**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF NEW YORK**

|  |  |
| --- | --- |
| COMMODITY FUTURES TRADING COMMISSION,Plaintiff, -against-EDDY ALEXANDRE andEMINIFX, INC.,Defendants. | 22 Civ. 3822 (VEC) |

 **PROOF OF CLAIM FORM**

This Proof of Claim Form is for asserting claims against EminiFX, Inc. (“EminiFX”) currently in receivership being administered by David Castleman, in his capacity as the court-appointed receiver (the “**Receiver**”), in the case captioned *CFTC v. Alexandre et al.*, Case No. 22-cv-03822 (VEC). On August 29, 2023, the United States District Court for the Southern District of New York (the “**Court**”) entered an Order establishing procedures for the resolution of claims and setting claims bar dates [Dkt. 228] (the “**Order**”).[[1]](#footnote-1)

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| --- |
| **STOP** Did you ever have an EminiFX account and is your claim based on your status as an EminiFX User?**IF YES, DO NOT FILL OUT THIS FORM.****You should have received an email from the Receiver asking you to log onto the Portal. Follow the instructions in that email instead.** **If you did not receive that email, but had an EminiFX account, contact** **EminiFXInquiries@Stretto.com****.**  |

Read the attached Proof of Claim instructions before filling out this Proof of Claim Form. Attach copies of any documents that support the Claim, such as agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, evidence of perfection of lien, and other documents evidencing the amount and basis of the Non-User Claim. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, you must explain why in an attachment or else the Proof of Claim may be subject to disallowance.

## CLAIMANT CONTACT INFORMATION

|  |  |
| --- | --- |
| Claimant’s name: |  |
| Phone Number (primary): |  | Phone Number (cell): |  |
| Email Address: |  | Last Four Digits of SSN/TIN: |  |
| * Claimant is an entity. (If so, attach a list of all persons who directly or indirectly hold interests or beneficial interests in the Claimant exceeding ten percent (10%)).
 |

|  |  |
| --- | --- |
| **Claimant’s Mailing Address (For Notice)** | **Claimant’s Address for Payment (if Different)**  |
| Country: |  | Country: |  |
| Address 1: |  | Address 1: |  |
| Address 2: |  | Address 2: |  |
| City: |  | City: |  |
| State: |  | State: |  |
| ZIP: |  | ZIP: |  |

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

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

## CLAIM INFORMATION

1. **Has this claim been acquired from someone else?**

|  |  |  |
| --- | --- | --- |
| * No
* Yes
 | From whom? |  |

1. **Does this claim amend one already filed?**

|  |  |  |
| --- | --- | --- |
| * No
* Yes
 | Filed on: |  |

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

|  |  |  |
| --- | --- | --- |
| * No
* Yes
 | Last 4 digits of the number:  |  |

1. **How much is the claim in U.S. Dollars?**
2. **Does this amount include interest or other charges?**
* No
* Yes (Attach statement itemizing interest or other charges)
1. **Explain the basis of the Claim and attach all supporting documentation:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

|  |  |  |
| --- | --- | --- |
| * No
* Yes
 | How much of the claim? |  |

1. **Have you mitigated your damages?**

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

|  |  |  |
| --- | --- | --- |
| * No
* Yes
 | How much of the claim? |  |

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Is all or part of the Claim secured?**
* Yes (Complete the items below)
* No.

Description of collateral:

Asserted value of collateral:

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

Basis for perfection:

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

1. **Is your claim based on a lease?**

|  |  |  |
| --- | --- | --- |
| * No
* Yes
 | Identify the property: |  |

1. **Is your claim subject to a right of setoff?**

|  |
| --- |
| * No
* Yes
 |

## CERTIFICATION

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

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

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

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

Signature:

Name of Signatory:

If by Authorized Representative, Name and Title:

Executed this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_

**Instructions for Completing Non-User Proof of Claim Form**

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

**Who should complete and serve a Proof of Claim?**

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

**How will this Proof of Claim be used?**

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

**How do I submit a Proof of Claim?**

* Complete each section of the Proof of Claim Form.
	+ If you need more space to provide any of the information requested, please attach a separate document to your Proof of Claim and indicate the section and question to which you are providing additional information.
* Attach *copies* (not originals) of all documents that support your Claim. Documents will not be returned to you. If you are missing any documents that support your Claim, attach an explanation of why the documents are unavailable.
* Sign the Proof of Claim Form.
* Serve the Proof of Claim along with supporting documentation to the Receiver’s Claims Agent by:

(1) First Class Mail via the USPS addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; (2) overnight courier or in-person delivery addressed to EminiFX Claims Processing c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602; or (3) using the electronic Proof of Claim Form available on the Receiver’s website at [https://www.EminiFXreceivership.com/](https://www.straightpathreceivership.com/), including through the Portal.

* A Proof of Claim will only be deemed served when actually received by the Receiver’s Claims Agent.
* No Proof of Claim should be filed with the Court and any Proof of Claim so filed will not be considered properly served.

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

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

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

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

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

* Yes. The Receiver’s Claims Agent must actually receive your Proof of Claim, including any supporting documentation, by the following deadlines:
1. 5:00 p.m. (prevailing Eastern Time) on October 30, 2023 is the deadline for Claimants other than Governmental Units to serve Proofs of Claim against the Receivership Entities; and
2. 5:00 p.m. (prevailing Eastern Time) on December 27, 2023 is the deadline for Governmental Units to serve Proofs of Claim against the Receivership Entities.

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

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

* The Receiver will review each timely Filed Proof of Claim and notify each Claimant of his determination regarding the Claimant’s Filed Proof of Claim. If a Claimant disagrees with the Receiver’s determination, the Claimant will be required to timely serve a Claimant Objection on the Receiver, triggering a procedure for resolution of the dispute. If you would like further information regarding this process, please review the Order and the Procedures, which are available on the receivership website at <https://www.eminifxreceivership.com/>.
1. Capitalized terms used but not defined herein shall have the same meanings ascribed in the Order (I) Approving Procedures for the Verification of User Contributions to and Withdrawals from EminiFX, (II) Setting a Bar Date for the Filing of Non-User Claims, (III) Establishing Notice Procedures, and (IV) Granting Related Relief [Dkt. 228](the “**Order**” and accompanying “**Procedures**”). [↑](#footnote-ref-1)