

**STATE OF NEBRASKA**  
**Department of Banking & Finance**

In the Matter of Kinetics Mutual Funds, Inc.	)	FINDINGS OF FACT
The Small Cap Opportunities Fund	)	CONCLUSIONS OF LAW
No Load Class	)	AND
1311 Mamaroneck Avenue, Suite 130	)	CONSENT ORDER
White Plains, NY 10605	)	

THIS MATTER comes before the Nebraska Department of Banking and Finance ("DEPARTMENT") pursuant to the Securities Act of Nebraska, Neb. Rev. Stat. § 8-1101 to 8-1124 (Reissue 1997; Cum. Supp. 2002) ("Act"). Pursuant to Neb. Rev. Stat. § 8-1115 (Reissue 1997), the DEPARTMENT by and through its Director ("Director"), has investigated the acts, practices, and transactions engaged in by Kinetics Mutual Funds, Inc., The Small Cap Opportunities Fund No Load Class ("SMALL CAP"). As a result of the investigation, and being duly advised and informed in the matter, the Director and SMALL CAP enter into the following Findings of Fact, Conclusions of Law, and Consent Order ("Order").

**FINDINGS OF FACT**

1. SMALL CAP is registered with the United States Securities and Exchange Commission ("SEC") as an open-end, non-diversified investment company under the Investment Company Act of 1940. SMALL CAP shares have been registered under the Securities Act of 1933.
2. On March 13, 2000, SMALL CAP made a notice filing in Nebraska under the Act claiming status as a federal covered security. The filing expired on March 13, 2001, and was not renewed.

3. On or about May 23, 2002, SMALL CAP filed documents purporting to renew the notice filing. A search of DEPARTMENT records found the expiration of the notice filing as set forth in Finding of Fact 2.

4. According to SMALL CAP'S records, Nebraska residents purchased \$515,709.45 worth of SMALL CAP'S shares between March 13, 2001, and March 12, 2002. SMALL CAP notified the DEPARTMENT of the sales by letter dated May 23, 2002.

### CONCLUSIONS OF LAW

1. The SMALL CAP shares are securities within the meaning of Neb. Rev. Stat. § 8-1101(15) (Cum. Supp. 2002).

2. Neb. Rev. Stat. § 8-1104 (Reissue 1997) provides it shall be unlawful for any person to offer or sell any securities in this state unless such securities are either registered, exempt from registration or qualified as federal covered securities pursuant to the Act. 48 NAC 20.002.02 provides that a notice filing shall be effective for a period of one year from the date the notice is received by the Director. 48 NAC 20.002.03 provides that a notice filing may be renewed by filing the required information prior to the expiration of the effectiveness of the previous notice filing, together with a report of sales made in Nebraska during the effective period.

3. The facts set forth in Findings of Fact Nos. 2 through 4 constitute the sale of securities in Nebraska in violation of Neb. Rev. Stat. § 8-1104 (Reissue 1997).

4. Neb. Rev. Stat. § 8-1108.01(4) (Supp. 2001) authorizes the Director, after giving reasonable notice and an opportunity for a hearing, to impose a fine not exceeding twenty-five thousand dollars (\$25,000.00) per violation upon a person found to have engaged in any act or practice which would constitute a violation of the Act or any rule, regulation, or order issued under the Act.

5. Under the Act's statutory framework, the Director has legal and equitable authority to fashion significant protection remedies.

6. It is in the best interest of SMALL CAP and the Director to resolve the issues included herein.

### **CONSENT ORDER**

NOW, THEREFORE, the parties to this Order agree as follows:

Stipulations: In connection with this Order, SMALL CAP and the Director stipulate to the following:

- a. The DEPARTMENT has jurisdiction as to all matters herein.
- b. This Order should be entered in this matter, which shall be in lieu of other proceedings by the DEPARTMENT.

SMALL CAP further represents as follows:

1. SMALL CAP is aware of its right to a hearing at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such hearing, and any related appeal, on all other matters covered by this Order is irrevocably waived.

2. SMALL CAP is acting free from any duress or coercion of any kind or nature.

3. This Order is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for purposes of this Order and for no other purposes.

FURTHER, SMALL CAP agrees to take whatever action is necessary to ensure compliance with all provisions of the Act in the future. If, at any time, the DEPARTMENT determines SMALL CAP has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

IT IS HEREBY ORDERED that Kinetics Mutual Funds, Inc., The Small Cap Opportunities Fund No Load Class shall pay a fine in the amount of six-thousand five-hundred forty-seven dollars and thirteen cents (\$6,547.13). Such amount shall be paid to the DEPARTMENT no later than thirty (30) days from the date of the entry of this ORDER.

IT IS FURTHER ORDERED that Kinetics Mutual Funds, Inc., The Small Cap Opportunities Fund No Load Class shall maintain a current registration or notice filing or, in the alternative, claim an appropriate, applicable exemption with the DEPARTMENT at all times that offers and sales of its securities are made, or are to be made, within Nebraska.

In the event SMALL CAP fails to comply with provisions of this Order, the DEPARTMENT may commence such action as it deems necessary and appropriate in the public interest.

DATED this 11~~th~~ day of December, 2002

Kinetics Mutual Funds, Inc.  
The Small Cap Opportunities Fund  
No Load Class

By: Leonid Polyakov  
(Printed Name) Leonid Polyakov  
(Title) Chief Financial Officer

DATED this 6 day of ~~December~~, 2002. January, 2003.

STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE

By: Samuel P. Baird  
Samuel P. Baird  
Director

