



and Order to Show Cause re Preliminary Injunction [Docket #2], the Court entered a Statutory Restraining Order (“Order”) [Docket #4] on September 18, 2012 and appointed Guy M. Hohmann to serve as the Receiver for the assets of Defendants Senen Pousa, ProphetMax, and Joel Friant (collectively, “Defendants”), including the assets of Defendants’ respective affiliates and subsidiaries (the “ProphetMax Receivership Estate” or “Estate”). *See* Order ¶ 19. Under the Order, the Receiver was given broad powers and duties to assume responsibility for the Estate and to marshal the Estate’s assets.<sup>1</sup>

2. At this time the Receiver is prepared to begin his Claims Process, which will allow the Receiver to distribute the Estate’s Assets (“Funds”) to investors with valid claims against the Estate in the coming months. Through this Motion, the Receiver seeks the Court’s approval to:

- a. give notice of and instructions regarding the Claims Process to Investors by electronic means;
- b. accept claims by electronic means;
- c. determine whether a claim is valid, and if that amount is disputed, assert the amount that is valid; and
- d. establish a Bar Date.

## II. DISCUSSION

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<sup>1</sup> Under paragraphs 19-20 of the Order, the Receiver was given the following general powers and duties: (i) assume full control of ProphetMax and its business entities; (ii) take exclusive custody, control, and possession of all funds, property, mail and other assets of Defendants; (iii) assume full power to sue for, collect, receive and take possession of Defendants’ goods, chattels, rights, moneys, land, books, and records; (iv) take all steps necessary to secure Defendants’ residential and business premises; (v) preserve, hold and manage all assets of the Estate, 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; (vi) prevent the withdrawal or misapplication of funds entrusted to Defendants; (vii) manage and administer Defendants’ assets; (viii) collect all money owed to Defendants; (ix) initiate, defend, compromise, or become a party to any actions or proceedings necessary to preserve or increase Defendants’ assets; (x) engage and employ attorneys, accountants, appraisers, and other technical specialists, as the Receiver deems advisable or necessary; (xi) issue subpoenas and conduct discovery to obtain documents and records pertaining to the Estate; (xii) open bank accounts as designated depositories for Defendants’ funds; and (xiii) make payments and disbursements from the Estate that are necessary or advisable.

## A. Notice via Electronic Means

1. By information and belief, there are over 3,600 investor victims of the ProphetMax fraud with potential claims for recovery of membership fees and/or investment amounts (“Investors”). Before the Receiver can conduct a distribution, Investors must provide the Receiver with details regarding their losses and documentation supporting their claim (the “Claims Process”). The Receiver must provide Investors with notice of the Claims Process and Bar Date (described below) comporting with due process. The Receiver believes that the Claims Process and notice procedure outlined below provide an efficient and effective system that accounts for the digital nature of this case and the vast number of Investors living abroad.

2. Notice of the Claims Process must comport with procedural due process. A party must receive notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). In the receivership context, federal courts have distinguished between “known” and “unknown” creditors or investors in determining adequacy of notice. *See In re Waterford Energy*, 294 Fed. Appx. 900, 904 (5th Cir. 2008), *citing Zurich Am. Ins. Co. v. Tessler (In re J.A. Jones, Inc.)*, 492 F.3d 242, 249-250 (4<sup>th</sup> Cir. 2007). A creditor whose identity is actually known or “reasonably ascertainable” to the debtor is considered a known creditor. *Tessler* at 250. “Reasonably ascertainable” has been defined as a creditor that can be discovered through “reasonably diligent efforts.” *In re Crystal Oil Co.*, 158 F.3d 291, 297 (5th Cir.1998) (quoting *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 n. 4, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983)). As to known creditors, actual notice of a bar date is required in order for the bar date to be effective. *Tessler* at 249-250. On the other hand, constructive notice (typically in the form of publication) suffices to provide an unknown creditor with notice of a bar date.

3. In similar circumstances, federal courts – including those in the Fifth Circuit - have found that e-mail notice comports with due process. *See RPost Holdings, Inc. v. Kagan*, 2012 WL 194388 at \*2 (E.D.Tex. Jan. 23, 2012) (holding that e-mail service of complaint was valid); *Browning v. Yahoo! Inc.*, C04-01463 HRL, 2007 WL 4105971, at \*4 (N.D. Cal. Nov. 16, 2007) (where claims arose from “visits to Defendants’ internet websites,” e-mail notice was “particularly suitable”); *Lundell v. Dell, Inc.*, CIVA C05-3970 JWRS, 2006 WL 3507938, at \*1 (N.D. Cal. Dec. 5, 2006) (notice to class which was emailed, sent by first class mail to those who did not receive the notice via email, and posted to the class website, satisfied due process and provided the best practicable notice to the members of the class).

4. The Receiver proposes the use of electronic notice to apprise Investors of the Claims Process in order to greatly reduce the costs associated with the notice process, and believes electronic notice is appropriate given the digital nature of the ProphetMax fraud. The ProphetMax fraud was fundamentally an internet-based scheme, similar to cases outlined herein in which courts have approved notice via electronic means. Investors were introduced to the ProphetMax scheme via the Elevation Group website *www.theelevationgroup.net*, through which Investors were directed to the ProphetMax website and invited to participate in various webcasts, webinars, podcasts, and online seminars. Senen Pousa and the other principals of the ProphetMax fraud communicated with Investors by email and periodic webinars which were only accessible online. Investors became aware of and remained connected to the ProphetMax scheme through its internet presence. Under the circumstances, it is reasonable to assume the Investors have regular internet access, and that notice via electronic means would comport with due process in this case. *See Browning v. Yahoo Inc.*, 2007 WL 4105971 at \* 4.

5. Specifically, the Receiver requests approval of the following notice procedures: within 14 days after entry of the Court's Order, the Receiver will (1) provide notice of the Claims Process via email to all known Investors in a form substantially similar to the notice attached hereto as **Exhibit A** ("Notice"); (2) provide Notice via postcard to known Investors for whom the Receiver has no email address, or to those for whom the Receiver receives a return email demonstrating that the email address provided is no longer valid;<sup>2</sup> and (3) publish the Notice on the Receiver's website at [www.prophetmaxreceivership.com](http://www.prophetmaxreceivership.com), and the Receivership Facebook page entitled "ProphetMax Receivership."<sup>3</sup>

6. The Receiver submits that the proposed notice procedure, which is reasonably calculated to apprise Investors of the Claims Process and comports with due process, is in the best interest of the ProphetMax Receivership Estate and should be approved.

#### **B. Electronic Submittal of Claims**

7. The Receiver has prepared an online claim system that will allow Investors to electronically submit a form containing information regarding their claim, as well as documentation supporting their claim (the "Claim Form").<sup>4</sup> The Notice provided by the Receiver via email or publication will contain a link, or in the case of Notice provided by postcard, a web address, directing Investors to the online Claim Form and instruction site. Investors who visit the website will have the ability to fill out and submit the claim form electronically, and to submit documentation supporting their claims through the Receiver's file share mechanism.

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<sup>2</sup> The Receiver's database contains under 100 Investors whose email addresses have not been provided, but for whom a name and address has been obtained; approximately 50 of those Investors provided an address that is outside of the U.S.

<sup>3</sup> The Receiver has used these pages to communicate with and update investors, and publication to these pages will provide notice to unknown Investors in addition to providing supplementary notice to known Investors.

<sup>4</sup> Investors will be required to complete and submit a form substantially similar to the form attached hereto as **Exhibit B**.

8. The notice of the Claims Process will prompt recipients to visit a webpage on the Receiver's website. The page will contain instructions for submitting claims and documentation, and a second link to access the Claim Form. The Claim Form will prompt Investors to enter contact information and claim information (including amounts of membership fees and other amounts invested, as well as the amount of any funds returned to the Investor). In addition to requesting information regarding the Investor's claim, the Claim Form includes a consent to jurisdiction which provides the Investor's consent to this Court's exclusive jurisdiction regarding any dispute related to the Investor's claim. The Claim Form also requires Investors to attest that the claim submitted is true and correct under penalty of perjury. Once Investors electronically submit the Claim Form, they will be prompted to upload documentation supporting their claim. Upon receipt of a claim form documentation, the Receiver will send a response email to the email address provided on the Investor's Claim Form confirming that the Claim Form, documentation, or both, have been received.<sup>5</sup> Confirmation of receipt will have no bearing on whether the Claim Form is complete, whether the documentation provided is sufficient, and/or whether the Investor's claim is approved; it will simply confirm receipt of transmission.

9. The Receiver submits that the online claim system is designed to receive the claims of Investors in a cost-effective manner. Therefore, every Investor should assert all claims through the Receiver's online Claim Form and file share system. Any Investor who wishes to submit their claim via mail or by any other alternative means should contact the Receiver at receiver@prophetmaxreceivership.com, or by letter postmarked no later than 30 calendar days

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<sup>5</sup> If the Receiver has agreed to an alternative means of claim submittal as discussed below, the Receiver will provide confirmation of receipt of the claim via the alternative method agreed upon.

prior to the Bar Date (discussed below) to request approval of the alternative method, which may be granted in the Receiver's sole discretion.<sup>6</sup>

### **C. Bar Date**

10. In order to obtain certainty regarding the number and aggregate amount of claims and to allow for a final distribution of all Receivership Estate funds, a date must be set by which all claims are to be submitted (the "Bar Date"). The Receiver believes that 60 days will be sufficient for the Receiver to provide notice of the Claims Process and for both U.S.-based and internationally located Investors to collect and submit their claims. The Receiver therefore requests the Court's approval to establish a Bar Date of 11:59 p.m. (prevailing Central Time) on the first Tuesday that is 75 calendar days after the date the Court enters its Order regarding the relief requested in this Motion. 75 days will provide both U.S.-based and international Investors the opportunity to organize and submit documentation supporting their claims, as well as provide Investors who wish to submit claims via an alternate means with ample time to contact the Receiver to obtain approval.

11. If an Investor fails to submit a Claim Form by the Bar Date, the Investor will nevertheless be entitled to receive a pro-rata distribution calculated to the best of the Receiver's ability based on the Receiver's records. No claim will be barred simply based on the Investor's failure to submit a Claim Form, although submittal of a Claim Form is the best way for an Investor to ensure that the Receiver has sufficient information to provide a disbursement. It is important to note that the Receiver's records are missing pertinent information for some of the Investors, such as mailing addresses, email addresses, amount of funds invested with the Defendants, membership fees paid, etc. Thus, an Investor who fails to submit a Claim Form bears the risk that the Receiver

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<sup>6</sup> Requests for approval of an alternative means of claim submittal via mail may be addressed to: ProphetMax Receivership, c/o Guy Hohmann, 210 Barton Springs Rd., Suite 250, Austin, Texas 78704.

may be unable to determine the amount of any losses incurred by this subset of Investors and so the Receiver will be unable to approve a claim for these Investors as described in Section D, below.

#### **D. Approval of Claims**

12. After receiving a claim and supporting documentation, the Receiver will reconcile the data provided with the information collected throughout the Receivership. Assistants with a low hourly rate will support the Receiver in reviewing documentation submitted with each claim. The Receiver and his assistants will reconcile claims on a rolling basis beginning as soon as the first claim is submitted. The Receiver hopes to complete reconciliation of each Investor's claim as soon as possible, although time needed after the Bar Date has passed to complete reconciliation of all claims will be dependent upon the amount of claims received near that date. Once the Receiver has determined in his sole discretion whether a claim is valid, the Receiver's assistants will notify the Investor via the email provided with the Investor's Claim Form (or via U.S. mail if only a mailing address has been provided) whether the claim is valid or invalid (the "Claim Determination").<sup>7</sup> The Claim Determination will clearly include the amounts, if any, the Receiver believes the Investor invested (including ProphetMax membership fees) as well as amounts the Receiver believes have previously been returned to the Investor.<sup>8</sup>

#### **E. Objecting to the Claim Determination**

13. Investors should have the opportunity to object to the Receiver's Claim Determination. The Receiver proposes that each Investor be given 60 days from the Bar Date to submit an objection. The objection should be emailed to the Receiver at receiver@prophetmaxreceivership.com on or before 11:59 p.m. (prevailing Central Time) on the

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<sup>7</sup> In the event the Receiver has agreed to an alternative means of claim submittal as discussed below, the Receiver will provide the Claim Determination via the alternative method agreed upon.

<sup>8</sup> The amount an Investor may recover on a valid claim will likely not be equal to 100% of the amount of the claim. The distribution percentage will be dependent upon the aggregate total of valid Investor claims.

date that is 60 days after the Bar Date. If the Receiver has agreed to an alternative means of claim submittal, an objection may likewise be sent via the alternative method agreed upon and shall be received on or before 11:59 p.m. (prevailing Central Time) on the date that is 60 days after the Bar Date.

#### **F. Release**

14. Finally, the Receiver proposes the release attached hereto as **Exhibit C** from each Investor who submits a claim (the “Release”). The Release provides that any Investor who seeks to receive a distribution from the ProphetMax Receivership Estate will release the Receiver from any claim the Investor has or may assert in excess of the amount of the Claim Determination. The purpose of the Release is to prevent an Investor from later contesting a Claim Determination or amount of distribution received after the objection process has occurred, thus allowing the Receiver to reliably conduct a final distribution. By signing the Release, Investors are not releasing a claim to any additional funds that have already been recovered but are not held in the ProphetMax Receivership Estate, or releasing a claim to any additional funds that may be recovered from any other source. Similar releases have been approved in other receiverships or trusteeships involving distributions. *In re MF Global Holdings Ltd.*, 2013 WL 139594, 1 (S.D.N.Y. January 11, 2013); *In re MF Global Inc.*, 2012 WL 1424670 (Bankr. S.D.N.Y. Apr. 24, 2012). The Receiver will provide a reminder to Investors regarding submittal of the release both during confirmation of receipt of the Claim and once the final Claim Determination is sent.

### **III. PRAYER**

The Receiver respectfully requests that the Court enter an Order approving Receiver’s proposed Claims Process, method of notice and receipt of claims, and the Bar Date, and providing any other relief this Court finds proper.





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**From:**

**Sent:**

**To:**

**Subject:** ProphetMax Receivership – Notice of Claim Bar Date

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

*United States Commodity Futures Trading Commission v. Senen Pousa, Investment Intelligence Corporation d/b/a ProphetMax Managed FX, Joel Friant, Michael Dillard, and Elevation Group, Inc.*, Civil Action No. A-12-CV-0862-LY

**COURT-APPROVED NOTICE OF CLAIMS BAR DATE**

***THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.***

Dear Claimant:

On September 18, 2012, the United States District Court for the Western District of Texas, Austin Division (the “Court”) entered a Statutory Restraining Order (“Order”) appointing Guy M. Hohmann to serve as the Receiver for the assets of Defendants Senen Pousa, Investment Intelligence Corporation d/b/a ProphetMax Managed FX, and Joel Friant (collectively, the “Receivership Defendants”), including the assets of Defendants’ respective affiliates and subsidiaries (the “ProphetMax Receivership Estate” or “Estate”). On \_\_\_\_\_, 2015, the Court entered an order that authorized the Claims Process, set the Bar Date and authorized certain notice procedures in regard to the Claims Process and the Bar Date.

You are receiving this Notice because our records indicate you *may* hold a claim against the Receivership Defendants. Receiving this Notice does not mean that you hold a claim.

**Deadlines for Submitting Claims**

NOTICE IS HEREBY GIVEN that all investor victims of the ProphetMax fraud with potential claims for recovery of membership fees and/or investment amounts (“Investors”) from the ProphetMax Receivership Estate should file their claim with the Receiver so that it is actually uploaded and submitted on the Receiver’s online claim system ([http://www.prophetmaxreceivership.com/Claim\\_Form\\_2.html](http://www.prophetmaxreceivership.com/Claim_Form_2.html)) by **11:59 p.m. (prevailing Central Time) on \_\_\_\_\_, 2015 (the “Bar Date”)**. All claims should be filed electronically with the Receiver on the Receiver’s online claim system at [http://www.prophetmaxreceivership.com/Claim\\_Form\\_2.html](http://www.prophetmaxreceivership.com/Claim_Form_2.html).

Individuals or entities that believe they have good cause to either extend the Bar Date or to submit their claim by means other than the Receiver’s online system should contact the Receiver at [receiver@prophetmaxreceivership.com](mailto:receiver@prophetmaxreceivership.com), or by letter postmarked no later than 30 calendar days prior to the Bar Date to request this relief, which relief may be granted in the Receiver’s sole

EXHIBIT A

discretion. Investors wishing to file a claim who do not have internet access may contact the Receiver by sending a letter to ProphetMax Receivership, c/o Guy Hohmann, 210 Barton Springs Rd., Suite 250, Austin, Texas 78704.

## Claim Form

THE DEADLINE TO SUBMIT THIS FORM IS \_\_\_\_\_.

### INSTRUCTIONS

1. You are eligible to submit this form if you have incurred a loss as a result of your investment with Investment Intelligence Corporation d/b/a ProphetMax Managed FX. This includes membership fees.
2. Please fill out this form completely. Additional information will be requested if this form is incomplete or otherwise insufficient to process your claim. You must respond to any request for additional information; if you fail to respond, your claim may not be processed.
3. You must submit documents to support your claim. Types of acceptable documents may include, but are not limited to, bank statements; wire transfer receipts; emails or correspondence from any of the defendants acknowledging receipt of funds; correspondence from financial institutions referencing the investment; or, any other documents supporting your claim.
4. This form requires you to specifically identify any and all amounts invested, any and all amounts paid as membership fees, as well as any and all amounts charged back or returned to you. The documents you submit should reference any monies returned.
5. While we prefer electronic documents for more efficient processing, you may also submit your claim by mailing your form and documents to: Keri Anderson, Hohmann, Brophy & Shelton, PLLC 210 Barton Springs Rd, Suite 250, Austin, Texas 78704.
6. We will acknowledge receipt of your claim form and documentation via email. You should be aware that it will take time to fully process all of the claims, and the work will be done as promptly as time permits.
7. A "Claim Determination" will be sent via email outlining amount of claim accepted, if any, for membership and investment amounts paid.
8. Any "Claim Determination may be objected to by emailing the Receiver (receiver@prophetmaxreceivership.com) on or before 11:59 p.m. (Central time) 60 days after the Bar Date.
9. We will continue to keep you updated through the Receiver's Facebook site and through the Receiver's website (www.prophetmaxreceivership.com).
10. If any of your contact information changes, please notify us immediately.

#### I. Contact Information

First Name: \*

Last Name: \*

Address Street 1: \*

Address Street 2:

City: \*

State: \*

AL

Country:

United States of America

Zip Code/Post Code: \*

Daytime Phone: \*

Evening Phone:

**EMAIL: \***

If Claimant is other than an individual, state the name of the entity on whose behalf you are making the claim and the name and capacity of the person completing this form (e.g. Officer, Director, Partner, etc.):\*

\*IF YOU ARE SUBMITTING A CLAIM ON BEHALF OF AN ENTITY, PLEASE DO NOT SUBMIT A DUPLICATE CLAIM INDIVIDUALLY. THIS WILL DELAY PROCESSING OF YOUR CLAIM.

## II. Claim Information

1. Did you invest or pay any membership fee? : \* Yes
2. If yes to #1, which ProphetMax program did you join?:
3. If yes to #1, how much did you pay in membership fees only? Please respond in USD.:
4. Did you invest any other monies?: \*
5. If yes to #4, how much money did you invest? Please respond in USD.: Yes
6. How much money, if any, was charged back or returned to you?:
7. What currency did you invest with?:\*

## III. Claim Documentation

Identify the type(s) of documentation you are submitting to support your claim and attach to this form (you will be directed to a page to upload your documents after you hit submit): \*

## IV. Acknowledgment of Claimant

By submitting this form, Claimant acknowledges that they have read and agree to submit to the exclusive jurisdiction of the U.S. District Court for the Western District of Texas for all purposes associated with this Claim. Claimant represents and warrants that the information contained herein is true, accurate and correct. Claimant specifically warrants that Claimant is the rightful and only owner or assignee of the claim submitted.

Acknowledgment of Claimant (Please check to show you have acknowledged the above).

## V. Certification

By signing this form, Claimant certifies that the information is true and correct to the best of their knowledge and belief.

Electronic Signature (Please affix your signature to this document by typing your name. A typed name will have the full force and effect of a handwritten signature along with the Acknowledgement checked herein): \*

Date: \*



Electronic Signature::

Date:



**Once you hit submit you will be directed to the next step of uploading your claim documentation. Please note: If you do not upload your documentation your claim will not be processed. ALL investors are required to submit this Claim Form and supporting documentation electronically through the Receiver's website. If you believe you require an alternative method to submit your claim, you may contact the Receiver at [receiver@prophetmaxreceivership.com](mailto:receiver@prophetmaxreceivership.com) or by letter postmarked no later than [30 days after Bar Date as ordered by the Court] addressed to: ProphetMax Receivership, c/o Guy Hohmann, 210 Barton Springs Rd., Suite 250, Austin, TX 78704 to request approval of the alternative method.**



**funds that have been recovered and are in the possession of the ProphetMax Receivership Estate, and any Claim or counterclaim which the ProphetMax Receivership Estate has asserted or does assert against me.**

Claimant further acknowledges the sufficiency of the Consideration and that Receiver may deliver such Consideration in multiple installments. Notwithstanding anything to the contrary herein, to the extent the Consideration is delivered in multiple installments, the releases set forth herein shall take effect only with respect to the portion of the Claim which has been satisfied by such portion of the Consideration.

This Release does not release any claims against any current or former employee, officer, member or managing member, or member of Investment Intelligence Corporation, d/b/a ProphetMax Managed FX, Senen Pousa, or Joel Friant (“Friant”) (collectively, the “Receivership Defendants”) or any of the Receivership Defendants’ subsidiaries or affiliates. Further, the Release does not release any claims to any additional funds that have been recovered but are not held by the ProphetMax Receivership Estate, or releasing a claim to any additional funds that may be recovered from any other source.

I certify under penalty of perjury that the foregoing is true and correct.

Signature of Claimant: \_\_\_\_\_

By:

Title:

(Only include “By” and “Title”

If claimant is not a natural person)



## **II. Bar Date**

2. Each person or entity that asserts a claim against the ProphetMax Receivership Estate shall be required to file an original claim (a “Claim”) using the Receiver’s online claim system in substantially the form (“Claim Form”) attached as **Exhibit B** to the Motion. All Claim Forms must be submitted so that they are actually received by 11:59 p.m. (prevailing Central time) on the first Tuesday that is 75 calendar days after the date of entry of this Order (the “Bar Date”). The Claim Form must be completed and submitted through the Receiver’s online claim system at [http://www.prophetmaxreceivership.com/Claim\\_Form\\_2.html](http://www.prophetmaxreceivership.com/Claim_Form_2.html), unless the Investor has express, written permission from the Receiver to submit a Claim via alternative means.

## **III. Untimely or Otherwise Improper Claims**

3. All claims must be filed so that they are actually received by the Receiver on or before 11:59 p.m. (prevailing Central time) on the Bar Date. Investors who have not objected to the Receiver’s Claim Determination 60 days from the Bar Date are barred from later asserting such Claim against the ProphetMax Receivership Estate.

## **IV. Notice Procedure**

4. The notice procedures proposed in the Motion are approved. Within fourteen days after entry of this Order, the Receiver shall apprise Investors of the Bar Date and pendency of the Claims Process as follows:

a. the Receiver will provide notice of the Claims Process via email to all known Investors in a form substantially similar to the Notice attached to the Motion as **Exhibit A**;

b. the Receiver will provide Notice via postcard to known Investors for whom the Receiver has no email address, or to those for whom the Receiver receives a return email demonstrating that the email address provided is no longer valid; and

c. the Receiver will publish Notice on the Receiver's website at [www.prophetmaxreceivership.com](http://www.prophetmaxreceivership.com), and to the Receivership Facebook page entitled "ProphetMax Receivership."

#### **V. Procedure for Filing a Claim**

5. The Receiver's Claim Form is approved in substantially the form attached to the Motion as **Exhibit B**.

6. All Claims should be submitted electronically using the Receiver's Claim Form, found at [http://www.prophetmaxreceivership.com/Claim\\_Form\\_2.html](http://www.prophetmaxreceivership.com/Claim_Form_2.html), except where the Investor can establish cause, in the Receiver's sole discretion, to permit the Investor to submit their claim via alternative means.

#### **VI. Claims Determination Process**

7. During the Claims Determination Process, the Receiver will establish the amount of a Claim that the Receiver believes is legitimate (the "Claim Determination"), based on the Receiver's records, information provided in the Claim Form, and supporting documentation provided by the Investor. The Receiver will also determine what amounts, if any, were previously refunded in full to the Investor. The Receiver is authorized to provide the Claim Determination to Investors electronically, except to Investors with whom the Receiver has agreed to provide alternative notice.

8. An Investor will not necessarily receive 100% of the amount of the claim as set out in the Claim Determination. The percentage an Investor can expect to recover on account of the Claim Determination will be established by this Court prior to a distribution by the Receiver.

9. Any objection to the Claim Determination should be submitted via email to the Receiver at [receiver@prophetmaxreceivership.com](mailto:receiver@prophetmaxreceivership.com) on or before 11:59 p.m. (prevailing Central time) on the date that is 60 days after the Bar Date.

#### **VII. Release**

10. The Receiver is authorized to obtain the release attached to the Motion as **Exhibit C** from each Investor who wishes to receive a distribution. If an Investor does not provide a Release to the Receiver 60 days from the date the Receiver sends the Claim Determination, the Investor may be deemed to have forfeited their distribution.

#### **VIII. Failure to Object to a Claim Determination.**

11. Any Investor who fails to file an objection to the Receiver's Claim Determination on or before 11:59 p.m. (prevailing Central time) on the date that is 60 days after the Bar Date shall be forever barred, estopped, and enjoined from asserting such claim, and participating in any distribution, or receiving further notices regarding such claim. The ProphetMax Receivership Estate shall be forever discharged from any and all indebtedness or liability with respect to or arising from such Claim.

#### **IX. Miscellaneous.**

12. The Receiver shall retain the right to dispute, or assert offsets or defenses against, any filed claim as to the nature, amount, liability, or classification thereof. Nothing in this Order is intended to preclude the Receiver from objecting to any claim on any grounds.

13. The notice procedures as set forth in this Order and in the Motion will provide adequate and sufficient notice of the Bar Date, and satisfy the requirements of due process.

14. This Order shall be immediately effective and enforceable upon its entry.

15. The Receiver is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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LEE YEAKEL  
UNITED STATES DISTRICT JUDGE