

obviated a need for such a waiver. Second, the Court inquired as to whether ING would agree to convert the settlement amount from Euros to Dollars, at this time, expressing concern as to being able to advise investors as to what to expect.

3. The Receiver agreed to pursue both of these matters with ING.

4. On the first issue, ING was persuaded that, in regard to United States investors, this Court's bar and channeling injunctions made the waiver redundant. As a result, ING agreed to eliminate the requirement in regard to United States investors. ING and the Receiver entered into the amendment and ratification agreement attached hereto as Exhibit A to the Receiver's accompanying supplemental declaration which is attached as Exhibit 1. The Receiver will submit a Second Supplement to the Motion to Approve attaching the fully executed Settlement Agreement and Amendment and Ratification, once it is received from ING's counsel. ING pointed out, however, that the jurisdictional reach of this Court into Europe is uncertain, and therefore ING declined to waive the requirement as to European investors. As there is some merit in this position, the Receiver recommends that this qualification be accepted, and the settlement be approved with the modification applying only to United States investors.

5. On the second issue, ING declined to convert the amount from Euros to Dollars at this time. ING pointed out that the agreement was negotiated in Euros, and asserted this is a material part of the agreement from its perspective. In view of the taking of this position, the Receiver examined the extent of fluctuation in exchange rates during the period September 1, 2022 to October 31, 2022, and determined that, on September 1, one US Dollar would have purchased .9952 Euros, and, on October 31, one US Dollar would have purchased .9887 Euros. Similarly, had ING funded the settlement the day after the hearing, the exchange would have been one US Dollar to .998 Euros. Given this, it appears the Euro and the US Dollar are fluctuating in a relatively narrow band at the present time, although the overall trend is slightly down over the past

sixty days. Additionally, as previously reported, the trend for the year is down, in view of events principally occurring in the first five months of this year. On balance, the Receiver recommends that the Court proceed with the settlement and permit the Receiver to move as expeditiously as possible to obtain the funds, thus allowing the Receiver to convert the Euros to US Dollars and so advise the investors as to their exact dollar payments on an individual basis.

6. The Receiver tenders herewith a supporting Declaration as Exhibit 1, and a revised order.

WHEREFORE, the Receiver prays the Court enter the Order tendered herewith.

Respectfully submitted,
GUY HOHMANN

By: /s/ Guy Hohmann
Guy Hohmann
State Bar No. 09813100
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Suite 1100
Austin, Texas 78701
(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. The CFTC agrees with the relief sought herein no position on this Motion. The Receiver has also conferred with counsel for ING, who represents ING agrees with the relief sought herein.

/s/ Guy Hohmann
Guy Hohmann

CERTIFICATE OF SERVICE

On November 3, 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. At the hearing, the Court inquired as to two aspects of the settlement. First, the Court inquired as to whether ING would insist upon obtaining a waiver document prior to the issuance of distributions to investors, pointing out that this Court's bar and channeling injunctions obviated a need for such a waiver. Second, the Court inquired as to whether ING would agree to convert the settlement amount from Euros to Dollars, at this time, expressing concern as to being able to advise investors as to what to expect.

7. I agreed to pursue both of these matters with ING.

8. On the first issue, ING was persuaded that, in regard to United States investors, this Court's bar and channeling injunctions made the waiver redundant. As a result, ING agreed to eliminate the requirement in regard to United States investors. ING accordingly entered into the amendment and ratification agreement attached hereto as Exhibit A. ING pointed out, however, that the jurisdictional reach of this Court into Europe is uncertain, and therefore ING declined to waive the requirement as to European investors. In my opinion, this is a reasonable position for ING to take under the circumstances, and therefore I recommend the settlement be approved with the modification applying only to United States investors.

9. On the second issue, ING declined to convert the amount from Euros to Dollars at this time. ING pointed out that the agreement was negotiated in Euros, and asserted this is a material part of the agreement from its perspective. In view of the taking of this position, I examined the extent of fluctuation in exchange rates during the period September 1, 2022 to October 31, 2022, as reported by Google Finance. On September 1, one US Dollar would have purchased .9952 Euros. On October 31, one US Dollar would have purchased .9887 Euros. Similarly, had ING funded the settlement the day after the hearing, the exchange would have been one US Dollar to .998 Euros. Given this, it appears the Euro and the US Dollar are fluctuating in a relatively narrow band at the present time, although the overall trend is slightly down over the

past sixty days. Additionally, as previously reported, the trend for the year is down, in view of events principally occurring in the first five months of this year. On balance, the Receiver recommends that the Court proceed with the settlement and permit the Receiver to move as expeditiously as possible to obtain the funds, thus allowing the Receiver to convert the Euros to US Dollars and so advise the investors as to their exact dollar payments on an individual basis.



GUY M. HOHMANN

SETTLEMENT AGREEMENT – AMENDMENT AND RATIFICATION

THIS AMENDMENT is made when fully executed as of the date of the last signature.

THE PARTIES

1. **ING BANK N.V.**, a public company under Dutch law (*naamloze vennootschap*), having its statutory seat in Amsterdam, the Netherlands, and registered in the Dutch Commercial Register under number 33031431 (**ING**); and
2. **GUY M. HOHMANN**, in his capacity as receiver for the assets of IB Capital FX, LLC (a/k/a IB Capital FX (NZ) LLP) (**IB Capital**), Michel Geurkink, Emade Echadi, and any affiliates and subsidiaries of those entities (the **Receiver**).

ING Bank and the Receiver are hereafter collectively referred to as the **Parties** and each a **Party**.

WHEREAS:

- (A) The Parties executed a Settlement Agreement whose approval is pending before the United States District Court for the Western District of Texas (the **Texas 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, Doc. Nos. 16, 24 & 25 (the **IB Capital Case**), and *CFTC v. Pousa, et al.*, Civil Action No. A-12-cv-0862- LY, Doc. Nos. 4 & 22 (the **ProphetMax Case**) (collectively **Receivership Orders**);
- (B) Whereas, the Texas Court has requested the Parties modify the Settlement Agreement to eliminate from the distribution process the obtaining of a Waiver Document from United States citizens as specified in Section 3.1(iii)-(iv) of the Settlement Agreement on the ground that such is redundant of the bar order being issued by the Court in regard to United States citizens; and
- (C) Whereas ING has agreed to amend and otherwise to ratify the Settlement Agreement notwithstanding such requested amendment;

IT IS AGREED AS FOLLOWS:

1. ORDER FROM TEXAS COURT

ING waives Section 2.1(vii) in regard to citizens of the United States only.

ING agrees to entry of a revised Order, specifically the order attached hereto as Exhibit A.

2. DISTRIBUTION PROCESS

The Receiver may disregard Section 3.1 (iii) and 3.2 of the Settlement Agreement in regard to citizens of the United States only.

ING agrees the following language in Section 3.1(iv) shall not apply to citizens of the United States only: “only following receipt from an IB Capital Investor of the Waiver Document”.

3. MISCELLANEOUS

All other provisions of the Settlement Agreement are unchanged and continue to apply.

Exhibit A

Any dispute arising out of or relating to this Amendment Agreement will be resolved in accordance with the rules of the Netherlands Arbitration Institute (NAI). The arbitration tribunal will consist of three arbitrators. The place of arbitration will be Amsterdam. The language of arbitration is English. The arbitrators will decide according to the rules of Dutch law.

This Amendment Agreement and all contractual and non-contractual obligations arising out of or relating to it will be governed by Dutch law.

[signature page to follow]

Exhibit A

SIGNATURE PAGE

ING BANK N.V.

Name: R. van Dusschoten
Title: Country Manager ING in
Date: the Netherlands
November 3 2022

Signature:



ING BANK N.V.

Name: A.B. Brakel
Title: Head Legal DB NL
Date: November 3 2022

Signature:



GUY M. HOHMANN, in his capacity as receiver for the assets of IB Capital FX, LLC (a/k/a IB Capital FX (NZ) LLP), Michel Geurkink, Emade Echadi, and any affiliates and subsidiaries of those entities.

Signature: Guy M. Hohmann

Date: November 1, 2022

(“ING”). The purpose of the Motion is to present for approval a settlement by, among, and for the mutual benefit of ING, the Receiver, IB Capital, and the IB Capital Investors (“ING Settlement”) of any and all claims arising out of or related in any way to the Deposits made by the IB Capital Investors, as well as the terms and conditions of the settlement as reflected in the ING Settlement Agreement, as amended and ratified by agreement dated November 1, 2022, and to request an ancillary channeling injunction, bar order, and distribution procedures. Contemporaneously with the filing of the Motion, the Receiver filed an Unopposed Motion to Approve Notice Procedures and to Set Hearing, which the Court granted as reflected on the Court’s docket. The “Notice” document approved thereby was thereafter issued by the Receiver in accordance with the Court’s directives as reflected in a Supplemental Certificate of Service. Based upon the record before the Court, and for the reasons set forth more fully below, the Court, following a hearing as reflected on the Court’s docket, finds the terms of the ING Settlement are adequate, fair, reasonable, and equitable, and that accordingly the ING Settlement should be and is hereby APPROVED, and entry of this Order is necessary and appropriate.

Terms Used in this Document

The following terms, as used in this Order, have the following meanings: “Motion”, “Receiver”, “IB Capital Case”, ProphetMax Case”, “Receivership Orders”, “Receivership Estate”, “Deposits”, “IB Capital Investors”, “ING”, “ING Settlement”.

1. "Claim" means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

2. "Court" means United States District Court for the Western District of Texas.
3. "Distribution Procedures" means the procedures set forth in the ING Settlement Agreement.
4. "Forum" means any court, adjudicative body, tribunal, or jurisdiction, whether its nature is federal, foreign, state, administrative, regulatory, arbitral, local, or otherwise
5. "Parties" means the Receiver, and ING collectively.
6. "Settled and/or Barred Claim" means any action, cause of action, suit, liability, claim, right of action, debt, sums of money, covenants, contracts, controversies, agreements, promises, damages, contribution, indemnity, specific performance, attorney's fees and demands whatsoever, whether or not currently asserted in any Forum, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based in contract, tort, statute, law, equity or otherwise, that the Receiver and/or any IB Capital Investor ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) IB Capital, (ii) the IB Capital Fraud, or (iii) the Deposits, except for the Receiver's claims to the Funds in the Accounts that are the subject of the March 25, 2020 Confidential Indemnification Agreement between the Receiver and ING, which are expressly excluded from the term "Settled and/or Barred Claim" (such terms "Funds" and "Accounts" having the meanings assigned to them in said indemnification agreement). "Settled and/or Barred Claims" specifically includes, without limitation, all claims the Receiver and/or any IB Capital Investor does not know or suspect to exist in his, her or its favor at the time of release, which, if known by that person, might have affected a decision with respect to this Agreement ("Unknown Claims"). These provisions concerning unknown and unsuspected claims and the

inclusion of Unknown Claims in the definition of Settled Claims were separately bargained for and are an essential element of this Agreement and the Settlement.

7. "Settlement Amount" means the amount set forth in the ING Settlement Agreement.

8. "Waiver Document" means Schedule 7 to the ING Settlement Agreement.

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court has broad powers and wide discretion to determine the appropriate relief in an equity receivership, including the entry of bar orders. *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 896-97 (5th Cir. 2019).

2. The Court has jurisdiction over the subject matter of this action.

3. The Receiver is a proper party to seek entry of this Order.

4. In regard to the Notice the Court approved and the Receiver issued, the Court finds (i) the methodology, form, content and dissemination of Notice were implemented in keeping with this Court's directives; (ii) constituted the best practicable notice; (iii) was reasonably calculated, under the circumstances, to apprise all IB Capital Investors of the ING Settlement, the releases in the ING Settlement Agreement, and the injunctions provided for in this Order; (iv) was reasonably calculated, under the circumstances, to apprise all IB Capital Investors of the right to object to the ING Settlement, the ING Settlement Agreement, and this Order and to appear at the Final Approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all applicable requirements of law, including, without limitation, the Federal Rules of Civil Procedure, the United States Constitution (including Due Process), and the Rules of the Court; and (vii) provided to all persons a full and fair opportunity to be heard on these matters.

5. The Court finds the ING Settlement was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length negotiations

involving experienced and competent counsel. The claims at issue contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with significant risks posed to the parties seeking recovery. By the same token, it is clear ING would never agree to the terms of the ING Settlement unless ING were assured of global peace with respect to all claims that have been, could have been, or could be asserted against ING by any person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against ING. The injunction against such claims is therefore a necessary and appropriate order ancillary to the relief obtained for the Receivership Estate, IB Capital and the IB Capital Investors pursuant to the ING Settlement. *See Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d at 896-97.

6. The Court finds the Claims Ledger is the product of a reasonable investigation and claims process conducted by the Receiver, and is an accurate statement of the Claims of the IB Capital Investors.

7. The Court finds there are no other persons eligible to share in the ING Settlement other than those listed on the Claims Ledger.

8. The Court finds the Distribution Procedures proposed by the Receiver will result in a fair, reasonable, and equitable distribution of the Settlement Proceeds to all persons potentially entitled to share in those proceeds.

9. The Court approves the form of the Waiver Document to be signed by non-United States citizens.

10. Accordingly, the Court finds that the ING Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of all IB Capital Investors set forth on the Claims Ledger. Accordingly, the terms set forth in the ING Settlement Agreement and the Amendment and Ratification thereto are hereby fully and finally approved, and the Parties are directed to

implement and consummate the ING Settlement in accordance with the terms and provisions of the ING Settlement Agreement and this Order.

11. The Receiver on behalf of the Receivership Estate and each of IB Capital's past and present, direct and indirect, parent entities, subsidiaries, affiliates, heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such, and any IB Capital Investor or anyone who can claim through any of them, fully, finally, and forever release, relinquish, and discharge, with prejudice, all Settled Claims and/or Barred Claims against ING.

12. Notwithstanding anything to the contrary in this Order, the foregoing releases do not release the Parties' rights and obligations under the ING Settlement or the ING Settlement Agreement or bar the Parties from seeking to enforce or effectuate the terms of the ING Settlement Agreement.

13. The Court hereby channels unto itself all of the Claims of any IB Capital Investor, whether or not asserted, listed or not listed on the Claims Ledger, known or unknown, pending in any jurisdiction, or later presented to any court, tribunal, authority, or government.

14. The Court hereby permanently bars, restrains and enjoins the Receiver, IB Capital, the IB Capital Investors, and all other persons or entities, known or unknown, whether acting in concert with the foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against ING, now or at any time in the future, any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including but not limited to litigation, arbitration, or other proceeding, in any Forum, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with IB

Capital or the Deposits made by the IB Capital Investors. The foregoing specifically includes, but is not limited to, any claim, however denominated, seeking contribution, indemnity, damages, or other remedy. Notwithstanding the foregoing, the Parties retain the right to sue for alleged breaches of the ING Settlement Agreement.

15. ING has no responsibility, obligation, or liability whatsoever with respect to the costs associated with or the content of the Notice; the notice process; the Distribution Procedures; the implementation of the Distribution Procedures; the administration of the ING Settlement; the management, investment, disbursement, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the ING Settlement, or any portion thereof; the payment or withholding of taxes; the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid or received in connection with the ING Settlement or the ING Settlement Agreement; or any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. The Receiver has no obligation in regard to ING's costs, expenses, or attorneys' fees.

16. Nothing in this Order or the ING Settlement Agreement and no aspect of the ING Settlement or negotiation thereof is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Parties. ING has always denied and continues to expressly deny any liability or wrongdoing.

17. ING is hereby ordered to deliver or cause to be delivered the Settlement Amount to the Receiver as described in the ING Settlement Agreement. Further, the Parties are ordered to act in conformity with all other provisions of the ING Settlement Agreement.

18. Without in any way affecting the finality of this Order, the Court retains jurisdiction for purposes of the administration, interpretation, consummation, and enforcement of this Order, including, without limitation, the injunctions, bar orders, and releases as set forth in this Order and to enter orders concerning implementation of the ING Settlement Agreement.

19. Notwithstanding anything to the contrary in this Order, any dispute arising out of or relating to the ING Settlement Agreement will be subject to the terms of the ING Settlement Agreement.

20. The Receiver shall implement the Distributions Procedures as specified in the ING Settlement Agreement, which the Court approves, finding them to be fair, equitable, and reasonably calculated to provide equitable restitution from the proceeds of the ING Settlement.

21. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Order, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED, this ___ day of _____, 2022.

JUDGE LEE YEAKEL
UNITED STATES DISTRICT JUDGE