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MEMO ENDORSED

January 31, 2025

VIA ECF

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

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**Re: CFTC v. Alexandre and EminiFX, Inc., No. 22 Civ. 3822 (VEC)
Application for Payment of Fees and Expenses – Fourth Quarter 2024**

Dear Judge Caproni:

Pursuant to this Court’s Order dated June 10, 2022 concerning applications for professional fees and expenses [Dkt. 47], as amended on February 2, 2023 [Dkt. 187] and on June 30, 2023 [Dkt. 209] (the “**Employment Order**”), David Castleman, the court-appointed receiver (the “**Receiver**”) over Defendant EminiFX, Inc. (“**EminiFX**”) and certain assets of Defendant Eddy Alexandre (“**Alexandre**”), in the above-referenced action (the “**Civil Action**”) pursuant to the Consent Order for Preliminary Injunction [Dkt. 56] (“**Consent Order**”), respectfully submits this application (the “**Application**”) for the payment of professional fees and expenses for the period of October 1, 2024 through December 31, 2024 (the “**Application Period**”). The Receiver requests approval of payment of fees and expenses to the Receiver and the following firms: Otterbourg P.C. (“**Otterbourg**”), J.S. Held LLC (“**JS Held**”), Deloitte Tax LLP (“**Deloitte Tax**”), Crowe LLP (“**Crowe**”), and Stretto, Inc., (“**Stretto**”) (collectively, the “**Professional Firms**”).

During the Application Period, the Receiver continued to work towards implementing his goal of making a major initial distribution to investors, completing the transaction review process, receiving and processing initial responses during the objection period, and collecting payment information for the distribution process. As a result of the work completed during the Application Period, the Receiver was in a position to announce a \$100 million distribution in January 2025, two days after the Court approved the Distribution Plan [Dkts. 431, 434].

The Receiver and each of the Professional Firms have agreed to a public-service discount of their fees given the circumstances of the receivership. For the Application Period, (i) the Receiver requests fees of \$94,242.50; (ii) Otterbourg requests fees of \$618,230.08 and all expenses have been waived; (iii) JS Held requests fees of \$275,142.00 and expenses of \$12,278.50; (iv) Deloitte Tax requests fees of \$44,014.00 and expenses of \$2,201.00; (v) Crowe requests fees of \$3,455.25; and (vi) Stretto requests fees of \$213,845.50 and expenses of \$35,907.86. Otterbourg’s requested fees reflect \$179,438.42 in total discounts that includes both the standard public service discount and additional discounts as detailed in the invoice. The combined discounts of Otterbourg and the Receiver (\$132,882.50) for the Application Period total \$312,320.92.



Page 2

The total requested or incurred fees of \$1,248,929.33 and expenses of \$50,387.36 for the Application Period are reasonable given the significant complexity and substantial work completed, as set forth in detail in Part III. The total request of just under \$1.3 million is almost 40% less than the \$2.1 million requested in the Third Quarter 2024. Moreover, given the completion of the transaction review process at the end of October, the total fees declined each month during quarter (from just under \$600,000 in October to just over \$300,000 in December).

The Standardized Fund Accounting Report annexed to the Receiver's affidavit shows the cash flows in and out of the Receivership. The Receivership continued to earn substantial interest, just over \$1 million during the Application Period. The \$151.8 million in cash under management exceeds the \$151.1 million in turned over assets (cash plus liquidation value less custodial fees) by over \$700,000.

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

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

I. Authority for Requested Relief

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



Page 3

Inc., No. 05 Civ. 5231, 2015 WL 13678841, at *1 (S.D.N.Y. Sept. 14, 2015) (citations omitted). “In addition, in a securities receivership, opposition or acquiescence by the [regulatory agency] to the fee application will be given great weight.” *Byers*, 590 F. Supp. 2d at 644 (cleaned up).

II. Procedural History

The Receiver’s Fourth Quarter 2024 Report, filed on January 31, 2025, sets forth in detail the procedural history during the Application Period [Dkt. 444, at 5-10]. The most significant filing during the Application Period was the Schedule of User Transactions on October 30, 2024, which contained the results of the primary phase of the User Transaction and Verification Process and the Receiver’s determinations for nearly 120,000 transactions [Dkt. 417].

On August 9, 2024, the Receiver filed a motion for approval of the Proposed Plan [Dkts. 381-84], with briefing completed during the Third Quarter 2024. After the close the Application Period but before this Application was filed, Court entered an Opinion and Order approving the Plan on January 21, 2025 [Dkt. 431], and two days later the Receiver filed a Notice of Initial Distribution was filed [Dkt. 434].

On August 23, 2024, the Receiver and the CFTC filed motions to dismiss Alexandre’s counterclaims on August 23 [Dkts. 386-89], to which Alexandre filed a response [Dkts. 400-01]. The Receiver and the CFTC filed replies [Dkts. 403, 404]. Mr. Alexandre’s deadline to respond to the Receiver’s motion was extended during in October 2024, after which he withdrew his counterclaims against the Receiver on November 25 [Dkt. 423].

On September 23, 2024, the CFTC filed its motion for summary judgment [Dkts. 395-96]. The Receiver filed a response to the CFTC’s motion on October 11, without waiver of any argument Alexandre chooses to make in opposition [Dkt. 411]. Alexandre’s deadline to respond to the motion was extended to November 29 [Dkt. 413], and then again to December 27 [Dkt. 422]. The motion was fully briefed as of January 24, 2025, after the close of the Application Period but before this Application was filed, and remains pending.

On November 8, 2024, the Receiver filed a Third Quarter 2024 status report, and a fee application for that quarter. On November 26, 2024, the Court approved the Receiver’s application for fees and expenses for the Third Quarter 2024 [Dkt. 424].¹

¹ Prior fee applications had been granted on August 5, 2022 [Dkt. 92], October 25, 2022 [Dkt. 167], January 27, 2023 [Dkt. 185], February 13, 2023 [Dkt. No. 191], May 11, 2023 [Dkt. 198], August 10, 2023 [Dkt. 227], and November 15, 2023 [Dkt. 237], February 9, 2024 [Dkt. 255], May 16, 2024 [Dkt. 307], August 16, 2024 [Dkt. 385].



Page 4

III. Summary of Services During the Application Period

Transaction Verification and User Claims Process. During the Application Period, the Receiver and his teams at Otterbourg, JS Held, and Stretto continued to implement the transaction verification and claims process, completing their quality control review during the Application Period. On October 30, 2024, the Schedule of User Transactions was filed which showed the results of the Receiver's review, in which most of the nearly 120,000 transactions were resolved but for which just over 7,000 transactions (about 6% of the total) remained disputed, affecting 3,627 users (around 10% of the total—some users had both disputed and undisputed transactions).

During the Application Period, the Receiver and his teams implemented the 45-day objection period as set forth in the Claims Procedure Order [Dkt. 228]. During that period, a revised set of transactions was posted on each user's individual User Portal, with an explanation for disputed transactions and the results of any added or modified transactions. Users who still had disputed transactions remaining were given the opportunity to contest or accept the Receiver's determinations. Most users accepted the Receiver's determination either affirmatively or by declining to respond at all, and users who objected on the User Portal (and some who indicated an objection in a different way) remain pending. For some objections—generally in circumstances where the user provided the necessary missing documentation—the Receiver was able to immediately accept the transaction and resolve in the user's favor. At the end of the Application Period, only 630 users remained who have disputed transactions of review holds, and over 30,000 users are eligible for a distribution under the rising tide method. The Receiver and his team expect to spend the next two quarters resolving the remaining users and submitting any disputes that cannot be resolved amicably to the Court for omnibus resolution.

Non-User Claims. All of the non-user claims have now been resolved. There was one non-user claim which had not been settled, but discussions had been ongoing. During the Application Period, the Receiver engaged in a mediation with this non-user which resulted in the settlement of that claim. The agreement allowed the claim in the amount of \$555,000.00 with a recovery cap of 45% (\$249,750.00) if distributions to users exceeded this percentage. This represented a significant reduction from the amended claim (\$1,003,064.39) and ensured a resolution that was both fair and equitable under the circumstances. After the close of the Application Period but before this Application was filed, the Receiver made the initial 45% distribution on that claim (see below), and the claim is now fully satisfied.

Proposed Plan of Distribution. As previously reported, on August 9, 2024, the Receiver filed his Plan Motion and Proposed Plan. As of September 27, 2024, the Plan Motion was fully briefed. During the Application Period, in anticipation of the Proposed Plan being approved, the Receiver and his team began collecting payment information from EminiFX users. A function was added to the Portal to enable users to easily and securely send preferred method of payment. On January 21, 2025, the Court approved the Receiver's Proposed Plan [Dkt. 431]. Two Days Later,



Page 5

the Receiver filed a Notice of Initial Distribution [Dkt. No. 434], announcing initial distribution and rising tide percentages at 45% for Class 3 and 55% for Class 3A. The total budget for the initial distribution is approximately \$100 million which is a majority of the \$152 million currently held in the Receivership. The Receiver is in the process of preparing distributions and for users who have provided payment information, he anticipates the first payments will be made to EminiFX users in February 2025.

Tax Liability. During the Application Period, the Receiver worked with his tax and accounting teams to minimize, if possible, the tax burden while expediting certainty from the IRS. During the Application Period, tax and accounting teams assisted the Receiver to analyze pre-receiver tax liability, and filed a tax return for the Qualified Settlement Fund (the “QSF”) for the 2023 year. The team also assisted the Receiver in preparing tax return for the pre-Receivership tax liability of EminiFX, which will be filed concurrently with or shortly after this Application.

Investigation into Third Party Claims. The Receiver’s legal team at Otterbourg, in consultation with and supervised by the Receiver, continued its investigation into potential claims that the receivership may have against third parties. Such claims could result in a direct financial recovery of the estate, or in the reduction or elimination of certain claims against the estate. The Receiver continued an investigation into an issue concerning millions of dollars of EminiFX funds. In addition, in light of new information discerned during the non-user claims process, the Receiver discovered that over \$500,000 in EminiFX funds was used by Alexandre to purchase two luxury watches, and the Receiver initiated turnover request to Alexandre. After the close of the Application Period, but before the filing of this Application, Alexandre responded refusing to comply with the turnover request. The Receiver is considering next steps.

After significant work completing the drafting of a complaint during the Application Period, on December 3, 2024, the Receiver commenced an action in the New York County Supreme Court against Interactive Brokers LLC (“IBKR”), on behalf of the estate, and for the ultimate benefit of the customers of EminiFX seeking damages based on IBKR’s alleged conduct related to Alexandre’s trading of EminiFX funds in his personal IBKR account. Index No. 659407/2024 (the “State Court Action”) [State Court Action NYSCEF 1]. After the close of the Application Period but before the filing of this Application, IBKR removed to this Court. Case No. 25-cv-00042-VEC (the “District Court Action”). The parties are currently briefing whether to remand the case to state court, in response to an Order to Show Cause in the District Court Action, and that issue remains pending. The Receiver expects to proceed with litigation in either federal or state court once the jurisdictional issue is resolved.

Administration of the Estate and Case. The Receiver, assisted by his counsel at Otterbourg, supervised the administration of the estate, including monitoring bank accounts, redirecting and opening mail, and other tasks incidental to the management of the estate. The Receiver, with the assistance of Otterbourg, filed a status report advising the Court of the activities



Page 6

from the prior quarter [Dkt. 418]. The Receiver also continues to communicate with Alexandre regarding the Receivership as necessary via the CorrLinks system and the U.S. Mail. In general, the Receiver will conserve estate resources by filing responses to motions by Alexandre only when necessary or when ordered by the Court.

IV. Summary of Fees and Expenses Requested

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

The Receiver. As set forth above, the Receiver spent substantial time administering all aspects of the receivership. The Receiver respectfully requests the Court approve payment of \$94,242.50 in fees to the Receiver, which reflects a discount of over 50% from his normal rate—a savings of \$132,882.50 to the estate. The Castleman Affidavit attached as Exhibit 1 includes additional detail on his billing, as well as his supervision of the various Professional Firms.

Otterbourg. As set forth above, Otterbourg spent substantial time assisting the Receiver in administering and providing legal advice concerning all aspects of the receivership, including completing the primary phase of the user verification and claims process and investigating potential third-party claims. The Receiver respectfully requests the Court approve payment of \$618,230.08 in fees (reflecting the 15% public service discount and additional discounts as requested by the Receiver) to Otterbourg, and expenses were waived. The Feeney Affidavit attached as Exhibit 2 describes in more detail the work performed.

JS Held. JS Held continued to provide substantial forensic services to the estate, including the development of the review platform and analysis of user transactions in connection with the implementation the transaction verification and claims process. The Receiver respectfully requests the Court approve payment of \$275,142.00 in fees and \$12,278.50 in expenses to JS Held. The O'Malley Affidavit attached as Exhibit 3 describes in more detail the work performed.

Deloitte Tax. Deloitte Tax has provided the estate with tax analysis and strategic advice, in connection with determining EminiFX's pre-receivership tax liability. The Receiver respectfully requests the Court approve payment of \$44,014.00 in fees and \$2,201.00 in expenses to Deloitte Tax. The Young Affidavit attached as Exhibit 4 describes the work performed.

Crowe. Crowe has provided the estate with critical tax support and analysis, including preparing the QSF Return for 2023, which was timely filed during the Application Period. The



Page 7

Receiver respectfully requests the Court approve payment of \$3,455.25 in fees to Crowe. The Davis Affidavit attached as Exhibit 5 describes the work performed.

Stretto. Stretto has managed all user communications and continued to play a key role in the implementation of the Portal and the transaction verification and claims process and the claims resolution and plan process. The Receiver respectfully requests the Court approve payment of \$213,845.50 in fees and \$35,907.86 in expenses to Stretto. The McElhinney Affidavit attached as Exhibit 6 describes in more detail the work performed.

V. Conclusion

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D.A. Castleman".

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Receiver

Attachments

cc: Counsel of Record (*via ECF*)
Eddy Alexandre (*via U.S. Mail*)

Application GRANTED.

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Valerie Caproni".

3/7/2025

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE