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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

DENARI CAPITAL LLC,
TRAVIS CAPSON, and ARNAB
SARKAR

Defendants.

Case No. 19-cv-07284-EMC
AMENDED

~~PROPOSED~~ ORDER GRANTING
ADMINISTRATIVE MOTION BY
RECEIVER PURSUANT TO LOCAL
CIVIL RULE 7-11 FOR ENTRY OF
ORDER:

- (1) ESTABLISHING CLAIMS BAR DATE;
- (2) APPROVING FORM AND MANNER OF NOTICE;
- (3) APPROVING PROOF OF CLAIM FORM AND SUMMARY PROCEDURES; AND
- (4) ESTABLISHING THE NET INVESTMENT METHODOLOGY FOR CLAIMS

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

1 The Temporary Receiver in this matter appointed pursuant to the Court's Order
2 Appointing Receiver (the "Receiver Order") (Doc. No. 37), Kathy Bazoian Phelps (the
3 "Receiver"), requests that the Court grant the *Administrative Motion Pursuant to Local Civil Rule*
4 *7-11 for Entry of an Order (i) Establishing Claims Bar Date; (ii) Approving Form and Manner of*
5 *Notice; (iii) Approving the Proof of Claim Form and Summary Claims Procedure; and (iv)*
6 *Establishing the Net Investment Methodology for Claims* (the "Motion"). The Receiver through
7 her declaration has represented that she has conferred with counsel for the Commodity Futures
8 Trading Commission and the Defendants, who have confirmed that they do not oppose the
9 Motion.

10 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT:

11 1. The Receiver's Motion is granted.
12 2. **Establishment of Claims Bar Date.** The deadline by which all investors,
13 creditors, and other claimants must submit completed and signed proofs of claim evidencing their
14 claims against Denari Capital, LLC ("Denari"), Travis Capson, and Arnab Sarkar (collectively
15 with Denari, the "Receivership Defendants") (collectively, "the Receivership Entities") is hereby
16 set as April 6, 2020 (the "Bar Date")

17 3. **Notice by Email, Mail and Publication.** The Receiver shall serve all known
18 potential claimants by regular mail and email, to the extent she has a known email address, within
19 thirty (30) days after entry of the Bar Date Order, with: (i) notice of the Bar Date and the
20 procedures for submitting proofs of claim, substantially in the form of the notice attached hereto
21 as Exhibit 1 (the "Bar Date Notice") and (ii) a proof of claim form substantially in the form of the
22 documents attached hereto as Exhibit 2 ("Claim Form").

23 4. **Notice by Publication:** The Receiver shall publish the Bar Date Notice in the
24 following general circulation newspaper at least thirty (30) days prior to the Bar Date: *San*
25 *Francisco Chronicle* or a newspaper of similar circulation. To the extent that the Receiver
26 determines that potential claimants are likely to be located outside of the Bay Area, the Receiver
27 shall publish the Bar Date Notice in other general circulation newspapers likely to provide notice
28 to those individuals.

1 5. **Establishment of Receiver Website:** The Receiver is instructed to set up a
2 Receivership website and to make reasonable efforts to publicize the existence of that website or
3 otherwise notify potential claimants of the existence of that website.

4 6. **Approval of Claim Form.** The Court approves the Claim Form attached to the
5 Motion as Exhibit “2” for the submission of any and all types of claims.

6 7. **Procedures for Submitting and Determining Proofs of Claim.** All claimants
7 must complete and sign the Claim Form under penalty of perjury and return it to the Receiver
8 before the Bar Date with supporting documentation. The claimant must provide the amount(s)
9 that he or she contends is owed, as well as legible copies of documents supporting the claim or, if
10 such documents are not available, an explanation as to why documentation is lacking.

11 8. Each filed proof of claim must conform substantially to the Claim Form approved
12 by the Court. Each proof of claim must be signed by the claimant or, if the claimant is not an
13 individual, by an authorized agent of the claimant. The claimant must attest under oath that the
14 information provided therein is true and correct. Each proof of claim must be legible, written in
15 English, and denominated in U.S. currency.

16 9. **Effect of Failure to Submit Claim Form Before Bar Date.** If any claimant fails
17 to return the Claim Form to the Receiver in a timely manner, the effect of such failure will be that
18 the claimant waives any claim against the Receivership Estate. Any claims received after the Bar
19 Date shall forever be disallowed without further order of the Court.

20 10. **Use of the Net Investment Method To Fix Allowed Amount of Investor Claims**
21 **Is Appropriate.** The Court authorizes the Receiver to fix the amount of investor claims by
22 utilizing the net investment methodology of calculation of those claims, allowing the Receiver to
23 offset payments made to the investors against the amount that they invested.

24 11. **Claims Objections.** The Receiver may file appropriate objections to those claims
25 the Receiver believes are objectionable in the exercise of her business judgment, forth the factual
26 and legal basis therefor. The Receiver shall identify the portion of the claim she believes is
27 unobjectionable and should be allowed. The burden of proof will then shift to the claimant to
28 overcome the objection.

1 12. **Limitation on Discovery and Motion Practice.** Prior to the Receiver’s filing of
2 an objection to a claim, no discovery, motion practice, or other claims litigation shall occur unless
3 the claimant and the Receiver agree, or if the Receiver does not agree, the claimant first seeks and
4 obtains leave of Court, upon a showing of good cause and substantial need for such relief. If
5 discovery and/or motion practice is allowed by the Court on request of the claimant, then the
6 Receiver shall have a reciprocal right to conduct discovery and/or motion practice.

7 13. **Jurisdiction of the Court.** The submission of a proof of claim will subject the
8 claimant to the jurisdiction of the United States District Court for the Northern District of
9 California for all purposes and constitutes agreement to be bound by its decisions, including,
10 without limitation, a determination as to the extent, validity, priority, and amount of any claim
11 asserted against the Receivership Estate. The submission of a Claim Form shall constitute consent
12 to be bound by the decisions of the Court as to the classification, treatment, and payment of the
13 claim in a Court-approved distribution plan.

14 14. **Authority to Compromise and Settle.** The Receiver shall have the authority to
15 compromise and settle any claim dispute, at any time, as appropriate, without further order of this
16 Court, where the amount of the claim is less than \$25,000.00 and/or the amount discounted or
17 given up by the Receivership Estate in the compromise is \$50,000.00 or less. The Receiver, at her
18 discretion, may file a motion seeking Court approval of any compromise or settlement of a claim.
19 All parties to this proceeding are directed to cooperate with the Receiver to the maximum extent
20 possible to achieve a swift resolution of disputes concerning claims without the need for
21 determination by the Court.

22 15. **Reservation of Rights.** Nothing herein shall prejudice or limit any right of the
23 Receiver to dispute, or assert offsets or defenses, as to the extent, validity, or priority, or
24 otherwise against amounts asserted in any claim, including but not limited to the manner in which
25 accounts will be aggregated and claims classified, treated, and paid under a Court-approved
26 distribution plan. Nothing contained herein is intended to preclude or limit the Receiver from
27 objecting to any claim on any grounds. Subject to approval of the Court, the Receiver retains the
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1 sole and absolute right to propose a plan of distribution.

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DATED: February 6, 2020



EDWARD M. CHEN
United States District Judge