

CERTIFICATE OF SERVICE

On June 14, 2022, 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

6. This settlement arises out of the context of a fraudulent scheme as more particularly detailed in the CFTC Complaints and the Consent Order entered in the IB Capital Case *See* Dkt. #24 therein (the “IB Capital Fraud”).

7. This Amended Declaration is being tendered in support of the Motion. I have also tendered a Motion to Submit Under Seal the proposed settlement agreement (the “ING Settlement Agreement”) *See* Dkt. #205-1 Exhibit 1 pgs. 9-17.

8. The settlement funds are being paid in Euros. The distribution to the investors will be made in US Dollars. When the settlement agreement was initially reached, the payments to the investors, at then existing exchange rates, was estimated to be 36 cents on the dollar. Due to currency fluctuations since the initial Motion to Approve was filed, the estimated payments to investors, at today’s exchange rates, is estimated to be 31 cents on the dollar.

9. In proposing this settlement, I am acting in furtherance of orders entered by this Court, *inter alia*, *CFTC v. IB Capital FX, LLC (aka IB Capital FX (NZ) LLP), et al.*, Civil Action No. 1:15-cv-01022-LY, *See* Dkt. #s 16, 24 & 25 (the “IB Capital Case”), and *CFTC v. Pousa, et al.*, Civil Action No. A-12-cv-0862- LY, *See* Dkt. #s 4 & 22 (the “ProphetMax Case”) (collectively “Receivership Orders”). Through the Receivership Orders, the Court has taken exclusive possession of all the funds, property, and assets of IB Capital and the other receivership defendants (“Receivership Assets” or “Receivership Estate”) and directed me, as Receiver, to collect, receive, and take possession of, *inter alia*, all rights, moneys or accounts, as well as to seek, administer, and equitably distribute restitution for the victims of the IB Capital Fraud. *Id.*

10. As Receiver, I have alleged one of the acts of IB Capital and two individual Receivership Defendants done in furtherance of the IB Capital Fraud was to establish accounts

at ING and solicit deposits from certain persons who transferred funds directly or indirectly (“Deposits”) to such ING bank accounts (“IB Capital Investors”).

11. As Receiver, I have solicited, investigated and adjusted claims presented to me by IB Capital Investors, as well as certain persons who initially deposited funds in other financial institutions and determined the names of the IB Capital Investors and their respective net cash losses and last known addresses of the IB Capital Investors are accurately stated on the Receiver’s official Claims Ledger (which is set forth as Motion for Leave to File Under Seal [Dkt. #205] Exhibit 1 to Sealing Motion [Dkt. #205-1 pgs. 18-32].

12. As Receiver, I have presented to ING the claims of IB Capital and the IB Capital Investors arising out of the Deposits, and ING has disputed any liability to such parties (the “Disputed Claims”) and ING has expressly denied any all allegations of wrongdoing, fault, liability or damages whatsoever.

13. Both I and ING have respectively conducted an extensive investigation into the facts and the law relating to the Disputed Claims, and considered the results of those investigations and the benefits of a settlement, as well as the burden, expense, delays and risks of litigation.

14. Absent this Settlement, the Disputed Claims would have taken years to litigate to judgment likely in competing jurisdictions at substantial expense to all concerned and without any certainty as to the ultimate outcome.

15. In an effort to resolve the Disputed Claims, I, as Receiver, and ING have engaged in an intense period of negotiation spanning the period of more than two years that has, at times, also included litigation as reflected in the Court’s docket in the above-referenced matters, and, as a result, have now resolved a settlement that will provide a global resolution of the Disputed

Claims (“ING Settlement”) through the ING Settlement Agreement and the Proposed Final Order Approving the Settlement, Issuing Channeling and Bar Injunctions, and Approving Distribution Procedures set forth as [Dkt. #205-1 Exhibit 1 pgs. 40-44] to the ING Settlement Agreement (the “Order”). Thus, the Parties have engaged in extensive, good faith, arm’s-length negotiations.

16. To be clear, the Parties are entering into the ING Settlement to avoid the burden, expense, and risks of litigation and to achieve global peace with respect to all claims that have been, could have been, or could be asserted against ING relating to or arising out of the Deposits or the IB Capital Fraud in any respect.

17. The Parties have concluded that a settlement under the terms set forth in the ING Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Receiver, IB Capital, the IB Capital Investors and ING.

18. The Parties desire to fully, finally and forever compromise and effect a global settlement and discharge of all claims, disputes, and issues between them upon the terms set forth herein. Indeed, global peace is an essential condition for the ING Settlement.

19. The ING Settlement will permit me, as Receiver, to issue Distribution Checks for pro rata immediate restitution of approximately 31% of the net cash losses of the investors, at today’s exchange rates, taking into consideration the other recoveries in the case, the administrative expenses and recovery costs and the settlement amount.

20. The ING Settlement will permit me, as Receiver, to pursue frozen funds in other jurisdictions that could substantially augment this restitution in the relative near term.

21. In regard to notice of the Motion, I, as Receiver, propose to send the form of notice tendered for the Court’s consideration contemporaneously herewith (the “Notice”) [Dkt. #205-

1 Exhibit 1 pgs. 59-61] to the email and/or physical addresses listed on the Claims Ledger, which are the last known addresses of the IB Capital Investors and the best available information as to where to send the Notice. I, as Receiver, intend to first attempt email, and, if that is returned, to immediately send the Notice via regular mail.

22. My law firm's paralegals recently validated 829 investor claimants' email and addresses via email through recent postcard mailings through the United States Postal Service ("USPS").

23. I, intend to attempt to reach the remaining 121 investor claimants where email addresses are not valid or postcards were returned or not responded to via telephone calls, at the investor claimants last known telephone numbers. I will continue to announce updates on the ProphetMax Receivership Facebook and post updates on the ProphetMax Receivership website.

24. The ING Settlement provides Distribution Procedures that are based upon the Claims Ledger, which is the product of a thorough investigation and the employment of claims procedures that permitted the IB Capital Investors to present claims.

25. The Distribution Procedures further provide notice of the approved claim amount, the proposed payment amount, the opportunity to object, and the potential for Court review.

26. I was personally involved in the preparation of the Motion and accompanying documents. The factual assertions of the Motion and the factual statements in the ING Settlement Agreement are true and correct.

