



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-DAE
	§	
SEKEN POUSA, INVESTMENT	§	
INTELLIGENCE CORPORATION,	§	
<i>DBA</i> PROPHETMAX MANAGED FX,	§	
JOEL FRIANT, MICHAEL DILLARD, and	§	
ELEVATION GROUP, INC.,	§	
	§	
<i>Defendants.</i>	§	

**RECEIVER’S UNOPPOSED MOTION TO AMEND PREVIOUSLY ISSUED ORDERS**

Guy M. Hohmann, the Court-appointed Receiver in the above-referenced ProphetMax Receivership matter and the ancillary IB Capital matter, files this Motion to Amend Previously Issued Orders and would respectfully show as follows.

**BACKGROUND INFORMATION**

On March 23, 2023, the honorable Lee Yeakel signed two orders pertaining to two distributions. Both orders have the same distribution due date and the exact language regarding W-9 forms.

The first pertains to the ING Bank Settlement; the Receiver's Motion for Distribution Plan and Procedures for Approval of Disbursement of Funds to Approved Investor Claimants from the ING Bank Settlement.<sup>1</sup>

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<sup>1</sup> Signed Order [Dkt.# 268]. This will result in payments to investors of 33.78% of their approved claim amounts.

The second pertains to funds the Receiver has collected and is prepared to distribute; it is the Unopposed Motion for Approval and the Receiver's Motion for Approval of First Interim Distribution Plan and Procedures (Dkt.# 249).<sup>2</sup>

### **PREVIOUS MOTIONS**

As stated in previous filings, the ING Bank Settlement distribution is on-going. The Receiver has 180 days from the date the order became final on April 24, 2023, to distribute the funds; if the funds are not distributed by October 20, 2023, the Receiver is required to wire the remaining funds back to ING Bank's counsel, if the parties cannot agree upon an extended date parties are free to file a motion with this Court.

The Unopposed Motion for Approval and the Receiver's Motion for Approval of First Interim Distribution Plan and Procedures also orders the Receiver to distribute the funds within 180 days from the date that order is granted to distribute funds.

Both signed orders also share the exact same language "Upon receipt of the W-9 forms, the Receiver shall forward the DocuSign envelope to [Donlin Recano Company Inc.] DRC to take custody of the W-9 forms".<sup>3,4</sup>

At the time the orders were drafted, it was the Receiver's belief, DocuSign would be the fastest and securest way to send and receive the Internal Revenue Services required W-9 forms to the U.S Investor Claimants governed by federal tax laws.<sup>5</sup>

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<sup>2</sup> Signed Order [Dkt. #262]. This will result in payments to investors of 20% of their approved claim amounts.

<sup>3</sup> [Dkt# 268]. pg. 4 (c)

<sup>4</sup> [Dkt# 262]. pg. 3 (b)

<sup>5</sup> The information derived from the W-9 form will be used in drafting the MISC-1099 forms the Approved Investor Claimants will need to file with the IRS with their 2023 income tax filings for their distribution payments.

The Receiver anticipated the ING Bank Settlement distribution taking less than 180 days to complete. The distribution process was complicated by technical difficulties with DocuSign, technical difficulties with non-standardized wire instructions, a large number of investors have aged and do not use email or were not comfortable using DocuSign, they did not respond to the Receiver's email communication regarding the ING Settlement distribution (caught in spam), last known email addresses were no longer valid, a significant number of investors questioned their original approved claim amount and Investor Claimants passed away and investments made out of business entities know longer exist.

All the above listed factors played a role in the estimated time it would take to execute the ING Bank Settlement distributions and have made it extremely difficult to meet the First Interim distribution date of September 19, 2023.

Due to several of the factors listed above, the Receiver and his paralegals have received a large number of W-9 forms via the USPS, photocopies sent via text, pdf images sent via email and ShareFile uploads. Numerous W-9 forms received via DocuSign included inconsistencies. The Receiver's paralegals were and still are currently addressing with Investor Claimant(s) incorrect submitted forms such as: the address included P.O Box which the IRS will not accept, names that do not match the approved claim form, the forms were returned blank no information input etc. The Receiver's paralegals are required to contact the Investor Claimant and retrieve valid information.

### **Conclusion**

Due to the conflicting end dates of the distributions, the Receiver requests this Court to extend the First Interim Distribution date until February 28, 2023, to complete sending the payment wires to international investors.

Due to the vast amount of communication that is required in obtaining and validating the W-9 form information from the Investor Claimants, the Receiver requests this Court to approve the Receiver to retain copies of the completed W-9 forms and send the required W-9 form information via ShareFile to the DRC to issue the MISC 1099 forms to the US Investor Claimants governed by federal tax laws.

Respectfully submitted,  
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 is unopposed the Motion and the relief sought herein.

/s/ Guy Hohmann  
Guy Hohmann

**CERTIFICATE OF SERVICE**

On September 12, 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