

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

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

SENE 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

**RECEIVER’S STATUS UPDATE AND UNOPPOSED MOTION TO INCUR AND PAY
EXPENSES AND TO INITIATE LITIGATION**

Comes now, Guy M. Hohmann, the Court-appointed Receiver in the above-referenced ProphetMax Receivership matter and the ancillary IB Capital matter, and files this Status Update, Motion to Incur and Pay Expenses and to Initiate Litigation.

I. Riknik USD \$7.2 million Judgment

As noted in the Receiver’s most recent status report, the Slovakian court’s clerk had asked whether Riknik was capable of being legally served with the Complaint Against Relief Defendants given that it had previously been stricken from the Registry of the Seychelles Financial Services Authority (the “Seychelles Registry”) for failing to pay annual fees and file annual reports. The Receiver retained counsel from the Seychelles to render an opinion on this issue. That counsel opined that under Seychelles law, Riknik was capable of being served with process even though it was stricken from the Seychelles Registry. That opinion was provided to the Slovakian court in

the judgment recognition proceeding. This opinion will allow the Receiver to avoid having to file a proceeding in the Seychelles to have Riknik reinstated to the Seychelles Registry. The Receiver's Slovakian counsel presently expects the judgment recognition proceeding should be concluded by year end 2020. This timeline assumes no further closure of the Slovakian courts, due to the Corona virus.

II. Randius, Ltd. USD \$7.2 million Judgment

As noted in the Receiver's most recent status report, the Dutch Public Prosecutor's Office ("DPPO") was monitoring a proceeding in Cyprus which, if successful, would have resulted in the Cyprus Depositor's Scheme being ordered to pay €100,000 EUR per investor (as opposed to per bank account). The Receiver was recently informed by the DPPO those efforts were not successful and that an appeal has been taken from that decision.

III. Assignments from Neotex Advanced, Ltd. and Essadia Moutaouakkil

As noted in previous reports, the Receiver obtained Assignment Documents from Essadia Moutaouakkil ("E. Moutaouakkil") and Neotex Advanced, Ltd. ("Neotex"). The Assignment Documents from E. Moutaouakkil pertain to approximately USD \$4.3 million which the Receiver understands is presently on deposit at Banque Populaire in Morocco. The Receiver's Moroccan counsel had previously attempted to correspond with Banque Populaire, but no response was received. After conferring further with the DPPO, on September 9, 2020, the Receiver wrote a letter to the Chairman and CEO of Banque Populaire and copied the sole U.S. director on that correspondence. On September 25, 2020, legal counsel for the bank responded to the Receiver's September 9, 2020, correspondence stating the bank would be happy to help and assist in the matter. Counsel for the bank laid out the steps necessary for the transfer of funds to take place.

One of those steps requires the Assignment Documents to be re-executed and authenticated by a notary and the Consulate of Morocco. The Receiver has recently emailed and telephoned (thus far unsuccessfully) to the Moroccan Consulate's offices in Morocco and Washington D.C. to schedule a time to have the documents re-executed and to determine whether the Receiver must be present in the Consulate's Washington D.C. offices at the time of execution.

The September 25, 2020, correspondence from counsel for Banque Populaire also requires an enforcement order by a local Moroccan Court (Casablanca first instance Court). Lastly, the Moroccan Office of Exchange must approve of the funds being transferred abroad out of Morocco. The Receiver's Moroccan counsel has requested a retainer in the amount of €27,500 EUR in order to undertake the court filing and to seek approval from the Office of Exchange. The Receiver hereby requests that he be authorized to pay his Moroccan counsel the requested retainer amount.

The Receiver has also obtained Assignment Documents from Neotex Advanced, Ltd. ("Neotex"). At one time, Neotex had approximately USD \$1.5 million on deposit with FBME Bank in Cyprus in two separate accounts. If the Appeal referenced above is successful in Cyprus, the €100,000 EUR limit under the Cyprus Depositor Protection Scheme (the equivalent of our FAIC) would be applied on a "per investor" basis rather than a per account basis.

IV. Status of Restoration Proceedings for IB Capital FX LLP and Maverick

In order to have IB Capital FX LLP and Maverick reinstated into the Registrar of Companies in the United Kingdom, the Receiver hired legal counsel in the UK; so, the intent of the Maverick Assignment Documents may be effectuated and the funds in the ING Accounts may be transferred to the Receiver. The Receiver has retained counsel from the UK and the reinstatement process for IB Capital FX LLP was initiated on October 25, 2019.

As noted in a previous Status Report filed on July 31, 2020, [*See* Dkt. # 185] the Receiver's UK Counsel informed the Receiver the judge presiding over the reinstatement proceeding sought clarification from this Court as to the Receiver's appointment over the UK entity, IB Capital FX LLP (NZ). On July 24, 2020, the Receiver filed a Motion for Clarification [*See* Dkt. #184], asking the Court to find IB Capital FX LLP an affiliate of IB Capital FX (NZ) LLC.

V. Discussions with Rabiaa Moutaouakkil

The Receiver recently asked his Dutch counsel in the summer of 2020 to reach out to R. Moutaouakkil's counsel. Ms. R. Moutaouakkil's responded that he was in the process of conferring with the DPPO and would revert sometime in early September 2020. Having heard nothing further from her counsel, my Dutch counsel inquired again recently, but has not heard anything further at the moment.

VI. Status of Dutch proceeding

The Receiver's Dutch counsel advises that "hearings took place in the Complaint proceedings against the ING settlement with the Dutch state before the Court of Appeal in The Hague on 9 September 2020, and 7 October 2020. The Court has announced that it aims to render a final decision before year's end."

VII. Upcoming First Interim Distribution

On July 22, 2020, the Court requested an Amended Combined Agreed Order for the Unopposed Motions to Appoint the National Futures Association as Monitor and for Approval of Interim Distribution Plan. Once entered, the Amended Combined Agreed Order for the Unopposed Motion to Appoint the National Futures Association as Monitor and for Approval of Interim

Distribution Plan, the plan will go into effect. Under the first interim distribution plan, the Investor Claimants will receive distributions in the amount of 9.09% of their Allowed Claim Amounts as reflected in their Notices of Determination.

VIII. Possible suit against ING Bank

The Receiver's Dutch counsel recently prepared a draft Complaint against ING. The email transmitting the draft Complaint gave ING until December 2, 2020, to respond to the settlement demand. If the claims against ING cannot be resolved amicably, the Receiver hereby seeks permission of this Court to file suit against ING in Amsterdam. As of December 2, 2020, (assuming no further funds are collected by the Receiver), the damages the Receiver will seek to be recover are as follows¹:

Principal sum lost by 21 June 2012: USD 28.480.000, EUR 3.087.224 (exchange rate 1,24) and GBP 522.916 (exchange rate 1,54)	USD 33.113.447
Statutory interest from 21 June 2012 tot 3 October 2019	+ USD 6.108.144,42
First distribution to Hohmann of Van der Plas funds by the DPPO on 3 October 2019: EUR 10.635 (exchange rate 1,1)	- USD 11.698,50
Statutory interest from 3 October 2019 tot 2 March 2020	+ USD 326.206,12
Second distribution to Hohmann of Van der Plas funds by the DPPO on 2 March 2020: EUR 39.711,54 (exchange rate 1,1)	- USD 43.682,69
Distribution to Hohmann of part of the balance on ING bank accounts of IB Capital and Maverick, on 4 March 2020: EUR 3.280.478,75 (exchange rate 1,1)	- USD 3.608.526,62
Statutory interest from 4 March 2020 to 2 December 2020	+ USD 536.279,82
Total	USD 36.093.963,40

¹ This information was provided by the Receiver's Dutch Counsel on September 2, 2020.

IX. PRAYER FOR RELIEF

The Receiver requests the Court enter the proposed Order filed with this Motion to approve Motion to Incur and Pay Expenses and to Initiate Litigation for the ProphetMax Receivership Estate and IB Capital Receivership Estate which were both reasonable and necessary for the Receiver to fulfill his Court-ordered duties. The next status report will be submitted to the Court on January 31, 2021. If significant developments occur in the interim, the Receiver will file a report before January 31, 2021.

Respectfully submitted,
GUY HOHMANN

By: /s/ Guy Hohmann

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(512) 495-1438

**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 oppose this Motion nor the relief sought herein. The Motion, therefore, is unopposed.

/s/ Guy Hohmann
Guy Hohmann

CERTIFICATE OF SERVICE

On October 22, 2020, 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

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

**PROPOSED ORDER GRANTING RECEIVER’S UNOPPOSED MOTION
 TO INCUR AND PAY EXPENSES AND TO INITIATE LITIGATION**

Before the Court is the Receiver’s Unopposed Motion to Incur and Pay Expenses and to Initiate Litigation (the “Motion”).

The Motion includes the Receiver’s request to pay a retainer in the amount of €27,500 EUR to obtain an enforcement order by a local Moroccan Court (Casablanca first instance Court) and to seek approval from the Moroccan Office of Exchange to transfer certain funds from Morocco to the United States.

The Motion also requests approval to potentially incur and pay expenses to initiate litigation against ING Bank, if the claims against ING cannot be resolved amicably.

Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that the Receiver is authorized to pay the retainer for his Moroccan counsel's fees and expenses and to incur expenses associated with initiating litigation against ING Bank, if the Receiver is not able to resolve his claims against ING amicably.

SIGNED this _____ day of _____, 2020.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE