

**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)

**THIRD QUARTER 2024 REPORT OF RECEIVER DAVID A. CASTLEMAN**

**(TENTH STATUS REPORT)**

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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 Tenth Status Report (the “**Report**”) to apprise the Court of the activities of the receivership (the “**Receivership**”) during the period from July 1, 2024 through and including September 30, 2024 (the “**Third Quarter**”).

## I. INTRODUCTION

During the Third Quarter, the Receiver and his team continued their efforts to implement the Receiver’s goal of making a preliminary distribution to eligible claimants by the end of the 2024 calendar year. The primary focus this quarter was completing two related tasks—the transaction review process and filing a motion to seek approval of a proposed plan of distribution. Subject to the Court’s approval of the proposed plan, the Receiver will fix the Claims for the vast majority of the tens of thousands of EminiFX users who deposited funds with EminiFX for investment purposes (otherwise referred to as “**users**” in this Report) and make initial distributions to such users. As detailed below, these tasks—and the transaction review, in particular—were large and complex undertakings, but were, in the Receiver’s judgment, necessary to fairly and as best as possible ensure that users receive credit for deposits made into EminiFX. And as of the filing of this Report, both tasks have been completed.

As detailed in prior quarterly reports,<sup>1</sup> the Receiver launched an online portal (the “**Portal**”) at the end of the third quarter of 2023 that allowed EminiFX users to verify, update and/or add to their EminiFX transactions, in accordance with the Court-approved procedures (the “**Procedures**”) [Dkt. 228]. The purpose of establishing this Portal was to provide users with a streamlined means of verifying their deposits and withdrawals and, where a dispute existed,

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<sup>1</sup> See Eighth Status Report, Part IV, Dkt. 301; Ninth Status Report, Part IV, Dkt. 370.

allowing the affected users an opportunity to easily provide the Receiver and his team with corroborating evidence to validate each Transaction. The Receiver's goal was to reduce the burden on individual users as much as possible, while also ensuring that the maximum number of users receive credit for deposits that they made. Ultimately, the amounts verified through this submission and review process would form the basis for the user's claim and the corresponding distribution of EminiFX funds to that user.

As previously reported, as of March 1, 2024, when the Portal closed to all EminiFX users, 110,318 transactions had been verified, representing approximately 30,000 users, which is 98% of the transactions originally identified by the Receiver. Another 11,778 transactions were disputed or added by EminiFX users ("**Disputed Transactions**"), representing about 6,500 users. From the time of the Portal's close through the end of the Third Quarter, the Receiver and his team worked to resolve and validate those remaining Disputed Transactions. As a result of those efforts, including those undertaken during the Third Quarter, over 3,000 of the users who disputed transactions have had their transactions fully resolved and will, subject to approval of the Proposed Plan (discussed below), be eligible for a distribution, in addition to those Users whose transactions were already verified. 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 a distribution to the affected people. Only 7,030 Disputed Transactions remain as a result of the Receiver's review, representing under 6% of that 119,850 total user transactions. As this culmination of this review process, the Receiver filed a Schedule of User Transactions at the end of October 2024, and launched a revised version of the Portal that would facilitate the resolution of remaining Disputed Transactions and the collection of payment information from all users in anticipation of a distribution.

During the Third Quarter, the Receiver and his team also finalized and filed a proposed plan of distribution (“**Proposed Plan**”) and a motion seeking the Proposed Plan’s approval (“**Plan Motion**”) [Dkt. 381]. In an effort to permit users to easily review and respond to the Proposed Plan, the Receiver and his team created an update for the existing user Portal, available to all users, that allowed users to input their responses to the Proposed Plan digitally and anonymously. As reflected in the notice of user responses to the Proposed Plan [Dkt. 390], the Receiver received responses from 307 Users, representing approximately 1% of the total users. An objection was also received by defendant Eddy Alexandre [Dkts. 394, 407], and a response in support was filed by the CFTC [Dkt. 398]. The Receiver filed his reply in support of the Proposed Plan on September 27, 2024 [Dkt. 399]. As of the end of the Third Quarter, the motion to approve the Proposed Plan was fully briefed.

In addition to these tasks, the Receiver continued efforts to resolve the estate’s tax liability during the Third Quarter. In addition to ongoing discussions regarding any pre-Receivership liability, the Receiver and his team prepared and, at the beginning of the Fourth Quarter 2024 ultimately filed, a 2023 QSF tax return as well as a request for a prompt assessment.

As of the end of the Third Quarter, the Receivership earned just over \$1.2 million in interest on its high-yield accounts and paid expenses of around \$1.54 million, largely comprised of Court-approved professional fees and expenses, and recaptured \$76,709 in payroll reserves. The Receivership had nearly \$153 million in cash on hand and no other material assets other than potential litigation claims. A full ledger of the Receivership cash transactions for the Third Quarter is attached as Exhibit 1. The tables attached as Exhibit 2 show the balance sheet, income statement, and cash flows for the Receivership for the Third Quarter.<sup>2</sup>

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<sup>2</sup> 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

Looking forward, as a result of the efforts undertaken during the Third Quarter, if the Proposed Plan is approved by the Court, the Receiver is prepared to commence distributions to users and other claimants by the end of 2024 and into the beginning of 2025. Additionally, the Receiver expects to spend the final quarter of the year, as well as the first two quarters of 2025, resolving the remaining Disputed Transactions and seeking the assistance of the Court for unresolved disputes, 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 as of the end of the Third Quarter, the Receiver expects that the estate will be substantially administered by the second or 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*.<sup>3</sup> Additional procedural history is set forth in detail in the eight prior status reports [Dkts. 71, 163, 192, 195, 218, 234, 251, 301, 370], and is not repeated here. The following actions occurred in the Third Quarter:

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(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 Third Quarter, as applicable.

<sup>3</sup> 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.

**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],<sup>4</sup> 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. 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

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<sup>4</sup> 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].

dismiss, his deadline to respond to the Receiver's motion was extended to November 21, 2024 [Dkt. 416].<sup>5</sup>

**Summary Judgment.** On July 16, 2024, the Court approved a briefing schedule for the CFTC's motion for summary judgment [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 its 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 November 29, 2024 [Dkt. 413].

**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.

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<sup>5</sup> 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.*].

**Non-User Claims Report.** In accordance with the Procedures, on August 2, 2024, the Receiver filed his Non-User Claims Report [Dkt. 369]. The Non-User Claims Report identifies all non-user claims that were filed and previously allowed pursuant to settlements between the Receiver and respective claimant, as well as the amount allowed pursuant to such settlements. The Non-User Claims Report also sets forth the Receiver's determination, of whether, and to what extent, any filed non-user claim should be allowed, partially allowed, or disallowed. There remains only one non-user claim that has not been settled, which the Receiver proposed to disallow full. The affected claimant has objected to the Receiver's determination, and, as of the date of this Report, discussions to consensually resolve the claim are ongoing. The parties have agreed to a half-day mediation session in December in an effort to come to a resolution.

**Applications for Fees and Expenses.** On August 2, 2024, the Receiver filed an application for fees and expenses incurred from April 2024 through June 2024 [Dkts. 371-72], which was granted by the Court on August 16, 2024 [Dkt. 385].

### **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 Alexandre account statements, have been turned over to the Receivership. If any additional assets come to light as a result of the Receiver's investigation, the Receiver will evaluate any such situation and act or seek relief accordingly, including pursuing claims against third parties as appropriate.

In the Third Quarter, the Receivership earned \$1,203,409.93 in interest and spent a net \$1,466,700.76 in cash for expenses, which included: (i) Court approved professional fees and expenses of \$1,543,409.71 for work performed in the second quarter 2024 and a recapture of \$76,708.95 previously maintained separately as a payroll reserve [Dkts. 42, 354]. The total cash position of the Receivership as of September 30, 2024 was \$152,883,985.84.

The fees and expenses for the Receiver and his professional firms that have been incurred during the Third Quarter total \$2,102,215.83, 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 Third Quarter, largely related to management of the user transaction verification and review process, preparing the Proposed Plan and Plan Motion, 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, and the nearly \$153 million in cash under management exceeds the \$151 million in turned over assets (cash plus net liquidation value) by almost \$2 million.

The financial statements attached as Exhibit 2 show the post-appointment balance sheet, income statement, and cash flows for the Receivership during the Third 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<sup>6</sup>*

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

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<sup>6</sup> 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.

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 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.<sup>7</sup> 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 for non-users to assert claims, and a review process for each.<sup>8</sup> On August 29, 2023, the Court approved the Procedures [Dkt. 228] and the Receiver implemented a process by which users could

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<sup>7</sup> The Receiver and his team were able to attribute 99.8% of cryptocurrency withdrawals by transaction count.

<sup>8</sup> The Procedures may be amended from time to time in the judgment of the Receiver, with updates posted on the Website, reports on any changes included in each Regular Quarterly report to the Court, and leave from the Court sought for changes the Receiver deems to be sufficiently material to require further approval. As previously reported [Dkt. 251, p. 11], in accordance with 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/>.

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).<sup>9</sup>

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.

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

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<sup>9</sup> 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.

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.<sup>10</sup> 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 Proposed 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 a distribution to the affected people. Approximately 3,000 users with Disputed Transactions have had their transactions fully resolved and will be eligible for a distribution under

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<sup>10</sup> 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.

the Proposed 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 Proposed 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.

The total universe of verified and disputed transactions are set forth in the Receiver's Schedule of User Transactions, which was filed on October 30, 2024 [Dkt. 417].

### *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 Third Quarter 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. Users with Disputed Transactions have the opportunity through the Portal 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 are also shown

the total deposits and withdrawals asserted by the user as compared to the total deposits and withdrawals agreed to by the Receiver. Those Users who wish to accept the Receiver's determinations are able to use a feature on the User Portal that will require only a simple click and confirmation of such acceptance.<sup>11</sup>

Additionally, these users, as well as those whose transactions are currently all verified, are able to use the updated portal to submit payment information in anticipation of any eventual distribution to which they may be entitled.<sup>12</sup>

As a result of efforts undertaken during the Third Quarter, the Receiver filed a Schedule of User Transactions with the Court on October 30, 2024 and launched the revised portal on the same day, allowing every user access to view their own transactions. Contemporaneously, the Receiver provided an explainer on his website that walks through the features of the updated Portal, including each of the categories of Disputed Transactions that users will encounter, and how those disputes can be resolved.<sup>13</sup>

#### *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*.

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<sup>11</sup> 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.

<sup>12</sup> As of the date of this Report, over 10,000 users have input their payment information into the Portal.

<sup>13</sup> 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].

On August 2, 2024, the Receiver filed a Claims Analysis Report that, for the eight non-duplicative Proofs of Claim that were submitted by non-users,<sup>14</sup> set forth the resolution or determination for each such claim [Dkt. 369]. Only one claim (Claimant A0001) has not been resolved and extinguished, and the Receiver has disallowed that claim in its entirety, subject to the claimant's right to file an objection. That claimant timely filed an objection in accordance with the Procedures, which the Receiver is attempting to resolve consensually, including through an agreed-to mediation session. Though discussions are ongoing, if a resolution cannot ultimately be reached, the claim will be submitted to the Court for resolution in accordance with the Procedures.

As has been previously reported, of the remaining seven claims, three asserted claims exceeding \$50,000 and that have been the subject of prior proceedings in this case and therefore will be referred to by name (Claimants A0002-A0004), one of which (CoinPayments) was settled in the First Quarter, and two of which (Suites and the Beils) were settled in the Second Quarter. Three were from creditors asserting claims that did not exceed \$50,000 (Claimants A0005-A0007), and one was from the New York State Workers' Compensation Board (Claimant A0008), all of which were settled prior to the Second Quarter.

## **V. PROPOSED PLAN**

As noted above, on August 9, 2024, the Receiver filed his Plan Motion and Proposed Plan. As of September 27, 2024, the Plan Motion had been fully briefed. During the Third Quarter, the Receiver and his team devoted considerable attention to crafting the Proposed Plan and its

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<sup>14</sup> For those "non-user" claims submitted by users based upon their status as a user, the Procedures authorize 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 has therefore emailed each of those users informing them that their submitted Proof of Claim does not verify their user transactions and all such Proofs of Claim will be denied by the Receiver. The email further directed those users to the Portal where they can review and add transactions.

supporting papers, reviewing responses received by users, and preparing a response to those users concerns as reflected in the Receiver's reply.

Under the Proposed Plan, the Receiver is seeking to define allowed investor claims based only upon each investor's actual deposits into, and withdrawals from, EminiFX. The Receiver is seeking to exclude (i) the ROI, representing fictitious profits not related to any actual investing activity, (ii) recruitment and multilevel marketing bonuses, and (iii) internal transfers from the definition of an investor's claim. The Receiver is further seeking to employ 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 claim. This treatment acknowledges that pre-receivership withdrawals were paid from the pool of commingled investor deposits—the same pool of funds that will be used by the Receiver to make distributions per the Proposed Plan. Under the Rising Tide method, the pro rata distribution percentage will be higher than such percentage under a "Net Investment" distribution method (where withdrawals are subtracted from deposits to determine a net claim) for the same number of dollars distributed.

As discussed above and below in connection with next steps, as a result of efforts undertaken in the Third Quarter and thereafter, the Receiver is prepared to commence distributions if and when a plan is approved.

## **VI. RECEIVERSHIP COMMUNICATIONS**

During the Third Quarter, the Receiver communicated with users through email to provide them with pertinent updates in the Receivership, including emails advising of the filing of the Receiver's Proposed Plan and that users could log into the user Portal to provide their responses. The Receivership website (<http://www.eminifxreceivership.com>), was also updated frequently during the Third 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. In

particular, the Receiver made available during the Third Quarter a page devoted to explaining the terms of the Proposed Plan, which can be found on the website's "Distribution Plan" section.

*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](mailto:EminiFX@Stretto.com) with questions or concerns. During the Third Quarter, the Receiver's team received 407 phone calls and 319 emails, each of which received a response. 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.

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.

## VII. 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 Third 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.

As set forth in the Receiver's reply brief to the Proposed Plan [Dkt. 399, at 12-13], there is a substantial likelihood that the deposits into EminiFX will be treated by the IRS as income. An open question remains as to whether such income can be offset in whole or in part by the pre-receivership withdrawals, investment losses, expenditures, and eventual transfer of EminiFX assets to the qualified settlement fund upon the establishment of the Receivership. Until those issues have been resolved, the Receiver will ensure that sufficient reserves are set aside to satisfy any potential tax liability, recognizing the super-priority of tax claims as set forth in the Federal Priority Statute and in Second Circuit case law. *See* 31 U.S.C. § 3713; *S.E.C. v. Credit Bancorp., Ltd.*, 297 F.3d 127, 140 (2d Cir. 2002).

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. That return was ultimately filed in October 2024.

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.*

## **VIII. 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. Resolution of Remaining Disputed Transactions and Claims*

The deadline for users to object to their Disputed Transactions through the Portal is **December 16, 2024**. The Receiver and his team are currently working, and will continue to work, to resolve as many Disputed Transactions as possible to create certainty for the user and limit the need for resolution by the Court. The Receiver expects that this process will continue through the

first quarter of 2025. On or around that time, to the extent there are Disputed Transactions that cannot be resolved with the affected users, the Receiver and his team will submit one or more omnibus claims objections (when possible) to the Court for the Court to resolve the Disputed Transactions. The Receiver will also be prepared to submit a schedule of approved and disputed User Claims to the Court, based upon the Verified and Disputed Transactions, if and when the Court approves the Proposed Plan, and to periodically update that schedule thereafter as additional User Claims are approved.

Further, as set forth above, the Receiver has resolved all but one of the non-user Proofs of Claim, and the Receiver is currently in discussions with the sole remaining non-user claimant. In accordance with the Procedures, there is a court approved process for non-users to dispute the Receiver's determination of their filed claims, alternative dispute resolution procedures, and a process for adjudication through summary proceedings (Procedures, Secs. 4.D, 5).

In early 2025, the Receiver also expects to resolve the claims of insiders and reaching settlements with net winners under the terms of the Proposed Plan, or as otherwise approved by the Court. The Receiver expects these processes will continue through the second quarter of 2025. At that time, with the resolution of other Disputed Transactions, the Receiver expects to be able to file a final claims report.

*B. Distribution Plan and Initial Distributions*

As noted, while the resolution of Disputed Transactions is ongoing, the large majority of users have their transactions verified, and, subject to their providing payment information through the Portal, are in a position to receive a distribution if and when the Proposed Plan is approved. The collection of that information is currently underway.

If the Proposed Plan is approved, the Receiver intends to make an initial distribution based on the appropriate tax reserves, which will likely take well into 2025 to complete even if

distributions are able to be commenced by the end of 2024. The Receiver anticipates that there will be additional distributions to Class 3 and 4 claimants under the Proposed Plan, mostly likely as tax reserves are released or if there are additional recoveries.

*C. Resolution of Tax Issues*

After the end of the Third Quarter, but before the filing of this Report, the Receiver filed the tax return for the QSF for the year 2023, which is the year that all of the Receivership's Bitcoin was sold. The Receiver has requested a prompt assessment and will reserve appropriately. The Receiver also anticipates filing, by the end of the year or in early 2025, a return for the pre-receivership liability of EminiFX, as well as a request for a prompt assessment, and will reserve appropriately. The Receiver and his advisors cannot guarantee when the IRS will make a final determination with respect to each return but remains hopeful that the requests for prompt assessment will be granted and that the tax liability will be resolved by the end of 2026.

*D. Commencement of Potential Litigation Claims*

As part of the administration of the estate, the Receiver has been, and is continuing, to evaluate the availability of litigation claims against third parties for which the estate has standing to pursue under applicable law and for which there is a potential for return on investment should such litigation be commenced. Based on his investigations, the Receiver has identified certain actions that may provide value for the estate, and is prepared to begin commencing litigation as early as the Fourth Quarter 2024.

**IX. CONCLUSION**

The Receiver will provide a further report within 30 days of the end of the Fourth Quarter 2024, 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  
November 8, 2024

Respectfully Submitted,

By: 

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*Receiver*

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2024, I electronically filed the Third Quarter 2024 Report of David A. Castleman (Tenth 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 Tenth 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  
November 8, 2024

/s/ David A. Castleman  
David A. Castleman

# Exhibit 1

## Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): Cash General Ledger - 2024 3Q

Category	Type	Detail	Dkt	Asset Pool	Amount (USD)	Date	Balance (USD)
						Balance on 7/1/2024:	\$153,223,978.53
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
Transfer	Transfer	Transfer Out		General Receivership	(\$7.10)	08/02/2024	\$153,631,617.04
Transfer	Transfer	Transfer In		General Receivership	\$7.10	08/02/2024	\$153,631,624.14
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

# Exhibit 2

**Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): 2024-3Q Balance Sheet**

<b>Assets [1]</b>	<b>Consolidated</b>	<b>General Estate</b>	<b>Alexandre Assets</b>
Cash and Cash Equivalents	\$ 152,883,986	\$ 152,883,986	\$ -
Tax Prepayment	\$ 25,000	\$ 25,000	\$ -
Litigation and Other Claims [2]		<i>To be determined</i>	
<b>Total Assets</b>	<b>\$ 152,908,986</b>	<b>\$ 152,908,986</b>	<b>\$ -</b>
<b>Liabilities</b>			
Professional Fees and Expenses for Work Performed but not Paid in Period [3]	\$ 2,102,216	\$ 2,102,216	\$ -
Tax Liabilities [4]	\$ 24,922	\$ 24,922	\$ -
Receivership Claims [5]		<i>To be determined</i>	
<b>Total Liabilities</b>	<b>\$ 2,127,138</b>	<b>\$ 2,127,138</b>	<b>\$ -</b>
<b>Receivership Net Asset Value</b>	<b>\$ 150,781,848</b>	<b>\$ 150,781,848</b>	<b>\$ -</b>

**Notes**

[1] All assets and liabilities as of September 30, 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 Third Quarter 2024, pending approval or modification by the Court.

[4] The QSF tax return for 2023, reflecting that \$24,922 was owed, was filed after the close of the quarter. The tax obligation of the estate for the pre-receivership activities of EminiFX, Inc. is uncertain and yet to be determined.

[5] The estate anticipates having significant claims allowed against it, largely owing to thousands of expected EminiFX user claims, as well as other potential claims. The value of these claims is not yet known and will not be fixed until a claims register is completed by the Receiver and approved by the Court in accordance with the Transaction Verification and Claims Procedure.

**Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): 2024-3Q Income Statement**

<b>Income [1]</b>	<b>Consolidated</b>	<b>General Estate</b>	<b>Alexandre Assets</b>
Interest on Accounts	\$ 1,203,410	\$ 1,203,410	\$ -
<b>Total Income</b>	<b>\$ 1,203,410</b>	<b>\$ 1,203,410</b>	<b>\$ -</b>
<b>Expenses</b>			
Administrative Expenses [2]	\$ 2,102,216	\$ 2,102,216	\$ -
Recapture of Payroll Reserve	\$ (76,709)	\$ (76,709)	\$ -
<b>Total Expenses</b>	<b>\$ 2,025,507</b>	<b>\$ 2,025,507</b>	<b>\$ -</b>
<b>Receivership Net Income</b>	<b>\$ (822,097)</b>	<b>\$ (822,097)</b>	<b>\$ -</b>

**Notes**

[1] Income from July 1, 2024 to September 30, 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. 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 Third Quarter 2024 Fee Application, pending approval or modification by the Court.

**Receivership Estate of EminiFX and Alexandre (22 Civ. 3822): 2024-3Q Statement of Cash Flows**

	<u>Consolidated</u>	<u>General Estate</u>	<u>Alexandre Assets</u>
<b>Cash on Hand at Beginning of Period [1]</b>	\$ 153,147,276	\$ 153,147,276	\$ -
<b>Receivership Activities</b>			
Interest	\$ 1,203,410	\$ 1,203,410	\$ -
Professional Fees and Expenses [2]	\$ (1,543,409)	\$ (1,543,409)	\$ -
Recapture of Payroll Reserve	\$ 76,709	\$ 76,709	\$ -
<b>Total Cash Flow from Receivership Activities</b>	<b>\$ (263,290)</b>	<b>\$ (263,290)</b>	<b>\$ -</b>
<b>Cash and Cash Equivalents at the End of the Period</b>	<b>\$ 152,883,986</b>	<b>\$ 152,883,986</b>	<b>\$ -</b>

**Notes**

[1] Cash flows from July 1, 2024 to September 30, 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] Fees paid in the Third Quarter 2024 were for work performed in the Second Quarter 2024, and were approved by the Court in the Third Quarter 2024.