

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**KINETIC INVESTMENT GROUP, LLC and  
MICHAEL SCOTT WILLIAMS, Case No: 8:20-cv-394-MSS-SPF**

Defendants, and

**KINETIC FUNDS I, LLC,  
KCL SERVICES, LLC d/b/a LENDACY,  
SCPIO, LLC, LF 42, LLC, EL MORRO  
FINANCIAL GROUP, LLC, and KIH, INC.,  
f/k/a KINETIC INTERNATIONAL, LLC,**

Relief Defendants.

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**RECEIVER'S ELEVENTH INTERIM REPORT**

**(July 1, 2022 to September 30, 2022)<sup>1</sup>**

Mark A. Kornfeld, Esq., in his capacity as the court-appointed Receiver (the "Receiver") for Kinetic Investment Group, LLC ("KIG"), Kinetic Funds I, LLC ("Kinetic Funds"), KCL Services, LLC d/b/a Lendacy ("Lendacy"), Scipio, LLC

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<sup>1</sup> Due to certain significant post-quarterly events involving the prospective \$2.1 million sale of the Villa Gabriel Property, the Receiver has included some post-quarter activity in this Report to alert the Court as to the status of the sale and the position of the prospective purchaser. These events are described in greater detail in Sec. (1) of the Executive Summary.

(“Scipio”), LF 42, LLC (“LF42”), El Morro Financial Group, LLC (“El Morro”), and KIH Inc., f/k/a Kinetic International, LLC (“Kinetic International”) (collectively, the “Receivership Defendants”), respectfully files his Eleventh Interim Report (the “Eleventh Report”) covering information and activity occurring from July 1, 2022 to September 30, 2022. In addition to providing notice of the receivership to all known investors shortly after his appointment, the Receiver has also established an informational website at [www.kineticreceivership.com](http://www.kineticreceivership.com), which is regularly updated with important court filings (including previous and subsequent Interim Reports), announcements, and other news that might be relevant to interested parties.

During the time period covered by this Eleventh Report (July 1, 2022 to September 30, 2022), the Receiver and his team of legal, technology, tax, and accounting professionals (collectively, the “Retained Professionals”) have engaged in significant activities regarding the Receivership Estate, which are discussed more thoroughly in the forthcoming report.

**TABLE OF CONTENTS**

**I. EXECUTIVE SUMMARY OF REPORTING PERIOD ACTIVITIES .....Error!  
Bookmark not defined.**

**A. Significant Activities During This Reporting Period.....1**

**II. BACKGROUND .....9**

**A. Procedure and Chronology.....9**

**B. The Receiver’s Role and Responsibilities..... 11**

**C. Receivership Defendants ..... 12**

**III. OVERVIEW OF RECEIVER’S PRELIMINARY FINDINGS .....12**

**A. Discrepancies Between Kinetic Funds’ Actual And Reported  
Performance And Assets..... 13**

**B. Analyzing The Use Of Investor Deposits ..... 19**

**C. Kinetic Funds Management Fees ..... 22**

**D. Lendacy’s Funding Source Was Kinetic Funds ..... 23**

**E. Significant Losses From Association With VTrader Pro, LLC .. 24**

**F. Williams’ Use Of Investor Funds For His Own Benefit ..... 26**

**IV. THE NEXT QUARTER.....28**

**A. Investigation ..... 28**

**B. Continuing Implementation Of Claims ProcessError! Bookmark not  
defined.**

**C. Liquidation of Assets..... 30**

**D. Potential Third-Party Claims..... 31**

**I. EXECUTIVE SUMMARY OF REPORTING PERIOD**

**A. Significant Activities Occurring During This Reporting Period**

**1. CONTINUED EFFORTS TO OBTAIN APPROVAL OF THE SALE OF THE VILLA GABRIEL PROPERTY AS PRESCRIBED IN RECEIVER’S MOTION FOR APPROVAL OF PRIVATE SALE (DOC. 275)**

As stated in the Commission’s Complaint, Defendant Williams “used KFYield funds” to purchase “three luxury apartments and two parking spaces for himself in San Juan, Puerto Rico.” (Doc. 1 ¶ 34.) The Receiver’s investigation revealed evidence supporting these allegations, including that Kinetic funds were directly traceable to the purchase of Villa Gabriela. On April 1, 2022, the Receiver filed Receiver’s Motion for Approval of the Sale of the (1) Private Sale of Puerto Rico Real Properties and Parking Spaces; and (2) Proposed Publication, Marketing, and Overbid Procedures Associated with the Sale of the Real Properties. (Doc. 275, the “Motion for Approval.”)

In the Motion for Approval, the Receiver sought judicial confirmation of the sale either (i) to the Purchaser/Buyer for a purchase price of **\$2,100,000.00** pursuant to the Purchase and Sale Agreement; or (ii) to the highest, qualified buyer who hereafter timely submits the highest “bona fide offer” pursuant to the terms and conditions set forth herein and approved by the Court. Since the filing of the Motion in last Reporting Period, the Receiver has worked expeditiously to effectuate the closing of Villa Gabriel, including responding to Court briefings,

keeping investors, real estate professionals, and Buyer informed, and upholding the management responsibilities, which are detailed more thoroughly below.

As to the prospective sale, the Receiver obtained an Order granting approval for the sale on October 24, 2022 (post Q3 Period.) Prior to receiving this approval, Receiver received written communication from counsel for the prospective buyer that the buyer intended to terminate the Purchase and Sale agreement due to the passage of time in which the sale was not approved. Receiver's counsel immediately contacted counsel for the buyer who was concerned about the change in the market and the increase in interest rates in the last six months. The buyer expressed a willingness to close on lower pricing terms. Despite the fact that approval was granted by the Court shortly after Receiver received the buyer's correspondence, the buyer is still not willing to set a closing date. Counsel for the Receiver and counsel for the buyer are speaking regularly to determine an amicable resolution. In the interim, Receiver has initiated the publication and overbid procedures prescribed by the Motion for Approval. The publication regarding the sale and overbid procedures will run in the *Sarasota Herald Tribune* and Puerto Rico's *El Nuevo Dia* on October 31, 2022.

The Receiver will continue to keep the Court notified regarding any developments regarding the prospective sale, including any timely offers that satisfy the highest "bona fide offer" requirement. The Receiver will also continue

to communicate with the buyer and his counsel to determine a solution to bring in the most funds to the Receivership Estates for the Villa Gabriel property.

**2. CONTINUED ALL MANAGEMENT RESPONSIBILITIES OF HOLDING TITLE TO VILLA GABRIEL PROPERTY, INCLUDING COMMUNICATING WITH REAL ESTATE PROFESSIONALS ON PROSPECTIVE SALE, HANDLING DAY-TO-DAY ISSUES AND UPKEEP OF PROPERTY, AND PAYING CONTINUING COSTS RELATED TO PROPERTY**

On April 1, 2022, Receiver filed a Motion for Approval of Private Sale (Doc. 275) to sell the Villa Gabriel to a prospective buyer for \$2.1 million. By way of background, Receiver and his staff of professionals have continued to work diligently to prepare for the eventual sale of Villa Gabriel, as outlined in the Motion for Approval filed with the Court. During the time preceding this sale, Receiver has expended a great deal of time, effort, and resources to handle and manage this property. These tasks include but are not limited to as follows:

- Worked with Villa Gabriel management company in Puerto Rico to handle all upkeep issues with the property, including weather proofing for storms, plumbing and electrical upkeep, and general property maintenance;
- Communicated with real estate professionals and real property brokers as to the status of the prospective sale and the progression of Receiver's Motion for Approval of Private Sale and the subsequent briefings related to the Motion in the Receivership litigation;
- Expended funds of the Receivership Estate to pay outstanding property taxes, property insurance, and HOA management fees related to the property; and,

- Assisted and communicated with Puerto Rican legal counsel regarding any issues related to the prospective sale of Villa Gabriel.

As part of the sale, Receiver accepted \$63,000.00 as earnest deposit from the contract buyer to hold in escrow for the eventual sale. Receiver's real estate professionals continue to hold these funds until the sale closes. While the Court's approval occurred outside of this Reporting Period (approved via Court Order entered on October 24, 2022), Receiver has now initiated the publishing and overbid procedures as outlined in the Motion for Approval and notified counsel for the buyer of same. Receiver will continue all efforts to swiftly effectuate the sale and bring its proceeds into the Receivership Estate.

**3. FILED UNOPPOSED MOTION FOR SECOND INTERIM DISTRIBUTION TO INVESTORS AND WORKED WITH FORENSIC CPA PROFESSIONALS TO DETERMINE APPROPRIATE DISTRIBUTION CALCULATIONS.**

On September 15, 2022, the Receiver filed his Unopposed Motion to Approve Second Interim Distribution, in which the Receiver sought the Court to enter an Order approving a distribution of **\$3,500,000.02** to investors. This distribution amount represents a recovery of 10.6% of the Total Allowed Amounts of Investor Claims. Prior to filing this Motion, Receiver met with his forensic CPA professionals to determine the appropriate distribution calculations for investors and created the Exhibit A Distribution Chart in line with their calculations.

Even with the anticipated proceeds from the sale of the Villa Gabriela Property, **it does not appear that the Receiver's efforts will result in a 100% recovery of all Investor Claims.** If the proposed Second Interim Distribution is approved by this Court, the Receiver will have distributed \$16,716,050.90 (over 80%) of the approximately \$20,000,000.00 that has been recovered to benefit Investor Claims. The Receiver believes it is now prudent to distribute a portion of the cash on hand while also maintaining a balance to continue the administration of the Receivership, the payment of management costs of Villa Gabriela, the potential prosecution of third-party claims, and to reserve for any unknown contingencies arising out of these matters. At present, the Receiver awaits Court Approval from the Court. Once the Receiver receives an Order approving the distribution, the Receiver will promptly remit checks to investors.

**4. REVIEWED POTENTIAL THIRD-PARTY CLAIMS AND CONTINUED WORK TO OBTAIN FUNDS FROM THIRD-PARTIES**

Receiver previously identified various potential claims with respect to third-parties that may have received improper transfers consisting of investor assets. After the Court granted his Unopposed Motion to Approve Procedure to Pursue Potential Third-Party Claims, the Receiver and his professionals continued evaluating those potential claims pursuant to the procedures approved



by the Court. Receiver and his professionals have continued their efforts to obtain funds from these individuals.

For several of those claims, the Receiver has reached an agreement to recover the full amount sought. For other claims, the Receiver is continuing to pursue a beneficial outcome which could include filing litigation against those third-parties. For one of those claims, the Receiver filed a motion seeking the Court's approval of a negotiated settlement (Doc. 271), which resulted in a structured payment plan to satisfy the agreed upon debt. Additionally, the Receiver received one lump sum payment of \$111,472.12 from an investor due to false profits received from a Kinetic entity. Receiver will continue his efforts to obtain full recovery of third-party claims.

#### **5. PREPARATION OF TENTH INTERIM REPORT**

The Receiver prepared and filed his Tenth Interim Report on July 29, 2022 (Doc. 287), which provided a comprehensive summary, analysis, and supporting documentation of the Receiver's continuing investigation as well as the tracing of investor funds.

#### **6. COMMUNICATION WITH INVESTORS**

The Receiver's staff professionals and counsel continued to communicate regularly with investors via phone and through email correspondence. Additionally, the Receiver continues to provide updates and announcements on

the informational website at [www.kineticreceivership.com](http://www.kineticreceivership.com) for investors and other interested parties. Receiver has provided updates to investors on the status of the Motion for Second Interim Distribution and the eventual distribution of 10.6% of Total Allowed Amounts of Investor Claims.

**7. CONTINUED MONITORING OF ZEPHYR AEROSPACE INVESTMENT AND COMMUNICATED WITH ZEPHYR PRINCIPAL**

In March of 2019, Kinetic International made an investment totaling \$500,000.00 in an early-stage airline seat startup known as Zephyr Aerospace (“Zephyr”). This investment was traceable to investor funds. The Receiver has been in contact with Zephyr’s principal regarding updates on the company and will continue all efforts to monetize this investment for the defrauded investors.

**8. CONTINUED INVESTIGATION AND REVIEW OF RELEVANT DOCUMENTATION AND INFORMATION**

The Receiver and his professionals continued their investigation of the business operations of the various Receivership Entities. This included identifying, obtaining, and reviewing relevant documentation and information from the Receivership Entities’ offices and interviewing various individuals.

**9. ATTENDED TO LITIGATION MATTERS**

The Receiver continues to monitor the Court’s docket given that the Commission’s claims against Mr. Williams remain pending. The Receiver continues to be in contact with the SEC and individuals involved in the litigation.

## 10. MANAGEMENT OF RECEIVER'S CASH ACCOUNTS

Receivership funds are currently being held at ServisFirst Bank. The Receiver has attached a standardized fund accounting report showing the total funds on hand and secured as of July 28, 2022 as **Exhibit 1**.<sup>2</sup> As of the date of this Report, the Receiver has (i) secured, frozen, marshaled, and liquidated assets for the benefit of victim that resulted in the deposit of **approximately \$20 million**<sup>3</sup> in the Receiver's fiduciary bank accounts during the Receiver's appointment; (ii) secured significant real property assets and commenced the process of marketing and liquidating those assets which shall result in additional proceeds deposited with the Receivership Estate; and (iii) made an initial distribution of **\$13.2 million** to Investor Claimants with approved claims, which amount constitutes 40% of each Investor Claimant's approved claim.

The nearly \$20 million recovered for the benefit of victims is the result of the following actions:

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<sup>2</sup> The report includes the bank account holding funds previously transferred by Williams' former counsel to the Receiver.

<sup>3</sup> This amount includes approximately \$251,928.02 in funds previously held in Mr. Williams' prior counsel's trust account and which were subsequently transferred to the Receiver's fiduciary accounts to be held in trust pending further Order from the Court. In the interim, the Court has authorized the payment of various living and legal expenses to or for Mr. Williams' benefit.

- March 6, 2020: Froze approximately **\$7.6 million** in Receivership bank accounts located at BMO Harris Bank;
- March 20, 2020: Liquidated securities located in Kinetic Funds sub-accounts at Interactive Brokers. After satisfying the account margin obligations, approximately **\$5.5 million** was transferred to the Receiver's bank accounts on January 7, 2021;
- June 25, 2020: Liquidated gold coins held by Kinetic Funds for total proceeds of **\$223,877.75** which were deposited into the Receiver's bank accounts;
- November 10, 2020: Received nearly **\$3.5 million from** two Kinetic Funds investors as part of a settlement that ultimately offset roughly \$8 million of the approximately \$12 million in margin obligations in Kinetic Funds' Interactive Brokers' sub-accounts;
- May 11, 2021: Received approximately **\$4.0 million** in net sales proceeds from the sale of the property located at 152 Tetuan Street, San Jan, Puerto Rico 00901; and
- Through September 30, 2021, the Receiver and his retained legal, accounting, tax, and technology professionals have been paid approximately **\$1,250,000** in fees and expenses for their services.

## II. BACKGROUND

### A. Procedure and Chronology

On February 20, 2020, the Commission filed a complaint (the "Complaint") (Doc. 1) in the United States District Court for the Middle District of Florida (the "Court") against Defendants and Relief Defendants alleging that Defendants violated the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940 by making false or materially misleading representations to investors and that over \$6 million of investor funds was

misappropriated to fund other business ventures and pay for other unauthorized expenses. Doc. 1 ¶¶4, 28-38.

The Complaint alleged that the scheme involved securities offerings made on behalf of Kinetic Funds, a purported hedge fund with a sub-fund structure managed by Kinetic Investment Group and Defendant Williams. *Id.* ¶ 2. Defendants represented to investors that the largest sub-fund, KFYield, invested all of its assets in income-producing U.S. listed financial products hedged by listed options. *Id.* Potential investors were told that KFYield was a liquid investment that would “maintain 90% principle [sic] protection” and that an investor could redeem their principal investment “100% . . . without penalties” with a 30-day written notice. *Id.* ¶¶ 2, 28. Investors in the KFYield fund, which attracted the near-entirety of investor funds entrusted to Kinetic Funds, were routinely provided with documentation from Bloomberg’s reporting service that claimed KFYield had achieved positive annual returns every year since inception. *Id.* ¶ 24. Many, but not all, investors were also attracted to the Kinetic Funds investment opportunity by the advertised ability to obtain low-interest and unsecured loans from Lendacy based on their KFYield investment and with the understanding that 100% of their KFYield investment would continue earning dividends. *Id.* ¶ 28.

On March 6, 2020, the Court entered the Order Appointing Receiver. By separate Order, the Court also granted the Commission’s Motion for Asset Freeze

and granted other relief as to all Defendants (Doc. 33). Among other things, the Orders froze Defendants' assets and enjoined any further violations of federal securities laws.

On May 12, 2020, Defendant Williams filed his Answer and Affirmative Defenses to the Commission's Complaint in which he denied the Commission's substantive allegations and set forth 13 affirmative defenses (Doc. 56). On May 28, 2020, the Commission filed its Motion for Judgment of Permanent Injunction (Doc. 86) following the Receiver's execution of a Consent Judgment on behalf of the various Receivership Entities named in the Complaint, and the Court entered that Consent Judgment on November 5, 2020 (Doc. 156). The Commission and Defendant Williams mediated this case on August 28, 2020, which resulted in an impasse (Doc. 132). Both the Commission and Defendant Williams have filed pending dispositive motions seeking judgment in their favor. Docs. 200-202. On July 21, 2021, the Court granted the Commission's request to postpone the trial pending resolution of the pending case-dispositive motions. (Doc. 257).

**B. The Receiver's Role and Responsibilities**

As an independent agent of the Court, the Receiver's powers and responsibilities are set forth in the Order Appointing Receiver which provides, in relevant part, that the Receiver:

- “[S]hall have all powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers and general and limited

partners of the Receivership Defendants under applicable state and federal law...” and “shall assume and control the operation of the Receivership Defendants and shall pursue and preserve all of their claims.” Doc. 34 ¶¶ 4-5;

- Shall “take custody, control, and possession of all Receivership Property and records relevant thereto from the Receivership Defendants...” and “manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property pending further Order of this Court.” *Id.* ¶ 7(B);
- Is “authorized, empowered, and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and...to institute such actions and legal proceedings...as the Receiver deems necessary and appropriate...” *Id.* ¶ 37; and
- Is directed to “develop a plan for the fair, reasonable, and efficient recovery and liquidation of all remaining, recovered, and recoverable Receivership Property...and to “file and serve a full report and accounting of each Receivership Estate” for each calendar quarter. *Id.* ¶¶ 46, 48.

### **C. Receivership Defendants**

The Receiver incorporates by reference herein the descriptions of the various Receivership Defendants and Other Relevant Non-Parties set forth in the First Report. *See* Doc. 60 at pp. 12-16.

### **III. OVERVIEW OF RECEIVER’S PRELIMINARY FINDINGS**

The Receiver’s issuance of interim quarterly reports is intended to, among other things, present a detailed summary of various preliminary findings and ongoing investigation. Unless specifically indicated herein, those preliminary findings are incorporated herein and remain consistent with the Receiver’s

ongoing investigation. The Receiver reserves the right to revise, amend, and/or supplement these conclusions as the investigation progresses. The Receiver presents the following non-exclusive conclusions that he continues to supplement based on his preliminary review of the documents in his possession and with the assistance of his Retained Professionals.

**A. Discrepancies Between Kinetic Funds' Actual And Reported Performance And Assets**

**i. Performance Discrepancies**

Many investors were attracted to KFYield through promises of consistent investment returns made possible through lower risk, “principle [sic] protection,” and “maximum liquidity.” No later than early 2017, KFYield’s performance and other information were listed on Bloomberg, and those reports were provided to current and prospective investors showing that KFYield had achieved consistent positive returns. For example, the Q2 2019 Quarterly Report distributed to current investors included a Bloomberg report indicating that the fund had profitable monthly returns for 41 out of the 50 months during the period from April 2015 to June 2019 - including a streak of 21 consecutive months of positive monthly returns from October 2017 to June 2019.<sup>4</sup>

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<sup>4</sup> With the exception of a -3.33% monthly return in 2015, the fund’s performance for the remaining reported eight unprofitable months during that period ranged from -.02% to -.61%.



The following chart lists KFYield’s annual performance from 2013 to 2019 based on figures reported by Bloomberg and distributed to current and prospective investors:

<u>Year</u>	<u>Bloomberg Reported Performance For KFYield Fund</u>
2013	9.79%
2014	21.27%
2015	.21%
2016	2.24%
2017	1.04%
2018	7.09%
2019 (through June 28, 2019) <sup>5</sup>	2.45%

Beginning in June 2014, Kinetic Funds moved its brokerage accounts for KFYield and other sub-accounts to Interactive Brokers.<sup>6</sup> According to Interactive Brokers’ Portfolio Analyst tool, the KFYield trading account’s performance (and change in net asset value) from 2015 (the first full year at Interactive Brokers) to 2019 was:

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<sup>5</sup> The Receiver has not seen any information indicating that Kinetic Funds updated the Fund’s reported Bloomberg performance figures after September 2019.

<sup>6</sup> Prior to June 2014, trading accounts for KFYield and other sub-funds were held at Bank of America/Merrill Lynch by Kinetic Securities Trading (“KST”), a predecessor to Kinetic Funds.

<u>Year</u>	<u>Actual Interactive Brokers Performance For KFYield Fund</u>
2015	-8.8%
2016	-3.8%
2017	-27.5%
2018	12.8%
2019 (annual)	-1.2%

There are significant discrepancies between the figures reported on Bloomberg and calculated by Interactive Brokers.

For example, in the “Fourth Quarter 2017” quarterly report distributed by Kinetic Investment Group that included the fund’s reported performance data on Bloomberg for that period, Defendant Williams stated that “[l]ast year maintained a conservative approach of over-hedging against potential market volatility.” The Bloomberg report included with that Quarterly Report showed that, as of December 29, 2017, the fund had total assets of \$31.78 million and its year-to-date performance was 1.04%.

However, the 2017 annual statement produced by Interactive Brokers for KFYield’s trading account showed that the account declined in value by over 25% during that period:

Net Asset Value					
	December 31, 2016	December 31, 2017			Change
	Total	Long	Short	Total	
Cash	-11,437,677.94	0.00	-88,877,936.84	-88,877,936.84	-77,440,258.90
Stock	17,653,496.00	104,667,799.00	-219,768.00	104,438,041.00	86,784,646.00
Options	264,376.62	3,067,374.02	-13,927,674.86	-10,860,300.83	-11,124,677.36
Interest Accruals	-4,140.83	0.00	-99,942.86	-99,942.86	-95,802.03
Dividend Accruals	34,887.82	134,620.11	0.00	134,620.11	99,632.29
<b>Total</b>	<b>6,610,940.67</b>	<b>107,869,693.13</b>	<b>-103,126,312.66</b>	<b>4,734,380.58</b>	<b>-1,776,559.99</b>
<b>Time Weighted Rate of Return</b>					<b>-27.62%</b>

According to this statement, KFYield had a Net Asset Value (“NAV”) of \$6,510,940.57 as of December 31, 2016, and that NAV declined to \$4,734,380.58 as of December 31, 2017 - an annual change of -\$1,776,559.99 or -27.62% of the account’s NAV. As of December 31, 2017, the account holdings consisted of over \$104 million in stock positions, -\$10.8 million in net options positions, and a cash balance of nearly -\$89 million.<sup>7</sup>

Another portion of that statement entitled “Change in NAV” showed a breakdown of the annual change in the NAV during that period:

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<sup>7</sup> Unlike previous reports, which included the fund’s top 10 holdings as of the end of the relevant quarter, the 2017 Q4 report included the fund’s top holdings as of February 13, 2018 - approximately 45 days after the end of the relevant quarter and which were significantly different than the fund’s holdings as of December 29, 2017.

Change in NAV	Total
Starting Value	6,510,940.67
Mark-to-Market	-3,164,606.38
Position Transfers	16,684.00
Dividends	1,923,148.82
Withholding Tax	-2,036.76
Change in Dividend Accruals	99,632.29
Interest	-439,632.20
Change in Interest Accruals	-96,802.03
Other Fees	-253.30
Commissions	-120,842.30
Transaction Fees	-2,953.13
Ending Value	4,734,380.68

As the statement shows, the KFYield account generated nearly \$2 million in dividends during this period (which appeared to have largely been generated by using significant amounts of margin to purchase dividend-generating equities) but also incurred mark-to-market losses of over -\$3.1 million and paid over \$500,000 in commissions and margin interest charges.

Despite having open equity positions with a value of more than \$100 million as of December 29, 2017, the account statement shows that the vast majority of these holdings were purchased using margin and that the net account value was actually \$4.734 million as of December 29, 2017. In other words, the account's liquidation would have generated less than \$5 million in net proceeds. The fund's reported NAV of roughly \$4.7 million (and thus value of its investment holdings) as of December 31, 2017, differs by over \$25 million compared to the total assets represented in the Bloomberg report for the same time period. Similarly, the account's annual decline of over 27% during 2017 is significantly different than the

1.04% increase represented in the Bloomberg report for the same period. The Receiver has made requests to Defendant Williams' counsel for more information and clarification regarding the calculation of investment performance for KFYield but has, to date, not received any formal response.

**ii. Apparent Shortfall**

Based on the above-identified discrepancies, there appears to have been a shortfall between actual and reported fund assets since at least 2017. Using the late-2017 timeframe as an example, the December 2017 monthly statements distributed to KFYield investors show the total market value of the KFYield fund investments as nearly \$27 million.<sup>8</sup> This theoretically is the amount of funds that were being held and managed on behalf of KFYield investors, and accordingly is the amount that would need to be returned in the event that all investors elected to redeem their investments.

However, it appears that Kinetic Funds had approximately half of the amount represented to KFYield investors readily accessible and available for withdrawal as of December 31, 2017. As of December 31, 2017, Kinetic Funds' bank account at BMO Harris (which held investor deposits) had a balance of approximately \$9.8 million, and KFYield's sub-account at Interactive Brokers had

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<sup>8</sup> This figure also appears to differ from the Bloomberg report showing total KFYield assets of nearly \$32 million as of December 29, 2017.

a value of approximately \$4.73 million. Thus, Kinetic Funds had approximately \$14.5 million of available cash or securities assets to satisfy total KFYield investor obligations of approximately \$27 million (which does not include holdings or margin obligations in Kinetic Funds' other sub-accounts at Interactive Brokers<sup>9</sup>). Although the Receiver understands that Kinetic Funds had extended various Lendacy loans to investors and non-investors, the near-entirety of those loans specifically provided that the loans were unsecured and thus were not assets that could be immediately called or otherwise converted to cash to meet investor redemptions. Indeed, in the event that KFYield's largest investor alone sought to liquidate its \$18 million investment (which did not have a corresponding Lendacy loan), it is unclear how Kinetic Funds would have been able to satisfy that redemption - let alone maintain continuity of operations. The Receiver continues to investigate the origin, extent, and duration of this shortfall.

**B. Analyzing The Use Of Investor Deposits**

From January 15, 2013 to March 4, 2020 (the "Relevant Period"), approximately \$44.1 million was deposited into Kinetic Funds' BMO Harris bank account with account number ending in x4255 (the "KF Bank Account"). The

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<sup>9</sup> For example, Kinetic Funds' master account had a negative margin balance of -\$7.3 million as of December 31, 2017 for which Kinetic Funds was legally responsible.

analysis by the Receiver and his Retained Professionals shows the following flow of funds and transaction activity in the BMO Account holding investor deposits:

- Approximately **\$11 million** was transferred during the Relevant Period from the KF Bank Account to Kinetic Funds' Interactive Brokers brokerage account in the master account with account number ending in x8796 (the "Brokerage Account"). This included a \$5 million transfer on December 29, 2016 which was used to reduce the then-outstanding -\$12.23 million margin balance to -\$7.24 million as of December 31, 2016, and thus never deposited into the KFYield sub-account. Another \$5 million was transferred to the Brokerage Account on June 29, 2018, of which \$4.995 million was transferred to the KFYield sub-account that same day.
- Nearly **\$13 million** of investor deposits was transferred from the KF Bank Account to Lendacy's BMO Harris bank accounts ending in x8676 and x1081 (the "Lendacy BMO Accounts") during the Relevant Period, which was in turn used for various purposes including:
  - Making at least 34 loans totaling **\$6.1 million** to various investors, insiders, and third-parties (excluding Michael Williams);
  - Transferring an additional **\$4.3 million** at the direction, and for the benefit, of Defendant Williams for two separate purchases of real estate in Puerto Rico;
  - Transferring nearly **\$1 million** to Kinetic Investment Group's BMO Harris bank account;
  - Transferring **\$586,550** to El Morro Financial;
  - Transferring **\$550,000** to LF42; and
  - Transferring nearly **\$500,000** for a private investment in an aerospace company in the name of Kinetic International.
- At least **\$6.1 million** of investor deposits was transferred from the KF Bank Account to current and former investors in the form of redemptions and distributions.
- Nearly **\$3.9 million** was transferred from the KF Bank Account to Kinetic Investment Group's BMO Harris bank account during the Relevant

Period.<sup>10</sup> Kinetic Investment Group's bank account also received transfers of nearly \$1 million from Lendacy.

- Over **\$4 million** was transferred by the Receivership Entities to various third parties for professional services or payments, including:
  - Over \$1.53 million to ADP, a payroll processing company;
  - Nearly \$1 million to American Express for credit card payments;
  - Nearly \$700,000 for rental payments for the Sarasota KIG office and the Puerto Rico office used by El Morro and other entities;
  - Roughly \$230,000 for health insurance;
  - Approximately \$122,000 to Bloomberg LP; and
  - Nearly \$500,000 to legal and accounting firms.
- Over **\$1 million** was transferred in connection with Receivership Entity KIH, Inc. f/k/a Kinetic International, LLC's efforts to develop a software exchange platform known as ISX, including:
  - The transfer of **\$550,000** from the KF Bank Account to two Puerto Rico bank accounts established for Kinetic International, LLC;
  - The transfer of over **\$500,000** to fund a "launch event" in March 2019 and to pay outside contractors and developers.

On March 5, 2020, one day before the Court's hearing on the Commission's motions seeking an asset freeze and appointment of a receiver, Defendant Williams deposited approximately \$2.9 million with the Receivership Entities which included a \$2.35 million deposit into the KF Bank Account. Prior to that

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<sup>10</sup> Kinetic Investment Group also received nearly \$1 million in transfers from the Lendacy Accounts, which received the near-entirety of their funding from the KF Bank Account (\$12.9 million) and payments from loan recipients (\$2.7 million).



deposit the day before the Court's hearing, the KF Bank Account had a balance of less than \$5.2 million. Following appointment of the Receiver on March 6, 2020, a total of approximately \$7.6 million was frozen in the Receivership Entities' bank accounts at BMO Harris.

**C. Kinetic Funds Management Fees**

The Receiver's investigation shows Kinetic Funds and Lendacy made total transfers of nearly \$5 million to Kinetic Investment Group over the relevant period - including nearly \$3.9 million alone from Kinetic Funds. Although the agreements between Kinetic Funds and its investors specified that Kinetic Funds would pay Kinetic Investment Group a management fee of 1% of assets under management as well as 20% of any profits realized from trading of investor assets, the total transfers of nearly \$5 million appear to be significantly larger than what the 1% "expense ratio" for assets under management would have been even using the numbers reported to investors at the end of each calendar year.<sup>11</sup> Based on the Receiver's investigation, it appears that at least a portion of these transfers were used by Kinetic Investment Group for other unauthorized expenses that did not benefit investors. For example, Kinetic Investment Group made nearly \$1 million in transfers to El Morro Financial during the period of March 2017 to December

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<sup>11</sup> This also assumes that Kinetic Investment Group was entitled to receive this "expense ratio" fee even if a majority of investor funds were never deposited into brokerage accounts as represented.

2019. *See* First Report pp. 47-53.<sup>12</sup> The Receiver continues to investigate these discrepancies.

**D. Lendacy's Funding Source Was Kinetic Funds**

Lendacy received approximately \$17 million into its bank accounts from February 2013 to March 2020, including nearly \$13 million in transfers of investor funds from Kinetic Funds' bank account. Lendacy used these transfers to fund at least 34 loans to various individuals and entities during that time period. These loans often featured significantly below-market rates, were not typically collateralized, and contained little recourse in the event of default. Of those loans, roughly a third were made to insiders and non-KFYield investors that were necessarily funded using investor assets.

For example, a Lendacy loan was made to non-investor M.J. on or about May 4, 2016. It is believed that M.J. is Defendant Williams' niece, and the purpose of the loan appears to have been to fund a summer college program. The loan has been in default since M.J. last made a payment in June 2019. At least four employees also received Lendacy loans for various reasons including a "sales

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<sup>12</sup> The vast majority of these transfers appear to have been made pursuant to monthly invoices ranging from \$25,000 to \$50,000 generated by El Morro for purported services relating to "Statement Reporting" and other various expenses apparently for Kinetic Funds investors. El Morro also funded a lavish Kinetic Financial Summit in San Juan, Puerto Rico in early 2019 that had no discernible benefit to Kinetic Funds investors.

draw” and also to fund employee K.P.’s purchase of Defendant Williams’ car. Each of those loans were in default no later than February 2019. Another Lendacy loan was made to Puerto Rico resident A.C. for what appears to be repairs to a business located in Puerto Rico. None of those Lendacy loan recipients were Kinetic Funds investors, meaning that their “loans” were necessarily funded with investor deposits.

A document located in Kinetic Funds’ files and prepared by the former office administrator shows that a number of the investor loans were also in default as of December 2019 – including some loan recipients that had not made payments in months or even years. For example, Lendacy loans totaling approximately **\$2.5 million** to investors L.W., M.S., and C.G. appear to have been in default **since at least 2015**.

**E. Significant Losses From Association With VTrader Pro, LLC**

At the March 6, 2020 hearing, Defendant Williams’ counsel disclosed that part of the Kinetic Funds asset shortfall identified by the Court was attributable to losses suffered in connection with Kinetic Funds’ previous relationship with a failed broker-dealer named VTrader Pro, LLC (“VTrader”). The Receiver has seen evidence that Kinetic Funds’ predecessor, KST, was a Class B, “Entrepreneurial Member Trader” of VTrader before VTrader’s registration was

terminated in January 2013.<sup>13</sup> As an “Entrepreneurial Member Trader,” KST shared in the profits and losses of VTrader and received distributions based on the percentage of profits in its individual trading accounts. There were number of other Member Traders in VTrader that were unrelated to KST or Defendant Williams. KST and every other Member Traders’ trading accounts were assets of VTrader and essentially comingled. This meant that KST’s trading account was subject to VTrader’s obligations and third party claims and exposed to the losses and shortfalls incurred by other Member Traders.

At some point in 2011, VTrader suffered heavy losses and needed a capital infusion to remain viable. To this end, Defendant Williams agreed to exchange \$1 million from the KST Class B investment in VTrader and convert it to Class A stock. VTrader subsequently collapsed, resulting in the loss of KST’s \$1 million investment. It appears those losses were satisfied by (and correspondingly depleted) investor assets.<sup>14</sup> A K-1 was also generated showing a \$1 million loss for Kinetic Partners, LLC.

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<sup>13</sup> See <https://brokercheck.finra.org/firm/summary/131920>.

<sup>14</sup> In January 2012, VTrader informed Williams that most of the \$1 million that KST had converted to Class A stock had been used to pay down debt balances owed by Class B members and was gone. With respect to the \$1 million Williams converted into a Class A investment, it appears that KST received only \$5,000 in the liquidation. Thus, in addition to any trading losses KST incurred on its subaccounts, it also seemingly lost nearly \$1,000,000 as a result of its Class A investment in VTrader.

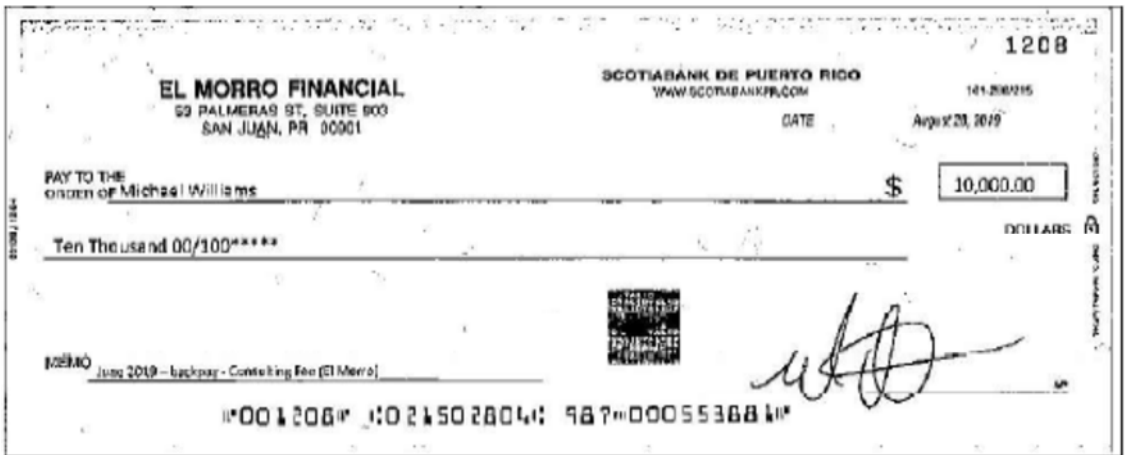
Between mid-2012 through the end of 2012, it appears KST moved its accounts out of VTrader and over to Bank of America/Merrill Lynch. The Receiver's investigation into these events has been hampered by the passage of nearly ten years from these events and the unavailability of sufficient documentation, but it appears that investor funds were adversely affected.

**F. Williams' Use Of Investor Funds For His Own Benefit**

The Receiver's review of the financial transactions among the various Receivership Entities has allowed him to trace millions of dollars in investor funds that were transferred to or for the benefit of Defendant Williams and without any discernible authorized purpose or benefit to Kinetic Funds. As further detailed in the First Report, these transfers include:

- The use of \$1.5 million in investor funds, later classified as a Lendacy loan, to purchase two luxury apartments in Puerto Rico and corresponding parking spaces. In addition to using one of the apartments as his primary residence, Defendant Williams also rented out one of the units to a tenant for which he received monthly rental income not turned over to Kinetic Funds (Doc. 60 pp. 43-44);
- The use of \$2.755 million in investor funds, later classified as a Lendacy loan, to purchase a historic commercial bank building in San Juan, Puerto Rico on behalf of Receivership Entity Scipio, LLC (Doc. 60 pp. 45-46);
- The use of \$2 million in investor funds, later classified as a Lendacy loan on behalf of Receivership Entity LF42, for various expenses relating to several Receivership Entities located and operating in San Juan, Puerto Rico, including the funding of the "Kinetic Summit" in February 2019 (Doc. 60 p. 47);
- The payment of nearly \$1 million in investor funds to Receivership Entity El Morro Financial purportedly for statement preparation and other

services and the payment of more than \$50,000 in salary to Defendant Williams from mid-2017 to mid-2019. Several \$10,000 checks were also written payable to (and signed by) Defendant Williams in late 2019 that contained the notation “Consulting Fee” in the memo portion:



(See First Report pp. 47-53);

- The structuring of at least one “Consulting Agreement” between Kinetic Investment Group and LF42, Defendant Williams’ entity, including an agreement in September 2019 - after Defendant Williams was on notice of the Commission’s investigation - signed by Defendant Williams on behalf of KIG and LF42 and pursuant to which Kinetic Investment Group transferred \$10,000 per month to LF42 from September 2019 to February 2020 for Defendant Williams’ benefit (See First Report p. 47);

- The sale of Defendant Williams' car to an employee in the Sarasota, Florida Kinetic Funds office for which the employee signed a Lendacy loan for \$18,000 and the same sum was wired to Defendant Williams (*See* First Report p. 47); and
- Arranging for who the Receiver understands to be Defendant Williams' girlfriend to be on the payroll of Kinetic Investment Group despite the lack of any justifiable business purpose or services for value (*See* First Report pp. 47).

**G. Continued Investor Outreach and Administration Of Website**

Throughout the relevant period, the Receiver continued to communicate with investors and other interested parties regarding the status of his efforts and any particular questions or issues brought to the Receiver's attention. The Receiver also continued to administer his informational website located at [www.kineticreceivership.com](http://www.kineticreceivership.com) which is regularly updated with court filings and reports and also allows interested parties to contact the Receiver.

**IV. THE NEXT QUARTER**

**A. Investigation**

The Receiver believes he has identified and, if applicable, frozen or secured all known assets attributable to investor funds, and he continues to investigate the Receivership Defendants' business operations and underlying financial transactions between those operations.<sup>15</sup> These investigative efforts remain

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<sup>15</sup> A further description of these assets and the Receiver's intended liquidation plan is set forth in the Receiver's Liquidation Plan (Doc. 92) available on the Receiver's website and incorporated herein.

ongoing through the review of additional documents from (and, where necessary, interviews with) third parties. The Receiver continues to work diligently and efficiently on this task, which includes a substantial amount of documentation and financial records. The Receiver will continue to attempt to locate additional funds and other assets and will likely institute proceedings to recover assets on behalf of the Receivership Defendants. In an effort to more fully understand the conduct at issue and in an attempt to locate more assets, the Receiver will continue to conduct interviews of parties and third parties who may have knowledge of the fraudulent scheme. The Receiver believes that continuation of the Receivership (and employment of the Retained Professionals) is necessary and imperative for the continued marshaling, liquidation, and distribution of assets.

**B. Claims Process and Second Interim Distribution to Investors**

The Receiver has prioritized the process of returning investor funds as soon as possible, which resulted in a First Interim Distribution being made in November 2021 to Investor Claimants with approved claims. The First Interim Distribution represented the return of 40% of each Investor Claimant's approved claim. On September 15, 2022, Receiver filed his Unopposed Motion to Approve Second Interim Distribution, in which the Receiver sought an Order approving a distribution of \$3,500,000.02 to Claimants. This distribution amount represents a recovery of \$10.6% of the Total Allowed Amounts of Investor Claims. At present, the Receiver awaits Court Approval to move forward with the requested



distribution amount. Once the Receiver receives an Order from the Court, the Receiver will promptly remit checks to Claimants as designated in Exhibit A of the Motion.

**C. Liquidation and Sale of Real Property**

The Receiver continues to prioritize the marketing and sale of the Receivership's real property assets. Following his successful liquidation of the Bank Building for net proceeds of **\$4.0 million**, the Receiver worked with his professionals to transfer title of Villa Gabriela from Defendant Williams to the Receiver and is taking all steps to effectuate the current contracted sale for **\$2.1 million**. Once the Receiver received Court approval for the sale on October 24, 2022, Receiver immediately took efforts to initiate the publication and overbid procedures. On October 31, 2022, the publications regarding the sale and overbid procedures will run in the *Sarasota Herald Tribune* and Puerto Rico's *El Nuevo Dia*. In the Executive Summary of this Report, the Receiver has outlined certain efforts expended by him and his staff counsel regarding the buyer's potential termination of the Purchase and Sale Agreement. Receiver will work diligently to communicate with buyer's counsel to find an amicable resolution to this issue.

The Receiver previously disposed of all of the remaining personal property secured from Kinetic Funds' office in Sarasota, Florida, which has included donations to three local non-profits. As for the ISX software, the Receiver was

previously provided with a “Summary & Valuation of ISX Codebase” prepared by Marshall Swatt which, among other things, concluded that the “codebase is largely a preliminary design, for proof of concept or demonstration purposes, rather than suitable for actual use” and estimated that the software has a current market value of approximately \$45,000. The Receiver continues to explore available options to realize any value from the ISX asset and the Zephyr investment.

**D. Potential Third-Party Claims**

The Court granted the Receiver’s Unopposed Motion to Approve Procedure to Pursue Potential Third-Party Claims on February 25, 2021. The Receiver is proceeding with pursuing some of those potential claims a stated earlier in this Report. Moving forward, the Receiver will continue to evaluate the viability of other third-party claims to add assets to the Receivership Estates.

Respectfully submitted,  
**BUCHANAN INGERSOLL & ROONEY PC**

By:



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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 28th day of October, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

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