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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 COMMODITY FUTURES TRADING
COMMISSION,

12 Plaintiff,

13 v.

14 MONEX DEPOSIT COMPANY,
15 MONEX CREDIT COMPANY,
16 NEWPORT SERVICE
CORPORATION, MICHAEL
17 CARABINI, AND LOUIS
18 CARABINI

19 Defendants.

Case No. 8:17-cv-01868-JVS-DFM

**MONITOR'S FIRST STATUS
REPORT AND ACCOUNTING**

Date: _____,
Time: _____
Ctm.: 10 C
Judge: Hon. James V. Selna

20 **TO THE HONORABLE JAMES V. SELNA JUDGE OF THE UNITED**
21 **STATES DISTRICT COURT IN THE WESTERN DIVISION OF THE**
22 **CENTRAL CIRCUIT, AND INTERESTED PARTIES:**

23 Thomas A. Seaman ("Monitor") the Court-appointed Monitor for the Monex
24 Restitution Fund, hereby submits this First Status Report and Accounting. The
25 reporting period for report is from April 4, 2023, through December 31, 2023 (the
26 "Reporting Period").

27 This report provides a status of the claim process to date. The scope of the
28 Monitor's work has been provided in the Monitor's First Fee Application, filed

1 concurrently herewith, and is repeated below by way of background for this Status
2 Report.

- 3 • Met and conferred with CFTC on background information on the
4 underlying litigation.
- 5 • Met with Monex representatives on background of the litigation,
6 investor losses, methodology.
- 7 • Opened bank accounts and spread deposits over multiple banks to stay
8 within FDIC limits.
- 9 • Hired counsel to advise on responsibilities and duties of the Monitor
10 and requirements of the Consent Order.
- 11 • Retained Stretto to provide logistical support for the eventual
12 dissemination of the notice to investors and claim form and payment to
13 claimants, development of portal for filing claims, website
14 maintenance, establishing bank accounts covered by FDIC limits.
- 15 • Created a website for communications with Monex investors and
16 interested parties.
- 17 • Review and analyze Monex requests to exclude certain claimants
18 including those with whom Monex had previously settled litigation
19 brought by the investor, and other investors who were unsuccessful in
20 litigation against Monex.
- 21 • Made determination to not exclude any investor with losses that
22 engaged in margin borrowing, and to reduce claims by the amount of
23 any settlements received by the investors.
- 24 • Created a Qualified Settlement Fund (“QSF”) and prepared and filed
25 2022 tax returns.
- 26 • Obtained tax advice on 1099s for claimants (not required)
- 27 • Reviewed and analyzed loss calculations, conducted reconciliation of
28 loss calculations compared to investor account statements.

- 1 • Considered methodology of loss calculation by the parties and
- 2 recommended that losses include margin interest and storage and other
- 3 costs. Reviewed and analyzed revised loss numbers.
- 4 • Established framework for administration of distribution process.
- 5 • Wrote notice to investors.
- 6 • Prepared proposed claim form; collaborated with Stretto and CFTC re
- 7 same.
- 8 • Established a Bar Date of February 3, 2024
- 9 • Notice by mail completed on December 5, 2023.
- 10 • Established process and workflow to administer investor emails and
- 11 voice mails
- 12 • Administered thousands of emails and calls from investors.
- 13 • Published the Notice of Bar Date in the Wall Street Journal and Los
- 14 Angeles Times.
- 15 • Monitor number of claims being filed.

16 STATUS OF CLAIMS PROCESS

17
18 The Monitor initiated the claims process in early December by mailing a
19 Notice of Bar Date and a pre-printed claim form containing the investor's loss
20 derived from Monex' books and records. The Notice is attached as Exhibit A.
21 Mailing was completed on December 5, 2023.

22 There are 10,313 investors with losses in the aggregate amount of
23 \$448,715,546. The Notice and Claim form were mailed to all of them. Many
24 hundreds were returned with a forwarding address and the Monitor re-sent the
25 notices and claim forms accordingly. To date, 1,644 have been returned to the
26 Monitor with no forwarding address. The Monitor published the Notice of Bar
27 Date, including a telephone number to call, in the Wall Street Journal and Los
28 Angeles Times.

1 The Monitor also emailed the Notice and Claim Form to 9,730 investors, of
2 those 1,379 were returned as undeliverable. The Monitor has received 2,231 hard
3 copy claim forms. These claim forms are in the process of being scanned and
4 entered into the investor database. The Monitor does not yet have any metrics on
5 the claims filed by mail. It appears that some investors filed both paper claims and
6 claims on the portal.

7 To date 2,193 investors have filed claims on the portal. Of those 2,124
8 investors agree with the loss set forth on their claim form. The total amount of these
9 agreed to claim is \$141,731,866.30. The remaining 69 of the investors using the
10 portal disagree with the amount of the loss. The amount that these 69 investors
11 believe their loss to be is \$10,532,097.03. The Monitor believes the aggregate loss
12 of these 69 investors to be 6,046,290.

13 Based on investor communications to date, most investors who disagree do so
14 by including losses on trades that did not use leverage, or do not offset trades using
15 leverage that resulted in gains. Several investors have changed their claim after the
16 calculations were explained.

17 In total, approximately 4,400¹ out of 10,313 have filed claims to date. A large
18 volume of claims are being received by mail as the Bar Date approaches. The
19 volume on the portal has slowed. The Monitor is concerned that more claims have
20 not been filed and after consulting with the CFTC and Monex is extending the Bar
21 Date to March 29, 2024.

22 ACCOUNTING

23 During the First Application Period, the gross receipts to the Monex
24 Restitution Fund were \$33,503,628.79. Exhibit B provides a Standardized Fund
25 Accounting Report (“SFAR”). The gross receipts may be summarized as follows:

26 Funds turned over by NFA \$33,000,000.00
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28 _____
¹ This number includes potential duplicate claims and may thus be overstated.


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<u>Interest income</u>	<u>\$503,503.79</u>
Total	\$33,503,628.79

Respectfully submitted,

Dated: January 30, 2024

Thomas Seaman Company

By: 

Thomas A. Seaman
Monitor for the Monex Restitution Fund

EXHIBIT A

**NOTICE TO CERTAIN CUSTOMERS OF MONEX DEPOSIT COMPANY,
MONEX CREDIT COMPANY, AND NEWPORT SERVICE CORPORATION**

In the matter known as Commodity Futures Trading Commission (“Plaintiff” or “CFTC”) vs. MONEX Deposit Company, MONEX Credit Company and Newport Service Corporation (“Defendants” or “MONEX”), case number 8:17-CV-01868-JVS-DFM in the Southern District of the Central District of California, the Court has entered a Consent Order. Without admitting or denying the allegations in the CFTC’s complaint, MONEX has agreed to the terms of the Consent Order, including payment of Restitution Obligation of \$33,000,000 to fund the MONEX Restitution Fund which will be distributed by a Court-appointed Monitor to customers who lost money in leveraged transactions in MONEX’s Atlas Trading Program during the relevant time period of July 16, 2011, through December 31, 2021. The Monitor has confirmed customer losses and will be making pro-rated distributions based on each customer’s loss as a percentage of the total customer net losses of \$448,734,874. The amount that you will receive is not known at this time and will depend on the number and amount of the claims that are submitted to the Receiver prior to the Bar Date (as defined below).

The Consent Order provides that the amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from MONEX or any other person or entity. Nothing in the Consent Order shall be construed in any way to limit or abridge the rights of any customer that exists under state or common law. The Consent Order states that each customer of MONEX who suffered a loss is explicitly made an intended third-party beneficiary of the Consent Order and may enforce obedience of the Consent Order to obtain satisfaction of any portion of the restitution to ensure continued compliance with any provision of the Consent Order and to hold Defendants in contempt for any violations of any provision of the Consent Order.

In order to participate in the MONEX Restitution Fund, customers need to complete, sign and return a claim form (“Claim Form”). The most efficient and fastest way to complete the Claim Form is through the on-line claim portal. Alternatively, Customers may submit their Claim Form by mail which must be received by the Monitor on or before February 3, 2024, at 11:59 p.m. (prevailing Eastern Time) (the “Bar Date”). If you do not submit a Claim Form by the Bar Date, then you will forfeit your right to participate in or receive a payment from the Restitution Fund. If you do not agree with the amount of loss as set forth on the portal or on the attached Claim Form, please submit the amount of your loss and any documentation in support of the loss. If you have not received your claim form by December 19, 2023, please contact the Monitor’s office either by email to mail@monexrestitutionfund.com or by leaving a voice mail with your contact information at (949) 222-0305. Please have your MONEX account number available, if possible. The Monitor will evaluate the submission and provide you with his determination. If necessary, unresolved claims will be submitted to the U.S. District Court to determine the amount of the claims. Please also confirm your mailing address and email address. In addition, please indicate whether you would like a check mailed to you or to receive payment by PayPal or Venmo, in which case kindly provide your PayPal or Venmo account information. If the amount of your loss is equal to or greater than \$750,000 and you elect to receive payment via wire transfer, please provide wire instructions with the Claim Form.

You may submit a Claim Form to the Monitor, using either of the following methods: (1) electronically via the link to the on-line claim filing portal sent to you by the Monitor or by accessing the link posted to the Monitor’s website (<https://www.monexrestitutionfund.com>); or (2) via overnight mail, courier service, hand delivery, or first-class mail addressed to:

MONEX Restitution Fund
c/o Thomas Seaman Company, Monitor
1 Park Plaza, Suite 580
Irvine, CA 92614

EXHIBIT B

STANDARDIZED FUND ACCOUNTING REPORT for MONEX Restitution Fund - Cash Basis

Thomas Seaman, Monitor case number Case No: 8:17-cv-01868-JVS-DFM Judge Selna


Reporting Period 04/28/2023 to 12/31/2023

FUND ACCOUNTING (See instructions):			
	<u>Detail</u>	<u>Subtotal</u>	<u>Grand Total</u>
Line 1	Beginning Balance (04/28/2023):	-	-
	<i>Increases in Fund Balance:</i>		
Line 2	Business Income		-
Line 3	Cash and Securities	33,000,000	33,000,000
Line 4	Interest/Dividend Income	503,628	503,628
Line 5	Business Asset Liquidation		-
Line 6	Personal Asset Liquidation		-
Line 7	Third-Party Litigation Income		-
Line 8	Miscellaneous - Other		-
	Total Funds Available (Lines 1 - 8):	33,503,628	33,503,628
	<i>Decreases in Fund Balance:</i>		
Line 9	Disbursements to Investors		-
Line 10	Disbursements to Receivership Operations		
	<i>Line 10a Disbursement to Receiver or Other Professionals</i>		-
	<i>Line 10b Business Asset Expenses</i>		-
	<i>Line 10c Personal Asset Expenses</i>		
	<i>Line 10d Investment Expenses</i>	-	-
	<i>Line 10e Third-Party Litigation Expenses</i>		-
	1. Attorney Fees		-
	2. Litigation Expenses	-	-
	Total Third-Party Litigation Expenses	-	-
	<i>Line 10f Tax Administrator Fees and Bonds</i>	-	-
	<i>Line 10g Federal and State Tax Payments</i>		-
	Total Disbursements for Receivership Operations		-
Line 11	Disbursements for Distribution Expenses Paid by the Fund:		
	<i>Line 11a Distribution Plan Development Expenses:</i>		
	1. Fees:		
	Fund Administrator.....	-	-
	Independent Distribution Consultant (IDC)..	-	-
	Distribution Agent.....	-	-
	Consultants.....	-	-
	Legal Advisors.....	-	-
	Tax Advisors.....	-	-
	2. Administrative Expenses		-
	3. Miscellaneous	-	-
	Total Plan Developmental Expenses		-
	<i>Line 11b Distribution Plan Implementation Expenses:</i>		
	1. Fees:		
	Fund Administrator.....	-	-
	IDC.....	-	-
	Distribution Agent.....	-	-
	Consultants.....	-	-
	Legal Advisors.....	-	-
	Tax Advisors.....	-	-
	2. Administrative Expenses	-	-
	3. Investor Identification:		
	Notice/Publishing Approved Plan.....		-
	Claimant Identification.....	-	-
	Claims Processing.....	-	-
	Web Site Maintenance/Call Center.....	-	-
	4. Fund Administrator Bond	-	-
	5. Miscellaneous	-	-
	6. Federal Account for Investor Restitution (FAIR) Reports Expenses	-	-
	Total Plan Implementation Expenses	-	-
	Total Disbursements for Distribution Expenses Paid by the Fund		-
Line 12	Disbursements to Court/Other:		
	<i>Line 12a Investment Expenses/Court Registry Investment System (CRIS) Fees</i>	-	-
	<i>Line 12b Federal Tax Payments</i>		-
	Total Disbursement to Court/Other:		-
	Total Funds Disbursed:		
Line 13	Ending Balance (As of 12/31/2023):		33,503,628

STANDARDIZED FUND ACCOUNTING REPORT for MONEX Restitution Fund - Cash Basis
Thomas Seaman, Monitor case number Case No: 8:17-cv-01868-JVS-DFM Judge Selna
Reporting Period 04/28/2023 to 12/31/2023

Line 14	Ending Balance of Fund - Net Assets:			
<i>Line 14a</i>	<i>Cash & Cash Equivalents</i>			33,503,628
<i>Line 14b</i>	<i>Investments</i>			-
<i>Line 14c</i>	<i>Other Assets or Uncleared Funds</i>			-
	Total Ending Balance of Fund - Net Assets			33,503,628

OTHER SUPPLEMENTAL INFORMATION:			
	<u>Detail</u>	<u>Subtotal</u>	<u>Grand Total</u>
Report of Items NOT to be Paid by the Fund:			
Line 15	Disbursement for Plan Administration Expenses Not Paid by the Fund:		
<i>Line 15a</i>	<i>Plan Development Expenses Not Paid by the Fund:</i>		
	1. Fees:		
	Fund Administrator.....	-	-
	IDC.....	-	-
	Distribution Agent.....	-	-
	Consultants.....	-	-
	Legal Advisors.....	-	-
	Tax Advisors.....	-	-
	2. Administrative Expenses	-	-
	3. Miscellaneous	-	-
	Total Plan Developmental Expenses Not Paid by the Fund		-
<i>Line 15b</i>	<i>Plan Implementation Expenses Not Paid by the Fund</i>		
	1. Fees:		
	Fund Administrator.....	-	-
	IDC.....	-	-
	Distribution Agent.....	-	-
	Consultants.....	-	-
	Legal Advisors.....	-	-
	Tax Advisors.....	-	-
	2. Administrative Expenses	-	-
	3. Investor Identification		
	Notice/Publishing Approved Plan.....	-	-
	Claimant Identification.....	-	-
	Claims Processing.....	-	-
	Web Site Maintenance/Call Center.....	-	-
	4. Fund Administrator Bond	-	-
	5. Miscellaneous	-	-
	6. FAIR Reporting Expenses	-	-
	Total Plan Implementation Expenses Not Paid by the Fund		-
<i>Line 15c</i>	<i>Tax Administrator Fees & Bonds Not Paid by the Fund</i>		-
	Total Disbursements for Plan Administration Expenses Not Paid by the Fund		-
Line 16	Disbursements to Court/Other Not Paid by the Fund:		
<i>Line 16a</i>	<i>Investment Expenses/CRIS Fees</i>	-	-
<i>Line 16b</i>	<i>Federal Tax Payments</i>	-	-
	Total Disbursement to Court/Other Not Paid by the Fund:		-
Line 17	DC & State Tax Payments	-	-
Line 18	No. of Claims:		
<i>Line 18a</i>	<i># of Claims Received This Reporting Period</i>	4,424	as of 1/24/2024
<i>Line 18b</i>	<i># of Claims Received Since Inception of Fund</i>	4,424	
Line 19	No. of Claimants/Investors:		
<i>Line 19a</i>	<i># of Claimants/Investors Paid this Reporting Period.....</i>		
<i>Line 19b</i>	<i># of Claimants/Investors Paid Since Inception of Fund.....</i>		

By: 
 Thomas Seaman
 Monitor for MONEX Restitution Fund

Date: 1/24/2024