

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ELISEO ACOSTA,

Defendant.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Securities and Exchange Commission (the “Commission”) alleges:

I. INTRODUCTION

1. From approximately October 2015 to July 2018, Defendant Eliseo Acosta (“Acosta”) acted as an unregistered broker on behalf of Kinetic Funds I, LLC (“Kinetic Funds”) managed by Kinetic Investment Group, LLC (“Kinetic Group”). Acosta raised \$22 million for Kinetic Group from the offer and sale of Kinetic Funds securities to two investors located in Puerto Rico. From these sales, Acosta received \$105,300 in transaction-based sales commissions.

2. During the time Acosta offered and sold Kinetic Funds securities to investors, he was not registered as a broker-dealer or associated with a registered broker-dealer.

3. By engaging in this conduct, Acosta violated Section 15(a)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78o(a)(1)]. The Commission seeks an injunction against Acosta from future violations of Section 15(a)(1) of the Exchange Act, as well as disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil money penalty.

II. DEFENDANT

4. Eliseo Acosta, 60, is a resident of San Juan, Puerto Rico. Acosta has never been registered as a broker-dealer or associated with any registered broker-dealer.

III. JURISDICTION

5. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa(a)].

6. This Court has personal jurisdiction over Acosta, and venue is proper in the District of Puerto Rico, because Acosta resides in this District and transacted business in this District relating to the sale of Kinetic Funds.

7. In connection with the conduct alleged in this Complaint, Acosta, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, or of the mails.

IV. FACTUAL ALLEGATIONS

A. Kinetic Group's Fraudulent Offering

8. From at least 2013 through February 20, 2020 (when the Commission filed an emergency action against Kinetic Group and others), Kinetic Group and its managing member, Michael Scott Williams ("Williams") raised approximately \$39 million from at least 30 investors located primarily in Florida and Puerto Rico. Kinetic Group and Williams represented to investors that Kinetic Funds, and in particular, its largest sub-fund, Kinetic Funds Yield ("KFYIELD"), was conservative and safe, their entire capital would be invested in income producing U.S. listed financial products, and their principal would be secure because the KFYIELD portfolio would be

hedged with listed options. Kinetic Group and Williams also touted KFYIELD as a liquid investment.

9. In reality, Kinetic Group and Williams diverted a substantial portion of KFYIELD investor capital to KCL Services, LLC d/b/a Lendacy (“Lendacy”), a private, start-up company owned by Williams. Lendacy was neither listed on a U.S. exchange nor capable of being hedged with listed options. Lendacy did not have an independent source of capital to run its business and Kinetic Group and Williams funded it using KFYIELD assets. Williams then directed Lendacy to make purported loans using KFYIELD assets to himself, entities controlled by him, and others.

10. Since at least 2015, Williams misappropriated at least \$6.3 million of Kinetic Funds’ assets through these loans to fund other business ventures and to pay for personal expenses.

B. Kinetic Group’s and Williams’ Offer and Sale of Securities and Misrepresentations to Investors

11. Since at least 2013 through February 2020, Kinetic Group and Williams offered and sold investors membership interests in Kinetic Funds, which employed four investment strategies through sub-funds characterized as income, gold, growth, or inflation. The income strategy, KFYIELD, accounted for approximately 98% of Kinetic Funds’ assets as of January 2019.

12. During the time Kinetic Group and Williams offered and sold membership interests in Kinetic Funds, they typically provided investors and potential investors with: (a) a copy of the Kinetic Funds Subscription Agreement (“Subscription Agreement”), (b) either Exhibit “B-1” or “C-1” to the Kinetic Funds Operating Agreement (“Operating Agreement”), which investors used to designate the strategy they wanted to invest in, (c) the Kinetic Funds Offering Questionnaire, and (d) Kinetic Funds marketing brochures. In some instances, Kinetic Group and Williams gave investors and potential investors a copy of the Operating Agreement.

13. Kinetic Funds investors signed the Subscription Agreement and either Exhibit B-1 or C-1 to the Operating Agreement, which constituted the note or contract between Kinetic Group and the investors.

14. The membership interests in Kinetic Funds sold to investors are investment contracts, and therefore securities, within the meaning of Section 3(a)(10) of the Exchange Act.

15. Kinetic Group and Williams solicited investors for Kinetic Funds in several ways. Kinetic Group and Williams initially offered Kinetic Funds to Williams' friends, partners, and associates. Over time, Kinetic Group and Williams developed marketing brochures, websites, and used unregistered sales agents, including Acosta, to solicit additional investors.

16. In 2015, Kinetic Group and Williams expanded the marketing materials to include, among other things, a description of KFYIELD and its performance information, assets under management and holdings available on Bloomberg, a computer system that allows viewers to access real-time financial data on companies. Kinetic Group and Williams took this step in order to make KFYIELD appear transparent and give it a measure of credibility.

17. In 2015, Kinetic Group and Williams also began to market Kinetic Funds with Williams' other entity Lendacy, sometimes describing Lendacy as a "real estate lending structure" designed to meet credit demands of accredited investors. Kinetic Group and Williams told investors orally and through their marketing materials that if they invested in KFYIELD, they were eligible to receive a Lendacy credit line of up to 70% of their investment in KFYIELD at a low interest rate. They also promoted customized case studies to potential investors offering investment and lending solutions, including access to capital through the credit line while providing security and income through the KFYIELD investment.

18. In addition to the misrepresentations and omissions about the safety, security, and liquidity of investing in Kinetic Funds, Kinetic Group and Williams made numerous other misrepresentations and omissions to investors and potential investors concerning, among other things, the use of investor funds and the value of investor accounts. Specifically, with respect to the Lendacy credit line product, Kinetic Group and Williams led investors and prospective investors to believe Lendacy had a separate funding source that would finance the loan from Lendacy to the investor, and that their entire capital would be invested in KFYIELD.

19. Furthermore, Kinetic Group and Williams provided false account statements to investors regarding their holdings in Kinetic Funds. Kinetic Funds' known assets were less than the aggregate amount reflected on investor account statements.

C. Acosta Offered and Sold Kinetic Funds Securities and Acted as an Unregistered Broker

20. Sometime in late 2015, Acosta was introduced to Kinetic Group and Williams, and Acosta agreed to solicit investors in Puerto Rico to invest in Kinetic Funds.

21. From approximately October 2015 to July 2018, Acosta solicited at least sixteen potential investors – all Puerto Rico government entities – to invest in Kinetic Funds securities via various means, including emails, telephone calls, and in-person meetings. Two of the government entities agreed, investing a combined \$22 million in KFYIELD, thereby becoming its two largest investors.

22. Pursuant to a “referral agent agreement” entered into by Acosta and Kinetic Group, Kinetic Group paid Acosta 33% of Kinetic Group's 1% management fee for the first year of the investment in Kinetic Funds securities and 25% of the 1% management fee so long as the investor maintained the investment in Kinetic Funds securities.

23. Kinetic Group provided Acosta with marketing materials that, among other things, described KFYIELD as a liquid, “conservative blended fund,” with 90% principal protection, and stated that “[a]ll [its] products are listed on the U.S. exchanges.” Acosta used these marketing materials to offer and sell Kinetic Funds securities and forwarded them to potential investors, containing these representations. Acosta also relayed to these potential investors the advantages of investing in KFYIELD, including that it was a safe, conservative fund, listed on Bloomberg, and that Kinetic Group was registered to do business in Puerto Rico.

24. Furthermore, Acosta gathered and provided Kinetic Group and Williams background information on the Puerto Rico government entities, including their respective financial, investing and lending needs, for Kinetic Group and Williams to incorporate into the customized case studies offering investing and lending solutions to them. In most instances, Acosta forwarded the customized case studies to potential investors, which aside from including specific investing and lending recommendations, reiterated that KFYIELD was a conservative, blended fund, offering 90% principal protection, income generation, and quarterly liquidation.

25. Acosta received \$105,300 in commissions from his sales of Kinetic Funds securities.

V. CLAIMS FOR RELIEF

COUNT I

Violations of Section 15(a)(1) of the Exchange Act

26. The Commission repeats and re-alleges Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. From approximately October 2015 and continuing through approximately July 2018, Acosta, directly or indirectly, by the use of the mails or any means or instrumentality of

interstate commerce effected transactions in, or induced or attempted to induce the purchase or sale of securities, while he was not registered with the Commission as a broker or dealer or not associated with an entity registered with the Commission as a broker-dealer.

28. By reason of the foregoing, Acosta violated, and unless enjoined, is reasonably likely to continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court find Acosta committed the violations alleged, and:

A.

Permanent Injunctive Relief

Issue a Permanent Injunction enjoining Acosta from violating Section 15(a)(1) of the Exchange Act.

B.

Disgorgement and Prejudgment Interest

Issue an Order directing Acosta to disgorge all ill-gotten gains or proceeds received including prejudgment interest thereon as a result of the acts and/or courses of conduct alleged in this Complaint.

C.

Civil Money Penalty

Issue an Order directing Acosta to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

D.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

E.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: September 13, 2021

Respectfully submitted,

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