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VIA ECF

Hon. Valerie E. Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

**Re: CFTC v. Alexandre and EminiFX, Inc., No. 22 Civ. 3822 (VEC)
Application for Payment of Fees and Expenses – Fourth Quarter 2023**

Dear Judge Caproni:

Pursuant to this Court’s Order dated June 10, 2022 concerning applications for professional fees and expenses [Dkt. 47], as amended on February 2, 2023 [Dkt. 187] and on June 30, 2023 [Dkt. 209] (the “**Employment Order**”), David Castleman, the court-appointed receiver (the “**Receiver**”) over Defendant EminiFX, Inc. (“**EminiFX**”) and certain assets of Defendant Eddy Alexandre (“**Alexandre**”), respectfully submits this application (the “**Application**”) for the payment of professional fees and expenses for the period of October 1, 2023 through December 31, 2023 (the “**Application Period**”). The Receiver requests approval of payment of fees and expenses to the Receiver and the following firms: Otterbourg P.C. (“**Otterbourg**”), J.S. Held LLC (“**JS Held**”), Deloitte Tax LLP (“**Deloitte Tax**”), Crowe LLP (“**Crowe**”), and Stretto, Inc., (“**Stretto**”) (collectively, the “**Professional Firms**”).

The Receiver and each of the Professional Firms have agreed to a public-service discount of their fees given the circumstances of the receivership. During the Application Period, the general receivership estate earned \$1,129,047 in interest on its high-yield accounts, with an additional \$76,337 earned in the separate Alexandre Assets account (not used for general expenses of the estate), for total earnings during the Application Period of \$1,205,384. The total cash outflows were \$1,191,118 comprised almost exclusively of approved fees and expenses for the Receiver and the Professional Firms. In addition, the Receivership expended \$16,375 to resolve certain non-user claims.

During the Application Period, the Receiver and his professionals spent the bulk of their time implementing the transaction verification and claims process for the tens of thousands of EminiFX Users and more limited number of potential non-user creditors, largely through the use of the User Portal. As most users have verified all their transactions, the Receivership has saved thousands of hours and millions of dollars in costs, but the remaining processing will take time. See 2023 Annual Status Report, at 10-16 [Dkt. 251]. The Receiver and his tax team also made substantial progress toward filing a closing agreement with the Internal Revenue Service, continued their investigation into potential third-party claims, and continued to administer all aspects of the Receivership.



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For the Application Period, (i) the Receiver requests fees of \$72,864.00; (ii) Otterbourg requests fees of \$551,338.90 and expenses of \$196.35; (iii) JS Held requests fees of \$204,052.00 and expenses of \$11,365.10; (iv) Crowe requests fees of \$43,674.71 and expenses of \$9.73; and (v) Stretto requests fees of \$248,678.00 and expenses of \$38,678.53. Stretto also requests expenses of \$5,475.29 incurred in the prior application period, and has agreed to apply the prior-approved \$25,000.00 retainer [Dkt. 47] to its fee request. Deloitte Tax incurred fees of \$34,240.00 and expenses of \$1,712.00, but the Receiver expects to request those fees in the next regularly filed fee application. The total requested or incurred fees of \$1,154,847.61 and expenses of \$51,961.71 for the Application Period are reasonable given the significant complexity and substantial work completed, as set forth in detail in Part III, below. The total administrative expenses for the Application Period are roughly equal to the interest earned during the same period, and the \$154.1 million in cash under management exceeds the \$151.3 million in turned over assets (cash plus liquidation value) by nearly \$3 million.

The Receiver and his professionals have maintained and presented their time and expense charges as set forth in the Billing Instructions for Receivers in Civil Actions Commenced by the Commodity Futures Trading Commission (“CFTC”) (the “**CFTC Billing Instructions**”), as required by the Employment Order. These detailed time entries have been approved by the CFTC, which consents to this request, and those time entries will be submitted to the Court separately under seal pursuant to the Employment Order. Attached as Exhibits 1-6 are affidavits setting forth narrative explanations of the services provided.

This Application will be posted on the homepage of the Receiver’s website at www.eminifxreceivership.com. Any EminiFX members who have any questions regarding this Application may send an email to the Receiver’s team at EminiFX@Stretto.com, as directed by this Court in its order dated August 12, 2022 [Dkt. 106]. Unless a party has made a motion to intervene, and that motion has been granted by the Court, parties should **not** send any inquiries directly to the Court [Dkts. 174, 176].

I. Authority for Requested Relief

A receiver appointed by a court “who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred. The amount of the compensation is to be determined by the court in the exercise of its reasonable discretion.” *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008). “This presumption of reasonable compensation extends to a receiver’s counsel and professionals.” *SEC v. Morgan*, 504 F. Supp. 3d 221, 223 (W.D.N.Y. 2020) (quoting *SEC v. Platinum Mgmt. (NY) LLC*, No. 16-CV-6848 (BMC), 2018 WL 4623012, at *4 (E.D.N.Y. Sept. 26, 2018)). “The Court considers several factors in determining a reasonable fee, including ‘(1) the complexity of problems faced, (2) the benefits to the receivership estate, (3) the quality of the work performed, and (4) the time records presented.’” *Id.* (quotations omitted). The Court may also consider “the reasonableness of the



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hourly rate charged and the reasonableness of the number of hours billed.” *SEC v. Amerindo Inv. Advisors Inc.*, No. 05 Civ. 5231 (RJS), 2015 WL 13678841, at *1 (S.D.N.Y. Sept. 14, 2015) (citations omitted). “In addition, in a securities receivership, opposition or acquiescence by the [regulatory agency] to the fee application will be given great weight.” *Byers*, 590 F. Supp. 2d at 644 (quotation marks and alteration omitted).

II. Procedural History

On June 15, 2022, the Court entered the Consent Order for Preliminary Injunction, appointing the Receiver as permanent Receiver [Dkt. 56] (“**Consent Order**”). Additional procedural history is set forth in the Receiver’s various status reports filed in this case, including the Receiver’s 2023 Annual Status Report filed on January 26, 2024 [Dkt. 251], the Receiver’s Financial Condition Report of EminiFX filed on May 16, 2023 [Dkt. No. 199], and prior fee applications [Dkts. 88, 164, 178, 188, 196, 219, 235].

On October 30, 2023, the Receiver filed an application for fees and expenses for July through September 2023 [Dkt. 235]. That application was granted on November 15, 2023 [Dkt. 237]. Prior fee applications had been granted on August 5, 2022 [Dkt. 92], October 25, 2022 [Dkt. 167], January 27, 2023 [Dkt. 185], February 13, 2023 [Dkt. No. 191], May 11, 2023 [Dkt. 198], and August 10, 2023 [Dkt. 227].

On December 14, 2023, a group of individuals, which identified themselves as investors in EminiFX, filed a motion to intervene in the Civil Action [Dkt. 240], which the Court denied without prejudice by an Order dated December 18, 2023 [Dkt. 242].

On December 26, 2023, the Receiver filed an Application [Dkt. 244] for supplemental authority to pay the following expenses: (1) the filing fee charged by the Internal Revenue Service for a closing agreement, which fee is currently set at \$38,000; and (2) additional funds of up to \$50,000 to provide supplemental public notice and informational campaign regarding the Portal.

III. Summary of Services During the Application Period

Transaction Verification and Claims Process. The Receiver and his teams at Otterbourg, JS Held and Stretto spent a substantial amount of time during the Application Period preparing and launching the transaction verification and claims process. Stretto, with input from the Receiver and his professionals, created a claims portal (the “**Portal**”) for investors to view and verify their transaction information.

As previously reported, the Portal launched on September 12, 2023 with instruction and login emails sent to every user. Users were then able to log on to the Portal to verify their transactions, relieving the vast majority of them of the burden of locating their transaction records.



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Since the launch of the Portal, as of December 31, 2023: over 21,600 users have submitted their transactions, over 72,800 transactions have been verified, around 7,400 transactions have been disputed (many of which are de minimis) and around 6,500 transactions have been added.

The Receiver and his teams at Otterbourg, JS Held, and Stretto are continuing to implement the transaction verification and claims process, investigating disputed or added transactions and resolving other user requests. During the Application Period, the Receiver and his team were able to analyze the submissions received to date, to identify common issues, and to formulate a consistent response for the resolution of such issues. Based on that review, the Receiver also concluded that a traditional process, whereby users are responsible for submitting their own documentation that must be then verified, would have required thousands of additional hours and cost millions of additional dollars.

The Receiver and his team continued to improve the functionality of the User Portal, including creating a communication feature where the Receiver and his team will be able to communicate with users directly through the portal. Such functionality will greatly aid the Receiver and his team to resolve consensually as many disputed transactions as possible, in order to minimize the disputed transactions submitted to the Court.

Upon hearing from multiple leaders in the Haitian community that an extension of the December 18, 2023 deadline to verify, add and/or dispute/or update transactions in the Portal would be beneficial, the Receiver extended the deadline to February 26, 2024. The Receiver sent an email to all users explaining the extension and next steps, published that date on the Receivership website, and posted a video announcement on the Receiver's YouTube webpage. The Receiver also explained that he did not believe that the extension of the deadline would materially impact the timing of a distribution, especially given that over 20,000 users have already submitted their transactions and a review of disputed transactions is underway. The Receiver and his team at Stretto continued to communicate with users via the channels already in place, with the Stretto team answering thousands of calls and emails during the Application Period.

During the Application Period, the Receiver and his legal team at Otterbourg reviewed proofs of claims filed by non-users. The general non-user claim bar date was October 30, 2023 and the governmental bar date was December 27, 2023. As of December 31, 2023, 55 proofs of claim have been submitted, most of which were user claims for which the claimant was set an email directing them to the User Portal. For the eight non-duplicative proofs of claim, the Receiver and his team began negotiating resolution of seven of those, while reserving judgment on one insider claim. Resolutions were reached with three claimants whose claims were within the Receiver's settlement authority, and an additional such resolution was reached after the close of the Application Period. During the Application Period, the Receiver and his team began negotiating with CoinPayments, which culminated in a proposed resolution as set forth in the



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resulting application to the Court [Dkts. 248, 249]. The Receiver is continuing to discuss resolution with the remaining two non-insider claimants.

Analysis of EminiFX Tax Liability. During the Application Period, the Receiver worked with his tax and accounting teams to minimize, if possible, the tax burden while expediting certainty from the IRS. In the Receiver's judgment based on advice received, it is in the best interest of the estate to approach the IRS with a closing agreement to obtain as prompt a resolution of the pre-receivership tax liability as possible. On December 26, 2023, the Receiver filed an Application [Dkt. 244] for supplemental authority to pay, among other things, the filing fee charged by the IRS for a closing agreement, which fee is currently set at \$38,000. The Receiver and his team also finalized and filed the Receivership's tax return at the beginning of the Application period, as set forth in the prior fee application [Dkt. 235].

Investigation into Third Party Claims. The Receiver's legal team at Otterbourg, in consultation with and supervised by the Receiver, continued its investigation into potential claims that the Receivership may have against third parties. Such claims could result in a direct financial recovery of the estate, or in the reduction or elimination of certain claims against the estate. During the Application Period, the Receiver and his legal team began to communicate and review documents received by third parties. Such investigation remains ongoing, and the Receiver will seek further relief or instruction from this Court as necessary.

Administration of the Estate and Case. The Receiver, assisted by his counsel at Otterbourg, supervised the administration of the estate, including monitoring bank accounts, redirecting and opening mail, and other tasks incidental to the management of the estate. The Receiver, with the assistance of Otterbourg, filed a status report advising the Court of the activities from the prior quarter [Dkt. 234]. The Receiver also coordinated with counsel for the CFTC and for Mr. Alexandre regarding potential next steps and resolution of the enforcement action.

IV. Summary of Fees and Expenses Requested

The Receiver includes herewith affidavits from himself and the lead from each of the Professional Firms. Pursuant to the Employment Order, detailed time entries are filed separately under seal. The aggregate fees being requested have been discounted for the public service each firm has been performing. The Receiver and the Professional Firms have reasonably and diligently exercised their duties during the Application Period, and the Receiver respectfully submits that they are entitled to be fairly compensated for services rendered.

The Receiver. As set forth above, the Receiver spent substantial time administering all aspects of the receivership. The Receiver respectfully requests the Court approve payment of \$72,864.00 in fees to the Receiver. The Castleman Affidavit attached as Exhibit 1 includes additional detail on his billing, as well as his supervision of the various Professional Firms. The



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Receiver has, with the consent of the CFTC, increased his billing rate beginning January 1, 2024 from \$495 to \$575 per hour, which still represents a discount of 44% off his normal rate. Such a rate will be reflected in invoices attached to the next regularly filed fee application.

Otterbourg. As set forth above, Otterbourg spent substantial time assisting the Receiver in administering and providing legal advice concerning all aspects of the receivership, and investigating potential third-party claims. Otterbourg played a key role in the implementation of the transaction verification and claims process and the User Portal, which accounted for the bulk of its time this quarter. The Receiver respectfully requests the Court approve payment of \$551,338.90 in fees and \$196.35 in expenses to Otterbourg. The Feeney Affidavit, attached as Exhibit 2, describes in more detail the work performed.

JS Held. JS Held continued to provide substantial forensic services to the estate, including its analysis of pre-receivership transactions, in connection with the implementation of the User Portal and the transaction verification and claims process. At the request of the Receiver and his legal team, JS Held has been providing updated reports to make the verification and claims process quicker and more efficient. The Receiver respectfully requests the Court approve payment of \$204,052.00 in fees and \$11,365.10 in expenses to JS Held. The O'Malley Affidavit attached as Exhibit 3 describes in more detail the work performed.

Deloitte Tax. Deloitte Tax has provided the estate with critical tax analysis and strategic advice, in connection with the Receiver's obligation to file a tax return for EminiFX in connection with EminiFX's pre-receivership tax liability. Deloitte Tax incurred fees of \$34,240.00 and expenses of \$1,712.00. Due to unexpected circumstances unrelated to the Receivership, the Receiver expects to request payment of these fees and expenses in the next regularly filed fee application.

Crowe. Crowe has provided the estate with critical tax support and analysis, including preparing a QSF tax return for the Receivership. The Receiver respectfully requests the Court approve payment of \$43,674.71 in fees and expenses of \$9.73 to Crowe. The Tomlinson Affidavit attached as Exhibit 5 describes the work performed.

Stretto. Stretto has managed all user communications and continued to play a key role in the implementation of the User Portal and the transaction verification and claims process. Stretto has also agreed to the Receiver's request to apply the \$25,000.00 retainer previously approved by the Court [Dkt. 47] to its latest invoice. The Receiver respectfully requests the Court approve payment of \$223,678.00 in fees (the requested amount less the application of the retainer) and expenses of \$44,153.82 (including the \$5,475.29 from the prior quarter) to Stretto. The Karpuk Affidavit attached as Exhibit 6 describes in more detail the work performed.



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V. Conclusion

The Receiver respectfully requests that the Court approve the fee and expense requests as set forth in this Application.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'David A. Castleman', with a long horizontal flourish extending to the right.

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Attachments

cc: Counsel of Record (*via ECF*)

Application GRANTED.

SO ORDERED.

A handwritten signature in blue ink, appearing to read 'Valerie Caproni', with a date '02/09/2024' written to its right.

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE