

**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)

2024 ANNUAL STATUS REPORT OF RECEIVER DAVID A. CASTLEMAN

(ELEVENTH STATUS REPORT)

David A. Castleman
OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
Tel: (212) 661-9100
Receiver

Jennifer S. Feeney
William M. Moran
OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
Tel: (212) 661-9100
Counsel for the Receiver

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David A. Castleman (the “**Receiver**”), as Receiver pursuant to the Consent Preliminary Injunction (the “**Consent Order**”), entered by this Court in this action (the “**Civil Action**”) on June 15, 2022 [Dkt. 56], files this Eleventh Status Report (the “**Report**”) to apprise the Court of the activities of the receivership (the “**Receivership**”) for the 2024 calendar year (the “**Annual Period**”), with a detailed focus on the period from October 1, 2024 through and including December 31, 2024 (the “**Fourth Quarter**”).¹ To the extent that events since January 1, 2025 are relevant for context, the Report will generally so note.

I. INTRODUCTION

During 2024, the primary focus throughout the year was on three related tasks—completing the transaction review process, filing a plan of distribution, and collecting user payment information in anticipation of making an initial distribution upon approval of the proposed plan. At the start of the year, over six thousand EminiFX users (otherwise referred to as “**users**” in this Report) had transactions in dispute. On October 30, 2024, the Receiver filed a lengthy schedule of nearly 120,000 user transactions, each representing an actual deposit or withdrawal into EminiFX [Dkt. 417]. After the 45-day objection period concluded on December 16, 2024, many users accepted the Receiver’s determinations, and some users provided the missing documentation necessary to resolve the dispute in their favor. By December 31, 2024, less than 650 users had transaction disputes or review holds.

On January 21, 2025, after the close of the Fourth Quarter, but before the filing of this Report, the Court entered an *Opinion and Order* (the “**Distribution Plan Order**”) [Dkt. 431] approved the plan of distribution (the “**Plan**”), as proposed by the Receiver. A clean copy of the

¹ The Receiver already reported on certain Fourth Quarter 2024 activities in the Third Quarter 2024 Report of Receiver David A. Castleman [Dkt. 418], which was filed on November 8, 2024. For the sake of continuity and clarity, this Report may include descriptions by the Receiver of activities that occurred in January 2025. This Annual Report will also include descriptions of other Receivership activities throughout 2024.

approved Plan is annexed to this Report.² With the Plan now approved, the initial phase of the transaction review process complete (as discussed further below), the Receiver will continue to collect payment information from users with undisputed claims who are eligible to receive a distribution. On January 23, 2025, the Receiver announced a \$100 million distribution and set the rising tide percentage at 45% (with an additional 10% for users with deposits of \$1,000 or less as they are eligible for a single distribution) (the “**Notice of Initial Distribution**”) [Dkt. 434]. The Receiver and his team will commence distributions to such users in accordance with the approved Plan in the first half of February.

As described in detail in prior quarterly reports, the Receiver launched an online portal (the “**Portal**”) at the end of the third quarter of 2023 to provide users with a streamlined process to verify, update, or supplement their transactions in accordance with the court-approved Procedures (the “**Procedures**”) [Dkt. 228]. The transaction review process was an extensive and complex effort, necessary to ensure the fair and accurate treatment of EminiFX users’ claims. The Portal enabled users to validate deposits and withdrawals and, in cases of disputes, to submit corroborating evidence. The data verified through this process became the foundation for users’ claims and the basis for distributions.

Throughout 2024, the Receiver focused extensively on the transaction verification and claims resolution process, addressing tens of thousands of claims submitted by users and non-users. By the time the Portal closed to all users at the end of the first quarter³, 110,318 transactions had been verified, representing approximately 30,000 users, which is 98% of the transactions

² The clean copy of the Plan removes the disclaimer on the cover page that then-Proposed Plan was subject to Court approval and updates the header to indicate this is the “Court Approved Plan.” No other modifications have been made. This version will replace the Proposed Plan on the Receivership website.

³ References to the first quarter, second quarter, and third quarter throughout this Report are refer to the calendar year 2024, unless expressly stated otherwise to indicate a different year.

originally identified by the Receiver. Another 11,778 transactions were disputed or added by EminiFX users (“**Disputed Transactions**”), representing about 6,500 users.

On October 30, 2024, the Receiver filed a Schedule of User Transactions, outlining all verified and disputed transactions. [Dkt. 417]. As a result of efforts to resolve and validate remaining Disputed Transactions, over 3,000 of the users who Disputed Transactions had their transactions fully resolved and became eligible for distribution. The process also resulted in the validation of 4,892 added transactions, not previously reflected on the Portal, resulting in over \$26.4 million in additional claims that will form the basis for distributions to the affected users. Only 7,030 Disputed Transactions remained at the end of the third quarter, representing under 6% of the 119,850 total user transactions.

Additionally, the Receiver revised the Portal in the Fourth Quarter to provide users with updated transaction logs reflecting the Receiver’s review and analysis. The revised Portal also allowed users with Disputed Transactions have the opportunity, through the revised Portal, to either accept or object to the Receiver’s proposed resolution, and to provide additional documentation or information that corroborates the claimed Transaction in dispute. More importantly, the revised Portal also enabled users to provide payment information in anticipation of distributions. By year-end, over 15,000 users had submitted payment details, and only 650 users had Disputed Transactions.

The Receiver also resolved all non-user claims during 2024. As noted in previous quarterly reports, only one non-user claim remained at the end of the third quarter. This final claim was resolved through mediation in the Fourth Quarter, after which the Receiver filed an Amended Claims Analysis Report on January 6, 2025 [Dkt. 427].

In addition to these tasks, the Receiver continued to address tax-related issues throughout the year. In the Fourth Quarter, the Receiver filed the 2023 qualified settlement fund tax return (the “**QSF Tax Return**”) and requested a prompt assessment, the granting of which is in the discretion of the Internal Revenue Service (“**IRS**”). With the assistance of his tax advisors at Deloitte Tax LLP, the Receiver is—concurrently with the filing of this Report or shortly thereafter—filing a pre-receivership tax return for EminiFX, Inc. (the “**Corporate Tax Return**”). The Corporate Tax Return reflects substantial tax auditing and forensic accounting given the substantial uncertainty inherent in a Ponzi scheme receivership. The Corporate Tax Return was filed with a tax liability of \$0, which the Receiver believes is correct under the applicable circumstances and foregoing caveats. The Receiver’s tax advisors have also provided him with estimates of reasonable worst-case scenarios under different possible interpretations of the tax liability owed under both QSF Tax Return and Corporate Tax Return. Given inapplicability of 11 U.S.C. § 505(b) to federal equity receivers, who nevertheless remain bound by the Federal Priority Statute, 31 U.S.C. § 3713, the Receiver has reserved conservatively to ensure compliance with all applicable laws. To the extent that any reserves are no longer needed, the Receiver will advise the Court and release such reserves to enable a subsequent distribution.

As of December 31, 2024, the Receivership estate earned nearly \$4.6 million in interest, removed the encumbrances on \$841,000 in recoveries through the non-user claims process, and incurred nearly \$5.9 million in expenses, primarily comprising Court-approved professional fees expenses. The Receivership’s assets at year-end include held approximately \$152 million in cash and potential litigation claims. The Receivership’s liabilities consist of \$1.3 million in professional fees and expenses for the Fourth Quarter 2024 contingent on Court approval, as well as refund claims for users (*i.e.*, Class 3/3A Claims). As a result of the conclusion of the transaction

verification process, the Receiver was able to determine a preliminary value for the total amount of claims approved to date, which is just under \$228 million. That liability may increase somewhat as disputed claims are resolved. A full ledger of the Receivership's financial transactions for 2024 is attached as Exhibit 1, with additional financial data presented in Exhibit 2.⁴

Looking forward, as a result of the efforts undertaken during the calendar year 2024, and given the court's approval of the Plan, the Receiver is prepared to commence distributions to eligible users by the first week of February. Additionally, the Receiver expects to spend the first two quarters of 2025 on seeking to resolve the remaining Disputed Transactions, filing the returns and requests for prompt assessments necessary to resolve the tax situation, and completing investigation of, and commencing, any third-party claims. Based on the current status, the Receiver expects that the estate will be substantially administered by the third quarter of 2025.

II. PROCEDURAL HISTORY

On May 11, 2022, the CFTC filed the Complaint [Dkt. 5] and a motion for an *ex parte* Statutory Restraining Order [Dkt. 6], which the Court granted on the same day, appointing the Receiver initially as Temporary Receiver [Dkt. 9]. On June 15, the Court entered the Consent Order that appointed the Receiver [Dkt. 56]. On February 15, 2024, Mr. Alexandre's counsel at the time filed a letter [Dkt. 257], stating Mr. Alexandre no longer agreed to the CFTC's proposed consent order, and requesting permission to withdraw as counsel, which the Court granted on February 21, 2024. Mr. Alexandre has since been proceeding *pro se*.⁵ Additional procedural

⁴ These financial statements are illustrative and are not intended to be in accordance with generally accepted accounting principles (GAAP), nor are they intended to be used in connection with determining the taxable income (if any) of the Receivership. The Receiver includes these statements to provide the Court and other interested parties a high-level overview of the financial condition of the Receivership during the Fourth Quarter, as applicable.

⁵ In light of Mr. Alexandre's *pro se* status, the Receiver has continued to send Mr. Alexandre docket entries of Orders of the Court when they are posted on ECF [Dkts. 378, 379, 380, 413, 414, 416], as well as paper copies via U.S. Mail.

history is set forth in detail in the ten prior status reports [Dkts. 71, 163, 192, 195, 218, 234, 251, 301⁶, 370, 418]. The procedural history relevant to this Status Report follows.

The Laptop Application. On March 15, 2024, Mr. Alexandre filed an application requesting that the Receiver return a laptop currently held in storage by the Receiver [Dkt. 278] (the “**Laptop Application**”). Following the Receiver’s response filed on March 25, 2024 [Dkt. 284], the Court denied the Laptop Application [Dkt. 287], finding that the “Receiver’s possession of the laptop is an appropriate exercise of his authority to take control of assets belonging to the EminiFX that may aid in his efforts to return stolen funds to EminiFX customers.” Mr. Alexandre filed a motion seeking reconsideration of the Court’s denial [Dkt. 305], which the Court also denied [Dkt. 309]. Mr. Alexandre filed a notice of appeal of these decisions, seeking to appeal the Court’s decision to the United States Court of Appeals for the Second Circuit (the “**Second Circuit**”) [Dkt. 330]. Because the appeal was of an interlocutory order, this Court declined to enter a stay [Dkt. 331]. On June 26, 2024, the CFTC filed a motion with the Second Circuit to dismiss the appeal for lack of appellate jurisdiction [Dkt. 20.1, 24-1493]. On October 23, 2024, the Second Circuit granted the CFTC’s motion to dismiss, finding, among other things, that the Second Circuit lacks jurisdiction over the appeals and dismissing the appeals for lack of jurisdiction [Dkt. 28.1, 24-2008; *mandate docketed* Jan. 2, 2025, Dkt. 426].

Motion to Dismiss. On April 4, 2024, Mr. Alexandre filed a motion to dismiss the Complaint and compel arbitration (“**Motion to Dismiss**”) [Dkt. 291], and on April 22, 2024, the

⁶ On April 26, 2024, the Receiver filed the Eighth Status Report [Dkt. 301]. On June 21, 2024 Mr. Alexandre filed application in opposition of the adoption of the Eight Status Report [Dkt. 345]. On July 1, 2024, the Court denied Mr. Alexandre’s application in opposition [Dkt. 353]. Mr. Alexandre filed a notice of appeal of these decisions [Dkt. 366]. Because the appeal was of an interlocutory order, this Court declined to enter a stay [Dkt. 368]. On June 26, 2024, the CFTC filed a motion with the Second Circuit to dismiss the appeal for lack of appellate jurisdiction. [Dkt. 20.1, 24-1493]. On October 23, 2024, the Second Circuit granted the CFTC’s motion to dismiss [Dkt. 28.1, 24-2008] and the mandate was docketed on January 2, 2025 [Dkt. 426].

CFTC filed its opposition [Dkt. 296]. Mr. Alexandre filed his reply on May 15, 2024 [Dkt. 322]. On July 10, 2024, the Court denied Mr. Alexandre's Motion to Dismiss and issued an Opinion and Order [Dkt. 355]. Mr. Alexandre filed a notice of appeal of these decisions [Dkt. 330]. Because the appeal was of an interlocutory order, this Court declined to enter a stay [Dkt. 337]. On June 26, 2024, the CFTC filed a motion with the Second Circuit to dismiss the appeal for lack of appellate jurisdiction. [Dkt. 20.1, 24-1493]. On October 23, 2024, the Second Circuit granted the CFTC's motion to dismiss for lack of jurisdiction [Dkt. 28.1, 24-2008; *mandate docketed* Jan. 2, 2025, Dkt. 426].

Motion for Supplemental Instructions. On May 14, 2024, the Receiver filed a motion requesting supplemental instructions to (1) modify the June 1, 2022 Order Granting the Receiver's Emergency Request for Instructions [Dkt. 42] so that the Receiver no longer be required to hold in reserve purported salaries of Mr. Alexandre and Clarelle Dieuveuil (the former Chief Financial Officer and Mr. Alexandre's wife), and (2) allowing the Receiver to redact certain information from public filings without further order of the Court ("**Motion for Supplemental Instructions**") [Dkt. 317-20]. Alexandre opposed the Motion for Supplemental Instruction on June 28, 2024 [Dkt. 349],⁷ and the Court entered an order granting the Motion on July 3, 2024 [Dkt. 354].

Responses to CFTC Complaint. On February 29, 2024, the Receiver, solely on behalf of EminiFX, filed a Qualified Answer to the Complaint [Dkt. 264]. On April 4, 2024, Mr. Alexandre filed a Motion to Dismiss the Complaint [Dkt. 291], and on April 22, 2024, the CFTC filed its opposition [Dkt. 296]. Mr. Alexandre filed his reply on May 15, 2024 [Dkt. 322]. On July 10, 2024, the Court denied Mr. Alexandre's Motion to Dismiss and issued an Opinion and Order [Dkt.

⁷ The Receiver had filed a Notice of Non-Opposition on June 27 [Dkt. 347], as Mr. Alexandre's opposition was due on June 14, and Mr. Alexandre did not serve his opposition on the Receiver. After Mr. Alexandre's opposition was docketed, the Receiver immediately filed an amended reply [Dkt. 350].

355]. Mr. Alexandre ultimately filed his Answer to the Complaint on August 5, 2024, which included multiple counterclaims and affirmative defenses [Dkt. 377]. The Receiver and the CFTC filed motions to dismiss the respective counterclaims against them [Dkts. 386-89], to which Mr. Alexandre filed a response [Dkts. 400-01]. The Receiver and the CFTC filed replies [Dkts. 403, 404]. Because Mr. Alexandre asserted that he did not initially receive the Receiver's motion to dismiss, his deadline to respond to the Receiver's motion was extended to November 21, 2024 [Dkt. 416].⁸ On November 25, 2024, Mr. Alexandre filed his response to the Receiver's motion to dismiss [Dkt. 423], in which he also sought to withdraw certain counterclaims and cross-claims against the Receiver. On December 2, 2024, the Court entered an order dismissing certain counterclaims and cross-claims against the Receiver. After the close of the Fourth Quarter, but before the filing of this Report, the Court issued an Opinion and Order [Dkt. 433] granting the CFTC's motion to dismiss, which resulted in the dismissal of the counterclaims against the CFTC. The portion of the Receiver's motion seeking to strike any affirmative defense of contributory negligence was denied as moot.

Summary Judgment. On July 16, 2024, the Court approved a briefing schedule for the CFTC's motion for summary judgment with respect to the Complaint [Dkt. 358]; consistent with that schedule, the CFTC filed its motion on September 23, 2024 [Dkts. 395-96]. The Receiver filed a response to the CFTC's motion on October 11, 2024, stating, in relevant part, that the Receiver did not oppose the motion as it related to EminiFX, but that his position was without prejudice to Mr. Alexandre's right to contest any of the motion's factual statements or legal conclusions [Dkt. 411]. Mr. Alexandre's deadline to respond to the motion was extended to

⁸ As reflected in the Receiver's letter dated October 9, 2024, Mr. Alexandre contacted the Receiver via CorrLinks asserting that he did not receive the Receiver's motion [Dkt. 408]. The Receiver thereafter mailed Mr. Alexandre an additional copy of his motion on October 9, 2024 [*Id.*].

November 29, 2024 [Dkt. 413]. On November 15, 2024, the Court extended Mr. Alexandre's deadline to respond to the motion to December 27, 2024, and extended the CFTC's deadline to reply to January 24, 2025. After the close of the Fourth Quarter, but before the filing of this Report, Mr. Alexandre filed a response to the CFTC's motion on January 3, 2025 [Dkt. 428], and the CFTC filed a reply in support of its motion for summary judgment on January 24, 2025 [Dkt. 436].

Plan Motion. On July 17, 2024, the Court approved a schedule for submission of the Receiver's Proposed Plan and Plan Motion, as well as responses thereto [Dkt. 359]. The Motion, which included a copy of the Proposed Plan [Dkt. 383-1], was filed on August 9, 2024 [Dkts. 381-84]. Through the Portal, the Receiver solicited responses from users from August 9, 2024, the date the Distribution Plan was filed, until the morning of August 27, 2024 (this included a grace period of several hours after the published response deadline of August 26, 2024). The Receiver complied and filed those responses on September 10, 2024 [Dkt. 390]. Mr. Alexandre filed opposition to the Proposed Plan [as amended, Dkt. 294]; the CFTC filed a response reflecting the Commission's support [Dkt. 398]. The Receiver filed his reply in support of the Plan Motion and Proposed Plan on September 26, 2024 [Dkt. 399], completing the briefing contemplated by the approved scheduling order. The Court entered an Opinion and Order approving the Plan on January 21, 2025 [Dkt. 431].

Schedule of User Transactions. On October 30, 2024, the Receiver filed the Schedule of User Transactions [Dkt.417], which includes: (i) a list of all Disputed Transactions, (ii) a list of all Verified Transactions, and (iii) a list of Approved Added Transactions.

Non-User Claims Report. In accordance with the Procedures, on August 2, 2024, the Receiver filed the Non-User Claims Report ("Claims Analysis Report") [Dkt. 369], which provided a comprehensive summary of all non-user claims submitted in the Receivership. The

report detailed claims resolved through settlement, the Receiver's determinations on the allowance, partial allowance, or disallowance of each claim, and the rationale for those determinations. At the time of filing of the Claims Analysis Report, one non-user claim remained outstanding. During the Fourth Quarter, the Receiver engaged in mediation with the remaining claimant, and the parties successfully resolved the claim. Following the conclusion of the Fourth Quarter, but prior to the filing of this Report, the Receiver filed an Amended Non-User Claims Report ("**Amended Claims Analysis Report**") on January 6, 2025 [Dkt. 427], which reflects the resolution of the final claim and the completion of the non-user claims process.

Applications for Fees and Expenses. On April 26, 2024, the Receiver filed an application for fees and expenses incurred in the first quarter 2024 [Dkts. 303-304], which was granted on May 7, 2024 [Dkt. 307]. A subsequent application for fees and expenses incurred in the second quarter 2024 was filed on August 2, 2024 [Dkts. 371-72], and granted on August 16, 2024 [Dkt. 385]. Most recently, the Receiver filed an application for fees and expenses incurred in the third quarter 2024 on November 8, 2024 [Dkt. 419], which was granted on November 26, 2024 [Dkt. 424].

III. RECEIVERSHIP FINANCES

As noted in the Financial Condition Report [Dkt. 199], the Receiver believes that all material EminiFX assets, as reflected on the EminiFX and Mr. Alexandre's account statements, have been turned over to the Receivership. The Receiver, however, continued to investigate any unknown or suspicious transfers to determine if there is any additional property or funds that should be returned to the estate. As described below (section VI.A), the Receiver has uncovered that EminiFX funds were used by Mr. Alexandre for the purchase of expensive personal items and has made demand for the turnover of such property, while reserving all rights to take appropriate action. The Receiver will continue to uphold his fiduciary obligation to investigate any suspicious

activity or fraudulent transfers and, in his sound judgment, will evaluate any such situation and act or seek relief accordingly, including pursuing claims against third parties as appropriate.

In the Fourth Quarter, the Receivership earned \$1.0 million in interest and spent a net \$2.1 million in cash for expenses, consisting almost entirely of Court approved-professional fees and expenses for work performed in the third quarter 2024 and a \$3,500 mediation fee for resolution of the one non-remaining user claim. The total cash position of the Receivership as of December 31, 2024 was \$151.8 million.

The fees and expenses for the Receiver and his professional firms that have been incurred during the Fourth Quarter total \$1.3 million, subject to review and approval by the Court pursuant to the Employment Order [Dkt. 47]. These fees reflect the considerable activity in this case during the Fourth Quarter, although significantly less than the prior quarter. The fees incurred largely related to management of the user transaction verification and review process, responding to various filings on the docket, and undertaking investigations, as set forth therein. The Receiver will file a separate application to seek authority to pay such fees and expenses simultaneously with this Report. Interest income continues to cover the bulk of expenses.

The financial statements attached as Exhibit 2 show the post-appointment balance sheet, income statement, and cash flows for the Receivership during the Fourth Quarter. As noted above, these financial statements are illustrative and are not intended to be in accordance with generally accepted accounting principles (GAAP), nor are they intended to be used in connection with determining the taxable income (if any) of the Receivership or EminiFX. The Receiver includes these statements to give the Court and other interested parties a high-level overview of the financial condition of the Receivership.

IV. EMINIFX USER TRANSACTIONS AND CLAIMS

A. *Background*⁹

EminiFX purported to be a multi-level “investment club” that received over \$260 million in contributions from around 35,000 users. EminiFX users accessed the platform via an online dashboard (the “**Dashboard**”) and created accounts (“**User Accounts**”) through which they could contribute funds. The Dashboard represented to users that they 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. EminiFX also satisfied requests from certain users to withdraw funds from EminiFX, which could and did sometimes include accrued ROI and bonuses. The User Accounts were maintained in an EminiFX MySQL database (the “**Database**”), which was recovered by the Receiver. The Database contained records related to EminiFX users’ contributions, withdrawals, as well as detailed records of the weekly accrual of the ROI and bonuses shown on the Dashboard.

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. 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. The Receiver and his team undertook a detailed forensic investigation to be able to report on the financial condition of EminiFX, as set forth in the Financial Condition Report, filed on May 16, 2023 [Dkt. 199], and to also enable the Receiver to initiate a claims process by piecing together the record of

⁹ The detail in this section IV.A has been provided in prior status reports, and is included here for completeness, solely to aid the Court and other interested parties as background information.

contributions made to and withdrawals made from the EminiFX system and to identify User Accounts that may have been created, but no contribution or withdrawal identified.

The Database contained a substantial amount of information deemed reliable that assisted the Receiver in attributing most transactions to specific users or purposes. 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.

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. The Receiver and his team were able to preliminarily attribute 92% of the cryptocurrency contributions, 85% of the bank deposit contributions, and 95% of the cryptocurrency withdrawals, by dollar amount.¹⁰ This left *thousands* of transactions on the bank statements that were not attributable to specific users, especially with respect to the thousands of individual cash contributions, as well as 6,609 unattributable transactions made through CoinPayments. Moreover, users would often give money to another user to contribute on their behalf, which was typically not reflected in the EminiFX system.

In view of these deficiencies, 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, on August 10, 2023, the Receiver filed a motion seeking the approval of the Procedures for the verification of user transactions, the establishment of bar dates

¹⁰ The Receiver and his team were able to attribute 99.8% of cryptocurrency withdrawals by transaction count.

for non-users to assert claims, and a review process for each.¹¹ On August 29, 2023, the Court approved the Procedures [Dkt. 228] and the Receiver implemented a process by which users could validate their net contributions to EminiFX using the Portal. The Procedures also provide a process for claimants, who have a claim against EminiFX not based on their status as a user, to complete and serve a Proof of Claim.

One of the key elements of the Procedures, the online EminiFX user Portal developed by the Receiver provided an opportunity for EminiFX users to review the transactions attributed to their account and provide additional information within prescribed parameters. The deadline for submitting transactions in this version of the Portal was February 26, 2024 (as discussed below, the Receiver has recently launched an updated version of Portal). While users could continue to access this version of the Portal, the majority were no longer able to verify, add and/or update transactions as of March 1, 2024 (the deadline plus a four-day grace period).¹²

There was significant user interaction with the Portal. Approximately 26,000 EminiFX users submitted their transactions (*i.e.*, the user has reviewed all of their transactions and have either verified or disputed transactions (including adding transactions) and then submitted such actions for review by the Receiver). Over 20,000 of these users affirmatively verified all of their transactions, and another 10,000 neither verified nor disputed their transactions, meaning that their transactions became presumptively verified under the Procedures.

¹¹ As previously reported [Dkt. 251, p. 11], as permitted by the Procedures, on December 14, 2023, the Receiver modified the Procedures, which the Receiver determined did not require Court approval, and posted a notice of the modification to the Procedures on the Receivership website, <https://www.eminifxreceivership.com/>.

¹² The Receiver re-opened the Portal for a period of two weeks in early April 2024 for a selection of users whose transactions had been corrected after it was determined that those users made withdrawals from EminiFX to e-wallets shared with other users. This determination required the correction of certain withdrawals originally assigned by the Receiver, and the Receiver therefore re-opened those users' portals so that they could verify their transactions as amended.

Over 6,500 users had at least one Disputed Transaction, whether as a result of disputing the amount of a transaction, denying the occurrence of a transaction, transferring a transaction to another user, or adding a transaction that the Receiver had not listed on the user's transaction log in the Portal. When a user added a transaction that was not reflected in the Receiver's initial attribution, or disagreed with the Receiver's transaction attribution, the Receiver also required that such user provide additional evidence to corroborate that the added transaction occurred, or to otherwise corroborate the dispute. Of the thousands of users who added Disputed Transactions, most provided documentation or other corroborating information that allowed the Receiver and his team to review the Transaction.

B. Disputed Transaction Review Process

Leading up to the closure of the Portal on March 1, 2024, and throughout the third quarter, the Receiver and his team focused their forensic efforts on addressing all Disputed Transactions by reviewing information and documents submitted by users and information compiled by the Receiver and have also reviewed other submissions made by users in the Portal. In the first two quarters of 2024, the Receiver and his team developed, implemented, and refined a process to facilitate and streamline the review of the Disputed Transactions, to ensure accuracy and consistency as efficiently as possible. While the Portal allowed the Receiver and his professionals to save a substantial amount of time because they were not required to manage and review the submission of documentation for the over 80,000 transactions that have been verified, the remaining tasks of reviewing and processing the Disputed Transactions had to be completed manually. Though the Disputed Transactions made up a small portion of the aggregate total of transactions, reviewing each of those transactions was an intensive process, though one that is critical to developing a register of verified and resolved deposits and withdrawals—that the Receiver believes is both accurate and fair. Indeed, the Receiver has been mindful throughout this

process that the vast majority of the more than 36,000 EminiFX Users are looking to the Receivership as their primary (or even sole) source of restitution from this Ponzi scheme. As a result, the review of the Disputed Transactions has been the most labor-intensive aspect of the Receiver's efforts to execute the Procedures, given the need to give proper attention to each user's claim and the transactions that form the basis of that claim.

Specifically, while the Receiver and his team made efforts to automate aspects of the Disputed Transaction review where appropriate, for thousands of users, reviewing Disputed Transactions required a careful review of what a user submitted, what they were claiming, and identifying how best to use the documents in the Receiver's possession to corroborate those claims. Often, as a result of human error or deficient record-keeping on the part of EminiFX, reviewing and comparing documents and users' additions required an exercise of judgment. In some instances, it also required contacting a user directly in an effort to gain clarity about and, in some instances, resolve a Disputed Transaction.¹³ Moreover, the review process was complicated by how large numbers of users engaged with EminiFX before it was shut down. In many cases, users provided cash directly to other users to deposit into EminiFX on their behalf. The receiving user might, in turn, make an internal transfer to the original user. However, the Procedures (and the Plan) recognize only cash or cryptocurrency into or out of the EminiFX system as verifiable transactions, and each such transaction cannot be double counted and applied to multiple users.

The Receiver and his team substantially completed their review of the Disputed Transactions in the third quarter. As a result of his review, the Receiver was able to validate 4,892 added transactions, resulting in over \$26.4 million in additional claims that will form the basis for

¹³ As noted in prior reports, the Receiver introduced a messaging system within the Portal that allows the Receiver's professionals to correspond with users through the portal system to seek additional information or clarification regarding Disputed Transactions.

a distribution to the affected people. Approximately 3,000 users with Disputed Transactions had their transactions fully resolved and will be eligible for a distribution under the Plan. Nearly 33,000 Users now have fully resolved transactions, and the Receiver projects that over 30,000 users will be eligible for an initial distribution under the Plan.

However, some Disputed Transactions remain. For 4,486 added Transactions, the Receiver determined that the transaction was not an actual contribution to or withdrawal from EminiFX (*e.g.*, the payment of ROI or bonuses, a payment from one user to another, a transaction that another user had made, and so forth), and therefore should not be used in calculating distributions. For 2,544 added transactions, despite the Receiver's best efforts, there was insufficient corroboration to validate that the transaction occurred, and such users will get a second opportunity in the objection process to provide such information. These 7,030 Disputed Transactions represent just under 6% of the 119,850 total transactions, and account for 3,627 users.

Due to the progress made in the first three quarters of 2024, the Receiver was able to file the Receiver's Schedule of User Transactions, which outlined the full scope of verified and disputed transactions [Dkt. 417]. As detailed in Part IV.C below, alongside this filing, the Receiver launched the next stage of the review process with the revised Portal.

In the Fourth Quarter, the Receiver used the revised Portal to focus on resolving the remaining Disputed Transactions, aiming to provide clarity for users and reduce the need for court intervention. The deadline for users to object to or accept the Receiver's determinations through the Portal was December 16, 2024. Leading up to this date, the Receiver and his team worked diligently to address disputes, offering users opportunities to submit additional documentation or accept the Receiver's decisions.

By year-end, significant progress had been made, with the number of users with unresolved Disputed Transactions reduced to less than 650. The Receiver expects to continue efforts to resolve these disputes in the first quarter of 2025. For those disputes that cannot be resolved directly with users, the Receiver will prepare and submit omnibus claims objections to the Court for resolution

C. Revised User Portal

In addition to completing the review of Disputed Transactions, the Receiver and his team also prepared for the next step in the review process, which formally began in October 2024 and is ongoing through the date of this Report—namely, the resolution of the remaining Disputed Transactions. To resolve these remaining disputes (and to facilitate the payment of distributions to claimants throughout the Receivership), through the end of the year, the Receiver and his team developed a revamped Portal that provides users with revised transaction logs, each updated to reflect the results of the Receiver’s review and analysis of the user’s submissions.

The Revised Portal was launched in conjunction with the filing of the Schedule of User Transactions with the Court. In an effort to educate users on the revised portal, the Receiver held a town hall and published an explainer¹⁴ on the Receiver's website, outlining the Portal’s features, including an explanation of the categories of Disputed Transactions and guidance on resolving disputes.

In the revised Portal, users with Disputed Transactions had the opportunity to either accept or object to the Receiver’s proposed resolution, and to provide additional documentation or information that corroborates the claimed Transaction or dispute. Users with Disputed Transactions could also see the total deposits and withdrawals asserted by the user as compared to

¹⁴ The explainer is available at <https://www.eminifxreceivership.com/updatedportalinstructions>. These categories are also explained in the Receiver’s Schedule of User Transactions [Dkt. 417].

the total deposits and withdrawals agreed to by the Receiver. Those users who wished to accept the Receiver's determinations were able to use a feature on the revised Portal that required only a simple click and confirmation of such acceptance.¹⁵

Additionally, users are able to use the updated portal to submit payment information in anticipation of any distribution to which they may be entitled. By the end of the Fourth Quarter, the Receiver collected payment information from over 15,000 users,¹⁶ positioning themselves for distribution once the Court approved the plan.

D. *Non-User Claims*

As described above, the Procedures also provided an opportunity for claimants, who have a claim against EminiFX not based on their status as a user, to complete and serve a Proof of Claim. The general non-user claim bar date was October 30, 2023 (5:00 p.m. ET) and the governmental bar date was December 27, 2023 (5:00 p.m. ET). The Internal Revenue Service is not subject to the Procedures, and taxes are addressed separately in Part VII, *infra*.

On August 2, 2024, the Receiver filed a Claims Analysis Report detailing the resolution or determination of eight non-duplicative Proofs of Claim submitted by non-users¹⁷ [Dkt. 369]. As detailed in the amended Claims Analysis Report, but summarized here, seven of these claims were fully resolved and extinguished by the time of the filing, while one claim (Claimant A0001)

¹⁵ Initial submission data in the week between the launch of the revised Portal and the submission of this Report indicate that many Users will avail themselves of this option. The Receiver and his team will work to resolve consensually as many objections as possible before submitting the remainder to the Court for determination.

¹⁶ As of the date of this filing, and in anticipation of the imminent distribution, over 20,000 users have provided payment information.

¹⁷ For those "non-user" claims submitted by users based upon their status as a user, the Procedures authorized the Receiver to reject, without further review by the Court, any Proof of Claim submitted by a user based solely on their status as user. (Procedures, Sec. 3.C.(I)). The Receiver emailed each of those users informing them that their submitted Proof of Claim did not verify their user transactions and all such Proofs of Claim would be denied by the Receiver. The email further directed those users to the Portal where they were able to review and add transactions.

remained unresolved. The resolved claims included those asserting amounts both above and below \$50,000, with settlements finalized in the first and second quarters of the year. These included the CoinPayments Settlement in January 2024 [Dkt. 248, 249], the 34th Street Suites Settlement in April 2024 [Dkt. 288, 298], and the Beils Settlement in May 2024 [Dkt. 338, 339]. Additionally, three claims in which the value did not exceed \$50,000 (Claimants A0005-A0007) and one claim from the New York State Workers' Compensation Board (Claimant A0008) were all resolved prior to the second quarter of this year. Each settlement achieved significant reductions to the claimed amounts or appropriate distributions, releasing funds back to the Receivership estate.

At the beginning of the Fourth Quarter, Claim A0001 was the sole unresolved claim. This claim sought recovery for goods and labor provided to EminiFX, for which the Claimant had already received \$904,258.81 prior to the Receivership. Initially asserting a claim of \$992,614.05, the Claimant later amended it to exceed \$2 million, citing additional amounts owed for services rendered. At the time the Claim A0001 was submitted, the Claimant did not have retained counsel and provided limited supporting documentation. The Receiver deemed the Claimant a potential insider due to their critical role in establishing EminiFX's technology infrastructure, which led to the Receiver reserving the right to subordinate the claim. Following an extensive review, the Receiver disallowed the claim in its entirety, determining that the payments already received exceeded the value of the services provided.

In the Fourth Quarter, the Receiver and Claimant A0001 engaged in a mediation process to resolve the dispute. Prior to mediation, the Claimant retained counsel, further amended the claim to \$1,003,064.39, clarified the amount sought, and submitted additional documentation. The parties participated in a one-day mediation session with a neutral, highly experienced mediator, during which they reached a settlement. The agreement allowed the claim in the amount of

\$555,000, with a recovery cap of 45% (\$249,750) if distributions to users exceeded this percentage. This represented a significant reduction from the amended claim amount and ensured a resolution that was both fair and equitable under the circumstances.

The Receiver carefully considered multiple factors in determining the fairness of the settlement. Given the totality of the circumstances, including the additional documentation provided, the substantial payments already received by the user, and the insider status of the Claimant balanced against their financial losses due to fraud, the Receiver determined that the settlement was reasonable and equitable. While the Receiver had reserved the right to subordinate the claim, the reduced claim amount and recovery cap achieved a similar economic effect for a portion of the claim. By reaching this agreement, the Receivership avoided the significant costs of litigation and resolved the final non-user claim without the need for court intervention.

With the resolution of Claim A0001, after the close of the Fourth Quarter, but before filing of this Report, the Receiver filed an Amended Claims Report, reflecting that all non-user claims have now been addressed and resolved. The Receiver personally reviewed and approved each settlement, ensuring that the outcomes represented fair compromises, minimized costs, and served the best interests of the Receivership. This process concludes all non-user claims, providing finality to this important component of the Receivership's effort.

V. PLAN OF DISTRIBUTION

As detailed above, on August 9, 2024, the Receiver submitted the Plan Motion and Proposed Plan, which was fully briefed as of September 27, 2024. On January 22, 2025, the Court approved the Plan as proposed by the Receiver [Dkt. 433]. Throughout the year, the Receiver and his team devoted considerable attention to crafting the Plan and its supporting papers, reviewing responses received by users, and preparing a response to those users concerns as reflected in the Receiver's reply.

Under the Court approved Plan, allowed investor claims are defined based only upon each investor's actual deposits into, and withdrawals from, EminiFX. The Plan excludes from the calculation of an investor's claim (i) the ROI, representing fictitious profits not related to any actual investing activity, (ii) recruitment and multilevel marketing bonuses, and (iii) internal transfers. The Plan provides for a pro rata distribution using the "rising tide" method, which calculates claims based on pre-receivership deposits and treats pre-receivership withdrawals as distributions on such claims, acknowledging that pre-receivership withdrawals were paid from the pool of commingled investor deposits—the same pool of funds that will be used to make distributions under the Plan. Under the Rising Tide method, the pro rata distribution percentage will be higher than such percentage would have been under a "Net Investment" distribution method (where withdrawals are subtracted from deposits to determine a net claim) for the same number of dollars distributed.

With the Court's approval of the Plan and the Receiver's Notice of Initial Distribution, the Receiver advised users of the applicable rising tide percentages. The Notice of Initial Distribution divided claimants in to five groups: (1) Class 3 users entitled to an initial distribution, (2) Class 3 users who are not entitled to an initial distribution because pre-Receivership withdrawals exceeded the amount that the user would have received under the rising tide percentage, (3) Class 3A users entitled to a single distribution, (4) Class 3A users who are not entitled to an initial distribution because pre-Receivership withdrawals exceeded the amount that the user would have received under the rising tide percentage and (5) users with disputed claims or holds on their accounts who are not entitled to receive a distribution at this time.¹⁸ The Receiver will make the initial wave of

¹⁸ The emails to users were sent by the Claims Agent on January 23, 2025. Due to an error by the Claims Agent, the text of the emails sent to Class 3 Claimants over the Rising Tide and Class 3A Claimants under the Rising Tide was transposed. The error was resolved and corrected emails were sent on January 24, 2025.

distributions in early February 2025 and will continue to make distributions throughout the year as additional users provide the Receiver with payment information on the User Portal.

VI. ASSET RECOVERY

As noted above, the Receiver continues to investigate any unknown or suspicious transactions that may have occurred prior to the Receivership. The Receiver has and will also continue to pursue litigation claims against third parties for which the estate has standing and which present a potential for return on investment. A summary of the receiver's ongoing investigations and litigations follows.

A. *Investigation into Undisclosed Luxury Items*

As noted above, the Receiver continues to investigate any unknown or suspicious transactions that may have occurred prior to the Receivership. In the Second Status Report¹⁹, the Receiver has identified all outgoing transactions over \$100,000 (excluding transfers between Bank 1, Bank 2, and Brokerage 1), in order to determine whether such transactions warrant further action. Among those transactions were the following transactions, both of which were processed through CoinPayments transferring funds from EminiFX accounts to unknown destinations, with a note in the CoinPayments indicating the smaller payment was for Claimant A0001:

| PAYMENTS AND WITHDRAWALS IN EXCESS OF \$100,000 | | | | |
|--|---------------|----------------|--------------------------|--------------------------------|
| Date | Amount | Account | Description | Further Action |
| 04/06/22 | \$139,629 | Cr Ex 4 | Payment to Tech Provider | Expected receivership claimant |
| 04/06/22 | \$377,164 | Cr Ex 4 | Unknown Payment | Receiver investigating |

However, in the Fourth Quarter, as a result of Claimant A0001's repeated denials that he was the recipient of the \$139,629 transfer, the Receiver investigated the transaction further. Due to advancements in Bitcoin tracing technology, the Receiver's investigation identified that both

¹⁹ See Second Status Report, Part IV, Dkt. 163 (Oct. 12, 2022).

transactions—totaling \$509,986—were sent to a luxury watch retailer to purchase two high-value watches: a Patek Philippe Rose Gold Nautilus for \$351,509 (plus taxes) and an Audemars Piguet Royal Oak 41 Chronograph Black Men’s Watch for \$129,609 (plus taxes).

The Receiver’s investigation further revealed that Mr. Alexandre was the purchaser of the two watches, a detail that Mr. Alexandre did not disclose to the Receiver, as required by the Consent Order. Claimant A0001 further denied that he received either of these watches. As a result of the Receiver’s investigation, on November 25, 2024, the Receiver issued a formal demand letter to Mr. Alexandre, requiring him to disclose the location and status of the watches and facilitate their turnover to the Receiver by December 13, 2024.

On December 12, 2024, Mr. Alexandre requested a 30-day extension, until January 13, 2025, to consult with a standby attorney and provide a substantive response, which the Receiver did not oppose. After the close of the Fourth Quarter but before the filing of this Report, on January 24, 2025, Mr. Alexandre submitted a response to the Receiver. In his response, Mr. Alexandre did not deny the purchase of the watches, but refused to provide their status and location, in direct violation of the Consent Order, which requires the turnover of all Receivership property. As of the filing of this Report, Mr. Alexandre has not complied with the Receiver’s demand letter. Given the significant value of the watches, the Receiver is evaluating next steps to recover the watches for the benefit of EminiFX users.

B. Investigation into Currency Fraud

During the transaction review process, the Receiver identified suspicious activity involving irregular pre-receivership deposits and withdrawals, suggesting exploitation of the EminiFX system to misappropriate funds by someone with a sophisticated understanding of how the system operated. The Receiver discovered that between March and April 2022, certain users with EminiFX accounts—many of which appear to be dummy accounts—deposited money into the

EminiFX system via CoinPayments, utilizing alternative currencies such as Vietnamese Dong, Iranian Rial, or BTT.TRC20, which are worth a fraction of a penny. While the actual cost to complete these transactions in the foreign currencies was de minimis, the EminiFX system improperly credited the accounts with the full nominal value of the transactions as though the payments had been made in U.S. dollars, often hundreds of thousands of dollars. The funds were then moved through the EminiFX system, generally using the internal transfer function, and then withdrawn from dozens of what appear to be dummy accounts and paid in Bitcoin. The Receiver estimates that between \$5 and \$10 million was extracted from EminiFX in this manner, including into multiple Bitcoin wallets that have not been accessed (e.g., money withdrawn) since the Receiver was appointed. The Receiver's investigation is ongoing.

C. Investigation into Unreported Cash

During the transaction review process, based on numerous conversations with users and a review of various documents, the Receiver discovered that in early April 2022, following Bank of America's decision to freeze the EminiFX's accounts and the decision by Alexandre and the CFO to cease using the TD Bank account for deposits, Alexandre, the CFO, and others at EminiFX began accepting cash deposits directly from users. The Receiver's investigation determined that over \$6 million in cash from hundreds of users, often deposited at the 34th Street offices of EminiFX.²⁰ The equivalent balances were then funneled through the EminiFX system by Alexandre and the CFO, often using the internal transfer function, to make it appear as though the user had made a deposit.²¹ However, only \$1 million was deposited into the EminiFX bank

²⁰ Soon after taking control of EminiFX, two advanced cash counting machines (of the kind often seen at bank teller windows) were delivered to the EminiFX office, further indicating that substantial cash deposits were being received at the EminiFX office and that more were expected.

²¹ Those transactions, which represent actual funds deposited by the user to EminiFX personnel, were generally credited to users in the transaction verification process.

accounts that were disclosed to the Receiver. The Receiver is continuing his investigation into the remainder of the misappropriated funds and is evaluating potential litigation options.

D. *Third Party Litigation*

On December 3, 2024, the Receiver filed a complaint against Interactive Brokers LLC (“**Interactive Brokers**”) in the Supreme Court of the State of New York, County of New York. The case, captioned *David A. Castleman as Receiver for EminiFX, Inc. v. Interactive Brokers LLC*, Index No. 659407/2024 (“**State Court Action**”), seeks damages based on Interactive Brokers’ alleged independent liability to EminiFX. Because all Class 4 claimants have now been settled and satisfied under the Plan, and because Class 1 and 2 claims are fixed amounts that will be paid from the current corpus of the Receivership, any additional funds recovered from Litigation will inure directly to the benefit of Class 3/3A claimants—*i.e.*, EminiFX investors.

After the close of the Fourth Quarter but before the filing of this Report, Interactive Brokers removed the State Court Action to the United States District Court for the Southern District of New York on January 2, 2025. On January 13, 2025, while the Receiver was drafting a limited motion for remand for lack of subject matter and removal jurisdiction, the Court issued an order to show cause to Interactive Brokers as to whether subject matter and removal jurisdiction existed. Responses by Interactive Brokers and the Receiver were filed on January 27 and 30, respectively, and the issue of jurisdiction remains *sub judice* as of this Status Report. The Receiver is prepared to litigate the matter in either federal or state court.

The Receiver is contemplating additional third-party litigation and may file such suits in federal or state court, depending on whether federal jurisdiction exists and on other factors, in accordance with ¶ 37 of the Consent Order (incorporating ¶ 31(i) of the SRO), and as confirmed in the Distribution Plan Order [Dkt. 431].

E. *Net Winners*

Pursuant to the Court's *Order and Opinion* approving the Distribution Plan, the Court approved specific special procedures regarding the treatment of Net Winners, which are users who withdrew more than they deposited. Under the Plan, Net Winners will not receive any further distributions, regardless of whether the Receiver initiates legal action against them. As a result of the transaction verification process, the Receiver generally is able to determine and identify Net Winners. As part of this process submitted to and approved by the Court, the Receiver anticipates making settlement offers to Net Winners in the First Quarter 2025, allowing them to resolve fraudulent transfer claims in exchange for 50% of their net winnings (withdrawals less deposits).

VII. RECEIVERSHIP COMMUNICATIONS

During the Fourth Quarter, the Receiver communicated with users through email, and at many times through phone calls, to provide them with pertinent updates in the Receivership, including emails advising of the filing of the Receiver's Proposed Plan and the Receiver's User Claims Report and updates to portals. The Receiver and his team communicated with several users to respond to their questions through the portal and to seek to resolve disputes where possible. The Receivership website (<http://www.eminifxreceivership.com>), was also updated frequently during the Fourth Quarter, with such updates being made available in English, French, and Haitian Creole, and will continue to be the primary source of information for interested parties.

Any interested party seeking information concerning the Receivership is encouraged to review the website in the first instance. The homepage of the website contains the status reports (including this one), a report on asset recovery, key filings, frequently asked questions, and other information about this case. The website also contains a "Civil Docket" section, so that all ECF filings in this case are available to all interested parties without the need for any such party to pay for filings using PACER or ECF. The Receiver's team will aim to have all docket items posted

by the end of each week, and any interested party can subscribe for docket item email updates by clicking the “**Subscribe**” button in the “**Civil Docket**” section. Under the “**Frequently Asked Questions**” section, the Receiver and his team endeavor to provide answers to common user questions so that answers are available to all interested parties, and the Receiver and his team will update the information over time. Finally, the website contains a section for EminiFX users or interested parties to update their contact information, especially their email addresses.

EminiFX users may email EminiFX@Stretto.com with questions or concerns. The Receiver and other employees of his law firm will not, as a general rule, respond directly to inquiries from individual EminiFX users, given that the Stretto conduit remains open to EminiFX users and the need to ensure that communications with EminiFX users remain as cost-effective as possible. However, the Receiver and his team, in connection with the transaction review process, would directly respond to messages through the user portal where appropriate.

Finally, as noted in the Receiver’s response to a motion to intervene filed by certain EminiFX users [Dkt. 250], the Receiver encourages any EminiFX users who wish to file anything directly with the Court to reach out through the various communication channels available—most notably the EminiFX@Stretto.com email address—to see if their concern may be resolved by the Receiver and his professionals.

VIII. TAXES

As noted in prior reports, as of the Receiver’s appointment, the IRS did not have a tax return on file for EminiFX, nor does it appear that one was prepared based on the evidence provided to the Receiver. The Receiver has a specific obligation to file a tax return for EminiFX (*see* Dkt. 9, ¶ 31(m) (incorporated at Consent Order ¶ 37)), and during the Fourth Quarter, the Receiver continued to work with his tax and accounting teams to take prudent steps towards preparing a tax return for EminiFX, which was especially difficult given the lack of accounting

records for EminiFX or any sort of legal structure around the contributions from EminiFX users. The Receiver is aiming to file an initial corporate return for EminiFX as soon as possible, with the twin goals of—to the extent possible—minimizing the tax burden to the estate while expediting certainty on such return from the IRS.

In addition to preparing the EminiFX tax return, the Receiver must address other tax issues in the Receivership. Pursuant to applicable United States Treasury Regulations, the EminiFX Receivership estate is treated as a Qualified Settlement Fund (“**QSF**”) effective as of the date of the commencement of the Receivership, May 11, 2022. A QSF is a separate entity that is subject to federal income tax requirements that are independent of EminiFX and individual users’ tax requirements. By operation of law, EminiFX’s assets were transferred to the QSF on May 11, 2022. To the extent that assets transferred to the QSF produce includable income, less certain expenses, the QSF will be required to pay tax at the maximum tax rate in effect for that tax year under the Internal Revenue Code. During the third quarter, the Receiver worked with his tax and accounting teams to prepare the QSF tax return for the receivership for 2023.

In the Fourth Quarter, the Receiver filed the QSF Tax Return for 2023, the year in which all Bitcoin held by the Receivership was sold. The total tax liability was just under \$25,000. Along with the filing, the Receiver requested a prompt assessment from the IRS, the granting of which is in the discretion of the IRS. Concurrently with the filing of this Status Report, or shortly thereafter, the Receiver is filing the Corporate Tax Return with a \$0 tax liability, along with a similar request for a prompt assessment. The exact timeline for the IRS to issue final determinations remains uncertain.

In accordance with the Court’s approval of the Plan and in consultation with his tax advisors, the Receiver has conservatively reserved funds during any distributions to eligible users

to account for reasonable worst-case tax liabilities related to the Corporate Tax Return (pre-receivership) and the QSF Tax Return (post-receivership). These reserves are detailed in the Receiver's reply brief in support of the Plan [Dkt. 399, at 3, 12-13] and are necessitated by the inapplicability of 11 U.S.C. § 505(b) to federal equity receiverships, which remain subject to the Federal Priority Statute, 31 U.S.C. § 3713. *See also S.E.C. v. Credit Bancorp., Ltd.*, 297 F.3d 127, 140 (2d Cir. 2002). Additional reserves will also be maintained to address disputed transactions, review holds, and other contingencies. The Receiver and his team are actively working to minimize and expedite the tax finalization process. Any funds not required to satisfy tax obligations will be distributed to eligible users.

Further, the Receiver does not intend to issue 1099s to EminiFX users that received funds from EminiFX, including those who received more funds than they contributed, as the Receiver does not believe that such excess amounts represented profits from actual investing activity, but instead were paid using the contributions from other EminiFX users and are properly reflected as partial refunds on money contributed to EminiFX.

Nothing in the foregoing is intended to be tax advice for any EminiFX user, and *each EminiFX user is responsible for his or her own personal tax situation.*

IX. RECOMMENDATIONS AND NEXT STEPS

While the litigation in the Civil Action continues, the Receiver anticipates the following next steps to administer the Receivership in the coming quarters:

A. Distribution Plan and Initial Distributions

The Receiver began collecting payment information from users through the designated Portal in the Fourth Quarter. Given the Court's approval of the Plan, before the filing of this Report, the Receiver filed the Notice of Initial Distribution, announcing a \$100 million initial distribution. This amount represents a significant portion of the \$152 million currently held in the

Receivership. Class 3 and Class 3A claimants will receive distributions based on Rising Tide percentages of 45% and 55%, respectively. The Receiver also updated the user portals to include an update for users entitled to receive a distribution of the Rising Tide Percentage and the amount of that user's initial distribution based upon the user's verified deposits and withdrawals.

The Receiver will commence distributions in February 2025. To facilitate these efforts, the Portal will be temporarily closed after the initial collection period to process payments and ensure the accuracy of data. It will reopen shortly thereafter, allowing users who have not yet submitted their payment information to do so.

Those users who provide their payment information by the end of January 2025 will receive a payment in the first wave of payments in early February 2025. As users continue to provide payment information, periodic waves of payments will be made throughout 2025. This phased approach ensures that verified claimants receive timely payments while maintaining sufficient reserves to address contingent liabilities, including unresolved tax matters.

B. Resolution of Remaining Disputed Transactions and Claims

The Receiver and his team will continue their efforts to resolve as many Disputed Transactions as possible to create certainty for users and minimize the need for court intervention. This process is expected to continue through the first half of 2025. Following this review, any unresolved Disputed Transactions will be addressed through one or more omnibus claims objections submitted to the Court.

As appropriate, the Receiver will submit an updated schedule of approved and disputed User Claims to the Court based on Verified and Disputed Transactions. Additionally, insider claims and settlements with net winners under the Plan or as otherwise approved by the Court will be addressed during the first half of 2025.

C. *Resolution of Tax Issues*

The primary tax returns where liability could be reasonably and materially contested are the QSF Tax Return and the Corporate Tax Return, the former of which was filed and the latter of which will be filed concurrently with or shortly after this Status Report. The Receiver will continue to work with his tax advisors to encourage the IRS to expedite its review if any of those returns, and the Receiver is prepared to provide the IRS with whatever data it needs in such efforts. The Receiver cannot determine with certainty when these issues will be resolved—even the granting of a request for a prompt assessment reducing the time to audit from 36 to 18 months is in the discretion of the IRS.

D. *Litigation Claims*

As part of the administration of the estate, the Receiver will continue to evaluate additional potential litigation claims against third parties for which the estate has standing and which present a potential for return on investment, and will continue to litigate the Interactive Brokers case as set forth above. The Receiver expects that most if not all affirmative litigation will be filed in 2025, and such litigation may extend into 2026 and beyond.

X. CONCLUSION

The Receiver will provide a further report within 30 days of the end of the First Quarter 2025, or at such other time as the Court may direct. The Receiver remains available to provide any further information or advice that the Court may require.

Dated: New York, New York
January 31, 2025

Respectfully Submitted,

By: 

David A. Castleman
OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
Tel: (212) 661-9100
Receiver

Jennifer S. Feeney
William M. Moran
OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
Tel: (212) 661-9100
Counsel for the Receiver

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2025, I electronically filed the 2024 Annual Report of David A. Castleman (Eleventh Status Report), with the Clerk of the Court using the Court's CM/ECF system, which shall send notice to all counsel of record. I also served, or cause to be served, copies of the Eleventh Status Report on Defendant Eddy Alexandre by U.S. mail to Eddy Alexandre, Reg. No. 00712-51, FCC Allenwood-Low, P.O. Box 1000, White Deer, PA 17887.

Dated: New York, New York
January 31, 2025

/s/ David A. Castleman
David A. Castleman

Exhibit 1

Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): Cash General Ledger - 2024 All

| Category | Type | Detail | Dkt | Asset Pool | Amount (USD) | Date | Balance (USD) |
|------------|-------------|-------------------|---------|----------------------|----------------|-----------------------|------------------|
| | | | | | | Balance on 1/1/2024:* | \$154,216,779.22 |
| Operations | Expenses | Rent | 91 | General Receivership | (\$198.02) | 01/08/2024 | \$154,216,581.20 |
| Recovery | Liquidation | Vehicles | 91 | General Receivership | (\$5,000.00) | 01/18/2024 | \$154,211,581.20 |
| Operations | Expenses | Claims/Notice | 245 | General Receivership | (\$25,000.00) | 01/18/2024 | \$154,186,581.20 |
| Operations | Expenses | Misc | 249 | General Receivership | (\$61.63) | 01/30/2024 | \$154,186,519.57 |
| Operations | Income | Interest | | General Receivership | \$314,949.42 | 01/31/2024 | \$154,501,468.99 |
| Operations | Income | Interest | | Alexandre Assets | \$25,792.36 | 01/31/2024 | \$154,527,261.35 |
| Operations | Income | Interest | | General Receivership | \$318.64 | 01/31/2024 | \$154,527,579.99 |
| Operations | Income | Interest | | General Receivership | \$64,450.35 | 01/31/2024 | \$154,592,030.34 |
| Operations | Expenses | Professional Fees | 255 | General Receivership | (\$72,864.00) | 02/09/2024 | \$154,519,166.34 |
| Operations | Expenses | Professional Fees | 255 | General Receivership | (\$551,338.90) | 02/09/2024 | \$153,967,827.44 |
| Operations | Expenses | Professional Fees | 255 | General Receivership | (\$204,052.00) | 02/09/2024 | \$153,763,775.44 |
| Operations | Expenses | Professional Fees | 255 | General Receivership | (\$43,674.71) | 02/09/2024 | \$153,720,100.73 |
| Operations | Expenses | Professional Fees | 255 | General Receivership | (\$223,678.00) | 02/09/2024 | \$153,496,422.73 |
| Operations | Retainers | Retainer | 47/255 | General Receivership | \$25,000.00 | 02/09/2024 | \$153,521,422.73 |
| Operations | Expenses | Professional Fees | 47/255 | General Receivership | (\$25,000.00) | 02/09/2024 | \$153,496,422.73 |
| Operations | Expenses | Prof Expenses | 255 | General Receivership | (\$196.35) | 02/09/2024 | \$153,496,226.38 |
| Operations | Expenses | Prof Expenses | 255 | General Receivership | (\$11,365.10) | 02/09/2024 | \$153,484,861.28 |
| Operations | Expenses | Prof Expenses | 255 | General Receivership | (\$9.73) | 02/09/2024 | \$153,484,851.55 |
| Operations | Expenses | Prof Expenses | 255 | General Receivership | (\$44,153.82) | 02/09/2024 | \$153,440,697.73 |
| Operations | Expenses | Claims/Notice | 245 | General Receivership | (\$25,000.00) | 02/09/2024 | \$153,415,697.73 |
| Operations | Expenses | Rent | 91 | General Receivership | (\$25.00) | 02/12/2024 | \$153,415,672.73 |
| Recovery | Liquidation | Bitcoin | 249 | General Receivership | (\$251,555.37) | 02/12/2024 | \$153,164,117.36 |
| Operations | Income | Interest | | General Receivership | \$292,988.10 | 02/29/2024 | \$153,457,105.46 |
| Operations | Income | Interest | | Alexandre Assets | \$24,194.76 | 02/29/2024 | \$153,481,300.22 |
| Operations | Income | Interest | | General Receivership | \$298.87 | 02/29/2024 | \$153,481,599.09 |
| Operations | Income | Interest | | General Receivership | \$60,447.00 | 02/29/2024 | \$153,542,046.09 |
| Recovery | Turnover | Cash | | General Receivership | \$2,880.00 | 03/04/2024 | \$153,544,926.09 |
| Operations | Income | Interest | | General Receivership | \$312,732.19 | 03/29/2024 | \$153,857,658.28 |
| Operations | Income | Interest | | Alexandre Assets | \$25,929.96 | 03/29/2024 | \$153,883,588.24 |
| Operations | Income | Interest | | General Receivership | \$320.27 | 03/29/2024 | \$153,883,908.51 |
| Operations | Income | Interest | | General Receivership | \$64,770.89 | 03/29/2024 | \$153,948,679.40 |
| Operations | Expenses | Rent | 91 | General Receivership | \$176.17 | 04/05/2024 | \$153,948,855.57 |
| Operations | Retainers | Taxes | SRO-31m | General Receivership | (\$25,000.00) | 04/09/2024 | \$153,923,855.57 |

* Adjusted by \$204.63 due to correction to interest reported in the statements of one of the Receivership bank accounts

Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): Cash General Ledger - 2024 All

| Category | Type | Detail | Dkt | Asset Pool | Amount (USD) | Date | Balance (USD) |
|--------------|--------------|---------------------|--------|----------------------|------------------|------------|------------------|
| Operations | Income | Misc Deposit | 298 | General Receivership | (\$90,376.06) | 04/25/2024 | \$153,833,479.51 |
| Operations | Income | Interest | | General Receivership | \$302,514.31 | 04/30/2024 | \$154,135,993.82 |
| Operations | Income | Interest | | Alexandre Assets | \$25,162.59 | 04/30/2024 | \$154,161,156.41 |
| Operations | Income | Interest | | General Receivership | \$310.76 | 04/30/2024 | \$154,161,467.17 |
| Operations | Income | Interest | | General Receivership | \$62,842.37 | 04/30/2024 | \$154,224,309.54 |
| Operations | Expenses | Professional Fees | 307 | General Receivership | (\$89,470.00) | 05/09/2024 | \$154,134,839.54 |
| Operations | Expenses | Professional Fees | 307 | General Receivership | (\$667,990.35) | 05/09/2024 | \$153,466,849.19 |
| Operations | Expenses | Professional Fees | 307 | General Receivership | (\$500,156.00) | 05/09/2024 | \$152,966,693.19 |
| Operations | Expenses | Professional Fees | 307 | General Receivership | (\$44,448.00) | 05/09/2024 | \$152,922,245.19 |
| Operations | Expenses | Professional Fees | 307 | General Receivership | (\$29,967.61) | 05/09/2024 | \$152,892,277.58 |
| Operations | Expenses | Professional Fees | 307 | General Receivership | (\$208,563.50) | 05/09/2024 | \$152,683,714.08 |
| Operations | Expenses | Prof Expenses | 307 | General Receivership | (\$99.60) | 05/09/2024 | \$152,683,614.48 |
| Operations | Expenses | Prof Expenses | 307 | General Receivership | (\$18,159.58) | 05/09/2024 | \$152,665,454.90 |
| Operations | Expenses | Prof Expenses | 307 | General Receivership | (\$2,222.00) | 05/09/2024 | \$152,663,232.90 |
| Operations | Expenses | Prof Expenses | 307 | General Receivership | (\$18.85) | 05/09/2024 | \$152,663,214.05 |
| Operations | Expenses | Prof Expenses | 307 | General Receivership | (\$23,278.09) | 05/09/2024 | \$152,639,935.96 |
| Operations | Expenses | Professional Fees | 307 | General Receivership | (\$34,240.00) | 05/09/2024 | \$152,605,695.96 |
| Operations | Expenses | Prof Expenses | 307 | General Receivership | (\$1,712.00) | 05/09/2024 | \$152,603,983.96 |
| Reallocation | Reallocation | Alexandre Assets | 311 | General Receivership | \$9,470,813.35 | 05/09/2024 | \$162,074,797.31 |
| Reallocation | Reallocation | Alexandre Assets | 311 | Alexandre Assets | (\$9,470,813.35) | 05/09/2024 | \$152,603,983.96 |
| Operations | Income | Interest | | General Receivership | \$369,623.66 | 05/31/2024 | \$152,973,607.62 |
| Operations | Income | Interest | | General Receivership | \$321.95 | 05/31/2024 | \$152,973,929.57 |
| Operations | Income | Interest | | General Receivership | \$16,965.92 | 05/31/2024 | \$152,990,895.49 |
| Operations | Income | RE Deposit | 339 | General Receivership | (\$160,500.00) | 06/10/2024 | \$152,830,395.49 |
| Operations | Income | Interest | | General Receivership | \$393,270.65 | 06/28/2024 | \$153,223,666.14 |
| Operations | Income | Interest | | General Receivership | \$312.39 | 06/30/2024 | \$153,223,978.53 |
| Operations | Income | Interest | | General Receivership | \$7.09 | 06/30/2024 | \$153,223,985.62 |
| Reserves | Reserve | Alexandre (Payroll) | 42/354 | General Receivership | (\$54,556.92) | 07/31/2024 | \$153,169,428.70 |
| Operations | Expenses | Payroll | 354 | General Receivership | \$54,556.92 | 07/31/2024 | \$153,223,985.62 |
| Reserves | Reserve | Dieuveuil (Payroll) | 42/354 | General Receivership | (\$22,152.03) | 07/31/2024 | \$153,201,833.59 |
| Operations | Expenses | Payroll | 354 | General Receivership | \$22,152.03 | 07/31/2024 | \$153,223,985.62 |
| Operations | Income | Interest | | General Receivership | \$407,314.89 | 07/31/2024 | \$153,631,300.51 |
| Operations | Income | Interest | | General Receivership | \$323.62 | 07/31/2024 | \$153,631,624.13 |
| Operations | Income | Interest | | General Receivership | \$0.01 | 07/31/2024 | \$153,631,624.14 |

Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): Cash General Ledger - 2024 All

| Category | Type | Detail | Dkt | Asset Pool | Amount (USD) | Date | Balance (USD) |
|------------|-----------|-------------------|---------|----------------------|------------------|------------|------------------|
| Operations | Expenses | Professional Fees | 385 | General Receivership | (\$119,082.50) | 08/21/2024 | \$153,512,541.64 |
| Operations | Expenses | Professional Fees | 385 | General Receivership | (\$927,154.93) | 08/21/2024 | \$152,585,386.71 |
| Operations | Expenses | Professional Fees | 385 | General Receivership | (\$306,356.50) | 08/21/2024 | \$152,279,030.21 |
| Operations | Expenses | Professional Fees | 385 | General Receivership | (\$15,880.00) | 08/21/2024 | \$152,263,150.21 |
| Operations | Expenses | Professional Fees | 385 | General Receivership | (\$871.25) | 08/21/2024 | \$152,262,278.96 |
| Operations | Expenses | Professional Fees | 385 | General Receivership | (\$153,766.50) | 08/21/2024 | \$152,108,512.46 |
| Operations | Expenses | Prof Expenses | 385 | General Receivership | (\$14,127.20) | 08/21/2024 | \$152,094,385.26 |
| Operations | Expenses | Prof Expenses | 385 | General Receivership | (\$794.00) | 08/21/2024 | \$152,093,591.26 |
| Operations | Expenses | Prof Expenses | 385 | General Receivership | (\$5,376.83) | 08/21/2024 | \$152,088,214.43 |
| Operations | Income | Interest | | General Receivership | \$406,948.08 | 08/31/2024 | \$152,495,162.51 |
| Operations | Income | Interest | | General Receivership | \$324.49 | 08/31/2024 | \$152,495,487.00 |
| Operations | Income | Interest | | General Receivership | \$388,205.79 | 09/30/2024 | \$152,883,692.79 |
| Operations | Income | Interest | | General Receivership | \$293.05 | 09/30/2024 | \$152,883,985.84 |
| Operations | Income | Interest | | General Receivership | \$354,811.32 | 10/31/2024 | \$153,238,797.16 |
| Operations | Income | Interest | | General Receivership | \$274.03 | 10/31/2024 | \$153,239,071.19 |
| Operations | Expenses | Claims/Notice | 228 | General Receivership | (\$3,500.00) | 11/26/2024 | \$153,235,571.19 |
| Operations | Expenses | Professional Fees | 424 | General Receivership | (\$228,907.50) | 11/27/2024 | \$153,006,663.69 |
| Operations | Expenses | Professional Fees | 424 | General Receivership | (\$1,140,665.15) | 11/27/2024 | \$151,865,998.54 |
| Operations | Expenses | Professional Fees | 424 | General Receivership | (\$430,503.50) | 11/27/2024 | \$151,435,495.04 |
| Operations | Expenses | Professional Fees | 424 | General Receivership | (\$38,928.00) | 11/27/2024 | \$151,396,567.04 |
| Operations | Expenses | Professional Fees | 424 | General Receivership | (\$11,194.50) | 11/27/2024 | \$151,385,372.54 |
| Operations | Expenses | Professional Fees | 424 | General Receivership | (\$203,718.00) | 11/27/2024 | \$151,181,654.54 |
| Operations | Expenses | Prof Expenses | 424 | General Receivership | (\$16,149.49) | 11/27/2024 | \$151,165,505.05 |
| Operations | Expenses | Prof Expenses | 424 | General Receivership | (\$1,946.00) | 11/27/2024 | \$151,163,559.05 |
| Operations | Expenses | Prof Expenses | 424 | General Receivership | (\$30,203.69) | 11/27/2024 | \$151,133,355.36 |
| Operations | Income | Interest | | General Receivership | \$343,376.98 | 11/29/2024 | \$151,476,732.34 |
| Operations | Income | Interest | | General Receivership | \$246.41 | 11/29/2024 | \$151,476,978.75 |
| Operations | Retainers | Taxes | SRO-31m | General Receivership | \$24,918.51 | 12/13/2024 | \$151,501,897.26 |
| Taxes | Federal | QSF | SRO-31m | General Receivership | (\$24,918.51) | 12/13/2024 | \$151,476,978.75 |
| Operations | Retainers | Taxes | SRO-31m | General Receivership | \$81.49 | 12/13/2024 | \$151,477,060.24 |
| Operations | Income | Interest | | General Receivership | \$335,495.05 | 12/31/2024 | \$151,812,555.29 |
| Operations | Income | Interest | | General Receivership | \$237.21 | 12/31/2024 | \$151,812,792.50 |

Exhibit 2

Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): 2024 Annual Balance Sheet

| Assets [1] | FY2024 | FY2023 | Difference |
|--|------------------------|-------------------------|-------------------------|
| Cash and Cash Equivalents | \$ 151,812,793 | \$ 154,140,070 | \$ (2,327,277) |
| Unused Retainers | \$ - | \$ 25,000 | \$ (25,000) |
| Litigation and Other Claims [2] | | <i>To be determined</i> | |
| Total Assets | \$ 151,812,793 | \$ 154,165,070 | \$ (2,352,277) |
| Liabilities | | | |
| Professional Fees and Expenses for Work | | | |
| Performed but not Paid in Period [3] | \$ 1,299,317 | \$ 1,212,285 | \$ 87,032 |
| Tax Liabilities [4] | | <i>To be determined</i> | |
| Non-User Claim | \$ 249,750 | \$ - | \$ 249,750 |
| Receivership Refund Claims - Preliminary Value [5] | \$ 227,947,789 | \$ - | \$ 227,947,789 |
| Total Liabilities | \$ 229,496,856 | \$ 1,212,285 | \$ 228,284,571 |
| Receivership Net Asset Value | \$ (77,684,063) | \$ 152,952,785 | \$ (230,636,848) |

Notes

[1] All assets and liabilities as of December 31, 2024. These statements are unaudited and not in accordance with generally accepted accounting principles in the United States (GAAP) and should not be considered in isolation from or as a replacement for the most directly comparable GAAP financial measures.

[2] The estate may have significant litigation and other claims based on the pre-receivership activities of EminiFX, Inc. and third-parties. The Receiver has not attempted to value those claims for the purpose of this balance sheet.

[3] Fees and expenses to be requested from the Court for work performed in the Fourth Quarter 2024, pending approval or modification by the Court.

[4] The tax obligation of the estate for the pre-receivership activities of EminiFX, Inc. was not yet determined as of the end of 2024. As of January 2025, those liabilities were determined to be zero, which will be reflected on a tax return to be filed concurrently with these financial statements or soon thereafter. The Receiver will update this line item in the First Quarter 2025 Balance Sheet.

[5] The value of these claims will not be finalized until a final claims register is completed by the Receiver and submitted to the Court in accordance with the Transaction Verification and Claims Procedure and the Receiver's Distribution Plan. The amount above reflects the net investment (deposits less withdrawals) of the 32,553 investors whose transactions have been fixed by the Receiver as of December 31, 2024. An additional 556 claims, with a net investment value between \$8.8 to \$14.4 million, remain disputed or on hold as of December 31, 2024.

Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): 2024 Annual Income Statement

| Income [1] | 2024 (Year) | 2024 (4Q Only) | 2023 (Year) |
|--|-----------------------|-----------------------|---------------------|
| Interest on Accounts | \$ 4,596,375 | \$ 1,034,441 | \$ 4,197,691 |
| Real Estate Deposit Recoveries | \$ - | \$ - | \$ 82,000 |
| Other Recoveries | \$ - | \$ - | \$ 20,100 |
| Total Income | \$ 4,596,375 | \$ 1,034,441 | \$ 4,299,791 |
| Expenses | | | |
| Administrative Expenses [2] | \$ 5,639,385 | \$ 1,299,317 | \$ 3,682,422 |
| Recapture of Payroll Reserve | \$ (76,709) | \$ - | \$ - |
| QSF Tax Payment (2023) | \$ 24,918 | \$ 24,918 | |
| Claims Paid - Partial Refunds of Security Deposits [3] | \$ 250,876 | \$ - | \$ - |
| Notice Expenses | \$ 50,000 | \$ - | |
| Miscellaneous Expenses | \$ 3,608 | \$ 3,500 | \$ 6,360 |
| Total Expenses | \$ 5,892,078 | \$ 1,327,735 | \$ 3,688,782 |
| Receivership Net Income | \$ (1,295,703) | \$ (293,294) | \$ 611,009 |
| Offset for Removal of Encumbrance [3] | \$ (841,000) | \$ - | \$ - |
| Receivership Adjusted Net Income | \$ (454,703) | \$ (293,294) | \$ 611,009 |

Notes

[1] Income from October 1 to December 31, 2024 (4Q Only), or from January 1 to December 31, 2024 (Year). These statements are unaudited and not in accordance with generally accepted accounting principles in the United States (GAAP) and should not be considered in isolation from or as a replacement for the most directly comparable GAAP financial measures. This income statement is for illustrative purposes only and is not intended to represent the taxable income to the receivership estate.

[2] Fees and expenses to be requested from the Court in the Fourth Quarter 2024 Fee Application, pending approval or modification by the Court.

[3] See 2022 Income Statement, Dkt. 192 Ex. 2. The net encumbrance removed was \$590,214.

Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): 2024 Annual Statement of Cash Flows

| | 2024 (Year) | 2024 (4Q Only) | 2023 (Year) |
|--|-----------------------|-----------------------|-----------------------|
| Cash on Hand at Beginning of Period [1] | \$ 154,140,070 | \$ 152,883,986 | \$ 62,992,400 |
| Asset Turnovers and Liquidations | | | |
| Liquidation of Digital Assets | \$ (251,555) | \$ - | \$ 90,090,628 |
| Cash Recoveries | \$ 2,880 | \$ - | \$ - |
| Liquidation of Vehicles | \$ (5,000) | \$ - | \$ - |
| Total Cash Flow from Asset Turnovers and Liquidations | \$ (253,675) | \$ - | \$ 90,090,628 |
| Receivership Activities | | | |
| Interest | \$ 4,596,375 | \$ 1,034,441 | \$ 4,197,691 |
| Real Estate Recoveries | \$ - | \$ - | \$ 82,000 |
| Other Recoveries | \$ - | \$ - | \$ 20,100 |
| Professional Fees and Expenses [2] | \$ (6,417,284) | \$ (2,102,216) | \$ (3,220,014) |
| Recapture of Payroll Reserve | \$ 76,709 | \$ - | \$ - |
| Claims Paid - Partial Refunds of Security Deposits | \$ (250,876) | \$ - | \$ - |
| Notice Expenses | \$ (50,000) | \$ - | \$ - |
| Tax Prepayments and Refunds | \$ (24,918) | \$ 82 | \$ - |
| Other Expenses | \$ (3,608) | \$ (3,500) | \$ (6,360) |
| Total Cash Flow from Receivership Activities | \$ (2,073,602) | \$ (1,071,193) | \$ 1,073,417 |
| Claims Paid | | | |
| Non User Claims Paid | \$ - | \$ - | \$ (16,375) |
| Total Cash Flow from Claims Paid | \$ - | \$ - | \$ (16,375) |
| Cash and Cash Equivalents at the End of the Period | \$ 151,812,793 | \$ 151,812,793 | \$ 154,140,070 |

Notes

[1] Cash flows from October 1 to December 31, 2024 (4Q Only), or from January 1 to December 31, 2024 (Year). These statements are unaudited and not in accordance with generally accepted accounting principles in the United States (GAAP) and should not be considered in isolation from or as a replacement for the most directly comparable GAAP financial measures.

[2] Fees paid in the Fourth Quarter 2024 were for work performed in the Third Quarter 2024, and were approved by the Court in the Fourth Quarter 2024. Fees paid during 2024 were for work performed from October 1, 2023 to September 30, 2024.

COURT APPROVED PLAN

**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)

RECEIVER'S DISTRIBUTION PLAN

David A. Castleman
OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
Tel: (212) 661-9100
Receiver

Jennifer S. Feeney
William M. Moran
James V. Drew
OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
Tel: (212) 661-9100
Counsel for the Receiver

Filed: August 9, 2024
Approved: January 21, 2025

COURT APPROVED PLAN

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COURT APPROVED PLAN

INTRODUCTION

This Distribution Plan governs the process by which the Receiver will make distributions of Receivership Assets to eligible claimants, the vast majority of whom are investors (*i.e.*, users) in EminiFX.¹ This Distribution Plan sets forth the eligibility criteria for EminiFX investors and claimants to receive distributions, how distributions will be calculated, the timing and procedure with respect to investor distributions, and other items as set forth herein:

Claims and Classification. An investor claim shall be comprised of only investments made into the EminiFX System, and exclude any purported profits, interest, bonuses, internal transfers or other similar amounts shown in the EminiFX System. Investors who deposited less than \$1,000 into the EminiFX System will be grouped into a separate “convenience class” and will receive a one-time distribution that will be at a higher percentage than the initial distribution to other investors, but with no expectation of receiving additional distributions. The Distribution Plan will also set forth the classification and priority of claims, including priority status for Administrative Claims and Tax Claims, and subordination of certain Claims, to be determined through subsequent litigation as necessary.

Calculating Distributions. The Distribution Plan will use the “rising tide” method to calculate distributions, which provides that a distribution is calculated as a percentage (the “rising tide”) of the investor’s total investment (deposits) into the EminiFX System, and then subtracting both the Pre-Receivership Withdrawals and any other post-receivership distributions already received. This method effectively treats Pre-Receivership Withdrawals as equivalent to post-receivership distributions. For investors who deposited more than \$1,000, the Receiver will periodically increase the rising tide percentage over time, making additional distributions to investors with Allowed Claims. For investors who deposited less than \$1,000, they will be placed in a separate sub-class (a “convenience class”) and receive a single distribution that is higher (as a percentage of the Allowed Claim) than the initial distribution percentage of claimants with Allowed Claims above \$1,000. However, the Receiver expects that to be a “one-time” distribution received by such “convenience class” investors.

Procedure and Timing of Distributions. The Distribution Plan will set forth the procedure and timing for investor distributions. The Receiver’s goal is to commence an initial distribution to EminiFX investors by the end of 2024 and into 2025, and to continue making distributions to investors as their Transactions are fully resolved and as additional Receivership Assets become available for distribution. The initial distribution will be to those investors whose Transactions have been verified and their Claims allowed in accordance with the previously approved Claims Procedures by a set date (and whose Claim is not being held for further review). Once an investor’s disputed Transactions are resolved, newly Allowed Claims will be entitled to receive the same percentage distribution as all other similarly classified investors. The initial “rising tide” percentage and distribution will be calculated in the business judgment of the Receiver, accounting

¹ Capitalized terms used herein have the meanings set forth in Article I.A. All references to “investor” or “investment” throughout are for convenience only and are not intended to affect any characterization of the relevant transactions for tax purposes or otherwise. “Investor” is used interchangeably with “User” herein.

COURT APPROVED PLAN

for the total Cash included in the Receivership Assets, less appropriate reserves for disputed Claims, estimates for Tax and Administrative Claims, and any other appropriate reserves.

Litigation Claims, Temporary Holds, and Setoffs. The Distribution Plan shall set forth the Causes of Action that shall be retained by the Receiver for future prosecution and ability to resolve such Causes of Action, both in his sole discretion. The Distribution Plan will also set forth the procedures by which the Receiver can identify Holders of Claims that otherwise may be entitled to a distribution, and temporarily withhold such distribution for a set period of time (a “review hold”) while the Receiver investigates whether the Receiver may have affirmative Causes of Action against such Holder or whether the Holder’s Claim, in whole or in part, should be subject to equitable subordination, consolidation, or setoff.

Additional Procedures. The Distribution Plan shall set forth additional procedures for making distributions to investors, including the handling of claims of deceased investors and investors for whom there may be a lien on assets, de minimis distributions, and distributions that are returned to the Receiver as undeliverable.

**ARTICLE I.
PLAN DEFINITIONS AND RULES OF INTERPRETATION**

A. Definitions

“Administrative Claim” means any EminiFX Claim to the extent that it asserts an entitlement to priority in payment under applicable law in connection with the administration of the Receivership Assets or otherwise on the basis that it arises or is deemed to arise after the Receivership Date. For the avoidance of doubt, Administrative Claims shall include claims for compensation by EminiFX Professionals.

“Alexandre” means Eddy Alexandre, a defendant in the CFTC Enforcement Action.

“Allowed” means, (i) in respect of any User Claim or User Convenience Class Claim, any such EminiFX Claim with respect to which no Transactions upon which the EminiFX Claim is based (either deposits or withdrawals) remain disputed in accordance with the terms of the Claims Procedures and (ii) in respect of all other EminiFX Claims, any such EminiFX Claim determined to be “allowed” in accordance with the terms of the Claims Procedures or otherwise expressly determined to be “allowed” pursuant to a Final Order of this Court, in the allowed amount, priority and/or classification so determined. Notwithstanding the foregoing, no EminiFX Claim or any portion thereof shall be Allowed if it remains subject to the “review hold” or Litigation Demand described in Article IV.E.

“Cash” means the lawful currency of the United States of America and its equivalents.

“Cause of Action” means any action, claim, cause of action, controversy, third-party claim, dispute, proceeding, demand, right, action, lien, indemnity, contribution, guaranty, suit, obligation, objection, liability, loss, debt, fee or expense, damage, interest, judgment, account, defense, remedy, power, privilege, license, and franchise of any kind or character whatsoever, whether known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed

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or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the date hereof, in contract, in tort, in law, or in equity or pursuant to any other theory of law. For the avoidance of doubt, a “Cause of Action” includes: (i) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (ii) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of fiduciary duty, or violation of state or federal law, including securities laws, negligence, and gross negligence; (iii) the right to object to or otherwise contest, recharacterize, reclassify, subordinate, or disallow Claims; (iv) any claim or defense including fraud, mistake, duress, and usury, and any other similar defenses; and (v) any state or foreign law fraudulent transfer or similar claim.

“**CFTC**” means the Commodity Futures Trading Commission.

“**CFTC Enforcement Action**” means the action commenced by the CFTC in this Court in the case captioned *Commodity Futures Trading Commission v. Eddy Alexandre and EminiFX, Inc.*, Case No. 22 Civ. 3822 (S.D.N.Y.).

“**Claim**” means any (i) potential or claimed right to payment, whether or not such right is based in equity or statute, reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) a potential or claimed 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.

“**Claims Procedures**” means this Court’s *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*, entered on August 29, 2023, and the procedures approved thereby, as those procedures may be amended from time to time [Dkt. 228].

“**Claims Procedures Motion**” means the *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*, filed on August 10, 2023 [Dkt. 225]

“**Court**” means the United States District Court for the Southern District New York.

“**Distribution Plan**” means this Distribution Plan, as may be amended from time to time.

“**Distribution Plan Order**” means the Order entered by the Court approving this Distribution Plan as filed or as may be modified by the Court in such Order.

“**Effective Date**” means the date upon which the Court enters the Distribution Plan Order.

“**EminiFX**” means EminiFX, Inc., a defendant in the CFTC Enforcement Action.

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“**EminiFX Claim**” means any Claim with respect to which recovery is sought from or against the Receivership Assets.

“**EminiFX Financial Condition Report**” means that certain *Receiver’s Financial Condition Report of EminiFX*, dated May 15, 2023 [Dkt. 199].

“**EminiFX System**” means the EminiFX-branded platform to and from which Users made Contributions and Withdrawals of Funds.

“**EminiFX QSF**” means the qualified settlement fund established from the Receivership Assets pursuant to 26 CFR § 1.468B-1.

“**Equity Interests**” means, in respect of EminiFX, Inc., any ordinary shares, units, common stock, preferred stock, membership interest, partnership interest, or other instrument, evidencing any fixed or contingent ownership interest, whether or not transferable, including any option, warrant, stock appreciation rights, phantom stock rights, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements, or commitments of any character, contractual or otherwise, to acquire any such interest.

“**Final Order**” means an order or judgment of this Court or another court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court, which is in full force and effect and has not been reversed, vacated, stayed, modified, or amended and as to which (i) the time to appeal, petition for writ of certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for writ of certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or writ of certiorari shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for writ of certiorari, or move for a new trial, reargument, or rehearing shall have expired; provided, however, for the avoidance of doubt, an order or judgment that is subject to appeal shall not constitute a Final Order even if a stay of such order or judgment pending resolution of the appeal has not been obtained; and, provided, further, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure (or any analogous rule applicable in another court of competent jurisdiction) has been or may be filed with respect to such order or judgment.

“**EminiFX Professionals**” means any professional retained by the Receiver pursuant to an order of the Court.

“**Funds**” means Cash or Bitcoin (BTC).

“**Holder**” means, with respect to any EminiFX Claim, the Person that holds (or held) such EminiFX Claim as of the Record Date or the successor in interest to such Person under valid and enforceable operation of applicable law as determined as such by the Receiver in his sole

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discretion; *provided that* the Receiver shall have no obligation to recognize or honor voluntary transfers of EminiFX Claims by Holders of EminiFX Claims except as provided herein.²

“Litigation Demand” means a written demand (whether in the form of a demand letter, complaint, motion, or other similar written form) that asserts an actual or potential Cause of Action by the Receiver against the Holder of an EminiFX Claim or otherwise with respect to any EminiFX Claim and includes a short and plain statement of such Cause of Action and the nature of the relief which may be sought by the Receiver.

“Net Winner” means any User whose Verified Withdrawal Amount exceeds their Verified User Deposit Amount.

“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 EminiFX 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.

“Other Claim” means any Non-User Claim to the extent that such Non-User Claim is not an Administrative Claim, a Tax Claim, or a Subordinated Claim.

“Person” means a natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental unit or other entity.

“Pre-Receivership Deposits” means, as to a User, deposits of Funds into the EminiFX System prior to the Receivership Date, whether deposited directly or by a third party for or on behalf of a User, net of fees and other transaction costs. For Funds deposited as Bitcoin, the value is converted to US Dollars based on the closing price on the date of deposit.

“Pre-Receivership Withdrawals” means, as to a User, 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 prior to the Receivership Date, irrespective of the characterization of such withdrawals as interest payments, redemptions, return of principal, or otherwise.

“Prior Distribution Amount” means, in respect of any given User Claim, the sum of (i) the Verified User Withdrawal Amount and (ii) the total amount of any distributions by the Receiver to or for the benefit of the Holder of such User Claim at any time.

“Receiver” means David A. Castleman, the Court-appointed receiver in the CFTC Enforcement Action, or any Court-appointed successor to David A. Castleman.

² The Receiver intends to publish a form by which purported transferors of deceased Holders of EminiFX Claims may assert their rights and provide supporting documentation. *See* Section V.C.5 herein.

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“**Receivership**” means the federal equity receivership established by one or more orders of this Court entered in the CFTC Enforcement Action.

“**Receivership Assets**” means all assets (including, without limitation, any Causes of Action) of EminiFX or Alexandre that are under the control of the Receiver pursuant to order of this Court or another court of competent jurisdiction (including, without limitation, the EminiFX QSF), and all proceeds thereof.

“**Receivership Date**” means the date of the commencement of the CFTC Enforcement Action.

“**Receivership Preliminary Injunction Order**” means this Court’s *Consent Order for Preliminary Injunction Against Defendants Eddy Alexandre and EminiFX, Inc.* [Dkt. 56].

“**Receivership TRO**” means this Court’s *Order Granting Plaintiff’s Motion for an Ex Parte Statutory Restraining Order, Appointment of a Temporary Receiver, and Other Equitable Relief* [Dkt. 9].

“**Record Date**” means March 1, 2024.

“**Review Hold Expiration Date**” means the later of (i) June 30, 2025, or (ii) the date that is six months after the entry of the Distribution Plan Order, unless extended as set forth herein.

“**Rising Tide Percentage**” means, in respect of any distribution made by the Receiver to Holders of Allowed User Claims, a percentage determined by the Receiver in his sole discretion that applies to distributions to Class 3 User Claims, as may be increased from time to time in accordance with this Distribution Plan. The method for calculating the Rising Tide Percentage is described in Article V.A.

“**Subordinated Claim**” means in respect of an EminiFX Claim or any portion thereof, as applicable, (i) subordinated in accordance with a written agreement signed by the Receiver and the Holder of such EminiFX Claim; (ii) any fine or penalty levied by the CFTC in connection with the CFTC Enforcement Action that is in whole or in part payable by the Receivership or from Receivership Assets, unless the Court orders otherwise; or (iii) that contains consequential or indirect damages, or lost profits, or should otherwise be a subordinated in the interest of equity, consistent with the procedures set forth in Article IV.E.

“**Tax Claim**” means any EminiFX Claim asserted by taxing authorities or other governmental entities in respect of any purported tax liability with recourse to the Receivership Assets (including any pre-receivership tax liabilities and any tax liabilities of the EminiFX QSF) to the extent that such EminiFX Claim is not an Administrative Claim or Other Claim, except to the extent that such EminiFX Claim is a Subordinated Claim.

“**Transaction**” means either a deposit into or a withdrawal from the EminiFX system made by a User, as described in the Claims Procedures Motion.

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

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“User Claim” means an EminiFX Claim that is based on an alleged investment in the EminiFX System prior to the Receivership Date, except to the extent that such EminiFX Claim is a Subordinated Claim or an EminiFX User Convenience Class Claim.

“User Convenience Class Claim” means an EminiFX Claim that is based on an alleged investment in the EminiFX System prior to the commencement of the CFTC Enforcement Action, where the Verified User Deposit Amount (not subtracting the Verified User Withdrawal Amount) is not greater than \$1,000, except to the extent that such EminiFX Claim is a Subordinated Claim.

“User Convenience Class Distribution Percentage” means, in respect of any distribution made by the Receiver to Holders of Allowed User Convenience Class Claims, a percentage determined by the Receiver in his sole discretion that applies to distributions to Class 3A User Claims, subject to any increase as set forth in Article III.A.4.

“User Portal” means the portal established pursuant to the Claims Procedures, for which all Users were given access to review all of the Transactions identified by the Receiver so that the Users could 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; and which may be updated from time to time with functionality for Users to submit their feedback related to this proposed Distribution Plan, their distribution payment information, and their objections to Disputed Transactions.

“Verified User Deposit Amount” means, for each User that does not have any Pre-Receivership Deposits or Pre-Receivership Withdrawals in dispute under the terms of the Claims Procedures, the sum of all Pre-Receivership Deposits made by or on behalf of that User (or otherwise properly attributable to such User as determined by the Receiver).

“Verified User Withdrawal Amount” means, for each User that does not have any Pre-Receivership Deposits or Pre-Receivership Withdrawals in dispute under the terms of the Claims Procedures, the sum of all Pre-Receivership Withdrawals made to or for the benefit of that User (or otherwise properly attributable to such User as determined by the Receiver).

B. Rules of Interpretation

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, all references herein to “Articles” are references to Articles of this Distribution Plan; (3) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to this Distribution Plan in its entirety rather than to a particular portion of this Distribution Plan; (4) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (5) the words “include” and “including” and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words “without limitation;” (6) any effectuating provisions may be interpreted by the Receiver in his sole discretion in a manner consistent with the overall purpose and intent of this Distribution Plan all without further notice to or action, order, or approval of this Court or any other Person, without waiver of the rights of any Person; and (7) any docket number

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references in this Distribution Plan shall refer to the docket number of any document filed with this Court in the CFTC Enforcement Action.

To the extent that this Distribution Plan is translated into any other language by the Receiver, the English language version shall control, and such translation of the Distribution Plan shall have no legal effect and be used for convenience only.

C. Governing Law

Unless a rule of law or procedure is supplied by federal law or unless otherwise specifically stated herein, the laws of the State of New York without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of this Distribution Plan.

D. Reference to Monetary Figures

All references in this Distribution Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

**ARTICLE II.
CLAIMS PROCESS**

A. Claims Procedures

The Receivership Assets consist almost exclusively of Cash (proceeds of previously liquidated assets, including Bitcoin) and certain potential Causes of Action. As of June 30, 2024, the Cash included in the Receivership Assets totaled approximately \$153 million.

One of the primary responsibilities of the Receiver is to determine how to allocate the Cash of the Receivership to Holders of Allowed EminiFX Claims. Critical to that is ascertaining Verified User Deposit Amount and Verified User Withdrawal Amount for each investor (*i.e.*, User). Following his appointment, using the bank and cryptocurrency exchange records recovered, and EminiFX internal records (which were unreliable and incomplete), the Receiver and his team were able to match up the majority of the over 100,000 deposit and withdrawal transactions to EminiFX Users. This left many thousands of Transactions unmatched. Accordingly, the Receiver initiated procedures to verify deposits and withdrawals and on August 29, 2023, this Court entered an Order approving the Claims Procedures. The Claims Procedures provided that, among other things, Users could access a User Portal established by the Receiver to allow them to verify or dispute the Transactions (contributions into and withdrawals from EminiFX) that the Receiver identified as belonging to the User, and also add Transactions or attribute deposits to other Users, with any such additions and modifications subject to review and either verification or dispute by the Receiver. The time periods during which Users or other claimants could take the foregoing actions under the Claims Procedures have now expired.

There was substantial response to the User Portal, with thousands of Users interacting with the User Portal and either verifying the Receiver's Transactions or disputing, including adding, thousands of Transactions. Given this tremendous response, the Receiver has spent significant time analyzing the responses of every User that did not simply verify all of the Receiver's

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Transactions. That analysis is ongoing. Accordingly, the total amounts of investments into, and withdrawals from, EminiFX used for purposes of distributions under this Distribution Plan may vary from the estimates stated in the EminiFX Financial Condition Report.³

The Claims Procedures also established deadlines for governmental entities and other Non-Users to file proofs of claim (120 days and 60 days after entry of the order, respectively).⁴

B. User Transaction Review Process

In respect of User Claims, the Receiver and his professionals are in the process of reviewing the disputed Transactions (anything other than those that were verified). Where the Receiver agrees with a User's modification or addition, the Receiver will verify such Transaction. Where the Receiver cannot verify the modification or addition, the Receiver will mark it as disputed and the User will have an opportunity to respond or provide additional information once the Receiver's determinations are communicated to the Users. The Receiver expects to verify and accept thousands of modifications and additions, valued in the tens of millions of dollars, the vast majority of which relate to deposits by Users.

The Receiver expects that the initial review of all Users' disputed Transactions will be completed in or around October 2024, at which time the Receiver will file a Schedule of Disputed Transactions (as defined in the Claims Procedures) with respect to remaining disputes regarding Users' Transactions, pursuant to the terms of the Claims Procedures. Affected Users will have 45 days thereafter in which to object using the User Portal and the Receiver will continue to seek to reach a consensus with those Users who claimed to have deposited or withdrew actual Funds from EminiFX. However, the Receiver will categorically deny any Users seeking to claim as valid deposits returns on investment ("ROI"), bonuses, or internal transfers, as many have on the User Portal. Further, although the Receiver will continue to provide limited mechanisms for Users to resolve inter-user disputes where appropriate and consistent with the Claims Procedures and this Distribution Plan, the Receiver as a general rule will not resolve such disputes, and the Claims Procedures expressly reserve the rights of Users to assert claims against third parties (including other Users).

Thereafter, for all disputes that remain, the Receiver will file with the Court a summary of the Users' objections to the Schedule of Disputed Transactions and a statement in support of the Receiver's determination with respect thereto and may seek one or more orders of the Court resolving any disputes.

The Receiver anticipates that the foregoing process for resolving disputed investor Transactions may take several months. However, the vast majority of Users verified their Claims and have no disputes. The Receiver anticipates that initial distributions may be made to Users with verified Transactions (that are not insiders or otherwise subject to heightened scrutiny) prior

³ The Financial Condition Report explained that, based on the information obtained from analyzing EminiFX's bank statements and incomplete internal records and during the eight-month period EminiFX was operational, investments (in either US Dollars or Bitcoin) into EminiFX were estimated at \$262.5 million. Withdrawals by investors from EminiFX during the same period were estimated at approximately \$34.0 million in the Financial Condition Report.

⁴ The Internal Revenue Service is not subject to these deadlines.

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to the full and final conclusion of the Transaction review process pursuant to this Distribution Plan. As a User's Transactions are verified and no disputes remain, such Users will be entitled to catch up distributions.

C. Proof of Claim Review Process (Non-User Claims)

Additionally, the Receiver reviewed the proofs of claim of Non-Users and, as of the filing of this Plan, reached agreements with all such claimants but one.⁵ Per the agreements reached with the settling claimants, all have been paid and their claims extinguished. No further action is required by either party and no distributions will be made under this Plan to such settled claimants. Certain Users filed proofs of claim, presumably out of an abundance of caution. Per the Claims Procedures, all proofs of claim submitted by Users on account of their investments in the EminiFX System are automatically disallowed and the User was advised that such User was required to interact with the User Portal to verify and/or dispute any of their EminiFX Transactions.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS**

A. Classification of Claims

The investors or other claimants that are eligible to receive distributions under this Distribution Plan are classified as follow:

| | |
|-----------|-------------------------------|
| Class 1: | Administrative Claims |
| Class 2: | Tax Claims |
| Class 3: | User Claims |
| Class 3A: | User Convenience Class Claims |
| Class 4: | Other Claims |
| Class 5: | Subordinated Claims |
| Class 6: | Equity Interests |

B. Treatment of Claims

Distributions on Allowed EminiFX Claims are governed by, and subject to the terms of this Distribution Plan and shall be in full and complete satisfaction, settlement, and release of all such EminiFX Claims. Allowed EminiFX Claims in the following classes are payable with the following priority and on the following terms from the Receivership Assets. No Holder of an Allowed EminiFX Claim shall be entitled to recovery under this Distribution Plan in excess of the full amount of such Holder's Allowed EminiFX Claim (nor shall such Holder be entitled to any interest on such Claim):

1. Class 1 – Administrative Claims

Each Holder of an Allowed Administrative Claim (Class 1) shall be entitled to receive the full amount of such Holder's Allowed Administrative Claim in Cash from time to time as and

⁵ On August 2, 2024, the Receiver filed the Non-User Claims Analysis Report, which initiated the formal process to resolve the remaining dispute with the one non-settling claimant.

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when due pursuant to any applicable orders of this Court, except to the extent that such Holder agrees to less favorable treatment. Unpaid or disputed Administrative Claims will be reserved for in their full amounts unless otherwise resolved in accordance with this Distribution Plan. EminiFX Professionals with Administrative Claims shall be paid in accordance with the Employment Order entered in this case on June 10, 2022, as amended from time to time [Dkts. 47, 187, 209 *et seq.*].

2. Class 2 – Tax Claims

Each Holder of an Allowed Tax Claim (Class 2) shall be entitled to receive the full amount of such Holder's Allowed Tax Claim in Cash from time to time as and when due pursuant to any applicable orders of this Court, except to the extent that such Holder agrees to less favorable treatment. At the time of any distribution, to the extent that the amount of the Tax Claims has not been determined or otherwise Allowed, the Receiver will establish a reserve—in an amount determined in his sole discretion after consultation with his advisors—to be a reasonable estimate of potential tax liabilities of EminiFX and the EminiFX QSF.

Consistent with the authority in Paragraph 31(m) of the Statutory Restraining Order [Dkt. 9], as incorporated into Paragraph 37 of the Consent Order [Dkt. 56], the Receiver shall file a tax return for the EminiFX QSF and pay any amount owed without further order of the Court, and shall include in the next regularly filed status report any amount paid. To the extent that the Internal Revenue Service (or state analogue) files a Tax Claim with respect to any pre-receivership tax liability of EminiFX, the Receiver shall accept such filing without regard to the Bar Date and shall have the authority to accept or negotiate the amount or priority of any such Tax Claim. The Receiver shall thereafter file a supplemental report with the Court seeking approval for the allowance, priority, and payment of any such Tax Claim.

3. Class 3 – User Claims

Each Holder of an Allowed User Claim (Class 3) shall be entitled to receive one or more distributions in Cash, from time to time in the discretion of the Receiver, equal to (i) the Verified User Deposit Amount in respect of such Holder's Allowed User Claim multiplied by the then-applicable Rising Tide Percentage minus (ii) the Prior Distribution Amount in respect of such Holder's Allowed User Claim.

The Receiver expects to prepare and file with the Court, in advance of making such distribution to Class 3, a notice identifying the applicable Rising Tide Percentage and an anonymized schedule showing the Verified User Deposit Amount and Prior Distribution Amount for each Allowed User Claim. To the extent that the foregoing calculation results in a negative amount with respect to any given Allowed User Claim, the Holder of such Allowed User Claim shall not receive a distribution.

4. Class 3A – User Convenience Class Claims

Each Holder of an Allowed User Convenience Class Claim (Class 3A) shall be entitled to receive a single distribution in Cash, at approximately the same time that the first interim distribution is made to Holders of Allowed User Claims (Class 3), equal to (i) the Verified User Deposit Amount in respect of such Allowed User Convenience Class Claim multiplied by the User Convenience Class Distribution Percentage minus (ii) the Prior Distribution Amount in respect of

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such Allowed User Convenience Class Claim. To the extent that the foregoing calculation results in a negative amount with respect to any given Allowed User Convenience Class Claim, the Holder of such Allowed User Convenience Class Claim shall not receive a distribution.

The Receiver expects to prepare and file with the Court, in advance of making such distribution to Class 3A, a notice identifying the applicable User Convenience Class Distribution Percentage and an anonymized schedule showing the Verified User Deposit Amount and Prior Distribution Amount for each Allowed User Convenience Class Claim.

Notwithstanding the foregoing, to the extent that the Receiver determines subsequently that the Convenience Class Distribution Percentage is inequitable as compared to the eventual final Rising Tide Percentage, the Receiver reserves the right in his sole discretion to revise the Convenience Class Distribution Percentage upward and make a further “top-up” distribution to Holders of Allowed User Convenience Class Claims based on the revised percentage (such that the total distributions by the Receiver under the Plan to each Holder of an Allowed User Convenience Class Claim would be made equal to the amount that would have been made if the Convenience Class Distribution Percentage had been the revised percentage originally).

5. Class 4 – Other Claims

Each Holder of an Allowed Other Claim (Class 4) shall be entitled to receive distributions in cash, at approximately the same time that distributions are made on account of Allowed User Claims (Class 3), equal to the amount of such Holder’s Allowed Other Claim multiplied by the then-applicable Rising Tide Percentage being used for purposes of distributions on account of Allowed User Claims. As of the filing of the Non-User Claims Analysis Report on August 2, 2024, there was only one remaining Allowed Other Claim that had not been resolved and extinguished. The claimant asserted a claim in the amount of \$992,614 and later sought to amend the claim to an amount in excess of \$2 million. The Receiver determined that such claim should be disallowed in its entirety, subject to the claimant’s right to object to the Receiver’s determination and have the issue decided by the Court pursuant to the Claims Procedures.

6. Class 5 – Subordinated Claims

Each Holder of an Allowed Subordinated Claim (Class 5) shall not be entitled to any distributions unless and until each Allowed EminiFX Claim in Classes 1, 2, 3, 3A and 4 are satisfied in full in accordance with the Distribution Plan; thereafter any Holder of an Allowed Subordinated Claim shall be entitled to its *pro rata* share of any further distributions by the Receiver from the Receivership Assets, if any. Current estimates are that holders of Allowed Subordinated Claims will not receive a distribution.

7. Class 6 – Equity Interests

Equity Interests shall not be entitled to any distributions under this Distribution Plan and will be extinguished and cancelled upon the dissolution of EminiFX in accordance with the terms of this Distribution Plan.

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ARTICLE IV.

CLAIMS ALLOWANCE, EFFECT OF LITIGATION ON CLAIMS ALLOWANCE

A. Claims Allowance Process

All determinations of whether any EminiFX Claim is Allowed (which includes, in respect of any User Claim or User Convenience Class Claim, resolving any disputes regarding any Transaction and determining the Verified User Deposit Amount and the Verified User Withdrawal Amount) shall be done in accordance with the terms of the Claims Procedures, or otherwise pursuant to a Final Order of this Court, subject to the potential disallowance of EminiFX User Claims as described in Article IV.E below. Any resolution of a Disputed Claim, as set forth in Sections 4 and 5 the Claims Procedures, may include a determination of whether all or a portion of such Disputed Claim that is allowed shall be classified as a Subordinated Claim.

For the avoidance of doubt, the Receiver is currently reviewing Transactions for the purpose of determining Verified User Deposit Amounts and Verified User Withdrawal Amounts pursuant to the terms of the Claims Procedures. At the conclusion of such process, the Receiver will file a Schedule of Disputed Transactions (as defined in the Claims Procedures), and affected Holders of EminiFX Claims will have 45 days thereafter in which to object in writing, agree to the Receiver's recommendations, or reach a resolution with the Receiver.

Notwithstanding anything in the Claims Procedures to the contrary, and in addition to any authority thereunder or which may be otherwise granted to the Receiver, the Receiver shall have specific authority to reach a resolution with the Holder of any User Claim or User Convenience Class Claim to Allow such EminiFX Claim (which includes, in respect of any User Claim or User Convenience Class Claim, resolving any disputes regarding any Transactions and determining the Verified User Deposit Amount and the Verified User Withdrawal Amount), in his sole discretion, without the necessity of this Court's approval or any notice to any third party or the Court.

B. Exclusion of ROI from Verified User Deposit Amounts

As set forth in the EminiFX Financial Condition Report and the Claims Procedures Motion, the Receiver has concluded that the investment returns (called "ROI" in the EminiFX System) credited to investors were not based on the results of actual investment activity and should not be recognized as legitimate or actual liabilities of EminiFX. Thus, ROI purportedly earned by Users will not be considered for purposes of determining Verified User Deposit Amounts.

C. Exclusion of Bonuses from Verified User Deposit Amounts

The Receiver has also concluded that bonuses awarded to Users for signing up other Persons to become Users and invest in the EminiFX System were not based on any actual value provided to EminiFX, and further enabled the EminiFX scheme, and should not be recognized as legitimate or actual liabilities of EminiFX. Thus, bonuses purportedly earned by Users will not be considered for determining Verified User Deposit Amounts.

COURT APPROVED PLAN**D. Exclusion of Internal Transfers from Verified User Deposit Amounts**

The Receiver has also concluded that internal transfers between EminiFX Users within the EminiFX system shall not be recognized as liabilities of EminiFX and will not be recognized for purposes of determining Verified User Deposit Amounts. These internal transfers do not reflect new money contributed to EminiFX, but, rather a transfer of a part of one User's "personal volume" or account balance to the account of another User. EminiFX records reflect nearly 50,000 internal transfers with a nominal "value" of over \$77 million were made within the EminiFX System. Because a User's balance nearly always included substantial fictitious ROI and multilevel marketing bonuses, determining how much of a transfer consisted of actual Funds is a practical impossibility and could also result in a deduction of the Transferor's Pre-Receivership Deposits to avoid double counting the same Funds.⁶ Thus, transfers between Users within the EminiFX System will not be considered for determining Verified User Deposit Amounts.

E. No Allowance of Claims Subject to Disputes**1. Potential Consolidation of Investor Accounts**

The Receiver may determine that certain investor accounts, under the applicable facts and circumstances, should be deemed consolidated with one another for purposes of determining the Verified User Deposit Amount and the Verified User Withdrawal Amount in respect of certain User Claims or User Convenience Class Claims.⁷ At any time, but no later than the Review Hold Expiration Date, the Receiver will notify the affected Holders of any User Claim or User Convenience Class Claim of any such determination in writing (which may be through the User Portal), and thereafter such affected User Claims or User Convenience Class Claims shall not be Allowed and the Holders of such affected User Claims or User Convenience Class Claims shall not be entitled to any distributions under this Distribution Plan unless and until the Receiver's determination is withdrawn in writing by the Receiver, resolved by written agreement of the Receiver, or resolved by a Final Order of this Court.

2. Temporary Litigation-Related "Review Holds"

The Receiver shall have the authority to place a temporary "review hold" with respect to any EminiFX Claim or the Holder thereof at any time up until the Review Hold Expiration Date, which shall prevent any EminiFX Claim identified in such temporary "review hold" and all EminiFX Claims of the Holder identified in such temporary "review hold" from being Allowed. The potential bases for such a temporary "review hold" include, without limitation, the Receiver's need for additional time to identify potential actions to subordinate EminiFX Claims, to assert affirmative claims for recovery, to further investigate the beneficial owner of an EminiFX Claim, or to recommend equitable subordination or consolidation to the Court. The Receiver shall use

⁶ The Transaction review process gave EminiFX Users the ability to add a member to a deposit, which allowed users to in effect transfer deposits from themselves to other Users. However, the Receiver will generally not resolve disputes among Users where those Users do not agree.

⁷ An example of a situation in which the Receiver may determine to consolidate two accounts is where the principal owner of the account is the same (e.g., a business account and a personal account or if the User opened up two separate accounts) and one of the relevant investor accounts is held by a Net Winner. The foregoing is solely an example for illustrative purposes. The Receiver may determine to designate accounts for consolidation in other situations as well.

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the User Portal to notify the relevant Holder that the User's EminiFX Claim has been placed under a "review hold" while the Receiver conducts his review. The Receiver may remove any such temporary "review hold" for any reason, in his sole discretion. All such temporary "review holds" shall automatically expire on the Review Hold Expiration Date if not removed before such time, *provided that* no Litigation Demand has been made as described in the following section, or no request for equitable subordination or consolidation has been made under this Article IV.E.

The Review Hold Expiration Date may be extended only with the approval of the Court, which may be requested by the Receiver via letter application instead of by motion on regular notice. The current Review Hold Expiration Date shall be posted on the Receivership website.

3. Litigation Demands

The Receiver shall have the authority to assert a Litigation Demand with respect to any EminiFX Claim (regardless of whether a temporary "review hold" applied to such EminiFX Claim at any time) or the Holder thereof. Such assertion of a Litigation Demand shall also prevent any EminiFX Claim identified in such Litigation Demand and all EminiFX Claims of the Holder identified in such Litigation Demand from being Allowed at any time after notice of the Litigation Demand is provided to the relevant Holder, until such time that the Litigation Demand is withdrawn in writing by the Receiver, resolved by written agreement of the Receiver, or resolved by a Final Order of this Court.

To the extent that distributions are made under this Distribution Plan on account of an Allowed EminiFX Claim that subsequently becomes the subject of a Litigation Demand and thus not Allowed, the Receiver may seek appropriate relief from the Court, including, but not limited to, disgorgement of previous distributions.

4. Potential Subordination of Investor Claims

The Receiver may determine that certain User Claims or User Convenience Class Claims, under the applicable facts and circumstances, should be classified as Subordinated Claims. For any such potential Subordinated Claims, the Receiver may, prior to the Review Hold Expiration Date, file one or more schedules of Subordinated Claims with the Court from time to time, and shall serve any affected Holder. Any affected Holder shall have 45 days to submit an objection to the Receiver, in a manner specified by the Receiver upon service of the schedule of Subordinated Claims. Failure to timely object shall result in such subordination classification becoming final. For any subordination classification not resolved consensually with the affected Holder, the Receiver shall submit such classification to the Court for summary disposition in a manner consistent with Section 5 of the Claims Procedures.

For the avoidance of doubt, any User Claim or User Convenience Class Claim (a) for which a request for subordination has not been made under this Section prior to the Review Hold Expiration Date, or (b) that has not been included in a Litigation Demand as set forth in Article IV.E shall not be a Subordinated Claim.

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**ARTICLE V.
DISTRIBUTIONS PROCESS**

A. Summary of Rising Tide Methodology

The Receiver will make distributions to Holders of Allowed User Claims utilizing a method referred to as the “rising tide” method. The “rising tide” method, which is a method widely recognized by courts as appropriate in the context of Ponzi schemes, provides that distributions are made such that each eligible investor would receive a Cash distribution from the Receiver that, when added to the prior distributions received by that investor, total an amount that equals a certain percentage (known as the “rising tide” percentage) of that investor’s gross investment in EminiFX (ignoring any purported profits, interest, bonuses, transfers or other amounts shown in the EminiFX system other than actual money contributed to EminiFX by the investor). For example, if the Rising Tide Percentage was fixed at 50%, and an investor previously received distributions equal to 28% of his or her Verified User Deposit Amount, then such investor would receive a distribution from the Receiver equal to 22% of that investor’s Verified User Deposit Amount. Investors that previously received distributions (before or after the Receivership Date) equal to or greater than the then-applicable Rising Tide Percentage multiplied by the User’s Verified User Deposit Amount, would not receive any distribution from the Receiver at that time. Distributions under the rising tide method can be calculated as follows:

$$\text{Distribution} = (\text{Verified User Deposit Amount} \text{ multiplied by Rising Tide } \%) \\ \text{minus Verified User Withdrawal Amount} \text{ minus Distributions Made by Receiver to Date.}$$

The following table is an example how the rising tide methodology would be applied to four sample users, all of whom have \$10,000 in Verified User Deposit Amounts, but different Verified User Withdrawal Amounts. In this example, the rising tide percentage starts at 30% in the initial distribution and is subsequently increased to 50% in a subsequent distribution. **This is only an example and not intended to indicate the Rising Tide Percentages that will be set by the Receiver at any point in time.**

| Sample User | Distribution 1 30% Rising Tide | Distribution 2 50% Rising Tide | Sum of Receiver Distributions | Sum of Withdrawals and Distributions |
|---|-----------------------------------|-----------------------------------|----------------------------------|---|
| User A Deposits \$10,000 Withdrawals \$0 | \$3,000 | \$2,000 | \$5,000 | \$5,000 |
| User B Deposits \$10,000 Withdrawals \$2,000 | \$1,000 | \$2,000 | \$3,000 | \$5,000 |
| User C Deposits \$10,000 Withdrawals \$4,000 | \$0 | \$1,000 | \$1,000 | \$5,000 |
| User D Deposits \$10,000 Withdrawals \$8,000 | \$0 | \$0 | \$0 | \$8,000 |

The Receiver will set the initial Rising Tide Percentage in his sole discretion promptly after the later of (i) the conclusion of the investors’ period to respond to the Receiver’s initial Schedule of Disputed Transactions, and (ii) entry of the Distribution Plan Order. When calculating such

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percentage, the Receiver expects to account for all available information—including the amounts of disputed Transactions and estimates of remaining Class 1 and Class 2 Claims—and to reserve using these reasonable estimates given that the Receiver expects to increase the Rising Tide Percentage from time to time. The Receiver will post such initial Rising Tide Percentage on the Receivership website and shall file with the Court a notice identifying the applicable Rising Tide Percentage. The Verified User Deposit Amount and the Verified User Withdrawal Amount for Holders with Allowed User Claims shall also be filed with the Court, posted on the Receivership website, and posted on that investor's User Portal.

The Receiver will set the User Convenience Class Distribution Percentage at the same time he sets the initial Rising Tide Percentage, and will follow a similar procedure as set forth above, posting the User Convenience Class Distribution Percentage on the website, filing schedules with the Court, and updating the User Portal with the Verified User Deposit Amount and Verified User Withdrawal Amount for Holders with Allowed User Convenience Class Claims.

For subsequent distributions, when the Receiver determines it is prudent to increase the Rising Tide Percentage—using reasonable reserve estimates and seeking to minimize the costs of distributions—the Receiver will follow a similar procedure, filing a notice of revised Rising Tide Percentage and posting the revised Rising Tide Percentage on the Receiver's website. The Receiver will periodically file and publish revised schedules of Allowed User Claims and Allowed User Convenience Class Claims as such Claims become Allowed.

B. Timing and Approvals of Distributions

At any time after the Effective Date, the Receiver shall be authorized to make distributions of Receivership Assets pursuant to and consistent with this Distribution Plan from time to time as determined by the Receiver in his sole discretion without further specific approval of the Court, subject to applicable law and any otherwise applicable orders of the Court.

C. Form of Distributions

Payments made pursuant to the Distribution Plan shall be made by the Receiver in Cash by means of check, ACH, Paypal, Venmo, Zelle, or other electronic payment method that the Receiver deems reasonable or necessary under the circumstances.

For any investors that do not provide to the Receiver via the User Portal updated contact and payment information, the Receiver may send checks to the last known addresses located in the United States of such investors, provided that the Receiver does not have a good faith basis to believe that the investor or the investor's designee is no longer located at such address. The Receiver may in his sole discretion allow an investor to designate a third party to receive such investor's distribution, for good cause shown to the Receiver.

The Receiver shall not be required to mail any checks or other form of physical payment to investors located outside the United States. To the extent that none of the payment methods authorized by the Receiver are practicable for an investor located outside the United States, the Receiver may in his sole discretion decide to use a different payment method for such investor, but the Receiver is not required to make any such exception.

COURT APPROVED PLAN**D. Distribution Reserves**

Prior to making any distributions to Holders of Allowed EminiFX Claims, the Receiver shall establish reserves as reasonably necessary to ensure that the Receivership Assets remaining after such distributions will be sufficient to (i) fund future expected professional, administrative, operational, and other expenses associated with fully administering the Receivership Assets as well as all potential Allowed Administrative Claims (Class 1) and all Allowed Tax Claim (Class 2) and (ii) otherwise ensure compliance by the Receiver with this Distribution Plan including the potential requirement to make distributions to Holders of EminiFX Claims that are at the time not yet Allowed Claims, but that might become entitled to distributions pursuant to this Distribution Plan if such EminiFX Claims were Allowed.

E. No De Minimis Distributions Required

The Receiver shall not be required to make a distribution to the holder of an Allowed EminiFX Claim if the amount of any one distribution on such Allowed EminiFX Claim is less than \$50.00.

F. Compliance with Applicable Law

Notwithstanding anything else contained herein, the Receiver shall be authorized to take any action he deems reasonably necessary to ensure compliance with applicable law in connection with making any distribution otherwise required hereunder. By way of example, and without limitation, the Receiver shall be permitted to (i) withhold distributions otherwise payable to Holders of Allowed EminiFX Claims until receipt of information necessary requested from such Holders in respect of applicable tax withholding and reporting requirements,⁸ (ii) withhold distributions otherwise payable to Holders of Allowed EminiFX Claims based on restrictions under applicable law or regulations including as promulgated by Office of Foreign Assets Control of the US Department of the Treasury, provided that the Receiver is given notice of such lien pursuant to the procedures set forth below, and (iii) establish any other mechanisms he believes are reasonable and appropriate consistent with the foregoing.

G. Distributions to Third Parties

The Receiver shall be permitted to withhold or pay distributions to third parties that were otherwise payable to Holders of Allowed EminiFX Claims as necessary to honor or satisfy applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances; provided that the Receiver is given notice of such lien pursuant to the procedures set forth below. Any amounts so withheld or paid to third parties by the Receiver pursuant to this foregoing authority shall be deemed to have been distributed to and received by the applicable Holder for all purposes of this Distribution Plan.

⁸ However, the Receiver does not currently contemplate requiring Holders of Allowed User Claims or Allowed User Convenience Class Claims to provide tax identification numbers or other tax reporting information as a condition to making distributions to such Holders, because such Holders are expected to receive only a partial refund of their total deposits and not any profits or gains.

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The Receiver may publish a form and related procedures by which purported third-party holders of liens or other rights may assert such liens or rights. Any such procedures shall require valid evidence of purported third-party holders' liens or other rights and may require such purported third-party holders to pay certain fees or other charges associated with filing and administering the third-party liens in any amounts that the Receiver deems reasonable in his sole discretion. The Receiver shall be authorized to determine the validity of any such evidence in his discretion, subject to the right of any party to seek a ruling from this Court.

The Receiver also may publish a form and related procedures for beneficiaries of estates of Holders of User Claims that are deceased, which shall require valid evidence of death and a right to receive distributions on behalf of the deceased Holder's estate. The Receiver shall be authorized to determine the validity of any such evidence in his discretion, subject to the right of any party to seek a ruling from this Court.

The Receiver may otherwise in his discretion make a distribution otherwise due to a Holder to the designee of a Holder, at the request of such Holder, provided that the Receiver has a good faith basis to believe that such request was made in good faith and not to evade compliance with this section or applicable law.

H. Disposition of Unclaimed Property

In the event that (a) any distribution to any Holder of an Allowed EminiFX Claim is returned as undeliverable or (b) the Holder of an Allowed EminiFX Claim does not respond to a request by the Receiver for information necessary to facilitate a particular distribution, no further distribution to such Holder shall be made unless and until the Receiver shall have determined the then-current address of such Holder or received the necessary information to facilitate a particular distribution, at which time such distribution and all catch-up distributions shall be made to such Holder without interest, dividends, or other accruals of any kind; provided that such distributions shall be deemed unclaimed property on the date that the Receiver determines in his sole discretion that all reasonable attempts to deliver such distributions have been exhausted, but in all events, prior to the final distribution of Receivership Assets. After such date, such Holder shall be deemed to have forfeited their right to any and all distributions from the Receiver, and all unclaimed property or interests in property shall be deemed Receivership Assets available for distribution to other Holders of Allowed EminiFX Claims (notwithstanding any applicable federal, provincial, or state escheat, abandoned, or unclaimed property laws to the contrary).

**ARTICLE VI.
RECEIVER CAUSES OF ACTION****A. Preservation of Receiver Causes of Action**

All Causes of Action included within the Receivership Assets are expressly preserved by the Receiver, and nothing in this Distribution Plan shall be deemed a waiver or abandonment of any such Causes of Action.

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B. Potential Claims and Causes of Action

The Receiver is in the process of evaluating a number of potential Causes of Action against third parties, which may seek affirmative recovery and/or disallowance or subordination of any investor claims such third party may have against EminiFX. Whether the Receiver asserts any Causes of Action, either through litigation or demand letters, and the resolution of such Causes of Action, could affect the number and dollar amount of claims that are eventually Allowed and deemed eligible for distributions under this Distribution Plan.

While the Receiver does not contemplate significant litigation against investors in EminiFX, certain investors may be the target of litigation to the extent that, among other things, they are deemed insiders, may have aided and abetted the fraudulent scheme, or may have received fraudulent transfers. Before commencing any litigation, the Receiver will first seek to resolve any claims without the need for litigation.

This Distribution Plan provides that EminiFX Claims identified by the Receiver as subject to litigation-related disputes will not be Allowed (and thus not eligible for distributions) as described in Article IV.E. Any litigation will not hinder the Receiver's ability to make initial distributions to investors whose claims have been verified and are not subject to disputes or potential litigation.

To the extent that any monies are recovered by the Receiver through litigation, settlement or otherwise after the filing of this Distribution Plan, or third parties seek to make distributions of litigation recoveries through the Receivership, such amounts will be included in the assets distributed to Holders in accordance with the terms of this Distribution Plan, unless the Receiver moves the Court for an amendment to this Distribution Plan concerning distribution of such amounts.

C. Receiver's Discretion Regarding Causes of Action

The Receiver shall be and is authorized to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any EminiFX Causes of Action, and to decline to do any of the foregoing, without the consent or approval of any third party or further notice to or action, order, or approval of this Court, subject to the Court's Supplemental Procedures Order [Dkt. 91] and, with respect to Net Winners, Article VI.D.

D. Treatment of Net Winners

Net Winners will not receive distributions under this Distribution Plan regardless of whether the Receiver commences any action to recover sums from such Net Winner. This is so simply because the "rising tide" method of calculating distributions is used, and Net Winners by definition have already received more than full recovery of the amounts that they are entitled to on their total investment.

The Receiver contemplates making settlement offers to Net Winners, offering a release from litigation by the Receiver in exchange for return of a portion of amounts received by Net Winners. Absent any settlement, Net Winners may be subject to potential affirmative Causes of Action brought by the Receiver.

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**ARTICLE VII.
TAX ISSUES**

A. Class 2 Pre-Receivership Tax Claims

The Receiver will accept the filing of any EminiFX Claim by the United States Internal Revenue Service (the “IRS”) or the New York Department of Taxation and Finance for unpaid taxes by EminiFX, Inc. pre-receivership, without regard to the deadlines set in the Claims Procedures, which are inapplicable to Claims of the IRS. Any such claim by the IRS shall receive any priority required under law, including but not limited to the Federal Priority Statute, 31 U.S.C. § 3713, provided that the Receiver and the IRS may negotiate the amount and priority of any such EminiFX Claim. The Receiver may make distributions on account of Class 3 and Class 3A claims, notwithstanding the Federal Priority Statute, so long as the Receiver reserves appropriately.

B. Class 2 Post-Receivership Qualified Settlement Fund Tax Claims

The EminiFX QSF comprises the Receivership estate, and is a separate taxable entity. The Receiver has and will continue to file, on an annual basis, tax returns for the EminiFX QSF. Any taxes owed thereon shall be treated as Class 2 claims entitled to payment from the Receivership Assets upon the filing of such tax returns, without further order from the Court.

C. Investor Tax Matters

EminiFX investors are expected to ultimately receive distribution(s) less than each investor’s net contribution into the EminiFX System. Consequently, EminiFX investors are advised that the Receiver does not expect to file tax reporting documents on distributions to Class 3 Claims or Class 3A Claims, nor does the Receiver expect to withhold any taxes on account of such distributions. All Holders of Class 3 Claims and Class 3A Claims are responsible for determining the tax treatment of any distributions received thereon. The Receiver cannot give any tax advice to Holders of EminiFX Claims, who are advised to consult their own tax advisors.

**ARTICLE VIII.
MISCELLANEOUS PROVISIONS**

A. Jurisdiction of Court

This Court shall have sole and exclusive jurisdiction to interpret and enforce this Distribution Plan and to adjudicate all matters arising out of, and related to the Receivership and the Distribution Plan, including jurisdiction, power and authority to:

1. Consider any amendments or modifications of the Distribution Plan requested by the Receiver.
2. Cure any defect or omission, or reconcile any inconsistency in the Distribution Plan, or any order of the Court.
3. Issue such orders in aid of execution of, or to enforce, the Distribution Plan as may be necessary and appropriate.

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4. Hear and determine all litigation, Causes of Action and all controversies, suits and disputes that may arise in connection with the interpretation, implementation, or enforcement of this Distribution Plan and any settlements or compromises reflected herein.

5. Ensure that distributions to holders of Allowed EminiFX Claims are accomplished pursuant to the provisions of this Distribution Plan.

6. Hear and determine all objections or other disputes with respect to EminiFX Claims.

7. Protect the Receivership Assets from adverse claims or interference inconsistent with the Distribution Plan, including the issuance of injunctions or other such action as may be necessary or appropriate to restrain interference with the implementation or enforcement of the Distribution Plan.

8. Hear and determine all applications for compensation and reimbursement of expenses of professionals employed by the Receiver.

9. Hear and determine issues related to the Receiver's efforts to recover all Receivership Assets, wherever located.

10. Hear and determine all litigation, Causes of Action and all controversies, suits, and disputes that may arise in connection with any action sought to be taken against the Receiver or his professionals.

11. Enter a Final Order closing the CFTC Enforcement Action and discharging the Receiver.

12. Hear and determine all other issues or matters necessary to carry out the purpose of this Distribution Plan.

B. Effective Date of Distribution Plan

This Distribution Plan shall become effective on the Effective Date. On or after the Effective Date, the Receiver may, in his discretion, commence making distributions to Holders of Allowed EminiFX Claims.

C. Binding Effect of Distribution Plan

On and after the Effective Date, the provisions of this Distribution Plan shall, and shall be deemed to, bind each Holder of an EminiFX Claim, including each of their respective successors, heirs, legal representatives, and assigns.

D. Injunction

Except as otherwise provided in this Distribution Plan or in any document, instrument, release, or other agreement entered into in connection with this Distribution Plan or approved by

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order of the Court, all Persons that have held, hold, or may hold EminiFX Claims are permanently enjoined from taking any of the following actions against the Receivership Assets:

1. commencing or continuing, in any manner or in any place, any action or other proceeding to enforce, attach, collect, or recover in any manner any judgment, award, decree, or order;
2. creating, perfecting, or enforcing any lien or encumbrance;
3. asserting a setoff or right of subrogation of any kind against any debt, liability, or obligation due to the Receiver in his capacity as such;
4. commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Distribution Plan; provided, however, that nothing contained herein shall preclude such persons or entities from exercising their rights pursuant to and consistent with the terms of this Distribution Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with the Distribution Plan, or approved by order of the Court; and
5. taking any other action specifically enjoined in Paragraphs 55 and 56 of the Receivership Preliminary Injunction Order.

E. Continued Force and Effect of Receivership Preliminary Injunction Order

To the extent that it is not expressly superseded by, or clearly contrary to, the provisions of this Distribution Plan, the Receivership Preliminary Injunction Order shall remain in full force and effect through entry of an order closing the CFTC Enforcement Action, unless otherwise superseded by an Order of the Court.

F. Severability

If any term or provision of this Distribution Plan is determined by the Court to be invalid, void or unenforceable, the Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Distribution Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration, or interpretation.

G. Dissolution of EminiFX

As part of this Distribution Plan, at or near the conclusion of the Receiver's administration of the Receivership Assets, EminiFX will be dissolved. Such dissolution will include the filing of articles of dissolution if necessary, compliance with applicable state and local laws and procedures related to entity dissolution, and the filing of final tax returns.

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H. Reports to the Court and to Claimants

The Receiver shall file a written report with this Court no less than annually regarding the status of efforts to implement this Distribution Plan. The Receiver shall post a copy of his written report, which may be part of the annual or quarterly status reports, on the Receiver's website in order to provide notice to claimants (<https://www.eminifxreceivership.com/>).

I. Amendments to Distribution Plan

The Receiver expressly reserves the rights to alter, amend, or modify this Distribution Plan, one or more times, after this Court's approval hereof, if such alteration, amendment or modification does not, in the Receiver's judgment, materially alter the Distribution Plan, and, to the extent necessary, seek this Court's approval to so alter, amend, or modify this Distribution Plan, or remedy any defect or omission, or reconcile any inconsistencies in this Distribution Plan, in such manner as may be necessary to carry out the purposes and intent of this Distribution Plan. The Receiver shall post any amendments to the Distribution Plan with a redline on the Receivership website, and shall inform the Court in his next regularly filed status report.

J. Notice

In general, the Receiver will provide notice to Users via the User Portal and via email, which are the preferred methods of communication. All notices, requests, and demands to or upon the Receiver to be effective—unless such communication be made through the User Portal **in which case no additional notice is required**—shall be in writing (including, without limitation) addressed as follows:

David A. Castleman, Receiver
EminiFX Distributions c/o Stretto
410 Exchange, Suite 100
Irvine, CA 92602
EminiFX@stretto.com

K. Application for Order Terminating the Receivership

When the Receiver has fully administered the Receivership Assets, the Receiver may apply to this Court for an order terminating his appointment as Receiver, closing the CFTC Enforcement Action and ending the Receivership. Any such application shall be accompanied by (a) a final accounting identifying (i) all Receivership Assets, their source and value; and (ii) all liabilities, the nature and amount of such claims; and (b) a proposal for a final disposition of any remaining Receivership Assets.

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L. Preservation of Records

The Receiver shall preserve all material records and documents relating to his appointment as Receiver until a date that is 1 year following entry of an order closing of the CFTC Enforcement Action.

Dated: New York, New York
August 9, 2024

Respectfully Submitted,

By: /s/ David A. Castleman
David A. Castleman
OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
Tel: (212) 661-9100
Receiver

Jennifer S. Feeney
William M. Moran
James V. Drew
OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
Tel: (212) 661-9100
Counsel for the Receiver