

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

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

SENEN 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-DAE

RECEIVER’S STATUS UPDATE

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 his Status Update. Since the Receiver’s status report previously report of July 1, 2023, there has been significant activity to report.

A. ING Settlement - Complete

The payments from ING Bank Settlement allowed the Receiver to distribute 33.78% of each Investors Claimants approved claim amounts.¹ As previously reported, pursuant to the settlement agreement with ING the Receiver had until October 19, 2023, to disperse the final tranche. On November 7, 2023, the Receiver wired remaining undistributed funds to ING Bank’s

¹ As part of the ING Bank Settlement the settlement amount is confidential; the agreement also outlines their terms filed under seal. [Dkt.# 206].

counsel; the amount totaled \$9,284.65.² It was complex, multi-faceted with numerous components to manage. The settlement account and administrative fee accounts were closed and reconciled. The Receiver's paralegals reconciled all settlement documentation which included executed signature waivers with corresponding wire transfer records, records of checks that were mailed to the approved Investor Claimants by this Court's approved distribution agent and expenses associated with the distributions; as well as, documented all financial transactions in an Excel spreadsheet i.e. evidence of outgoing wires, names, amounts, checks mailed by the distribution agent and administrative expenses.

B. Motion for First Interim Distribution – Final stage

On March 23, 2023, this Court granted the Receiver's Unopposed Motion for Disbursement of Funds for Approval of First Interim Distribution Plan & Procedures.³ The First Interim Distribution allowed the Receiver to distribute \$4,829,874.28. This distribution is distributed from funds the Receiver recovered from a number of different sources and will represent a return of approximately twenty (20) cents on the dollar for each Investor Claimants' approved claim amount. The distributions began the week of November 27, 2023, and will be completed by February 28, 2024.⁴

It was the Receiver and his paralegals' goals to complete the distribution by January 31, 2024. Unexpected time constraints such as: unresponsive emails from investors due to the holidays, reconfirming wire instructions previously received during the ING Bank Settlement,

² The undistributed funds were from investors that did not respond to the Receiver or his paralegals, emails, attempts to notify the Approved Investor Claimants of the ING Settlement via email, telephone calls and announcements made social media.

³ March 23, 2023, [Dkt. # 262]. ORDER GRANTING 249 Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and Procedures.

⁴ September 12, 2023, [Dkt. #297]. ORDER GRANTING Unopposed MOTION Receiver's Motion to Amend Previously Issued Orders.

ensuring all W-9 forms received from approved Investor Claimant's governed by U.S. tax laws, validation of the W-9 forms received, seeking correct information for smudged, missing information, two names on one W-9 form and a variety errors or ambiguity that needed corrections. To date, approximately two-thirds of the approve Investor Claimants have received their first interim distributions. The remaining distribution will be complete by the February 28, 2024 date, if not sooner.

C. Slovakia - Riknik & Sons Ltd. Funds – Estimated recovery \$7.2 million

As previously reported, with the convictions of Echade and Geurkink, a forfeiture proceeding was filed in the Netherlands. The Receiver was informed by the Dutch Public Prosecutor (the "DPPO"), the forfeiture proceeding in the Netherlands is complete.

The next step, the Slovakian Court needs to recognize the Netherlands forfeiture proceeding. On January 29, 2024, the DPPO had not received an update from the Public Prosecutor in Slovakia. It is the Receiver's understanding the request for the forfeiture proceeding is now going to be communicated to the Slovakian Ministry of Justice who will be in a better position to communicate with the Slovakian court. On January 31, 2024, the DPPO informed the Receiver they sent a letter addressed to the President of the court "...with a request to provide them relevant information about the state of play without delay." The Receiver believes this is a positive update. If and when the assets are released by Slovakia, the Receiver expects to be wire transferred approximately USD \$7.2 million. This would represent a significant portion of the total approved investors claim amount of approximately \$23.8 million.

D. Morocco – Estimated recovery \$4.87 million

Activity since last Court ordered status report on July 31, 2023:

On September 7, 2023, the Irrevocable Transfer Orders (“ITOs”) executed by the three account holders Emade Echade, Rabbia and Essadia Moutaouakkil were received. The Receiver executed the ITOs and had his signature apostilled at the Texas Secretary of State’s office. The Receiver sent the fully executed ITOs via DHL to his French counsel who, along with the Receiver’s Moroccan counsel, will then present them to counsel for Banque Populaire.

Several years ago, the Receiver’s Dutch counsel obtained a copy of the three account holders’ bank statements and performed an analysis of what funds were in the accounts prior to the IB Capital funds being deposited.

According to the DPPO, the subject bank accounts also allegedly contain ill-gotten funds from a separate earlier fraud committed by Mr. Echade and Mr. Geurkink. The Receiver has agreed with the DPPO that if he comes into possession of the funds, a pro-rata portion will be allocated between the IB Capital investors and the investors from the alleged earlier fraud.

The account holders agreed to waive any claims for amounts which may have been on deposit at Banque Populaire prior to the misappropriations from Capilo Spot Forex and IB Capital.

In return the Receiver waived any claims to the Moroccan real estate which the DPPO believes may have been acquired with funds that may have been misappropriated from the aforementioned two entities. The Receiver’s filed Second Motion for Instructions.⁵ The Receiver had previously tried to have the most valuable of the properties listed with a realtor and was not successful.

⁵ September 7, 2023, [Dkt. #292]. ORDER GRANTING Receiver's Second Motion for Instructions.

On December 13, 2023, the Receiver received an email from the DPPO informing the Receiver the DPPO would drop all charges against Rabbia and Essadia Moutaouakkil on the condition of transferring the bank account balances to the receivership estate.

On December 15, 2023, the Receiver's Moroccan counsel outlined their concerns for the DPPO lifting the freeze. They requested the Receiver to communicate to the DPPO to await further instructions. The Receiver's counsel wanted to ensure the Consultant's recommended steps are completed and clear processes are set-up to ensure the pathway of released funds are secure and coordinated. This was a necessary step to ensure the funds are transferred to the Receivership bank account.

The Receiver's French and Moroccan counsel are working closely with the Moroccan Consultant to make a presentation to present to the Moroccan Currency Exchange Office (the "MCEO"). As part of that presentation, the Receiver's French counsel requested access and other information pertaining to the accounts as follows:

- Bank documents showing that the sums deposited in the debtors' bank accounts have been repatriated to Morocco;
- Recent bank statements for the debtors' bank accounts;
- Details of the nature of debtors' bank accounts (bank accounts for Moroccans living abroad, convertible dirham accounts, or ordinary dirham accounts).

The Receiver's Dutch counsel previously obtained documentation from the DPPO's files pertaining to the Moroccan Bank accounts. He forwarded that documentation to the Receiver's French counsel who will in turn share the documents with the Receiver's Moroccan counsel. The Receiver's French counsel is optimistic the documentation will allow them to answer most of the Moroccan Consultant's questions.

If the assets are released by Morocco, the Receiver expects to be wired a significant dollar amount. Given that some of these funds may have emanated with the Spot Forex fraud, the Receiver is not able to estimate the amount that could potentially be transferred, at this time.

Conclusion

The next status report will be submitted to the Court on July 31, 2024. If significant developments occur in the interim, the Receiver will file a report before that date.

Respectfully submitted,

GUY HOHMANN

By: /s/ Guy Hohmann

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**RECEIVER FOR THE PROPHETMAX AND
IB CAPITAL RECEIVERSHIP ESTATES**

Certificate of Service

On January 31, 2024, 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