

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

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

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KINETIC INVESTMENT GROUP, LLC and )  
MICHAEL SCOTT WILLIAMS, )  
 )  
Defendant, 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. )  
\_\_\_\_\_ )

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S (“SEC”)  
REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (“MSJ”)  
AGAINST DEFENDANT MICHAEL SCOTT WILLIAMS (“WILLIAMS”)  
AND SUPPORTING MEMORANDUM OF LAW**

## Table of Contents

I.	Williams’ Admissions Pave The Way For Summary Judgment.....	1
II.	Williams’ Affirmative Defenses Do Not Preclude Summary Judgment..	2
	A. Mere Denials Dressed Up As Affirmative Defenses .....	3
	B. The SEC’s Claims Are Timely.....	3
	C. Investor Damages or Losses Are Not At Issue .....	4
	D. The Bespeaks Caution Doctrine Is Inapplicable .....	5
	E. Good Faith Reliance Defenses Are Unavailing.....	5
III.	Williams Violated the Securities Act and Exchange Act.....	8
	A. Williams Misappropriated Investor Funds.....	8
	1. Investor Capital, Not Money Borrowed On Margin, Funded Purported Lendacy Loans .....	8
	2. Williams’ Margin Theory Offers Him No Aid .....	10
	B. Williams’ Misappropriation Occurred “In the Offer or Sale” and “In Connection With the Purchase or Sale” of a Security .....	11
	C. Williams’ Misstatements and Omissions To Investors .....	13
	1. Williams was the “Maker” of the Misstatements.....	13
	2. There Are No Jurisdictional Hurdles To Summary Judgment ....	14
IV.	Williams Violated the Advisers Act.....	16
	Conclusion.....	17

## Table of Authorities

### Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 247-48 (1986) .....	10
<i>Beck-Wilson v. Principi</i> , 441 F.3d 353, 360 (6th Cir. 2009) .....	2
<i>FDIC v. Hall</i> , 2016 WL 7325590, *5 (M.D. Fla. Aug. 29, 2016) .....	3
<i>Janus Capital Grp., Inc. v. First Derivative Traders</i> , 564 U.S. 135, 142 (2011) .....	14
<i>Lorenzo v. SEC</i> , 139 S. Ct. 1094, (2019) .....	17
<i>Lumens Co., Ltd. v. Goeco LED, LLC</i> , 807 Fed. App'x 612, 618 (9th Cir. Feb. 24, 2020) .....	2
<i>Malouf v. SEC</i> , 933 F.3d 1248, 1263 (10th Cir. 2019) .....	17
<i>Oasis Legal Finance Operating Co., LLC v. Chodes</i> , 454 F.Supp.3d 724, 737-38 (N.D. Ill. 2020) .....	2
<i>SEC v. Benson</i> , 657 F. Supp. 1122, 1130-31 (S.D.N.Y. 1997) .....	14, 15
<i>SEC v. Chemical Trust</i> , 2000 WL 33231600, *9 (S.D. Fla. Dec. 19, 2000) .....	15
<i>SEC v. Huff</i> , 758 F.Supp.2d 1288, 1349 (S.D. Fla. 2010) .....	6
<i>SEC v. Illarramendi</i> , 260 F.Supp.3d 166, 180 (D. Conn. 2017) .....	3
<i>SEC v. JSG Capital Investments, LLC</i> , 2017 WL 3579570, *7 (N.D. Cal. June 30, 2017) .....	17
<i>SEC v. Meltzer</i> , 440 F. Supp. 2d 179, 189, 190 (E.D.N.Y. 2006) .....	7, 8
<i>SEC v. Merchant Capital, LLC</i> , 483 F.3d 747, 766 (11th Cir. 2007) .....	5
<i>SEC v. Merrill Scott &amp; Assocs., Ltd.</i> , 2011 WL 5834271, *10-11 (D. Utah Nov. 21, 2011) .....	14
<i>SEC v. Morgan Keegan &amp; Co., Inc.</i> , 678 F.3d 1233, 1244 (11th Cir. 2012) .....	4
<i>SEC v. Smith</i> , 2005 WL 2373849, *7 (S.D. Ohio, Sept. 27, 2005) .....	15
<i>SEC v. Softpoint</i> , 958 F. Supp. 846, 865 (S.D.N.Y. 1997) .....	15
<i>SEC v. Zanford</i> , 535 U.S. 819, 820-21, 824-25 (2002) .....	11, 12
<i>Superintendent of Ins. of State of N.Y. v. Bankers Life &amp; Cas. Co.</i> , 404 U.S. 6, 12-13 (1971) .....	11, 13

<i>Tingley Systems, Inc. v. HealthLink, Inc.</i> , 509 F.Supp.2d 1209, 1220 (M.D. Fla. 2007) .....	3
<i>United States v. Elliott</i> , 62 F.3d 1304 (11th Cir. 1995)), <i>report adopted</i> 2017 WL 3575599 (N.D. Cal. July 28, 2017) .....	17
<i>United States v. Erickson</i> , 601 F.2d 296, 305 (7th Cir. 1979) .....	8
<i>United States v. Four Parcels of Prop. In Green and Tuscaloosa Ctys. in the State of Ala.</i> , 941 F.2d 1428, 1438 (11th Cir. 1991) .....	2
<i>United States v. Hornaday</i> , 392 F.3d 1306, 1311 (11th Cir. 2004) .....	16
<i>United States v. Naftalin</i> , 441 U.S. 768, 773-75 (1979) .....	11
<i>United States v. Stein</i> , 881 F.3d 853, 854 (11th Cir. 2018) .....	2

## Statutes

### Section 17(a)

15 U.S.C. § 77q(a)(1) of the Securities Act of 1933 .....	11, 17
15 U.S.C. § 77q(a)(2) of the Securities Act of 1933 .....	11
15 U.S.C. § 77q(a)(3) of the Securities Act of 1933 .....	11

### Section 10(b)

15 U.S.C. § 78j(b) of the Securities Exchange Act of 1934 .....	11, 12, Passim
---	----------------

### Section 206

15 U.S.C. § 80b-6(1) of the Investment Advisers Act of 1940 .....	17
15 U.S.C. § 80b-6(2) of the Investment Advisers Act of 1940 .....	17

National Defense Authorization Act of 2021, §6501(a)(8)(B) .....	4
--	---

28 U.S.C. §2462 .....	4
-----------------------	---



## **Rules**

### **Rule 10b-5**

17 C.F.R. § 240.10b-5(a) of the Securities Exchange Act of 1934 .....	11, 17
17 C.F.R. § 240.10b-5(b) of the Securities Exchange Act of 1934 .....	11, 14
17 C.F.R. § 240.10b-5(c) of the Securities Exchange Act of 1934 .....	11

## I. Williams' Admissions Pave The Way For Summary Judgment

Far from demonstrating a genuine issue for trial, Williams has made a series of critical admissions that only bolster the SEC's claims. Indeed, he concedes that evidence establishes what has been alleged from the beginning:

- “[I]t was made clear to investors all of their funds would be invested” [DE 221, p. 10, n. 56], but Williams “did not always use all of an investor’s cash to purchase investments” [DE 221, p. 14, n. 73]
- Instead, “the majority of KFYield’s funds was used to fund Lendacy’s loans” and in fact “a loan to KF’s investors could only be funded by transferring their investment capital to Lendacy” [DE 221, p. 9, n. 50]<sup>1</sup>
- “[I]nvestors were told their funds would be invested in U.S.-listed securities”, but “Lendacy was not listed on a U.S. exchange” [DE 221, p. 10, n. 55-56]
- “[O]ne investor was not told his investment would be used to fund Lendacy loans” [DE 221, p. 10, n. 56]
- Regarding Bloomberg reports which among other things, misrepresented the use of investor funds, inflated KFYield’s performance, and omitted KFYield’s margin balance (MSJ Statement of Undisputed Material Facts ¶¶18, 31 (“SF \_\_\_\_”)), Williams admits he “provided Bloomberg reports to *some* investors” [DE 221, p. 7, n. 41, emphasis in original]

These admissions alone warrant summary judgment for the SEC.

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<sup>1</sup> Williams’ follow-up argument that he “never diverted any investor capital to Lendacy”, as it was money borrowed on margin from Kinetic Funds’ broker that funded the Lendacy “loans”, is demonstrably false. As explained in §III.A.1 below, the amount of money that Kinetic Funds received from its broker was well below the amount of Lendacy “loans” to Williams and others. Moreover, it is immaterial to Williams’ liability whether he misappropriated investor funds by stealing them before investing the funds as opposed to, as he claims, using the funds to purchase securities, then pledging those securities to obtain margin loans and using the loan proceeds for his personal benefit.

## II. Williams' Affirmative Defenses Do Not Preclude Summary Judgment

Williams argues that the SEC has failed to negate his 13 affirmative defenses, but he has done nothing to establish them in the first place. Williams cannot withstand summary judgment simply because he pled affirmative defenses. *See Lumens Co., Ltd. v. Goeco LED, LLC*, 807 Fed. App'x 612, 618 (9th Cir. Feb. 24, 2020) (rejecting defenses on summary judgment because “merely citing to the allegations in the pleadings” is not enough). With the SEC having discharged its initial burden, Williams must present “significant, probative evidence demonstrating the existence of a triable issue of fact” in order to defeat summary judgment. *See United States v. Four Parcels of Prop. In Green and Tuscaloosa Ctys. in the State of Ala.*, 941 F.2d 1428, 1438 (11th Cir. 1991).

Williams has not developed any of his affirmative defenses. *See Beck-Wilson v. Principi*, 441 F.3d 353, 360 (6th Cir. 2009) (defendant bears the burden of proof on affirmative defenses). He cursorily notes six of them in less than one page, and does not even bother to mention the other seven [DE 221, p. 34]. *See Oasis Legal Finance Operating Co., LLC v. Chodes*, 454 F.Supp.3d 724, 737-38 (N.D. Ill. 2020) (on summary judgment, rejecting defenses omitted from defendants' brief, as well as those noted but not explained or supported with record evidence). His defenses hinge merely on his bare-boned pleading and conclusory declaration. *See United States v. Stein*, 881 F.3d 853, 854 (11th Cir. 2018) (a self-serving,

uncorroborated declaration does not necessarily prevent summary judgment); *SEC v. Illarramendi*, 260 F.Supp.3d 166, 180 (D. Conn. 2017) (rejecting defense on summary judgment where defendant failed to “point to specific evidence in the record”, instead relying on “self-serving allegations without evidentiary support”). Furthermore, Williams’ supposed table of disputed material facts [DE 221, Ex. A] is not evidence, but just re-packaged arguments of counsel.

**A. Mere Denials Dressed Up As Affirmative Defenses**

Williams’ fifth (lack of scienter), sixth (no fraudulent conduct), seventh (no materiality), eighth (compliance with laws), eleventh (no likelihood of future violations), twelfth (no ill-gotten gains), and thirteenth (no duty to disclose) defenses merely deny the elements of the SEC’s claims and, thus, warrant summary judgment in the SEC’s favor. *See Tingley Systems, Inc. v. HealthLink, Inc.*, 509 F.Supp.2d 1209, 1220 (M.D. Fla. 2007) (granting summary judgment for plaintiff on defenses asserted as denials); *FDIC v. Hall*, 2016 WL 7325590, \*5 (M.D. Fla. Aug. 29, 2016) (same where defenses merely pointed out a defect in the plaintiff’s prima facie case).

**B. The SEC’s Claims Are Timely**

Williams fails to muster any support for his first defense (statute of limitations), merely mentioning in passing that “any misrepresentations and omissions made before February 20, 2020 are time-barred.” *See* DE 221, p. 34, n.

118.<sup>2</sup> There is no question that each of the SEC's claims and requests for relief are timely. The Complaint was filed on February 20, 2020. *See* DE 1. Williams misappropriated investor funds from at least April 2015 through April 2019 (SF ¶¶44-48), and has admitted ultimate authority over fraudulent statements and omissions dating back to at least July 2015 through January 2019 (SF ¶30, *e.g.*, Ex. 20 and Ex. D; SF ¶37, *e.g.*, Ex. 37). The SEC's request for injunctive relief falls well within the 10-year statute of limitations. *See* National Defense Authorization Act of 2021, §6501(a)(8)(B). Its request for disgorgement likewise meets the 10-year limitations period for its scienter-based claims, and 5-year limitations period for its non-scienter-based claims. *Id.* at §6501(a)(8)(A). Finally, its request for a civil penalty satisfies the 5-year limitations period set forth in 28 U.S.C. §2462.

**C. Investor Damages or Losses Are Not At Issue**

Williams' ninth affirmative defense (third parties caused investor losses and damages) is a non-starter. It is well-settled that the SEC is not required to establish damages, investor losses, or reliance in its enforcement actions. *See SEC v. Morgan Keegan & Co., Inc.*, 678 F.3d 1233, 1244 (11th Cir. 2012).

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<sup>2</sup> It appears Williams mistakenly referenced February 20, 2020, the date the Complaint was filed, and may have intended to reference February 20, 2015, 5 years prior.

**D. The Bespeaks Caution Doctrine Is Inapplicable**

Williams’ third affirmative defense (bespeaks caution doctrine) fares no better. The doctrine applies to forward-looking statements – not misrepresentations or omissions of existing or historical facts. *See SEC v. Merchant Capital, LLC*, 483 F.3d 747, 767 (11th Cir. 2007). It also does not lend itself to “boilerplate” cautionary language.” *Id.* (“A disclaimer does not provide *per se* immunity, precisely because the disclaimer must be meaningful and tailored to the risks the business faces.”). In any event, the doctrine has no application here where time and again, Williams misled investors about the actual use of their funds and the performance of KFYield. As examples, account statements and Bloomberg reports made it look as though Williams was investing the entirety of investor funds in U.S. listed financial products as promised. Unbeknownst to investors, Williams was funneling investor capital to Lendacy, a private company controlled by him, so he could fund purported loans to himself and his entities (SF ¶¶34-35), and heavily margining the KFYield portfolio using investor assets as collateral (SF ¶¶32-33, 39-41).

**E. Good Faith Reliance Defenses Are Unavailing**

Williams fails to wash away his scienter by blaming his fraudulent conduct on his lawyers and accountants in his second (reliance on expert advice), fourth (good faith), and tenth (information from other sources) defenses. To establish

these good faith reliance defenses, Williams must show: (1) he made a complete disclosure to the professional, (2) he sought the advice of the professional as to the appropriateness of the challenged conduct, (3) he received the professional's advice that the conduct was appropriate, and (4) he relied on that advice in good faith. *SEC v. Huff*, 758 F.Supp.2d 1288, 1349 (S.D. Fla. 2010). Williams fails to bring forth any evidence or support establishing any of the four required elements.

There is nothing remarkable about the alleged roles of the 3 professionals identified by Williams which would absolve him of his wrongdoing. Williams claims that: (1) Phillip Handin, Esq. – with his approval and based on information he provided – prepared the offering documents for Kinetic Funds and corporate formation documents for his various entities.<sup>3</sup> (2) BDO, an accounting firm, provided advice on how to structure El Morro<sup>4</sup>; and (3) Jeanelle Alemar-Escabi, Esq. created the Lendacy lines of credit for Scipio and LF42, and the promissory note executed by ISX in favor LF42.<sup>5</sup>

As Williams concedes, *none* of these professionals had any involvement in the operation of Kinetic Funds or KFYield.<sup>6</sup> He cannot pass the buck onto them for his wrongful actions, including secretly margining the KFYield portfolio and

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<sup>3</sup> See MSJ, Ex. 12, MW Tr. 126:24-127:13, 137:20-138:1, 162:3-164:17, 165:5-17; DE 221-2, ¶¶4, 13, 18, 27, 40, 45, 50.

<sup>4</sup> See MSJ, Ex. 12, MW Tr. at 411:13-412:13.

<sup>5</sup> See MSJ, Ex. 12, MW Tr. at 413:25-415:21.

<sup>6</sup> See MSJ, Ex. 12, MW Tr. at 417:5-8; 413:16-24; 414:17-20.

diverting investor cash to Lendacy for his personal benefit. *See SEC v. Meltzer*, 440 F. Supp. 2d 179, 189 (E.D.N.Y. 2006) (on summary judgment, rejecting good faith reliance defense where “there is nothing in the record to demonstrate that [defendant] made a complete disclosure, nor is there any indication that counsel advised [defendant] that the conduct was appropriate).

He also cannot cast the blame on them for his misrepresentations and omissions to investors and prospective investors. He has not specified any marketing materials approved by Handin, BDO, or Alemar-Escabi. When asked why the offering documents did not disclose Williams as the majority owner of Lendacy, Williams responded, “I do not have an answer for you.”<sup>7</sup> Furthermore, according to Williams, BDO and Alemar-Escabi did not come onto the scene until around March 2016 (SF ¶6 as to El Morro’s formation in March 2016), and May 2018 (SF ¶47 as to Scipio’s credit agreement dated May 4, 2018), respectively. This was well after Williams concedes authorizing marketing materials for distribution to investors in 2015. (SF ¶37, *e.g.*, Ex. 36-37). And, while Alemar-Escabi may have prepared the Lendacy credit agreements, she had nothing to do with Lendacy’s operations.<sup>8</sup>

Even if the professionals approved the materials provided to investors,

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<sup>7</sup> See MSJ, Ex. 12, MW Tr. at 145:16-146:7.

<sup>8</sup> See MSJ, Ex. 12, MW Tr. at 416:4-8.



Williams could not establish good faith reliance on their advice when he knew his statements and omissions were false and misleading. *See Meltzer*, 440 F. Supp. 2d at 190 (“The mere fact that his attorney willingly approved the disclaimers cannot establish a defense of good faith reliance when the knowing misrepresentations clearly establish bad faith.”) (citing *United States v. Erickson*, 601 F.2d 296, 305 (7th Cir. 1979) (“If a company officer knows that the financial statements are false or misleading and yet proceeds to file them, the willingness of an accountant to give an unqualified opinion with respect to them does not negate the existence of the requisite intent or establish good faith reliance.”)).

### **III. Williams Violated the Securities Act and Exchange Act**

#### **A. Williams Misappropriated Investor Funds**

Williams cannot overcome the evidence of his misappropriation, and his distortion of the facts and misinterpretation of the law only highlight his fraud.

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

Williams argues that money borrowed on margin from Kinetic Funds’ broker, Interactive Brokers (“IB”), and not investor capital, funded the Lendacy loans. According to Williams, “[a]ll of the funds Scipio, LF42, and [he] 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.” *See* DE 221-2, ¶209.

The bank records, however, betray Williams' tale. As set forth in the declaration of Crystal Ivory, attached hereto as **Exhibit "1"**, the Kinetic Funds and Lendacy bank accounts received a combined total of \$312,275 from IB between January 2015 and September 2019, with the last deposit occurring on October 26, 2016. *See* Ivory Decl. at ¶¶7-8. The \$312,275 from IB could not have possibly funded the over \$6.3 million that Williams concedes Scipio, LF42, and he "borrowed" from Lendacy, between March 2017 and April 2019. *See* 221-2 ¶¶181, 186, 191, 193, 201; *see also* SF ¶¶ 45, 47, 48. Nor could it have covered the over \$1.5 million in Lendacy credit line draws to others between November 2016 and September 2019. *See* Ivory Decl. at ¶¶7-9.

Rather, it was investor funds deposited into Kinetic Funds' bank account, and then transferred to Lendacy's bank accounts, which funded the Lendacy loans. *Id.* at ¶¶5-6. Between January 2015 and September 2019, the Kinetic Funds bank account received approximately \$39 million of investor proceeds, which represents approximately 93% of total inflows into that account. During that same time period, the KCL bank accounts received approximately \$13 million, of which transfers from the Kinetic Funds bank account represent approximately 83% of the inflows and Lendacy loan repayments represent approximately 14% of the inflows. Thus, Lendacy's primary source of funding, like that of Kinetic Funds, trace back to investor capital.

## 2. Williams' Margin Theory Offers Him No Aid

Even if we were to pretend that Lendacy loans were funded solely on margin, Williams still could not escape liability because the use of margin is simply an alternative way of stealing investor funds that increases the cost and risk to investors (SF ¶40), as aptly explained by the Honorable William Jung during the asset freeze hearing. *See* March 6, 2020 hearing transcript at 24:14-26:20 attached hereto as **Exhibit "2"**.<sup>9</sup>

Williams' tale further unravels because he never told investors he would collateralize their assets so he and his entities could receive margin-funded loans from Lendacy. (SF ¶¶33, 35). He also cannot explain why he, unlike others, was allowed to "borrow" from Lendacy more than 70% of his investment in KFYield. *See* 221-2, ¶136. Williams concedes that by March 2017, he had only invested \$65,000 in KFYield; yet, he "borrowed" \$1,517,000 to buy his residence. *Id.* at ¶¶172, 177-178. He claims he pledged his *future* payout from another venture as

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<sup>9</sup> Take two examples: in the first, the investor gives Williams \$100 to buy stock, and Williams skims \$25 off the top, leaving the investor with an account worth only \$75 and Williams with \$25 in ill-gotten gains. In the second, Williams invests the full \$100, then pledges the stock for a \$25 margin loan, and keeps the \$25 loan proceeds for himself. In the second case, as with the first, Williams' misconduct results in the investor having an account worth only \$75 (\$100 in securities less \$25 owed on the margin loan) and Williams has \$25 he is not entitled to. Thus, any dispute over the difference in how Williams effected the misappropriation is immaterial and does not preclude summary judgment for the Commission. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) ("[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.") (emphasis in original).

collateral for the “loan” – as if that rendered him eligible for a Lendacy loan – but then admits he never repaid the “loan” with the payout, using it instead to invest in KFYield. *Id.* at ¶¶179, 185.

He likewise cannot reconcile why Scipio and LF42, which did not invest *any* money in KFYield, received millions of dollars in “loans” from Lendacy. (SF ¶¶47, 51). And, despite his attempt to back-peddle (DE 221-2, ¶210), he never told investors about his, Scipio’s, or LF42’s purported loans. (SF ¶¶27, 35).

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

Misconstruing the law, Williams argues that his misappropriation of investor funds fail to satisfy the “in connection with” requirement because it occurred after investors invested in KFYield. *See* DE 221 at pp. 27-28. The Supreme Court, however, has recognized that § 17(a)’s “in the offer or sale” and 10(b)’s “in connection with the purchase or sale” of a security requirements are to be read broadly. *United States v. Naftalin*, 441 U.S. 768, 773-75 (1979); *SEC v. Zandford*, 535 U.S. 813, 819 (2002); *Superintendent of Ins. of State of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12-13 (1971) (the “in connection with” requirement is met even if the deception does not occur alongside the purchase or sale of securities).

In *Zandford*, the broker misappropriated his clients’ funds by writing checks to himself from the clients’ investment account, all the while knowing that redeeming the check would require the sale of securities from that account.

535 U.S. at 821. The defendant argued that the subsequent misappropriation did not have the requisite connection with the securities sales to state a 10(b) violation, but was more akin to simple theft of cash. *Id.* at 820. Rejecting this argument, the Supreme Court found that the broker's breaches of fiduciary duty "coincide[d]" with the securities transactions and, thus, were "in connection with" securities sales. *Id.* at 821, 825. "[T]he [clients'] securities did not have value for [the broker] apart from their use in a securities transaction and the fraud was not complete before the sale of securities occurred. *Id.* at 824-25.

Similarly, Williams' misappropriation coincided with the purchase of securities for KFYield investors. Investors deposited their capital into Kinetic Funds' bank account so it could be invested in KFYield. (SF ¶¶26, 38). But Williams kept a portion of the capital in the Kinetic Funds bank account and transferred the remainder to Kinetic Funds' brokerage account. (*Id.*) Securities for KFYield were then purchased with a mix of investor capital and margin. (SF ¶39), so that investor funds left behind in the bank account could be diverted to Lendacy to fund purported loans to Williams and his entities. (SF ¶¶41, 44-48). In other words, the purchase of KFYield securities on margin at Williams' direction worked hand-in-hand with Williams' diversion of investor capital to fund purported Lendacy loans (*Id.* at ¶¶41, 44-48), thereby satisfying the "in the

offer or sale” and “in connection with” requirements.<sup>10</sup>

### C. Williams’ Misstatements and Omissions To Investors

Williams’ attempt to portray his misrepresentations as being made to an empty room is a farce. *See* DE 221, p. 26. The record is replete with material misrepresentations and omissions made to investors by him and at his direction.

#### 1. Williams was the “Maker” of the Misstatements

During an in-person meeting, Williams made misstatements and omissions to Wilmer Gonzalez Vargas of Plan de Pensiones Ministerial, Inc. (“Plan de Pensiones”), an investor of KFYield.<sup>11</sup> Williams grasps onto testimony from Carla Mendez indicating that he did not attend a meeting with Plan de Pensiones that she attended. *See* DE 221, p. 29. However, Mendez’s testimony implies at best that Williams was not present at one of many meetings with Plan de Penisiones, *see* Kelly Locke Tr. at 216:3-217:8, attached hereto as **Exhibit “3”**, not that he was absent from the one described in Mr. Vargas’ declaration. What is telling though is that Williams – in his 223-paragraph declaration – never denies meeting with Mr. Vargas. *See* DE 221-1.

Williams cannot distance himself from the misstatements conveyed to

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

<sup>11</sup> *See* MSJ, Ex. 12, MW Tr. at 297:18-298:11; Ex. 41.

investors by others at his direction. *See* DE 221, pp. 26-27. Liability rests with him because he had ultimate authority for the misleading statements and omissions made orally and in documents provided to clients and prospective clients (*Id.* at ¶37), including in offering documents, Bloomberg reports, written marketing materials, brochures, and account statements (*Id.* at ¶¶15, 18, 30, 37 and DE 221, pp. 13-14, n. 71). *See Janus Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 142 (2011) (a person may be held primarily liable under § 10(b) and Rule 10b-5(b) for “making” a misleading statement if he or she had “ultimate authority over the statement, including its content and whether and how to communicate it.”).<sup>12</sup>

## 2. There Are No Jurisdictional Hurdles To Summary Judgment

As to the “in connection with” requirement, there is no dispute that investors received offering documents and marketing materials for Kinetic Funds that misrepresented and omitted the use of investor capital, the misappropriation of investor funds, and the performance of KFYield. (SF ¶¶11-14, 22-37; 44-48); *see also SEC v. Merrill Scott & Assocs., Ltd.*, 2011 WL 5834271, \*10-11 (D. Utah Nov. 21, 2011) (misrepresentations and omissions regarding defendants’ misappropriation of investor assets were made in connection with the sale of securities); *SEC v.*

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<sup>12</sup> Williams’ argument against materiality is absurd. *See* DE 221, p. 24-25. As set forth in the SEC’s MSJ, no reasonable investor would have given Williams money knowing he was actually going to use it to buy himself a million-dollar-plus house and fund his start-up businesses. (*Id.* at ¶¶22-25, 44-48; pp. 24-25). Likewise, evidence of Williams’ scienter abounds (*Id.* at pp. 27-29) and is unaffected by Williams’ good faith reliance defenses as discussed in §II.E above.

*Benson*, 657 F. Supp. 1122, 1130-31 (S.D.N.Y. 1997) (the “in connection with” requirement was met where registration statements failed to “disclose the amounts misappropriated by corporate officials[.]”). Investors need not have received these materials before they invested in Kinetic Funds. *SEC v. Smith*, 2005 WL 2373849, \*7 (S.D. Ohio, Sept. 27, 2005) (“The point in time in which the investors received [the POMs and marketing materials] need not have been before they purchased the security[.]”). The SEC is not required to prove reliance or damages. *See infra* § II.C.

There also is no doubt that Williams used an instrumentality of interstate commerce to perpetuate his fraud.<sup>13</sup> Investor capital was wire-transferred to the Kinetic Funds bank account, and a portion was then transferred to IB for investment in KFYield. (DE 221-2, ¶¶91, 97; SF ¶38). *See also* Ex. 1, Locke Tr. at 39:16-40:3. Williams’ manipulation of various wire transactions facilitated his misuse and misappropriation of investor assets. (SF ¶¶5, 36, 45). His misrepresentations and omissions are contained in account statements e-mailed to investors (SF ¶30 and Ex. 1, Locke Tr. at 57:12-58:1), as well as marketing materials

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<sup>13</sup> *See SEC v. Softpoint*, 958 F. Supp. 846, 865 (S.D.N.Y. 1997) (interstate commerce is “broadly construed, so as to be satisfied by . . . even the most ancillary mailings.”); *SEC v. Chemical Trust*, 2000 WL 33231600, \*9 (S.D. Fla. Dec. 19, 2000) (interstate commerce satisfied “whether or not the defendant’s false statement itself passed through” those means).



and offering documents e-mailed to investors (SF ¶¶15, 18, 22, 37) and Kinetic Funds sales agents.<sup>14</sup>

#### IV. Williams Violated the Advisers Act

Despite his mere denials, Williams, through Kinetic Group, was an “investment adviser” to Kinetic Funds. (SF ¶¶1-3, 18-20, 22, 24, 26, 28, 30-31, 41-42). In addition to the misstatements, omissions, and conflicts of interest previously described (*see* DE 200, pp. 32-33), Williams: (1) authored a letter on behalf of Kinetic Group advising investors to keep KFYield as a “core component” of their investment portfolio;<sup>15</sup> (2) advised investors through Bloomberg reports about KFYield’s strategy, value, and performance (SF ¶18); and (3) solicited investors to KFYield by touting its portfolio and management by Kinetic Group.<sup>16</sup>

Williams also received compensation for providing investment advice. Through Kinetic Group, he received a 1% management fee for managing Kinetic Funds and, at times, a high-water mark fee.<sup>17</sup> *See* Ex. 1, Ivory Decl. at ¶10 (showing \$3.1 million net transferred from Kinetic Funds and Lendacy to Kinetic Group); *see also* LF42’s (Williams’ personal LLC<sup>18</sup>) consulting agreement with Kinetic Group, attached hereto as **Exhibit “4”**, which was executed so Williams “could have some

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<sup>14</sup> *See* MSJ, Ex. 12, MW Tr. at 121:7-122:16. *See also United States v. Hornaday*, 392 F.3d 1306, 1311 (11th Cir. 2004) (“[t]he internet is an instrumentality of interstate commerce.”).

<sup>15</sup> *See* MSJ, Ex. 46 SEC-KP-E-0264737; Ex. 12, MW at 213:20-214:14.

<sup>16</sup> *See* MSJ, Ex. 36 at pp. 3, 6; Ex. 12, MW at 291:15-23.

<sup>17</sup> *See* MSJ, n. 6.

<sup>18</sup> *See* MSJ, Ex. 1 at ¶40.

type of pay to do everybody's job" after Kinetic Group's "entire staff quit"<sup>19</sup>; Proof of Claim filed by Williams and LF42, attached hereto as **Exhibit "5"**.<sup>20</sup> Finally, Williams received compensation by "misappropriating or commingling investor funds for personal use." *SEC v. JSG Capital Investments, LLC*, 2017 WL 3579570, \*7 (N.D. Cal. June 30, 2017) (citing *United States v. Elliott*, 62 F.3d 1304 (11th Cir. 1995)), *report adopted* 2017 WL 3575599 (N.D. Cal. July 28, 2017).

To the extent not found primarily liable, Williams is liable for aiding and abetting Kinetic Group's Adviser's Act violations as previously addressed. *See* DE 200, pp. 33-36. Furthermore, his aiding and abetting liability is grounded in Kinetic Group's misrepresentations and omissions to investors, not his misappropriation of investor funds. *See Malouf v. SEC*, 933 F.3d 1248, 1263 (10th Cir. 2019) (Because misstatements could create scheme liability under § 17(a)(1) and Rule 10b-5(a) and (c) under *Lorenzo v. SEC*, 139 S. Ct. 1094 (2019), the defendant's failure to correct his investment advisory firm's misstatements could establish scheme liability under the nearly identical provisions of § 206(1) and (2) of the Advisers Act).

### **CONCLUSION**

The SEC respectfully asks the Court to grant its motion and enter summary judgment on all counts of the Complaint against Williams.

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<sup>19</sup> *See* MSJ, Ex. 12 at 396:11-397: 4.

<sup>20</sup> *See* ¶12, LF42 received \$60,000 in 2019 (in addition to other amounts in previous years) from a "Receivership Entity" pursuant to a "contract."

April 26, 2021

Respectfully submitted,

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

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Attorneys for Plaintiff

**Securities and Exchange Commission**

801 Brickell Avenue, Suite 1950

Miami, FL 33131

Facsimile: (305) 536-4154

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 26, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Stephanie N. Moot

Stephanie N. Moot

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*Counsel for Receiver, Mark A. Kornfeld*

**DECLARATION OF CRYSTAL C. IVORY**

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

**I. INTRODUCTION**

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

**EXHIBIT**

**1**

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

## **II. DOCUMENTS REVIEWED**

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

## **III. ANALYSIS**

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

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



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

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

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

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

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

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

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

**C. Lendacy Credit Line Draws**

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

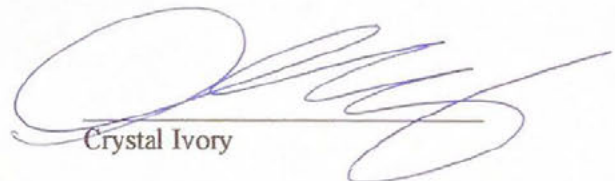
**D. Net Payments to Kinetic Management Group LLC**

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

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

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

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



Crystal Ivory



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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

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

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

Proceedings recorded by mechanical stenography,  
transcript produced by computer.

EXHIBIT

2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MR. KEHOE: Sure.

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

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

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



**FL-04184**

***LOCKE\_KELLY\_20190919***

***9/19/2019 10:07 AM***

**Condensed Transcript**

**Prepared by:**

FL-04184

Thursday, October 3, 2019

**EXHIBIT**

**3**

<p style="text-align: right;">Page 37</p> <p>1 received?</p> <p>2 A When we received investor capital my</p> <p>3 understanding was that, investor capital, based on</p> <p>4 our subscription agreement, we told the investor to</p> <p>5 wire it to our BMO Harris -- Kinetic's BMO Harris</p> <p>6 account and from there, it would be sent to</p> <p>7 Interactive Brokers for deployment or investment.</p> <p>8 I observed from my -- from the beginning of</p> <p>9 my experience working at Kinetic that that seemed to</p> <p>10 be a point of contention with the existing trader,</p> <p>11 Gina Rosenberger; that the capital was not getting</p> <p>12 transferred from the BMO bank account to the broker</p> <p>13 consistently enough or enough of an amount. I don't</p> <p>14 know exactly what his fiduciary responsibility was to</p> <p>15 transfer a certain percent of it, a certain amount of</p> <p>16 it, but I do know that the investors believed their</p> <p>17 capital was being held at Interactive Brokers.</p> <p>18 And there was a reason for that. Because</p> <p>19 Interactive Brokers, according to Michael Williams,</p> <p>20 did not participate in any OTC trades or private</p> <p>21 party risk and he often compared the Merrill Lynch</p> <p>22 BOA 2008 crash experience to those issues. So he</p> <p>23 promoted Interactive Brokers as the custodian, the</p> <p>24 trusted custodian that could be -- that was</p> <p>25 responsible where the capital was held.</p>	<p style="text-align: right;">Page 39</p> <p>1 But two, for Lendacy to afford to wire the</p> <p>2 approved credit lines to the investor, we had to</p> <p>3 transfer from the bank account money from Kinetic</p> <p>4 Funds over to KCL Services so that we could wire it</p> <p>5 back to the customer. So there were internal bank</p> <p>6 transfers made on a regular basis from Kinetic to KCL</p> <p>7 so that we could fund the loans.</p> <p>8 Q And just to be clear, Kinetic is the KF</p> <p>9 Yield Fund account?</p> <p>10 A Yes.</p> <p>11 Q So the transfer is going from KF Yield Fund</p> <p>12 account to the KCL account?</p> <p>13 A Correct.</p> <p>14 BY MS. IVORY:</p> <p>15 Q To the investor or the borrower?</p> <p>16 A To the borrower, right. So the investor</p> <p>17 would wire their money to BMO Harris for the purposes</p> <p>18 of investing in Kinetic Funds, the KF Yield strategy.</p> <p>19 It would not necessarily make it to the interactive</p> <p>20 broker. It would be an internal bank transfer to</p> <p>21 send the money over to KCL and then we would load a</p> <p>22 wire and wire the investor the loan amount -- the</p> <p>23 funding amount. They could take it in whole, they</p> <p>24 could take the entire amount, they could take it --</p> <p>25 it was in tranches. It was structured as revolving</p>
<p style="text-align: right;">Page 38</p> <p>1 So that was the first issue, that the</p> <p>2 capital would not get from the bank account to the</p> <p>3 broker.</p> <p>4 BY MR. HOUCHIN:</p> <p>5 Q And if I may interrupt there.</p> <p>6 A Mmm-hmm.</p> <p>7 Q The interactive brokerage account that</p> <p>8 you're referencing --</p> <p>9 A Yes.</p> <p>10 Q -- was the account that was holding the</p> <p>11 capital or the securities for the KF Yield Fund?</p> <p>12 A Yes.</p> <p>13 Q Thank you.</p> <p>14 A And then when somebody wanted a loan --</p> <p>15 wanted to apply for a loan, I was told that there was</p> <p>16 a partnership agreement, there was an investment</p> <p>17 agreement and there was a private equity placement.</p> <p>18 That somehow this relationship between Kinetic and</p> <p>19 Lendacy was documented and structured prior to my</p> <p>20 hire date. So it was important for me to just track</p> <p>21 what money was being transferred where so that we</p> <p>22 could sort everything out the way it need to be. You</p> <p>23 know, I would -- operationally I would be able to</p> <p>24 show the accountant or whoever, you know, these were</p> <p>25 the transactions and whatnot.</p>	<p style="text-align: right;">Page 40</p> <p>1 credit lines so they could draw on it at any time.</p> <p>2 So we may approve a loan, but the transfer doesn't</p> <p>3 have to be made until they're ready to withdraw.</p> <p>4 The majority of these loans did not have</p> <p>5 any payments being made. The sales pitch -- the</p> <p>6 marketing pitch was that, you could defer your</p> <p>7 payments for up to two years at a time and when that</p> <p>8 deferment came up, you know, we could reassess the</p> <p>9 loan and potentially defer it longer. So the idea</p> <p>10 that you didn't have to make a payment because we had</p> <p>11 your investment relationship was a selling point for</p> <p>12 the loan. You could structure these loans however</p> <p>13 you wanted.</p> <p>14 The interest rates were very low. Interest</p> <p>15 rates were anywhere between 1.75 to 3 or 4 percent.</p> <p>16 Interest rates were identified spontaneously. There</p> <p>17 was no structure to what the interest rates would be.</p> <p>18 It was chosen based on that particular situation or</p> <p>19 that particular loan for whatever its purpose may be.</p> <p>20 BY MR. HOUCHIN:</p> <p>21 Q Who would set the interest rate?</p> <p>22 A Initially Michael Williams. For all the</p> <p>23 loans prior to me, I understood that Michael Williams</p> <p>24 chose the interest rate. When I first started, I did</p> <p>25 not have the authority to make a decision on what the</p>

Page 57

1 performance as well. So that component I'm not  
2 familiar with.

3 Q So just to confirm, there was no separate  
4 account in Interactive Broker for each investor?

5 A No.

6 Q Rather the spreadsheet was used by Michael  
7 Williams to determine an account balance?

8 A Correct.

9 Q Okay.

10 A Correct.

11 BY MR. HOUCHIN:

12 Q And Michael Williams is the person who  
13 prepared the account statements for each KF Yield  
14 investor every month?

15 A Correct.

16 Q Did that ever changed, to your knowledge?

17 A No. Let me just think to be careful with  
18 that answer. Preparing and generating the  
19 statements, and uploading the statements to the  
20 investor, and e-mailing the final statement are two  
21 separate things. So I would -- anyone of us, myself,  
22 Keli Pufahl, Kenneth Rachon, Carla Mendez, we were  
23 all responsible for uploading the statements to the  
24 investors once they were calculated, but Michael  
25 Williams was in control of generating the financial

Page 58

1 information that would go on those statements.

2 And I misspoke too quickly earlier when I  
3 said no. There was one period of time that I  
4 understood that the statement processing was turned  
5 over to Anadi Gaur for, you know, I'm not sure how  
6 long, but I understood that Anadi recognized there  
7 are mathematical errors in the statements and instead  
8 of addressing them, Michael took the statement  
9 process back and continued to process the statements.

10 So aside from that one time when Anadi  
11 started and Michael entrusted him to do the  
12 statements -- Anadi is financially educated and has  
13 to masters degrees, I believe. But there became  
14 issues with Anadi doing the statements because of the  
15 problems that he identified, which I don't know  
16 specifically what they are, and then the statement  
17 processing was taken away -- taken back from him and  
18 it continued on by Michael Williams.

19 Q How do you know Mr. Gaur identified  
20 mathematical errors?

21 A From discussions in the office afterwards.  
22 So at the time I wasn't aware of it because I was in  
23 Puerto Rico, but I remember coming back to the  
24 Sarasota office with Keli Pufahl, Anadi and Kenneth  
25 Rachon, and there was a conversation that I observed

Page 59

1 and heard from them referencing frustrations with the  
2 statements and Anadi wasn't responsible for them  
3 anymore.

4 So that's -- and I'm paraphrasing that  
5 conversation. That's the gist of what I understood  
6 from that moment was that, Anadi identified issues,  
7 Kenneth as well. I think -- I believe Kenneth and  
8 Anadi were very close and had become very close  
9 friends, so they -- I understood they confided in  
10 each other with some things. So both of them had  
11 recognized issues with the statement processing.  
12 Kenneth background is an accountant and I  
13 just observed that conversation talking about that.  
14 But I don't know exactly the time frame in which  
15 Anadi was responsible temporarily for the statements.

16 Q Okay. And I guess you don't know  
17 approximately when Mr. Gaur discovered that there  
18 could be some mathematical issues on the statements?

19 A No.

20 Q Okay. What type of information was on the  
21 KF Yield statements?

22 A It would show the dividend per share that  
23 was being issued that month and then the total amount  
24 based on how many shares they owned, it would say  
25 what fund, which is usually always the KF Yield fund.

Page 60

1 There were a few investors as I mentioned also had  
2 placements in the other funds, so if you did, it  
3 would show up underneath Kinetic Funds. It told the  
4 redemptions or the additional investments that month  
5 and then what the ending market value would be, and  
6 whether or not you redeemed your dividend in cash or  
7 you reinvested it, or a portion of it.

8 The statements changed. Michael  
9 reformatted the statements to look differently. When  
10 we were in Puerto Rico he improved the look of the  
11 statements. He changed the logo. The logo was  
12 changed. It used to say Kinetic Funds 1 and I  
13 believe the current -- the statement that you see now  
14 I believe it says -- it just says K -- you know, it  
15 references KF Yield, but and then when we got to --  
16 afterwards when we got to Puerto Rico another change  
17 that happened with the statements was that, the  
18 disclosure at the bottom and then the logo on the  
19 bottom right corner that I felt implied who generated  
20 the statement, was changed to El-Morro Financial,  
21 which was the Act 20 company that Michael opened when  
22 he relocated to Puerto Rico.

23 So I felt -- I didn't know if that was  
24 necessarily wrong, but I felt there was an issue  
25 there because it was implying to our investors that



Page 213

1 A AEELA, no. Angelo Diaz was aware that he  
 2 would be eligible for a loan if he invested, but he  
 3 was not aware of how we accomplished that  
 4 operationally with -- he -- as he understood, a  
 5 hundred percent of his assets would be invested,  
 6 remain invested in the market generating income,  
 7 working for him, and that he would get a separate  
 8 line of credit available to him to draw on.  
 9 So he was aware of Lendacy because he used  
 10 Lendacy. He was not truly aware of how Lendacy  
 11 worked. He didn't ask any of the questions that  
 12 somebody like Ryan Corbett asked. And then his wife,  
 13 she didn't -- she made the investment because he made  
 14 the investment.  
 15 ACCA and AEELA, it's hard to remember  
 16 because I recall both of us being frustrated, myself  
 17 and Michael Williams, because we couldn't get in to  
 18 meet with them. Eliseo was speaking on our behalf  
 19 and negotiating, and sharing the materials, and  
 20 selling the fund.  
 21 Q For ACCA and AEELA?  
 22 A For ACCA and AEELA.  
 23 Q It was Eliseo speaking --  
 24 A Yes.  
 25 Q -- on behalf of Kinetic Funds?

Page 214

1 A Correct. And so he would follow up with us  
 2 and, you know, ask -- you know, can you create a  
 3 proposal for A, B and C? Can you write a reposal  
 4 [sic] for this -- this investment amount?  
 5 And we started writing case studies. Let  
 6 me back up for a second. We started writing case  
 7 studies for every potential opportunity. So Eliseo  
 8 said, okay, ACCA is interested. I think they have  
 9 about \$5 million to invest and they want to redo  
 10 their parking lot, which was a real opportunity for a  
 11 loan, they would need, you know, 2 million or a loan.  
 12 Can you give me a case study that calculates what  
 13 that would be?  
 14 So in Excel, based on -- Michael had  
 15 created this Excel spreadsheet where you could type  
 16 in the investment amount and based on historical  
 17 returns it would predict potentially what your  
 18 investment, you know, could be or would grow to be  
 19 based on historical returns, and then it would  
 20 calculate how much interest you would be charged  
 21 depending on what your interest rate was, and how you  
 22 made your payments and what your net return would be.  
 23 So we would do these type of case studies  
 24 for Eliseo and we were constantly editing those case  
 25 studies or adjusting them, and giving them to him,

Page 215

1 and Eliseo would then go back to the agency and have  
 2 the meeting, or just have the dinner with somebody.  
 3 That's how things work.  
 4 And so it was a major frustration for us  
 5 that particularly for ACCA and CFSE we were not able  
 6 to pitch or control, you know, that investment, but  
 7 we supplied Eliseo with all the materials that he  
 8 would share and all the information that he would  
 9 share, and everything that he would say. So it  
 10 was -- we couldn't verify what Eliseo was saying, but  
 11 it was clear that he was not to just make anything  
 12 up. He would relay what we told him to.  
 13 Q And who drafted the materials given to  
 14 Eliseo to give to ACCA and AEELA?  
 15 A Initially it was Michael Williams, but it  
 16 got to the point where we've done -- we did so many  
 17 that if he needed me to update it, I could. If he  
 18 needed me to rerun the numbers with a different  
 19 interest rate, I could and I could update the case  
 20 studies and save it, and send it back to him. All of  
 21 the case studies, whether I was involved in it or  
 22 not, have to say Michael Williams and Kelly Locke as  
 23 author.  
 24 Q Okay. But who had ultimate authority for  
 25 those materials given to Eliseo and to give to ACCA

Page 216

1 and AEELA?  
 2 A Michael Williams.  
 3 Q Any other investors, Puerto Rican investors  
 4 that you met with prior to their investment?  
 5 A Yes. Plan de Pensiones, Angelo Diaz  
 6 referred us to them; I attended some meetings with  
 7 them; there was a language barrier, so either Angelo  
 8 or his business partner would have to come with us to  
 9 help translate.  
 10 Q And what was told to Plan de Pensiones?  
 11 A The same pitch. That you keep your  
 12 investment protected, generate income. And they  
 13 wanted to -- this church provided loans to its other  
 14 branches, branch of a church, so they were interested  
 15 in using Lendacy to help fund their other church  
 16 locations. So -- but overall, the pitch was the same.  
 17 It's just how do we apply the investment lending  
 18 structure to what you need to buy, you know, or what  
 19 your particular situation. So what was going to --  
 20 what the fund was going to invest in, how it was  
 21 liquid, the returns, the principal protection; all of  
 22 that was the same pitch.  
 23 Q And what were they told that the fund was  
 24 going to be invested in?  
 25 A US listed securities that issued a dividend

<p style="text-align: right;">Page 217</p> <p>1 that were insured using US listed options.</p> <p>2 Q Was Plan de Pensiones ever told that the</p> <p>3 money that they would invest in Kinetic Funds would</p> <p>4 be used to fund Lendacy loans?</p> <p>5 A No. They knew about Lendacy and they knew</p> <p>6 they would have an access to Lendacy. They were not</p> <p>7 aware that the money they were investing would be</p> <p>8 used to fund their own loan.</p> <p>9 Q Did they request a loan with Lendacy?</p> <p>10 A I don't remember if we got that far.</p> <p>11 Q Okay. And --</p> <p>12 A Keli Pufahl would be able to know. I think</p> <p>13 that she would remember.</p> <p>14 Q Any other Puerto Rican investors that you</p> <p>15 met with prior to their investment in Kinetic Funds?</p> <p>16 A Samuel Padilla.</p> <p>17 Q And what was he told about Kinetic Funds?</p> <p>18 A The same thing. That the fund invested in</p> <p>19 US listed securities that generated a dividend and</p> <p>20 that it would be protected and insured; even to the</p> <p>21 detail that your -- that 90 percent of your balance</p> <p>22 would be protected. So the 10 percent was like your</p> <p>23 insurance deductible.</p> <p>24 Q And this was told to all the Puerto Rican</p> <p>25 investors that you met with?</p>	<p style="text-align: right;">Page 219</p> <p>1 Q And what exhibit? What exhibit number is</p> <p>2 that one?</p> <p>3 A Exhibit 30.</p> <p>4 Q So the brochure in Exhibit 30 would have</p> <p>5 been one of the documents that you would have given</p> <p>6 ACCA? Or you were not at the ACCA meeting?</p> <p>7 A Was not at the ACCA meeting, but we would</p> <p>8 have --</p> <p>9 Q Who would you have given that brochure</p> <p>10 identified in Exhibit 30 to of these investors?</p> <p>11 A I think that there was a newer version of</p> <p>12 this one by the time I spoke to Samuel Padilla, but</p> <p>13 as far as content changes and what it contained, it</p> <p>14 would have all said this similar information.</p> <p>15 Q Any other investors from Puerto Rico that</p> <p>16 you met with before they made their investment in</p> <p>17 Kinetic Funds?</p> <p>18 A No. I believe that's everyone.</p> <p>19 Q Okay. And -- actually, I'd like to go back</p> <p>20 to Kinetic Exhibit 30, the e-mail, the second page.</p> <p>21 Michael writes about the Bloomberg reports, that</p> <p>22 they're generated by Bloomberg and then he goes onto</p> <p>23 state we're putting together quarterly reports as</p> <p>24 well.</p> <p>25 Can you tell us about those quarterly</p>
<p style="text-align: right;">Page 218</p> <p>1 A Yes.</p> <p>2 BY MR. HOUCHIN:</p> <p>3 Q And who gave the sales pitch to Mr.</p> <p>4 Padilla?</p> <p>5 A I did.</p> <p>6 Q Was Mr. Williams there?</p> <p>7 A No.</p> <p>8 Q Were you using the information that Mr.</p> <p>9 Williams had provided to you about the fund?</p> <p>10 A Yes.</p> <p>11 BY MS. VINIEGRA:</p> <p>12 Q In any of these meetings did you provide</p> <p>13 any documents, you know, Kinetic brochures or, you</p> <p>14 know, any of these marketing materials that we've</p> <p>15 discussed to any of these investors?</p> <p>16 A Yes. I would have had the current version</p> <p>17 of the marketing materials at all of the meetings.</p> <p>18 So if we were there, we would have had Kinetic</p> <p>19 materials and Lendacy materials. The Lendacy</p> <p>20 materials just consisted of the brochure. And</p> <p>21 possibly -- depending on how much we knew about the</p> <p>22 investor ahead of time, we may have had a customized</p> <p>23 case study pre-written for them, but the marketing</p> <p>24 materials that are in here, this Kinetic Funds</p> <p>25 brochure, is something that we would have had.</p>	<p style="text-align: right;">Page 220</p> <p>1 reports?</p> <p>2 A Yes. So that was another piece of</p> <p>3 marketing materials that we were working on creating,</p> <p>4 was a quarterly report.</p> <p>5 Q And what was contained in these quarterly</p> <p>6 reports?</p> <p>7 A First it would have in the beginning a</p> <p>8 letter to the investors from Michael usually about</p> <p>9 how the market is doing, what's going on and what his</p> <p>10 prediction may be, or his concerns or focus, and then</p> <p>11 it would have very similar details to the Kinetic</p> <p>12 Funds brochure that explained what the fund invested</p> <p>13 in; how it maintains liquidity; the dividend that it</p> <p>14 kicked off on monthly basis; it would have historical</p> <p>15 returns; it would include the Bloomberg performance</p> <p>16 in the back.</p> <p>17 Q And these were given to investors on a</p> <p>18 quarterly basis?</p> <p>19 A Yes.</p> <p>20 Q And all the information contained in here,</p> <p>21 you know, do you think it was important for the</p> <p>22 investors to have that information for purposes of</p> <p>23 Kinetic fund investment?</p> <p>24 A Well, certainly I think it's important for</p> <p>25 investors to be provided a quarterly report.</p>

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C E R T I F I C A T E

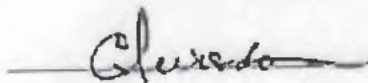
STATE OF FLORIDA  
COUNTY OF PALM BEACH

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







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

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

EXHIBIT

4




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

Kinetic Investment Group, LLC

By:   
Its: Managing Partner  
Print: Michael Williams

LF42, LLC

By:   
Its: MANAGER  
Print: Michael Williams



## PROOF OF CLAIM FORM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KINETIC INVESTMENT GROUP, LLC and MICHAEL  
SCOTT WILLIAMS,

Defendants;

and

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

Relief Defendants.

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

Michael Scott Williams  
LF42 LLC

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

Case Number: 8:20-cv-394

U.S. District Court Middle District of Florida (Tampa Division)

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

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

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

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

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

**General Instructions:**

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

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

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

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

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

☒ Investor

☐ Provided Goods or Services to a Receivership Entity

☒ Other (specify basis) Partner - partnership contributions

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

**Questions Specific to Investors**

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

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

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

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

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

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

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

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

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

**ATTACHED: Documentation regarding other investments**



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

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

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

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

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

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

12. Did you receive any other funds or anything of value other than money (for example, a car or shares of stock) from any Receivership Entity or anyone acting on their behalf? Yes X No \_\_\_\_ . If yes, please identify how much or what you received, from whom, and the date it was received. \_\_\_\_\_

El Morro Payroll - approximately \$36,000 per year - (2017-2018).

LF42 contract - approximately (2015 \$60k, 2016 \$60k, 2017 \$25k, 2018 \$25k, 2019 \$60k)

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

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

Partner. As a Partner, has made significant investments into the companies over the years.

Investments include, but not limited to: office expenses, legal, technology, and other business services.

Exceeding \$500,000+

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

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

compensation of any nature from any Receivership Entity?   x   Yes        No. If yes, please identify how much or what you received, from whom, and the date it was received. \_\_\_\_\_  
 See #12  
 \_\_\_\_\_  
 \_\_\_\_\_

**Questions Specific To Non-Investor Claimants**

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

ISX Technology Expenses: \$286,761.00

Kinetic International Bank Expenses: \$152,110.00

Kinetic Investment Group Expenses: \$158,321.96

\*See Attached

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

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

**Question for all Claimants:**

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

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

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

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

Signature of Claimant: 

Print Name: Michael Scott Williams (LF42, LLC)

Date: 2/02/2021

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

**EXHIBIT A**

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

**Amount Invested:** \$ \_\_\_\_\_

**Total Payments/Loans/Distributions:** \$ \_\_\_\_\_

**Net Investment Amount:** \$ \_\_\_\_\_

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

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

**Investments / Payments / Contributions****Michael Scott Williams**

Kinetic Investments / Payments						
Date	Amounts	To	From	Bank	Account	
5/4/2015	\$ 65,000	Kinetic Funds	LF42	BMO Harris	4812564247	
5/3/2018	\$ 1,500,000	Kinetic Funds	LF42	BMO Harris	4812564247	
3/5/2020	\$ 2,914,964	Kinetic Management Group LLC	CHI Trust (on behalf of LF42)	(see Completed Wire Detail)		
Total	\$ 4,479,964					
Completed Wire Detail						
Additional Contributions						
Source Account						
SX Technology	\$ 286,761					
Kinetic International Bank	\$ 152,110					
Kinetic Investment Group	\$ 158,322					
Total	\$ 597,193					

**Completed Wire Detail**

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

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

**Source of Funds: Silexx**

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

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

Approximate Distributions from Silexx: \$8m+

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

Investment

4-May-15

\$65,000



A part of BMO Financial Group

BMO HARRIS BANK N.A. 180807  
 P.O. BOX 94033  
 PALATINE, IL 60094-4033

ACCOUNT NUMBER: 4812564247

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

01 09837

PAGE 1 OF 2

LF42  
 1800 SECOND ST #955  
 SARASOTA FL 34236

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## CHECKING ACCOUNTS

ESSENTIAL BUSINESS CKG  
 ACCOUNT NUMBER 4812564247 (Checking) LF42

## DEPOSIT ACCOUNT SUMMARY

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

## Deposits and Other Credits

Date	Amount	Description
May 04	8,000.00	REMOTE DEPOSIT

## Withdrawals and Other Debits

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

## Checks by Serial Number

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

INVESTMENT

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



A part of BMO Financial Group

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

282977

ACCOUNT NUMBER: 4812564255

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

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PAGE 1 OF 2

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

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LENDER. NMLS401052 VISIT US ONLINE AT WWW.BMOHARRIS.COM.

## CHECKING ACCOUNTS

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

Interest Paid YTD 2,048.70

## DEPOSIT ACCOUNT SUMMARY

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

## Deposits and Other Credits

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



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

**Class C Member Addendum**

This Addendum, consisting of three (3) pages, is entered into as of 5/4/18, 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 15<sup>th</sup> of each month for the preceding month's activity. The Fund(s)' Profit/Loss are reported on a mark-to-market basis for month-end. Any/all dividends issued by financial products held in the Fund will reported as a separate line item. The Company may provide statements online, if/when available. If a Class C Member wishes to receive statements by standard mail, that will be arranged by request. The Company does not guarantee the receipt via standard mail by the 15<sup>th</sup> of the month.

**RISK MARGIN:**

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

**PROFITS AND LOSSES:**

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

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

**FEES AND EXPENSES:**

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

**RISKS:**

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

AGREED AND ACKNOWLEDGED THIS 30 DAY OF April, 2015.

**CLASS C MEMBER**

MICHAEL S WILLIAMS (print name)

LF42, LLC

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

By: 

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

Address: 1800 SECOND ST

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

SARASOTA FL 34236

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

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

**KINETIC FUNDS I, LLC**

Class A Member

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

**CREDIT FACILITY AGREEMENT AND FEDERAL TRUTH-IN-LENDING DISCLOSURE****NOTICE: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE****1) YOUR AGREEMENT.**

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

You agree to all of the following terms.

**2) REPAYMENT OPTIONS.**

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

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

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

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



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

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

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

## 5) PROMISE TO PAY.

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

## 6) BILLING CYCLE.

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

## 7) INDEX.

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

## 8) PERIODIC FINANCE CHARGE RATE.

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

## 9) PERIODIC FINANCE CHARGE.

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

**10) ANNUAL PERCENTAGE RATE LIMIT.**

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

**11) CALCULATION OF DAILY BALANCE.**

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

**12) MONTHLY PAYMENTS.**

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

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

**13) REGULAR PERIODIC STATEMENT.**

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

**14) PREPAYMENTS.**

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

**15) STOP PAYMENT ORDERS.**

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

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

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

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

**16) OTHER ACCOUNT CHARGES**

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

**17) YOUR OBLIGATIONS ARE UNSECURED.**

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

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

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

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

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

After your Account is opened, Lender may:

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

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

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

**21) EVENTS OF DEFAULT.**

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

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



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

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

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

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

**23) TAX DEDUCTIBILITY.**

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

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

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

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

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

**25) MISCELLANEOUS PROVISIONS.**

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

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

**26) GUARANTOR.**

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

☐

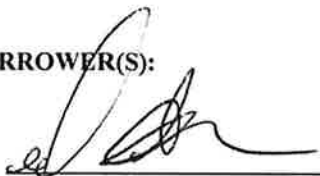
a. Borrower's Initials: \_\_\_\_\_

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

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

EXECUTED ON THE DATE OPPOSITE THE NAMES AND SIGNATURES BELOW:

**BORROWER(S):**

 (sign)

Michael Williams (print)

DATE: 4-30-15

**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 error or problem appeared. You can telephone Lender, but doing so will not preserve your rights.

In your letter, give Lender the following information:

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

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

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

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

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

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

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

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

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

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

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

**GUARANTOR:**

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

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

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

**Address:****Fax:**

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

\_\_\_\_\_

**Phone:****Email:**

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

\_\_\_\_\_





### 1. YOUR AGREEMENT

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

### YOU AGREE TO ALL OF THE FOLLOWING TERMS

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

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

### 3. REPAYMENT OPTIONS

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

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

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

#### PAYMENT OPTION AFTER DEFERRAL PERIOD:

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

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

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

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





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

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

c) You expressly acknowledge and agree that:

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

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

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

### 4. INDEX

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

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

### 5. MARGIN RATE

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





## 6. PERIODIC FINANCE CHARGE

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

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

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

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

## 7. LIMITS

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

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

## 8. CALCULATION OF DAILY BALANCE

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





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

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

**10. PROMISE TO PAY**

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

**11. BILLING CYCLE**

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





## 12. MONTHLY PAYMENTS

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

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

## 13. REGULAR PERIODIC STATEMENT

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

## 14. PREPAYMENTS

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

## 15. STOP PAYMENT ORDERS

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

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

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

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

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







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

## 16. YOUR OBLIGATIONS ARE UNSECURED

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

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

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

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







## 18. CHANGES IN THE TERMS OF YOUR ACCOUNT

After your Account is opened, Lender may:

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

## 19. CREDIT INFORMATION AND FINANCIAL STATEMENTS

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

## 20. EVENTS OF DEFAULT

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

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

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

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

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





## 22. TAX DEDUCTIBILITY

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

## 23. TERMINATION OF ACCOUNT AT YOUR ELECTION

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

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

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

## 24. MISCELLANEOUS PROVISIONS

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

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





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

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

## 25. GUARANTOR

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

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

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

EXECUTED ON THE DATE OPPOSITE THE NAMES AND SIGNATURES BELOW:

BORROWER(S): ☒ INDIVIDUAL ☐ TRUST ☐ LLC ☐ PARTNERSHIP ☐ CORPORATION ☐ OTHER

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

SIGNATURE  PRINTED NAME Michael Williams DATE 3/23/2017

ADDRESS 7644 Sandalwood Way CITY Sarasota STATE FL ZIP 34231

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

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

BORROWER(S):

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

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

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

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

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





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

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

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

In your letter, give Lender the following information:

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

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

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

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

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

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





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

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

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

- a) Anything to the contrary herein notwithstanding, the liability of the Guarantor shall be direct and immediate as a primary and not a secondary obligation or liability, and is not conditioned or contingent upon the pursuit of any remedies against Borrower or any other person. Guarantor unconditionally waives any right which he/she may have to require that Lender first proceed against Borrower or any other person or entity with respect to the Guaranteed Obligations.
- b) Guarantor's obligations hereunder are an irrevocable, absolute, continuing agreement of payment and performance and not a guaranty of collection. Guarantor's obligations hereunder may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor and after Guarantor's death (in which event the Agreement and this Guarantor Addendum shall be binding upon such Guarantor's estate and Guarantor's legal representatives and heirs). The fact that at any time or from time to time the Guaranteed Obligations may be increased or reduced shall not release or discharge the obligations of Guarantor to Lender with respect to the Guaranteed Obligations. Guarantor's obligations hereunder may be enforced by Lender and any subsequent holder of this Promissory Note and shall not be discharged by the assignment or negotiation of all or part of this Promissory Note.
- c) If all or any part of the Guaranteed Obligations shall not be punctually paid when due, whether at demand, maturity, acceleration or otherwise, Guarantor shall, immediately upon demand by Lender and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Guaranteed Obligations to Lender at Lender's address as set forth in the Agreement. Such demand(s) may be made at any time coincident with or after the time for payment of all or part of the Guaranteed Obligations and may be made from time to time with respect to the same or different items of Guaranteed Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions of the Agreement.
- d) Guarantor hereby unconditionally agrees to waive and agrees not to assert or take advantage of any defense based upon:
  - i) The incapacity, lack of authority, death or disability of any Borrower, or any other person or entity;
  - ii) The failure of Lender to commence an action against Borrower at 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 of remedies by Lender, whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Guarantor or the rights of Guarantor to proceed against Borrower by way of subrogation or for reimbursement or contribution, or all such rights;
  - viii) Any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other aspects more burdensome than that of a Guarantor; and
  - ix) Any other suretyship defense that might, but for the terms hereof, be available to Guarantor.





GUARANTOR:

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

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

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

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

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Guarantor Addendum to Credit Facility Agreement—2 of 2 | Rev 2-10-16





## COLLATERAL PLEDGE AGREEMENT

Dated: Monday, March 20, 2017

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

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

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

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

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

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

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

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

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

By: 

Kelly N. Locke

President of Lendacy

By: 

Michael S. Williams

Vice President of Silexx Financial Systems,  
LLC

Exhibit A

Collateral

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



# 1. YOUR AGREEMENT

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

## YOU AGREE TO ALL OF THE FOLLOWING TERMS

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

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

# 3. REPAYMENT OPTIONS

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

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

Deferred Payment Expiration Date: December 27, 2019

## PAYMENT OPTION AFTER DEFERRAL PERIOD:

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

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

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





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

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

c) You expressly acknowledge and agree that:

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

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

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

#### **4. INDEX**

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

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

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

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







## 6. PERIODIC FINANCE CHARGE

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

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

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

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

## 7. LIMITS

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

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

## 8. CALCULATION OF DAILY BALANCE

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







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

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

**10. PROMISE TO PAY**

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

**11. BILLING CYCLE**

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





## 12. MONTHLY PAYMENTS

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

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

## 13. REGULAR PERIODIC STATEMENT

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

## 14. PREPAYMENTS

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

## 15. STOP PAYMENT ORDERS

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

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

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

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

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





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

## 16. YOUR OBLIGATIONS ARE UNSECURED

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

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

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

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





## 18. CHANGES IN THE TERMS OF YOUR ACCOUNT

After your Account is opened, Lender may:

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

## 19. CREDIT INFORMATION AND FINANCIAL STATEMENTS

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

## 20. EVENTS OF DEFAULT

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

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

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

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

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





## 22. TAX DEDUCTIBILITY

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

## 23. TERMINATION OF ACCOUNT AT YOUR ELECTION

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

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

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

## 24. MISCELLANEOUS PROVISIONS

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

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







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

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

## 25. GUARANTOR

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

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

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

EXECUTED ON THE DATE OPPOSITE THE NAMES AND SIGNATURES BELOW:

BORROWER(S): ☐ INDIVIDUAL ☐ TRUST ☒ LLC ☐ PARTNERSHIP ☐ CORPORATION ☐ OTHER

ENTITY NAME (IF APPLICABLE) LF42, LLC

SIGNATURE [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 \_\_\_\_\_

Office (941) 363-6686 | Toll Free (855) 793-5363 | info@lendacy.com | www.lendacy.com  
1800 2nd Street, Suite 956 | Sarasota, FL | 34236







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

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

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

In your letter, give Lender the following information:

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

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

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

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

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

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





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

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

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

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





**GUARANTOR:**

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

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

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

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

Office (941) 363-6686 | Toll Free (855) 793-5363 | [info@lendacy.com](mailto:info@lendacy.com) | [www.lendacy.com](http://www.lendacy.com)  
1800 2<sup>nd</sup> Street, Suite 956 | Sarasota, FL | 34236

Guarantor Addendum to Credit Facility Agreement—2 of 2 | Rev 2-10-16



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

**NON-NEGOTIABLE PROMISSORY NOTE**

**\$2,000,000**

**Issued: April 15, 2019**

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

**SECTION 1. PAYMENTS**

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

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

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

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

## SECTION 2. DEFAULTS

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

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

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

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

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

## SECTION 3. MISCELLANEOUS

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

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



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

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

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

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

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

ISX, LLC


By: 

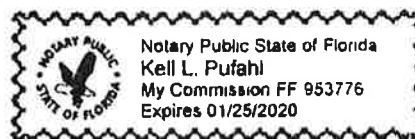
Name: Michael Williams

Title: Administrator

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

WITNESS my hand and official seal:







# Delaware

PAGE 1

*The First State*


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

5142105 8100

120447235

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



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9517430

DATE: 04-20-12

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

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

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

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

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

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

  
Authorized Person—Phillip E. Handin, Esq.



Department of the Treasury  
Internal Revenue Service

Cincinnati Service Center  
CINCINNATI OH 45999-0046

*Sent to Laura Ann 2/3/15*  
In reply refer to: 0223653563  
Feb. 04, 2015 LTR 385C 0  
45-5270195 000000 00

00003790

BODC: SB

LF42

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

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

Dear Taxpayer:

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

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

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

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

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

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

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

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

0223653563  
Feb. 04, 2015 LTR 385C 0  
45-5270195 000000 00  
00003791

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

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

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

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

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

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

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

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

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

Keep a copy of this letter for your records.

Thank you for your cooperation.

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

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



16852

Sincerely yours,

A handwritten signature in black ink, appearing to read "David Brian Stahley". The signature is written in a cursive, flowing style.

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

Enclosures:  
Copy of this letter  
Envelope

## DISTRIBUTION AGREEMENT AND MUTUAL RELEASE

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

### Background

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

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

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

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

### Agreement

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

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

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

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

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



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

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

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



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

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

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