

1 Carlin Metzger ([cmetzger@cftc.gov](mailto:cmetzger@cftc.gov))  
IL ARDC No. 6275516  
2 Susan Gradman ([sgradman@cftc.gov](mailto:sgradman@cftc.gov))  
IL ARDC No. 6225060  
3 Attorneys for Plaintiff  
4 Commodity Futures Trading Commission  
5 525 W. Monroe, Suite 1100  
Chicago, Illinois 60661  
6 Tel. 312-596-0700; Fax 312-596-0714

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT CALIFORNIA

9 \_\_\_\_\_ )  
10 COMMODITY FUTURES )  
11 TRADING COMMISSION, )

11 Plaintiff, )

12 vs. )

13 DENARI CAPITAL LLC, TRAVIS )  
14 CAPSON, and ARNAB SARKAR, )

15 Defendants. )

Case No: 3:19-cv-07284-EC

[Proposed] CONSENT ORDER  
FOR PRELIMINARY  
INJUNCTION AND OTHER  
ANCILLARY RELIEF AGAINST  
DEFENDANTS

16  
17 On November 5, 2019, Plaintiff Commodity Futures Trading Commission (“CFTC” or  
18 “Commission”) filed a Complaint against the Defendants, Travis Capson (“Capson”), Arnab Sarkar  
19 (“Sarkar”) and Denari Capital, LLC (“Denari”) (collectively “Defendants”), seeking injunctive and other  
20 equitable relief for violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1-26  
21 (2012)(ECF No. 1).

22 Defendants, without admitting or denying the allegations of the Complaint for the purposes of  
23 this Consent Order of Preliminary Injunction and Other Ancillary Relief (“Order”), except as to  
24 jurisdiction and venue, which they admit, consent to the entry of this Order and state that the consent is  
25 entered voluntarily and that no promise or threat has been made by the Commission or any member,  
26 officer agent or representative thereof, to induce them to consent to this Order.  
27  
28

**THE PARTIES AGREE AND THE COURT FINDS:**

1  
2 1. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal  
3 question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil  
4 actions commenced by the United States or by any agency expressly authorized to sue by Act of  
5 Congress). This Court has jurisdiction over the subject matter of this action and Defendants hereto  
6 pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(a) (2012), which authorizes the CFTC to seek  
7 injunctive relief against any person whenever it shall appear that such person has engaged, is engaging  
8 or is about to engage in any act or practice constituting a violation of any provision of the Act or any  
9 rule, regulation or order thereunder.  
10

11 2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1,  
12 in that Defendants are found in, inhabit, or transact business in this district, and the actions and practices  
13 in violation of the Act have occurred, are occurring, or are about to occur within this district, among  
14 other places.  
15

16 3. Defendants acknowledge service of the Summons and Complaint in this action.

17 4. Defendants waive the entry of findings of facts and conclusions of law for purposes of  
18 this Order pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 52(a).

19 **I. DEFINITIONS**

20 **For Purposes of this Order, the following definitions apply:**

21 5. The term “funds, assets, or other property” means any legal or equitable interest in, right  
22 to, or claim to, any real or personal property, with the exception of individual defendants’ “primary  
23 residences” as identified below, whether individually or jointly, directly or indirectly controlled, and  
24 wherever located, including but not limited to: chattels, goods, instruments, equipment, fixtures, general  
25 intangibles, effects, leaseholds mail or other deliveries, inventory, checks, notes, accounts (including,  
26 but not limited to, bank accounts and accounts at other financial institutions), credits, receivables, lines  
27  
28

1 of credit, contracts (including spot, futures, options, or swaps contracts), insurance policies, and all cash,  
2 wherever located, whether in the United States or outside the United States.

3 6. The term “primary residences” include the land and improvements, including dwellings  
4 and any other buildings, located at: (1) 928 West Vermillion Drive, Kanab, Utah 84741 (Capson primary  
5 residence); and (2) 6827 Snowdon Avenue, El Cerrito, California 94530 (Sarkar primary residence).

6 7. The term “document” and “electronically stored information” are synonymous in  
7 meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), and includes, but is not  
8 limited to, all writings, graphs, charts, photographs, sound recordings, images, and other data or other  
9 data compilations—stored in any medium from which information can be obtained or translated, if  
10 necessary, into reasonable usable form. The terms “document” and “electronically stored information”  
11 also refer to each and every such item in Defendants’ actual or constructive possession, including but  
12 not limited to: (i) all such items within the custody or control of any agents, employers, employees, or  
13 partners of the Defendants; and (ii) all items which Defendants have a legal or equitable right to obtain  
14 from another person. A draft or non-identical copy is a separate item within the meaning of the term. A  
15 document also includes the file and folder tabs associated with each original and copy.  
16  
17

## 18 **II. RELIEF GRANTED**

### 19 **IT IS THEREFORE ORDERED THAT:**

20 8. Defendants, and any person insofar as he or she is acting in the capacity of an officer,  
21 agent, servant, employee or attorney of Defendants and any person who receives actual notice of this  
22 Order by personal service or otherwise insofar as he or she is acting in concert or participation with  
23 Defendants, is restrained, enjoined and prohibited, until further order of the Court, from directly or  
24 indirectly violating Sections 4b(a)(2)(A)-(C), 4k(2), 4m(1), 4o(1)(A)-(B), and 2(c)(2)(iii)(I)(cc) of the  
25 Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6k(2), 6m(1), 6o(1)(A)-(B), 2(c)(2)(iii)(I)(cc) (2012), and Regulations  
26 (“Regulations”) 4.20(b)-(c), 4.21, 5.2(b)(1)-(3), and 5.3(a)(2), 17 C.F.R. § 4.20(a)-(c), 4.21, 5.2(b)(1)-  
27 (3), 5.3(a)(2) (2019).  
28

1 9. Defendants and any person insofar as he or she is acting in the capacity of an officer,  
2 agent, servant, employee or attorney of Defendants and any person who receives actual notice of this  
3 Order by personal service or otherwise insofar as he or she is acting in concert or participation with  
4 Defendants, is further restrained, enjoined and prohibited, until further order of the Court, from directly  
5 or indirectly:

- 6 a. trading on or subject to the rules of any registered entity (as that term is defined in  
7 Section 1a of the Act, 7 U.S.C. § 1a(4) (2012));
- 8 b. entering into any transactions involving “commodity interests” (as that term is defined in  
9 Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2019)) for his personal account or for any account  
10 in which he has a direct or indirect interest;
- 11 c. (i) having any commodity interests traded on their behalf; (ii) controlling or directing the  
12 trading for or on behalf of any other person or entity, whether by power of attorney or  
13 otherwise, in any account involving commodity interests; or (iii) soliciting, receiving or  
14 accepting any funds from any person for the purpose of purchasing or selling any  
15 commodity interests;
- 16 d. applying for registration or claiming exemption from registration with the Commission in  
17 any capacity, and engaging in any activity requiring such registration or exemption from  
18 registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17  
19 C.F.R. § 4.14(a)(9) (2017); and/or
- 20 e. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a)  
21 (2014)), agent or any other officer or employee of any person (as that term is defined in  
22 Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered, exempted from  
23 registration or required to be registered with the Commission except as provided for in  
24 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017).

25 **IT IS FURTHER ORDERED THAT:**

26 **Asset Freeze Order Prohibiting the Transfer, Removal, Dissipation and Disposal of Assets**

27 10. Until further order of this Court and except as provided otherwise in this Order,  
28 Defendants and each firm, corporation, or other person or entity with notice that holds any accounts,  
funds, assets, the primary residences, or other property of Defendants is prohibited from directly or  
indirectly withdrawing, transferring, removing, dissipating, concealing, assigning, pledging,  
encumbering, disbursing, converting, selling, or otherwise disposing of, in any manner, any funds,  
assets, or other property of Defendants, wherever situated, including, but not limited to, all funds,

1 personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any  
2 financial institution, bank or savings and loan account, including funds or property of customers,  
3 wherever located, whether held in the name of Defendants or otherwise. The provisions in this  
4 paragraph do not apply to any bank account or accounts at any other financial institutions that are held  
5 solely in the name of Beth A. Sarkar or Jennifer G. Capson, the spouses of Mr. Sarkar and Mr. Capson,  
6 respectively, unless evidence arises that they do not contain funds solely from legitimate sources of  
7 income unrelated to Denari Capital LLC or the allegations in the Complaint.  
8

9 11. Notwithstanding the provisions of this Section, at the request of the Temporary Receiver,  
10 Defendants and any other person who has possession, custody, or control of any of Defendants' funds,  
11 assets or other property shall transfer possession of all assets subject to this Order to the Temporary  
12 Receiver in accordance with paragraph 28 of this Order, with the exception of the primary residences  
13 defined in Paragraph 6 of this Order, or any bank accounts and accounts at other financial institutions  
14 held solely in the name of Beth A. Sarkar or Jennifer G. Capson, the spouses of Mr. Sarkar and Mr.  
15 Capson, respectively, unless evidence arises that they do not contain funds solely from legitimate  
16 sources of income unrelated to Denari Capital LLC or the allegations in the Complaint.  
17

18 12. The funds, assets or other property affected by this Order shall include existing funds,  
19 assets or other property, and funds, assets or other property acquired after the effective date of this  
20 Order, but shall not include the primary residences defined in Paragraph 6 of this Order, or any bank  
21 accounts and accounts at other financial institutions held solely in the name of Beth A. Sarkar or  
22 Jennifer G. Capson, the spouses of Mr. Sarkar and Mr. Capson, respectively, unless evidence arises that  
23 they do not contain funds solely from legitimate sources of income unrelated to Denari Capital LLC or  
24 the allegations in the Complaint.  
25

26 13. Nothing in this order shall prevent Defendants Travis Capson or Arnab Sarkar from  
27 earning an income from a legitimate business or employment. Subject to the reporting requirements in  
28 paragraph 14 of this Order, Capson and Sarkar may each use up to \$5,000 a month – an amount subject

1 to modification based on further application to this Court – from legitimate sources of income that are  
2 not related to this case and are obtained after the effective date of this Order for reasonable living  
3 expenses.

4 14. Notwithstanding the terms of the asset freeze contained herein, Capson and Sarkar are  
5 each permitted to open one bank account at a bank chartered in the United States and regulated by the  
6 U.S. Federal Deposit Insurance Corporation, the U.S. Federal Reserve Board, or the U.S. Office of the  
7 Comptroller of the Currency, for the purpose of depositing, withdrawing or transferring funds earned or  
8 liabilities incurred after the date of this Order from activities unrelated to the allegations contained in the  
9 Complaint in this matter. Any such account opened by Capson and Sarkar shall meet the following  
10 conditions:  
11

- 12 a. The account will be opened in the name of Capson or Sarkar.
- 13 b. Capson and Sarkar shall deposit income obtained after the effective date of this Order  
14 from legitimate sources that are not related to this case and to use for his reasonable  
15 living expenses and attorney fees.
- 16 c. Capson and Sarkar shall not open any safety deposit boxes.
- 17 d. Capson and Sarkar are prohibited from providing any other entity or individual any  
18 control, direct or indirect beneficial interest, discretionary authority or power of  
19 attorney over the account.
- 20 e. Capson and Sarkar shall immediately provide the Commission the name of the bank  
21 at which the account was opened, the address of the branch at which the account was  
22 opened; the type of account (i.e., checking, savings, etc.), the account number, and  
23 the name on the account.
- 24 f. Capson and Sarkar shall provide to the Commission on a monthly basis copies of the  
25 monthly account statements from the bank. Further, Capson and Sarkar shall  
26 cooperate with the Commission to provide information to confirm that any activity in  
27  
28

1 the account, including deposits, withdrawals or fund transfers, was the result of  
2 lawful activities.

3 g. If the account is closed, either by Capson or Sarkar or the bank, Capson and Sarkar  
4 shall immediately notify the Commission and provide copies of documents relating to  
5 the closing of the account, including close-out statements and all documents  
6 reflecting the reasons the account was closed.  
7

8 **Maintenance of and Access to All Records Which Relate to the Business Activities and**  
9 **Business and Personal Finances**

10 15. Defendants are restrained from directly or indirectly destroying, mutilating, erasing,  
11 altering, concealing or disposing of, in any manner any documents that refer or relate in any manner to  
12 any transaction or matter described in the Complaint in this case, including the business practices or  
13 business or personal finances of any Defendant.

14 16. Representatives of the Commission shall be allowed to inspect the records that relate or  
15 refer to the business and personal finances of the Defendants, including, but not limited to, both hard-  
16 copy and electronically stored information, wherever they may be situated and whether they are in the  
17 possession of the Defendants or others, with 72 hours advance notice to Defendants. To ensure  
18 preservation and facilitate meaningful inspection and review of records, Defendants shall allow  
19 representatives of the Commission to make copies of said documents and electronically stored  
20 information, and if on-site copying of documents and electronically stored information is not  
21 practicable, representatives may make such copies off site. After any such off-site copying, Plaintiff  
22 shall promptly return the original documents and devices upon which electronic information is stored.  
23

24 17. To further facilitate meaningful inspection and review, Defendants shall, absent a valid  
25 assertion of their rights against self-incrimination under the Fifth Amendment, promptly provide  
26 Commission staff, to the extent not previously provided to Plaintiff, with:  
27  
28

- 1 a. the location of all records relating or referring to the business activities and business and  
2 personal finances of the Defendants; and
- 3 b. all identification numbers and other identifying information for websites, cloud storage  
4 services, email and smartphone accounts, and all accounts at any bank, financial institution  
5 or brokerage firm (including any introducing broker or futures commission merchant)  
6 owned, controlled or operated by Defendants, or to which the Defendants have access; and
- 7 c. all passwords to, and the location, make and model of, all computers and/or mobile  
8 electronic devices owned and/or used by Defendants in connection with their business  
9 activities and business and personal finances.

10  
11 18. When inspecting records that are subject to this Order, including those contained on  
12 computer(s) and/or other electronic device(s), the Commission shall undertake reasonable measures to  
13 prevent review of the Defendants' privileged communications and/or other nonbusiness, nonfinancial  
14 materials by the Commission's attorneys and other staff who are part of the litigation team in this matter.  
15 Moreover, Defendants (or their counsel) shall promptly contact Plaintiff's counsel to assert any claims  
16 of privilege (or other legal objections) relating to the contents of any records that are subject to this  
17 Order and promptly cooperate with Plaintiff's counsel to develop reasonable protocols to isolate and  
18 prevent disclosure of claimed privileged and/or other nonbusiness, nonfinancial materials to the  
19 Commission's attorneys and other staff who are part of the litigation team in this matter. The Parties  
20 agree that nothing described in this Order, including the inspection and review of documents, waives, or  
21 is intended to waive, any rights or privileges of Defendants, including any attorney-client, work-product,  
22 or other privilege. However, nothing herein shall excuse Defendants from full compliance with this  
23 Court's Order permitting Plaintiff to inspect the books and records which relate to Defendant's business  
24 activities and their business and personal finances.  
25  
26  
27  
28



**Notice to Financial Institutions and Others that Hold or Control Assets or Records**

1  
2 19. To ensure the effectiveness of the asset freeze and pending further Order of this Court,  
3 any financial or brokerage institution, business entity, or person that receives actual notice of this Order  
4 and holds, controls, or maintains custody of any account or asset or other property of Defendants' shall  
5 not, in active concert or participation with Defendants, permit Defendants or other persons to withdraw,  
6 transfer, remove, dissipate, or otherwise dispose of any of Defendants' assets, except as directed by  
7 further order of the Court. The provisions in this paragraph do not apply to any bank account or  
8 accounts at any other financial institutions that are held solely in the name of Beth A. Sarkar or Jennifer  
9 G. Capson, the spouses of Mr. Sarkar and Mr. Capson, respectively, unless evidence arises that they do  
10 not contain funds solely from legitimate sources of income unrelated to Denari Capital LLC or the  
11 allegations in the Complaint.  
12

13 20. Any financial or brokerage institution, business entity, or person that receives notice of  
14 this Order by personal service or otherwise shall not, in active concert or participation with any  
15 Defendants, directly or indirectly destroy, alter, or dispose of, in any manner, any records relating to the  
16 business activities and business and personal finances of any Defendant.  
17

18 21. Furthermore, any such financial or brokerage institution, business entity, or person that  
19 receives actual notice of this Order and holds, controls, or maintains custody of any account or asset  
20 titled in the name of, held for the benefit of, or otherwise under the control of any Defendant, or has  
21 held, controlled, or maintained custody of any such account or asset of any Defendant at any time since  
22 October 2013, shall not, in active concert or participation with Defendants deny a request by the  
23 Commission to inspect all records pertaining to every account or asset owned, controlled, managed, or  
24 held by, on behalf of, or for the benefit of Defendant(s), including, but not limited to, originals or copies  
25 of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to  
26 and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099  
27 forms, and safe deposit box logs. As an alternative to allowing inspection of records, a financial or  
28

1 brokerage institution, business entity or other person may provide copies of records requested by the  
2 Commission.

3 22. Furthermore, any such financial or brokerage institution, business entity, or person that  
4 receives actual notice of this Order shall:

- 5 a. Within ten (10) business days of a request by the Temporary Receiver, or such longer  
6 period specified by the Temporary Receiver, provide the Temporary Receiver with copies  
7 of all records pertaining to any account or asset owned, controlled, managed, or held by, on  
8 behalf of, or for the benefit of Defendants, either individually or jointly, including, but not  
9 limited to, originals or copies of account applications, account statements, signature cards,  
10 checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit  
11 instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs;  
12 and  
13  
14 b. Cooperate with all reasonable requests of the Temporary Receiver relating to  
15 implementation of this Order, including transferring Defendants' funds at the Temporary  
16 Receiver's direction, and producing records related to business activities or business or  
17 personal finances of Defendants' to the Temporary Receiver.  
18

19 **Order Appointing A Temporary Receiver**

20 **IT IS FURTHER ORDERED THAT:**

21 23. [See Docket Entry 16 for Temporary Receiver recommendations by Plaintiff CFTC] is  
22 appointed as Temporary Receiver, until further order of the Court, with the full powers of an equity  
23 receiver, for Defendants, and their affiliates and subsidiaries owned or controlled by Defendants  
24 (hereinafter referred to as the "Receivership Defendants"), and of all the funds, properties, premises,  
25 accounts, income, now or hereafter due or owing to the Receivership Defendants, and other assets  
26 directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants except as  
27  
28

1 explicitly excluded in Paragraph 12 of this Order (hereinafter, the “Receivership Estate”). The  
2 Temporary Receiver shall be the agent of this Court in acting as Temporary Receiver under this Order.

3 24. The Temporary Receiver is directed and authorized to accomplish the following:

- 4 a. Assume full control of the Receivership Defendants by removing Defendants and any  
5 officer, independent contractor, employee, or agent of the Receivership Defendants,  
6 from control and management of the affairs of the Receivership Defendants as the  
7 Temporary Receiver deems appropriate;  
8
- 9 b. Take exclusive custody, control, and possession of the Receivership Estate, which  
10 includes but is not limited to complete authority to sue for, collect, receive and take  
11 possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books,  
12 records, work papers, and records of accounts, including computer-maintained  
13 information, contracts, financial records, funds on hand in banks and other financial  
14 institutions, and other papers and records of the Receivership Defendants and  
15 customers or clients of any of Receivership Defendants’ business activities whose  
16 interests are now held by or under the direction, possession, custody or control of the  
17 Receivership Defendants;  
18
- 19 c. Take all steps necessary to secure the business and other premises under the control  
20 of the Receivership Defendants, except as explicitly excluded in Paragraph 12 of this  
21 Order;  
22
- 23 d. Perform all acts necessary, including the suspension of operations, to conserve, hold,  
24 manage, and preserve the value of the Receivership Estate in order to prevent an  
25 irreparable loss, damage, or injury to any customers or clients of any of Receivership  
26 Defendants’ business activities;  
27  
28

- 1 e. Perform a valuation of the securities holdings in the Receivership Estate, and attempt  
2 to sell and/or transfer those holdings, with any proceeds or transfers applied to claims  
3 of the customers of Denari;
- 4 f. Prevent the withdrawal or misapplication of funds entrusted to the Receivership  
5 Defendants, and otherwise protect the interests of any customers or clients of any of  
6 Receivership Defendants' business activities;
- 7  
8 g. Manage and administer the Receivership Defendants and the Receivership Estate by  
9 performing all acts incidental thereto that the Temporary Receiver deems appropriate,  
10 including hiring or dismissing any and all personnel, suspending operations, and/or  
11 entering into agreements, including but not limited to: (1) the retention and  
12 employment of investigators, attorneys or accountants, appraisers, and other  
13 independent contractors and technical specialists of the Temporary Receiver's choice,  
14 including without limitation members and employees of the Temporary Receiver  
15 firm, to assist, advise, and represent the Temporary Receiver; and (2) the movement  
16 and storage of any equipment, furniture, records, files or other physical property of  
17 the Receivership Defendants;
- 18  
19 h. Collect all money owed to the Receivership Defendants;
- 20  
21 i. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to  
22 any actions or proceedings in state, federal or foreign court that the Temporary  
23 Receiver deems necessary and advisable to preserve or increase the value of the  
24 Receivership Estate or that the Temporary Receiver deems necessary and advisable to  
25 carry out the Temporary Receiver's mandate under this Order;
- 26  
27 j. Issue subpoenas to obtain documents and records pertaining to the Receivership and  
28 conduct discovery in this action on behalf of the Receivership Estate;

- 1 k. Open one or more bank accounts and deposit all funds of the Receivership Estate in  
2 such designated accounts and make all payments and disbursements from the  
3 Receivership Estate from such accounts;
- 4 l. Make payments and disbursements from the Receivership Estate that are necessary or  
5 advisable for carrying out the directions of, or exercising the authority granted by,  
6 this Order, provided that the Temporary Receiver shall apply to the Court for prior  
7 approval of any payment of any debt or obligation incurred by the Receivership  
8 Defendants prior to the date of entry of this Order, except for payments that the  
9 Temporary Receiver deems necessary or advisable to secure the Receivership Estate  
10 from immediate and irreparable loss; and
- 11 m. Maintain written accounts itemizing receipts and expenditures, describing properties  
12 held or managed, and naming the depositories holding funds or other assets of the  
13 Receivership Estate; make such written accounts and supporting documentation  
14 available to the Commission for inspection; and, within sixty (60) days of being  
15 appointed and periodically thereafter, as directed by the Court, file with the Court and  
16 serve on the parties a report summarizing efforts to marshal and collect assets,  
17 administer the Receivership Estate, and otherwise perform the duties mandated by  
18 this Order.

19  
20  
21 **Accounting and Transfer of Funds and Records to the Receiver**

22 25. Absent a valid assertion by Defendants of their rights against self-incrimination under the  
23 Fifth Amendment, each Defendant shall, within ten (10) business days following the service of this  
24 Order:

- 25  
26 a. Provide the Temporary Receiver, to the extent not already provided to the Plaintiff,  
27 with a full detailed accounting of all funds, records, and assets, including the assets  
28

1 inside and outside of the United States that are held by each and every Defendant, for  
2 their benefit, or under their direct or indirect control, whether jointly or singly.

3 b. Transfer to the territory of the United States and deliver to possession, custody, and  
4 control of the Temporary Receiver, all records, funds, and assets (other than real  
5 property) located outside of the United States that are held by each and every  
6 Defendant, for their benefit, or under their direct or indirect control, whether jointly  
7 or singly.

8 c. Provide the Temporary Receiver access to all records of accounts or assets of the  
9 Defendants held by financial institutions located within or outside the territorial  
10 United States by signing the necessary consent forms.

11  
12 26. Absent a valid assertion by Defendants of their rights against self-incrimination under the  
13 Fifth Amendment, Defendants shall, within five (5) business days of the issuance of this Order, cause to  
14 be prepared and delivered to the Temporary Receiver, a detailed and complete schedule of all passwords  
15 and identification (ID) numbers for all websites, cloud storage services, email and smartphone accounts,  
16 and all accounts at any bank, financial institution or brokerage firm (including any introducing broker or  
17 futures commission merchant) controlled or operated by or to which any of the Defendants has access in  
18 connection with their business activities and business and personal finances.

19  
20 27. Absent a valid assertion by Defendants of their rights against self-incrimination under the  
21 Fifth Amendment, Defendants shall, within 24 hours of the issuance of this Order, cause to be prepared  
22 and delivered to the Temporary Receiver, a detailed and complete schedule of all passwords to, and the  
23 location, make and model of, all computers and mobile electronic devices owned and/or used by  
24 Defendants in connection with their business activities and business and personal finances. The  
25 schedules required by this section shall include at a minimum the make, model and description of each,  
26 along with the location, the name of the person primarily assigned to use the computer and/or mobile  
27  
28

1 device, and all passwords necessary to access and use the software contained on the computer and/or  
2 mobile device.

3 **Turning Over Property to the Temporary Receiver**

4 28. Within five (5) business days of the request of the Temporary Receiver, and absent a  
5 valid assertion by Defendants of their rights against self-incrimination under the Fifth Amendment,  
6 Defendants and any other person or entity served with a copy of this Order, shall deliver over to the  
7 Temporary Receiver:  
8

- 9 A. Possession and custody of all funds, assets, property, and all other assets, owned  
10 beneficially or otherwise, wherever situated, of the Receivership Defendants, except  
11 as explicitly excluded in Paragraph 12 of this Order;
- 12 B. Possession and custody of records of the Receivership Defendants in connection with  
13 their business activities and business and personal finances, including but not limited  
14 to, all books and records of accounts, all financial and accounting records, balance  
15 sheets, income statements, bank records (including monthly statements, canceled  
16 checks, records of wire transfers, and check registers), client lists, title documents and  
17 other records of the Receivership Defendants, to the extent not already in the  
18 possession of Plaintiff;
- 19 C. Possession and custody of all funds and other assets belonging to members of the  
20 public now held by the Receivership Defendants;
- 21 D. All keys, computer passwords, entry codes, and combinations to locks necessary to  
22 gain or to secure access to any of the assets or records of the Receivership  
23 Defendants, including, but not limited to, access to the Receivership Defendants'  
24 business premises, means of communication, accounts, computer systems, mobile  
25 electronic devices or other property; and  
26  
27  
28

1 E. Information identifying the accounts, employees, properties or other assets or  
2 obligations of the Receivership Defendants, to the extent not already provided to  
3 Plaintiff.

4 **Directive to Cooperate with Temporary Receiver**

5 29. Absent a valid assertion by Defendants of their rights against self-incrimination under the  
6 Fifth Amendment, Defendants, and all other persons or entities served with a copy of this order, shall  
7 cooperate fully with and assist the Temporary Receiver. This cooperation and assistance shall include,  
8 but not be limited to, providing any information to the Temporary Receiver that the Temporary Receiver  
9 deems necessary to exercising the authority as provided in this Order; providing any password required  
10 to access any computer or electronic files in any medium; and discharging the responsibilities of the  
11 Temporary Receiver under this Order, and advising all persons who owe money to the Receivership  
12 Defendants that all debts should be paid directly to the Temporary Receiver.  
13

14 **Stay on Actions Against the Receivership Defendants**

15 30. Except by leave of the Court, during the pendency of the receivership ordered herein, the  
16 Defendants and all other persons and entities be and hereby are stayed from taking any action (other  
17 than the present action by the Commission) to establish or enforce any claim, right or interest for,  
18 against, on behalf of, in, or in the name of, the Receivership Defendants, the Temporary Receiver,  
19 receivership assets, or the Temporary Receiver's duly authorized agents acting in their capacities as  
20 such, including but not limited to, the following actions:  
21

22 A. Petitioning, or assisting in the filing of a petition that would cause the Receivership  
23 Defendants to be placed in bankruptcy.

24 B. Commencing, prosecuting, litigating or enforcing any suit or proceeding against any  
25 of the Receivership Defendants, or any of their subsidiaries or affiliates, except that  
26 such actions may be filed to toll any applicable statute of limitations  
27  
28



- 1 C. Commencing, prosecuting, continuing or entering any suit or proceeding in the name  
2 or on behalf of any of the Receivership Defendants, or any of their subsidiaries or  
3 affiliates;
- 4 D. Accelerating the due date of any obligation or claimed obligation, enforcing any lien  
5 upon, or taking or attempting to take possession of, or retaining possession of,  
6 property of the Receivership Defendants, or any of their subsidiaries or affiliates, or  
7 any property claimed by any of them, or attempting to foreclose, forfeit, alter or  
8 terminate any of the Receivership Defendants' interests in property, including without  
9 limitation, the establishment, granting, or perfection of any security interest, whether  
10 such acts are part of a judicial proceeding or otherwise;
- 11 E. Using self-help or executing or issuing, or causing the execution or issuance of, any  
12 court attachment, subpoena, replevin, execution or other process for the purpose of  
13 impounding or taking possession of or interfering with, or creating or enforcing a lien  
14 upon any property, wherever located, owned by or in the possession of the  
15 Receivership Defendants, or any of their subsidiaries or affiliates, or the Temporary  
16 Receiver, or any agent of the Temporary Receiver; and
- 17 F. Doing any act or thing whatsoever to interfere with the Temporary Receiver taking  
18 control, possession or management of the property subject to the receivership, or to in  
19 any way interfere with the Temporary Receiver or to harass or interfere with the  
20 duties of the Temporary Receiver; or to interfere in any manner with the exclusive  
21 jurisdiction of this Court over the property and assets of the Receivership Defendants,  
22 or their subsidiaries or affiliates.

23  
24  
25  
26 31. Provided, however, that nothing in this section shall prohibit any federal or state law  
27 enforcement or regulatory authority from commencing or prosecuting an action against the Receivership  
28 Defendants.

**Compensation for Temporary Receiver and Personnel Hired by the Temporary Receiver**

1  
2 32. The Temporary Receiver and all personnel hired by the Temporary Receiver as herein  
3 authorized, including counsel to the Receiver, are entitled to reasonable compensation for the  
4 performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred  
5 by them for those services authorized by this Order that when rendered were (1) reasonably likely to  
6 benefit the receivership estate or (2) necessary to the administration of the estate. However, the  
7 Receiver and any personnel hired by the Receiver shall not be compensated or reimbursed by, or  
8 otherwise be entitled to, any funds from the Court or the CFTC. The Receiver shall file with the Court  
9 and serve on the parties periodic requests for the payment of such reasonable compensation, with the  
10 first such request filed no more than ninety (90) days after the date of this Order and subsequent requests  
11 filed quarterly thereafter. The requests for compensation shall itemize the time and nature of services  
12 rendered by the Receiver and all personnel hired by the Receiver.  
13

14 **Persons Bound By this Order**

15 33. This Order is binding on any person who receives actual notice of this Order by personal  
16 service or otherwise and is acting in the capacity of an officer, agent, servant, employee, or attorney of  
17 the Defendants, or is in active concert or participation with the Defendants.  
18

19 **Bond Not Required of Plaintiff or the Temporary Receiver**

20 34. As Plaintiff Commission has made a proper showing under Section 6c(b) of the Act, 7  
21 U.S.C. 13a-1(b) (2012), it is not required to post any bond in connection with this Order. The  
22 Temporary Receiver similarly is not required to post bond.  
23

24 **Service of Order and Assistance of U.S. Marshals Service and/or Other Law Enforcement  
Personnel**

25 35. Copies of this Order may be served by any means, including via email or facsimile  
26 transmission, upon any financial institution or other entity or person that may have possession, custody,  
27  
28

1 or control of any records or assets of any Defendant, or that may be otherwise subject to any provision  
2 of this Order.

3 36. Staff of the Division of Enforcement and representatives of the United States Marshal  
4 Service and other law enforcement personnel are specially appointed by the Court to effect service.

5 37. The United States Marshal's Service, the Federal Bureau of Investigation, the local police  
6 and other law enforcement personnel are authorized to: (a) accompany and assist the Commission's  
7 representatives in the service and execution of this Order on Defendants, and (b) help maintain lawful  
8 order while Commission representatives inspect records as provided in this Order.  
9

10 **Service on the Commission**

11 38. The Defendants shall comply with all electronic filing rules and requirements of the U.S.  
12 District Court of the Northern District of California and shall serve all pleadings, correspondence,  
13 notices required by this Order, and other materials on the Commission by delivering a copy to Carlin  
14 Metzger, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission,  
15 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661, cmetzger@cftc.gov, by electronic filing,  
16 e-mail, personal delivery or courier service (such as Federal Express or United Parcel Service) and not  
17 by regular mail due to potential delay resulting from heightened security and decontamination  
18 procedures applicable to the Commission's regular mail.  
19

20 **Force and Effect**

21 39. This Order shall remain in full force and effect until further order of this Court, and this  
22 Court retains jurisdiction of this matter for all purposes.  
23  
24


25 This Order is entered into by consent, and pursuant to the Stipulation of the parties:  
26  
27  
28

1 Date: December 3, 2019

Attorney for Plaintiff CFTC:

2  
3 /s/ Carlin Metzger  
4 Commodity Futures Trading Commission  
5 525 W. Monroe St., Suite 1100  
6 Chicago, IL 60661  
7 (312) 596-0536  
8 [cmetzger@cftc.gov](mailto:cmetzger@cftc.gov)

9  
10   
11 \_\_\_\_\_  
12 DENARI CAPITAL, LLC

13 By:  
14   
15 \_\_\_\_\_  
16 TRAVIS CAPSON

17   
18 \_\_\_\_\_  
19 ARNAB SARKAR

20 Approved as to Form By:  
21 Attorneys for Defendants Denari Capital, LLC,  
22 Travis Capson, and Arnab Sarkar:

23 /s/ Brian Walsh (pro hac vice)  
24 Brian Walsh ([Brian.Walsh@mmlawus.com](mailto:Brian.Walsh@mmlawus.com))  
25 Elizabeth Davis ([Elizabeth.Davis@mmlawus.com](mailto:Elizabeth.Davis@mmlawus.com))  
26 Murphy & McGonigle, P.C.  
27 1001 G Street, N.W.  
28 Seventh Floor  
Washington, DC 20001  
T: (202) 661-7030 (Walsh)  
T: (202) 220-1933 (Davis)  
F: (202) 661-7059

PURSUANT TO STIPULATION, IT IS SO ORDERED:

29 Dated: December \_\_, 2019

\_\_\_\_\_  
EDWARD M. CHEN  
United States District Court Judge