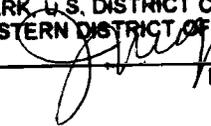


FILED

NOV 15 2012

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

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY

U.S. COMMODITY FUTURES TRADING	)	
COMMISSION,	)	Civil Action No. 1:12-cv-00862-LY
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
SENEN POUSA, INVESTMENT	)	
INTELLIGENCE CORPORATION, <i>DBA</i>	)	
PROPHETMAX MANAGED FX, JOEL	)	
FRIANT, MICHAEL DILLARD, AND	)	
ELEVATION GROUP, INC.	)	
	)	
	)	
Defendants.	)	

**ORDER OF PRELIMINARY INJUNCTION AGAINST DEFENDANTS**

Plaintiff, U.S. Commodity Futures Trading Commission (“Commission” or “CFTC”) has filed and served a Complaint against Defendants Senen Pousa (“Pousa”), Investment Intelligence Corporation, *dba* ProphetMax Managed FX (“IIC”), Joel Friant (“Friant”), Michael Dillard (“Dillard”), and Elevation Group, Inc. (“Elevation”) for Permanent Injunction, Civil Penalties, and Other Equitable Relief, and moved for an *Ex Parte* Statutory Restraining Order and Preliminary Injunction (“SRO”).<sup>1</sup> Docket Entry (“D.E.”) #1 and 2. On September 19, 2012, the

<sup>1</sup> On September 19, 2012, the Court entered a Consent Order of Permanent Injunction and Ancillary Equitable Relief as to Defendants Dillard and Elevation. Further, the Court currently has pending before it a proposed Consent Order of Permanent Injunction and Ancillary Equitable Relief as to Defendant Friant. D.E. #5.

Court issued a SRO as to Defendants Pousa and IIC, which remains in effect until further order of this Court. D.E. #4.<sup>2</sup>

As it appears to the Court that there is good cause to believe that Defendants Pousa and IIC have engaged, are engaging in, or are about to engage in violations of the Commodity Exchange Act, as amended (“Act”) 7 U.S.C. §§ 1 *et. seq.*, and that this is a proper case for granting a preliminary injunction to preserve the *status quo*, protect public customers from further loss and damage, and enable the Commission to fulfill its statutory duties, the Court enters this Order as follows:

#### **DEFINITIONS**

For the purposes of this Order, the following definitions apply:

1. “Assets” means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.
2. The term “document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term.

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<sup>2</sup> On October 25, 2012, the Court entered an order resetting the Preliminary Injunction hearing to November 15, 2012. The order also extended the force and effect of the CFTC Statutory Restraining Order and SEC Temporary Restraining Order to November 15, 2012. D.E. #25.

3. The term “Defendants” refers to Pousa and IIC, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any of the Defendants, and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with any of the Defendants.

I.

*Jurisdiction and Venue*

**IT IS HEREBY ORDERED** that:

4. This Court has jurisdiction over the Defendants and the subject matter of this case pursuant to Section 6c(a) of the Commodity Exchange Act (the “Act”) 7 U.S.C. § 13a-1(a), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

5. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendants are found, inhabit, or transact business in this district, and the acts, practices, and conduct that allegedly violated the Act has occurred, is occurring, or is about to occur within this district, among other places.

II.

*Prohibition from Violating the Act*

**IT IS HEREBY ORDERED** that:

6. Defendants Pousa and IIC, except as otherwise ordered by this Court, are restrained and preliminarily enjoined from directly or indirectly:

- a. Engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant in violation of Section 4o(1)(B) of the Act, 7 U.S.C. § 6o(1)(B) (2006).
- b. Engaging in any conduct in violation of Section 2(c)(2)(C)(iii)(I)(bb) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2006 & Supp. V 2011) including, but not limited to, exercising discretionary authority over accounts of individuals who were not ECPs, as defined in Section 1a of the Act, 7 U.S.C. § 1a, in connection with retail forex transactions.
- c. Engaging in any conduct in violation Commission Regulation (“Regulation”) 5.3(a)(3)(ii), 17 C.F.R. § 5.3(a)(3)(ii) (2012), including, but not limited to, acting as an AP of an CTA without registering with the Commission.

7. Defendants Pousa and IIC are also restrained and preliminarily enjoined from directly or indirectly

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a);
- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2012)) (“commodity options”), security futures products, foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) and/or swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Regulation 1.3, 17 C.F.R. 1.3) for their own personal account or for any account in which they has a direct or indirect interest;

- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts and/or swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Regulation 1.3, 17 C.F.R. 1.3) traded on their behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Regulation 1.3, 17 C.F.R. 1.3);
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Regulation 1.3, 17 C.F.R. 1.3);
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

**III.**

***Continued Force and Effect of Statutory Restraining Order***

**IT IS HEREBY ORDERED** that:

8. The Court's September 19, 2012 SRO shall continue in full force and effect against Defendants until further order of the Court. Defendants shall comply fully with all requirements of the SRO including, but not limited to, the requirements pertaining to the: (1) asset freeze, (2) directives to financial institutions and others, (3) maintenance and access to business records, and (4) inspection and copying of books and records. The SRO's prohibition against transfer, dissipation, and disposal of assets shall continue to apply to all assets directly or indirectly under the control of any of the Defendants.

**IV.**

***Continued Force and Effect of Court's Appointment of Receiver***

**IT IS HEREBY ORDERED** that:

9. The Receiver, Guy M. Hohmann, appointed under this Court's SRO shall continue to serve as Receiver in this proceeding with all of the duties and powers set forth in the SRO. Pursuant to the SRO, Defendants, and all other persons or entities served with a copy of the SRO shall continue to cooperate fully with and assist the Receiver.

**V.**

***Service of Order***

**IT IS HEREBY ORDERED** that:

10. Copies of this Order may be served by any means, including facsimile transmission and electronic mail, upon any financial institution or other entity or person that may

have possession, custody, or control of any documents or assets of Defendants or that may be subject to any provision of this Order.

**VI.**

*Service on the Commission*

**IT IS HEREBY ORDERED** that:

11. Defendants shall serve all notices and other such materials required by this Order, and other materials on the Commission by delivering a copy to Timothy J. Mulreany, Chief Trial Attorney, Division of Enforcement and/or JonMarc P. Buffa, Senior Trial Attorney, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21<sup>st</sup>, N.W. Washington, DC 20581 via FedEx, UPS, or other reliable overnight delivery service.

**VII.**

*Force and Effect of Order*

**IT IS HEREBY ORDERED** that:

12. This Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

**SO ORDERED**, this 15<sup>th</sup> day of November, 2012.

  
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Judge Lee Yeakel  
UNITED STATES DISTRICT JUDGE

cc: All parties and counsel of record