

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:18-cv-23992-JEM

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

TIMOTHY JOSEPH ATKINSON, JAY  
PASSERINO, ALL IN PUBLISHING, LLC,  
& GASHER, INC.,

Defendants.

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**LEGAL NOTICE OF  
CLAIMS ADMINISTRATION PROCESS  
AND PLAN OF DISTRIBUTION**

**IF YOU TRANSFERRED FUNDS TO ANY OF THE BINARY  
OPTIONS TRADING CAMPAIGNS, FIRMS AND/OR WEBSITES  
MARKETED BY DEFENDANTS (THE “BINARY OPTIONS  
CAMPAIGNS”)<sup>1</sup>**

**OR**

**IF YOU ARE A CREDITOR OF ANY DEFENDANT,**

**YOU MAY BE ENTITLED TO RECEIVE A PAYMENT FROM  
FUNDS RECOVERED IN THIS CFTC ENFORCEMENT ACTION.**

**DEADLINE FOR ALL CUSTOMERS AND CREDITORS TO  
SUBMIT CLAIMS TO THE RECEIVER: OCTOBER 21, 2020.**

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<sup>1</sup> A list of the known Binary Options Campaigns is attached to the *Receiver’s Motion to Approve (A) Noticing and Claims Administration Process and (B) Plan of Distribution* [ECF No. 242] (the “Motion”) as **Exhibit A**, which may be updated as additional information is discovered. The most current version will be available for claimants to review as part of the online Proof of Claim and Release Form.

## INTRODUCTION

The Court has entered *Orders for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants* (the “Permanent Injunctions”) [ECF Nos. 206 and 237], which determined that Defendants committed fraud and violated various federal statutes in connection with the marketing of binary options trading Campaigns, websites and/or firms (the “Binary Options Campaigns”). In the Permanent Injunction [ECF No. 206], the Court directed its appointed Permanent Receiver, Melanie E. Damian, Esq. (the “Receiver”) to, among other things, propose to the Court a claims administration process and plan of distribution for purposes of administering the claims of, and making distributions to, the customers and creditors of the Defendants.

On April 28, 2020, the Receiver filed with the Court a Motion to Approve (A) Noticing and Claims Administration Process and (B) Plan of Distribution [ECF No. 242]. On December 20, 2019, the Court entered an Order [ECF No. 253] approving the Noticing and Claims Administration Process and Distribution Plan (described herein), pursuant to which the “Eligible Claimants” (defined below) shall file the Proof of Claim and Release form attached hereto for (i) the amounts of their net losses incurred as result of transferring funds to any of the Binary Options Campaigns (if they are customers), or (ii) the amount that the Defendants owe them for goods delivered and/or services performed (if they are creditors). Further, the Court-approved Distribution Plan authorizes and directs the Receiver to create a “Distribution Fund” (defined below), and distribute the proceeds of such Fund, after payment of administrative expenses of the receivership estate, to each customer and creditor of the Defendants determined to have an “Allowed Claim” (defined below).

## LEGAL NOTICE

If you transferred funds to any of the Binary Options Campaigns listed on the non-exhaustive list at Exhibit A to the Motion or to another Binary Options Campaign to which you were directed or referred by the Defendants or an ad they created, or you are a creditor of either of the Defendants, you may be an Eligible Claimant entitled to file a Proof of Claim, and you may have an Allowed Claim and, thus, be entitled to receive a *pro rata* distribution from the Distribution Fund based on your net losses as a result of the transfers you made to the Binary Options Campaigns or the amount that the Defendants owe to you. If you are an Eligible Claimant, to obtain any distribution from the Distribution Fund, you must fill out and submit to the Receiver the online Proof of Claim and Release form described below **ON OR BEFORE OCTOBER 21, 2020**.

### **How was the Distribution Fund created?**

The Distribution Fund is comprised of the funds recovered from the Defendants, the proceeds of the sale of assets of the Defendants, the restitution paid by the Defendants pursuant to the Permanent Injunction entered against them, and other funds recovered from

third parties based on their relationship, transaction and other dealings with the Defendants. These funds are the results of the Receiver's sustained efforts to marshal, safeguard, liquidate and recover assets, pursuant to his duties as the Court-appointed Receiver in this CFTC enforcement action.

The Receiver has deposited all recovered funds into a Court-approved receivership account. After paying Court-approved administrative expenses, the proceeds of the Distribution Fund will be distributed, on a *pro rata* basis, to customers and creditors with Allowed Claims in accordance with the Court-approved Claims Process and Distribution Plan, based on the net amount of each allowed claimants' net losses, or the Defendants' current debt to them, and the total amount to be distributed to all allowed claimants.

The Receiver will conduct one Claims Process for all Eligible Claimants (defined below) of the Estate and make an initial distribution and a final distribution to customers and creditors with allowed claims based on the determinations made in that process. Within thirty (30) days following the conclusion of the Claims Process, the Receiver shall seek to make an initial distribution of seventy-five (75%) of the total amount of cash on hand in the Distribution Fund at that time (or a lesser amount if the total amount of allowed claims is less than 75% of the Fund). After the asset recovery and liquidation phases of the Receivership have been concluded, the Receiver will make a final distribution of the remaining cash on hand in the Estate after payment of all administrative expenses that are incurred through the conclusion of the Receivership.

### **Who is an Eligible Claimant?**

Customers are eligible to participate in the Claims Process, and are encouraged to submit a claim, if they incurred a net loss as a result of transferring funds to one or more of the Binary Options Campaigns. Creditors are eligible to participate in the Claims Process, and are encouraged to submit a claim, if one or more of the Defendants incurred a debt to them prior to the appointment of the Receiver, on October 5, 2018, and that debt remains unpaid in whole or in part. Such customers and creditors are "Eligible Claimants" in this Claims Process.

### **What is required to have an Allowed Claim?**

The claim of a customer or creditor will be allowed (an "Allowed Claim"), such that the customer or creditor will be entitled to receive a *pro rata* distribution from the initial distribution based on that customer's net loss as a result of transferring funds to one or more of the Binary Options Campaigns, or the amount the Defendants still owe to that creditor, provided that the customer or creditor sufficiently demonstrates to the satisfaction of the Receiver through documentation and/or sworn statements, among other things:

- (i) that such customer (a) transferred funds directly to any Binary Options Campaign that transferred some or all of those funds to any Defendant, and (b) did not receive from any Binary Options Campaign any amount, or received an amount less than the amount

they had transferred to a Binary Options Campaign, and thus incurred a net loss during the Relevant Period;

OR

that a Defendant incurred a debt to such creditor, for goods or services that such creditor provided to such Defendant during the Relevant Period and such debt remains unpaid in whole or in part;

AND

- (ii) that such customer or creditor (a) was not an affiliate, family member or insider of any Defendant, any affiliate of any Defendant, or any Binary Options Campaign, and (b) did not knowingly assist any Defendant, affiliate of any Defendant, or Binary Options Campaign to effectuate, perpetuate or promote the Defendants' business operations or have knowledge of its fraudulent nature, at the time funds were transferred to any Defendant or a Binary Options Campaign, or a debt was incurred by one or both of the Defendants;

AND

- (iii) that the total amount of funds that such customer transferred to any Binary Options Campaign exceeds the total amount of funds that any Binary Options Campaign transferred back to such customer, or that the total value of the goods or services that the creditor provided to the Defendants exceeds the total amount that the Defendants paid to such creditor for those goods and services.

The Receiver may consider other factors in determining whether a claim is an Allowed Claim. If a customer or creditor cannot prove the foregoing factors (i), (ii) and (iii), that customer's or creditor's claim will be disallowed and such customer or creditor will receive no distribution.<sup>2</sup> If a *customer* makes the requisite showing regarding his or her claim and the Receiver determines that such claim is an Allowed Claim, the Receiver will calculate the amount of such Allowed Claim by subtracting the total amount of all transfers that such customer received from any Binary Options Campaign from the total amount of transfers that such customer made to such Campaign. If a *creditor* makes the requisite showing regarding his or her claim and the Receiver determines that such claim

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<sup>2</sup> To the extent a customer received transfers from any Binary Options Campaign in excess of such customer's total transfers to such Campaign, or a creditor received transfers from the Defendants in excess of the value of the goods or services they provided to the Defendants, such that the customer or creditor profited from the Defendants' marketing scheme, the Receiver reserves the right to pursue a claim against such customer or creditor for the return of the profit received and any other appropriate relief.

is an Allowed Claim, the Receiver will calculate the amount of such Allowed Claim by subtracting the total amount that the Defendants paid to the creditor from the total value of the goods or services that such creditor provided to the Defendants. **Customers and creditors with Allowed Claims will only be entitled to receive a *pro rata* distribution based on the *net loss* of the customer or the principal amount that is still owed to the creditor;** the Receiver will not include within her calculation for distributions any profit that was reported or promised to a customer or any interest or fee that was promised to a creditor.

### **How does an Eligible Claimant submit a Claim?**

To submit a claim and participate in the Claims Process and Distribution Plan, you must fill out and submit an online Proof of Claim form and agree to and sign an online release form. You will find the electronic Proof of Claim and Release form by visiting the online Claims Portal created for this receivership located at this URL: [www.AIPClaimsProcess.com](http://www.AIPClaimsProcess.com). On the home page of the Claims Portal, you will see a link for the online Proof of Claim and Release form. That Proof of Claim and Release form will request information required to participate in the Claims Process and to receive a distribution from the Distribution Fund if you are determined to have an Allowed Claim. And, you will also be able to upload all supporting documentation through that Portal. For technical support in completing the online Proof of Claim and Release form, please contact Noticing Agent, Stretto at (855) 266-3532 (toll-free) or [TeamAIP@stretto.com](mailto:TeamAIP@stretto.com).

You may also obtain information regarding the claims process by:

- Visiting the websites for this Receivership ([www.allinpublishingreceivership.com](http://www.allinpublishingreceivership.com))
- Submitting questions by mail to the Receiver at Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131

The foregoing is a summary table of deadlines for the Claims Process and Distribution Plan.

**DEADLINES**

June 23, 2020	Plan Approval Date
August 22, 2020	Deadline to send out notice of claims process to potential customers and creditors
October 21, 2020	Claims Bar Date
December 20, 2020	Receiver's Initial Determination Date
January 19, 2021	Investor Deadline for Appealing to Receiver
February 18, 2021	Receiver's Final Determination Date
March 20, 2021	Investor Deadline for Appealing to the Court
April 19, 2021	Receiver's Response to Appeals Deadline
May 19, 2021	Receiver Files Motion to Approve Initial Distribution
TBD – based on completion of recovery phase	Receiver Files Motion to Approve Final Distribution