This is the background questionnaire attached to the subpoena that I completed.

Q Who provided the answers that are on that exhibit?

A I did.

Q Did you have any assistance in preparing those answers?

A No, sir.

Q Are there any answers -- strike that.
Are the answers that you provided in that exhibit true and correct to the best of your knowledge?
A That's correct.
Q Is there any information in the exhibit that you'd like to change or modify at this time?
A Not at this time.
Q I'd just like -- you can set that aside.
I would like to just go over some general instructions regarding your time with us today.
A Okay.
Q During your testimony, any member of the staff here may ask you questions, so when we're asking our questions, please let us finish the questions before you start the answer because as you can tell, the court reporter is taking down everything that we're saying; will you do that?
A Yes.
Q If you do not understand a question, please let us know and we'll try to rephrase it; will you do that?
A Understood, yes.
Q You may tell me at any time if you'd like to change or modify an answer to a question that you

have given; will you do that?
A Yes, I do. I will.
Q During the course of your testimony today we're going to ask you questions about things that happened or may have happened in the past. Obviously time has gone by since those events and you're likely to have a better and more complete memory of some events than others.
In answering a questions about these events, however, you should tell us about all of your memories or recollections that are responsive to the question, not just those that are specific or perfectly clear, or those in which you are 100 percent sure. We're asking you also for vague memories, cloudy memories, general memories or memories of which you're less than 100 percent certain. In other words, we're asking you for any responsive recollection whatsoever you may have however incomplete or uncertain, or vague, or nonspecific it may be. We can then sort out which memories are vague or less clear, and which ones are more certain. Do you understand that?
A I understand.
Q If you answer I don't recall or I don't remember, or I forget, we will assume that you have

no memory or recollection whatsoever that is responsive to the questions asked, not even fuzzy or less than crystal clear memories. Do you understand that?
A I understand.
Q If at any time you'd like to take a break, please let us know and we'll accommodate your request. My only caveat is that, if a question is pending, we'd ask that you answer the question before we take a break.
A Okay.
Q Do you understand that?
A I understand.
Q And prior to taking a break, we'll have to go off the record, I want you to understand that the only people that can direct the court reporter to go off the record are the staff here that are present. Do you understand?
A I understand.
Q Is there any mental or physical reason that you cannot testify truthfully and accurately in this matter?
A No, sir.
Q Are you presently on any drugs or medications that could cause you to be unable to

testify accurately and truthfully in this matter today?
A No, sir.
Q Have you spoken to anyone other than your attorneys about your testimony today or the investigation?
A Yes.
Q Who have you spoken to?
A My parents. My mom, my dad, vaguely to my brother and sister, my husband, my mother-in-law, client and a former client, Angelo Diaz, my two former colleagues, Keli Pufahl, Kelly Locke, my best friends from high school, present neighbors of Michael Williams, which I hold a friendship with. I think that's it.
Q Okay. You mentioned that a client or former client, then you said Angelo Diaz, is that one person or are we talking a client and a former client, two separate?
A No. It's the same person.
Q Okay. Same person?
A Yes.
Q What is the name of your mother-in-law?
A Elena Alonso. Elena.
Q A-L-E-N-A?

A E-L-E-N-A.
Q A-L-O-N-S-O?
A A-L-O-N-S-O, yes, that's correct.
Q What about your best friends from high school? What are their names?
A Valerie Hernandez and Alexandra Montalvo.
Q M-O-N-T-A-L-V-O?
A Yes, that's correct.
Q Any other friends from high school that you talked to?
A No.
Q What about the present neighbors of Michael Williams that you referenced?
A Jesse Arms and Frankie Arms.
Q And when you say they're neighbors, are they neighbors in terms of their home residents or is this a business neighbor?
A No. In terms of their home residence.
Q Okay.
A They live in the same building as --
Q The Gabriella House?
A Yes, correct.
Q Okay. Can you tell us the substance of the communications that you've had with each of the parties you've just identified as it relates to --

A Yes.
Q -- your testimony or the investigation?
A As it relates to the testimony, like, today and the investigation? Can you clarify specifically?
Q What have you spoken to them about as it relates to either your testimony today actually and the investigation?
A Okay. Let's start in order. Let's start with my husband. My husband knows everything that has happened since I resigned and prior to that, so he has -- he knows that I'm here testifying, and he knows all the information that I will provide today to your answer -- to your questions.

Next on the list is my mother-in-law. She vaguely knows what I -- why I resigned and she knows that I will be here giving my testimony today. She needs to take care of my son and pick him up from school.

My two friends from high school, they vaguely know why I resigned and they know that I have -- that I will be here in Miami to give my testimony. To be honest, I haven't talk too much with them because they don't understand completely. One is a pediatrician and one is an attorney, but they don't understand.

Jesse and Frankie Arms have been with me through all this process. I met them when they first moved to Villa Gabriella and we developed a friendship, and they personally know Michael, and they know -- they knew everything that has happened. They live in Old San Juan. If Puerto Rico was small, Old San Juan is smaller, so news runs fast and rumor has it, so they knew. I told specifically Frankie that I was -- that I will be here in Miami to give my testimony because she kept pushing to have lunch.

Former client, Angelo Diaz. I have kept in contact with him after I resigned. He called me yesterday. I'm so sorry. I recall -- let me take it back. He called on Wednesday to notify me about the article that was being published. He was the first person that send it to me and we talked about other investors, and he asked me if they should -- if he should talk to them to -- for them to request they're investment in Kinetic Funds, and I told him that I was going to be here the rest of the week.

Q What are the identities of the other investors you just referenced?
A It's a church. The name is in Spanish. It's Plan de Pensiones Ministerial. The abbreviation is PPM. And the other investor is Samuel Padilla.

Q So it's your understanding based on that conversation that both Plan de Pensiones and Mr. Padilla still have their investments with the Kinetic Yield fund; is that correct?
A Correct.
Q Do you recall any other conversations with Mr. Diaz about your testimony or the investigation, or the facts surrounding that?
A Yes, sir. I had multiple calls and conversations with Mr. Diaz since the day I resigned. I was very unclear when I said that I was leaving the company and he started asking me questions why I was leaving. I tried saying that I wasn't feeling comfortable anymore where I was; I wasn't sure about what was going on in the company and that I needed to leave, but he wouldn't be satisfied with those answers, and he kept asking questions, not on the same call. There were multiple calls. Conversations and ultimately -- he is -- he has experience in life insurance and investments. He hold I believe some licenses, so he had some experience and knowledge on the matter, and I thought he was one of the only persons that could maybe clarify and give me some light in this process. So I didn't specifically said any -- like, I did not specifically say -- said the

facts, but I asked him questions that led him to understand what was going on.

For example, some of those questions would have been, if you were managing a fund, could you take money for yourself in the form of a loan? And he would respond, no. That's a conflict of interest. In other cases he would ask me, like, is this what's happening? Like -- and I would say, I don't know. I don't know. I don't have any factual proof.

Other example of another question is like, can you -- if you are a manager of the fund, can you buy property -- can you buy a property? And he would be -- he would answer, yes, if it's in the name of the company as a -- in the form of an investment.

But, yeah, I have kept in touch with Mr. Diaz after that regarding his investment in the fund and the other accounts -- the other investors as the church and Dr. Padilla.

Q Do you know whether Mr. Diaz still maintains an investment with KF Yield fund?

A He doesn't.

Q Do you know when he redeemed his investment from the KF Yield fund?

A I was told by him that he received his investment by July -- between July 11 and July 15. I

am not sure.

BY MS. VINIEGRA:

Q Of this year?

A Of this year.

Q 2019?

A Correct.

BY MR. HOUCHIN:

Q Did Mr. Diaz redeem his investment in the KF Yield fund after you had the conversations with him where you raised your questions that we just discussed?

A Yes, sir. I would like to start at the beginning of that story. Mr. -- when I started working for Kinetic, Mr. Diaz had already a relationship with Michael Williams and Kelly Locke, the only two people working in the Puerto Rico office. I would receive calls from Mr. Diaz requesting to meet Michael and Kelly on a weekly basis. They would not be available for him; they were always busy, and just like any other investor, would -- at some point I would say, if there's anything I can help you with? Do you need any information? He already had an investment.

And I started giving that -- managing that client relationship and ultimately he became more

comfortable dealing with me because I speak Spanish. It is to my knowledge that his English is not that good and he didn't receive the service he was expecting.

So as I mentioned, I kept managing that relationship, so I became his first point of contact to anything related to the fund or to KCL Services, even though I expressly told him multiple times, I don't deal with KCL Services, but I'm doing this to help you because I have direct access to Kelly Locke and Kelly Pufahl.

Over the course of time I received, like I said, calls from Mr. Diaz on a weekly basis maybe every two weeks. And this is the type of client that will call you and talk about the climate, the weather, what is going on in Puerto Rico. Like, he would keep me there on the phone, so we became friendly.

At some point he one time called me and ask me, if you ever were going to leave the company, would you tell me? And I'm, like, yes, I would, but why do you say that? I don't have any plans to leave. This was around February of this year, 2019. And he said, well, just so you know, you have to promise me you will tell me because I only have my money in

Kinetic is because I'm dealing with you. You are very easy to work with; you very accessible; very responsive and I am pretty sure that I won't receive this kind of service in JP Morgan or Merrill Lynch, but I could take my money elsewhere, so if you will not be there, I will not have my money.

And I said, sure. And he said, I had a dream that you were in an interview with an American man talking in the area -- the area was different. Talking in the area of Paseo Caribe, which is the area where the office, near the Caribe Hilton Hotel. And I said, well, that's specific. And he said, and not to be any superstitious or anything, but mostly of what I dream becomes true. And I'm, like, oh, okay. I don't have any plans to quit right now, but I will tell you.

Months went by and when everything happened, and I see myself that I'm going to leave the company, I said, I need to have my promise to this person and keep my word, because ultimately now I'm feeling responsible that I'm going to leave, and he told me that I should tell him. This is a person that lives in Puerto Rico, that knows everybody in Puerto Rico and my reputation was the most important thing to me. I would -- it would keep me up at

night. It was eating me alive knowing that this person -- when I started he had invested, like, $110,000 and by the time I left, he had $1 million, so --

Q Was that -- did that 110,000-dollar investment grow to a million, or did he continue to make capital contributions to raise the value?

A He continued to make capital contributions to grow that investment. So, yes, I felt -- I felt like that was my client. Nobody else would deal with him. And he made me make him a promise and now I'm leaving, so I felt responsible for it.

Q Okay.

A So, yes, I decided to tell him I'm leaving and he decided to take his investment.

Q Okay. We started off this description of your interactions with Mr. Diaz with you explaining that he was one of the first people that you interacted with when you became employed with Michael Williams or his companies, so let's start there.

When did you first become employed by Michael Williams and which entity were you employed by?

A Okay. I was employed by El-Morro Financial, LLC, an Act 20 company under the Puerto

Rican law. My start date was February 13, 2017, but ultimately I dealt with -- from February until October, end of October, I dealt with everything related to El-Morro Financial and some things from Kinetic Investment Group, some things from KCL. It was all pretty commingled, so I would be assisting Michael and Kelly in government meetings about KCL Services and Kinetic Investment Group.

It was myself and Ian Quetglas, the financial advisor, we were the only two people that spoke Spanish, and so all the meetings to pitch and sell the fund, they would need our help if it was a Puerto Rican entity or Puerto Rican client.

Q Would you and Mr. Quetglas attend those meetings where presentations were made about investing with Kinetic Yield Fund or KCL?

A Yes, that's correct.

Q And what specific meetings do you recall attending where the Kinetic Yield Fund and KCL were pitched?

A I recall attending the church meeting, the Plan de Pensiones Ministerial, I recall attending --

Q Mr. Padilla?

A No. I did not attend Mr. Padilla's meetings. I recall attending AEELA, that's another

investment. A-E-E-L-A. I recall attending CFSE, one of them. I recall attending a meeting on behalf Michael. He wasn't there. It was with Mr. Eliseo Acosta and it was with the -- this representative of the senators, the head of the chamber of representatives. I can't remember his name at this point.

Q Okay. I want to talk about each of those meetings as far as you recall them. Let's start with the Plan de Pensiones meeting.

Can you tell me who -- when that meeting occurred, if you recall specifically, and if not, generally, and who was in attendance there?

A I don't recall the exact date, but myself, Kelly Locke, and Mr. Quetglas attended that meeting. The --

Q Michael Williams was not present there?

A No.

Q Okay. What, if anything, was pitched in terms of business to Plan de Pensiones at that point in time?

A It was pitched the KF Yield fund and it was pitched the KCL Services, the Lendacy model.

Q And the model being the credit line?

A The credit line, that you could take

against your investment up to a 70 percent LTV.

Q And LTV is loan to value, correct?

A Correct.

Q Who made the presentation?

A Kelly Locke made the presentation, but she was making pauses every couple of paragraphs so I could translate, Ian Quetglas made the presentation about the Kinetic -- the KF Yield, and Kelly Locke made the presentation about KCL Services.

Q With respect to Mr. Quetglas' presentation, did he provide Plan de Pensiones with any written materials?

A Yes, sir.

Q What type of materials did he provide?

A The Kinetic Investment Group brochure, quarterly report of the current time, and there was always included a one-pager of how the fund, the KF Yield fund, worked with KCL Services.

Q Do you recall whether the KIG brochure or the quarterly report discussed the characteristics of the KF Yield fund?

A I don't remember exactly, but I don't think it was a specific -- I think it had general information.

Q Do you have an understanding as to who

drafted the Kinetic Investment Group brochure or the quarterly report?
A It was already created before I got there -- before I started, but it is my understanding that Michael Williams drafted the information that is on the marketing materials for KF Yield and KCL Services.
Q Okay. With respect to Ms. Locke's presentation about KCL or Lendacy, did she provide any written materials to Plan de Pensiones?
A Yes.
Q What type of materials?
A The Lendacy brochure.
Q Okay. And do you have an understanding as to who drafted the information contained in the Lendacy brochure?
A To my understanding, it was Michael Williams.
Q Okay. And your understanding that Mr. Williams drafted the Lendacy brochure and the Kinetic Investment Group brochure, and the quarterly reports, what's the basis for that? Is that something that someone told you? Something you read?
A In regards to the KCL Services Lendacy brochure, I remember Kelly Locke telling me how she

tried to do the marketing materials, but ultimately Michael Williams ended up changing everything. Michael had a gift for writing, that's what -- at least that's what I call it and -- because I remember complaining to Kelly that the first time I was given the Lendacy brochure, I couldn't understand what it was about. It was vague. It was -- it didn't explain anything.
With the Kinetic Investment Group brochure explaining the KF Yield, I asked Michael who had written that -- not who had written, but who had created the marketing materials. But nothing that would went onto represent the company to sell went out in an official matter unless Michael Williams had already review it or drafted it.
Q So would you agree that Michael Williams had the ultimate authority as to what was contained in those documents.
A I would say so, yes.
Q Okay. Do you have an understanding as to whether Ms. Locke or Mr. Quetglas was ever instructed or directed how to make their presentations to potential investors?
A If they were, I was not present.
Q Okay. After that presentation was made to

Plan de Pensiones, did there come a point time that Plan de Pensiones decided to invest in either the KF Yield fund or Lendacy?
A Yes.
Q How soon after?
A I don't recall the exact time. I know they ended invested in KF Yield, but they didn't want to use KCL Services.
Q Do you recall the amount of capital that they invested into the KF Yield fund?
A I think they started with half million dollars.
Q Did they make any subsequent capital contributions or investments?
A They did. It was between 300 or $400,000 extra.
Q Okay. So it was -- ultimately they had 8 to $900,000 --
A Yes.
Q -- invested in the KF Yield fund?
A Correct.
Q Do you have an understanding as to whether Michael Williams spoke to anyone at Plan de Pensiones either before they made that initial investment or prior to their subsequent investments?

A I don't think so because the -- Mr. Wilmer Gonzalez from Plan de Pensiones Ministerial, he didn't speak English so his point of contact always was Mr. Quetglas and after Mr. Quetglas left, I was his point of contact.
Q Okay. Anything relating to Plan de Pensiones and its investments in the KF Yield fund that we haven't talked about, any additional information?
A They redeemed their part of their investment.
Q And when did that redemption take place?
A First quarter of 2019 they redeemed $400,000.
Q Do you have any understanding as to why Plan de Pensiones decided to make a redemption or partial redemption?
A They had been trying to redeem some money after they made their extra capital. It was a back-and-forth. They requested their redemption papers and they canceled their redemption, and they put it back in place. They were wanting to make investments -- another -- separate investments and the time for them to receive the money was too long, but at the end they said, just -- I need to have the

money on our side.
Q Okay. What about the AEELA?
A They still have their investment to my knowledge.
Q And do you recall when that first meeting took place about possibly investing in the KF Yield fund?
A It was prior to my commencement, but the meeting I attended was for them to use KCL Services.
Q Okay. So correct me if I'm wrong; AEELA made the decision to invest in KF Yield prior to you --
A Starting.
Q -- joining El-Morro?
A Correct.
Q They came a point in which AEELA decided to or was pitched possibly utilizing the KCL credit line?
A Correct.
Q And you attended that meeting?
A I attended that meeting. It was after Hurricane Maria and to that meeting attended Mr. Michael Williams, Ian Quetglas and Mr. Eduardo Ferrer. He was the liaison between the board of AEELA and Kinetic.

Q Were any written materials provided to either Mr. Ferrer at that meeting or AEELA in relation to a KF Yield investment, or utilizing the credit line that Lendacy offered?
A I can't say with certainty. It was either a letter in the form of a case study of an example how they could use better the line of credit.
Q Did you ever --
A And --
Q Go ahead.
A And the Kinetic investment folder was always used. The Kinetic investment brochure was in the form of a folder, so that was the -- always the transportation of documents.
Q Okay. Are you familiar with the case studies that were periodically used? Have you ever had any occasion to review them?
A No.
Q Okay. Who made the presentation to AEELA?
A In this case it was Michael Williams talking, and Ian Quetglas and I translating, and explaining what Michael was trying to convey.
Q Do you recall what Mr. Williams was trying to convey; any of the specifics?
A He was explaining in general how the fund

worked and how the KCL worked. He was explaining to them how with their investment they could use the credit line and how -- because they were -- at that moment after Maria they were granting loans to the members. AEELA is a retirement fund for teachers, like a pension fund and they were granting loans to their members, so Michael explaining how they could benefit from putting more money in the fund and using that line of credit to grant more loans to the members of AEELA.
Q Did Mr. Williams talk about what holdings the fund would have in terms of the -- if they invested in or put more money in KF Yield fund, what that money or capital would be used to purchase, for example, US securities or things like that?
A I don't recall that being discussed in the presentation?
Q In discussing how the credit line worked, did Mr. Williams explain that the capital that would be used to fund their credit line would be coming from their KF Yield fund assets?
A I don't recall that information being discussed.
Q Okay. Do you recall any other specific information about what Mr. Williams conveyed to AEELA

during that meeting as it relates to the operation of the KF Yield fund or a Lendacy line of credit?
A Not at this time.
Q Okay. What about the CFSE meeting? What can you tell me about that meeting?
A I believe I attended two meetings with CFSE, one of them -- let's see. Let me take it back. The meeting that I attended was with Ian Quetglas and myself only to meet with Laura from CFSE to talk about the advisory services, Kinetic financial advisors.
Q So that was in relation to trying to get investment management work for CFSE or was it in relation to CFSE being a prospective or potential investor in the KF Yield fund?
A CFSE was already an investor in the fund, but their financial advisor was changing because of political --
Q Politics were changing?
A Yes. So there was an opening to submit proposal for the advisory services to be chosen as the firm for the advisory. Michael Williams was trying very hard to get that contract and when Ian Quetglas was called to attend this meeting -- I think it was a short-notice meeting -- to hand in an

updated proposal, he asked me, can you come with me? I believe it was a Friday; I was in jeans; I was in flats. I was, like, I can't go to the meeting like this -- looking like this. That was not typical. But I ended up going with him and I sat in the meeting, and he was trying to convince Laura, I don't remember her last name at this point, what was going on with our proposal and we were trying to compete with other firms, but the competition and the proposal wasn't that fair at all. There was another firm competing, Gavion Investments and Consultiva again.

Q Consultiva had the contract before?

A Correct. And if you know anything about Puerto Rico politics and what is going on with the agencies, we were pushing hard because their process was nothing close to transparent and it looked like they were going to choose Gavion Investments only because somebody else was rigging the game.

Q Was Mr. Williams aware that Gavion might have an edge in securing that work?

A Yes, sir.

Q And do you have any understanding as to whether Mr. Williams took any action to try to gain an upper hand in relation to securing that contract for the Kinetic companies?

A Not at that time, but after Gavion had the contract and the advisory, he did went to the Office of Commissioner of Financial Institutions and talk to Mr. George Joyner about Gavion not being registered in Puerto Rico and spreading information about Gavion. He talk to Consultiva as well, and he said also that he had talk to agencies and to take that information to other levels.

Q Did he engage or hire anyone or any entity to try to assist securing that advisory contract?

A Not specifically the CFSE contract, but Mr. Williams engaged in a contract with Mr. Jerome Garffer. He -- Mr. Jerome Garffer calls himself a lobbyist for Puerto Rico, but it was after all of the advisory just to maintain and keep the contracts with the government agencies.

Michael claimed that Mr. Jerome Garffer had been making threats and sending messages to him, that if he did engage in any way with the contract with him, he will -- he had the power to pull the contracts away. And this is me paraphrasing what was being said in that moment. It was on different occasions that Michael Williams said, I received a call from this person and he's telling me that I should call Jerome Garffer, and at that point Michael

decided to get in touch with Jerome Garffer and engage in a contract with him.

Q Do you have any understanding as to whether they ultimately entered into a relationship?

A Yes. They were -- Mr. Garffer was being paid $5,000 a month.

Q And do you have an understanding of when that started?

A 2018. I'm inclined to say quarter 3, quarter 4. I don't know with precision the exact date.

Q But a contract was entered into and Mr. Garffer was receiving a 5,000-dollar a month retainer, correct?

A Correct.

Q How long did that contract last? Did it have a term of a year or was it specified?

A It had a term. If I'm -- if I remember correctly, it had a term of six months, to revisit the contract again in six months. It ended not officially, but Michael instructed me to stop making payments and it was around the time that Kinetic International received the IFE license, because ultimately Michael Williams said, now we have our license, now he can't mess with us and try to take it

away. So you stop making payments and just tell him that our general counsel is reviewing all of the contracts under the Kinetic Investment agent -- company to make them new to Kinetic International.

Q Do you have an understanding as to what account those 5,000-dollar payments came from?

A Sometimes from Kinetic Investment Group, sometimes from LF42.

Q And we haven't talked about it yet today. So what is your understanding of what LF42 is?

A To my understanding, that is Michael Williams' personal pass-through company. He owns a hundred percent of LF42.

Q Okay.

BY MS. VINIEGRA:

Q You testified that you attended a number of meetings with some of the Puerto Rican investors. You stated you met with Plan de Pensiones Ministerial, AEELA, CFSE, and another that you're not sure, you don't remember the name, correct?

BY MR. HOUCHIN:

Q I believe it was on behalf of Mr. Williams.

A Yes, on behalf Mr. Williams.

Q It was Eliseo Acosta.

A Yes, that's correct.
BY MS. VINIEGRA:
Q If I show you a document, could it possibly refresh your recollection? So I'm going to hand you what has been marked as Kinetic Exhibit 17, which list a number of -- it list all the Kinetic Funds, LLC investors, and if you can review the document, let me know when you're done.
Have you seen this document before?
A I believe so, yes.
Q Can you tell us what it is?
A It's the list of investors -- list of members of the KF Yield that have investments in Kinetic Funds.
Q And after reviewing this document, does it refresh your recollection as to any other investor in Puerto Rico that you may have met with?
A No. That other meeting that I can't remember the name of the person, they didn't end up investing in the fund, but it was -- the meeting was to pitch the fund. It was a part of the -- a government. It was not a government agency. It had to -- it was related to the Chamber of Representatives.
Q And just to confirm. You met with Plan de

Pensiones prior to their investment, correct?
A Correct.
Q And you mentioned that the Kinetic Investment Group brochure was given to them at that meeting?
A Yes.
Q Okay. I'm going to hand you what has been previously marked as Kinetic Exhibit 31. Can you review the document and let me know when you're done
BY MR. HOUCHIN:
Q Ms. Mendez?
A Yes.
Q I don't mean to interrupt, I want to ask you a quick question.
If you turn to the page that's Bates numbered 64929, it's this page. It looks like this.
A Yes.
Q Is that the -- if you can look at the pages right behind there and let us know if that's the Kinetic Investment Group brochure as it relates to the KF Yield side of the investment that you were talking about that was used in relation to the Plan de Pensiones presentation?
A No. This is the new version or a new version of the KF Yield brochure. The first one --

these first two pages I have seen before, these are the one-pager I was referring to that would be presented to -- that would have been presented to Plan de Pensiones Ministerial, especially the private equity investment structure.
Q And for the record, you're referring to the pages that are Bates numbered SEC-Consultiva-E-0064920 and 64921?
A Correct. Now, the pages numbered 0064922 to page number 0064928, I have never seen this before.
Q What about the section beginning on page 64937 or 64938?
MS. INMAN: He was asking about 64937.
A 64937 is the last page of the KF Yield brochure. The page starting on 0064938 through 0064946 is the Lendacy brochure.
BY MR. HOUCHIN:
Q And was the Lendacy brochure that you just identified used as part of the presentation to Plan de Pensiones?
A That's correct.
BY MS. VINIEGRA:
Q I'm sorry. Go ahead.
A I was going to say that it would be handed

to them, but not really used as a presentation mechanism since they didn't understand English, and there was no actually numbers in the brochure. It was more of a handout.
Q And you stated that they were given a previous version of the Kinetic Investment Group brochure. To the best of your knowledge, was the previous version similar to the version that we have here marked in Kinetic Exhibit 31?
A The first -- I've never seen the version before.
Q Was it in English or in Spanish?
A English.
Q And how was the brochure explained to them if it was in English? Was it translated to them in Spanish? Or were they given a summary of what the brochure meant?
A Ian Quetglas would be using the brochure and in some cases a PowerPoint presentation.
Q But in Spanish?
A But he would be explaining and doing all the presentations in Spanish.
Q And do you remember more or less what Ian said about KF Yield? Did he say that it was a conservative blended fund?

A I don't recall him using that -- those exact words, but I have heard Ian pitching the fund. And I have these words in my mind probably from hearing Michael Williams and sometimes Ian, it's a conservative, very boring, private hedge fund, insured up to 90 percent against the market crash, and sometimes up to more; up to 94, 95, but at the minium, up to 90 percent insured, it's not leveraged. And I think that's it.

Q And that pitch was given to Plan de Pensiones --

A Yes.

Q -- at that meeting you were at, together with this brochure -- a similar brochure, a different version of this brochure in English?

A Correct.

BY MR. HOUCHIN:

Q What about the meeting that you referenced involving Eliseo Acosta? Do you recall any written materials being provided at that meeting?

A The KF Yield brochure.

Q The same version that was used at the Plan de Pensiones?

A Yes. And this was a big brochure. Like, probably bigger than a regular size paper with

pockets at the very beginning and at the very end to use as a folder. And as I said, it was used more as a folder to carry any statements, any quarterly reports, any other document that would want to be given out to the person of the meeting. Eliseo made an introduction of how he met Michael Williams and the fund, and how it functioned, but ultimately I had to explain how the fund worked and KCL -- and the relationship with KCL.

Q As a result of that meeting, did the people that the pitch was being made to end up investing in KF Yield?

A No, sir.

BY MS. VINIEGRA:

Q You said you've spoken a lot to Angelo Diaz, do you know if Angelo Diaz received one of those Kinetic Investment Group brochures?

A If he received one, it was prior to my start date, so I don't want to answer something that I don't know.

Q And how about Samuel Padilla, do you know if he received one of those Kinetic Investment Group brochures?

A I wasn't present at his meeting, so I don't know. I would like to say it was a formality for

every meeting and every conference, but I was not there.

BY MR. HOUCHIN:

Q Did you -- do you recall attending any other meetings in which the KF Yield fund was pitched or offered?

A I don't think so.

Q Let's go back to your role when you got hired.

You started by telling us that from February to October 2017 you worked with El-Morro and you did some work for KCL, and Kinetic Investment Group, after October 2017, did your role or duties change?

A Absolutely.

Q And can you explain to us how they changed and what they were?

A When I was first hired, I was hired as an executive assistance/office manager/personal assistant, so I was doing everything related to setting the office because the office had been just constructed. Being Michael's personal assistant, attend meetings on behalf of him, help with translations, answer e-mails, manage calendars, set up meetings, buy supplies and on the side around --

by the time that Michael Williams purchased his apartment, the penthouse in Villa Gabriella, that purchase came with a job.

When he purchased that apartment, the former owner told him that I also -- I'm president of the HOA and if you're purchasing this, would you mind taking care of that? And he said, yes, that's not a problem; I can take care of that. So that was an addition and it made me automatically the administrator of the building.

Q So as of March 2017, you effectively -- in addition to your duties at the El-Morro and KCL, you became the administrator for Gabriella's House?

A Correct. For October -- I remember it was in the middle of -- it was -- Michael had knowledge that the sale of another company that he was partner, Silexx, it was being bought by CBOE Markets -- CBOE Global Markets, and the operations manager for Kinetic Investment Group, Mr. Kenneth Rachon, was suggested to go with Silexx and take that position, because Kenneth had a blended position. He would work for Silexx and for Kinetic as well. So it was a conflict of interest, so he ended up going with Silexx.

Michael needed someone to manage all that

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Kenneth was doing and he said, would you be interested, and would you be willing to take that position? You can work from Puerto Rico, whatever you want. It was right after Hurricane Maria, so the island was crippled and everybody was looking for a way out.

And I said, if I ever want to just move to Florida, can I go? And he said, you do whatever you want, whatever makes you happy. It's all right if you, like, take this as a promotion, but I need you to take more responsibility. And I did, and there was only one condition. I said, I can't keep doing administration for the building; that's a separate thing. I don't even get paid for that, but it's taking a lot of my time. I would receive calls during the weekends from tenants and it was a lot of work. And he said, not a problem. You do what you have to do. And said, but I won't leave it hanging, let me find a person.

I did. That person didn't work out, so I kept in touch with Mr. Jesse Arms and Frankie Arms as well. They were helping me with all of this. They were the neighbors, mostly they were there full-time.

I accept this job as operations manager, I spent two weeks in the Florida office learning

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everything from Kenneth Rachon about his duties and responsibilities for this new position, and I came back. There was always an idea of me moving to Sarasota, looking for a better lifestyle for me and my family, that never happened, but my responsibilities just tripled, and now I was just dealing with everything in the Puerto Rico operation, but dealing as well with all the accounts payable for Kinetic Investment Group, all the benefits for the -- one employee at that time that the Kinetic Investment Group had, Mr. Anadi Gaur, HR stuff, human resources. Like, managing his benefits, insurance, payrolls, sending statements to investors.

Q What kind of statements?

A Monthly statements about their investment in KF Yield.

Q Who would prepare those statements?

A Michael Williams and sometime Anadi Gaur will help prepare the statements, but he couldn't complete them without Michael Williams giving him some data first.

Q Do you know what data Anadi Gaur was relying on to get from Mr. Williams?

A I don't. It was -- to my best recollection it was some Bloomberg data that they needed to

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complete the statements. But Michael Williams was very jealous about the statement creation. He would say that he didn't -- sometimes he would -- it would take him forever to complete the statements and I would start receiving calls from investors. They were supposed to be done by the 15th of each month and -- the statements pertaining to the past month.

But with the statements it came another set of task that needed to be done, like the client director commissions statement, like the firm statement; that's how they called it. And that was the statement that needed to be prepared to know what was the amount of the management fee that will be paid to Kinetic Investment Group from Kinetic funds. If that money didn't came in, sometimes there weren't enough money to cover Sarasota operations and to pay El-Morro Financial to continue operations. So there were months that I would start pressing and putting pressure on Michael and Anadi to get the statements out because I -- there was another set of responsibilities, and things that needed to be done.

Q Let me interrupt you for a second there.

A Yes.

Q When the statements weren't being done on time and there wasn't enough money to pay for the

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operations of the Sarasota office or the El-Morro oppositions, what would happen?

A It happened one time and I transferred an advance of $10,000 to cover payroll because I knew that the management fee will be higher than that and then transferred the difference when the statement came out. And it was not because it was not on time, it was because the money ran out -- the account ran out of money before the cycle of statement end, and so there was no money in the account and employees needed to be paid.

Q Which account ran out of money?

A Kinetic Investment Group.

Q And where was the money that served as the source of the $10,000 that was transferred come from?

A Can you repeat the question?

Q Yeah. If the Kinetic Investment Group account was the account that ran out of money, am I correct that $10,000 was transferred into that account?

A Correct.

Q Where did that $10,000 come from?

A From the Kinetic funds account.

Q So it's KF Yield account?

A Correct.

Q And that was done by internal wire transfer or internal transfer?
A It was done by internal wire transfer. I would like to make a clarification. This account that held the money from the fund, it was called Kinetic Funds 1, but I wouldn't call it the KF Yield account because KF Yield was -- it was more explained of a strategy to invest in the fund. There was the KF Growth or the KF Gold, or KF Inflation Fund. There were different strategies according to what I was explained.
Q So if you invested in say the KF Gold or the KF Inflation Fund when you made that initial investment, your capital did not go into the KF 1 account, it went into another account; am I understanding that to be correct?
A That's incorrect. Anybody that would make an investment in Kinetic Funds will send a wire or a check that would be deposited into the Kinetic Funds account -- Kinetic Funds 1 account and BMO Harris Bank. So all the money go --
Q So all four funds that Mr. Williams managed had money being deposited into the same account?
A Correct.
Q Okay. And when you made the 10,000-dollar

transfer into the Kinetic International Group account, did you need to get approval from anyone to make that transfer?
A I transferred the money to the Kinetic Investment Group account. I was trying to get a hold of Michael at that point and I had a problem in my hands, right; I don't have money, I need to pay employees and he wouldn't respond to me. I don't remember what he was doing and I needed to run payroll. When he called me back I said, I had a problem, but I fixed it. I transferred one portion of what is supposed to be coming in as the management fee to cover payroll. So he was glad that I fixed the problem. And no, I did not needed authorization to make internal transfers between accounts.
Q It was only for transfers that were outgoing?
A It was only for wire transfers, correct.
Q Okay. Let's take a five-minute break. Let's go off the record. It's 4:45 p.m.
(A brief recess was taken.)
MR. HOUCHIN: Let's go back on the record. It is 4:57 p.m.
BY MR. HOUCHIN:
Q Ms. Mendez, during the break, did you have

any communications with the SEC staff about your testimony or the investigation?
A No, sir.
Q Okay. Before we took a break you touched on the 1 percent management fee and I would like to take a little bit of time for you to walk us through the management fee. So if you could start with telling us how it -- who calculated it, from what accounts the fees were from and paid into, we can start with that.
A Okay. During my two weeks in Sarasota with Kenneth Rachon, he taught me everything that I needed to know about how to perform these duties. I don't know the exact formula to calculate this management -- the 1 percent management fee, I just know the process. So I will tell you how my process worked.
When I receive the firm statement, it was a -- it had -- it was a table and, like, a -- it was a PDF, but it came from a table in Excel which had a number per month. I remember it was -- it had the title of fees and distributions. Yes, fees and distributions.
Q Can I interrupt you for a second? The firm statement --

A Firm statement, yes.
Q -- where did that statement come from?
A It came from -- at the beginning the statements were uploaded to Google Drive and in that folder were all the statements from every investor, including the client director statements and the firm statements. So I'm -- I would like to assume that it came from the Excel spreadsheet that the statements were generated from.
When that statement was received, I needed to ask Anadi for the trade statistics for that current month and that trade statistic will give me the number of options or stocks trade in that month. I would need to input that information into another preset Excel template and make sure that the right accounts, and the right numbers were matching correctly, because in that Excel spreadsheet would be -- there was a formula. It would calculate, like, 100,000 options bought in that month for $2. It had a cost and then it would give you a round total.
That number I would take it and I would print out that -- I would print out that information from the Excel spreadsheet and I would call it contracts and services or contracts. Yes, contracts. That number needed to be sum up with the other number

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in the firm statement and add in addition a special charge for the TF account for $5,146. So the first two numbers would be variable, the third number would be always the same one.

Q What was the special charge for?

A To this day, I am not sure. It was a special fee to manage a specific account.

Q Do you know which account that fee was being paid to manage or for?

A I don't know.

BY MR. BUSTO:

Q What is a T and F account?

A I don't know. Those three numbers were sum up and you came up with a total for the management fee for the current month.

BY MS. IVORY:

Q And do you remember the name of the spreadsheet you used to calculate the total management fee?

A To calculate the management fee? It was not a spreadsheet. This calculation was done by hand manually.

Q So the three numbers you added up manually?

A Correct.

Q Okay. It was done -- there was a big

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folder named something statements. It was like this big and it went back in that same format up to 2015. So at this point I'm just continuing exactly what they told me how to do it. I ask numerous times, what is the static charge of TF account, not even Kenneth Rachon could tell me what it was. I'm just repeating exactly what I was told.

BY MR. HOUCHIN:

Q Did you ever ask anyone other than Kenneth Rachon what that charge was for?

A No.

BY MR. BUSTO:

Q So I still don't understand the first two components. I'm not sure what you're drawing from.

So when you say you took the statements, was that the brokerage statement from Interactive Brokers or is that the client investor statements?

A The client investor statements created by Michael Williams.

Q And so what would you do with those statements? Would you total up what everyone says they have in their accounts and get a number?

A No. No. The investor statements were created; it's a batch of PDF documents with Padilla statement, Diaz statement, ACCA statement.

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Q So what would you do with those?

A I would upload them to the investor individual folders in share file.

Q But in conjunction with the management fee, what would you do with those statements? How would those statements help you calculate the management fee?

A The investor statement, I did not take into consideration to create the management fee, only the firm statement which was included in the batch of PDF files.

Q So what is the firm statement?

A The firm statement had -- it was like a calendar for the year. It had the month from January to December and a number, and that month.

Q And what would that number be roughly typically?

A How much?

Q Yes.

A It would vary from month to month, but -- and I couldn't tell you how much an average was. I could tell you how much an average would be, the sum of the -- like the management fee in total. It would go from 40 to 60 grand approximately on average monthly. On some month specifically I remember, like,

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two times asking about the management fee in total because it was too high to what I was just adding up from the previous month.

So I remember one month it was like $101,000 and another one was 90-something thousand dollars. At this point I asked Michael Williams why there was a big difference between this month and other months, and he would respond with an explanation of a how the fund needed to hit a watermark when it was traded, and that if you make the investors some money above what they had in the past month, you would collect, like, an extra fee, like, a higher amount.

To be completely honest, it didn't make sense to me. I don't have a financial background, I don't have investment background, but those were the two times that that number was higher than that previous month and it caught my attention.

Q Just going back to the firm number. I mean was the firm number -- was it $10 million, $20 million, $30 million, $40 million?

A No. The number in the firm statement would be between the 30 and 40 to 50 grand a month.

Q No. But, like, what is -- that's the management fee, right, that you're talking about?

The 30 to 40?
A No. That's the number in the firm statement, in the first PDF document that came from the batch of PDF with the investors.
BY MS. IVORY:
Q So in that firm statement, you did not get a number to calculate the first number in your -- of your three used in your calculation. You just received a total in your firm statement and you just added that plus two other numbers to get your management fee?
A That's correct.
Q Okay.
A That's correct.
Q Okay.
BY MR. BUSTO:
Q So the trade statistic number, like, where does that come from?
A From the Silexx portal.
Q So these numbers are coming from the Silexx portal or just that number is coming from the Silexx portal?
A Only the trade statistics. The Silexx portal was used -- to my understanding, it's a platform to monitor risk in realtime. I used to have

access to the portal and I would download the trade statistics myself, but then the license was removed and I had to ask Anadi Gaur to the -- for the trade statistics. These were for specific accounts. I remember one was called, like, the GF64109. There was, like, two letters and numbers to get those statistics and it would give you the numbers of stocks and options traded during the month.
Q For certain clients or for the Kinetic Yield Fund?
A It didn't specify, but it was general. It wasn't for specific clients.
Q Okay. So you wouldn't know in the trade statistics which accounts those were for?
A No.
BY MS. IVORY:
Q And just to follow up. I'm not sure if you mentioned it before, but who created the firm statement? I know it was in the package with the investor statements, but who created that individual firm statement?
A Most of the times Michael Williams, but I have knowledge that Mr. Anadi Gaur would help Michael Williams create the statements from time to time.
Q Okay. Do you have any reason of why -- it

seems like Anadi add those three numbers that you added together to come up with the management fee. Do you have any idea why you would be responsible for doing it?
A When Kenneth Rachon explained to me all the things he did, that was part of his responsibilities.
Q Okay.
A He said, this is the process how we calculate the management fee and we do it like this, like this, like this. I wrote everything down and then followed the steps. It didn't cross my mind to just try to find the why behind it.
Q So once you got the management fee amount, what did you do next? What was your next responsibilities as far as paying the management fee?
A I would make an internal transfer from Kinetic funds account in BMO Harris to the Kinetic Investment Group account and BMO Harris as an internal transfer.
Q And how often would you do this transfer?
A On a monthly basis.
Q Thank you.
A Okay.
BY MR. HOUCHIN:
Q Would those transaction where the internal

transfer were made, would there be any indication in the bank records that would easily identify that that's what that transfer pertain to?
A The memo for the internal transfer would identify those transactions of the management fee.
BY MS. IVORY:
Q Was it always paid on the same day of the month or did it vary?
A It has a little, like, spread. It was supposed to be done by the 15th. There could be times where it was done a couple of days before or a couple of days after.
Q Thank you.
BY MR. HOUCHIN:
Q Okay. So we were talking when we went down this path about your duties and how they changed in addition to doing this. How did your duties changed after October 2017?
A With all the addition of the responsibilities for Kinetic Management Group, then I was responding to client questions.
Q When you say client questions, which clients were they in terms of what entities? Where they KCL clients, Kinetic Yield clients, Gold fund clients?

A That depends. Mr. Diaz was the client for both and that was the only client where I had to be, like, the liaison between Keli Pufahl from KCL Services to address the question with the client. On the other side it would be mostly clients of Kinetic Investment Group to provide redemption request to --
Q So they were investors in the Kinetic Yield Fund?
A Correct.
Q Did your job title change at all?
A Yes.
Q And what did it change from and to?
A It changed from executive assistant to operations manager, but I was still employed by El-Morro Financial and my payroll came always from El-Morro Financial.
Q Okay. And did you maintain the position of ops manager until you resigned?
A No, sir. After Kinetic International was created, titles were changed across the board and mine changed to director of operations of Kinetic International, but I still -- I was still doing all of my other responsibilities from the operations manager position. Some of the executive assistant position -- responsibilities even though we had hired

an administrative assistant, and from time to time dealing with the administration of the building as well.
Q And you were still fielding communications from KF Yield investors?
A Can you repeat the question? I'm sorry.
Q Yeah. Did you still continue to field questions from KF Yield investors?
A Correct.
Q Okay. And we've mentioned a couple of times today that you had positions and performed duties until you resigned. What's the date of your resignation?
A May 2nd, 2019.
Q And can you describe for us the facts or concerns that led you to resign?
A Let me see where I start. After Ms. Locke resigned in 2018, I did not understand -- I did understand -- okay. I understand the reasons why she say -- why she was resigning, but I didn't have, like, factual evidence to support her reasons. I was scared. I was -- I was -- I was scared for my life. And I remembered calling Michael to resign and he asked me that to please stay, that he needed me, that everybody was abandoning him because Ian had resigned

as well.
Q Okay. Let's break that down a little bit. How soon after Ms. Locke resigned did you have the phone call with Mr. Williams telling him you were contemplating resigning?
A One week after.
Q And had Mr. Quetglas resigned by then?
A Yes. Two days prior to that.
Q And why were you thinking of resigning at that point in time?
A Because I was scared.
Q Why?
A And I didn't understand and I didn't feel comfortable. I know there was serious accusations, but I -- it was more of a panicking at the moment. It was chaos.
Q Okay. And when you say you were scared for your life, can you explain to me what was driving that concern?
A So when somebody tells you that your boss is, like, misappropriate -- misappropriation -- misappropriating funds and stealing money, and you have been working for this person, then I thought I was going to jail automatically. I was ignorant to many things in the process and I don't have

investments experience. All that I learned, I learned from -- sorry.
Q That's okay. Want to take a quick break?
A All that I have learned, I have learned from this man with an impeccable reputation and this long experience, so it -- I was really excited to get into this industry. I thought I was learning from the best. So everything that was I was taught, everything that I had learned, I thought it was -- I thought it was good, I thought it was correct and all of sudden somebody tells you, like, it's all wrong.
This person is doing the wrong things and having worked for him for one year and a half, and being so close to his personal life to all of his -- because I would -- I was his personal executive assistant, I would know. And part of my conversation with him when I told him that I was thinking of resigning, he said, you know I have nothing to hide. You have access to my accounts.
You know more than anybody else that I have put from, like, all my money into these companies, why would you believe something like that? If somebody was accusing you of stealing money, what would you do? And I said, I would defend myself because I would say never steal money from anyone.

And he said, well, that's what I'm trying to do here. Just give me the benefit of the doubt.

I offer full transparency. Like, if you want to see, like, the accounts, if you want to see anything, just ask Ian Quetglas to take a look at everything. Like, I have -- I have nothing to hide. So he was very good at telling you what you needed to hear. I'm saying this because now I know, at the moment I didn't. And I --

Q At the time you had that conversation with him and he said, you know how much money I've put into the company, what was your understanding at that point in time how much money he, in fact, had put into the company?

A I can't say a specific amount, but I know that there were sometimes that if anything needed to be paid and there was not enough money in the Kinetic account, because this management fee was being used to fund both operations Sarasota and Puerto Rico, he would say, just take money from the LF42 and make a check, and just send it, deposit it. He would never have any complaining to say, oh no, then there's no money, then just leave it. He would always be, like, take money from LF42 account, put money here, then pay this from LF42.

Q How often did you take money from the LF42 and put it into the Kinetic accounts?

A I remember it would -- to my best recollection, it would be couple of times. Sometimes to pay the American Express card. Sometimes the amount would be too high and I would go to Michael and say, there's not enough money in Kinetic Investment Group to pay that credit card. And I think -- with certainty, I think there were two times that the credit card was paid with Kinetic Investment Group, but then a check deposited with L -- from LF42 into Kinetic Investment Group to make up for that money spent on the credit card.

Q Do you recall the amount of money that you're talking about?

A One time it was, like, thirteen thousand dollars four and something, and I think the other time was around $8,000.

Q I understand at the time that you had the conversation with Mr. Williams that you understood Ms. Locke's reasons for leaving, but that you may not have had the factual basis that led her to the conclusions that she made. In your communications with Mr. Williams, did he directly address any of the reasons that Ms. Locke had raised?

A Yes. In my conversations I asked him about the major concerns and accusations about Ms. Locke. I said, there are transactions that are being put into question, like the purchase of the apartment, the purchase of the building and he explained, like, everything had a reasoning to be. Like, everything was justified.

Like, the penthouse, he put the money -- this -- bear with me because this part is confusing even for me. He said that the building was collateralized by the asset and that the penthouse. He had sent money to collateralized -- for his credit -- for his credit line to be collateralized by his investment. And I said, Michael, I don't think that's true. You only have $66,000 invested in the fund and you have, like, millions of dollars on your credit line.

And he said, no. No. No. I sent -- I had Jamene -- his wife -- send a wire transfer for $1.5 million to -- like, to match his investment to the purchase of the apartment. And I said, when was that? You never told me about it. It happened that he didn't told me about it.

He had made a comment to Keli Pufahl -- now I know because when this conversation was over, I

talk to Keli Pufahl and she told me. But she thought that that 1.5 was to pay the apartment. It happened that it was to invest in the fund. He never told me, so he had to go back to the statements and change them retroactively to show the investment that he did of 1.5. Was that clear how that happened?

Q Not crystal.

A Okay.

Q I understand that he had the 60-something thousand dollars investment.

A Yes.

Q That he told you that he had instructed his wife to wire 1.5 million that was supposed to be an additional capital contribution into the KF Yield Fund account?

A Correct.

Q That you weren't aware of that?

A Correct.

Q I take it that that wire did, in fact, occur?

A Correct.

Q Did it occur at the same time that he said that it had occurred or was that something that happened later?

A No. It happened at the same time that he

said it happened.
Q So it was around the time of the Gabriella House purchase?
A No. It was one year later when he was trying --
Q Around the time of the bank building?
A Yes. When he was trying to purchase the bank building. And this information I know because I talk to Keli Pufahl. I don't know it from firsthand from Michael Williams. But when he tried to purchase the bank building, it started raising a lot of question for both Kellys and that's why he decided to send that 1.5, and she thought -- Pufahl thought that it was to pay his credit line for the purchase of the apartments, but, in fact, he ended up making it an additional capital invest into his account.
Q Did you have any understanding as to why Ms. Pufahl thought that that 1.5 million wire was to be used for something other than an investment in the KF Yield fund?
A From what she told me -- it's because -- it was because he had -- Michael Williams had told her that it was going to be that way. When -- and again, this information I know because I talk to Keli Pufahl.

When he made the purchase of the apartments, he did it under the impression -- not impression. Sorry -- under the promise that he would put that money back as soon as he would received his money from the sale of Silexx. That was --
Q Who did he make that promise to?
A I am not sure if it was to Keli Pufahl or Kelly Locke. I know that I -- Keli Pufahl told me this.
Q Okay. So at the time of the Gabriella purchase, you understood that Mr. Williams had used money from the KF Yield fund to purchase that property?
A I didn't know at the moment.
Q Right. But subsequently that's what was told to you?
A Correct.
Q And that it was your understanding based on someone telling -- Keli Pufahl telling you that he was going to pay that money back when he got a payment from the sale of the Silexx assets?
A Correct.
Q And when Mr. Williams was explaining his position to you that that $1.5 million was an additional capital contribution into the KF Yield

fund, that's a different story that he told to Kelly Pufahl?
A Yes. And --
Q But you didn't know it at the time?
A You didn't -- I didn't know it at the time. During my conversation with him, he was just making justifications for every transaction that he had done that was being put into question.
At that moment -- going back to the conversation when I tried resigning. I even ask him, like, Kelly had said that she was -- that she had a lot of concerns -- I do have a question to consult with counsel.
MS. INMAN: Okay.
MR. HOUCHIN: All right. Let's take a short break. Let's go off the record. It's 5:32 p.m.
(A brief recess was taken.)
MR. HOUCHIN: We're back on the record at 5:55 p.m.
BY MR. HOUCHIN:
Q Ms. Mendez, during the break did you have any communications with the staff about your testimony today or the investigation?
A No, sir.

Q We'll show you a document that's previously been marked as Kinetic Exhibit 44, take a moment and review the document, and let me know if you recognize it.
A Yes, I recognize this document.
Q And what is Exhibit 34?
A Exhibit 34 is an organizational -- it's an org chart that I created to represent ownership and how money flows between companies.
Q And why did you create this document?
A I was ask to create this document to present to the board of directors of Kinetic International.
Q And who asked you to prepare this document?
A Directly? Noel Zomat, director of the board.
Q And do you have an understanding as to why Mr. Zomat asked you to prepare this document?
A Yes. So fast forwarding to my -- from where I left off in my story. I could come back.
When I started getting concerned about the transactions and what was happening in the company, I talk to Michael Sayre, he was the CTO of Kinetic International.
Q And CTO is chief technology officer?

A That's correct. And he would talk to Noel Zomat as the last resource because we ultimately understood, that with the development of the platform ISX and the Kinetic International, there was a good vision, there was as good idea, there was future, but not with Michael Williams in the picture. So Michael Sayre contacted Noel Zomat and I believe so in the form of asking for help, and he wanted to get these concerns to a higher level.

Q Let me interrupt you for a second.

A Yes.

Q When you say that the future for ISX and Kinetic International was good, but not with Michael Williams, was that because your concerns about the transactions that we've touched on a little bit had increased since Ms. Locke's departure?

A Yes, and for other reasons as well. By the beginning of 2019 Michael Williams was the ultimate authority for all these companies and decisions, and ISX Kinetic International, which was the main focus of the -- all the staff -- but he wasn't present. He was distracted and spending time doing other things not related to the business.

Q Such as what?

A Such as creating a real estate portfolio of

properties in San Juan in Puerto Rico for other -- for a company -- for Seven Bridges. He was focused on the renovation of the Banco Espanol and filming documentary on the fresco that he was having artist, Luis Borrero, paint in there. He was very, very distracted with all the politics that was happening in Puerto Rico and collaborating with federal agencies, and he was playing a game, and it felt like he was in a movie. Everything was secretive. He had secret meetings all the time he wouldn't tell anyone. He was so distracted he wasn't present anymore.

Q And these are things that you personally observed?

A Yes, sir. In addition, with the development of the platform, Michael Sayre was in charge of that.

Q That's the ISX platform?

A ISX platform. Michael Sayre was in charge of that and Michael Williams was putting pressure to launch this platform, but it was not ready and he needed that platform to go live, like, yesterday, but Michael Sayre was pushing back because he was claiming that there was a lot of -- a lot of things that needed to be tested before going live, and we were short on money, and we didn't have anymore money

to keep putting in the platform for the development.

One of the things they realized that they needed -- that the platform besides from needing testing for security, it needed to be registered as a broker-dealer with the SEC because it was considered an alternative trading system, but Michael said, under no circumstances that platform was being registered as a broker-dealer because that was not a -- it was a Fintech solution just like Silexx. And Michael Sayre and James Bishop -- James Bishop was the CIO, chief investment officer.

Q Chief investment officer or chief information officer?

A Chief investment officer. They would argue and question, like, why you don't want to register this with the SEC? This is a great product that we're developing here, but we need to make it right, and there was always a disagreement on that. So Mike Sayre --

Q Other than saying that it was a Fintech solution, did Michael Williams provide any other reason for not wanting to register as a broker-dealer?

A No. He always said that it did not needed to be registered, that is only a Fintech solution;

that we're a facilitator. But based on the definitions on the books and every definition that James -- I remember being with James Bishop and Michael Sayre in the conference room, and James was, like, it's clear in here.

This is an -- this is considered an alternative trading system where trading is happening in the platform, this needs to be registered. Michael didn't agree. At this point Michael Sayre is trying to just use his lifelines and just how we can -- how we can get moving -- hold on. Sorry. How we can get this moving forward.

And he was reaching people close to Michael to try to talk some sense into him. And at the point he reaches out to Noel Zomat, he just tells him everything that's going on. Like, there are some concerns about some transactions about how leveraged he is and Mr. Zomat didn't understand. Mr. Zomat had a position as director of the board, but wasn't really -- as a board of Kinetic International, but He wasn't really involved other than for maybe give an opinion or something, not involved in the day-to-day operations and not involved in any other of the entities.

Michael Sayre's call to Noel Zomat raised

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some flags and he's like, Carla, we need to have a board of directors, but I need to understand what are you saying. Like, what are the concerns? So he kind of ask everyone to have a part. Like, Mike Sayre, you we detail, make a list of all the things that we need to get ISX moving forward, if it's a chief security officer -- security testings, extra money for the developing.

I don't know what he tasked James to do, but he said, can you do a spaghetti diagram and show, like, how the money flows in here? Because we will be discussing this -- I want to understand it and we will be discussing this with Michael. That's the reason why I created this work chart.

Q Can you explain the flow of money as indicated in Exhibit 34?

A Yes. So this is not a color copy, but the thin line is intended to represent ownership and the other line, which is --

Q The dash lines.

A -- the dash lines is intended to represent the flow of money. I think it -- there's an error in this org chart which I will be able to spot while I'm explaining it. Okay.

So Michael Williams is the owner -- a

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hundred percent owner of LF42 and Scipio, LF42 is the owner of Kinetic Partners, Kinetic Partners owns Kinetic Management Group and KCL Services, and Kinetic Management Group is the managing partner, not owner of Kinetic funds. Let's start with the first arrow going from Kinetic Management Group to El-Morro Financial. That's intended to represent the monthly invoice paid to El-Morro Financial for the purpose of reporting and producing statements to the investors of the fund.

The second line coming from Kinetic Management Group to KCL Services is intended to represent -- it goes -- it has to arrows because it goes both ways. Sometimes Kinetic Management Group will -- would make a transfer to subsidize some of the KCL Services operations, KCL Services would send money to Kinetic Management Group in a form of a loan or credit line.

The line coming from Kinetic Funds to Kinetic Management Group represents the management fee. The lines going out of KCL Services to LF42 and El-Morro Financial represents wire transfers in the forms of credit lines. The lines going out of El-Morro Financial to Kinetic Tech, Kinetic International and ISX, intend to represent payments

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made on behalf of these entities, cover expenses because the Kinetic Tech, Kinetic International and ISX didn't have a bank account for -- did not have a bank account, only Kinetic International at the very, but that money was not supposed to be touched. The --

Q And was that $200,000?

A I'm sorry.

Q Was the Kinetic International funds that were not to be touched, was that $200,000?

A The Kinetic International bank account was not supposed to be touched or used to pay expenses or operations because the money was transferred -- was sent directly from Kinetic funds account as a requirement to get the license of the IFE. As a requirement, the -- it needed to have an operational account with $250,000 and a CD pledged to the secretary of the treasury.

Q In Puerto Rico?

A In Puerto Rico for $300,000. The -- yes. Okay. Let's see. The lines -- dash lines coming out from Kinetic Funds to KCL Services is intended to represent the transfers to KCL in the form of interest collected from the credit lines and money to fund the credit lines. The line that goes from

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Kinetic funds to Kinetic International is intended to represent that transfer that I just mentioned, the $550,000.

And there's a line missing, but Kinetic Management Group DBA Kinetic Investment Group would send money occasionally, from time to time to the Kinetic Strategic Group bank account to cover the bank charges, pay for any FINRA licenses to keep the company open, because Kinetic Strategic Group did not have any operations -- active operations.

BY MR. BUSTO:

Q Does the CD -- the CD that was pledged, what bank was that CD from?

A SolCoop. It's a --

BY MR. HOUCHIN:

Q Is that the bank in the bottom of the building --

A That's correct.

Q -- where Kinetic offices are in?

A Yes, it's a co-op. It was opened downstairs because of conveniency (sic). Most of the banks in Puerto Rico didn't want to open accounts for international financial entities because of the risks they posed. And they were --

Q Do you have any understanding of what those

risks are?
A They are currently being investigated, a couple of them, for money laundering from Venezuela. So they -- mostly all of the banks. I remember calling almost every bank on the island and they wouldn't agree to open IFE accounts. You either have to open the account on another IFE or with SolCoop, or have some connections to make magic happen, but, no.
Q Other than preparing this chart to be used at a presentation at the board of directors, were you involved in the preparation of any other document that will be used at the presentation to the board?
A Yes. Keli Pufahl and I had shared -- we call it a transaction list in Excel. It was created before I started, but we kept collaborating and took the information. Firsthand we needed that spreadsheet to keep track of the money coming into the Kinetic Funds 1 account, money coming out of it, and she needed to keep track of the payments of the investors or money going out, so it was the only way that we could see the -- like, it was different tabs, but we could see.
If an investor needed to pay their credit line with their monthly distributions, it would be

recorded on that transaction. Ultimately we start adding tabs to the transaction list to keep track of other money transactions flowing because they were -- there was no ownership as to where to allocate the transactions, but we thought that it was important to keep track of some of those transactions.
Q In the transactions that you're talking about, can you give us an idea of which ones you're referring to?
A Yes.
Q Is that like the Gabriella House purchase?
A Yes. The is Gabriella -- the Villa Gabriella purchase, some investments that Michael agreed to do in another company.
Q Is that the Zephyr Aerospace?
A The Zephyr Aerospace. But I only know about that investment because Kelly Pufahl told me, because Michael Williams choose not to disclose that information to me.
Q Did you ever ask him about it?
A No.
Q Okay. Any reason why you didn't ask him about it?
A He wasn't that much present in the office anymore and at this point, I -- I don't know. He

would sometimes omit information from me and I didn't want to ask him about the Zephyr Aerospace and tell him Keli Pufahl told me because he would go to Keli Pufahl and --
Q And said why you're talking to Carla?
A Correct. And telling her information. He didn't like us talking, so I just took that information that Keli Pufahl told me and just -- if it was something that I needed to take action on, then, yes I would go to Michael. But he choose not to tell me about the Zephyr Aerospace probably because I was going to ask him something. I was always up front with him and ask him any doubts. I think that's why he choose not to disclose some information to me and some to Keli, and other -- he would choose what to share with everyone, depending on the person.
MR. HOUCHIN: Crystal, was that the transaction you -- or the file you wanted to talk about?
MS. IVORY: Yes.
MR. HOUCHIN: Can you mark this as Kinetic Exhibit 49.
(SEC Exhibit No. 49 was marked for identification.)

BY MS. IVORY:
Q What I have here is an e-mail that ends in Bates number 343628 entitled Monthly Transaction Sheet, with an attachment -- an Excel spreadsheet attach named Monthly Transactions KF and KCL team. The e-mail is dated April 12th, 2018 and attached there is an Excel workbook with three tabs.
Carla, when you take a look at the Excel spreadsheet that's attached, are you familiar with this spreadsheet? On the top of each page is the name of the spreadsheet, at the bottom is the name of the tab, there's three tabs KCL, KF, and KIG. If you get a chance to take a look at it.
A Okay.
Q Do you know who prepared this spreadsheet?
A I don't know who originally created this spreadsheet. I know that at some point Keli Pufahl and I collaborated on the spreadsheet.
Q Okay. Are you familiar with the information in this spreadsheet?
A Yes. In most case I would be more familiar with the Kinetic Fund side. I have seen the KCL side, but not that I am super familiar with it.
Q Do you have an idea what the data displayed in the spreadsheet represents?

A Yes. It would be deposits and credit line payments on the KCL side, and in the Kinetic Funds tab would be new investments, and additional capital investments, any change in the accounts, for example, address changes, name changes -- not names, but redirection of monthly distributions; any transaction regarding the Kinetic funds.

Q So would the KCL tab reflect draws or payments on the credit lines? Is what the data would be in the KCL tab?

A Can you repeat the question again?

Q Would the data in the KCL tab reflect credit line draws or repayments on loans from KCL?

A I am in inclined to say, yes, but this question would be more appropriate for Keli Pufahl to answer it because I did not collab- -- like, contributed or manage the KCL tab.

Q Well, can you share with me what's in the KF tab?

A In the KF tab the date refers to the date of the transaction that took place, account number, and the account number has a sequence of the date, month and day created or account opened, benefits or deposit, or withdrawal. Withdrawal considering like a redemption request or quarter disbursement. The

deposit could be an initial investment or additional capital contribution. The firm is KF for Kinetic Funds, the name would be the account name. There is no information for check numbers, amount and any comments related to the transaction.

Q How is the data in this spreadsheet used?

A It was used to keep track of money coming in and out, but Michael and Anadi needed these transactions for the month to see if there was any changes, any additional investments in the account to reflect in the statements created.

Q If there were any dividends payment, would it show up in this spreadsheet as well?

A If there were any dividend payments?

Q Or dividend that was earned on the fund balance?

A Yes. If the dividends -- let me take it back. Not all of them. Some dividends were send in the form of check to the account owner or in the form of a wire transfer, but that wouldn't be registered in the spreadsheet. But the use of the spreadsheet changed a long time. For example, when Kenneth Rachon explained to me how the transaction sheet was used, he said, you need to record any money going in or out, but with time, I was instructed -- I'm pretty

sure it was by Michael Williams and Anadi -- to only record transactions that would impact the statements.

The dividend payments were not in here, only if it was a change in statement. Let's -- in the dividend distribution. Let's say a client requested for their dividend distribution to be 50 percent for them to collect in cash and 50 percent to pay their credit line, then that would need to go here in this transaction sheet, otherwise, then, no.

Q And how did Michael Williams or Anadi use the data from the spreadsheet based on your understanding?

A They would highlight the transactions for the month and input the data in another spreadsheet to create the monthly statements.

Q Okay. So you were responsible -- and just correct me if I'm wrong. You remember responsible for updating this spreadsheet and the data from this spreadsheet was used to create monthly statements for investors; is that correct?

A It's correct since October 2017 until May 2nd, 2019.

BY MR. HOUCHIN:

Q And that's the period in which you were responsible for that task?

A Correct.

BY MS. IVORY:

Q Okay. Now, if you take a look at the last tab, it's entitled KIG. Do you have an idea of what the data in this spreadsheet or tab represent?

A I understand this information. I did not create this. This seems to be made by Kenneth Rachon to keep track of the client director commission statement. As I was explaining right now, for example, John Symmes had an arrangement into his commission payment, so 60 percent of his commission would be send to KCL Services to pay his credit line and forty percent would be send directly to John Symmes in the form of a wire. The date in this note are only for October 17, that is about right the time that Kenneth after that was training me to take over, but I did not continue using these notes.

Q So how were the director commissions paid after October 2017?

A In the same form. I just didn't keep track of this using his spreadsheet.

Q Was this data anywhere else, the commission payments?

A In the PDF batch of investor statements, which include the client director statements for John

Symmes and Eliseo Acosta, you could find the report for their commissions for the current month with the same amount that is being listed here. Not the same amount, but the amount pertaining to that month corresponding to the payment to Eliseo and John Symmes.

Q And which system did the commissions report come from?

A I don't have information about that.

Q Okay. Thank you.

BY MR. HOUCHIN:

Q Is this spreadsheet the spreadsheet that you were talking about where you said you create -- you and Ms. Pufahl created a tab to keep track of certain transactions?

A It would be the same spreadsheet, only that this spreadsheet goes to April 10th, 2018, and, of course, it's missing information.

Q Right. This was in essence a living document that changed over time?

A Correct.

Q Okay. Do you recall approximately when the tab to track the specific transactions that we started to talk about was added to the spreadsheet? Was it after Ms. Locke had left?

A Absolutely.

Q Was it within the year that she left or --

A Within the year for sure. I don't know the exact date, but it was after Ms. Locke left.

Q We could search for the name of the spreadsheet and try to identify when that tab appeared in order to find it?

A Correct.

Q Okay. Let me show you what's been marked previously as Kinetic Exhibit 36. Take a look at the document and let me know if you recognize it.

A I recognize this document.

Q And what is Exhibit 36?

A This is the additional tab created in the transaction spreadsheet to reflect, like, outstanding or highlighted transactions that weren't in any -- that weren't to keep track in any other place.

Q Was Exhibit 36 used, to your knowledge, as part of the presentation to the Kinetic International board of directors?

A That's correct.

Q Okay. And who made the presentation to the board of directors with respect to the transactions that are reflected in Exhibit 36?

A I believe I did with the help and

collaboration of Keli Pufahl. She was connected over a conference call.

Q Okay. Do you recall who was present during that meeting besides you physically being there and Ms. Pufahl being on the phone?

A Yes. There was James Bishop, Michael Sayre, Noel Zomat and Jeanelle Alemar.

Q Okay. And the transactions that are indicated on this exhibit, do you have an understanding as to who input the underlying data in the spreadsheet with respect to these transactions?

A The -- can you paraphrase the question?

Q Sure. For example, let's take the first section, the transfers for PH Vacation and Banco Espanol building, do you see that section?

A Yes.

Q Do you have an understanding as to what those transaction pertain to?

A Yes.

Q And what do those transactions pertain to?

A The first transactions correspond to the penthouse purchase and I would like to add that, in the moment that this transaction took place, I had recently started working for Michael Williams. I assisted him in coordinating some meetings to -- for

the penthouse, assisted in scanning documents for the closing, assisted in other capacity, but he never disclosed information of how he was paying for the penthouse, so later on I discovered that he used the company to pay for his apartment by Keli Pufahl.

Q And you learned that from Keli Pufahl?

A Correct.

Q Did -- were you able to verify in any of the corporate records that that flow of funds took place? For example, did you look in the bank statements and see a transfer going from say the BMO Harris account to KF Yield account, to KCL, and then out to the seller of the real estate?

A No. I did not look for those transactions.

Q Do you know if anyone looked to verify those transactions?

A Keli Pufahl, but not me.

Q Okay.

A The Greece sailing trip payment, same story. I coordinated the Greece trip, I sent some payments to the yacht owner that he was renting and there were some payments that needed to be done, and couldn't be done with -- I believe was it credit card or his LF42 account, so he contacted Keli Pufahl directly.

Q For the -- how much in total did the Greece vacation cost, if you recall?
A Approximately, like, 15 grand in total.
Q And who went on that vacation?
A Michael Williams wife, Jamene, and his son Jase, and himself, but he never ended up going into the trip. He needed to go back and he stayed in Zurich working.
Q Did his wife and son go on the trip?
A Yes, sir.
Q And do you have an understanding as to how that trip was paid for?
A Part with Michael Williams personal money, part with Jamene's credit card and later on I realized that with his credit line in KCL.
Q Okay. So am I correct that the only part of the Greece vacation that you believe could have come from the Kinetic funds account, stems from the sailing trip that Mr. Williams didn't go on that's indicated in this exhibit?
A Can you paraphrase the question? I'm sorry.
Q Yeah. If the overall vacation, the Greece vacation cost $15,000 and that $15,000 was partly paid by the LF42 funds of Mr. Williams, and part was

paid by his wife's credit card, do you have an understanding of where the remaining funds came from?
A I don't.
Q Okay. So you don't know if that came from KF funds or not?
A No, I don't.
Q Okay. What about with respect to the two items that are identified in Exhibit 36 with respect to the sailing trip?
A I remember making some payments with Michael Williams credit card, but I remember there was a problem with the terminal. It was a European very old retro website to make a payment. It wouldn't take cards. I remember e-mailing the owner with some hassles with the payment. These payments right here look like an advance like a deposit, like an advance, like a secured down payment.
Q But do you know if those funds that were used for the down payment, as you call it, came from the KF Yield account?
A I couldn't tell because I did not make those transactions. Keli Pufahl will be to give more information on that.
Q Okay. What about with respect to the next two transactions that are listed on there?

A The next two transactions are for the Banco building -- the purchase of the Banco building. The first one, I think it was a -- again, I was not involved in this money transaction because Michael was very careful on what to include me and what not.
Q Is Keli Pufahl the person who input the data with respect to these two transactions into this tab?
A That's correct.
Q Did she input the data into the other transactions that are identified in Exhibit 36?
A For Zephyr Aerospace, yes. The money transfer from Kinetic to open KIB banking accounts, I inputted that information.
Q And the $550,000 in total that's indicated there is a result of the two transactions that you talked about that we --
A Correct.
Q -- previously talked about in the org chart and flow of money chart?
A That's correct.
Q Can that was the $250,000 that had to be maintained in the account and the $300,000 for the CD at the co-op?
A That's correct.

Q Who authorized the wire transfers for the transactions identified in Exhibit 36?
A For all of them?
Q Yes.
A Michael Williams.
Q Is he the only one that had the authority to approve the out going wires out of the Kinetic accounts?
A That's correct. No money can go out in a form of wire transfer from any account in BMO Harris without Michael Williams approving those transactions.
Q What about with respect to the last section of Exhibit 36, the 2 million-dollar credit line to ISX, who input the data in that section?
A Part Keli Pufahl and part myself.
Q Which part did you input?
A This part was a collaboration. The amounts and the memos, the descriptions Kelly help corroborate.
Q Do you have an understanding as to what she reviewed to come up with those numbers or corroborate those numbers?
A Can you paraphrase the question?
Q Yes. In choosing to include the numbers

that are indicated for the transactions in this section, what sort of documents would have been examined or reviewed to confirm that those transactions took place?

A I'm so sorry, I'm not sure I understand the question. Are you asking if -- how did she came up with this amount to transfer them, or if she --

Q Did anyone look at -- let's just take one as an example.

The million dollars that's said was transferred from Kinetic funds to KCL for operational, how was it determined that that transaction took place?

A Because of an internal transfer from Kinetic funds to KCL Services.

Q So there are bank records that reflect that?

A Correct.

Q Okay. Is that true for the other transactions that are identified in Exhibit 36?

A Correct. All of the transactions can be corroborated in the bank statement or bank portal.

Q The -- in the comment section in the bottom part of the exhibit, there's references to Kinetic Financial Summit expenses, do you have an

understanding of what those were?

A Yes, sir. The Kinetic Financial Summit -- let me go back to 2017.

In 2017 we were supposed to have an event around September to advertise Kinetic, the fund, to advertise KCL Services, and to -- how it could be used for investments in Puerto Rico. The event was supposed to be a one-night Gala in the Antiguo Casino of Puerto Rico, the event never took place because of Hurricane Maria.

After that there was $30,000 already given out to vendors and we couldn't get a refund, so there was a credit that needed to be used within the year; we had until February 2019. After 2018 after Ms. Locke left, we still had those 30 grand in credits with vendors in the -- in a venue, we had decoration, we had music, we had some vendors.

With the new idea of Kinetic International and the ISX platform, Michael came up with the idea to use those credits to do an event to launch and present Kinetic International, and ISX to a group of investors and people. That event -- I had concerns about the event because I told Michael that we didn't have the money, that we had other financial priorities, like fund our operations, which there was

not enough money.

So I was getting concerned since October and meeting regularly with the accountant to keep track of our money, our financial situation. And I said, I don't think we should do an event. And he said, we're having an event, we're not losing that money, and this is this perfect time to just present the international bank and the platform.

So the meetings for the event started occurring like the event planning and Michael was present in those meetings, and it went from one night event to a one week event with 200 people, and paying for hotels for everybody, and telling people, you only need to pay your flight. Because the idea was to invite biggest companies, high net worth investors, family offices, the big players to -- with the ultimate intent for them to invest in Kinetic -- use Kinetic International as their international banking and to use ISX platform to invest in other deals.

Q So basically the event was trying to get business that would benefit the entities that were on the right-hand side of I think it was Exhibit 34?

A Correct. That's correct. I was in charge of coordinating that event.

Q Where was the event held?

A Condado Vanderbilt Hotel. It was a very expensive event. I was told by Michael that we were inviting the -- I mean we were inviting so many important people. We needed this event to be topnotch, high level, like everything. This need to be the best event that they would go into their lives.

Q Do you recall how much the event cost?

A Around $630,000.

Q Do you have an understanding as to how that money was paid for? What was the source of funds?

A Yes, sir. It was transferred from Kinetic funds to KCL Services in the form of a credit line under a promissory note, and from KCL Services wired to El-Morro Financial to pay for some portions of it since they were -- it was in Puerto Rico, and to Kinetic Investment group to pay for other portions of the expenses of this summit.

Q And Exhibit 36 seems to indicate that at least a portions of the funds or expenses for the event may have been incurred with an American Express card. Looks like $185,000. Do you see that?

A Correct, yes.

Q Which American Express card was used, if

you recall?
A Kinetic Investment Group and El-Morro Financial American Express.
Q And the money that was used to pay for those charges that were incurred on those American Express cards, came from KF Yield fund under the process or procedure that you just described?
A Correct. From Kinetic funds to KCL Services, from KCL Services to Kinetic Investment Group or El-Morro, and then paid to American Express.
Q Did anyone ever question whether that was a proper of use of those funds as it related to the KF Yield funds?
A When I was stressing about money -- I keep stressing about money since October 2018. Michael was hiring and making a lot of expenses either in the ISX platform development or hiring people that we didn't know that we needed to like Michael Sayre, or trips, or anything, then hiring James Bishop, chief investment officer that we didn't have an open position for.
We had a cushion in the El-Morro Financial account for $100,000, but that money was consuming quickly and I keep telling -- I kept telling Michael, we're going to run out of money for February 2019.

We don't -- we're not going to have with what to pay employees or rent, or anything. So he always told me, like, I appreciate you're stressed about money, but don't worry about it; it's going to be fine.
We were in the process of a capital raising, which didn't have success and that was one of reasons that I told him that I didn't think it was a good idea to do the event, and he said, no, we have to do this event; we're not losing 30 grand. And then -- sorry. I lost my track -- my train of thought.
Okay. At one time we were in the office -- Michael and I, we shared an office -- a small office space and I was stressing about money, and he asked me, what if I got $1 million, do you think that will get us through the expenses that we have? And I said, sure, but how are you going to find $1 million? Like, we have been stressing about money months ago. He's like well, maybe I could -- well, maybe I can just liquidate some assets that I have.
Liquid -- no. He didn't use the word assets. Sorry. He said, maybe I can liquidate some positions that I have, but I'm -- I would have to take a hit of 10 percent, I don't want to do that. Maybe I can try calling Merrill Lynch and get a

credit line there or -- I don't know. I have access to a 25 million-dollar account, but it cost me, like, eight percent interest; like, that's going to be a lot.
Oh, you know what? What if we used a promissory note against the money that I'm going to receive for the sale of Silexx at the end of this year? And I said, is that legal? Of course. Of course it is. Look -- and he called Jeanelle Alemar. She is the tax attorney, board of director member and she was sharing office space with us.
Q Let me interrupt you a second.
A Yes.
Q I don't want you to get into communications that may have involved legal advice being given to the company.
A Mmm-hmm.
Q Okay. So if there's business advice that Ms. Alemar was given, that's fine.
A Okay.
Q But I don't want to get, at least right now, into communications that were given by her while she was wearing her lawyer hat and providing legal advice.
A Understood.

Q You understand that?
A Yes.
Q Okay.
A Okay. A promissory notice was made -- was drafted and made, and sent to Keli Pufahl with the two -- with the 1 million credit line. I think it was 1 or 1.5 and the money was transferred, and that is the supporting documentation that we had to make that transfer and use of funds. Later on we realize -- Keli calls me and she said, I think this is wrong.
This promissory note says something different. It says that LF42 lends ISX $1 million credit line -- it was between 1 and one and a half, then changed to 2 million -- when LF42 receives the money at sale of Silexx. I don't think that's the wording appropriate for the promissory note because it's coming from the credit line to -- from Michael Williams, but to the -- to all of the expenses and all of the companies.
So that was a concern that we had. Later on I talk to Michael about it and I said that I -- I talk to Jeanelle first. I'm sorry. And later on I talk to Michael and I said, I think the promissory note is wrong and needs to be corrected. He told me

that Jeanelle was working on it and then to find out that he went back to Sarasota and had Keli change the promissory note.

Q Okay. Let me ask you this. With respect to the entities that are on the flowchart -- I think it was Exhibit 34.

A Yes.

Q Do you have an understanding as to whether there were professional accountants or auditors that provided any accounting or tax services to any of those entities?

A El-Morro Financial had an accountant, not licensed CPA. Her name is Kathia Torano.

Q How do you spell her last name?

A T-O-R-A, the N with the --

Q Tilde?

A Yes, O. For Kinetic Management Group, KCL Services was Famiglio & Associates CPA firm and for Kinetic Partners and all the Kinetic funds entities.

Q And the services that Kathia provided were just tax related?

A Tax related and monthly financial reviews.

Q Okay. Did she provide any auditing services?

A No.

Q Okay. And what about with respect to Famiglio, what's your understanding of what services Famiglio & Associates provided?

A To my understanding, only tax returns related services.

Q So tax returns in like preparations of K-1s?

A Correct.

Q Do you have any understanding as to whether any of the entities identified in Exhibit 34 were ever audited by an auditing firm or a CPA?

A Not that I recall from a auditing firm or a CPA.

Q Did you ever hear Michael Williams ever say that any of his companies were audited or had audited financial statements?

A I don't recall him saying that he had audited financial statements, but he would say that we have audits every year.

Q And what's your understanding of what he meant by that?

A At this point I don't know what he meant, but I recall when I was working, there was an audit, but it was made by the Florida Office of Regulations.

Q Florida Office of Financial Regulations?

A Yes.

Q The Florida OFR?

A Correct. And I thought he meant -- he was referring to those kind of audits.

Q When you say Mr. Williams said that they're audited, who would he say that to?

A Clients.

Q So potential investors in the KF Yield fund?

A Sure. Anybody that would question -- like, even when he was --

Q Do you ever -- do you have a specific recollection of him saying that to a prospective investor or talking about it?

A Not specifically, but he would say it casually in any conversations. Especially with the development of ISX, the idea changed through time and at the beginning he was advertising or making the impression that we had a partner in ISX that was -- it wasn't PwC, but it was a very recognized accounting firm.

Q BDO?

A No, it wasn't BDO.

BY MS. IVORY:

Q Deloitte?

A No.

Q KPMG?

MS. INMAN: Grant Thornton?

THE WITNESS: Sounds like KPMG.

BY MS. IVORY:

Q Beyer? Cranshaw?

A No. I have it written in my notes. But he would make it sound like that relationship was already set and like -- it wasn't. If, for example, at some point Mr. Noel Zomat asked for audited financials and he said, yes, sure we have them, that kind of expression. Like he would -- he would talk to them about it casually. Like, we are audited ever year. Like, I can't say, like, specific name, but I do have the memory of hearing -- listening to him making those expressions.

BY MR. BUSTO:

Q Did you ever hear him tell somebody that the fund -- Kinetic Yield Fund was audited?

A No. I heard those terms in general terms about the company, but he would also refer to, we have Interactive Brokers, which is our clearing firm.

Q So in those investor meetings that you were present and translating, that never came up?

A No.

BY MR. HOUCHIN:
Q Did he ever -- I'm sorry. Go ahead.
BY MS. IVORY:
Q So earlier you mentioned that you spoke with an accountant and, you know, figure you guys didn't have enough money, which accountant are you -- who are you referring to when you say you spoke with an accountant?
A That would be Kathia Torano from Puerto Rico.
Q And what types of services did she provide?
A Monthly financial reviews of the Puerto Rico operation only and tax returns.
Q Okay. When you say review, is it like a review, which is a little bit less than a audit, or do you mean something as far budgeting types of review?
A Not budgeting types. I kept the record -- the bookkeeping of the entities and she would help me, make sure that everything was in order and straight, and properly allocated to the accounts, and she would send monthly financial reports like PNLs, balance sheet with all the expenses pertaining to the El-Morro Financial. She had a retainer of $600 a month because at the end of the year the Act 20

company needs to file special reporters of expenses and other tax returns.
Q So did she work on more preparing the financial statements or reviewing the financial statements?
A For financial statements like -- we worked together in the QuickBooks to keep these records, and ultimately she would go in and get the information, make analysis on data, and she would meet with us and say, so from this month -- for past month to current month you had an increase in payroll, or you had an increase in these expenses, this should not be it with the money that you're -- with the income that you're receiving, that kind of review.
Q Was Ms. Torano a CPA?
A To my knowledge she was not licensed because at some point we needed financial statements audited, not the ones that Noel Zomat was asking. Other ones that I can't recall at this point for what -- for the purpose, and she said, you'll need to find somebody else because I can't do them for you because I'm --
Q Do you know which entities needed the audited financial statements?
A Probably El-Morro Financial because

otherwise I wouldn't have asked her. Anything related to accounting to -- or tax returns, or anything related to the Florida entities I would ask Len Booth, the accountant --
Q At Famiglio?
A -- at Famiglio, correct. If it was anything pertaining to Puerto Rico operations, then I would talk to Kathia.
BY MS. IVORY:
Q And one more question before we leave Exhibit 36.
You mentioned that you were in charge of doing the organization for the event at the Vanderbilt Hotel, did you maintain a list of vendors and expenses for the event?
A I did. I don't have it under my possession, but there is a list of vendor and expenses.
Q By any chance do you know what you saved it as or in what format it was in?
A There's a folder called Kinetic Financial Summit and it should have all the documentation.
Q Was it like an Excel spreadsheet this listing or was it --
A Excel spreadsheet.

Q Okay. Thank you.
A Okay.
BY MR. HOUCHIN:
Q Let's mark this as Kinetic Exhibit 50 and this one will be 51.
(SEC Exhibit Nos. 50 and 51 were marked for identification.)
BY MR. HOUCHIN:
Q Ms. Mendez, I'm showing you what's been marked Kinetic Exhibit 50 and 51, if you can take a moment and review the two documents and let me know if you recognize them.
A I recognize these e-mails.
Q And Exhibit 50 is an e-mail chain from June 29th, 2018, the most recent being from Michael Williams to you dated Bank purchase. Do you see that?
A Correct, yes.
Q And in that e-mail to you Mr. Williams writes, "Carla, here's an e-mail from my wife with a copy of the wire sent towards the bank building. See attachment. I'm forwarding you all the wire confirmation so you can see it as well. Please consider."
What did this pertain to?

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A This pertain to the conversation I was explaining on the day that I told him that I was considering resigning and asking him about the -- like highlighting outstanding transactions and this is where he said -- explains to me that he had send a wire for 1.5 million.
Q And if you look at the first e-mail chronologically, it's from [redacted]@gmail.com. Do you have an understanding as to who is the owner of that e-mail address?
A Yes. That is his wife, Jamene Pinnow, e-mail address.
Q And in that e-mail she writes to Michael and it says created with iScanner app. "Michael, this is the printed receipts I received at the Sarasota BMO branch after sending the one point five million from our personal account (LF42) to Kinetic funds on May 3rd, 2018, for the purchase of the bank build in Old San Juan." Do you see that?
A Yes.
Q Did I read that correctly?
A Yes, sir.
Q Is the reference to the bank building in Old San Juan the Banco Espanol building that we've been talking about?

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A That's correct.
Q And if you look at Exhibit 51, it's the June 29th e-mail from Michael Williams to you with the subject BMO Capital Markets Wire advance. Do you see that?
A Yes.
Q And what does the wire advance indicate?
A Where am I supposed to look again? I'm sorry.
Q On Exhibit 51.
A Exhibit 51.
Q The money transfer detail.
A Money transfer detail, May 3rd --
Q 2018.
A -- 2018.
Q Do you see that?
A Yes.
Q Who was the originating party, if you can tell from this?
A There's no name.
Q And who is the beneficiary?
A Kinetic Funds 1, LLC.
Q And the amount was 1,500,000?
A That's correct.
Q Is this the wire information that Mr.

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Williams and his wife were referencing in Exhibit 50?
A Yes, sir.
Q And do you have an understanding what this -- what the $1.5 million indicated in this wire transfer ultimately was used for?
A It says in the e-mail that it is to go towards the bank building, but I was told a different thing.
Q And what is your understanding that the 1.5 million was used for?
A It was used as an additional investment into Michael Williams personal account and the KF Yield fund.
Q And basis for your understanding of that is the conversation you had with Keli Pufahl, or did you look at documents that showed that or maybe both?
A Both and my conversation with Michael Williams, and his updating the investor statements to reflect his 1.5 additional investment capital in his account.
Q Okay. You can set those documents aside. Let's go off the record. It is 7:10 p.m.
(A brief recess was taken.)
MR. HOUCHIN: Let's go back on the record. It's 7:23 p.m.

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BY MR. HOUCHIN:
Q Ms. Mendez, during the break, did you have any communications with the staff about your testimony today or the investigation?
A No, sir.
Q Are you aware of a Ford Fiesta that was purchased by Mr. Williams?
A It was purchased prior to my commencement with Kinetic, but I am aware that he purchased -- ultimately Ms. Kelly Locke was the person who would drive that car all the time until it came a moment that a purchase sales agreement was drafted between -- and signed between Michael Williams and Kelly Locke.
Q Do you have any understanding as to whether Mr. Williams sought reimbursement for the cost of the car from either the KF Yield fund or KCL?
A Can you rephrase the question?
Q Sure. Mr. Williams ultimately sold the car to Ms. Locke.
A Correct.
Q Do you have an understanding as to what the sales price was?
A I believe the purchase sale agreement between the two of them said -- I have this number in

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my mind 17,500, but that's it.
Q Okay. And you indicated that there was an agreement that was entered into between Ms. Locke and Ms. Williams with respect to that transaction?
A Yes.
Q Did there come a point in time that Mr. Williams asked to be paid either from the KF Yield fund or from the KCL fund in relation to that car?
A Not to my understanding. I wouldn't have information on that.
Q Okay. Let me show you a document that's been previously marked as Kinetic Exhibit 41. And I understand you're not a recipient of that communication, but just review the document and let me know if the request that is indicated on that document was ever made?
A I did not have -- had information on this.
Q Okay. So if that transaction -- or strike that.
If the request -- strike that .
Let me just read for the record what the e-mail says. Exhibit 41 is an e-mail from Kelly Locke to Keli Pufahl dated July 12th, 2017, where Ms. Locke writes, "Michael has requested that Lendacy issue payment to him in full for the Ford Fiesta at

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$18,000. The verbal agreement to include five new tires and rims will not be honored so there's no price adjustment. I will write up the lending agreement and send it to you signed. Please communicate with Michael to process the wire as soon as possible."
I understand you don't have a recollection of any transaction relating to this request. If the transaction that was requested actually ended up being executed would be -- would I be correct in assuming that I could track that in the bank records for KCL?
A If the transaction ever took place you could find the transaction in the KCL Services transaction list.
Q And as you sit here today, you're not aware of an 18,000-dollar payment on or around this date made out of the KCL account to the LF42 entity; is that correct?
A That's correct.
Q Okay. You can set that one aside.
Now, we talked a little bit about American Express cards, was there anyone at Kinetic that would review the American Express card bills that would be sent to the Kinetic offices?

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A That would be me.
Q And did you review only the cards for the people associated with the Puerto Rico office or people in Sarasota that had cards, would those statements go to you as well or would those go to the Sarasota office?
A As of November 2017 when I assumed the responsibilities of operations manager for Kinetic investments, that would be part of my tasks. At that point only one person had an American Express card.
Q Only one person in Sarasota?
A In Sarasota, correct. That would be Michael Williams and in Puerto Rico, that would be Michael Williams, myself, Ian Quetglas.
BY MS. IVORY:
Q And under which entities were these cards held?
A El-Morro Financial the ones in Puerto Rico, at some point in Michael Sayre had El-Morro credit card, Gracia Rios had an El-Morro credit card.
Q Were those credit cards American Express cards or were they by another issuer?
A All were American Express cards. For the Sarasota operations it would be Michael Williams and myself.

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BY MS. IVORY:
Q And what entity was the Sarasota cards issued under?
A Kinetic Investment Group.
BY MR. HOUCHIN:
Q And from November 2017 until you resigned May 2nd, 2019, you reviewed the American Express statement every month?
A Correct.
Q Did you review them and make any determination as to whether they were business expenses versus nonbusiness expenses?
A I remember it was hard for me to separate what were business expenses and some not seem that business related expenses. There was always an issue because after I assumed the responsibilities of Kenneth Rachon, there was transactions that I couldn't recognize or couldn't find out the origin of it; monthly subscriptions, random purchases at Amazon.
So I would go to Michael and ask him about those transactions, but his answer always was that he didn't have a recollection, that he never uses his Kinetic investment card to make purchases. I started like my own internal audit, I'm trying to call the

transactions that I logged and I couldn't any response in anyone, trying to call the vendors to see when they were created. Mostly monthly subscriptions.

Q Things like audible?

A Correct.

Q And then random Amazon purchases?

A Random Amazon purchases. There was like software purchases, random stuff that ultimately nobody -- at the beginning I would call Kenneth Rachon, like, do you know anything about this transaction, and he's like, no. I think for him it was like an ongoing thing and Michael will always say that he never uses Kinetic investment card to make any purchases.

BY MS. IVORY:

Q So --

MR. HOUCHIN: Let me ask one question to follow up that first.

BY MR. HOUCHIN:

Q If he never made any charges to his American Express card, how would he explain that charges were being made an that card?

A He would say that he never used his Kinetic card to make any Amazon purchases or any not business

related purchases, but ultimately I couldn't figure out from which account the Amazon purchases were coming. I even created, like, a business account and instructed him, like, please, if you're going to make a business related account, use this account so I can keep track of -- and match the statements with the purchases being made. I don't think he ever used the account I created. I could never tell what was bought because in -- if you Amazon, you know that unless you are the owner of the account, you can't see what was purchased.

Q Who had access to his credit card information with respect to the American Express?

A That's a very good point because when I started noticing those kind of transactions and he claimed that he didn't have access to it -- that he department use -- sorry. He didn't use his card for personal transactions, I decided to request a new card for him and for the card holders in the American Express Kinetic Investment account because it was -- I did know that, for example, Kenneth Rachon had a copy in his desk about -- with the credit card.

They had given me the card some point to make any transaction. I knew that the card could have been, like, elsewhere, so one of the first decisions

that I -- or the steps that I took to try to solve the situation was to cancel and request a new card with new a number from Michael.

Q Do you recall approximately when you made that request?

A Had to be between December and February. December 2017 and February 2018.

Q And were new cards ultimately issued?

A Yes, sir.

Q After those new cards were issued, did you see the same problem?

A Sometimes, and sometime expenses that were I would say exorbitant, like dinners.

Q I'll represent to you that I've reviewed some of the American Express charges and there seems to be meal charges, either lunch or dinner, on fairly regular basis. Do you have any understanding as to whether people were ordering lunch and billing it to the American Express card?

A So there was a thing they called in the Sarasota office, the expiration Fridays. Expiration Fridays nobody was allowed to leave the office for the trading team, especially Anadi. So it was part of what Kenneth passed onto me. On expiration Fridays we ordered lunch for the office. That would

be the only approved charge to be made.

Q For the American Express cards that were issued both the El-Morro and the Kinetic, the KIG Investment Group cards, what was the source of funds used to pay those bills?

A In the Puerto Rico operation it was part of the income that El-Morro received from the invoice sent --

Q For the statements.

A -- for the statements. And Kinetic Investment Group, it was the only source of revenue, it was the management fee.

Q Okay. So you're not aware of those types of expenses being paid from the KF Yield account?

A No.

Q Okay.

A Not directly.

Q Do you have any concern that Mr. Williams was ever using the American Express card to purchase nonbusiness items or gifts for people?

A I have a recollection, I don't have physical information that would support that. Only a conversation with Ms. Locke and a conversation with Keli Pufahl, but I do remember -- okay. Let me see how I put this.

There was a time that there was a governor birthday party, the governor of Puerto Rico, and I remember Ms. Locke going shopping with Michael Williams, and the next day she was talking to me about the dress that she bought and the expensive shoes that she bought. And she made an expression like, I didn't know if I could -- I didn't know if I should buy those because they were so expensive. They were, like, $800 heels, but Michael kept pushing me just to buy them and put them on the credit card. But how do I complain to my bosses about that?

There was another when -- after Ms. Locke left, Michael made us, Keli Pufahl and I, to go into the KCL American Express card to mark all the transactions that were not business related and there were a lot of transactions there from Amazon, Walgreens, Marshalls, AT&T exorbitant bill charges, but to actually see if there were gifts or other -- to actually see what they bought, no -- what was bought, no.

Q Do you have any understanding or concern that Mr. Williams was using the company credit card to purchase personal items for himself?

A Not that I -- not that I recall. Those purchases will ultimately be charged on his LF42

American Express card.

Q And would that be true with respect to any gifts that he may have purchased for his girlfriend?

A His actual girlfriend?

Q He has an imaginary girlfriend?

A I want to say yes and no because when he started dating his girlfriend, I had access to his LF42 account and credit card -- no, not credit card. I'm sorry, to his LF42 BMO Harris account. But at some point he mentioned or made comments bragging about the new credit card and account that he had opened with chase that gives you the best reward points back, and you can use to exchange for miles. I believe and I would be speculating at this point, that those charges of gifts bought for his girlfriend are being done on that credit card because I didn't have access to it.

Q Do you know how the expenses for that credit card were paid?

A At some point with the LF42 account, but I am inclined to say that at the very end, part of the two transactions listed in the exhibit of the transaction list, there are two transactions made to his personal LF42 account. I recall talking to Keli Pufahl and her saying that Michael has asked her to

transfer money because he needed to pay some bills. And other than his credit cards, he didn't have any other bills.

Q And is it your understanding then that, the money that was going to be transferred was going to come from the Kinetic Yield account or over to Lendacy, and then to LF42? Or how was that flow going to work or did work?

A Keli Pufahl might be able to answer with precision, but the pattern or the instruction was, to transfer money from Kinetic funds to KCL Services and then out.

Q Okay. So would it have been from KCL Services to Chase if it was the Chase account that was being paid?

A Correct.

Q Okay.

BY MS. IVORY:

Q Earlier you mentioned that you went through the process of trying organize transactions into business and nonbusiness related expenses. Where were you tracking the results of your work? So ultimately where did you flag transactions as nonbusiness.

A I take notes in my notebook. I think there

are some e-mails asking Michael about those transactions -- about outstanding transactions that I couldn't figure out. I would say mostly in my personal notebook.

Q I guess my question is, for what purpose were you trying to flag them? Ultimately where would this show up?

A Sorry, I misunderstood. Because there was a lot of transactions for me, like, nobody was using. I kept seeing, like, an audible and who hears audiobooks in this office. I kept seeing a software being paid every month and do we use this software? Just trying to keep finances straight.

Q So was it to put into a financial statement or record, or was it just to identify inappropriate information -- inappropriate charges?

A Not with the purpose of identifying inappropriate charges. Just to keep the finances straight. I could -- having access to the credit card, I could account and respond to every charge made on the El-Morro credit card, and ultimately I didn't feel like I could do the same with the Kinetic Investment Group, and that I felt uncomfortable with it because I felt like I was paying a credit card without knowing what I was paying.

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Q So ultimately did you organize these charges in QuickBooks? Or why did you need to organize them into business, nonbusiness or categories is what I'm trying to understand?
A Maybe I'm not understanding the question properly. I'm sorry.
Q So you went through the Amex statements with the purpose of identifying what was the purpose of the transaction. Were you doing this to input the transactions into QuickBooks or --
A Yes. Sorry. All the transactions were record in QuickBooks, so when I was trying to do my reconciliation, that's when I realize that most of the transactions I don't recognize, I don't know how to categorize them. But, yes, because I was trying to keep record in QuickBooks.
Q Okay. So to confirm, you should in QuickBooks have a log of American Express expenses?
A Yes.
Q Okay.
A Yes.
Q And which profile? Did you have a profile name or the company name for QuickBooks?
A Yes. I had one log in information with access to all the companies, I don't have it right

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now, but I have it in my notebook.
Q Okay.
BY MR. HOUCHIN:
Q You mentioned that Ian Quetglas resigned shortly after Ms. Locke had left, do you have an understanding as to why Mr. Quetglas resigned?
A Yes. Ian was taking Kelly's accusation very seriously. After Kelly told everyone what she was resigning, Ian got hysterical, started crying, called his dad and he left. He was the only person licensed in the company and he thought that those serious accusations could potentially harm his career for life. That was a Friday.
On Sunday I met with Ian outside of work and he was confused, and he said, I think I'm just going to ask Michael for all the documentation because Michael was offering full transparency. And he was kind of putting ball in Ian's court. Like, you are the person, you are the financial advisory, if you feel that something is being done wrong, then you should not leave -- run and leave me, that you should help me make it right. Like, you have full transparency. You can see everything, you can see whatever you need. I'll give you access to Interactive Brokers. Ian did and asked him for all

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the documentation.
Q Was Mr. Quetglas given all the documentation he requested?
A Part of it. Because he realized in the middle of his investigation that it wasn't his place to do it and that he -- Ian was inexperienced. I mean he had, like, one, two years of financial advisory experience, he was an analyst in Consultiva first. And he said, I'm not going to put at risk my license because it's not my job to make this investigation. If I go through these documents and I don't find anything, and something happen afterwards, it's going to be my responsibility, so I rather not be involved in this and he resigned.
Q Were you asked to provide Mr. Quetglas with any of the information he wanted to look at when he was starting his inquiry?
A Yes. Michael Williams said, you know, we can give you anything. Carla can facilitate any documentation that you need. Michael even sent him documentation for him to review as well.
Q What types of documentation do you believe Mr. Quetglas received?
A Bank statements, Interactive Broker statements that I shared with him and I think he --

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we shared as well the transaction list.
Q Do you know what Mr. Quetglas is doing now?
A He is working at Boston.
Q Do you know what he's doing?
A No, I don't. I know he works at a company, he's happy, but I don't know what he's doing.
Q Okay. You mentioned that Mr. Quetglas was the only one in the company that was licensed.
A Yes.
Q After Mr. Quetglas left, did Kinetic do anything to -- in terms of filing with respect to Mr. Quetglas leaving the company? Did they file anything to say he's no longer associated with the company?
A Not to my knowledge, but Ian Quetglas did it on his own. He said he didn't want to be affiliated with any of it, so I think he removed himself from FINRA, like, affiliation with Kinetic Financial Advisors, yes.
Q Okay. Let's go off the record. It's -- hold on one second. It's 7:54 p.m.
(A brief recess was taken.)
MR. HOUCHIN: It is 7:56 p.m.
BY MR. HOUCHIN:
Q Ms. Mendez, during the break, did you have any communications with staff about your testimony or

the investigation?
A No, sir.
Q Okay. I believe Crystal has a follow-up question she wants to ask.
BY MS. IVORY:
Q Yes. I think earlier you discussed the process of payroll. Can you tell me the various sources of payroll payments Michael Williams received while you were there?
A The various payments of payroll that Michael Williams received to his personal account? Like his source of income?
Q Yeah. Any account for which you process payroll.
A Yes. Michael Williams was under payroll in El-Morro Financial, he received 36 -- around $36,000 a year. For sometime when I took over Kenneth Rachon's responsibilities, there was a monthly payment that needed to be made to LF42 for $2,100 for consulting.
BY MR. HOUCHIN:
Q And where did that payment come from?
A Kinetic Investment Group, but that's it.
Q And you said it was $2,100?
A Yes.

Q Okay. So $36,000 per year and the $2,100 a month were the only sources of payments Michael Williams received on a recurring basis?
A Yes. And the $2,100 stopped in 2019. I believe it was in 2019. Michael Williams told me, you can stop making those payments.
BY MR. HOUCHIN:
Q Did he provide any explanation as to why?
A No.
BY MS. IVORY:
Q One follow up.
What about Jamene Pinnow? Did she receive any payroll payments?
A Yes. She was under payroll, under LF42 payroll, her and his son. Jamene received 5 grand a month and Jase received $100 a month.
Q And what was the source of funding for the LF42 payroll?
A When I gained access to LF42 account, there was already money there and then with the sale of Silexx, he received a big portion of money. It was, like, $3 million, so there was money there. Until right before I left I talk to Michael, like, probably one month before because as I said, you don't have anymore money in the account, like, what with are you

going to do? You can't afford payroll, you need to tell Jamene. And Jamene would text me from time to time, am I getting money? Like, please let me know if I'm being cut off.
Q And I guess what happened when you told him there was no funds available for payroll?
A He said, don't worry about it. I'll find some money. And there was money again in his account. I don't know where the money came from.
Q Thank you.
BY MR. HOUCHIN:
Q Are you aware -- you just mentioned text messages from Mr. Williams' wife, are there -- are you aware of my other text messages relating to Mr. Williams or the Kinetic companies?
A Can you specify what kind of text messages?
Q Any kind of text messages dealing with Mr. Williams or the Kinetic companies?
A Well, the primary -- one of the primary methods of communication was WhatsApp mainly between me and Michael Williams.
Q Are messages or WhatsApp preserved unless deleted? Or do they go away after a period of time?
A No. I think you have to do a backup or something.

Q Do you still have those communications?
A Yes, sir.
Q So if we wanted to get a copy of them, we could make a request and you produce them?
A Yes, sir.
Q Okay. And you believe text messaging was a common means of communication that Mr. Williams used?
A Yes. WhatsApp and for some time telegram, but we had chats, like a Kinetic management chat. Another source of communication was 8X8 Instant Messaging between the company, but Michael rarely used it to communicate. He was a fan of WhatsApp.
Q I saw some charges in the American Express bill relating to 8X8, does that -- is that for the messaging services or --
A That's for the phone system. The phone system would change from Nextiva, because it wasn't properly functioning in Puerto Rico, to 8X8, and it was for phone service Puerto Rico, Sarasota and for -- it included instant messaging, video conferencing and --
Q Okay. I just saw -- remember seeing the charge and you just mentioned 8X8 messaging and I didn't know what it was for, so thought I would ask.
A Okay.

Q Thank you. Anybody else?
Ms. Mendez, we'd like to remind you that this is a confidential nonpublic investigation. We have no further questions at this time, however, in the future if question wish to speak to you again, we will contact your counsel and communicate that through them.
Do you wish to clarify any statements or provide any further information to us?
A I did not finish my story about my conversation with Michael Williams, if I should add to that?
Q Is that something you think we should know?
A There might be some details.
Q Okay. Please provide it to us?
A I think I left it at -- the day that Kelly resigned I talked to Michael, he was confused about everything that was going on; he was flying from China to Puerto Rico. Nobody understand -- really understand what he was doing in China. There was a trip first class to China paid by the company.
Q Do you know which account paid for that trip?
A American Express Kinetic Investment Group. When he landed, Kelly had resigned and it was chaos.

When I was talking to him -- sorry. Friday 29th when I was talking to him about consider -- me considering resignation and I was asking him questions about the outstanding transactions, and he was justifying every transaction that he made with the transfer of the 1.5, and I also asked him because Kelly at some point mentioned that she thought about filing a complaint.
And he said, don't you worry about it because if there's any complaint, we should receive a notice in 30 to 60 days, and ultimately I decided to stay. I also received confirmation and reassurance for Michael securities attorneys in the form of an e-mail, after that I decided to stay and no notification was received in any of the offices, so it kind of all made sense from Michael side that everything was okay; there was nothing to worry about.
And for so long it was just me and Michael in the office, and I have come to realize when you spend too much time with him, it's like a brainwash, but then other people started coming into the picture, like Michael Sayre, James Bishop, Jeanelle Alemar, and I started realizing that everybody was getting a different story of -- a different story of whatever was happening. Pretty much like telling

Kelly one thing, Pufahl, and then me another. So started noticing that he was telling Michael Sayre one thing and James Bishop another, or we shouldn't tell this to James because he shouldn't know.
Mostly with, for example, transactions about the 2 million-dollar credit line, oh, don't tell James. James can't know about this because he will not like it. And at that point it became clear that something was being hidden, because I remember thinking, when you are lying, you are hiding something and the story was never straight, and that's when I realized that something was wrong and something was off, and I became more alert, and ultimately decided to take my concerns to higher level.
Q And that's taking them to the higher level, that's a reference to speaking to the board of directors?
A Correct.
Q After the presentation was made to the board of directors, are you aware of the board taking any action?
A No.
Q Did they have any further communication with you after the presentation?

A There was a scheduled call that they never connected to. I remember me and Keli Pufahl being connected to the call and feeling like they ditched us, like they -- God knows what they're thinking, but ultimately we made the decision to resign. I talked a few times with Ms. Alemar and Noel Zomat.
Q Is that following your resignation or before?
A Following my resignation. Ms. Alemar contacted me a couple of times to see if I could help them. They were doing, like, their own internal investigation and hiring an accounting firm to reconstruct the books of Kinetic International.
Q Do you know the name of the accounting firm?
A I have it, but I don't remember it right now. I could provide it.
Q If you could provide that to your attorneys and they could relay it to us, I would appreciate it.
A I would do that. I met with that firm, they asked me about mostly transactions for Kinetic International. It is my understanding that Jeanelle Alemar was trying to salvage whatever was left of the company to see if they could do something about it after all the time her money and efforts spent on the

project. With regard -- she was very -- well -- okay.

With Noel Zomat, I was recently contacted to -- he offered me a position to another project; nothing related to Kinetic or with Michael Williams, but that's it.

Q What was the entity that he offered the job to you for?

A Mack Group Global.

Q And what was the position that he offered to you?

A I don't know exactly the title of the position, something along operations manager lines. The project is about converting zone in Aquadilla, Puerto Rico into a free-trade. And they have investors, they have a group of credible people coming together to work on that.

Q Okay. Is there any other information that you think we should know about Mr. Williams or Kinetic?

A I think that's -- that would be it for today at least.

Q Okay. If after you leave here you think of something else, please relay that to your attorneys and they can communicate it to us.

A I will.

MR. HOUCHIN: We have no further questions at this time, if you'd like to ask clarifying questions?

MS. INMAN: Do you want to ask the questions about --

MS. GONZALEZ: Ms. Mendez, do you recall having any conversation recently -- and if you can be specific in terms of the time line. Do you recall having any conversation with any Kinetic entity former employee about any current or former investor?

THE WITNESS: Yes. I received a message yesterday from Ian Quetglas asking me -- well, not asking me. He told me -- I'm paraphrasing because he used the WTF. I'm going quote. "WTF, Robert from Gavion Investment just called me to know what is going on because he read some article that was published." And I said, "Yes."

And I sent him the link of the article, and we started sending voice messages through WhatsApp. And he said -- summarizing the conversation. He said that Gavion was trying to reach out to the Florida office for Kinetic and try to get a hold of Michael, but he was -- he hasn't been able to.

I guess he thought that Ian still worked at

Kinetic and that he was very concerned about the investment, because the last time he was in the office with Michael, Michael only was talking about the Banco Espanol building and other stuff, that he seemed very distracted and not putting -- not being there to manage the fund. I asked Ian, do you think that he mentioned anything about CFSE, which is the agency that they advise for? Do you think -- did he explicitly said if he was pulling the investment for CSFE? And he said, he didn't explicitly say so, but it sounded like he was going to advise to remove the investment.

I was concerned about that because if that would happen, I assume or speculate that there would not be enough money for them to pull the $19 million that they invested in. So -- and remembering the process of redemption request, let's say that Gavion advices the pull the investments for CFSE right now, they would be receiving their money by January -- mid-January, between the 11th and the 15th.

MS. GONZALEZ: Because it's less than 30 days before the end of the quarter?

THE WITNESS: That's correct.

MS. GONZALEZ: Okay.

BY MR. HOUCHIN:

Q Ms. Mendez, any other recent update -- and if you can be specific in terms of the time line. Any other recent update that you wish to share with the commission regarding any potential communication that you may have become aware of regarding any former or current investors in the Kinetic Fund as -- following the publication of this article that you referred to?

A Yes. My last conversation with Mr. Diaz -- Angelo Diaz was yesterday as well. He confirmed that he -- that Mr. Padilla and the church have already requested their redemption request to pull their investment as well.

BY MR. HOUCHIN:

Q Do you have an understanding as to the timing in which they made that request? Was that before the article had come out or was it after the article?

A Mr. Diaz also told me that he had received two calls from Michael. One, the day the article was released to explain himself about the article. The second call was the next day, meaning yesterday, to -- Michael tell Angelo Diaz that Mr. Padilla had requested his redemption request -- his redemption

forms to pull his investment.
He wanted to give Angelo the courtesy of telling him because Angelo was the one who referred Mr. Padilla. And Michael claimed that he didn't know anything about his investment and he didn't know who he was, because ultimately Ms. Locke was the one that bring him on, but he was offering there to help in the process, and that he was available.
Q Did Mr. Diaz relay to you what Michael Williams said about the article?
A Yes. Mr. Diaz said that Michael said to him that he knew who was behind the article, that it was all Kelly Locke. That she was behind it and that he was confirmed by his lawyers that she filed a claim.
Q Anything else? Did he talk about any of the allegations that were made in the article?
A No. Only a comment that Angelo Diaz made to Michael and said, well, according to the article, you are the bad guy; and he said, yeah, yeah, I'm the bad guy.
Q Okay.
MS. INMAN: So can you tell us -- were there any instances where you feel like you personally benefitted from moneys that were coming

out of the Kinetic companies that personally benefitted you? Or another way to ask it is, did you ever receive moneys from Kinetic that really didn't have anything to do with Kinetic Yield funds?
THE WITNESS: Other than my payroll and I don't know if this is a -- how to categorize this money. Before the event, the Kinetic Financial Summit, me -- myself, Keli Pufahl and Gracia Rios received $800 from the LF42 account, like, in the form of a check from LF42 account. The purpose was -- I received it as a -- like a stipend for the event.
We were mainly complaining that this was a very high-level event, one week and there was no way we could afford to dress and present at the level that he was expecting us to; like, outfits, like, he needed everything to be perfect day and night. And it was until, like -- I don't know. I believe, like, beginning of February that I received $800 in the form of a check from LF42. Other than that and my regular payroll, no.
MR. HOUCHIN: Okay. Is there anything else?
MS. INMAN: My last question would be, are

there any other examples of what you perceived to be misappropriation of funds that we haven't covered here today?
THE WITNESS: Not that I can think of at this moment.
MS. INMAN: Okay.
We have no other questions.
MR. HOUCHIN: Thank you for your time.
We're off the record at 8:21 p.m.
THE WITNESS: Thank you.
(Whereupon, at 8:21 p.m., the examination was concluded.)
* * * * *

PROOFREADER'S CERTIFICATE

In the Matter of: KINETIC FINANCIAL ADVISORS, LLC
Witness: Carla Mendez
File Number: FL-04184-A
Date: Friday, September 20, 2019
Location: Miami, Florida 33141

This is to certify that I, Donna S. Raya, (the undersigned), do hereby certify that the foregoing transcript is a complete, true and accurate transcription of all matters contained on the recorded proceedings of the investigative testimony.

_____ _____
(Proofreader's Name) (Date)

C E R T I F I C A T E

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 29th day of September, 2019.

Caretha Wisdom,
Professional Court Reporter

CERTIFICATE

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.

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Dated this 29th day of September, 2019.

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Caretha Wisdom,
Professional Court Reporter

Transcript Word Index

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