

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

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

SECURITIES AND EXCHANGE)
COMMISSION) Civil Action No. 1:12-cv-00863-LY
)
Plaintiff,)
)
v.)
)
SENEN POUSA and)
INVESTMENT INTELLIGENCE)
CORPORATION PTY LLC)
)
Defendants.)
)
)
)

**U.S. COMMODITY FUTURES TRADING COMMISSION’S AND U.S. SECURITIES
AND EXCHANGE COMMISSION’S JOINT STATUS UPDATE TO THE VICTIMS OF
THE PROPHETMAX FRAUD**

We are writing to you on behalf of the U.S. Commodity Futures Trading Commission (“CFTC”) and U.S. Securities and Exchange Commission (“SEC”) (collectively, the “Agencies”) to provide an update on the status of the ProphetMax fraud cases. The Agencies are under a duty in these civil enforcement actions to proceed in the best interests of the

public and the defrauded investors. The ultimate goal of the CFTC and SEC by prosecuting these actions—and the court-appointed Receiver through its execution of its court-ordered duties—is to hold wrongdoers accountable under the law and to ensure a fair and equitable return of funds to investor-victims. To that end, the Agencies are working to: (1) achieve an expeditious distribution of Receivership funds back to investors—while at the same time maximizing the overall amount recovered and minimizing administrative costs; and (2) ensure that the perpetrators of this massive fraud are held responsible. Below, the Agencies summarize the status of these efforts both in the U.S. and abroad.

Status of U.S. Proceedings

Receivership

Since appointment by the US District Court for the Western District of Texas (“Court”) in September, 2012, Guy Hohmann (“Receiver”) has been working as expeditiously as possible to discharge his duties. At the direction of, and under the supervision of, the Court, he is continuing to examine the facts and circumstances of these civil enforcement actions. The Receiver has made strides in obtaining relevant documents, assessing the assets at issue, analyzing financial records, addressing issues with regard to purported property of Defendants, identifying and recovering misappropriated investor funds, and accomplishing other important tasks called for by the Court. The Agencies have been coordinating with the Receiver to ensure he discharges his duties as required by the Court. Given that the vast majority of the Receiver’s tasks have been completed, the Agencies and Receiver expect that the Receivership’s activity level will be greatly reduced pending a distribution. Though the Agencies cannot provide you with legal advice, if you have not done so already, all victims should consider submitting their claims for return of their misappropriated funds to the Receiver.

Identifying and Recovering Misappropriated Investor Funds

As previously explain in the Receiver’s June 24, 2013 letter to investor-victims, it appears that Mr. Hohmann has now identified the substantial majority of assets that may be recovered by the Receivership. To-date, the amounts recovered or frozen include: (1)

\$1,165,376.97 held by the U.S. Receiver in an interest-bearing trust account; (2) approximately \$3.4 million either controlled by the Australian Liquidator or frozen by financial institutions in Australia; and (3) “many millions of euros” frozen by the Dutch authorities in bank accounts both inside and outside the Netherlands.

Given the global nature of this fraud, the Agencies are working closely with foreign authorities to seek prompt return to the Receiver of all misappropriated investor-victim funds wherever situated. The Agencies have been working cooperatively with the Australian Securities and Investments Commission (“ASIC”), the Dutch Public Prosecution Service (“PPS”), and other foreign regulators to find and safeguard funds that can be returned to the victims of the ProphetMax fraud. These collection efforts are ongoing, but the collection and management of the restrained funds is subject to the legal requirements of each country.

The Agencies are in frequent communication with the foreign authorities, and have made clear that whether money is distributed through the Receiver or through a non-U.S. entity (such as the Australian Liquidator discussed below), all of these funds were fraudulently obtained and should be returned to defrauded investors in the quickest and most efficient manner possible. While the Agencies are committed to seeking return of these funds to defrauded investors as quickly as possible, unfortunately, at present, the Agencies cannot make an accurate prediction about when and if these internationally restrained funds may be returned to the investor-victims. For example, it is possible that a distribution of foreign funds may not happen until the legal proceedings in Australia and the Netherlands are completed. We have included updates from both the Australian and Dutch authorities to give you a better sense of the status of the litigation in those jurisdictions.

Recently, an Australian Court appointed a liquidator (“Australian Liquidator”) to manage the winding up of Investment Intelligence Corporation, *dba* ProphetMax Managed FX (“IIC”) in Australia. The Agencies and the Receiver are working to ensure that the Australian Liquidator understands the nature of the fraud and appropriately considers the interests of defrauded investors as part of the Australian liquidation. We have opened a dialogue with the Australian Liquidator in the hope that he will agree to work cooperatively with the Receiver to initiate an interim distribution to investors in the near future. Once

sufficient funds are in the possession of the Receiver, he will make an application to the Court for a claims administration process that will distribute funds back to defrauded investors. At this time, we believe this would be the most cost-effective way to quickly get a distribution to investors.

Cases Against Senen Pousa, Investment Intelligence Corp., Joel Friant, and Mike Dillard

On September 18, 2012, the Agencies sued Senen Pousa (“Pousa”), IIC, and Joel Friant (CFTC matter only) (“Friant”) for fraud (and other related charges) in connection with the ProphetMax offerings. The CFTC also sued Elevation Group (“Elevation”) and Mike Dillard (“Dillard”) for registration violations. The same day, the Court issued orders restraining Pousa, IIC, and Friant from continuing their fraudulent conduct, restraining Friant’s, Pousa’s, and IIC’s assets globally, and appointing the Receiver to identify, recover, safeguard, and ultimately distribute frozen funds for the benefit of defrauded investors. On November 15, 2012, the Court held a hearing during which the Agencies presented evidence of the ProphetMax fraud. Based on that evidence, the Court converted the restraining orders into preliminary injunctions which remain in effect today.

On November 30, 2012, the Court Clerk entered a default judgment against Pousa and IIC because they failed to answer the charges brought by the Agencies. This means that the allegations against Pousa and IIC are deemed admitted. This August, after completing a thorough investigation—including analyzing numerous records and interviewing and/or deposing relevant individuals—the Agencies moved for default judgments against Pousa and IIC. The SEC asked that the Court enter a final judgment of \$33,384,667 against Pousa and IIC plus civil monetary penalties of up to \$144 million. The CFTC asked that the Court enter a final judgment of \$33,299,821 against Pousa and IIC plus civil monetary penalties of up to \$79.5 million. The Agencies also moved the Court to permanently enjoin Pousa and IIC from defrauding investors in the future and to impose other civil remedies. These motions are currently pending. If the Court grants those motions, the Agencies’ cases against Pousa and IIC would be largely complete, but the Agencies would continue their work with the Receiver, foreign regulatory agencies, the Australian Liquidator, and others to help return as many funds as possible to defrauded investors.

As to Friant, Dillard, and Elevation, the Court entered consent orders of permanent injunction and other statutory and equitable relief in the CFTC matter. These consent orders establish liability for their violations of federal law. To date, Elevation and Dillard have jointly disgorged \$750,000 to the Receiver. Friant's restrained assets are under the management and control of the Receiver. The penalty phase for Friant, Dillard, and Elevation will commence soon, unless settlements are reached with these defendants.

Status of Related Proceedings in Australia

At the request of the Agencies, ASIC provided the following update on the status of related proceedings in Australia:

“ASIC has been investigating Investment Intelligence Corporation and Senen Pousa and on 26 July 2012, ASIC obtained interim orders, by consent, in the Queensland Supreme Court over \$3,092,799 held by St George Bank and \$313,136 held by American Express Australia in the accounts of Investment Intelligence. ASIC subsequently sought order from the Court to have Investment Intelligence wound up, but prior to the trial of the proceeding, on 31 May 2013, Mr. Pousa appointed Blair Pleash and Richard Albarran of Hall Chadwick as administrators of Investment Intelligence.

On 7 June 2013 ASIC filed an application to have the administration terminated and PricewaterhouseCoopers appointed as provisional liquidators of Investment Intelligence. On 12 June 2013 the Court made orders that the administration be terminated and that Mr. Pleash of Hall Chadwick be appointed as a provisional liquidator of Investment Intelligence. Hall Chadwick were subsequently appointed as liquidators of Investment Intelligence on 19 June 2013 after a creditor had Investment Intelligence wound up on the grounds of insolvency. Investment Intelligence Corporation Pty Ltd Creditors of Investment Intelligence Corporation Pty Ltd should [contact Hall Chadwick \[http://www.hallchadwick.com.au/media-releases/investment-intelligence-corporation-pty-ltd\]](http://www.hallchadwick.com.au/media-releases/investment-intelligence-corporation-pty-ltd).

ASIC's investigation is continuing.”

Though the Agencies cannot provide you with legal advice, all victims should consider submitting their claims for return of their misappropriated funds to the Australian Liquidator.

This will help ensure that your losses are properly recorded and considered in the Australian proceedings. To assist you in filing your claims, the Australian Liquidator's July 24, 2013 letter to creditors and claim form is attached as Exhibit "A."

Status of Related Proceedings in The Netherlands

At the request of the Agencies, the PPS provided an update on the status of related proceedings in The Netherlands. A copy of that update is attached as Exhibit "B."

Conclusion

Thank you for your patience and support during what is a complex case involving many international agencies and financial institutions. That complexity makes these civil enforcement actions more challenging and multifaceted. The CFTC and SEC remain committed to acting in the most effective and efficient manner possible to return as much funds as possible to the investor-victims of this massive fraud and to the civil prosecution of the wrongdoers. As always, please feel free to contact the Receiver with any questions at receiver@prophetmaxreceivership.com or at his website www.prophetmaxreceivership.com.

Dated: September 19, 2013

Respectfully Submitted,

/s/ JonMarc P. Buffa
Timothy J. Mulreany
JonMarc P. Buffa
Division of Enforcement
US Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

/s/ Chris Davis
Chris Davis
Division of Enforcement
U.S. Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, TX 76102

CERTIFICATE OF SERVICE

The undersigned certify that on September 19, 2013, they electronically filed the foregoing U.S. COMMODITY FUTURES TRADING COMMISSION'S AND U.S. SECURITIES AND EXCHANGE COMMISSION'S JOINT STATUS UPDATE TO THE VICTIMS OF THE PROPHETMAX FRAUD with the Clerk of this Court in the respective actions using the CM/ECF system, and they are relying upon the transmission of the Clerk's Notice of Electronic Filing for service upon parties of this action and by Express Mail on Defendants IIC and Pousa at: 218 Old Byron Bay Road Newrybar NSW 2479 Australia.

Further, notice was given to the known victims by: 1) posting it on the CFTC and SEC websites; 2) posting it on the Receiver's website; and 3) distributing it by email (to those victims who had email addresses known to the Receiver) and by the Receiver's social media accounts/message boards such as Facebook.

In CFTC v. Pousa et al, 12-CV-862-LY

/s/ JonMarc Buffa_____

In SEC v. Pousa et al, 12-CV-863-LY

/s/Chris Davis

Exhibit “A”

24 July 2013

CIRCULAR TO MEMBERS

OF

INVESTMENT INTELLIGENCE CORPORATION PTY LIMITED
(IN LIQUIDATION)
A.C.N. 101 616 371
("the Company")

We advise that the Company had previously appointed Richard Albarran and Blair Pleash of Hall Chadwick Chartered Accountants as Administrators effective 31 May 2013.

We understand that you may hold "membership" with the Company in relation to its product offerings.

Investment Intelligence Corporation Pty Limited traded as an online financial mentoring company from premises located in Brisbane, QLD. The Company had a significant online presence and an international investor following. However, the online presence of the Company has been suspended.

Initial investigations have identified that the Australian Securities and Investments Commission ("ASIC") and the United States Commodity Futures Trading Commission are currently investigating the business dealings and financial affairs of the Company. ASIC applied to terminate the Administration – that application was heard on 12 June 2013 in the Supreme Court of Queensland in Australia. The Court ordered that: -

- (i) The Administration end; and
- (ii) The Company be placed into provisional liquidation; and
- (iii) I, Blair Pleash, be appointed as provisional liquidator.

Notwithstanding the above, I advise that on 19 June 2013, I was appointed Official Liquidator of the Company by an Order of the Supreme Court of Queensland in Australia.

As Official Liquidator I will be investigating the Company's business, property and financial affairs and reporting to creditors on a detailed basis. This report to creditors will detail the investigations into the Company's affairs, the availability of assets, and any other voidable transaction recoveries that may be realised for the benefit of creditors.

At this stage, I request that those individuals who may hold membership complete the attached proof of debt form and return to this office. The return of these forms will assist in our investigations into the Company.

Further information regarding the liquidation will be released in due course at the following web address:

www.hallchadwick.com.au/iic

Yours faithfully


BLAIR PLEASH
OFFICIAL LIQUIDATOR

BRISBANE

Level 19
 144 Edward Street
 Brisbane QLD 4000
 Australia

Ph: (617) 3211 1250
 Fx: (617) 3211 1249

SYDNEY

Ph: (612) 9263 2600
 Fx: (612) 9263 2800

NEWCASTLE

Ph: (612) 4969 5521
 Fx: (612) 4969 6059

PARRAMATTA

Ph: (612) 9687 2100
 Fx: (612) 9687 2900

PENRITH

Ph: (612) 4721 8144
 Fx: (612) 4721 8155

MELBOURNE

Ph: (613) 8678 1600
 Fx: (613) 8678 1699

PERTH

Ph: (618) 9489 2560
 Fx: (618) 9489 2562

GOLD COAST

Ph: (617) 5538 2322
 Fx: (617) 5526 8599

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Australian Company Number: 101 616 371

FORM 535

Subregulation 5.6.49(2)

Corporations Act (2001)

FORMAL PROOF OF DEBT OR CLAIM
(GENERAL FORM)

To the Official Liquidator of Investment Intelligence Corporation Pty Limited (In Liquidation)

1. This is to state that the Company was on, Wednesday, 19 June 2013 and still is, justly and truly indebted to:.....
(full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for \$.....and.....cents.

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

- *3. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.
- *4. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

.....
Signature:
Occupation:
Address:

Dated:

Proof of Debt Reference:

Exhibit “B”

National Public Prosecutor's Office for serious fraud,
environmental crime and asset confiscation/
Functioneel Parket

Enforcement Unit Amsterdam/Handhavingseenheid Amsterdam

Address: PO Box 779, 1000 AT Amsterdam, The Netherlands

The United States Securities and Exchange
Commission
f.a.o. Mr. C. Davis
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, Texas 76102-6882

Department	Fraud team
Contact	Ms F. Heus/Mr. J.M. Mul/Mr. B.J.A.F. Oostdijk
Date	August 19, 2013
Concerning	Cayenne investigation

Dear Mr Davis,

It is my understanding that the judge in the US District Court for the Western District of Texas, Austin Divion, in the cases 12-cv-00862-LY and 12-cv-00863-LY has requested information about the investigations into this matter in foreign jurisdictions. I am happy to comply with this request by providing you with information which has been made public during open hearings in the District Court of Noord-Holland in the city of Haarlem (The Netherlands) and via press releases, both in Dutch and English.

I am a Public Prosecutor working with the National Prosecutor's Office for serious fraud, environmental crime and asset confiscation (in Dutch: Functioneel Parket) which is part of the Dutch Public Prosecution Service. Under my supervision the Dutch Fiscal Information and Investigation Service (FIOD) is conducting a criminal investigation under the name "Cayenne", into the laundering of many millions of euros originating from investment fraud which is related to the abovementioned civil cases.

In the course of this investigation two Dutch citizens who allegedly play a part in the investment fraud and subsequent money laundering have been arrested. These two men are being held in pre-trial detention.

The District Court of Noord-Holland in Haarlem will decide on the extension

of the pre-trial detention in a public hearing on October 18, 2013. The investigation is still ongoing and its conclusion will take at least several more months. The trial on the merits at the District Court of Noord-Holland will probably not take place until 2014.

We have frozen many millions of euros on several bank accounts both inside and outside of The Netherlands. This also serves to compensate duped investors where possible. However, this requires an irrevocable verdict (i.e. from the Court of Appeal or Supreme Court) in our criminal case which will take several years and cooperation of the other jurisdictions involved.

Please find attached the press releases about this investigation which have been issued on our website (www.om.nl) on December 17, 2012 and May 13, 2013.

Yours sincerely,
the Public Prosecutor,

Ms F. Heus





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Suspects in international money laundering investigation remain in custody

[VERKLAAR JARGON](#)

13 mei 2013 - Functioneel Parket

The two Dutch main suspects in a criminal investigation into the laundering of many millions of euros originating from investment fraud, are to remain in custody. The district court in the city of Haarlem has extended their pre-trial detention until 25 July 2013.

The many millions of euros which the suspects are allegedly to have laundered originate from investors who thought they were investing in forex trade. The investors paid their money into an account held in the name of a company called IB Capital FX LLP, registered in New Zealand. The money has been channeled away via a Dutch bank account to bank accounts controlled by the suspects in and outside the Netherlands. The deceived investors seem to live mainly in Australia and the United States.

The investigation is still ongoing and its conclusion will probably take several months. The Dutch Public Prosecution Service has frozen bank accounts connected to this investigation both inside and outside of The Netherlands and is still conducting the search for more accounts to be seized. This also serves to compensate duped investors where possible.

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Investigation into international money laundering case

[VERKLAAR JARGON](#)

17 december 2012 - Functioneel Parket

The Dutch Fiscal Intelligence and Investigation Service [FIOD] has arrested two main suspects in the Netherlands in a criminal investigation into laundering tens of millions of euros. The money originates from an international investment fraud, in which the two men, aged 33 and 40, allegedly play a role.

Through the intermediary of a company named IB Capital FX LLP, registered in New Zealand, many millions of euros from investors who thought they were investing in forex trade have been channelled away via Dutch bank accounts to bank accounts of the suspects in and outside the Netherlands. The deceived investors seem to live mainly in Australia and the United States, although some investors are from the Netherlands.

After a report from the Dutch Financial Markets Authority [AFM] who in turn had been informed by the supervisory bodies in Australia and the United States in September 2012, the FIOD intervened quickly. This approach has prevented more money from being channelled away and new investors from being defrauded.

The investigation is still ongoing and is conducted under supervision of the so-called Functioneel Parket of the Dutch Public Prosecution Service. At this time, neither the exact amount of the financial loss nor the exact number of victims has been established.

On Tuesday 11 September, the FIOD arrested a 33 year old Dutch citizen in the city of Haarlem. He had already been convicted for investment fraud before. At this time, the suspect is still in custody. On 17 December during the first public hearing, the District Court in Haarlem extended the pre-trial detention of the 33 year old man until the 11th of February 2013. That day there will be another public hearing.

On Saturday 3 November, the 40 year old suspect was arrested in the Dutch city of Winterswijk. This suspect had also been convicted before on account of fraud. Mid November, the Haarlem Court extended the pre-trial detention of this suspect until February 2013.

In the meantime, the FIOD and the Public Prosecution Service have seized bank accounts in the Netherlands and abroad containing over 13 million euro. Rounding up the investigation will at least take another few months.

The Functioneel Parket is part of the Public Prosecution Service in the Netherlands and is specialised in the investigation and prosecuting of economic and environmental crimes. The Functioneel Parket staff has specific know-how which enables them to conduct complicated criminal financial investigations. On a regular basis they are involved in investigations with international dimensions.

[Naar boven](#) ^