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8 Temporary Receiver

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 COMMODITY FUTURES TRADING
13 COMMISSION,

14 Plaintiff,

15 v.

16 DENARI CAPITAL LLC, TRAVIS
17 CAPSON, and ARNAB SARKAR,

18 Defendants.

Case No. 19-cv-07284-EC

**DECLARATION OF KATHY
BAZOIAN PHELPS IN SUPPORT OF
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

28

1 I, Kathy Bazoian Phelps, declare:

2 1. On December 4, 2019, I was appointed as the temporary receiver (the
3 “Receiver”) with full powers of an equity receiver, for Denari Capital, LLC (“Denari”),
4 Travis Capson, and Arnab Sarkar (collectively with Denari, the “Receivership
5 Defendants”) and all of their assets, except as set forth in the Order appointing a temporary
6 receiver (the “Receiver Order”) (Doc. No. 37).

7 2. I submit this Declaration in support of the concurrently filed Administrative
8 Motion by Receiver Pursuant to Local Civil Rule 7-11 for Entry of Order (i) Establishing
9 Claims Bar Date; (ii) Approving Form and Manner of Notice; (iii) Approving the Proof of
10 Claim Form and Summary Claims Procedure; and (iv) Establishing the Net Investment
11 Methodology for Claims. (the “Motion”).

12 3. I have personal knowledge of the facts set forth in this Declaration, and, if
13 called to testify, could testify competently thereto.

14 4. As Receiver over the Receivership Defendants, I have been working to
15 identify both the claims and the assets in this case. In order to determine the scope of the
16 claims to be compensated, it is necessary to establish a procedure to administer claims
17 against the Receivership Estate. I seek to initiate a claims filing and allowance process for
18 the Receivership Estate so that investors and creditors can file claims and, after review and
19 resolution of any appropriate objections, I can then propose an equitable distribution plan
20 in this case.

21 5. A copy of the Bar Date Notice that I propose to serve on all known potential
22 claimants by email, to the extent I have a known email address, or by regular mail if I do
23 not have an email address, is attached hereto as Exhibit “1.” A copy of the Claim Form
24 that I propose to serve on all known creditors is attached hereto as Exhibit “2.” The
25 proposed summary claims procedure is set forth in Exhibit “3” attached hereto.

26 6. I believe that the proposed form and manner of notice of the claims bar date
27 and the Claim Form is appropriate and will reach all known investors and creditors as well
28 as provide additional notice for any unknown claimants. I also believe that the proposed

1 time of 60 days for the filing of claims is a sufficient amount of time for claimants to
2 submit claims to me.

3 7. I believe that the net investment methodology for valuing claims is
4 appropriate in this case. To the extent that investors were paid on account of their claims,
5 either as interest payments or repayment of principal, I believe that the most equitable
6 manner of valuing those claims is to offset those payments against the amount invested. I
7 do not believe that the inclusion of expected profits is fair or inequitable in this case and
8 that the net investment methodology essentially levels the playing field for all investors by
9 disallowing expected profits and by reducing claim amounts by payments already made.

10 8. I believe the proposed summary procedure set forth in Exhibit “3” will both
11 minimize expense and delay and maximize distributions to investors and creditors of the
12 Receivership Estate. I believe the proposed procedure is in the best interest of the
13 Receivership Estate and therefore respectfully request that the Court grant the Motion.

14
15 I declare under penalty of perjury under the laws of the United States of America
16 that the foregoing is true and correct.

17 Executed on January 21, 2020, at Los Angeles, California

18
19 /s/ Kathy Bazoian Phelps
20 Kathy Bazoian Phelps, Receiver

EXHIBIT 1

1 KATHY BAZOIAN PHELPS (155564)
2 *kphelps@diamondmccarthy.com*
3 DIAMOND MCCARTHY LLP
4 1999 Avenue of the Stars, Suite 1100
5 Los Angeles, California 90067-4402
6 Telephone: (310) 651-2997

7 *Temporary Receiver*

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 COMMODITY FUTURES TRADING
12 COMMISSION,

13 Plaintiff,

14 v.

15 DENARI CAPITAL LLC, TRAVIS
16 CAPSON, and ARNAB SARKAR

17 Defendants.

Case No. 19-cv-07284-EC

**NOTICE OF CLAIMS BAR DATE AND
PROCEDURE FOR SUBMITTING A
PROOF OF CLAIM FORM**

18 **TO ALL CLAIMANTS OF THE RECEIVERSHIP ESTATE:**

19 **PLEASE TAKE NOTICE OF THE FOLLOWING:**

20 On _____, 2019, the United States District Court for the Northern District of California
21 (the "Court") entered an order in the above-captioned case (the "Bar Date Order") establishing
22 _____, 2020, at 11:59 p.m. (prevailing Pacific Time) as the deadline (the "Claims Bar Date") for
23 claimants to submit a completed and signed Proof of Claim form under penalty of perjury,
24 together with supporting documentation (a "Claim Form"), against the estate of the Receivership
25 Defendants (the "Receivership Estate")¹ in the above-captioned case.

26 _____
27 ¹ The "Receivership Defendants" include Denari Capital, LLC ("Denari"), Travis Capson, and Arnab Sarkar
28 (collectively with Denari, the "Receivership Defendants") and all of their assets, except as set forth in the Order
appointing a temporary receiver (the "Receiver Order") (Doc. No. 37).

1 **1. WHAT IS THE CLAIMS BAR DATE?**

2 The Claims Bar Date is the date by which the individuals and entities described below must
3 submit a Claim Form with the Receiver in the manner indicated below. The Claims Bar Date is
4 _____, at 11:59 p.m. (prevailing Pacific Time), and all Proofs of Claim, together with
5 supporting documentation, must be timely submitted to the Receiver by: (i) electronic mail, as an
6 attachment in portable document format (.pdf), to kphelps@diamondmccarthy.com; or (ii) first-
7 class mail or overnight courier to the Receiver at Diamond McCarthy LLP, 1999 Avenue of the
8 Stars, Suite 1100, Los Angeles, California 90067-4402; such that if emailed or sent by courier
9 service, it is delivered to the Receiver no later than the Claims Bar Date, or if sent by mail is
10 postmarked no later than the Claims Bar Date. Claim Forms submitted with a valid email address
11 will receive email confirmation of receipt by the Receiver of the Claim Form.

12 Please note that any Claim Form not timely submitted or in the proper form will be subject
13 to disallowance, which means such claimant would not be eligible to receive any distribution
14 under a Court approved- distribution plan.

15 **2. WHO NEEDS TO SUBMIT A PROOF OF CLAIM?**

16 ALL individuals and entities (including, without limitation, partnerships, corporations,
17 joint ventures, estates, trusts, and governmental units or authorities) that believe they possess a
18 claim, a potential or claimed right to payment, or a potential claim of any nature, against any of
19 the Receivership Defendants and believe that they are owed money by, or are entitled to a
20 distribution from the Receivership Estate must submit a Claim Form (each a "Claimant").

21 All claimants, whether investors or creditors, must submit a claim form.

22 An Investor Claim is founded on contract based on the investor's contractual investment
23 agreements with one or more of the Receivership Defendants for monies owed in connection with
24 an investment made in Denari, or by and through Denari, or by and through one or more of the
25 Receivership Defendants for the Claimant's benefit under a subscription agreement or similar
26 investment contract.

27 A Creditor Claim is a claim against one or more of the Receivership Defendants, including but
28

1 not limited to transactions based on, related to, or in connection with: (i) any vendor contract, lease,
2 or other noninvestment agreement for which payment has not been made in whole or in part; (ii) the
3 provision of goods or services provided; (iii) unpaid wages, compensation, or other employment
4 benefits; (iv) taxes payable by a Receivership Defendant, including those that may be asserted by
5 federal, state, local or other governmental entities or authorities; or (v) any other legal, equitable,
6 contractual, tort, statutory or other claim related to the acts, omissions, conduct, and/or activities
7 of the Receivership Defendants.

8 Investor Claims and Creditor Claims include claims that are contingent or fixed, liquidated
9 or unliquidated, matured or unmatured, disputed or undisputed.

10 **This notice is being sent to many individuals and entities that have had some**
11 **relationship or have done business with the Receivership Defendants. The fact that**
12 **you have received this notice does not necessarily mean that you are a Claimant, that you**
13 **have a valid Claim, or that the Court or the Receiver believes you have a Claim against**
14 **any of the Receivership Defendants or the Receivership Estate.**

15 **3. WHAT ARE THE CONSEQUENCES OF NOT TIMELY AND**
16 **PROPERLY SUBMITTING A CLAIM FORM?**

17 **ANY CLAIMANT WHO FAILS TO SUBMIT A CLAIM FORM IN A TIMELY**
18 **MANNER OR IN THE PROPER FORM, SHALL**

19 **(a) BE FOREVER BARRED, ESTOPPED, AND ENJOINED TO THE**
20 **FULLEST EXTENT ALLOWED BY APPLICABLE LAW FROM**
21 **ASSERTING, IN ANY MANNER, SUCH CLAIM AGAINST**

22 **(i) ANY RECEIVERSHIP DEFENDANT, AND**

23 **(ii) THE RECEIVERSHIP ESTATE OR ITS ASSETS, AND**

24 **(b) SHALL NOT RECEIVE ANY DISTRIBUTION FROM OR HAVE**
25 **STANDING TO OBJECT TO ANY DISTRIBUTION PLAN PROPOSED BY**
26 **THE RECEIVER.**

27 **4. WHERE CAN I GET A COPY OF THE CLAIM FORM?**

28 For your convenience, enclosed with this notice is a Claim Form. Copies of this Bar Date
Notice and the Claim Form can also be obtained by emailing the Receiver at:

1 *kphelps@diamondmccarthy.com.*

2 **5. HOW DO I SUBMIT MY CLAIM FORM?**

3 A properly completed and signed Claim Form, together with supporting documentation,
4 must be timely submitted to the Receiver by: (i) electronic mail, as an attachment in portable
5 document format (.pdf), to *kphelps@diamondmccarthy.com*; (ii) first-class mail or overnight
6 courier to first-class mail or overnight courier to the Receiver at Diamond McCarthy LLP, 1999
7 Avenue of the Stars, Suite 1100, Los Angeles, California 90067-4402; such that if emailed or sent
8 by courier service, it is delivered to the Receiver no later than the Claims Bar Date, or if sent by first-
9 class mail is postmarked no later than the Claims Bar Date.

10 If you choose to submit a Claim Form by electronic mail, you should retain a copy of the
11 email or other evidence the Claim Form was delivered to the Receiver no later than the Claims Bar
12 Date. If you choose to submit a Claim Form by courier service, you should retain evidence the
13 Claim Form was delivered to the Receiver no later than the Claims Bar Date. If you choose to
14 submit a Claim Form by mail, it is recommended that you submit your Claim Form by certified or
15 registered mail and retain evidence that the Claim Form was postmarked no later than the Claims
16 Bar Date.

17 Claim Forms submitted with a valid email address will receive email notification from the
18 Receiver confirming receipt of the Claim Form.

19 Claim Forms should not be filed with the Court, or sent to the Receiver's legal counsel,
20 retained professionals, or otherwise delivered to the Receivership Defendants, and any Claim Form
21 so filed or sent will not be considered properly filed.

22 If you reasonably believe you hold or may hold a Claim against one or more of the
23 Receivership Defendants, your Claim Form must identify the Receivership Defendant(s) against
24 which the Claim is asserted. The failure to identify the correct entity in the Claim Form may be
25 grounds for objection to, and disallowance of, such Claim.

26 **A. SUPPORTING DOCUMENTS TO INCLUDE WITH YOUR**
27 **CLAIM FORM.**

28 Each submitted Claim Form shall include copies of all documents available that support

1 such claim. Such documentation may include, but is not limited to: copies of personal checks,
2 cashier's checks, wire transfer advices, and other documents evidencing the investment of funds;
3 copies of each signed investment contract, copies of all agreements, promissory notes, purchase
4 orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages,
5 security agreements, evidence of perfection of liens; and any other documents evidencing the
6 amount and basis of the claim.

7 As applicable, supporting documentation must also include a chronological accounting
8 of any withdrawals made by or payments received from any Receivership Defendant, whether
9 such payments were denominated as the return of principal, interest, commissions, finder's fee, or
10 otherwise, indicating the date and amount of each withdrawal or payment.

11 PLEASE INCLUDE YOUR NAME ON EVERY DOCUMENT THAT YOU SUBMIT.

12 DO NOT SEND ORIGINAL DOCUMENTS.

13 It is the responsibility of Claimants and other interested parties to keep the Receiver
14 apprised of a current email and mailing address in order to receive notices or other
15 communication from the Receiver or the Receivership Estate.

16 Each Claim Form will have to satisfy certain minimum standards in order to establish a
17 Claim and be eligible to receive a distribution pursuant to a Court-approved distribution plan.
18 Accordingly, the more directly relevant information a Claim Form provides, the easier it will
19 be for the Receiver to validate the Claim.

20 If such supporting documentation is not available, in an addendum that is attached to your
21 Claim Form, please explain why it is not available.

22 PLEASE **DO NOT** SUBMIT THE FOLLOWING TYPES OF DOCUMENTS WITH
23 THE CLAIM FORM UNLESS REQUESTED BY THE RECEIVER:

- 24 (i) Copies of pleadings on file in this case related to the Receiver's
25 appointment or the receivership; and
26 (ii) Other documents received from the Receivership Estate or the
27 Receiver that do not reflect specific information concerning the
28 existence or amount of a claim.

1 **6. REQUESTS FOR ADDITIONAL INFORMATION AND**
2 **CLAIMS OBJECTIONS.**

3 If after receiving a Claim Form, the Receiver determines that she needs additional
4 information to process a Claim, the Receiver may contact you by telephone, mail or email to
5 request such additional information.

6 For those claims the Receiver believes are objectionable, the Receiver will communicate
7 first with the claimant informally stating the basis of her objection and shall try to reach resolution
8 of any disputes. If the parties are unable to reach a resolution, then the Receiver will file with the
9 Court an appropriate objection, setting forth the factual and legal basis therefor. The Receiver will
10 identify the portion of the claim, if any, she believes is unobjectionable and should be allowed.²
11 The objection shall include: (i) a detailed statement of the legal and factual basis for the Receiver's
12 objection, and (ii) copies of any document or other writing or other evidence upon which the
13 Receiver relies in support of her objection. The burden of proof will then shift to the claimant to
14 overcome the Receiver's objection. The claimant's response to the Receiver's claim objection
15 shall be filed with the Court, with a copy served on the Receiver and her counsel, pursuant to the
16 Court's Local Rules regarding responses to motions.

17 **7. HOW WILL MY CLAIM BE CALCULATED**

18 The Court has approved a net investment methodology of calculation for investor claims.
19 The net investment calculation fixes the amount of the investors' claim as the total amount
20 deposited by the claimant with the Receivership Entities less amounts returned to such claimant
21 by the Receivership Entities and less any illegal trading profits reinvested by or credited to such
22 claimant. Expected profits or interest will not be included in the allowed claim amount.

23 **8. COOPERATION.**

24 The Court has directed all parties to cooperate with the Receiver to the maximum extent
25

26 _____
27 ² While claims must be submitted to the Receiver prior to the Claims Bar Date, claimants are permitted and, indeed,
28 encouraged to submit completed Claims Forms to the Receiver in advance of the Claims Bar Date. The Receiver
will begin to evaluate claims upon submission and is free to consider and agree to the amount of allowed claims any
time after submission.

1 possible to achieve swift resolution of disputes concerning Claims without the need for a
2 determination by the Court.

3 **9. LIMITATION ON DISCOVERY AND MOTION PRACTICE.**

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

10 **10. CONSENT TO JURISDICTION.**

11 If you submit a Claim Form in this case, you consent to the jurisdiction of the Court for
12 all purposes and agree to be bound by its decisions, including, without limitation, a
13 determination as to the extent, validity, priority, and amount of any Claim you assert against the
14 Receivership Estate. In submitting a Claim Form, you agree to be bound by the decisions of the
15 Court as to the treatment of your Claim in a Court-approved distribution plan.

16 **11. RESERVATION OF RIGHTS.**

17 The Receiver reserves the right to dispute, or assert offsets or defenses as to, the extent,
18 validity, priority, or otherwise against, any amounts asserted in any Proof of Claim, including
19 but not limited to the manner in which accounts will be aggregated and treated under a Court-
20 approved distribution plan. Nothing set forth in this Bar Date Notice or the Claim Form shall
21 preclude the Receiver from objecting to any Claim Form, on any grounds. Subject to the approval
22 of the Court, the Receiver retains the sole and absolute right to propose a plan of distribution.

23
24 Dated: January __, 2020

By: /s/ Kathy Bazoian Phelps
Temporary Receiver

EXHIBIT 2

Civil Court Docket No. 19-cv-07284-EC

If you invested money with Denari Capital LLC managed by Denari Capital LLC, Travis Capson, or Arnab Sarkar, or if you have any claims against any of the Receivership Defendants (as defined below), you may be entitled to relief if you complete and submit this claim form by [Date].

A federal court authorized this notice. This is not a solicitation from a lawyer.

This case involves an action for fraud asserted by the Commodity Futures Trading Commission. The Court has placed all assets belonging to the following entities and individuals under the control of a Court-appointed Receiver:

Receivership Defendants:

Denari Capital LLC
Travis Capson
Arnab Sarkar

The Court must determine a fair and equitable means to distribute the assets above to investors, as well as any potential creditors, in the aforementioned entities. The purpose of this claim form is to identify all potential investors and creditors with valid claims against the Receivership Defendants.

If you invested money with any of the following entities or individuals, or are a creditor, you must complete and submit this form to the Receiver by [Date].

Denari Capital LLC
Travis Capson
Arnab Sarkar

Failure to do so could result in the disallowance of your claim. Completed claim forms should be delivered to one of the following:

1. Email: kphelps@diamondmccarthy.com
2. Kathy Bazoian Phelps, Receiver
1999 Avenue of the Stars, Suite 1100
Los Angeles, CA 90067-4402

If you have any questions, the Receiver may be contacted at (310) 651-2997.

PROOF OF CLAIM

This is an important legal document that will affect your legal rights if you have an interest in or claim against one or more of the Receivership Defendants as an investor or creditor. If you have an interest in or claim against one or more of the Receivership Defendants as an investor or creditor, you must submit this Proof of Claim Form on or before [Date]. Failure to do so could result in the forfeiture of your claim.

The Court has not yet determined how the assets of the Receivership Entities will be allocated or distributed or how claims against the Receivership Entities will be paid. However, when the Court makes this determination, the information provided in this Proof of Claim Form will be used to calculate your interest in or claim against the Receivership Defendants and your entitlement, if any, to participate in any distribution from the Receivership Defendants' estate (the "Receivership Estate").

The Receiver has the right to dispute and/or verify any information you have provided in order to determine the proper distribution amount, if any, to which you may be entitled. The Receiver additionally reserves the right to request additional documentation supporting your claim at a later date. All original documentation should be preserved as it may be requested at a future date. If you are an investor, the Receiver has the right to correct for administrative, or computational error, any information you provide as to your investment activity. The Receiver does not waive any right to (1) deny, contest the validity of, or otherwise object to a claim, or (2) if warranted, amend the provided investment activity to correct for such administrative or computational errors.

IMPORTANT INFORMATION TO READ PRIOR TO SUBMITTING THIS FORM:

ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM, EXCEPT FOR STATE AND LOCAL GOVERNMENT ENTITIES, SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS THAT COULD BE OR HAVE BEEN ASSERTED BY THE RECEIVER AGAINST SUCH CLAIMANT OR THE HOLDER OF SUCH CLAIM IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANSACTED BY OR WITH ANY RECEIVERSHIP DEFENDANT, OR (2) ANY DEALING OR BUSINESS TRANSACTED THAT RELATES IN ANY WAY TO ANY RECEIVERSHIP PROPERTY.

YOU MUST SUBMIT THIS COMPLETED FORM, SIGNED UNDER PENALTY OF PERJURY, TO THE RECEIVER BY DELIVERY TO THE RECEIVER BY NO LATER THAN [DATE]. SUBMIT YOUR FORM TO ONE OF THE FOLLOWING:

1. Email: KPHELPS@DIAMONDMCCARTHY.COM
2. Kathy Bazoian Phelps, Receiver
Diamond McCarthy LLP
1999 Avenue of the Stars, Suite 1100
Los Angeles, CA 90067-4402

IF YOU DO NOT SUBMIT THE COMPLETED CLAIM FORM BY [DATE], YOU WILL BE FOREVER BARRED FROM ASSERTING ANY CLAIM AGAINST THE RECEIVERSHIP DEFENDANTS' ASSETS AND WILL NOT BE ELIGIBLE TO RECEIVE ANY DISTRIBUTIONS FROM THE RECEIVERSHIP ESTATE.

Contact Information

GENERAL CONTACT INFORMATION (REQUIRED OF ALL CLAIMANTS)		
1	Name of Creditor/Investor:	
2	U.S. Taxpayer I.D. No.: (if applicable)	
3	Street Address/P.O. Box:	
4	City, State, Zip Code:	
5	Contact Person(s):	
6	Telephone Number(s):	
7	Email Address(es):	
GENERAL CLAIM INFORMATION (REQUIRED OF ALL CLAIMANTS)		
8	Total amount you are owed as of <u>December 4, 2019</u>:	Unpaid Principal: \$ _____ Unpaid Expected Profit or Interest: \$ _____ (do not include any interest incurred after December 4, 2019)
9	Explain the basis for your claim (i.e. how did your claim arise?):	
(Attach additional sheets if needed)		

10	Name of Receivership Entity that owes you (i.e., Denari Capital, LLC, Travis Capson, or Arnab Sarkar)			
IMPORTANT: You must attach documentation to support your claim, including invoices, canceled checks [front and back], account statements, trust deeds, property information and any other document that supports your claim (you do not need to provide documents you previously sent to the Receiver)				
11	Supporting documents: Please attach copies of any documents that support your claim, such as bank statements, canceled checks, correspondence, investor statements or subscription agreements. DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING	Number of pages of supporting documents attached: _____		
12	Do you hold a lien, trust deed or security interest related to your claim?	___ YES / ___ NO		
INVESTMENT INFORMATION				
13	Have you ever received a payment of interest, principal, dividends or investment distributions from any Receivership Entity?	___ YES / ___ NO		
14	If you answered "YES" to question 13 please provide the following information for each payment and amount received (attach additional sheets if needed):			
	Date of payment (mm/dd/yy)	Amount of Payment	Payment of Principal or Interest, if known	Name of Entity Making Payment
1	___/___/___	\$		
2	___/___/___	\$		
3	___/___/___	\$		
4	___/___/___	\$		
5	___/___/___	\$		
6	___/___/___	\$		
7	___/___/___	\$		

If you need additional space to complete an answer, please attach a separate sheet of paper and indicate the number of the question for which you are providing the additional information.

CERTIFICATION AND SIGNATURE (REQUIRED OF ALL CLAIMANTS)

By signing below, I declare under penalty of perjury that the information in this proof of claim form is true and correct, and that I have been authorized to file this proof of claim from on behalf of the claimant

Signature: X

Print Name: _____

Title: _____

Date: _____

IMPORTANT: ANY PERSON OR ENTITY SUBMITTING THIS PROOF OF CLAIM FORM SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA FOR ALL PURPOSES, INCLUDING, WITHOUT LIMITATION, AS TO ANY CLAIMS, OBJECTIONS, DEFENSES, OR COUNTERCLAIMS BY THE RECEIVER AGAINST SUCH CLAIMANT IN CONNECTION WITH THIS RECEIVERSHIP, INCLUDING THOSE ARISING OUT OF (1) ANY DEALING OR BUSINESS TRANACTED BY OR WITH ANY RECEIVERSHIP ENTITY OR (2) ANY DEALING OR BUSINESS TRANACTED THAT RELATES IN ANYWAY TO ANY RECEIVERSHIP PROPERTY. FURTHER, CLAIMANTS WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO SUCH CLAIMS, OBJECTIONS, DEFENSES, AND COUNTERCLAIMS.

EXHIBIT 3

Proposed Summary Claims Procedure¹

1. **Bar Date.** The Receiver seeks entry of the Bar Date Order establishing the Claims Bar Date approximately 60 days from the date of the Bar Date Order as the deadline by which all claimants must submit completed and signed proofs of claim evidencing their claims against the Receivership Estate. The proposed Claims Bar Date will allow sufficient time for the (i) Receiver to arrange for and publish the proposed notices, and (ii) claimants to file a proof of claim form with the Receiver. Further, the Claims Bar Date is necessary to allow as many claimants as possible to participate in the claims process while still permitting the Receiver to obtain certainty in a reasonably prompt fashion of the total potential claims against the Receivership Estate.

2. **Notice by Email, Mail and Publication.** The Receiver has examined the available data relating to the Receivership Defendants and has communicated with the CFTC concerning its investigation of the Receivership Defendants. This process has allowed the Receiver to identify many of the Receivership Defendants' investors and creditors. Nevertheless, the Receiver's knowledge of potential claimants is limited to: (i) the documents she has obtained from the CFTC, the Receivership Defendants, creditors, investors, and other relevant sources; and (ii) additional information she has gathered. Accordingly, as is typical in receivership actions, it is possible the identity of some potential claimants may be unknown and not reasonably ascertainable. Therefore, to reach both known and unknown claimants, the Receiver proposes the following notification efforts:

- a. Notice by Regular Mail or Email: The Receiver proposes to serve all known potential claimants by email to the extent she has a known email address, or by regular mail if she has a known mailing address, within thirty (30) days after

¹ All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the *Administrative Motion by Receiver Kathy Bazoian Phelps Pursuant to Local Civil Rule 7-11 for Entry of Order (i) Establishing Claims Bar Date; (ii) Approving Form and Manner of Notice; (iii) Approving the Proof of Claim Form and Summary Claims Procedure; and (iv) Establishing the Net Investment Methodology for Claims.*

entry of the Bar Date Order, with: (i) notice of the Claims Bar Date and the procedures for submitting proofs of claim, substantially in the form of the notice attached to the Phelps Declaration as **Exhibit “1”** (the “Bar Date Notice”), and (ii) a proof of claim form substantially in the form of the documents attached to the Phelps Declaration as **Exhibit “2”** (“Claim Form”).

- b. Notice by Publication: The Receiver proposes to publish the Bar Date Notice in the following general circulation newspaper at least thirty (30) days prior to the Bar Date: San Francisco Chronicle or a newspaper of similar circulation.

3. **Approval of Claim Form.** Attached as **Exhibit “2”** is the Receiver’s proposed Claim Form and related instructions for creditors and investors of the Receivership Estate. The Receiver asks the Court to approve **Exhibit “2”** for the submission of any and all types of pre-receivership claims.

4. **Procedures for Submitting and Determining Proofs of Claim.** The Receiver proposes a claims procedure to efficiently, equitably, and promptly identify potential claimants and the amount and validity of any pre-receivership claim. The proposed procedure will allow the Receiver to establish certainty as to the total number and amount of claims against the Receivership Estate and allow the Receiver to develop a plan for an equitable distribution of available assets among claimants.

5. The Claims Bar Date will apply to all possible claimants, including both “Investor Claims” and “Creditor Claims”:

- a. An “Investor Claim” is different from a “Creditor Claim.” An Investor Claim is founded on contract based on the investor’s contractual investment agreements with one or more of the Receivership Defendants for monies owed in connection with an investment made in Denari, or by and through Denari, or by and through one or more of the Receivership Defendants for the Claimant’s benefit under a subscription agreement or similar investment contract.
- b. A Creditor Claim is a claim against one or more of the Receivership Defendants,

including but not limited to transactions based on, related to, or in connection with: (i) any vendor contract, lease, or other noninvestment agreement for which payment has not been made in whole or in part; (ii) the provision of goods or services provided; (iii) unpaid wages, compensation, or other employment benefits; (iv) taxes payable by a Receivership Defendant, including those that may be asserted by federal, state, local or other governmental entities or authorities; or (v) any other legal, equitable, contractual, tort, statutory or other claim related to the acts, omissions, conduct, and/or activities of the Receivership Defendants.²

6. Claimants will be required to submit to the Receiver a completed, signed Claim Form together with, at a minimum, the following information required from claimant to validate the claim:

- a. Contact Information
- b. Name of the Receivership Defendant which the claim is asserted against;
- c. Total amount owed as of December 4, 2019;
- d. An explanation of the basis of the claim and how the claim arose;
- e. A complete identification of any payment received from any of the Receivership Entities, including payments of interest, principal, dividends or investment distributions, reflecting the date and amount of each such payment;
- f. A true and correct copy of all documents supporting or evidencing the claim, including of any documents that support your claim, such as bank statements, canceled checks, correspondence, investor statements or subscription agreements. Claimants are asked not to send original documents as they may be destroyed after scanning.

7. All potential claimants who assert that they have claims of any kind or nature,

² Creditor Claims also include investors who contend they have claims other than Investor Claims.

based on tort, contract or other grounds, whether liquidated or unliquidated, contingent or fixed, matured or unmatured, legal or equitable, disputed or undisputed must file a proof of claim with a signed attestation by the Claims Bar Date.

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

9. The submission of a Claim Form will subject the claimant to the jurisdiction of the United States District Court for the Northern District of California.

10. **Required Supporting Documentation for the Claim.** Each submitted Claim Form shall include copies of all documents available that support such claim. Such documentation may include, but is not limited to: copies of personal checks, cashier's checks, wire transfer advices, and other documents evidencing the investment of funds; copies of each signed investment contract, copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, evidence of perfection of liens; and any other documents evidencing the amount and basis of the claim.

11. Claimants should include their name on every document submitted.

12. Claimants should not send original documents with their Claim Form.

13. Each Claim Form must satisfy certain minimum standards in order to establish a claim and be eligible to receive a distribution pursuant to a Court-approved distribution plan. Accordingly, the more directly relevant information and documentation a Claim Form provides, the easier it will be for the Receiver to validate the claim.

14. **Materials That Should Not Be Submitted With A Claim Form.** Claim Forms should not include the following types of materials unless requested by the Receiver: (i) copies of pleadings on file in this case related to the Receiver's appointment or the

receivership; and (ii) other documents received from the Receivership Estate or the Receiver that do not reflect specific information concerning the existence or amount of a claim.

15. **Effect of Failure to Timely Submit Claim Form Before Bar Date.** The Receiver proposes that if any claimant fails to return the Claim Form to the Receiver in a timely manner by the Claims Bar Date, the effect of such failure will be that the claimant waives any claim against the Receivership Estate. Any claims received after the Claims Bar Date will be forever disallowed without further order of the Court.

16. **Request for Additional Information.** If at any time after receiving a timely Claim Form the Receiver determines that additional information is needed to assess and process a claim, the Receiver may contact the claimant (or counsel if one is designated) by telephone, mail, or email to request such additional information.

17. **Use of the Net Investment Method To Fix Allowed Amount of Investor Claims Is Appropriate.** The Receiver proposes to fix the amount of investor claims by utilizing the net investment methodology of calculation of those claims. To the extent that investors were paid on account of their claims, either as interest payments or repayment of principal, the claim amount will be reduced by the amount repaid to the investor. Expected profits and interest will not be allowed, and paid profits and interest actually paid will deducted from the principal amount invested.

18. Once the claim amounts are filed and determined and the Receiver has liquidated assets of the Receivership Estate, the Receiver intends to file a distribution plan setting forth the priorities, if any, that she proposes for purposes of distributing funds based upon the allowed amount of the claims and the available funds. The Motion does not seek approval of a plan of distribution at this time.

19. **Claim Objections.** For those claims the Receiver believes are objectionable, the Receiver will communicate first with the claimant informally stating the basis of her objection and shall try to reach resolution of any disputes. If the parties are unable to reach a resolution, then the Receiver will file with the Court an appropriate objection, setting forth the

factual and legal basis therefor. The Receiver will identify the portion of the claim, if any, she believes is unobjectionable and should be allowed.³ The objection shall include: (i) a detailed statement of the legal and factual basis for the Receiver's objection, and (ii) copies of any document or other writing or other evidence upon which the Receiver relies in support of her objection. The burden of proof will then shift to the claimant to overcome the Receiver's objection.

20. **Attempt to Resolve Objections.** Claimants are directed to work in good faith with the Receiver to resolve any disputes about the claim before submitting them to the Court for determination.

21. **Court Ruling on Determinations and Objections.** The claimant's response to the Receiver's claim objection shall be filed with the Court, with a copy served on the Receiver and her counsel, pursuant to the Court's Local Rules regarding responses to motions.

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

23. **Consent to Jurisdiction.** Submission of a Claim Form in this case constitutes consent to the jurisdiction of the Court for all purposes and constitutes agreement to be bound by its decisions, including, without limitation, a determination as to the extent, validity, priority, and amount of any claim asserted against the Receivership Estate. The submission of a Claim Form shall constitute consent to be bound by the decisions of the Court as to the classification, treatment, and payment of the claim in a Court-approved distribution plan.

³ While claims must be submitted to the Receiver prior to the Claims Bar Date, claimants are permitted and, indeed, encouraged to submit completed Claims Forms to the Receiver in advance of the Claims Bar Date. The Receiver will begin to evaluate claims upon submission and is free to consider and agree to the amount of allowed claims any time after submission.

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

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