

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

UNITED STATES COMMODITY	§	
FUTURES TRADING COMMISSION,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. A-12-CV-0862-LY
	§	
SENEN POUSA, INVESTMENT	§	
INTELLIGENCE CORPORATION,	§	
<i>DBA</i> PROPHETMAX MANAGED FX,	§	
JOEL FRIANT, MICHAEL DILLARD, and	§	
ELEVATION GROUP, INC.,	§	
	§	
<i>Defendants.</i>	§	

**RECEIVER’S MOTION FOR APPROVAL OF TWENTIETH FEE APPLICATION AND TO PAY EXPENSES AND BRIEF IN SUPPORT**

Guy M. Hohmann, the Court-appointed Receiver in the above-referenced ProphetMax Receivership matter and the ancillary IB Capital matter, files this Motion for Approval of Twentieth Fee Application and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from June 1, 2023, through June 30, 2023, (hereinafter “the Fee Period”). The Receiver believes this Motion and brief in support demonstrate the Receiver’s fees and expenses were reasonable and necessary when considering the thirty-day time period covered by the application and the results achieved by the Receiver during the Fee Period. For the Court’s convenience, the Receiver will convey details at a high level to avoid duplicate reporting.

**LEGAL STANDARD**

The Receiver has previously briefed the legal standards for evaluating the reasonableness and necessity of professional fees and expenses. The Court has consistently evaluated the Receiver's fee applications using the factors set forth by the Fifth Circuit in *Johnson v. Georgia*

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

UNITED STATES COMMODITY  
FUTURES TRADING COMMISSION,

*Plaintiff,*

v.

SENEN POUSA, INVESTMENT  
INTELLIGENCE CORPORATION,  
*DBA* PROPHETMAX MANAGED FX,  
JOEL FRIANT, MICHAEL DILLARD, and  
ELEVATION GROUP, INC.,

*Defendants.*

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

**ORDER GRANTING RECEIVER'S  
MOTION FOR APPROVAL OF TWENTIETH FEE APPLICATION**

Before the Court is the Receiver's Motion for Approval of the Twentieth Fee Application and Brief in Support ("Motion"), covering the one-month time period from June 1, 2023, through June 30, 2023.

Before the Court is the Receiver's Motion for Approval to Pay his Fees and Expenses of \$29,725.68 for the following:

1. Receiver's fees of \$4,940.63
2. Senior paralegal total expenses of \$2,340.00.
3. Paralegal total expenses of \$264.00
4. Munch Hardt \$915.00
5. Archipel (Paris, France) €14,337.50 (USD \$15,866.05)
6. Brahma (Casablanca, Morocco) \$5,400.00

Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver were reasonable and necessary for the Receiver to perform his Court-ordered duties. The Court concludes the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that payment for interim fees and expenses listed above totaling \$25,891.38.00 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Nineteenth Fee Period is approved.

SIGNED this 29<sup>th</sup> day of June, 2023.



\_\_\_\_\_  
DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE

*Highway Express, Inc.*, 488 F.2d 714, 717-19(5th Cir.1974).<sup>1</sup> The Court in the Stanford Receivership observed that this particular receivership is essentially equivalent to a Chapter 7 bankruptcy. *See* Civ. Action No. 3;09-cv-072 4, Doc. 1093 at 39 ("Ultimately, this particular receivership is the essential equivalent of a Chapter 7 bankruptcy. While a different federal statutory scheme - one that is looser and more flexible than the Bankruptcy Code-is at work, the overall purposes and objectives of the Stanford receivership track the overall purposes and objectives present in the Bankruptcy Code and a Chapter 7 proceeding."). Therefore, the factors governing the analysis of requests for professional fees and expenses incurred in the bankruptcy context are also relevant to the Court's valuation of the Receiver's fee applications.

Under 11 U.S.C. § 330(a)(3), in examining a request for fees and expenses to be awarded to an examiner, trustee under chapter 11, or other professional in the context of a bankruptcy, a court considers, in addition to the amounts involved and results obtained, "the nature, the extent, and the value of such services, taking into account all relevant factors, including (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered

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<sup>1</sup> Under *Johnson*, courts consider the following factors in determining whether the time spent, services performed, expenses incurred, and hourly rates charged are reasonable and necessary: (1) the time and labor required for the litigation; (2) the novelty and complication of the issues; (3) the skill required to properly litigate the issues; (4) whether the attorney was precluded from other employment by the acceptance of this case; (5) the attorney's customary fee; (6) whether the fee is fixed or contingent; (7) whether the client or the circumstances-imposed time limitations; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the attorney-client relationship; and (12) awards in similar cases. *Id.* at 717-19. In applying these factors, "the district court must explain the findings and the reasons upon which the award is based. However, it is not required to address fully each of the 12 factors." *Curtis v. Bill Hanna Ford, Inc.*, 822 F.2d 549, 552 (5th Cir. 1987) (citation omitted); *see also SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465,480 (S.D. Tex. 1974), *aff'd*, *SEC v. W.L. Moody & Co.*, 519 F.2d 1087 (5th Cir. 1975); *SEC v. Mega. fund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at \*2 (N.D. Tex. June 24, 2008); *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

toward the completion of, a case under [11 U.S.C. § 330(a)(3)]; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under [11 U.S.C. § 330(a)(3)]." 11 U.S.C. § 330(a)(3).

#### **A. ING BANK SETTLEMENT**

During this Fee Period, the Receiver made significant progress with the distribution phase of the ING Bank (“ING”) Settlement. As previously noted, the settlement with ING will result in a payment to investors of 33.87% of their approved claim amounts. As noted in previous filings, the settlement agreement requires that: (1) international investors are required to sign waivers releasing ING from any further liability; (2) ING is allowed to fund the settlement in three tranches (“installments”) (3) after exhausting an installment the Receiver is required to notify ING in writing stating the previously received funds have been distributed.<sup>2</sup>

In order to send and receive the required signatures on the waivers and the required tax form for U.S. investor claimants that are governed by U.S tax laws, the Receiver used DocuSign envelopes for electronic completion to expedite the distribution process.<sup>3</sup>

On June 16, 2023, the envelopes were sent to the approved investor claimants. The Receiver’s paralegal main focus is on the DocuSign phase of the distribution.

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<sup>2</sup> As part of the ING Bank Settlement the settlement amount is confidential; the agreement also outlines their terms filed under seal. [Dkt.# 206]

<sup>3</sup> Signed Order, [Dkt #253] Receiver's Motion for Distribution Plan and Procedures for Approval of Distribution of Funds to Approved Investor Claimants from the ING Bank Settlement

The Receiver held a telephonic meeting with the distribution agent Donlin Recano Co & Inc (“DRC”). The DRC set-up the ING Bank Settlement account and the Receiver committed to sending the initial distributable funds with a list of investors that live in the continental U.S. to the DRC by week of July 10, 2023.

### **FIRST INTERIM DISTRIBUTION**

As previously stated, on March 23, 2023, the Court also entered an Order granting the Receiver’s Unopposed Motion for Disbursement of Funds for Approval of First Interim Distribution Plan & Procedures. This Order is also final.<sup>4</sup> This distribution will be distributed from funds the Receiver has recovered and will represent a payment to investors of 20% of their approved claim amounts.<sup>5</sup>

The Receiver anticipates the First Interim Distribution payments will commence in the fall of 2023. It is also anticipated the First Interim Distributions will proceed much more quickly than the ING settlement distributions as the Receiver will have already received the executed W-9 forms from those investors residing in the U.S and wire instructions for international Investor Claimants or those living outside the continental U.S.

### **B. RECEIVER’S ACTIVITIES FOR THIS FEE PERIOD**

#### **1. Slovakia - \$7.3 million**

The Receiver continued to contact the Dutch Public Prosecutor’s Office (the “DPPO”) regarding the timing of the repatriation of \$7.3 million presently located in Slovakia and when it is expected to be repatriated. He also communicated with his Slovakian counsel concerning the

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<sup>4</sup> ORDER GRANTING [Dkt. # 249] Receiver’s Unopposed Motion for Approval of First Interim Distribution Plan and Procedures

<sup>5</sup> Due to ING Bank’s time constraints, the ING distribution will be made first. Then, we will begin making the first interim distributions.

judgment recognition proceeding which is taking place in Slovakia. On August 1, 2023, the judgment recognition proceeding is expected to be concluded. The Slovakian court has previously appointed an enforcement officer with whom my Slovakian counsel has been liaising. If one hundred percent of the Slovakian funds are repatriated, this would represent approximately 30.02% of the total approved claims of the investors.

## **2. Morocco – \$ 4.87 million**

The Receiver also continued to communicate with his foreign French and Moroccan counsel to assist in repatriating the Moroccan funds back to the United States. While the bank accounts holding the funds are in Moroccan Dirham, the three accounts at issue hold the equivalent of \$4.87 million (47,510,496.23 MAD).<sup>6</sup> If one hundred percent of the funds are repatriated, this would represent approximately 20.54% of the total approved claims of the investors.<sup>7</sup>

## **3. Communications with investor claimants**

Although, the Receiver's paralegals handle the majority of the communications via email and telephone, the Receiver also spent a considerable amount of time during this Fee Period communicating with investors both telephonically and via email. The Receiver's communications targeted issuance of payments to surviving spouses and individuals who invested through an entity that no longer exists as well as reviewing the requested supporting documentation for the investors' claims.

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<sup>6</sup> XE: Convert USD/MAD (July 24, 2023).

Retrieved from

<https://www.xe.com/currencyconverter/convert/?Amount=4870000&From=USD&To=MAD>

<sup>7</sup> It is the Receiver's understanding from multiple sources it is difficult to repatriate 100% percent of the funds out of the Kingdom of Morocco.

### **PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD**

The majority of the paralegals' activities consisted of communicating with investors. The paralegal's main focus was and continues to be the DocuSign software program which includes sending, receiving and validating the W-9s and Waivers. He manages the Receivership email box for communication regarding DocuSign.<sup>8</sup> The paralegal also updated the ProphetMax Receivership social media accounts; he completed maintenance on the site, as well as posted updates on the Receivership Facebook site and website.

The senior paralegal spent time communicating with the Receiver as it pertained to the ING settlement distribution process and regarding a significant number of questions raised in her conversations with investors concerning the First Interim Distribution as well as potential additional recoveries. She also spent a considerable amount of time communicating with investor claimants that telephoned and emailed to ensure they were on the approved claim list. She provided white glove assistance with five elderly investors assisting them via telephone keeping them up to date on the status of the distribution; she mailed the W-9's and read the instructions and helped them complete the W-9 over the telephone.<sup>9</sup> As part of her monthly duties, she updated the IB Capital ProphetMax bookkeeping notebook to include all approved expenses paid by the Receiver.<sup>10</sup> Her

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<sup>8</sup> Signed Order, [Dkt #253] Receiver's Motion for Distribution Plan and Procedures for Approval of Distribution of Funds to Approved Investor Claimants from the ING Bank Settlement

<sup>9</sup> The elderly investors either do not have computers or only read emails and do not respond. Included with the W-9 was a self-addressed stamped envelope to the Hohmann Law Firm to return the document.

<sup>10</sup> The IB Capital ProphetMax notebook includes all bank statements, invoices, court papers with corresponding orders and an Excel spreadsheet of account activity.



total hours for the month of June were 19.50; her invoice totaled \$2,340.00. The Receiver's other paralegal's total hours for the month of June were 3.30; his invoice totaled \$264.00.<sup>11</sup>

## **RECEIVER'S COUNSELS' ACTIVITES FOR THIS FEE PERIOD**

### **I. Munsch, Hardt**

As previously reported, the Munsch Hardt firm is the Receiver's United States ("U.S.") law firm. His time in June related to communications on multiple subjects relating to activity in various jurisdictions. This included conferring with the Receiver on foreign recovery efforts in Morocco. Munsch Hardt also invoiced for communications with the Receiver regarding Seychelles and Slovakian developments and correspondence with the Receiver's local counsel in those jurisdictions. Total fees and expenses for their most recent invoice for June was \$915.00.

### **I. Archipel (Paris, France)**

The Archipel's firm most recent invoice includes activities related to communications in assisting the Receiver with foreign recovery efforts in Morocco. The firm's time invoiced for analyzing Moroccan law and the Hague Convention of 5 October 1961. They held strategy calls with their co-counsel in Morocco regarding the consultant who specializes in the Moroccan Office of Foreign Exchange, translated documents and as well as communicating with the Receiver regarding all of the above. Total fees and expenses for their most recent invoice amounts to EUR €14,337.50 (USD 15,866.05).<sup>12</sup>

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<sup>11</sup> The Receiver's paralegal invoiced 3.30 hours at \$80.00 per hour which is 20% percent of his normal hourly rate for a total of \$264.00 and 19.50 hours at \$120.00 per hour which is 20% of her normal hourly rate for a total of \$2,340.00. [Dkt. 265]

<sup>12</sup> XE: Convert EUR/USD (July 24, 2023).

Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=14337.5&From=EUR&To=USD>

**II. BRAHMA (Casablanca, Morocco)**

The Brahma's firm activities for their most recent invoice were related to communications in assisting the Receiver with foreign recovery efforts in Morocco. Their activities included drafting a letter to be sent to Mrs. Essadia Moutouakkill regarding transferring funds in Morocco to the Receiver. They met with a consultant who specializes in support of clients before the Moroccan Exchange Office. They also held several meetings and conference calls with their co-counsel, the Archipel law firm in France. Total fees and expenses for their most recent invoice amounts to \$5,400.00.<sup>13</sup>

**CONCLUSION AND PRAYER FOR RELIEF**

The Receiver requests the Court to approve his Twentieth Fee Application totaling \$4,940.63 for his invoice which includes time expended by the Receiver for the one-month time period between June 1, 2023, through June 30, 2023. Attached as Exhibit 1 to this Motion for Approval of Twentieth Fee Application and Brief in Support is the redacted invoice detailing all the Receiver's time entries during the Fee Period.

The Receiver requests the Court enter the proposed Order filed with this Motion to approve the payment of interim expenses of \$2,604.00 for the invoices of his two paralegals and \$22,181.05 for the Receiver's counsel for their most recent invoices to the Receiver for the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Twentieth Fee Period, which were both reasonable and necessary for the Receiver to fulfill his Court-ordered duties.

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<sup>13</sup> The Braham firm invoices in USD.

Respectfully submitted,  
GUY HOHMANN

By: /s/ Guy Hohmann

Guy Hohmann  
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**RECEIVER FOR THE PROPHETMAX AND  
IB CAPITAL RECEIVERSHIP ESTATES**

**CERTIFICATE OF CONFERENCE**

The Receiver conferred with Timothy Mulreany, counsel for the CFTC, who stated the CFTC does not take a position on the Motion nor the relief sought herein.

/s/ Guy Hohmann

Guy Hohmann

**CERTIFICATE OF SERVICE**

On July 27, 2023, 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/ Guy Hohmann

Guy Hohmann



# The Hohmann Law Firm

# INVOICE

Norwood Tower  
 114 West 7th Street, Suite 1100  
 Austin, Texas , 78701  
 Guyh@hohmannlaw.com  
 www.hohmannlaw.com  
 O: 5125519808

Number	1313
Issue Date	6/1/2023
Due Date	6/30/2023
Email	guyh@hohmannlaw.com

## Bill To:

Guy Hohmann Receiver for ProphetMax and IB Capital  
 114 West Seventh Street  
 Suite 1100  
 Austin, Texas 78701  
 O: 512-495-1438

## Time Entries

Time Entries	Rate	Hours	Sub
GMH-RCVR 6/1/2023 Emails to and from Ms. Fiona Fraser regarding Riknik & Sons Ltd. Emails to and from Dennis Roossien regarding [REDACTED]. Review of recommendation from Appleby's firm regarding [REDACTED]. Emails to any from my Slovakian counsel regarding [REDACTED] emails to and from East West bank.	\$658.75	1.80	\$1,185.75
GMH-RCVR 6/2/2023 Emails to and from Michel Geurkink and Dennis Roossien regarding attempting to have Riknik restored to the registry in the Seychelles.	\$658.75	0.40	\$263.00
GMH-RCVR 6/5/2023 Emails forum and to my French counsel regarding [REDACTED]	\$658.75	0.60	\$395.25
GMH-RCVR 6/6/2023 Emails to and from Dennis Roossien regarding [REDACTED]. Email to and from [REDACTED] regarding Motion for Instructions.	\$658.75	0.80	\$527.00
GMH-RCVR 6/7/2023 Multiple emails to and from Rene at Seychamber regarding restoration of Riknik.	\$658.75	0.40	\$263.50
GMH-RCVR 6/8/2023 Emails to and from Dennis Roossien regarding [REDACTED].	\$658.75	0.40	\$263.50
GMH-RCVR 6/13/2023 Multiple Emails to and from Kinstellar law firm and my U.S. [REDACTED]	\$658.75	1.40	\$922.25

Time Entries	Rate	Hours	Sub
GMH-RCVR 6/15/2023 Emails with investor regarding his current address, emails with investors regarding email he received from the Department of Justice, email to paralegal with [REDACTED].	\$658.75	0.70	\$461.13
GMH-RCVR 6/20/2023 Emails with my French counsel regarding [REDACTED] counsel, email with my senior paralegal and an investor regarding timing of First Interim Distribution regarding change of address.	\$658.75	0.60	\$395.25
GMH-RCVR 6/27/2023 Emails from and to my French counsel regarding [REDACTED] [REDACTED]. Emails from to my French counsel [REDACTED].	\$658.75	0.40	\$263.50
	<b>Time Entries Total</b>	<b>7.50</b>	<b>\$4,940.63</b>

Total (USD)	\$4,940.63
Paid	\$0.00
Balance	\$4,940.63

[Terms & Conditions](#)

Net 30