

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

-against-

EDDY ALEXANDRE and
EMINIFX, INC.,

Defendants.

22 Civ. 3822 (VEC)

**NOTICE OF THE RECEIVER’S MOTION FOR ENTRY
OF AN ORDER (I) APPROVING PROCEDURES FOR THE VERIFICATION OF
USER CONTRIBUTIONS TO AND WITHDRAWALS FROM EMINIFX, (II)
SETTING A BAR DATE FOR THE FILING OF NON-USER CLAIMS,
(III) ESTABLISHING NOTICE PROCEDURES,
AND (IV) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that David A. Castleman, as Receiver in this action (the “**Receiver**”) will move before the Honorable Valerie E. Caproni, United States District Judge for the United States District Court for the Southern District of New York (the “**Court**”), located at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007 for entry of an Order (i) Approving Procedures for the Verification of User Contributions to and Withdrawals from EminiFX, (ii) Setting a Bar Date for the Filing of Non-User Claims, (iii) Establishing Notice Procedures, and (iv) Granting Related Relief (the “**Motion**”).¹

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion by a party must be made in writing and electronically filed with the Court so as to be actually received no later than **August 24, 2023**.

PLEASE TAKE FURTHER NOTICE that with respect to non-parties, unless such non-

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them by the Motion.

party has made a motion to intervene, and that motion has been granted by the Court, non-parties should not send any inquiries concerning the Motion directly to the Court or file them on the docket. [*Cf.* Dkts. 174, 176.] Non-parties may instead direct any questions or comments regarding this Motion to the Receiver’s team at EminiFXInquiries@Stretto.com with the subject line: “Claims/Verification Motion.”

PLEASE TAKE FURTHER NOTICE that, in the absence of any timely served written opposition, the Court may approve the proposed Order (i) Approving Procedures for the Verification of User Contributions to and Withdrawals from EminiFX, (ii) Setting a Bar Date for the Filing of Non-User Claims, (iii) Establishing Notice Procedures, and (iv) Granting Related Relief.

Dated: New York, New York
August 10, 2023

OTTERBOURG P.C.

By: /s/ Jennifer S. Feeney
Jennifer S. Feeney
William M. Moran
Erik B. Weinick

230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
jfeeney@otterbourg.com

*Attorneys for David A. Castleman, as
Receiver*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

-against-

EDDY ALEXANDRE and
EMINIFX, INC.,

Defendants.

22 Civ. 3822 (VEC)

**DECLARATION OF DAVID A. CASTLEMAN, AS RECEIVER,
IN SUPPORT OF HIS MOTION FOR ENTRY OF AN ORDER (I) APPROVING
PROCEDURES FOR THE VERIFICATION OF USER CONTRIBUTIONS TO AND
WITHDRAWALS FROM EMINIFX, (II) SETTING A BAR DATE FOR THE FILING
OF NON-USER CLAIMS, (III) ESTABLISHING NOTICE PROCEDURES, AND (IV)
GRANTING RELATED RELIEF**

I, David A. Castleman, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I make this declaration in my capacity as Receiver pursuant to the Consent Preliminary Injunction (the “**Consent Order**”) entered by this Court on June 15, 2022 [Dkt. 56]. I submit this declaration in support of my motion for entry of an Order: (i) Approving Procedures for the Verification of User Contributions to and Withdrawals from EminiFX, (ii) Setting a Bar Date for the Filing of Non-User Claims, (iii) Establishing Notice Procedures, and (iv) Granting Related Relief (the “**Motion**” seeking entry of the “**Proposed Order**” with its associated “**Procedures**”).¹

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Proposed Order.

I. INTRODUCTION

2. By this Motion, I am seeking approval of a process to complete my analysis of the EminiFX Users' Transactions and to determine the universe of Claimants that may be entitled to a distribution from the EminiFX receivership estate. This process will allow me to understand the full extent of the Users' Contributions and Withdrawals, resolve instances where the Users disagree with my determinations of their Contributions and Withdrawals, and resolve the Claims of Non-Users.

3. EminiFX was presented as a multi-level "investment club" that received over \$260 million in Contributions from at least 25,000 Users. EminiFX User Accounts were supposedly accruing a fixed weekly return on the pooled holdings between 5.00% and 9.99% per week (the "ROI") and certain Users accrued bonuses, including those related to the recruitment of other Users ("Bonuses"). EminiFX also satisfied requests from certain Users to withdraw funds from EminiFX, which could and did sometimes include accrued ROI and Bonuses. The records of these EminiFX User Accounts were maintained in an EminiFX MySQL database (the "Database"), which I was able to recover. The Database contained records related to EminiFX Users' Contributions, Withdrawals, and the weekly accrual of the ROI and Bonuses.

4. Although I was able to recover a substantial number of records from EminiFX (including the Database) and from certain third parties (largely financial institutions where EminiFX maintained accounts), there were significant deficiencies in the maintenance of records. In fact, among other things, my team and I have found no evidence of any regularly issued User account statements outside of the Database or even a general ledger of any kind. As a result, my team and I undertook a detailed forensic investigation to be able to report on the financial conditions of EminiFX, as detailed in the Financial Conditions Report, filed on May 16, 2023,

[Dkt. No. 199] (the “**FCR**”), and to enable us to initiate a Claims and verification process by piecing together the record of Contributions made to and Withdrawals made from the EminiFX System and to identify EminiFX User Accounts that may have been created, but had no identified Contributions or Withdrawals.

5. The Database contained a substantial amount of information which we considered reliable and assisted me in attributing most Transactions to specific Users or purposes. For example, the EminiFX “Package Purchase” data, which provided details related to the level of Contribution by each User, contained dates and amounts that allowed my forensics team to link that User to a specific bank or cryptocurrency exchange transaction reflected in reliable third party data. My team and I also obtained bank account statements, brokerage statements, and cryptocurrency data from various financial institutions, which I consider to be the best and most reliable evidence that a specific transaction had actually occurred.

6. Combining various bank and cryptocurrency financial data with records from the Database has allowed my team and I to construct a ledger with sufficient reliability to assess the overall financial condition of EminiFX on a weekly basis. This also coincides with the ROI schedule and allows us to ascertain Contributions and Withdrawals made to and from EminiFX User Accounts. My team and I were able to attribute 92% of the cryptocurrency Contributions, 85% of the cash Contributions, and 95%² of the cryptocurrency Withdrawals, by dollar amount. However, certain Transactions often cannot be attributed to specific Users, especially with respect to the thousands of individual cash Contributions. Cash Withdrawals were, on the other hand, minimal.

7. Therefore, at this point in the case, and to assist in proposing a distribution, it is

² My team and I were able to attribute 99.8% of cryptocurrency Withdrawals by transaction count.

necessary for me, as the Receiver, to verify User Transactions. This verification allows me to identify the Users that may be entitled to a distribution in the future and to set bar dates and procedures to identify Non-Users and understand their Claims against the Receivership Estate.

8. I have created within the Website a separate portal (“Portal”) that contains all of the Transactions identified by me as to each User. Users will be given access to the Portal, and will receive a special access page containing a Transaction Log with each of the User’s Transactions. Each User will thereafter be asked to verify the listed Transactions, modify such Transactions, and add additional Transactions or add an additional User on whose behalf a Transaction was made.

9. These Procedures are intended to allow Users to easily review and verify their Transactions or, if necessary, to add to or modify the Transaction Log. I expect that this method will reduce the burden on as many Users as possible, while still providing them with a robust system to submit additional Transactions for consideration. Given the volume of Users, I expect that this process will take some time.

10. I also seek to establish a date by which holders of Non-User Claims, who may not have been EminiFX Users or whose additional Claims may be unrelated to their status as Users, are required to submit a Claim against the Receivership Estate for Non-User Claims, and a subsequent process for the reconciliation of such Non-User Claims.

11. If approved, these procedures will allow me to verify Transactions to enable me to eventually consider User Claims and to determine the scope of Non-User Claims, all of which are critical steps toward an eventual distribution of the assets of the Receivership Estate.

II. BACKGROUND

12. Contributions into the EminiFX System generally occurred in one of two ways—via deposits in USD into an EminiFX United States bank account, or via Bitcoin (“BTC”) into an EminiFX account held at CoinPayments, an offshore cryptocurrency exchange. EminiFX’s primary bank accounts were at Bank of America and TD Bank. Before Bank of America froze the EminiFX account on or about March 14, 2022 and placed the balance of over \$14 million into suspense on April 8, 2022, a total of just over \$27 million was deposited there by Users. In TD Bank, a total of almost \$51 million was deposited by Users, including nearly \$2 million deposited directly into Mr. Alexandre’s personal account. It also appears that beginning on or about May 6, 2022, in the last days of EminiFX’s active operation, over a million dollars in cash was deposited, which I have treated as Contributions by Users.

13. By the week ending March 18, EminiFX had begun to accept Contributions through BTC, primarily through the offshore cryptocurrency exchange, CoinPayments. From March 2022 onward, Contributions through CoinPayments grew significantly. In its final nine weeks of operation, EminiFX received almost \$157 million in Contributions via CoinPayments. CoinPayments usually logged each “deposit” Transaction in both BTC and USD. This practice allowed my team and I to assign a USD value to each Transaction, even though it was never actually converted from BTC to USD.³ Furthermore, when BTC was added, the balance of the EminiFX User Account was incremented in USD—possibly indicating that a conversion from BTC to USD had taken place. As the BTC instead accumulated in the EminiFX CoinPayments account, a significant portion of that BTC was used to pay Withdrawals, and a smaller portion was

³ The amount of each Transaction, as reflected on the Transaction Log, may differ slightly from the amount that Users have in their own records, due to the fees and other transaction costs that Users may have paid to deposit funds into the EminiFX System.

sent to other cryptocurrency exchange platforms. At all times while the BTC was held in the EminiFX CoinPayments account, the amounts were subject to the volatility of the market. As the price of BTC generally decreased throughout the first half of 2022, so did the value of the EminiFX CoinPayments account.

14. Except for a few instances, Users' Withdrawals were processed through the CoinPayments system and fulfilled as BTC from the CoinPayments account, regardless of the Contribution form - USD, BTC, or a combination. By the time I was appointed, Users' net Contributions to the EminiFX System had totaled up to \$228 million.

15. Certain EminiFX Users were credited—within the EminiFX System only—with both ROI and multi-level marketing Bonuses for recruiting other Users each week, according to the EminiFX compensation plan. These accruals were depicted as increases in the EminiFX User account balances and in the database “earnings” table. Out of the 62,198 Users found in the EminiFX system, 16,439 had no Transactions, Bonuses, or ROI. Remarkably, many Users—18,819 EminiFX User Accounts—possessed positive balances despite not having any Contribution or Withdrawal attributed to them, indicating they accrued ROI and Bonuses. These account balances, inclusive of the accruals credited to the EminiFX User Accounts, were indeed available for Withdrawal, with certain Users withdrawing some of the ROI and Bonuses that were credited to their accounts. Any User who withdrew some of the ROI and Bonuses was paid, in effect, with the funds of other Users given the lack of any trading activity to support those ROI and bonuses. Predominantly, the account increases were accruals in the form of ROI, set at a fixed percentage between 5.00% and 9.99% every week since October 22, 2021.

16. Several Bonuses were also credited to Users, as elaborated in the February 2022 Compensation Plan and the “earnings” table. In general, these Bonuses mirrored the multilevel

nature of EminiFX, whereby a User could become the “sponsor” of another User he or she referred (termed the “affiliate”). The total amount accrued to Users through all Bonuses was approximately \$56.6 million, as reflected in the EminiFX System and in the EminiFX User Accounts.

17. Due to the substantial amounts accrued in ROI and Bonuses, the total stated account value of the Users (as shown in the EminiFX System) grew significantly each week, reaching nearly \$548 million by the time I was appointed as the Receiver. However, as I have detailed in the FCR, none of the ROI payments were predicated on actual investment results.

18. My comprehensive assessment of the actual weekly financial performance of EminiFX, on one hand, and the total alleged ROI and Bonuses accrued each week, on the other, revealed that there was no discernible link between the two. The marked-to-market account values of EminiFX’s holdings and the total stated account value of EminiFX Users saw a significant divergence throughout 2022, with the difference between these values growing to over \$374 million by May 2022. This widening gap between the actual value of EminiFX holdings and the stated value of EminiFX User Accounts underscores the disconnect between the purported ROI and Bonuses and EminiFX’s financial reality.

19. Due to this demonstrable disconnect and the lack of supporting evidence for the legitimacy of accrued ROI and Bonuses, I have determined that these amounts (\$319 million in total) should not be recognized as legitimate or actual liabilities of EminiFX or the Receivership Estate. This approach prioritizes the eventual resolution of legitimate Claims of Users to a refund of their Contributions (less Withdrawals) over artificially inflated account “balances” that have no basis in EminiFX’s financial performance or holdings. The use of accrued ROI and Bonuses to determine a User’s claim could perpetuate the problem of paying ROI and Bonuses (or claims thereon based) using the funds of other Users rather than using the proceeds of any legitimate

investment activity.

20. To determine the Contributions and Withdrawals of each User, my team and I relied on various sources of confirmable information. Users typically made Contributions by (i) depositing USD into an EminiFX U.S. bank account; (ii) transferring BTC into an EminiFX account held at CoinPayments; or (iii) transferring BTC into an EminiFX account held at CashApp, an onshore payment system that accepted cryptocurrency. [FCR, Dkt. 199, at 14.]

21. Because EminiFX did not maintain accounting records in generally accepted formats, my team and I faced significant challenges in attributing individual Transactions to specific Users, particularly the cash Contributions, which totaled over \$79 million. [FCR, Dkt. 199, at 14.] To determine each User's Contribution, my team and I team analyzed the Database, which provided specific details regarding Users' investment levels, Transaction dates, and amounts in addition to bank and cryptocurrency exchange data. [FCR, Dkt. 199, at 2, 13–14.]

22. Through a comprehensive approach, my team and I were able to construct a ledger with sufficient reliability to assess the overall financial condition of EminiFX on a weekly basis, while also providing a basis for creating a process to verify Users' Transactions. [FCR, Dkt. 199, at 14–15.]

III. THE PROCEDURES

23. The Procedures were drafted to account for the realities of the incomplete data available to me, while leveraging the available data to provide the majority of Users a streamlined process to verify their Withdrawals from and Contributions to the EminiFX System.

24. In my judgment, the process for verifying User Transactions is fair and equitable for all Users and will allow me to efficiently complete my investigation of all Contributions and Withdrawals to and from the EminiFX System. Further, the process for Claimants to submit Non-

User Claims by filing a Proof of Claim is appropriate and will allow me to determine the scope of Non-User Claims that may be entitled to a distribution from the Receivership Estate.

25. To effect the Procedures specific for Non-User Claims, attached hereto is “**Exhibit A**,” the Proof of Claim Form, “**Exhibit B**,” the Bar Date Notice, and “**Exhibit C**,” the Bar Date Publication Notice. As detailed fully in the Proposed Order, the Proof of Claim Form provides the means by which Claimants will submit their Non-User Claims to the Receiver, while the Bar Date Notice and Bar Date Publication Notice detail how and when these Claims should be submitted.

26. For the reasons set forth in the Memorandum of Law in Support of the Motion, I respectfully request the entry of an order substantially in the form filed contemporaneously with this Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
August 10, 2023

By: /s/ David A. Castleman
David A. Castleman

Exhibit A
(Proof of Claim Form)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

-against-

EDDY ALEXANDRE and
EMINIFX, INC.,

Defendants.

22 Civ. 3822 (VEC)

PROOF OF CLAIM FORM

This Proof of Claim Form is for asserting claims against EminiFX, Inc. (“EminiFX”) currently in receivership being administered by David Castleman, in his capacity as the court-appointed receiver (the “**Receiver**”), in the case captioned *CFTC v. Alexandre et al.*, Case No. 22-cv-03822 (VEC). On [XX], 2023, the United States District Court for the Southern District of New York (the “**Court**”) entered an Order establishing procedures for the resolution of claims and setting claims bar dates [Dkt. XX] (the “**Order**”).¹

STOP

Did you ever have an EminiFX account and
is your claim based on your status as an EminiFX User?

IF YES, DO NOT FILL OUT THIS FORM.

**You should have received an email from the Receiver asking you to log onto the Portal.
Follow the instructions in that email instead.**

**If you did not receive that email, but had an EminiFX account, contact
EminiFXInquiries@Stretto.com.**

Read the attached Proof of Claim instructions before filling out this Proof of Claim Form. Attach copies of any documents that support the Claim, such as checks, wire transfers, promissory

¹ Capitalized terms used but not defined herein shall have the same meanings ascribed in the Order (I) Approving Procedures for the Verification of User Contributions to and Withdrawals from EminiFX, (II) Setting a Bar Date for the Filing of Non-User Claims, (III) Establishing Notice Procedures, and (IV) Granting Related Relief [Dkt. XX] (the “**Order**” and accompanying “**Procedures**”).

notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, you must explain why in an attachment or else the Proof of Claim may be subject to disallowance.

I. CLAIMANT CONTACT INFORMATION

Claimant's name:			
Phone Number (primary):		Phone Number (cell):	
Email Address:		Last Four Digits of SSN/TIN:	
<input type="checkbox"/> Claimant is an entity. (If so, attach a list of all persons who directly or indirectly hold interests or beneficial interests in the Claimant exceeding ten percent (10%)).			

<u>Claimant's Mailing Address (For Notice)</u>		<u>Claimant's Address for Payment (if Different)</u>	
Country:		Country:	
Address 1:		Address 1:	
Address 2:		Address 2:	
City:		City:	
State:		State:	
ZIP:		ZIP:	

- I **am** represented by counsel.
- I **am not** represented by counsel. (Skip to next section.)

Law Firm Name:		City:	
Representative Name:		State:	
Country:		ZIP:	
Address 1:		Phone Number:	
Address 2:		Email Address:	

II. CLAIM INFORMATION

1. Has this claim been acquired from someone else?

- No
- Yes From whom? _____

2. Does this claim amend one already filed?

- No
- Yes Filed on: _____

3. Do you have any account number you use to identify EminiFX?

- No
- Yes Last 4 digits of the number: _____

4. How much is the claim in U.S. Dollars? _____

a. Does this amount include interest or other charges?

- No
- Yes (Attach statement itemizing interest or other charges)

5. Explain the basis of the Claim and attach all supporting documentation:

6. Does any portion of your Claim relate to goods or services that were not used by EminiFX?

- No
- Yes How much of the claim? _____

7. Have you mitigated your damages?

- No
- Yes Explain how and attach additional pages and documentation as necessary:

8. Does any portion of your Claim arise between May 11, 2022 and July 1, 2023?

- No
- Yes How much of the claim? _____

9. Is any portion of your claim ongoing after July 1, 2023?

- No
- Yes Explain how and attach additional pages and documentation as necessary:

10. Is all or part of the Claim secured?

- Yes (Complete the items below)
- No.

Description of collateral: _____

Asserted value of collateral: _____

Amount of the claim that is secured: _____ Amount of claim that is unsecured: _____

Basis for perfection: _____

Attach copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or another document that shows the lien has been filed or recorded.)

11. Is your claim based on a lease?

- No
- Yes Identify the property: _____

12. Is your claim subject to a right of setoff?

- No
- Yes

III. CERTIFICATION

By submitting this Proof of Claim Form, you consent to the jurisdiction of the United States District Court for the Southern District of New York for all purposes related to any Claim contained therein and agree to be bound by its decisions, including, without limitation, a determination as to the validity and amount of any Claims asserted against EminiFX.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

THE CLAIM SUBMITTED IN THIS PROOF OF CLAIM FORM IS **NOT** BASED ON MY STATUS AS AN EMINIFX USER, INCLUDING ANY CONTRIBUTIONS TO OR WITHDRAWALS FROM MY EMINIFX USER ACCOUNT.

I declare under penalty of perjury that the foregoing is true and correct.

Signature: _____

Name of Signatory: _____

If by Authorized Representative, Name and Title: _____

Executed this ____ day of _____, _____

Instructions for Completing Non-User Proof of Claim Form

(Please do not submit these instructions with your form.)

Who should complete and serve a Proof of Claim?

- EminiFX Users should **not** complete and serve a Proof of Claim unless their claim is not based on their status as a User.
- If you are not an EminiFX User or have a Claim against EminiFX not based on your status as a User, you must complete and serve a Proof of Claim.

How will this Proof of Claim be used?

- The information you provide in this Proof of Claim Form will be used to determine what, if any, distribution you may be entitled to receive from the Receivership Estate. Submitting a Proof of Claim does not guarantee that you will receive any distribution.

How do I submit a Proof of Claim?

- Complete each section of the Proof of Claim Form.
 - If you need more space to provide any of the information requested, please attach a separate document to your Proof of Claim and indicate the section and question to which you are providing additional information.
- Attach *copies* (not originals) of all documents that support your Claim. Documents will not be returned to you. If you are missing any documents that support your Claim, attach an explanation of why the documents are unavailable.
- Sign the Proof of Claim Form.
- Serve the Proof of Claim along with supporting documentation to the Receiver's Claims Agent by:
 - (1) First Class Mail via the USPS addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; (2) overnight courier or in-person delivery addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; (3) electronic mail, as an attachment in portable document format (.pdf), to EminiFXClaims@Stretto.com; or (4) using the electronic Proof of Claim Form available on the Receiver's website at <https://www.EminiFXreceivership.com/>, including through the Portal. Proofs of Claim should not be filed with the Court and any Proof of Claim so filed will not be considered properly submitted. Proofs of Claim will only be deemed served when actually received by the Receiver's Claims Agent, therefore please ensure sufficient time for delivery.
- A Proof of Claim will only be deemed served when actually received by the Receiver's Claims Agent.
- No Proof of Claim should be filed with the Court and any Proof of Claim so filed will not be considered properly served.

How do I know that my Proof of Claim has been served?

- If you serve a hard copy of your Proof of Claim and wish to receive confirmation of its submission, please enclose a stamped self-addressed envelope and an additional copy of the completed Proof of Claim with a note that you would like to receive confirmation that your Proof of Claim has been received.
- If you serve a copy of your Proof of Claim via email or submit an online version of the Proof of Claim Form, you will receive an email confirmation of your submission. You may print and retain a copy of this email for your records.

Where can I find additional information regarding Claims and this receivership?

- Additional information about the receivership generally may be found on the Receiver's website at <https://www.eminifxreceivership.com/>.

Is there a deadline to serve the completed Proof of Claim Form?

- Yes. The Receiver's Claims Agent must actually receive your Proof of Claim, including any supporting documentation, by the following deadlines:
 1. **5:00 p.m. (prevailing Eastern Time) on [REDACTED], 2023** is the deadline for Claimants other than Governmental Units to serve Proofs of Claim against the Receivership Entities; and
 2. **5:00 p.m. (prevailing Eastern Time) on [REDACTED], 2023** is the deadline for Governmental Units to serve Proofs of Claim against the Receivership Entities.

IF YOU FAIL TO SERVE YOUR PROOF OF CLAIM BY THE APPLICABLE DEADLINE, YOUR CLAIM WILL BE DEEMED ABANDONED; YOU WILL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM ASSERTING IN ANY MANNER SUCH ABANDONED CLAIM AGAINST EMINIFX AND ITS PROPERTY; YOU WILL NOT BE PERMITTED TO OBJECT TO ANY DISTRIBUTION PROPOSED BY THE RECEIVER; YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTION FROM THE RECEIVERSHIP ESTATE ON ACCOUNT OF SUCH ABANDONED CLAIM; AND YOU WILL NOT RECEIVE FURTHER NOTICES ON ACCOUNT OF SUCH ABANDONED CLAIM .

How will the Receiver notify me regarding my Filed Proof of Claim?

- The Receiver will review each timely Filed Proof of Claim and notify each Claimant of his determination regarding the Claimant's Filed Proof of Claim. If a Claimant disagrees with the Receiver's determination, the Claimant will be required to timely serve a Claimant Objection on the Receiver, triggering a procedure for resolution of the dispute. If you would like further information regarding this process, please review the Order and the Procedures, which are available on the receivership website at <https://www.eminifxreceivership.com/>.

Exhibit B
(Bar Date Notice)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

-against-

EDDY ALEXANDRE and
EMINIFX, INC.,

Defendants.

22 Civ. 3822 (VEC)

BAR DATE NOTICE

TO: ALL CLAIMANTS OF EMINIFX, INC.:

PLEASE TAKE NOTICE OF THE FOLLOWING:

On [•], the United States District Court for the Southern District of New York (the “Court”) entered the Order approving the motion of David A. Castleman, the Court-appointed receiver (the “Receiver” over Defendant EminiFX, Inc. (“**EminiFX**”), (i) approving procedures for the verification of User contributions to and withdrawals from EminiFX, (ii) setting a bar date for the filing of Non-User Claims, (iii) establishing notice procedures, and (iv) granting related relief (the “**Order**” and its associated “**Procedures**”) [Dkt. No. [•].]¹ Among other things, the Order establishes deadlines and procedures for Claimants to submit claims against EminiFX.

This notice is being sent to all potential Claimants for whom the Receiver has an email address. The fact that you have received this notice does not necessarily mean that you are a Claimant or hold a Claim.

ANY UPDATES TO THE PROCEDURES WILL BE POSTED ON THE RECEIVERSHIP WEBSITE AT [HTTPS://WWW.EMINIFXRECEIVERSHIP.COM](https://www.eminifxreceivership.com).

¹ The Order can be accessed on the Receiver’s website at <https://www.eminifxreceivership.com/>. Capitalized terms used but not defined herein shall have the same meanings ascribed in the Order. Claimants should refer to the Order and Procedures attached thereto for a complete description of the procedures and for any other relevant terms that are not defined here.

A. SUBMITTING A PROOF OF CLAIM

1. WHO IS ELIGIBLE TO SUBMIT A PROOF OF CLAIM?

Proofs of Claim may only be completed by and served on the Receiver by Persons who believe they hold a Non-User Claim that arose, in whole or in part, prior to July 1, 2023.

The following are certain relevant definitions:

- A “Claim” is (1) a purported right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, against EminiFX; or (2) a purported right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, against EminiFX.
- A “Non-User Claim” is any Claim by any Person not based on that Person’s status as a User which is based on (1) the provision of goods or services to EminiFX that has not been paid in whole; (2) money loaned to the Receivership Entity that has not been paid in whole; (3) unpaid wages, compensation, or other employment benefits that has not been paid in whole; (4) tax liabilities, including those held by federal and state governments, subject to Title 26 of the U.S. Code; (5) primary, secondary, direct, indirect, secured, unsecured, or contingent liability; /or (6) contract, tort, indemnity, reimbursement, subrogation theories, or other legal or equitable theory.
- A “Claimant” is any Person holding a Non-User Claim.
- A “Governmental Unit” is the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

2. WHO IS NOT REQUIRED TO SUBMIT A PROOF OF CLAIM?

The following Persons are NOT required to submit a proof of claim:

- (i) Persons holding Claims for professional fees that are governed by the June 10, 2022 Employment Order [Dkt. 47] are not subject to the Non-User Claim Bar Dates set forth herein. Their fees, and those of the Receiver, will be processed pursuant to the procedures set forth in the Employment Order, and not according to the Procedures.
- (ii) Persons holding Claims that arose on or after July 1, 2023 are not subject to the Non-User Claim Bar Dates set forth herein and any such Claims shall be addressed in accordance with other and further orders of this Court.

- (iii) Any Claim based solely on a Person's status as a User shall be processed in accordance with Section 2 of the Procedures, and shall not be filed in accordance with Section 3 of the Procedures. Any Claim so filed shall be rejected without further review by the Court.

3. WHAT MUST CLAIMANTS COMPLETE TO ASSERT A NON-USER CLAIM?

Each Claimant must complete the Proof of Claim Form that has been approved by the Court and sent to Claimants with these instructions. A Proof of Claim Form is also available on the Receiver's website at <https://www.eminifxreceivership.com/>. The Receiver will also provide this Notice and the Proof of Claim Form to any person or entity that makes a written request for such document to the e-mail address EminiFXClaims@Stretto.com or to the physical address EminiFX Claims c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602. Such documents will be provided electronically where possible.

Claimants must attach to each Proof of Claim copies (not originals) of all documents available to the Claimant on which the Claimant relies to support its Proof of Claim. Such documentation may include, but is not limited to: copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, evidence of perfection of lien, and other documents evidencing the amount and basis of the Non-User Claim. If such supporting documentation is not available, the Claimant shall attach to the Proof of Claim an explanation of why the documentation is unavailable.

4. WHAT ARE THE DEADLINES FOR FILING A PROOF OF CLAIM?

The Court has established the following dates by which Proofs of Claim must be served:

- (i) _____ at 5:00 p.m. (prevailing Eastern Time) as the deadline for Claimants other than Governmental Units to serve Proofs of Claim (the "General Non-User Claim Bar Date"); and
- (ii) _____ at 5:00 p.m. (prevailing Eastern Time) as the deadline for Governmental Units to serve Proofs of Claim (the "Governmental Bar Date," and together with the General Non-User Claim Bar Date, the "Non-User Claim Bar Dates").

5. HOW DO CLAIMANTS SERVE A NON-USER CLAIM AGAINST EMINIFX?

- (i) To timely assert a Non-User Claim, each Claimant must serve a completed and signed Proof of Claim Form, together with supporting documentation on the Claims Agent as required by this Order, so that such Proof of Claim Form is actually received by the Claims Agent on or before the Non-User Claim Bar Date applicable to the Claimant.

- (ii) Proofs of Claim shall be served on the Receiver’s Claims Agent by either (1) First Class Mail via the USPS addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; (2) overnight courier or in-person delivery addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; or (3) using the electronic Proof of Claim Form available on the Website and electronically submitting the Proof of Claim on the Website. Proofs of Claim must be served so as to be actually received by the Claims Agent on or before the applicable Non-User Claim Bar Date. Any Proof of Claim served in accordance with this procedure and that otherwise complies with the requirements of this Order shall become a **“Filed Claim.”**
- (iii) The Receiver has the discretion to extend the time for a Claimant to complete and serve its Proof of Claim for cause shown, or to accept service by other means.

6. WHAT ARE THE CONSEQUENCES OF NOT SERVING A PROOF OF CLAIM?

Any Claimant that fails to serve a Proof of Claim in a timely manner and in the form required pursuant to the Order is deemed to hold an “Abandoned Claim.” Any Claimant holding an Abandoned Claim will:

- (i) **be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Abandoned Claim against EminiFX and its property;**
- (ii) **not be permitted to object on account of such Abandoned Claim to any Distribution that may be proposed by the Receiver;**
- (iii) **be denied any Distributions on account of such Abandoned Claim under any Distribution that may be proposed by the Receiver; and**
- (iv) **not receive any further notices on account of such Abandoned Claim.**

B. CLAIMS DETERMINATIONS AND ADJUDICATION

The following procedures have been approved by the Court:

1. Non-User Claims Report.

- (i) Following the expiration of the Non-User Claim Bar Dates and after the Receiver has had an opportunity to review the Filed Claims, the Receiver will file a report (a **“Non-User Claims Report”**), listing the Receiver’s determination, after review of the Filed Claims, of the allowed amount of each Filed Claim. The Non-User Claims Report will classify Filed Claims

as fully allowed, partially allowed, or disallowed and may provide a brief explanation for the Receiver's determination if a Filed Claim is partially allowed or disallowed. The Receiver may also choose to reserve judgment on some Filed Claims pending further review and investigation and file an amended Non-User Claims Report at the appropriate time.

- (ii) The Receiver shall not be required to include an Abandoned Claim in a Non-User Claims Report. The Receiver may periodically modify previous Non-User Claims Reports as the Receiver deems necessary and provide a commensurate extension of time to respond.
- (iii) Prior to or concurrent with his issuance of the Non-User Claims Report, the Receiver will assign Claimants a unique identifier (each a "**Non-User Identification Number**"). The Receiver or his agents will use Non-User Identification Numbers to identify the Claimants in public filings with the Court.

2. **Allowed Claims.**

- (i) The Receiver may determine whether a Filed Claim is fully allowed, partially allowed, or disallowed by taking into account, without limitation, whether (i) the Filed Claim is properly and timely filed; (ii) the Filed Claim is duplicative of any other Filed Claim; (iii) the Filed Claim is consistent with the books and records of EminiFX (to the extent available); (iv) the Filed Claim is supported by adequate documentation; (v) the Filed Claim is subject to any offsets or defenses that may be asserted; or (vi) whether other grounds exist for allowing or disallowing the Filed Claim, in whole or in part. To aid the Receiver's review of the Filed Claims, the Receiver may conduct reasonable discovery with respect to the asserted Filed Claim. The Claimant shall be required to respond to such discovery requests within a reasonable period of time, as set forth by the Receiver in such requests.
- (ii) The Receiver's determination of the allowed amount of each fully allowed or partially allowed Filed Claim shall serve as the basis for calculating a Claimant's potential Distribution of assets of the EminiFX Estate; however, such allowed amount is not necessarily indicative of the priority or treatment of the Filed Claim, or the amount or type of Distribution a Claimant may ultimately receive from EminiFX on account of that Filed Claim. The Receiver may estimate the amount of a Filed Claim that is contingent, unliquidated, or unmatured for purposes of determining the allowed amount of any Filed Claim.
- (iii) The Receiver's determination to fully allow or partially allow a Filed Claim is without prejudice to a later subordination, reclassification, offset, or equitable distribution with respect to such Filed Claim, pursuant to a motion of the Receiver, including in connection with any potential Distribution that the Receiver may propose to the Court.

3. Notice of Non-User Claims Report.

- (i) The Receiver shall serve a “**Non-User Claims Report**” by posting it on the Website and by sending it to each Claimant that holds one or more Filed Claims that is the subject of a determination by the Receiver in such Non-User Claims Report.
- (ii) Within five (5) business days of filing a Non-User Claims Report, the Receiver or his agents will post the applicable Non-User Claims Report on the Website.

4. Claimant Objections and Disputed Claims.

- (i) A Claimant may challenge the Receiver’s determination of the Claimant’s Filed Claims set forth in a Non-User Claims Report including, without limitation, any objection to the Receiver’s determination (1) that the Filed Claim is a partially allowed Claim, or a disallowed Claim, (2) the allowed amount of the Filed Claim, or (3) the Receiver’s determination concerning the secured status of the Filed Claim or the property of EminiFX by which the Filed Claim is secured.
- (ii) A Claimant that seeks to object to the Receiver’s determination of the Claimant’s Filed Claims shall serve on the Receiver a written objection to the Receiver’s determination (each a “**Claimant Objection**”). No person or entity other than the applicable Claimant may file a Claimant Objection to the Non-User Claims Report, and Claimants may not object to the Receiver’s determinations of other Claimants’ Filed Claims unless so requested by the Receiver.
- (iii) Claimant Objections shall (1) be in writing; (2) state the name and address of the objecting Claimant and the name and address of the Claimant’s counsel or another authorized representative (if any), (3) the claim number assigned to the Filed Claims, and the nature of the Claims of such Claimant; (4) state with particularity the basis and nature of all objections to the applicable determinations; and (5) be electronically mailed to the Receiver at EminiFX.Claim.Disputes@Stretto.com, so as to be *actually received* on or before forty-five days following the Receiver’s emailing or mailing to a Claimant a Non-User Claims Report addressing the determination to which the Claimant Objection responds. Upon the timely service of a Claimant Objection, a Filed Claim shall become a Disputed Claim. Each Claimant that properly and timely serves a Claimant Objection shall be a “**Disputing Claimant.**”
- (iv) Claimant Objections should not be filed with the Court by the Claimant.
- (v) A Claimant’s failure to timely serve the Receiver with a Claimant Objection to a Claim that complies, in all respects, with the instructions set forth in this Order shall permanently preclude the Claimant’s right to object to or

contest the Receiver's Non-User Claims Reports and determinations as the same relate to such Claims.

- (vi) If a Claimant fails to serve a Claimant Objection to the Receiver's determination as to their Filed Claim as set forth in a Non-User Claims Report, then the Receiver's determination shall be final and binding as to the applicable as to that Filed Claim.

C. RESOLUTION OF DISPUTED CLAIMS.

1. Alternative Dispute Resolution of Disputed Claims.

- (i) The Receiver may attempt, within forty-five days of receipt of a Claimant Objection, to resolve a Disputed Claim with the respective Disputing Claimant.
- (ii) The Disputed Claim may, at the election of the Receiver and the Disputing Claimant, be submitted to mediation before a disinterested mediator, to be completed within thirty days from commencement of a mediation session unless extended by the Receiver in his discretion. The fees of mediation will be borne one-half by the Receivership Estate and one-half by the Disputing Claimant. Mediation fees under \$25,000 may be paid by the Receiver without further order of the Court.
- (iii) The Receiver may, in his sole discretion, settle and compromise any Disputed Claim on terms and for reasons that he deems, in his business judgment, to be appropriate without further Order of this Court.

2. Summary Disposition. Any Disputed Claim that is not resolved by agreement between the Receiver and the Disputing Claimant shall be adjudicated by the Court in a summary proceeding as follows:

- (i) The Receiver may file one or more motions with the Court requesting that the Court confirm the Receiver's determinations as to the particular Disputed Claims addressed in the motion (a "**Resolution Motion**").
- (ii) Each Resolution Motion shall attach the information which the Receiver deems necessary for the Court to resolve the Resolution Motion, but at a minimum, shall include (1) a brief statement of the Disputed Claim, (2) the Claimant Objection, (3) a recommended resolution, or request for further proceedings, and the reasons therefor.
- (iii) The Receiver's Resolution Motion and supporting brief shall be served on the applicable Disputing Claimant at the time of its filing by First Class Mail or by email.

- (iv) At the Receiver's election, a Resolution Motion may consist of omnibus motions addressing multiple Disputed Claims at one time, rather than individually.
- (v) The Disputing Claimant shall have fourteen days to respond to a Resolution Motion, without the need to formally intervene in this above-captioned action or file such response with the Court, unless the Court orders otherwise. The Receiver shall have seven days to reply.

D. ADDITIONAL INFORMATION

1. CONSENT TO JURISDICTION

A Claimant who submits a Proof of Claim is deemed to consent to the jurisdiction of the United States District Court for the Southern District of New York to resolve all matters related to the Proof of Claim and all Claims asserted therein.

2. RESERVATION OF RIGHTS

The Receiver reserves the right to dispute, or assert offsets or defenses as to the nature, amount, liability, classification, or otherwise, against any amounts asserted in any Proof of Claim. Nothing contained herein is intended to preclude the Receiver from objecting to any Proof of Claim on any grounds.

Dated: New York, New York
_____, 2023

DAVID A. CASTLEMAN

/s/ David A. Castleman

*Court-Appointed Receiver
EminiFXClaims@Stretto.com*

Exhibit C

(Bar Date Publication Notice)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

-against-

EDDY ALEXANDRE and
EMINIFX, INC.,

Defendants.

22 Civ. 3822 (VEC)

NOTICE OF LAST DAY TO FILE NON-USER CLAIM AGAINST EMINIFX

PLEASE TAKE NOTICE THAT:

1. On [•], the United States District Court for the Southern District of New York (the “**Court**”) entered the Order approving the motion of David A. Castleman, the Court-appointed receiver (the “**Receiver**” over Defendant EminiFX, Inc. (“**EminiFX**”), (i) approving procedures for the verification of User contributions to and withdrawals from EminiFX, (ii) setting a bar date for the filing of Non-User Claims, (iii) establishing notice procedures, and (iv) granting related relief (the “**Order**”) [Dkt. No. [•].]² Among other things, the Order establishes deadlines and procedures for Claimants to submit claims against EminiFX.
2. Proofs of Claim may only be submitted to the Receiver by Persons who believe they hold a Claim against EminiFX that arose, in whole or in part, prior to July 1, 2023.
3. The Order can be accessed at [https://www.eminifxreceivership.com/\[link\]](https://www.eminifxreceivership.com/[link]). Persons who think they may have a claim should refer to the Order and the Procedures attached thereto for a complete description of the applicable procedures and for the meaning of all terms that are not defined here.
4. Persons holding Claims solely based on their status as an Account User or Member of EminiFX or for professional fees governed by the June 10, 2022 Employment Order, or for claims that arose on or after July 1, 2023, shall not submit a Proof of Claim. If you are unsure as to whether your Claim falls within this definition, please email the Receiver’s team at EminiFXClaims@Stretto.com.

² Capitalized terms used but not defined herein shall have the same meanings ascribed in the Order.

5. Pursuant to the Order, the Court has established the following dates by which Proofs of Claim against the Receivership Entities must be served:
 - (i) _____ at 5:00 p.m. (prevailing Eastern Time) as the deadline for Claimants other than Governmental Units to serve Proofs of Claim (the “**General Non-User Claim Bar Date**”); and
 - (ii) _____ at 5:00 p.m. (prevailing Eastern Time) as the deadline for Governmental Units to serve Proofs of Claim (the “**Governmental Bar Date**,” and together with the General Non-User Claim Bar Date, the “**Non-User Claim Bar Dates**”).
6. The Proof of Claim Form is available on the Receiver’s website at [https://www.eminifxreceivership.com/\[link\]](https://www.eminifxreceivership.com/[link]). Proofs of Claim shall be served on the Receiver’s Claims Agent by either (1) First Class Mail via the USPS (or overnight courier or in-person delivery) addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; or (2) using the electronic Proof of Claim Form available on the Website and electronically submitting the Proof of Claim on the Website. Proofs of Claim must be served so as to be actually received by the Claims Agent on or before the applicable Non-User Claim Bar Date.
7. Any Claimant that fails to serve a Proof of Claim in a timely manner and in the form required pursuant to the Order is deemed to hold an “**Abandoned Claim**.” Any Claimant holding an Abandoned Claim will (i) be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Abandoned Claim against EminiFX and its property; (ii) not be permitted to object on account of such Abandoned Claim to any Distribution that may be proposed by the Receiver; (iii) be denied any Distributions on account of such Abandoned Claim under any Distribution that may be proposed by the Receiver; and (iv) not receive any further notices on account of such Abandoned Claim.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

-against-

EDDY ALEXANDRE and
EMINIFX, INC.,

Defendants.

22 Civ. 3822 (VEC)

**MEMORANDUM OF LAW IN SUPPORT OF THE RECEIVER'S MOTION FOR
ENTRY OF AN ORDER (I) APPROVING PROCEDURES FOR THE VERIFICATION
OF USER CONTRIBUTIONS TO AND WITHDRAWALS FROM EMINIFX, (II)
SETTING A BAR DATE FOR THE FILING OF NON-USER CLAIMS, (III)
ESTABLISHING NOTICE PROCEDURES, AND (IV) GRANTING RELATED RELIEF**

OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
(212) 661-9100

Attorneys for David A. Castleman, as Receiver

TABLE OF CONTENTS

	Page
I. PRELIMINARY STATEMENT	1
II. BACKGROUND	5
A. User Contributions and Withdrawals.....	5
B. ROI and Bonuses Accrued to Users.....	7
C. Calculation of User Refunds.....	8
D. Investigating User Transactions.....	9
III. THE PROPOSED PROCEDURES	10
A. Verification of User Transactions.....	10
1. User Verification Deadline	12
2. Verified Transactions and Voluntary Resolution of Disputed Transactions.....	13
3. Judicial Resolution of Disputed Transactions.....	13
B. Non-User Claims	14
1. Bar Dates.....	14
2. Non-User Claims Report.....	16
3. Claimant Objections and Disputed Claims.	17
4. Resolution of Disputes.....	17
C. Notice Procedures	18
IV. ARGUMENT.....	19
A. This Court Has the Requisite Authority to Grant the Relief Requested	19
B. The User Verification Procedures Are Appropriate	19
C. The Non-User Claims Procedures Are Appropriate	20

D.	The Receiver’s Proposed Order Affords Claimants the Requisite Notice and Opportunity to Be Heard	21
E.	The Proposed Form and Method of Notice Are Appropriate	21
F.	The Utilization of a Summary Proceeding to Resolve Disputed Transactions and Disputed Claims Is Proper	22
V.	NOTICE.....	23
VI.	CONCLUSION.....	24

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Chicago Title & Trust Co. v. Fox Theatres Corp.</i> , 91 F.2d 907 (2d Cir. 1937)	20
<i>FDIC v. Bernstein</i> , 786 F. Supp. 170 (E.D.N.Y. 1992)	22
<i>In re BGI, Inc.</i> , 476 B.R. 812 (Bankr. S.D.N.Y. 2012).....	22
<i>In re Drexel Burnham Lambert Grp., Inc.</i> , 151 B.R. 674 (Bankr. S.D.N.Y. 1993).....	22
<i>Mullane v. Cent. Hanover Bank & Trust Co.</i> , 339 U.S. 306, 70 S. Ct. 652 (1950).....	22
<i>People of New York v. Hopkins</i> , 18 F.2d 731 (2d Cir. 1927)	20
<i>Revere Copper & Brass, Inc. v. Adriance Machine Works, Inc.</i> , 76 F.2d 876 (2d Cir. 1935)	23
<i>S.E.C. v. Malek</i> , 397 F. App'x 711 (2d Cir. 2010)	19
<i>SEC v. Byers</i> , 637 F. Supp. 2d 166 (S.D.N.Y. 2009)	21, 22, 23
<i>SEC v. Callahan</i> , 193 F. Supp. 3d 177 (E.D.N.Y. 2016)	21, 23
<i>SEC v. Cook</i> , No. CIV.A. 399CV0571R, 2003 WL 22272065 (N.D. Tex. Sept. 30, 2003).....	20
<i>SEC v. Correll</i> , 4:05-cv-00472-RAS, Dkt. No. 369 (E.D. Tex. Dec. 12, 2008)	23
<i>SEC v. Credit Bancorp, Ltd.</i> , No. 99 CIV. 11395 RWS, 2000 WL 1752979 (S.D.N.Y. Nov. 29, 2000), <i>aff'd</i> , 290 F.3d 80 (2d Cir. 2002)	22

SEC v. Elliott,
953 F.2d 1560 (11th Cir. 1992) 19, 23

SEC v. Hardy,
803 F.2d 1034 (9th Cir. 1986) 19

SEC v. Lincoln Thrift Association,
577 F.2d 600 (9th Cir. 1978) 19

SEC v. Princeton Econ. Int’l Ltd,
No. 99 CIV. 9667 PKC, 2008 WL 7826694 (S.D.N.Y. Sept. 30, 2008) 20, 23

SEC v. Safety Fin. Serv.,
674 F.2d 368 (5th Cir. 1982) 19

SEC v. StraightPath Venture Partners LLC, et al.,
1:22-cv-03897-LAK, Dkt. No. 180 (S.D.N.Y. Mar. 30, 2023) 23

Rules of Procedure

Fed. R. Civ. P. 56..... 22

Treatises

RALPH E. CLARK, CLARK ON RECEIVERS § 646 (3d ed. 1959)..... 20

RALPH E. CLARK, CLARK ON RECEIVERS § 651 (3d ed. 1959)..... 20

RALPH E. CLARK, CLARK ON RECEIVERS § 652 (3d ed. 1959) 20

Pursuant to this Court’s Consent Order for Preliminary Injunction (“**Consent Order**”) [Dkt. 56], David A. Castleman, the Court-appointed receiver (the “**Receiver**”) over Defendant EminiFX, Inc. (“**EminiFX**”) and certain assets of Defendant Eddy Alexandre (“**Alexandre**”), through his counsel, respectfully submits this memorandum of law in support of his motion (the “**Motion**”), for entry of an Order, in substantially the form annexed hereto (the “**Proposed Order**”),¹ (i) Approving Procedures for the Verification of User Contributions to and Withdrawals from EminiFX, (ii) Setting a Bar Date for the Filing of Non-User Claims, (iii) Establishing Notice Procedures, and (iv) Granting Related Relief (the “**Procedures**,” annexed to the Proposed Order). The Receiver is contemporaneously filing the Declaration of David A. Castleman in Support of the Motion (the “**Castleman Dec.**”) and hereby states as follows:

I. PRELIMINARY STATEMENT

The Receiver, by this motion, seeks approval of a process to complete my analysis of the EminiFX Users’ Transactions and to determine the universe of persons² who may be entitled to a distribution from the EminiFX receivership estate (the “**Receivership Estate**”). This process will allow the Receiver to understand the full extent of the Users’ Contributions and Withdrawals, resolve instances where the Users disagree with the Receiver’s determinations of their Contributions and Withdrawals, and resolve the Claims of Non-Users. Castleman Dec. ¶ 2. There are tens of thousands of Users who created accounts with EminiFX (each an “**EminiFX User Account**”). As set forth in the Receiver’s Financial Conditions Report, filed on May 16, 2023 [Dkt. No. 199] (the “**FCR**”), these Users contributed hundreds of millions of dollars to the

¹ Capitalized terms not defined herein have the meanings ascribed to them in the Proposed Order.

² The Receiver intends to move the Court at a later date for a determination whether, and in what amount, a User holds a Claim against the Receivership Estate based largely on the outcome of the Procedures set forth in this Motion, as well as any relevant information that may come to light.

EminiFX System. In addition, there is a smaller group of Non-Users who may have Claims (“**Non-User Claims**”) and may be entitled to receive a Distribution from the Receivership Estate in an amount and priority to be determined.

EminiFX purported to be a multi-level “investment club” that received over \$260 million in Contributions from at least 25,000 Users.³ Castleman Dec. ¶ 3. EminiFX User Accounts accrued a fixed weekly return on the pooled holdings between 5.00% and 9.99% per week (the “**ROI**”) and certain Users accrued Bonuses, including those related to the recruitment of other Users. Castleman Dec. ¶ 3. EminiFX also satisfied requests from certain Users to withdraw funds from EminiFX, which could and did sometimes include accrued ROI and Bonuses. Castleman Dec. ¶ 3. The EminiFX User Accounts were maintained in an EminiFX MySQL database (the “**Database**”), which was recovered by the Receiver. Castleman Dec. ¶ 3. The Database contained records related to EminiFX Users’ Contributions, Withdrawals, as well as detailed records of the weekly accrual of the ROI and Bonuses. Castleman Dec. ¶ 3.

Although the Receiver was able to recover a substantial number of records from EminiFX (including the Database) and from certain third parties (largely financial institutions where EminiFX maintained accounts), there were significant deficiencies in the maintenance of records. Castleman Dec. ¶ 4. Significantly, the Receiver and his team have found no evidence of any regularly issued User account statements outside of the Database or even a general ledger of any kind. Castleman Dec. ¶ 4. As a result, the Receiver and his team undertook a detailed forensic investigation to be able to report on the financial conditions of EminiFX, as set forth in the FCR, and to also enable the Receiver to initiate a claims process by piecing together the record of

³ There are potentially tens of thousands of additional Users, although many of these Users have no contributions, withdrawals or other activity attributed to their EminiFX User Accounts.

Contributions made to and Withdrawals made from the EminiFX System and to identify EminiFX User Accounts that may have been created, but no Contribution or Withdrawal identified. Castleman Dec. ¶ 4.

The Database contained a substantial amount of information deemed reliable that assisted the Receiver in attributing most Transactions to specific Users or purposes. Castleman Dec. ¶ 5. For example, the EminiFX “Package Purchase” data, which provided details related to the level of Contribution by each User, contained dates and amounts that allowed the Receiver’s forensics team to link that User to a specific bank or cryptocurrency exchange transaction reflected in reliable third-party data. Castleman Dec. ¶ 5. The Receiver and his team also obtained bank account statements, brokerage statements, and cryptocurrency data from the various financial institutions, which the Receiver considers to be the best and most reliable evidence that a specific Transaction had actually occurred. Castleman Dec. ¶ 5.

Combining the various bank and cryptocurrency financial data with records from the Database allowed the Receiver and his team to construct a ledger with sufficient reliability to assess the overall financial condition of EminiFX on a weekly basis to coincide with the ROI schedule and to ascertain Contributions and Withdrawals made to and from EminiFX User Accounts. Castleman Dec. ¶ 6. The Receiver and his team were able to attribute 92% of the cryptocurrency Contributions, 85% of the cash Contributions, and 95% of the cryptocurrency Withdrawals, by dollar amount.⁴ Castleman Dec. ¶ 6. The cash Withdrawals were minimal. Castleman Dec. ¶ 6. However, certain transactions were often not attributable to specific Users, especially with respect to the thousands of individual cash Contributions. Castleman Dec. ¶ 6.

⁴ The Receiver and his team were able to attribute 99.8% of cryptocurrency Withdrawals by transaction count. Castleman Dec. ¶ 6 n.2.

Accordingly, at this juncture in the case, and in aid of eventually proposing a distribution, it is necessary for the Receiver to verify the User Transactions to enable the Receiver to determine the Users that may be entitled to an eventual distribution, and to establish bar dates and procedures to determine the identity of Non-Users and the amount of their Non-User Claims. Castleman Dec. ¶ 7. The Receiver is proposing Procedures for the verification of User Transactions, the establishment of bar dates for Non-Users to assert Non-User Claims, and a review process for each.⁵ The Procedures are intended to set forth a process that can be followed easily by Claimants while affording the Receiver flexibility to review and work with Claimants to verify Transactions and reconcile Non-User Claims.

The Receiver has created, within the Website, a separate portal (“**Portal**”) that contains all of the Transactions identified by the Receiver. Users will be given access to the Portal, and will receive a special access page containing a Transaction Log with each of the User’s Transactions. The User will thereafter be asked to verify their listed Transactions, modify such Transactions and/or add additional Transactions or add an additional User on whose behalf a Transaction may have been made. Castleman Dec. ¶ 8. The Procedures are intended to allow Users to easily review and verify their Transactions or, if necessary, to add to or modify the Transaction Log. Castleman Dec. ¶ 9. The Receiver hopes that such a method will reduce the burden on as many Users as possible, while still providing them with a robust system to submit additional Transactions for consideration. Castleman Dec. ¶ 9. Given the volume of Users, the Receiver expects that this process will take some time. Castleman Dec. ¶ 9.

The Procedures also seek to establish a date by which holders of claims, who may not have

⁵ The Procedures may be amended from time to time in the judgment of the Receiver, with updates posted on the Website, reports on any changes included in each Regular Quarterly report to the Court, and leave from the Court sought for changes the Receiver deems to be sufficiently material to require further approval.

been EminiFX Users or whose additional claims may be unrelated to their status as Users are required to submit a claim against the Receivership Estate for Non-User Claims, and a subsequent process for the reconciliation of such Non-User Claims. Castleman Dec. ¶ 10. The Procedures will allow the Receiver to make individual determinations with respect to each of the proofs of claim submitted by Non-Users. They also include an objection procedure for Non-User Claims.

The Procedures, if approved, will allow the Receiver to determine the scope of Non-User Claims, eventually consider and move the Court to confirm the Claims of Users,⁶ and provide critical step towards an eventual distribution of the assets of the Receivership Estate. Castleman Dec. ¶ 11.

II. BACKGROUND

A. User Contributions and Withdrawals

The FCR provides a full and complete accounting of the results of the Receiver's forensic analysis of the financial condition of EminiFX, including a description of the User activity in the EminiFX System. This section is intended to provide context to this Motion, including an understanding of how Contributions and Withdrawals were made, how such Transactions were recorded, and how the Database was used to effectuate and monitor activity.

The Contributions into the EminiFX System generally occurred in one of two ways—via deposits in USD into an EminiFX United States bank account, or via Bitcoin (“**BTC**”) into an EminiFX account held at CoinPayments, an offshore cryptocurrency exchange. Castleman Dec.

⁶ The potential Claims of Users, on account of which Users may be entitled to a distribution, will be determined in the first instance based upon such Users' Contributions to and Withdrawals from the EminiFX System. As the Receiver set out fully in the FCR, the accrued ROI and Bonuses, which were part of the purported User account balances in the EminiFX System alongside User Contributions and Withdrawals, had no actual connection or relationship to the financial performance of EminiFX or its holdings. To the extent that any other factors may bear upon whether an individual User's Contributions and Withdrawals should result in a claim, the Receiver expects to move this Court for further relief once the Receiver has sufficient information to do so. Nevertheless, the Receiver expects that the vast majority of the Claims of Users will be based solely on their Contributions and Withdrawals.

¶ 12. EminiFX’s primary bank accounts were at Bank of America and TD Bank. Castleman Dec. ¶ 12. Before Bank of America froze the EminiFX account on or about March 14, 2022 and placed the balance of over \$14 million into suspense on April 8, 2022, a total of just over \$27 million was deposited there by Users. Castleman Dec. ¶ 12. In TD Bank, a total of almost \$51 million was deposited by Users, including nearly \$2 million deposited directly into Mr. Alexandre’s personal account. Castleman Dec. ¶ 12. It also appears that beginning on or about May 6, 2022, in the last days of EminiFX’s active operation, over a million dollars in cash was deposited, which the Receiver has treated as Contributions by Users. Castleman Dec. ¶ 12.

By the week ending March 18, EminiFX had already been taking Contributions via BTC, largely via the offshore cryptocurrency exchange, CoinPayments. Castleman Dec. ¶ 13. However, also beginning in March 2022, Contributions via CoinPayments began to increase substantially, with EminiFX receiving nearly \$157 million in Contributions via CoinPayments in the final nine weeks of its operation. Castleman Dec. ¶ 13. CoinPayments generally recorded each “deposit” transaction in both BTC and USD, which allowed the Receiver and his team to value the transaction in USD, even though it was never actually converted from BTC to USD.⁷ Castleman Dec. ¶ 13. Further, the balance of the EminiFX User Account was increased in USD when the BTC was contributed—potentially indicating that a conversion from BTC to USD had occurred. Castleman Dec. ¶ 13. As the BTC instead accumulated in the EminiFX CoinPayments account, a significant portion of that BTC was used to pay Withdrawals, and a smaller portion was sent to other cryptocurrency exchange platforms. Castleman Dec. ¶ 13. At all times while the BTC was held in the EminiFX CoinPayments account, the amounts were subject to the volatility of the

⁷ The amount of each Transaction, as reflected on the Transaction Log, may differ slightly from the amount that Users have in their own records, due to the fees and other transaction costs that Users may have paid to deposit funds into the EminiFX System.

market. As the price of BTC generally decreased throughout the first half of 2022, so did the value of the EminiFX CoinPayments account. Castleman Dec. ¶ 13.

With a few exceptions, Users' Withdrawals were processed via the CoinPayments system and paid as BTC from the CoinPayments account, regardless of whether the EminiFX User had contributed USD, BTC, or some combination thereof. Castleman Dec. ¶ 14. By the time the Receiver was appointed, a net total of \$228 million in Contributions had been made into the EminiFX System by Users. Castleman Dec. ¶ 14.

B. ROI and Bonuses Accrued to Users

Certain EminiFX Users were credited—on the EminiFX System only—with both ROI and multi-level marketing “Bonuses” for recruiting other Users each week, as set forth in the EminiFX compensation plan. Castleman Dec. ¶ 15. The accruals were depicted as increases in the EminiFX User Account balances and in the Database “earnings” table. Castleman Dec. ¶ 15. Of the 62,198 Users found in the EminiFX system, 16,439 had no Transactions, Bonuses, or ROI. Castleman Dec. ¶ 15. Many EminiFX Users—18,819 EminiFX User Accounts—also had positive balances despite not having a Contribution or Withdrawal attributed to them, and therefore accrued ROI and Bonuses. Castleman Dec. ¶ 15. Those account balances, including the accruals credited to the EminiFX User Accounts, were nevertheless available for Withdrawal, and some Users did in fact withdraw some of the ROI and Bonuses that were credited to their accounts—and any User who withdrew some of the ROI and Bonuses was paid, in effect, with the funds of other Users given the lack of any trading activity to support those ROI and bonuses. Castleman Dec. ¶ 15. Most of the account increases were accruals in the form of ROI which was a fixed percentage between 5.00% and 9.99% every week starting on October 22, 2021. Castleman Dec. ¶ 15.

Several Bonuses were also credited to Users, as set forth in the February 2022

Compensation Plan and the “earnings” table. Castleman Dec. ¶ 16. These Bonuses generally reflected the multilevel nature of EminiFX, whereby a User would be considered the “sponsor” of a User she referred (the “affiliate”). Castleman Dec. ¶ 16. The total amount accrued to Users for all referral bonuses was \$56.6 million, as reflected in the EminiFX System and in the EminiFX User Accounts. Castleman Dec. ¶ 16.

As a result of the substantial amounts accrued in ROI and Bonuses, the total stated account value of the Users, reflected in the EminiFX System grew substantially each week, to almost \$548 million by the time the Receiver was appointed. Castleman Dec. ¶ 17. However, as the Receiver explained in the FCR, none of the ROI payments were based on the results of actual investing activity. Castleman Dec. ¶ 17.

C. Calculation of User Refunds

The Receiver’s comprehensive assessment of the actual weekly financial performance of EminiFX, on one hand, and the total alleged ROI and Bonuses accrued each week, on the other, revealed that there was no discernible link between the two. [FCR, Dkt. 199, at 5.] The marked-to-market account values of EminiFX’s holdings and total stated account value of EminiFX Users saw a significant divergence throughout 2022, with the difference between these values growing to over \$374 million by May 2022. [FCR, Dkt. 199, at 5.] This widening gap between the actual value of EminiFX holdings and the stated value of EminiFX User Accounts underscores the disconnect between the purported ROI and Bonuses and the company’s financial reality. Castleman Dec. ¶ 18.

Due to this demonstrable disconnect and the lack of supporting evidence for the legitimacy of accrued ROI and Bonuses, the Receiver has determined that these amounts (\$319 million in total [FCR, Dkt. 199, at 5]) should not be recognized as legitimate or actual liabilities of EminiFX

or the Receivership Estate. Castleman Dec. ¶ 19. Rather, the Receiver expects that the primary valuation method for the Claims of Users (on account of their status as Users in the EminiFX System) is their Contributions and Withdrawals. This approach rejects the use of artificially inflated account “balances” that have no basis in EminiFX’s financial performance or holdings, and the use of accrued ROI and Bonuses to determine a User’s claim could perpetuate the problem of paying ROI and Bonuses (or claims thereon based) using the funds of other Users rather than using the proceeds of any legitimate investment activity. Castleman Dec. ¶ 19.

D. Investigating User Transactions

To determine the Contributions and Withdrawals of each User, the Receiver and his team relied on various sources of confirmable information. Castleman Dec. ¶ 20. As detailed fully in the FCR, Users typically made Contributions by (i) depositing USD into an EminiFX United States bank account; (ii) transferring BTC into an EminiFX account held at CoinPayments; or (iii) transferring BTC into an EminiFX account held at CashApp, an onshore payment system that accepted cryptocurrency. [FCR, Dkt. 199, at 14.]

Since EminiFX did not maintain accounting records in generally accepted formats, the Receiver and his team faced significant challenges in attributing individual Transactions to specific Users, particularly the cash Contributions, which totaled over \$79 million. [FCR, Dkt. 199, at 14.] To determine each User’s Contribution, the Receiver and his team analyzed the Database, which provided specific details regarding Users’ investment levels, transaction dates, and amounts in addition to bank and cryptocurrency exchange data. [FCR, Dkt. 199, at 2, 13–14.]

Through a comprehensive approach, the Receiver and his team were able to construct a ledger with sufficient reliability to assess the overall financial condition of EminiFX on a weekly basis, while also providing a basis for creating a process to verify Users’ Transactions. [FCR, Dkt.

199, at 14–15.] The Procedures were drafted to account for the realities of the incomplete data available to the Receiver, while leveraging the available data to provide the majority of Users a streamlined process to verify their Withdrawals from and Contributions to the EminiFX System. Castleman Dec. ¶ 23.

III. THE PROPOSED PROCEDURES

A. Verification of User Transactions

By this Motion and the proposed Procedures, the Receiver seeks to establish a process for each User to access his or her account through a Portal created on the Website to: (1) verify the accuracy of the Contributions to and Withdrawals from the EminiFX System, as reflected in the Receiver’s Transaction Log, and correct any Transaction if the User claims it is inaccurate; (2) identify any additional Transactions not listed by the Receiver in the Transaction Log; and (3) advise the Receiver of any portion of any Transaction that should be attributable to another User. The User can also merge accounts if the User had more than one EminiFX User Account.

To accomplish the foregoing, the Receiver has developed a convenient and user-friendly process for Users. The details of the Procedures are set forth on Exhibit A to the Proposed Order and should be referred to for a complete description of the Procedures. In sum:

1. As soon as feasible after the entry of the Proposed Order, the Receiver will send a link to each User known to him to access the Portal. The Receiver will utilize multi-factor authentication and/or other appropriate measures to ensure the security of the Portal and the confidentiality of the information available on the Portal. The Portal will be available to Users on both desktop computers and certain mobile phones. The Receiver also intends to make the Portal available in French and Haitian Creole, to the extent practicable.
2. The Portal will allow each User to view their respective Transactions. A “Transaction” is

defined as a Contribution or Withdrawal of Funds to the EminiFX System. Each Transaction will have a Transaction number, date, source of funds, type of Transaction (Contribution or Withdrawal), and an amount. Transactions that have a BTC value on the master data file will display USD and BTC.

3. For each Transaction, the User will be presented with four “action” items: (1) verify the Transaction; (2) dispute the Transaction; (3) mark the Transaction as unrecognized; or (4) add a User to the Transaction.
 - a. If the User agrees with the information provided for each Transaction, the User need only click “verify.” The Transaction will then become a Verified Transaction. Any action other than verifying a transaction on the Transaction Log or adding a member to a Transaction is deemed a User Update. All such User Updates require supporting documentation and the Receiver is not required to independently investigate or verify the accuracy of any such User Update provided by a User without supporting documentation.
 - b. If the User does not agree with the amount listed for the Transaction, the User should mark the Transaction as “disputed”, in which case, a pop-up screen will enable the User to enter what the User believes to be the correct amount (in USC or BTC) of the Transaction.
 - c. If the User does not recognize a Transaction, the User can simply mark the transaction as unrecognized.
 - d. The User can also attribute a Transaction to another User, along with such User’s name and email, and the amount of the Transaction (in USD or BTC)

that should be attributed to the other User.

4. In addition, the User can add a Transaction that is not listed on the Transaction Log by clicking “add Transaction” and providing the date, transaction source, transaction type and amount of the Transaction (in USD or BTC).
5. If a User has multiple EminiFX User Accounts, the Portal will give the option of verifying ownership of another EminiFX User Account and merging the EminiFX User Accounts. The User must have access to the email addresses associated with each EminiFX User Account.
6. For EminiFX User Accounts in which no Transactions have been identified, the User will receive a special set of instructions, informing them that no Transactions have been identified, but still providing the option to log onto the Portal and add Transactions along with supporting documentation. The User will be unable to Dispute or Add a Transaction without providing supporting documentation.
7. Users are required to verify the accuracy of each respective Transaction and each User Update under penalty of perjury.
8. Once each Transaction is Verified or a User Update is made, the User will submit the Verifications and/or User Updates.

1. User Verification Deadline

Users will have a set deadline, known as the “**User Verification Date**,” to verify their Transactions or submit User Updates. The Receiver requests that the Court set the User Verification Date for such date that is ninety days after entry of the Proposed Order. The Receiver further proposes that he be given discretion to extend the User Verification Date for all Users or on an individual basis. Once the Portal is live, the Receiver intends to display the User Verification

Date currently in effect on the Website.⁸

2. Verified Transactions and Voluntary Resolution of Disputed Transactions

Following the User Verification Date, if the Receiver determines that a User Update is consistent with the existing records or the documentation provided by the User supports the User Update, the Transaction will be deemed a Verified Transaction; otherwise, it will become a Disputed Transaction. In cases where a Disputed Transaction arises, the Receiver will notify the User and may attempt to resolve the dispute voluntarily. If a resolution is reached, the Disputed Transaction may be considered a Verified Transaction.

If Users fail to verify their Transactions before the User Verification Date, they waive their right to contest the accuracy of those Transactions and from challenging the completeness of the Transaction Log.

3. Judicial Resolution of Disputed Transactions

Upon the Receiver's determination to initiate a formal process to resolve unsettled Disputed Transactions, he will file with the Court and send to the applicable Users a Schedule of Disputed Transactions.

The Receiver will state how he proposes to resolve each Disputed Transaction in the Schedule of Disputed Transactions and offer a brief explanation of his proposed resolution of each Disputed Transaction. Users may object to the Receiver's proposed resolution of their Disputed Transactions within forty-five days of its filing, by providing in writing to the Receiver, an objection that clearly states the grounds for the objection to the Receiver's proposed resolution regarding each of that User's Disputed Transactions addressed by the Schedule of Disputed

⁸ The "Website" can be found at "<https://www.eminifxreceivership.com>." The Website was established by the Receiver to keep all interested parties informed as to the progress of the Receivership.

Transactions, and any documentation in support of the User Objection.

After the User Objection Deadline, the Receiver will file with the Court a summary of the Disputed Transactions and a statement in support of the Receiver's determination with respect to each of the Disputed Transactions. Each Disputed Transaction will become a Resolved Transaction in an amount determined by the Court upon its consideration of the Receiver's proposed resolution as to each Disputed Transaction and each respective User Objection, if any.

The fact that a User may have a Verified Transaction **does not entitle the User to a User Claim, a Distribution or guarantee that a Distribution will be made or in what amount any such Distribution will be made.** Verified Transactions and any resultant future distributions may be subject to later priority determination, subordination, disallowance, offset, or equitable consolidation.

B. Non-User Claims

1. Bar Dates

For Non-User Claims, the Procedures attached to the Proposed Order outline a process for submitting, reviewing, and resolving the Non-User Claims, which are not directly tied to any User Transactions.⁹ To facilitate the process, the Receiver's noticing agent will provide a "**Proof of Claim Form**" in the form annexed as Exhibit A to the Castleman Dec., and establish deadlines for submitting Non-User Claims to the Receiver and ensure all potential Non-Users have ample time to submit their Claims.

The Receiver requests that the Court establish two bar dates with respect to Non-User Claims:

⁹ A Person may be both a User and Non-User. The procedures for submission of Non-User Claims are separate and apart from any Contributions, Withdrawals or other activities related to being a User in the EminiFX System.

- (i) for Claimants other than Governmental Units, the Receiver requests a bar date of sixty (60) days following the entry of the Proposed Order (the “**General Non-User Claim Bar Date**”).
- (ii) For Claims filed by Governmental Units, the Receiver requests a bar date of one hundred twenty 120 days following the entry of the Proposed Order (the “**Governmental Bar Date**,” and together with the General Non-User Claim Bar Date, the “**Non-User Claim Bar Dates**”).

Proofs of Claim may only be submitted by Persons who believe they hold a Non-User Claim that arose wholly or partially before July 1, 2023. However, those with Claims for professional fees that are governed by the June 10, 2022 Employment Order may not submit Proofs of Claim. These fees will be processed according to the procedures in the Employment Order. Similarly, individuals with Claims that arose on or after July 1, 2023 need not submit a Proof of Claim. Such Claims will be handled pursuant to future Court orders.

A Claimant who fails to properly serve a Proof of Claim Form before its respective Non-User Claim Bar Date will hold an “**Abandoned Claim.**” As a result, EminiFX and its respective property will be discharged from any and all indebtedness or liability with respect to any Abandoned Claim.

Non-User Claims asserted in a Proof of Claim Form must be supported with documentation. If supporting documentation is not available, a Claimant must attach an explanation for its unavailability. Once submitted, a Proof of Claim Form served in accordance with the Procedures and that complies with the requirements of the Proposed Order becomes a “**Filed Claim.**”

2. Non-User Claims Report

Following the expiration of the Non-User Claim Bar Dates and after the Receiver has had an opportunity to review the Filed Claims, the Receiver will file a report (a “**Non-User Claims Report**”), listing the Receiver’s determination, after review of the Filed Claims, of the allowed amount of each Non-User Claim. The Non-User Claims Report will classify Non-User Claims as fully allowed, partially allowed, or disallowed and provide a brief explanation for the Receiver’s determination if a Non-User Claim is partially allowed or disallowed. The Receiver may also choose to reserve judgment on some Filed Claims pending further review and investigation and file an amended Non-User Claims Report at the appropriate time.

As a privacy-preserving measure, prior to or concurrent with his issuance of the Non-User Claim Report, the Receiver will assign Non-Users unique identifiers (each a “**Non-User Identification Number**”). The Receiver or his agents will use Non-User Identification Numbers to identify the Non-Users in public filings with the Court. Given that the number, amounts, type, and complexity of the Claims are not fully known at this time, the Receiver cannot fix a date certain by which he will issue any Non-User Claims Report. The Receiver will work expeditiously to determine the status of each Filed Claim and keep the Court and parties-in-interest apprised of his progress.

To determine whether to allow or disallow each Non-User Claim in whole or in part, the Receiver will consider factors including, but not limited to, whether (i) the Non-User Claim is properly and timely filed; (ii) the Non-User Claim is duplicative of any other Non-User Claim; (iii) the Non-User Claim is consistent with the books and records of EminiFX (to the extent available); (iv) the Non-User Claim is supported by adequate documentation; (v) the Non-User Claim is subject to any offsets or defenses that may be asserted; or (vi) whether other grounds exist

for allowing or disallowing the Non-User Claim, in whole or in part. To aid the Receiver's review of the Non-User Claims, the Receiver may make document demands on a User with respect to asserted Non-User Claim. The Non-User shall be required to respond to such document demands within a reasonable period of time, as set forth by the Receiver in his document demand to the Non-User.

3. Claimant Objections and Disputed Claims.

Claimants may challenge the Receiver's determinations of their Filed Claims as stated in a Non-User Claims Report. This includes objections to the Receiver's decision about whether the Filed Claim is partially allowed or disallowed, the allowed amount of the Filed Claim, or the Receiver's ruling on the secured status of the Filed Claim.

Such Claimant Objections must be emailed to the Receiver at EminiFX.Claim.Disputes@Stretto.com within forty-five days after the Receiver emails or mails a Non-User Claims Report. A timely served Claimant Objection results in the Claim becoming a Disputed Claim and the Claimant becoming a Disputing Claimant.

However, Disputing Claimants may not file their Claimant Objections with the Court. Instead, the Receiver will file them as exhibits to a Resolution Motion filed by the Receiver.

Failure to timely serve a Claimant Objection or to comply with the instructions provided will result in the loss of the Disputing Claimant's right to object to or contest the Receiver's Non-User Claims Reports.

4. Resolution of Disputes

The Receiver may attempt to resolve a Disputed Claim with the respective Disputing Claimant within forty-five days of receiving a Claimant Objection. Disputed Claims may be submitted to mediation at the agreement of both the Receiver and the Disputing Claimant. The

cost of mediation will be split equally between the Receivership Estate and the Disputing Claimant, with mediation fees under \$25,000 payable by the Receiver without further court order. The Receiver also has the discretion to settle and compromise any Disputed Claim as he deems appropriate, in his business judgment, without further Court order.

If a Disputed Claim cannot be resolved through agreement, it will be adjudicated by the Court in a summary proceeding. The Receiver may file one or more Resolution Motions with the court to confirm his determinations of the Disputed Claims. Each Resolution Motion will include a brief statement of the Disputed Claim, the Claimant Objection, a recommended resolution, and the reasons for it. The Receiver's Resolution Motion and supporting brief must be served on the Disputing Claimant at the time of filing.

The Disputing Claimant will have fourteen days to respond to a Resolution Motion, and the Receiver will have seven days to reply. Multiple Disputed Claims can be addressed in a single Resolution Motion, at the Receiver's discretion.

C. Notice Procedures

To provide notice to potentially unknown Non-Users of the procedures outlined above and as more fully set forth in the Proposed Order, the Bar Date Notice, in the form annexed as Exhibit B to the Castleman Dec, will be emailed to all known Claimants for whom the Receiver has an email address within 14 business days after entry of the Proposed Order. The Bar Date Publication Notice, in the form annexed as Exhibit C to the Castleman Dec, will be posted on the website and in any cost-effective medium deemed appropriate by the Receiver within the same timeframe.

The Receiver will provide the Bar Date Notice and Proof of Claim Form electronically to anybody who requests them via email at EminiFXClaims@Stretto.com or via mail at EminiFX Claims c/o Stretto, 410 Exchange, Suite 100 Irvine, CA 92602.

IV. ARGUMENT

A. This Court Has the Requisite Authority to Grant the Relief Requested

In an equity receivership, a district court “has broad powers and wide discretion” to fashion relief. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *see also S.E.C. v. Malek*, 397 F. App’x 711 (2d Cir. 2010) (discussing the District Court’s power to supervise a Federal Equity Receiver’s implementation of an approved plan of *pro rata* distribution of receivership assets including commodity funds and effectively liquidating the receivership estate, where an entity executed an alleged fraudulent scheme and where the claimants were primarily the purported victims of such scheme). “The basis for broad deference to the district court’s supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions.” *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). “It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership,” and the relief the Receiver seeks is well within the limits of the District Court’s discretion. *See SEC v. Safety Fin. Serv.*, 674 F.2d 368, 372–73 (5th Cir. 1982) (quoting *SEC v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9th Cir. 1978)) (internal quotation marks omitted).

B. The User Verification Procedures Are Appropriate

The Receiver and his professionals have made significant progress to ascertain the financial condition of the Receivership Estate, including Users’ Contributions and Withdrawals. [See FCR, Dkt. 199, at 14–16.] However, the Receiver requires additional information to complete his analysis of the Users’ Contributions and Withdrawals. The process proposed by the Receiver will allow Users to provide information about Transactions that the Receiver cannot uncover based solely on a review of EminiFX’s records and the records which third parties have provided him.

C. The Non-User Claims Procedures Are Appropriate

Courts set limitations on the time for the proof and presentation of claims “to facilitate the proceeding and to promote dispatch in the settlement of the estate.” CLARK § 652, at 1142 (citing *Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir. 1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)); *see also SEC v. Princeton Econ. Int’l Ltd*, No. 99 CIV. 9667 PKC, 2008 WL 7826694 (S.D.N.Y. Sept. 30, 2008); *SEC v. Cook*, No. CIV.A. 399CV0571R, 2003 WL 22272065 (N.D. Tex. Sept. 30, 2003). Limiting the time to present claims “is necessary in order to lay the foundation for the court to order payment to creditors and distribution to those entitled to receive.” *Id.* § 651, at 1142 (citing CLARK § 652). Because those most vitally affected are not named parties to the suit, courts overseeing a receivership “should take every precaution to notify everyone interested in and substantively affected by the receivership,” including “by advertisement . . . by proper notices by mail . . . by publication and otherwise.” *Id.* § 652(a), at 1143.

In receiverships, “[e]very person who has any claim or demand against the estate or property in the custody of the court through the receiver . . . must assert such claim or demand in the court in which such receiver was appointed.” RALPH E. CLARK, CLARK ON RECEIVERS § 646, at 1132 (3d ed. 1959) (hereinafter “CLARK”). “The claims should be definite enough to enable the receiver to pass on their validity, fairness and legality and to place them in their proper and legal category of claims for preference, if any.” *Id.* § 651, at 1142. Claimants may present their claims in various ways, including to the receiver pursuant to a “general order of the appointing court” in which case, the receiver may decide whether to allow the claim, and the appointing court must then decide the final status of the claim, which functions as a final order. *Id.* § 646, at 1132.

To develop a successful plan for the eventual distribution of assets, the Receiver must

identify the nature and scope of the potential claims against, liabilities of, and Contributions to, EminiFX. For this reason, it is necessary to establish a deadline for Claimants to serve Proofs of Claim for review and processing by the Receiver, and a process for the Receiver to verify Users' Contributions to EminiFX.

D. The Receiver's Proposed Order Affords Claimants the Requisite Notice and Opportunity to Be Heard

Courts have held that neither a Court nor a Receiver may resolve a claimant's claims unless a claimant is afforded notice and an opportunity to be heard. *SEC v. Callahan*, 193 F. Supp. 3d 177, 204 (E.D.N.Y. 2016); *see also SEC v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (approving summary proceedings to evaluate claims). Therefore, the Proposed Order provides a fair process, granting sufficient time for Claimants to consider the Receiver's determination of their Claims. Moreover, the Proposed Order provides a means for Claimants to amicably resolve their disputes as to their Disputed Claims with the Receiver as well as a procedure to resolve their disputes before the Court in a summary proceeding if the parties do not resolve the dispute amicably. The Proposed Order reasonably balances the Claimants' rights and the receivership's need to determine Claims for Distribution purposes.

E. The Proposed Form and Method of Notice Are Appropriate

The Bar Date Notice will be posted on the Website and emailed to all potential Claimants who have provided the Receiver with their email addresses, including by contacting his retained professionals.

To address the possible existence of Claimants unknown to him, the Receiver will, in any newspaper or other medium deemed appropriate and cost-effective by the him, publish the Bar Date Publication Notice.

This form of notice is adequate, since “[f]or unknown creditors, constructive notice, such

as notice by publication, will suffice” to afford them notice that is “‘reasonably calculated, under all the circumstances to apprise’ them of the pendency of the Bar Date.” *In re BGI, Inc.*, 476 B.R. 812, 820 (Bankr. S.D.N.Y. 2012) (citing *In re Drexel Burnham Lambert Grp., Inc.*, 151 B.R. 674, 680 (Bankr. S.D.N.Y. 1993); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652 (1950)). Where the Receiver’s review of the EminiFX’s books and records would not alert him to the possibility that a Claim would be filed against the Receivership, publication notice in periodicals read by the investing public affords proper notice.

F. The Utilization of a Summary Proceeding to Resolve Disputed Transactions and Disputed Claims Is Proper

Summary proceedings have been upheld when, as here, they are used to implement claims procedures and claimants receive an opportunity to be heard, to object to their claim determinations, and to have their claims considered by a court. *See SEC v. Credit Bancorp, Ltd.*, No. 99 CIV. 11395 RWS, 2000 WL 1752979, at *33 (S.D.N.Y. Nov. 29, 2000) (finding that summary proceedings used in a receivership appropriate because they afforded claimants an opportunity to be heard regarding the validity of their interest in the receivership estate), *aff’d*, 290 F.3d 80 (2d Cir. 2002); *SEC v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (approving summary proceedings to evaluate claims). The Proposed Order satisfies each of these requirements. As explained in *FDIC v. Bernstein*:

“[T]he use of summary proceedings in equity receiverships, as opposed to plenary proceedings under the Federal Rules [of Civil Procedure], is within the jurisdictional authority of a district court.” Such procedures “avoid formalities that would slow down the resolution of disputes. This promotes judicial efficiency and reduces litigation costs to the receivership,” thereby preserving receivership assets for the benefit of creditors.

786 F. Supp. 170, 177–78 (E.D.N.Y. 1992) (citations omitted).

Rule 56 of the Federal Rules of Civil Procedure gives the district court summary

jurisdiction over all the receivership proceedings and allows the district court to disregard the Federal Rules.” *Elliott*, 953 F.2d at 1567. It is a claimant’s burden to establish a valid claim against the receivership estate. *See Revere Copper & Brass, Inc. v. Adriance Machine Works, Inc.*, 76 F.2d 876, 878 (2d Cir. 1935).

Courts commonly enter orders approving receivers’ procedures for verifying claims. *See SEC v. Callahan*, Case No. 2:12-cv-01065-JMA-AYS, Dkt. No. 186, 13-17 (E.D.N.Y. Feb. 20, 2014) (approving claim verification and objections procedures); *SEC v. Correll*, 4:05-cv-00472-RAS, Dkt. No. 369, 7 (E.D. Tex. Dec. 12, 2008) (approving procedures for resolving disputed claims, including summary proceedings); *SEC v. StraightPath Venture Partners LLC, et al.*, 1:22-cv-03897-LAK, Dkt. No. 180 (S.D.N.Y. Mar. 30, 2023) (same); *SEC v. Platinum Management (NY) LLC, et al.*, 1:16-CV-06848-BMC, Dkt. No. 554, 7–9 (E.D.N.Y. Dec. 1, 2020) (same); *see also Byers*, 637 F. Supp. 2d at 184.

Here, if a Disputed Claim cannot be resolved voluntarily, then the Receiver or his agents will file a Resolution Motion, which provides Claimants an opportunity to explain why the Court should reject the Receiver’s determination as to their Claim. For the sake of efficiency, if there are multiple Disputed Claims, the Receiver is permitted to consolidate them into one or more omnibus Resolution Motions as he deems appropriate. Thus, as required by applicable law, the Proposed Order provides Claimants with notice and an opportunity to be heard and are fair and reasonable. *Cf. Elliott*, 953 F.2d at 1567 (summary proceedings are inappropriate where parties would be deprived a full and fair opportunity to present claims and defenses).

V. NOTICE

The Receiver will provide notice of the Motion to parties via ECF by posting it to the Court’s docket. He will provide notice to non-parties by posting it to the Website’s homepage and “Civil Docket” tab, where it will be available without cost to the public.

As stated in the Notice of Motion, non-parties may direct any questions or comments regarding this Motion to the Receiver's team at EminiFXInquiries@Stretto.com. Unless a non-party has made a motion to intervene, and that motion has been granted by the Court, non-parties should **not** send any inquiries directly to the Court or file them on ECF. [Dkts. 174, 176]. The proposed notice procedures for the Motion are consistent with previous notice procedures proposed by the Receiver and approved by this Court. [Dkts. 77, 79, 91].

The Receiver has taken great efforts to gain the trust of Users and communicate clearly with them. The Receiver believes that serving this Motion on Users individually via email may cause some Users to attempt to verify their Transactions or submit User Updates prior to the launch of the Portal. To avoid this potential confusion, the Receiver will not serve this Motion upon the Users via email.

VI. CONCLUSION

For the reasons set forth herein, and in the Castleman Dec., the Receiver respectfully seeks the entry of an order, substantially in the form of the Proposed Order, filed contemporaneously with this Motion.

Dated: New York, New York
August 10, 2023

OTTERBOURG P.C.

By: /s/ Jennifer S. Feeney
Jennifer S. Feeney
William M. Moran
Erik B. Weinick

230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
jfeeney@otterbourg.com

*Attorneys for David A. Castleman, as
Receiver*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

-against-

EDDY ALEXANDRE and
EMINIFX, INC.,

Defendants.

22 Civ. 3822 (VEC)

[PROPOSED]

ORDER (I) APPROVING PROCEDURES FOR THE VERIFICATION OF USER CONTRIBUTIONS TO AND WITHDRAWALS FROM EMINIFX, (II) SETTING A BAR DATE FOR THE FILING OF NON-USER CLAIMS, (III) ESTABLISHING NOTICE PROCEDURES, AND (IV) GRANTING RELATED RELIEF

Upon consideration of the motion by David A. Castleman, the court-appointed receiver (the “**Receiver**”) over Defendant EminiFX, Inc. (“**EminiFX**” or the “**Receivership Entity**”) and certain assets of Defendant Eddy Alexandre (“**Alexandre**”) pursuant to this Court’s Consent Order for Preliminary Injunction (“**Consent Order**”) [Dkt. 56], the accompanying declaration of David A. Castleman (the “**Castleman Dec.**”) in support of the motion (the “**Motion**”) (i) Approving Procedures for the Verification of User Contributions to and Withdrawals from EminiFX, (ii) Setting a Bar Date for the Filing of Non-User Claims, (iii) Establishing Notice Procedures, and (iv) Granting Related Relief, and memorandum of law in support of the Motion, any responses or objections to the Motion, and any replies in support of the Motion, this Court finds that (i) the relief requested in the Motion is in the best interest of EminiFX, creditors and all other parties; (ii) notice of the Motion was good and reasonable under the circumstances; and (iii) based upon the record herein and after due deliberation it is hereby

ORDERED THAT:

1. The Motion is **GRANTED** in all respects.
2. All objections not withdrawn or specifically resolved by this Order are overruled in all respects.
3. The Procedures attached hereto as Exhibit A are approved, including all dates and deadlines set forth therein, as may be extended.
4. The Receiver is authorized to implement the Procedures attached hereto as Exhibit A.
5. The Receiver is permitted, in his reasonable judgment, to modify the Procedures without further order of this Court if doing so will not impair substantive rights of the Users or Claimants, so long as he maintains a current version of the Procedures that is accessible by members of the public at <https://www.eminifxreceivership.com/>, and states in each status report how the Procedures have changed from the last most recent iteration, if at all. However, if the Receiver deems a modification of the Procedures to require Court approval, the Receiver may seek authority from this Court to amend the Procedures.
6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.
7. This Order shall be immediately effective and enforceable upon its entry.

Dated: New York, New York

_____, 2023

SO ORDERED:

THE HON. VALERIE E. CAPRONI
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT A
PROCEDURES

SECTION 1. DEFINITIONS.

For purposes of this Order, the following terms are defined as follows:

A. “**Bonuses**” means bonuses Credited to Users prior to the Receivership Date by the EminiFX System on account of their recruitment of other Users. For the avoidance of doubt, all bonuses characterized as “direct referral bonuses,” “indirect referral bonuses,” “weekly profits pairing bonuses,” “monthly residual income,” and “fast track/rank bonuses” shall be considered Bonuses.

B. “**BTC**” means Bitcoin.

C. “**Cash**” means immediately available funds in USD.

D. “**Claim**” means (1) a purported right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, against EminiFX; or (2) a purported right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, against EminiFX.

E. “**Claimant**” means any Person holding a Non-User Claim.

F. “**Claims Agent**” means Stretto, Inc., whose retention the Court confirmed on June 10, 2022 [Dkt. 47].

G. “**Contribution**” is defined, as to a User, as a deposit of Funds into the EminiFX System prior to the Receivership Date, whether deposited directly or by a third party for or on behalf of that User, net of fees and other transaction costs.

H. “**Credited**” is defined as an increase in the amount or value of any currency, commodity, or security, attributed by the EminiFX System to a User, without regard to whether that increase represents a *bona fide* increase in the amount or value attributed by the EminiFX System to a User.

I. “**Disputed Claim**” means a Claim that is subject to continuing dispute between the Receiver and a Claimant, pursuant to the procedures outlined by Section 4.D, *infra*.

J. “**Disputed Transaction**” means a Transaction that is not a Verified Transaction or a Resolved Transaction.

K. “**Distribution**” means the disbursement or transfer of Cash pursuant to an eventual distribution of the assets of the Receivership Estate to Users or Claimants.

- L. “**EminiFX**” means EminiFX, Inc.
- M. “**EminiFX System**” means the EminiFX-branded platform to and from which Users made Contributions and Withdrawals of Funds.
- N. “**Funds**” means Cash or BTC.
- O. “**General Non-User Claim Bar Date**” means the date that is sixty days following entry of the Order at 5:00 p.m. (prevailing Eastern Time).
- P. “**Governmental Bar Date**” means the date that is one hundred twenty days following entry of the Order at 5:00 p.m. (prevailing Eastern Time).
- Q. “**Governmental Unit**” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.
- R. “**Non-User Claim**” means any Claim by any Person not based on that Person’s status as a User which is based on (1) the provision of goods or services to EminiFX that has not been paid in whole; (2) money loaned to the Receivership Entity that has not been paid in whole; (3) unpaid wages, compensation, or other employment benefits that has not been paid in whole; (4) tax liabilities, including those held by federal and state governments, subject to Title 26 of the U.S. Code; (5) primary, secondary, direct, indirect, secured, unsecured, or contingent liability; /or (6) contract, tort, indemnity, reimbursement, subrogation theories, or other legal or equitable theory.
- S. “**Non-User Claim Bar Dates**” means, collectively, the Governmental Bar Date and the General Non-User Claim Bar Date.
- T. “**Order**” means the Order (i) Approving Procedures for the Verification of User Contributions to and Withdrawals from EminiFX, (ii) Setting a Bar Date for the Filing of Non-User Claims, (iii) Establishing Notice Procedures; and (iv) Granting Related Relief.
- U. “**Person**” means a natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Unit or other entity.
- V. “**Portal**” means the webpage on the Website through which Users can review their Transactions.
- W. “**Proof of Claim**” or “**Proof of Claim Form**” means the form annexed as Exhibit A to the Castleman Dec. for Claimants to assert a Non-User Claim.
- X. “**Receivership Date**” means May 11, 2022.
- Y. “**Receivership Estate**” means the receivership estate of EminiFX.

Z. “**Resolved Transaction**” means a Transaction whose amount has been determined by the Court.

AA. “**ROI**” means the fixed weekly “return on investment” Credited to Users by the EminiFX System.

BB. “**Transaction**” means a Contribution or Withdrawal to the EminiFX System. For the avoidance of doubt, a Transaction does not include Bonuses or ROI.

CC. “**Transaction Log**” means the log created by the Receiver based upon the Receivership Entity’s books and records and any other documents available to the Receiver that lists, as to each User, that User’s Contributions and Withdrawals, which log may be updated from time to time as additional information becomes available to the Receiver.

DD. “**User Update**” means any action by the User to modify the Transaction Log on the Portal as described in Section 2.B and C, *infra*.

EE. “**USD**” means lawful currency of the United States of America.

FF. “**User**” means any Person who created an account within the EminiFX System before the Receivership Date.

GG. “**User Verification Date**” means the date that is ninety days after entry of the Order, unless otherwise extended by the Receiver for all Users or for any individual User in the Receiver’s discretion.

HH. “**Verified Transaction**” means a Transaction on the Transaction Log: (i) that has been verified by the User, (ii) for which the User failed to verify on or before to the User Verification Date, or (iii) which the Receiver, in his reasonable judgment, is satisfied that a User Update is supported by information known to the Receiver, including information which may be provided by the User in support of the User Update.

II. “**Website**” means <https://www.eminifxreceivership.com/>.

JJ. “**Withdrawal**” means a withdrawal of Funds from the EminiFX System, whether withdrawn directly by a User or by a third party for or on behalf of a User.

KK. All other defined terms not defined by this Section 1 will be defined in line with the Section in which they appear unless otherwise noted.

SECTION 2. VERIFICATION OF USER CONTRIBUTIONS.

The following procedures are approved:

A. The Portal

(I) The Receiver shall establish the Portal for use by Users to verify their Transactions and provide User Updates.

(II) The Receiver may employ means which, in his discretion, are appropriate to secure the confidentiality of information about Users available on the Portal. This may include the use of multi-factor authentication, which may include an email or mobile phone verification method.

(III) The Portal will be available to Users on both desktop computers and certain mobile phones.

(IV) The Receiver may add additional functionality to the Portal which is not required by this Order, but which, in his judgment, enhances the experience, convenience, or accessibility for Users; improves the accuracy of information available within the Portal; streamlines the process for verifying Transactions, or resolving disputes; or supports the overall administration or efficiency of the Receivership.

(V) Following the entry of this Order, the Receiver will send a link to all email addresses known to him to belong to Users that will allow them to access the Portal. The Receiver shall provide Users with instructions on how to access the Portal and verify, update or add Transactions (as described below), and will notify them of the User Verification Date.

(VI) The Receiver shall email instructions on how to access the Portal to any Person who the Receiver, to the best of his knowledge, believes made a Contribution and whose email address the Receiver knows, regardless of whether or not that Person created an account on the EminiFX System.

B. Verification and Update Procedures

(I) When a User logs onto the Portal, the Portal will show each User their respective Transactions in the form of a Transaction Log specific to that User. Each Transaction may have a transaction number, date, source of funds, type of transaction (Contribution or Withdrawal), and an amount.

(II) For each of a User's Transactions, that User must do at least one of the following, as applicable:

- a. Verify that the Transaction as shown on the Transaction Log is accurate;
- b. dispute the Transaction, where the Transaction is partially inaccurate as shown on the Transaction Log, and correct the Transaction in the manner instructed by the Portal interface;
- c. indicate that the User does not recognize the Transaction as shown on the Transaction Log; or

d. attribute the Transaction to other Users, in whole or part, if part of the Transaction was made pursuant to an agreement with, or for the benefit of, another User.

(III) A User may also add a Transaction to the Transaction Log, if not shown on the Transaction Log.

(IV) If a User verifies a Transaction, that Transaction becomes a Verified Transaction.

(V) If a User does not verify a Transaction, but selects any other option with respect to any particular Transaction, or adds a Transaction to the Transaction Log, each such Transaction becomes a User Update.

(VI) A User who submits a User Update that does not either attribute the Transaction at issue to other Users or indicate that the User does not recognize the Transaction at issue must support that User Update with documentation that would allow the Receiver to verify the accuracy of that User Update. The Receiver is not required to independently investigate or verify the accuracy of any User Update if the User submitting that User Update fails to submit such supporting documentation.

(VII) The Portal will allow Users to merge two or more accounts on the EminiFX System. To merge accounts, the User must have held both accounts as of the Receivership Date and must have access to the email addresses associated with both accounts on the EminiFX System.

(VIII) For accounts on the EminiFX System for which no Transactions have been identified, the account User will receive a special set of instructions, informing them that no Transactions have been identified, but still providing the option to log onto the Portal to allow the addition of Transactions.

(IX) Users must verify the accuracy of each Transaction and each User Update under penalty of perjury. The Receiver may disregard any Transaction or User Update not so verified.

C. User Verification Date.

(I) Users must verify and/or provide a User Update on or before the User Verification Date. Upon the User Verification Date, the Portal shall no longer allow any User to verify any Transactions or submit User Updates.

(II) The Receiver shall have the discretion, in his reasonable judgment, to extend the User Verification Date for any or all Users.

(III) A User who fails to verify their Transactions by the User Verification Date waives their right to contest the Receiver's determination of such User's Transactions.

(IV) A User who fails to update the Transaction Log, but who was required to do so on or before the User Verification Date:

a. is precluded from challenging the accuracy of any Transaction for which that User was required to submit a User Update; and

b. is precluded from challenging the completeness of the Transaction Log.

(V) A User who verifies any Transaction in the Transaction Log before the User Verification Date is precluded from later challenging the accuracy of that Transaction.

(VI) For the avoidance of doubt, no provision in this Section shall be construed as limiting, waiving, or otherwise prejudicing the rights of any party to seek redress, restitution, or other relief against another party, nor shall any provision herein operate to estop or otherwise preclude any party from asserting any claims, defenses, or arguments in any other proceedings to which the Receiver is not a party.

D. Voluntary Resolution of User Updates.

(I) If the Receiver, in his reasonable judgment, is satisfied that a User Update is supported by information known to the Receiver, including documentation provided by the User, the Receiver may deem the Transaction a Verified Transaction. The burden of supporting a User Update shall lie solely with the User, and not the Receiver.

(II) If the Receiver determines, in his reasonable judgment, that the documentation provided by a User does not support that User's User Update, the Transaction will become a Disputed Transaction.

(III) To aid the Receiver's review of the Transactions, the Receiver may demand that a User produce documents to the Receiver with respect to any of the Transactions, whether related to a Verified Transaction or Disputed Transaction. The User shall be required to respond to such document demands within a reasonable period of time, as set forth by the Receiver in his document demand to the User.

(IV) The Receiver may, but is not required to, attempt to resolve a Disputed Transaction at any time, including by informally contacting a User to resolve a Disputed Transaction.

E. Judicial Resolution of Disputed Transactions

(I) At such time that the Receiver believes it is appropriate to initiate a formal process to resolve all or part of the Disputed Transactions that have not voluntarily been resolved, the Receiver shall file with the Court and serve by email,

upon any User whose Disputed Transactions the Receiver seeks to resolve, a schedule of Disputed Transactions (“**Schedule of Disputed Transactions**”). The Receiver may, at his option, address multiple Disputed Transactions in a Schedule of Disputed Transactions in an omnibus manner.

(II) The Receiver or his agents may at any time attempt to resolve the dispute voluntarily, involving other parties, such as a mediator, as appropriate, in the reasonable judgment of the Receiver. If the Receiver and the User, as well as any other parties who the Receiver deems necessary to resolve the Disputed Transaction, have voluntarily resolved the Disputed Transaction, the Receiver may consider the Disputed Transaction as a Verified Transaction.

(III) As a privacy-preserving measure, prior to or concurrent with his issuance of the Schedule of Disputed Transactions, the Receiver will assign Users unique identifiers (each a “**User Identification Number**”). The Receiver or his agents will use User Identification Numbers to identify the Users in public filings with the Court.

(IV) As to each Disputed Transaction addressed in the Schedule of Disputed Transactions, the Receiver shall state his resolution of the Disputed Transaction, and may give a brief explanation of his proposed resolution of the Disputed Transaction.

(V) Within forty-five days of filing the Schedule of Disputed Transactions (the “**User Objection Deadline**”), a User may object to the Schedule of Disputed Transactions (each a “**User Objection**”) by providing in writing to the Receiver, via a method of service which he may designate, an objection that clearly states the grounds for the objection to the Receiver’s proposed resolution regarding each of that User’s Disputed Transactions addressed by the Schedule of Disputed Transactions, and any documentation in support of the User Objection.

(VI) The Receiver shall inform each User whose Disputed Transaction is included in the Schedule of Disputed Transactions that failure to submit to the Receiver a User Objection shall preclude that User from challenging the Receiver’s resolutions of Disputed Transactions included in the Schedule of Disputed Transactions in the future.

(VII) Following the User Objection Deadline, the Receiver will file with the Court a summary of the User Objections and a statement in support of the Receiver’s determination with respect to each of the Disputed Transactions. Any Disputed Transaction resolved by the Court shall become a Resolved Transaction in an amount determined by the Court.

F. Effect of Verification. The fact that a User may have a Verified Transaction **DOES NOT ENTITLE THE USER TO A DISTRIBUTION OR GUARANTEE THAT A DISTRIBUTION WILL BE MADE OR IN WHAT AMOUNT ANY SUCH DISTRIBUTION WILL BE MADE TO A USER.** A determination of whether a User holds a

Claim against the Receivership Estate and in what amount shall be addressed with the Court at a later date.

SECTION 3. NON-USER CLAIMS.

The following procedures shall govern the resolution of Non-Users' Claims:

A. The Proof of Claim Form and the information and instructions contained therein, generally in the form annexed as Exhibit A to the Castleman Dec., and the manner of notice of the Proof of Claim Form, are approved and the Proof of Claim Form shall be the sole manner for Claimants to submit Non-User Claims to the Receiver.

B. Persons Eligible to Submit Proofs of Claim. Proofs of Claim may only be completed by and served on the Receiver by Persons who believe they hold a Non-User Claim that arose, in whole or in part, prior to July 1, 2023.

C. Persons Not Required to Submit Proofs of Claim.

(I) Any Claim based solely on a Person's status as a User shall be processed in accordance with Section 2 of the Procedures, and shall not be filed in accordance with Section 3 of these Procedures. Any Claim so filed shall be rejected without further review by the Court.

(II) Persons holding Claims for professional fees that are governed by the June 10, 2022 Employment Order [Dkt. 47] are not subject to the Non-User Claim Bar Dates set forth herein. Their fees, and those of the Receiver, will be processed pursuant to the procedures set forth in the Employment Order, and not according to these Procedures.

(III) Persons holding Claims that arose on or after July 1, 2023 are not subject to the Non-User Claim Bar Dates set forth herein and any such Claims shall be addressed in accordance with other and further orders of this Court.

D. Non-User Claim Bar Dates.

(I) The deadline on or before which Claimants other than Governmental Units asserting a Non-User Claim are required to serve a Proof of Claim Form is the General Non-User Claim Bar Date; and

(II) The deadline on or before which Governmental Units asserting a Non-User Claim are required to serve a Proof of Claim Form is the Governmental Bar Date.

E. Procedure for Timely Serving Proofs of Claim. To timely assert a Non-User Claim, each Claimant must serve a completed and signed Proof of Claim Form, together with supporting documentation on the Claims Agent as required by this Order, so that such Proof of Claim Form is actually received by the Claims Agent on or before the Non-User Claim Bar Date applicable to the Claimant.

F. Proofs of Claim shall be served on the Receiver's Claims Agent by either (1) First Class Mail via the USPS addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; (2) overnight courier or in-person delivery addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; or (3) using the electronic Proof of Claim Form available on the Website and electronically submitting the Proof of Claim on the Website. Any Proof of Claim served in accordance with this procedure and that otherwise complies with the requirements of this Order shall become a "**Filed Claim.**"

G. The Receiver has the discretion to extend the time for a Claimant to complete and serve its Proof of Claim for cause shown, or to accept service by other means.

H. Supporting Documentation for Proof of Claim. Each Claimant must attach to each Proof of Claim copies of all documents available to the Claimant on which the Claimant relies to support its Proof of Claim. Such documentation may include, but is not limited to: copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, evidence of perfection of lien, and other documents evidencing the amount and basis of the Non-User Claim. If such supporting documentation is not available, the Claimant shall attach to the Proof of Claim an explanation of why the documentation is unavailable.

I. Consent to Jurisdiction. A Claimant who submits a Proof of Claim is deemed to consent to this Court's jurisdiction to resolve all matters related to that Proof of Claim and all Claims asserted therein.

J. Effect of Failure to Serve Proof of Claim Compliant with Claims Procedures.

(I) Any Claimant that fails to serve a Proof of Claim in a timely manner and in the form required pursuant to this Order shall be deemed to hold an "**Abandoned Claim.**" Any Claimant holding an Abandoned Claim:

a. shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Abandoned Claim against EminiFX and its property;

b. shall not be permitted to object on account of such Abandoned Claim to any Distribution that may be proposed by the Receiver;

c. shall be denied any Distributions on account of such Abandoned Claim under any Distribution that may be proposed by the Receiver; and

d. shall not receive any further notices on account of such Abandoned Claim.

(II) EminiFX and its respective property shall be, and hereby are, discharged from any and all indebtedness or liability with respect to any Abandoned Claim.

SECTION 4. NON-USER CLAIMS REPORT.

The following procedures are approved:

A. Non-User Claims Report.

(I) Following the expiration of the Non-User Claim Bar Dates and after the Receiver has had an opportunity to review Claims that were properly filed pursuant to these Procedures (the “**Filed Claims**”, the Receiver will file a report (a “**Non-User Claims Report**”), listing the Receiver’s determination, after review of the Filed Claims, of the allowed amount of each Filed Claim. The Non-User Claims Report will classify Filed Claims as fully allowed, partially allowed, or disallowed and may provide a brief explanation for the Receiver’s determination if a Filed Claim is partially allowed or disallowed. The Receiver may also choose to reserve judgment on some Filed Claims pending further review and investigation and file an amended Non-User Claims Report at the appropriate time.

(II) The Receiver shall not be required to include an Abandoned Claim in a Non-User Claims Report. The Receiver may periodically modify previous Non-User Claims Reports as the Receiver deems necessary and provide a commensurate extension of time to respond.

(III) Prior to or concurrent with his issuance of the Non-User Claims Report, the Receiver will assign Claimants a unique identifier (each a “**Non-User Identification Number**”). The Receiver or his agents will use Non-User Identification Numbers to identify the Claimants in public filings with the Court.

B. Allowed Claims.

(I) The Receiver may determine whether a Filed Claim is fully allowed, partially allowed, or disallowed by taking into account, without limitation, whether (i) the Filed Claim is properly and timely filed; (ii) the Filed Claim is duplicative of any other Filed Claim; (iii) the Filed Claim is consistent with the books and records of EminiFX (to the extent available); (iv) the Filed Claim is supported by adequate documentation; (v) the Filed Claim is subject to any offsets or defenses that may be asserted; or (vi) whether other grounds exist for allowing or disallowing the Filed Claim, in whole or in part. To aid the Receiver’s review of the Filed Claims, the Receiver may conduct reasonable discovery with respect to the asserted Filed Claim. The Claimant shall be required to respond to such discovery requests within a reasonable period of time, as set forth by the Receiver in such requests.

(II) The Receiver’s determination of the allowed amount of each fully allowed or partially allowed Filed Claim shall serve as the basis for calculating a Claimant’s potential Distribution of assets of the EminiFX Estate; however, such allowed amount is not necessarily indicative of the priority or treatment of the Filed Claim, or the amount or type of Distribution a Claimant may ultimately receive from EminiFX on account of that Filed Claim. The Receiver may estimate the

amount of a Filed Claim that is contingent, unliquidated, or unmatured for purposes of determining the allowed amount of any Filed Claim.

(III) The Receiver's determination to fully allow or partially allow a Filed Claim is without prejudice to a later subordination, reclassification, offset, or equitable distribution with respect to such Filed Claim, pursuant to a motion of the Receiver, including in connection with any potential Distribution that the Receiver may propose to the Court.

C. Notice of Non-User Claims Report.

(I) The Receiver shall serve a "**Non-User Claims Report**" by posting it on the Website and by sending it to each Claimant that holds one or more Filed Claims that is the subject of a determination by the Receiver in such Non-User Claims Report.

(II) Within five (5) business days of filing a Non-User Claims Report, the Receiver or his agents will post the applicable Non-User Claims Reports on the Website.

D. Claimant Objections and Disputed Claims.

(I) A Claimant may challenge the Receiver's determination of the Claimant's Filed Claims set forth in a Non-User Claims Report including, without limitation, any objection to the Receiver's determination (1) that the Filed Claim is a partially allowed Claim, or a disallowed Claim, (2) the allowed amount of the Filed Claim, or (3) the Receiver's determination concerning the secured status of the Filed Claim or the property of EminiFX by which the Filed Claim is secured.

(II) A Claimant that seeks to object to the Receiver's determination of the Claimant's Filed Claims shall serve on the Receiver a written objection to the Receiver's determination (each a "**Claimant Objection**"). No person or entity other than the applicable Claimant may file a Claimant Objection to the Non-User Claims Report, and Claimants may not object to the Receiver's determinations of other Claimants' Filed Claims unless so requested by the Receiver.

(III) Objections to the determinations in a Non-User Claims Report shall (1) be in writing; (2) state the name and address of the objecting Claimant and the name and address of the Claimant's counsel or another authorized representative (if any), (3) the claim number assigned to the Filed Claims, and the nature of the Claims of such Claimant; (4) state with particularity the basis and nature of all objections to the applicable determinations; and (5) be electronically mailed to the Receiver at EminiFX.Claim.Disputes@Stretto.com, so as to be *actually received* on or before forty-five days following the Receiver's emailing or mailing to a Claimant a Non-User Claims Report addressing the determination to which the Claimant Objection responds. Upon the timely service of a Claimant Objection, a Filed Claim shall become a Disputed Claim. Each Claimant that properly and timely serves a Claimant Objection shall be a "**Disputing Claimant.**"

(IV) Claimant Objections should not be filed with the Court except as an exhibit to a Resolution Motion (defined in Section 5.B(I), *infra*) filed by the Receiver and not by the Claimant.

(V) A Claimant's failure to timely serve the Receiver with a Claimant Objection to a Claim that complies, in all respects, with the instructions set forth in this Order shall permanently preclude the Claimant's right to object to or contest the Receiver's Non-User Claims Reports and determinations as the same relate to such Claims.

(VI) If a Claimant fails to serve a Claimant Objection to the Receiver's determination as to their Filed Claim as set forth in a Non-User Claims Report, then the Receiver's determination shall be final and binding as to the applicable as to that Filed Claim.

SECTION 5. RESOLUTION OF DISPUTED CLAIMS.

The following procedures are approved:

A. Alternative Dispute Resolution of Disputed Claims.

(I) The Receiver may attempt, within forty-five days of receipt of a Claimant Objection, to resolve a Disputed Claim with the respective Disputing Claimant.

(II) The Disputed Claim may, at the election of the Receiver and the Disputing Claimant, be submitted to mediation before a disinterested mediator, to be completed within thirty days from commencement of a mediation session unless extended by the Receiver in his discretion. The fees of mediation will be borne one-half by the Receivership Estate and one-half by the Disputing Claimant. Mediation fees under \$25,000 may be paid by the Receiver without further order of the Court.

(III) The Receiver may, in his sole discretion, settle and compromise any Disputed Claim on terms and for reasons that he deems, in his business judgment, to be appropriate without further Order of this Court.

B. Summary Disposition. Any Disputed Claim that is not resolved by agreement between the Receiver and the Disputing Claimant shall be adjudicated by the Court in a summary proceeding as follows:

(I) The Receiver may file one or more motions with the Court requesting that the Court confirm the Receiver's determinations as to the particular Disputed Claims addressed in the motion (a "**Resolution Motion**").

(II) Each Resolution Motion shall attach the information which the Receiver deems necessary for the Court to resolve the Resolution Motion, but at a minimum, shall include (1) a brief statement of the Disputed Claim, (2) the

Claimant Objection, (3) a recommended resolution, or request for further proceedings, and the reasons therefor.

(III) The Resolution Motion and supporting brief shall be served on the applicable Disputing Claimant at the time of its filing by First Class Mail or by email.

(IV) At the Receiver's election, a Resolution Motion may consist of omnibus motions addressing multiple Disputed Claims at one time, rather than individually.

(V) The Disputing Claimant shall have fourteen days to respond to a Resolution Motion, without the need for formal intervention, unless the Court orders otherwise. The Receiver shall have seven days to reply.

SECTION 6. NOTICE OF BAR DATE TO NON-USERS.

The "**Bar Date Notice**" is approved in the form annexed as Exhibit B to the Castleman Dec. Within fourteen (14) business days after entry of the Order, for all known Claimants for whom the Receiver possess an email address, a Bar Date Notice will be emailed to that email address.

SECTION 7. NOTICE BY PUBLICATION.

A. Form of Notice. The "**Bar Date Publication Notice**" in the form annexed as Exhibit C to the Castleman Dec. is approved.

B. Notice. Within fourteen business days after entry of the Order, the Bar Date Publication Notice, or a substantially similar notice, will be published as follows:

(I) the Bar Date Publication Notice will be posted to the Website; and

(II) in any newspaper or other medium deemed appropriate and cost-effective by the Receiver.

SECTION 8. NOTICE UPON INQUIRY.

The Receiver shall promptly provide the Bar Date Notice and the Proof of Claim Form to any person or entity that makes a written request for such document to the e-mail address EminiFXClaims@Stretto.com or to the physical address EminiFX Claims c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602. Such documents will be provided electronically where possible.