

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

SENEP POUSA, INVESTMENT
INTELLIGENCE CORPORATION,
DBA PROPHEMAX MANAGED FX,
JOEL FRIANT, MICHAEL DILLARD, and
ELEVATION GROUP, INC.,

Defendants.

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Civil Action No. A-12-CV-0862-LY

RECEIVER’S STATUS REPORT

Guy M. Hohmann, the Court-appointed Receiver in this action (“Receiver”), respectfully files this report to inform the Court of developments in the above-captioned matter.

As the Court is aware, a judgment was entered on October 14, 2016 against IB Capital and its principals Emad Echadi and Michel Geurkink (the “IB Capital Defendants”) in the related case captioned *U.S. Commodity Futures Trading Commission v. IB Capital FX, LLC (a/k/a IB Capital FX (NZ) LLP) d/b/a IB Capital, Michel Geurkink, and Emad Echadi* that was pending before this Court. *See* Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Michel Geurkink, Emad Echadi and IB Capital FX, LLC (“Consent Order”) [Doc. 24] and Final Judgment [Doc. 25].¹ The Consent Order and Judgment require the IB Capital

¹ *U.S. Commodity Futures Trading Commission v. IB Capital FX, LLC (a/k/a IB Capital FX (NZ) LLP) d/b/a IB Capital, Michel Geurkink, and Emad Echadi*, United States District Court for the Western District of Texas, Austin, Case No. 1:15-cv-01022-LY. IB Capital, Michel Geurkink and Emad Echadi are collectively referred to herein as the “IB Capital Defendants.”

Defendants to pay certain restitution and civil monetary penalties in the amount of \$35 million (USD) which the Receiver would like to see paid in significant part with amounts that are presently frozen by one or more governmental authorities. The CFTC and Receiver have been working diligently to facilitate the repatriation of those funds from the Netherlands so that the funds can be distributed to investors. As noted in the Receiver's Seventh Fee Application, the Receiver recently retained Dutch attorney Jurjen de Korte who specializes in cross-border litigation and has been assisting locally in the Netherlands to recover the frozen funds.

However, despite the Receiver's repatriation efforts, the Receivership and the CFTC continue to wait for there to be meaningful progress in the Dutch proceedings which would allow for the release of the funds. Recently the IB Capital Defendants retained new defense counsel, which appears to be further delaying what has proven to be a very slow proceeding. For this reason, the CFTC and Receiver have determined that it is best to continue to monitor the progress of the Dutch proceedings and leave open their offer to distribute any repatriated funds, but not spend any significant additional resources pursuing the repatriation on an expedited basis.

Concurrently, the Receiver and his counsel have been analyzing the merits of an action against ING Bank in the Netherlands ("ING Bank").² On May 10, 2017, the Receiver's Dutch counsel sent a letter to ING Bank setting forth the details of ING Bank's participation in the fraud. A copy of the letter to ING Bank is attached hereto as **Exhibit A**. This letter effectively extends the statute of limitations against ING Bank for five years. In September 2017, the Receiver was made aware that the Dutch Public Prosecutor's Office is investigating ING Bank for facilitating

² ING Bank was the depository institution which IB Capital utilized in defrauding investors.

money laundering and other international corruption matters. A copy of a recent article that appeared in a Dutch newspaper and translated to English by Google Translate is attached hereto as **Exhibit B**. Critically, the Receiver, US counsel and Dutch counsel are evaluating offers to have a third party fund this litigation on a contingent basis at no cost or risk whatsoever to the ProphetMax Receivership Estate (including expenses). In the event that the Receiver is successful in obtaining the funding, he will file a motion requesting that the Court formally approve the arrangement. If it becomes clear to the Receiver that pursuing litigation against ING is not in the best interests of the ProphetMax Receivership Estate (whether because the Receiver is unable to obtain a favorable funding arrangement or based on a development related to the merits of the case), the Receiver will inform the Court and proceed toward a distribution of the funds in his possession. The Receiver will continue to keep the Court apprised of any other major developments in this matter.

Respectfully submitted,

HOHMANN, BROPHY, SHELTON & WEISS, PLLC

By: /s/ Carrie Puccia

Carrie Puccia

State Bar No. 24083691

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(512) 384-1331

(512) 532-6637 (Fax)

**ATTORNEY FOR GUY M. HOHMANN
IN HIS CAPACITY AS RECEIVER FOR
THE PROPHETMAX RECEIVERSHIP
ESTATE**

CERTIFICATE OF SERVICE

On September 21st, 2017, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Carrie Puccia _____
Carrie Puccia

BY COURIER WITH NOTICE OF RECEIPT

ING Bank N.V.
Attn.: Board of Directors
Bijlmerplein 888
1102 MG Amsterdam
The Netherlands

Date: 10 May 2017
Your ref:
Our ref:
Direct: +31 20 5600 664
Email: jurjendekorte@eversheds-sutherland.nl

Hohmann (IB Capital FX, Echadi, Geurkink) c.s. / ING Bank N.V.

Dear Sirs

On behalf of Mr. Guy Hohmann ("**Hohmann**"), acting in his capacity as US receiver for IB Capital FX (NZ) LLP ("**IB Capital**"), Mr. Emad Echadi ("**Echadi**") and Mr. Michel Geurkink ("**Geurkink**") and also representing all or part of the investors in or former clients of IB Capital, we hereby inform you as follows.

Background

IB Capital is believed to have been established in the UK in 2011. Dutch citizen Echadi is understood to have been the director of IB Capital. Dutch citizen Geurkink ("**Geurkink**") is understood to have been an employee of IB Capital.

Starting on or around 19 December 2011 Echadi requested ING Bank N.V. ("**ING**") to open EUR, GBP and USD bank accounts in the name of IB Capital. The request to open a EUR account is believed to have been approved at some time before 20 February 2012 and without any specific questions having been raised by ING or answered by Echadi. It would actually appear that IB Capital started intensive use of an ING EUR bank account before 20 February 2012. As part of the acceptance of IB Capital's (later) request to open GBP and USD accounts, ING did request certain information and Echadi did provide certain information to ING. In that process ING was informed by Echadi and ING accepted as accurate that IB Capital was (in)directly 100% owned by Echadi, that IB Capital would be a company registered as a New Zealand Financial Service Provider, that IB Capital traded in foreign currencies for clients all over the world and that IB Capital only accepted money coming directly from its clients and would only return money to the client's bank account from which the initial payment was made. ING appears to have studied IB Capital (EUR) bank account transactions and concluded on the basis thereof that the clients of IB Capital were located in i.a. the US, UK, Netherlands and New-Zealand. Other than that there is no indication that ING conducted an independent verification of the information provided by Echadi on behalf of IB Capital. On or around 20 February 2012 ING concluded that all compliance requirements had been met and approved the request to also open the GBP and USD bank accounts for IB Capital.

In the period starting on or around 19 December 2011 IB Capital, Echadi and Geurkink and third party brokers approached clients to invest in forex trades with IB Capital and to do so by depositing funds in the ING bank accounts of IB Capital. The third party brokers included Australian corporation Investment Intelligence Corporation, doing business as ProphetMax FX, and its principal Senen Pousa, an Australian citizen. As a result, IB Capital received more than USD 50 million from approximately 1,850 investors worldwide on its ING bank accounts. The investors were led to believe, for instance with online investment overviews, that these funds were actually being invested in forex trades. It is understood that in reality the funds received by IB Capital from its clients were not or not entirely invested in forex trades, or at least not invested in accordance with the online investment overviews to which the clients of IB Capital were given access. It is understood that the funds received on the ING bank accounts were in

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Date: 10 May 2017

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reality transferred to CFH Markets Ltd and to other third parties to acquire Moroccan real estate and applied for other uses.

On or around 16 May 2012 IB Capital informed its clients that massive losses had occurred on their purported investments in foreign currencies. On 12 June 2012 IB Capital informed its clients that it had ceased its business and requested them to close their trading accounts.

However, in reality the invested values were not reduced due to a trading loss and in reality no or not all remaining funds were even returned to the bank accounts from which the investments were initially made. For instance, it is understood that on 26 June 2012 some USD 25 million was transferred from IB Capital's USD account at ING to a Hungarian account controlled by Echadi and/or Geurkink and that on 23 July 2012 more than EUR 4 million was transferred from IB Capital's ING bank account to a Dutch entity controlled by Echadi and/or Geurkink.

On 9 November 2015, the United States Commodity Futures Trading Commission ("CFTC") filed a complaint against IB Capital, Geurkink and Echadi at the US District Court of Texas, Austin division, United States (the "Court"). The CFTC established several violations of the US Commodity Exchange Act. These violations included violations of the duty to register with the CFTC (or request an exemption from the duty to register) and failure to disclose to investors that IB Capital was not so registered (or had obtained an exemption).

On 14 January 2016, the Court appointed Hohmann as receiver of the assets of IB Capital, Geurkink and Echadi and the assets of their affiliates and subsidiaries (**Attachment 1**). Under the terms of this appointment Hohmann's authority and mandate includes (paragraph 28):

"b. Take exclusive custody, control, and possession of all the funds, property, mail and other assets of, in the possession of, or under the control of the Defendants, wherever situated. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the Defendants, including documents related to customers or clients whose interest are now held by or under the direction, possession, custody or control of the Defendants; (...)

d. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to Defendants' customers or clients;

e. Prevent the withdrawal or misapplication of funds entrusted to the Defendants and otherwise protect the interests of customers, clients, or investors;

f. Manage and administer the assets of the Defendants by performing all acts incidental thereto that the Receiver deems appropriate, including hiring or dismissing any and all personnel or suspending operations;

g. Collect all money owed to the Defendants;

h. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of the Defendants or to carry out his or her duties pursuant to this Order;

i. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;

j. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate".

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On 14 October 2016, the Court issued a consent order (with the explicit consent of IB Capital, Echadi and Geurkink) in line with the CFTC's complaint (**Attachment 2**).

As ING is aware as a result of attachment of the bank accounts of IB Capital by the Dutch public prosecutor, this matter is also being investigated by the Dutch authorities.

Claims for compensation of damage

The investors and former clients of IB Capital have suffered significant damage as a result of this fraudulent scheme. Even though some of their purportedly lost investments may eventually be returned, it is already clear that it may not be possible to trace all of the funds and cause the return thereof and that they will in any event also suffer loss because of the delay in the return of funds.

At present Hohmann and investors and former clients of IB Capital are in the process of gathering facts and evidence and analysing their options. As a result, they at present are not in a position to assess any and all parties that might be liable on what basis and for what amounts in connection with the circumstances described hereinbefore.

There is, however, already reason to conclude that these damages would not have occurred if ING had followed all the rules and regulations applicable to it, if ING had followed all its internal rules and had implemented proper training and supervision of the employees responsible for the on-boarding of IB Capital as a client of ING and the opening of the bank accounts of IB Capital, if ING had made the appropriate inquiries, if ING had independently verified the information provided by Echadi and if ING had not opened the bank accounts of IB Capital, or that not all of these damages had been suffered if ING had appropriately monitored the significant and uncommon incoming and outgoing transactions requested and executed with IB Capital bank accounts, and if ING had not allowed some or all of the transfers into and out of these accounts, including the 26 June 2012 transfer of some USD 25 million and the 23 July 2012 transfer of more than EUR 4 million out of these accounts. At the very least ING facilitated this massive fraud and serious violation of i.e. US and Dutch regulations and civil and criminal laws. There is consequently also already reason to conclude that ING has breached its duty of care (*zorgplicht*), including the 'know your customer'-obligations as applicable to ING, and/or has committed a tort (*onrechtmatige daad*, whether or not pursuant to article 6:162 of the Dutch Civil Code) vis-à-vis the investors and former clients of IB Capital and is liable to compensate the damages caused to them and cost incurred by them as a consequence thereof.

Information request

ING is hereby invited to provide the undersigned as soon as possible with any and all documents and information that may in any way be useful for the international efforts to find and return the funds (and thereby reduce the amount of ING's liability) and to establish the relevant facts, including:

- a full copy of the IB Capital client acceptance file,
- a full copy of the IB Capital bank account opening files, and
- a full copy of all IB Capital bank account statements.

In that regard we point out paragraph 29 of the Court's order of 14 January 2016 (**Attachment 1**), further establishing ING's duties in this regard:

"The Defendants and all other persons or entities served with a copy of this order shall cooperate fully with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Receiver under this Order; and advising all persons who owe money to the Defendants that all debts should be paid directly to the Receiver".

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Renewal of time bar

Hohmann and the investors and former clients of IB Capital represented by him or represented directly now or in the future by the undersigned hereby explicitly reserve their right to initiate proceedings against ING to claim disclosure of documents and other information (whether or not based on article 843a of the Dutch Code of Civil Procedure) and compensation of the damages and cost caused by ING's tort and/or breach of its duty of care and/or violation of the rules and regulations as applicable to ING in any way connected with the opening of bank accounts for IB Capital and facilitating transfers of funds in and out of those bank accounts.

This letter should be interpreted as a notice in accordance with article 3:317 section 1 of the Dutch Civil Code (*stuiting verjaring*).

Any further communication regarding this matter shall be directed at the undersigned.

Sincerely yours,



J. Ph. de Korte

Eversheds Sutherland

Attachment 1: Court order dated 14 January 2016

Attachment 2: Consent order dated 14 October 2016

OM continues ING in four fraud cases

Criminal Justice Law suspects "wide-ranging policy" at ING and investigates role of bank in money laundering.

Camil Driessen

September 6, 2017 at 22:48



Photo Toussaint Kluiters / Reuters

The Public Prosecutor's Office investigates ING due to facilitating international corruption and money laundering in four separate cases. This is evidenced by trial documents held by *NRC*. The OM suspects that ING is "broadly failing policy".

In March [ING Bank reported in the annual report](#) that it is the subject of criminal investigation by the Dutch authorities due to involvement in corruption, money laundering and its own client acceptance policy. According to ING, the consequences of that research could be "substantial". In contrast to *the Financieele Dagblad*, the judge at that time investigated the role of ING in smuggling payments by telecom company VimpelCom.

Now it appears that this investigation of justice besides VimpelCom involves three other issues. The criminal investigation is called Houston. Justice has selected the four issues in the investigation that "a representative picture of a broad failure policy" at ING can be outlined regarding compliance with the bank - how law and regulations are complied with internally.

In full swing

Criminal investigation into Dutch banks by the OM is rare. In Houston, Justice investigates, inter alia, the role of ING in bribery by VimpelCom. The Amsterdam-based International Telecom Provider concluded [a record settlement of EUR 358 million](#) with the OM last year due to bribery and falsification in writings on accession to the Uzbek telecom market.

The OM will not, if requested, explain what three other issues ING is being investigated in criminal law and states that the investigation is "in full swing". It states that ING is suspected of not reporting unusual transactions or not reporting on time and having failed or insufficient customer research. However, this is required under the Wet on the Prevention of Money Laundering and Financing of Terrorism.

Fraud files

The name of ING has emerged in several major fraud files in recent years. For example, the bank broke prominently over the Malaysian government investment fund 1MDB last year, which, according to the US authorities, has been eclipsed about 1 billion by, among other things, the Malaysian prime minister.

In 2012, ING paid a USD 619 million fine because it had violated trade sanctions with Cuba and Iran for years.

The documents in the possession of NRC derive from an Article 12 procedure currently under the Court of Justice in The Hague. A businessman tries to enforce prosecution of ING through the procedure for facilitating money laundering and tax fraud at his former trust office.

In this Trust EU case, the judiciary conducted international research for seven years and continues two trust office managers for money laundering of around 100 million euros. Justice refuses to investigate ING's role as ING because of the fact that ING has taken on the grain for similar crimes as previously mentioned in Houston. Enlargement of the investigation would lead to "unwanted complications and delays".

ING does not want to deal with questions about the criminal investigation or the Article 12 procedure. At the request of the bank, the bank states that, in 2016, "various global programs" began to "improve" the way ING customers screen and monitor.

Naschrift (September 7, 2017): The headline of this article has been modified: 'follow' instead of 'hunting'.