

**HUMUNITED 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,
SCIPIO, 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 SEVENTEENTH INTERIM REPORT

(Reporting Period: January 1, 2024 to March 31, 2024)

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 ("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 Seventeenth Interim Report (the "Seventeenth Report") covering information and activity

occurring from January 1, 2024 to March 31, 2024. 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, 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 Seventeenth Report (January 1, 2024 to March 31, 2024), 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.

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I. EXECUTIVE SUMMARY OF REPORTING PERIOD

A. Significant Activities Occurring During this Reporting Period

1. **Finalized Third Interim Distribution to Claimant Investors with all Checks Being Negotiated by Claimant Investors**

During the 2023 First Reporting Quarter, the Receiver received Court approval for a Second Interim Distribution, in which the Receiver sought an Order approving a distribution of \$3,500,000.02 to the Investor Claimants. (Doc. 304). This distribution represented a recovery of 10.6% of the Total Allowed Amounts of Investor Claims all of which was paid to investor claimants in the 2023 First Reporting Quarter.

On August 4, 2023, the undersigned moved for Court approval to make a Third Interim Distribution of approximately \$1.4M to investors.¹ (Doc. 313). On December 22, 2023, the Court granted the Receiver's unopposed Motion for Third Interim Distribution. During this Reporting Period, the Receiver and his team promptly issued checks to the investor claimants for the Third Interim Distribution and addressed any check and/or investor issues with the distribution. As of March 18, 2024, every Investor Claimant had cashed his or her check for the Third Interim Distribution. To date, the Receiver has returned a total amount of **\$18,116,050.90** to Claimant Investors in this Receivership.

¹ Due to rounding on individual claimant investor distribution amounts, the total Third Interim Distribution totaled \$1,399,999.97.

2. Attention to Tax Associated with Sales of Real Property from the Receivership Estate

Due to the Receiver's efforts and those of the professionals supporting him during prior Reporting Periods, the sale of real property in the Receivership Estate occurred as planned—bringing in substantial funds in excess of seven figures to the Receivership Estate. Substantial work was expended during the Reporting Period to assist the Receiver's professionals in finalizing a myriad of complicated Post-Closing legal, financial, and tax issues, including (but not limited to also) communicating regularly with the Purchaser on all aspects of "Villa Gabriela," representing the following real property:

- Condominium Villa Gabriela, Apartment PH1-A/PH 1-B located at 109 De la Cruz Street, San Juan, Puerto Rico 00901;
- Condominium Villa Gabriella, Apartment 2-E located at 109 De la Cruz Street, San Juan, Puerto Rico 00901;
- Parking Space #321 located at Cochera San Francisco, Luna Street #204, San Juan, Puerto Rico 00901; and
- Parking Space #325 located at Cochera San Francisco, Luna Street #204, San Juan, Puerto Rico 00901.

Virtually all of the Receivership assets have been monetized as of the date of this application. Accordingly, the Receiver and his professionals expended time and necessary resources to fully analyze the state of the Receivership's tax and

related obligations in connection to the funds brought into the Receivership Estate from the sale of real property. This analysis included coordinating with a number of tax professionals and consultants to ensure that any capital gains of the Receivership were recognized and reported for both Puerto Rico and U.S. IRS tax returns.

As part of his appointment, the Receiver was charged with monetizing any and all real property, including such property located outside the continental U.S. The location of this real property in San Juan, Puerto Rico yielded some tax challenges requiring attention by the Receiver. Specifically, some of the real property at issue was held by Receivership Relief Defendant Scipio, LLC. Prior to the appointment of the Receiver, Scipio, LLC, had apparently not filed taxes for 2019 but still held title to this real property that was later sold by the Receivership. The Receiver therefore was required to address tax issues related to the sale of this property and this unique entity. To necessarily address and resolve these matters, the Receiver worked with local counsel and CPAs in Puerto Rico, who were experts with the tax code and compliance requirements of Puerto Rico law, as to the realization and approach to capital gains for the sale of real property.

The Receiver worked diligently with his professionals, both in Florida and Puerto Rico, to ensure among other things that all tax matters are addressed prior to the wind-down of the Receivership, which the Receiver reasonably anticipates

will occur in the calendar year 2024. At present, the Receiver continues to work with his tax professionals to ensure that all tax obligations are met both in the U.S. and in Puerto Rico.

3. Assessed Tax Considerations Regarding Zephyr Aerospace Investment

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”). The investment into Zephyr was beyond the disclosed and stated scope of the use of investors proceeds, (e.g. that there was no “dividend strategy” associated with this investment). The stated business purpose of Zephyr at the time was to “revolutionize” the way individuals select airline seats on commercial airlines. This \$500,000.00 investment was clearly and directly traceable to investor funds. Understanding that the Zephyr investment is now a loss, the Receiver has worked with his tax professionals to analyze how the investment can be treated for tax purposes. The Receiver will continue to take any measures as are required associated with lost value of the investment.

4. Continued Work to Bring in Funds to the Receivership Estate

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. In May 2021, the Receiver and his professionals sent demand letters

to various individuals seeking the return of funds the Receiver believes are rightfully owing to the Receivership Entities. For several of those claims, the Receiver reached an agreement to recover the full amount sought. During the Reporting Period, Receiver consolidated funds held in Interactive Broker Accounts for the benefit of Kinetic, totaling \$27,183.54 to the Receivership Assets.

5. Preparation of Sixteenth Interim Report

The Receiver prepared and filed his Sixteenth Interim Report on January 26, 2024 (Doc. 322), 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 for investors and other interested parties.

7. Continued Investigation and Review of Relevant Documentation and Information regarding the Receivership Entities

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.

8. Attended to Litigation Matters.

The Receiver continues to monitor the Court's docket given that the Commission's claims against Mr. Williams remain pending.

9. Managed Receiver's Cash Accounts Held at ServisFirst Bank.

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 March 31, 2024 as **Exhibit 1**.² As of the date of this Report, the Receiver has (i) secured, frozen, marshaled, and liquidated assets for the benefit of victims that resulted in the deposit of **approximately \$20 million**³ in the Receiver's fiduciary bank accounts during the Receiver's appointment; (ii) secured significant real property assets and completed the process of marketing and liquidating those assets which resulted in excess of \$5 million in additional proceeds deposited with the Receivership Estate; (iii) made an initial distribution of **\$13.2 million** to Investor Claimants with approved claims; and (iv) made a

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

³ This amount includes approximately \$174,464.59 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.

second distribution of **\$3.5 million** to Investor Claimants with approved claims.

The over **\$20 million** recovered for the benefit of claimants is the result of the following (including without limitation):

- 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
- January 13, 2023: Received a net recovery—after payment of commissions and other standard closing costs—of **\$1,606,053.00** for the sale of the Villa Gabriela property and associated parking spaces. (Docs. 301 and 303).

As of the date of this filing, the Receiver's accounts currently have **\$2,704.018.19**

All checks for the Third Interim Distribution have been negotiated and cashed by investor claimants.

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 INITIAL 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

1. 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 2019.⁴

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) ⁵	2.45%

Beginning in June 2014, Kinetic Funds moved its brokerage accounts for KFYield

⁴ 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%.

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

and other sub-accounts to Interactive Brokers.⁶ 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:

<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%.

⁶ 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.

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	17,663,496.00	104,667,799.00	-219,768.00	104,438,041.00	86,784,546.00
Options	264,376.52	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
Total	6,610,940.57	107,869,693.13	-103,126,312.66	4,734,380.68	-1,776,669.99
Time Weighted Rate of Return					-27.62%

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.⁷

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

⁷ 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	-3,164,506.38
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	-95,802.03
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.

2. 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.⁸ 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

⁸ 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 Brokers⁹). 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

⁹ 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.¹⁰ 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

¹⁰ 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.¹¹ 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

¹¹ 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.

in transfers to El Morro Financial during the period of March 2017 to December 2019. *See* First Report pp. 47-53.¹² 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

¹² 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.

four employees also received Lendacy loans for various reasons including a “sales 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 2013.¹³ 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.¹⁴ A K-1 was also generated showing a \$1 million loss for Kinetic Partners, LLC.

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

¹⁴ 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.

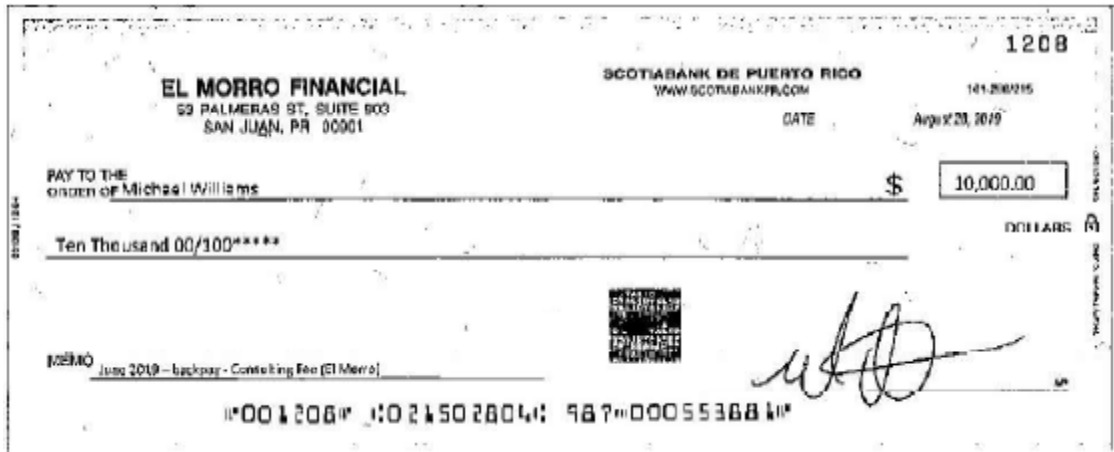
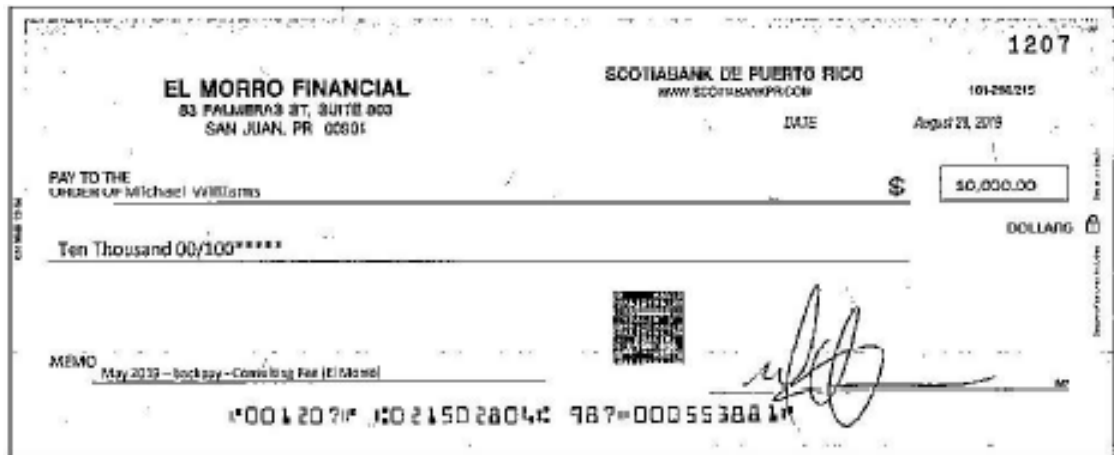
Between mid-2012 through the end of 2012, it appears KST moved its accounts out of VTrader and over to Bank of America/Merrill Lynch. The Receiver's investigation into these events has been hampered by the passage of nearly ten years from these events and the unavailability of sufficient documentation, 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 which is regularly updated with court filings and reports and also allows interested parties to contact the Receiver.

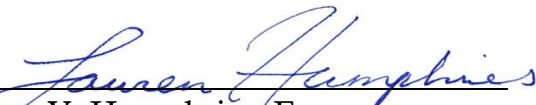
H. The Next Quarter

The Receiver understands that motion practice between the Securities and Exchange Commission and Defendants is still currently under review and pending before this Court. At present, the Receiver and his team are preparing, in all fashion, to position the Receivership to divest the Receivership Assets to the Claimant Investors in a final distribution. The Receiver and his team continue to work with their professionals on tax issues for Puerto Rican Receivership Entities and US Entities in addition to handling any final corporate issues that need to be address prior to the final distribution of funds.

IV. CONCLUSION

The Receiver's foregoing efforts have positioned the Receivership for a 2024 wind-down and the Receiver continues to work diligently toward that end.

Respectfully submitted,
BUCHANAN INGERSOLL & ROONEY PC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of April, 2024, 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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