

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

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| UNITED STATES COMMODITY | § | |
| FUTURES TRADING COMMISSION, | § | |
| | § | |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | Civil Action No. A-12-CV-0862-DAE |
| | § | |
| SEKEN POUSA, INVESTMENT | § | |
| INTELLIGENCE CORPORATION, | § | |
| DBA PROPHETMAX MANAGED FX, | § | |
| JOEL FRIANT, MICHAEL DILLARD, and | § | |
| ELEVATION GROUP, INC., | § | |
| | § | |
| <i>Defendants.</i> | § | |

RECEIVER’S MOTION FOR APPROVAL OF THIRTY-FOURTH FEE APPLICATION, STATUS UPDATE AND TO PAY EXPENSES AND BRIEF IN SUPPORT

Guy M. Hohmann, the Court-appointed Receiver in the above-referenced ProphetMax Receivership matter and the ancillary IB Capital matter, files this Motion for Approval of Thirty-Fourth Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from August 1, 2024, through August 31, 2024, (hereinafter “the Fee Period”).

The Receiver believes this Motion and brief in support demonstrate the Receiver’s fees and expenses were reasonable and necessary when considering the time period covered by the application and the results achieved by the Receiver during the Fee Period. For the Court’s convenience, the Receiver will convey details at a high level to avoid duplicate reporting.

LEGAL STANDARD

The Receiver has previously briefed the legal standards for evaluating the reasonableness and necessity of professional fees and expenses. The Court has consistently evaluated the Receiver's fee applications using the factors set forth by the Ninth Circuit in *Johnson v. Georgia*

Highway Express, Inc., 488 F.2d 714, 717-19(5th Cir.1974).¹ The Court in the Stanford Receivership observed that this particular receivership is essentially equivalent to a Chapter 7 bankruptcy. *See* Civ. Action No. 3;09-cv-072 4, Doc. 1093 at 39 ("Ultimately, this particular receivership is the essential equivalent of a Chapter 7 bankruptcy. While a different federal statutory scheme - one that is looser and more flexible than the Bankruptcy Code-is at work, the overall purposes and objectives of the Stanford receivership track the overall purposes and objectives present in the Bankruptcy Code and a Chapter 7 proceeding."). Therefore, the factors governing the analysis of requests for professional fees and expenses incurred in the bankruptcy context are also relevant to the Court's valuation of the Receiver's fee applications.

Under 11 U.S.C. § 330(a)(3), in examining a request for fees and expenses to be awarded to an examiner, trustee under chapter 11, or other professional in the context of a bankruptcy, a court considers, in addition to the amounts involved and results obtained, "the nature, the extent, and the value of such services, taking into account all relevant factors, including (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary

¹ Under *Johnson*, courts consider the following factors in determining whether the time spent, services performed, expenses incurred, and hourly rates charged are reasonable and necessary: (1) the time and labor required for the litigation; (2) the novelty and complication of the issues; (3) the skill required to properly litigate the issues;(4) whether the attorney was precluded from other employment by the acceptance of this case; (5) the attorney's customary fee; (6) whether the fee is fixed or contingent; (7) whether the client or the circumstances-imposed time limitations; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the attorney-client relationship; and (12) awards in similar cases. *Id.* at 717-19. In applying these factors, "the district court must explain the findings and the reasons upon which the award is based. However, it is not required to address fully each of the 12 factors." *Curtis v. Bill Hanna Ford, Inc.*, 822 F.2d 549, 552 (5th Cir. 1987) (citation omitted); *see also SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465,480 (S.D. Tex. 1974), *aff'd*, *SEC v. W.L. Moody & Co.*, 519 F.2d 1087 (5th Cir. 1975); *SEC v. Mega. fund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at *2 (N.D. Tex. July 24, 2008); *SEC v. Ninth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under [11 U.S.C. § 330(a)(3)]; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under [11 U.S.C. § 330(a)(3)]." 11 U.S.C. § 330(a)(3).

A. RECEIVER'S ACTIVITIES FOR THIS FEE PERIOD

1. Second Interim Distribution – In Process

On July 25, 2024, this Court's Order for the Receiver's Motion for Approval of Second Interim Distribution Plan & Procedures became final.²

As previously reported, the Second Interim Distribution is presently underway. Approved Investor Claimants are beginning to receive their checks or wires. Beginning August 12, 2024, distribution checks were issued and mailed by this Court's approved distribution agent Donlin Recano & Co. Inc. ("DRC") and the wire transfers were and continue to be sent to Investor Claimant(s) by the Receiver's senior paralegal with oversight from the Receiver.^{3,4}

As to an update, due to slow response time from the Investor Claimant(s), the distribution progress is taking longer than anticipated. There are multiple factors driving the decreased communication time: (1) Investor Claimant(s) responded immediately and upon requesting follow-up information, Investor Claimant(s) are slow to respond to additional information or

² [Dkt. # 320, 321].

³ [Dkt. #'s 268, 262 and 321].

⁴ Once the Second Interim Distribution payments are made, the investors will have received approximately 82% (eighty-two percent) of the Investor Claimants' losses.

confirmation requests; (2) Investor Claimant(s) are ageing and communication via email has become more difficult; (3) the majority of the emails the Receiver has on file for the Investor Claimant(s) are on popular email service providers i.e. Yahoo and Google etc. The Investor Claimant(s) receive numerous emails and the Receiver's emails are overlooked and/or lost in their vast inbox; (4) Investor Claimant(s) do not remember their claim amount or participating in previous distributions i.e. the ING Bank Settlement or First Interim Distribution and are requesting evidence of receiving their distributions (wire dates, copies of their cashed checks etc.); 5) The latest obstacle; Google flagged the Receivership emails as "unusual sending activity" and not sending batch bcc emails. The Receiver's paralegals are sending emails to several investors at a time or individually to communicate news of the Second Interim Distribution. See Exhibit 1.

Based on the Receiver's previous ING Settlement and First Interim Distribution, the Receiver estimates the distribution process will continue for approximately five (5) months.

Morocco – \$ 4.87 million

Since the last Status Report, there continues to be very little change in activity to report.⁵ The Receiver continues to wait for copies of documents which Banque Populaire (the "Bank") has indicated it will prepare for signature by the account holders (Emade Echade, Essadia and Rabiaa Moutaouakkil).

As previously reported, the above step is crucial to move forward and the Receiver's Moroccan and French counsel are in a holding pattern until the Bank sends the letters. Once the Bank sends the letters to the account holders, the next crucial step will almost be complete.

⁵ [Dkt. # 324].

During this Fee Period, the Dutch Public Prosecutor's Office ("DPPO") responded to the Receiver's French counsel who requested a copy of the Mutual Legal Assistance Treaty ("MLAT").⁶ The DPPO informed the Receiver's French counsel on July 3, 2024, his colleagues sent the signed and translated MLAT with attachments to their Central Authority ("CA") to forward the request to Morocco. He further responded; according to their registration their CA did send the request to Morocco yet; he asked them to forward the request as soon as possible. As soon as the request is received by the Moroccan authorities, he stated he would inform the Receiver's French counsel and provide them a copy.

Once it is received, my French and Moroccan counsel will submit it to the Moroccan Currency Exchange Office.

B. COMMUNICATIONS WITH INVESTOR CLAIMANTS

Due to the Second Interim Distribution, communication with investors is in full swing. Investor Claimant(s) continued to be extremely engaged in communications with the Receiver's two paralegals. Although, the majority of the contact with the Investor Claimant(s) stems from emails and telephone communication, the paralegals continue to receive emails from Investor Claimant(s) who stated they read the Receivership's social media update.^{7,8} The primary categories of communications: (1) Responding to the Receiver's request to validate their contact details & wire transfer details; (2) Investor Claimant(s) contacting the Receiver to inquire about the amount

⁶ The representative of DPPO apologized for their delayed response; they just returned from a four- week vacation.

⁷ [Dkt. #101]. Through this Court's approved communication process, the Receiver makes announcements on the Receivership's social media accounts: Facebook site: www.facebook.com/prophetmax.receivership, website: www.prophetmaxreceivership.com as well as and via email to Investor Claimants' email addresses the Receiver has on file.

⁸ In many instances, the Investor Claimants did not realize the email notifications were not received, due to the complications of the search engines and their filters. The paralegals send screenshots of the receivership's email attempts.

of their specific distribution; (3) paralegal emailing via secure ShareFile W-9 forms the Internal Revenue Requires the Receiver to keep on file reflecting Investor Claimant(s) address changes; (5) providing additional documentation to financial institutions that will not release the Second Interim Distribution payments to ensure the payments are not fraudulent; (6) providing documentation to investors regarding proof of their claim amounts and previous distributes.⁹

C. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD

As previously outlined above, the paralegal's activities regarding Investor Communications were consistently busy. This included changing the way the Receivership previously communicated to the Investor Claimant(s). This includes announcements and instructional emails that pertain to the Second Interim Distribution i.e. which included sending mass emails to the Investor Claimant(s) via blind carbon copy (bcc) emails. These types of emails requested the Investor Claimant(s) reconfirm their mailing addresses and/or wire instructions, prior to sending distribution payments. Emailing much smaller groups and in some cases emailing Investor Claimant(s) individually is a time-consuming process. In other instances, the senior paralegal is telephoning Investor Claimant(s) she knows are elderly and no longer using email or computers. She is also the main point of contact for the DRC.

The paralegal also spent time communicating to Investor Claimant(s) regarding U.S. Investor Claimants governed by federal tax laws and IRS's requirement for new W-9 forms reflecting any changes of address.¹⁰ The senior paralegal continues with her regular monthly duties which includes updating the IB Capital ProphetMax bookkeeping spreadsheet and notebook to

⁹ Attached as Exhibit 2

¹⁰ The paralegals send a secure ShareFile link to receive all W-9 forms.

include all approved expenses paid by the Receiver as well as assisting with this Court's court documents.¹¹

The paralegal continues his regular activities with updating and managing the Receivership's social media accounts.¹² During this Fee Period, the senior paralegal's hours were 110; her invoice totaled \$13,200.00. The paralegal's total hours were 128.7 and his invoice totaled \$10,296.¹³

D. RECEIVER'S COUNSELS' ACTIVITIES FOR THIS FEE PERIOD

I. Archipel (Paris, France)

The Archipel's firm most recent combined invoices are for the months of June and July; they include activities related to communications in assisting the Receiver with foreign recovery efforts in Morocco. The firm invoiced for continued activities relating to mainly email communications with the Receiver's Moroccan counsel, the DPPO, Emade Echadi and to the consultant as well as the Receiver. Their invoice included several telephone conference calls with the Receiver's Moroccan counsel regarding the DPPO's response regarding the MLAT request, as discussed, earlier in this status report. Total fees and expenses for their most recent combined invoices for June and July EUR €2,685.00(USD \$2,972.20).¹⁴

¹¹ The IB Capital ProphetMax notebook includes all bank statements, invoices, court papers with corresponding orders and an Excel spreadsheet of account activity.

¹² <https://prophetmaxreceivership.com/>; <https://www.facebook.com/prophetmax.receivership>

¹³ The Receiver's paralegal invoiced 128.7 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$10,296.00. The senior paralegal invoiced 110 hours at \$120.00 per hour which is a 20% discount of her normal hourly rate for a total of \$13,200.00 [Dkt. #265].

¹⁴ XE: Convert EUR/USD (September 12, 2024). Respectively quoted in their order of issuance. Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=2685&From=EUR&To=USD>

II. BRAHMA (Casablanca, Morocco)

The Brahma's firm activities for their most two recent combined invoices were related to communications in assisting the Receiver with foreign recovery efforts in Morocco. Their activities included exchanges with the Receiver and with their co-counsel in France on the annex to be filed before the Office des Changes "the OECD" and the status of the case. Their activities included attending a conference call with the Receiver's French counsel and conference calls with the consultant regarding the status of the case. Total fees and expenses for their most recent combined invoice from June and July is \$1, 260.¹⁵

E. ADMINISTRATIVE EXPENSES

During this fee period, The Hohmann Law Firm received three invoices from the DRC. They submitted their invoices for two matters which included two invoices related to the Second Interim Distribution in the amount of \$5,009.13.¹⁶ Two invoices related to administrative expenses such as document storage and other administrative services. Those invoices totaled \$298.38.

F. CONCLUSION AND PRAYER FOR RELIEF

The Receiver requests the Court approve his Thirty- Fourth Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between August 1, 2024, through August 31, 2024, totaling \$6,890.00. Attached as Exhibit 2 to this Motion for Approval of Thirty-Fourth Fee Application and Brief in Support is the redacted invoice detailing all the Receiver's time entries, during the Fee Period.

¹⁵ The Brahma firm invoices in USD.

¹⁶ Their invoice included numerous activities related to set-up requirements for the Second Interim Distribution, conference calls with the Senior Paralegal regarding upcoming Second Interim Distribution, Receivership letter to be mailed with checks, wire instructions to receive funds to be distributed etc.

The Receiver requests the Court enter the proposed Order filed with this motion to approve (1) the payment of interim expenses of \$23,496.00 for the invoices of his two paralegals. The total fees and expenses for this fee period are \$39,925.71 (inclusive of the Receiver's foreign counsel and administrative expense) for the Receivership Estate and IB Capital Receivership Estate during the Thirty- Fourth Fee Period, all of which were both reasonable and necessary for the Receiver to fulfill his Court-ordered duties.

Respectfully submitted,
GUY HOHMANN

By: /s/ Guy Hohmann
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**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 take a position on the Motion nor the relief sought herein.

/s/ Guy Hohmann
Guy Hohmann

CERTIFICATE OF SERVICE

September 16, 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

ProphetMax Receivership

From: Mail Delivery System <mailer-daemon@ppe-hosted.com>

To: [REDACTED]

Sent: Friday, August 16, 2024 12:02 PM

Subject: Delivery delayed:Delayed Mail (still being retried)

This is the PPE Hosted Dispatch mail system.

THIS IS A WARNING ONLY. YOU DO NOT NEED TO RESEND YOUR MESSAGE. #
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Your message could not be delivered for more than 1 hour(s).
It will be retried until it is 5 day(s) old.

<[REDACTED]@gmail.com>: host alt1.gmail-smtp-in.l.google.com[173.194.219.26] said:
421-4.7.28 Gmail has detected an unusual rate of mail originating from your
DKIM 421-4.7.28 domain [NETORGFT3828676.onmicrosoft.com 36]. To
protect our 421-4.7.28 users from spam, mail sent from your domain has been
temporarily 421-4.7.28 rate limited. For more information, go to 421-4.7.28
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Exhibit 1

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The Hohmann Law Firm

114 West 7th Street
 625 Norwood Tower
 Austin, Texas , 78701
 Guyh@hohmannlaw.com
 www.hohmannlaw.com
 O: (512) 551-9808

INVOICE

| | |
|------------|---------------------|
| Number | 1395 |
| Issue Date | 9/11/2024 |
| Due Date | 10/11/2024 |
| Email | guyh@hohmannlaw.com |

Bill To:

Guy Hohmann Receiver for ProphetMax and IB Capital

114 W. 7th Street
 625 Norwood Tower
 Austin, Texas 78701
 O: 512-495-1438

Time Entries

| Time Entries | Rate | Hours | Sub |
|--|----------|-------|------------|
| GMH 8/6/2024 Conference with Ryn Hohmann regarding various aspects of upcoming Second Interim Distribution. | \$650.00 | 0.40 | \$260.00 |
| GMH 8/9/2024 End of week meeting with Ryn Hohmann regarding status of responses from investors and Receivership inbox. | \$650.00 | 0.50 | \$325.00 |
| GMH 8/12/2024 Email from and to investors regarding Gallagher and Dion's involvement with IB Capital fraud. Review and revise draft emails to investors regarding upcoming Second Interim Distribution. | \$650.00 | 1.20 | \$780.00 |
| GMH 8/16/2024 End of week conference with Ryn Hohmann and Tyler Cunningham regarding the Second Interim Distribution and progress of distribution checks and wires. | \$650.00 | 0.30 | \$195.00 |
| GMH 8/20/2024 Review and revise Motion for 33rd Fee Application and conference with Ryn regarding same, exhibits and proposed order, conference with Ryn Hohmann regarding the Second Interim Distribution and progress of distribution checks and wires. | \$650.00 | 2.10 | \$1,365.00 |
| GMH 8/21/2024 Emails from and to the DPPO regarding amount of funds paid to Van der Wal and MLAT sent to Morocco regarding last known address for J.B. Smit and email to Ms. Smit regarding background information and need for wiring information and request for documentation, conference with Ryn Hohmann regarding [REDACTED] wire. | \$650.00 | 2.30 | \$1,495.00 |
| GMH 8/22/2024 Multiple emails to and from [REDACTED] regarding documentation and payments made to investors thus far, conference with Ryn Hohmann regarding documents and payments and review calculations. | \$650.00 | 0.60 | \$390.00 |

Exhibit 2

| Time Entries | Rate | Hours | Sub |
|--|---------------------------|--------------|-------------------|
| GMH 8/23/2024 End of week conference with Ryn Hohmann and Tyler Cunningham regarding the Second Interim Distribution and progress of distribution checks and wires. | \$650.00 | 0.50 | \$325.00 |
| GMH 8/23/2024 Emails from investor and review of his supporting documentation and prepare responsive email regarding his approved claim amount, emails with the DPPO regarding same, conference with Ryn Hohmann regarding her recent phone call and emails with investors and review upcoming email regarding same. | \$650.00 | 1.60 | \$1,040.00 |
| GMH 8/26/2024 Review incoming emails from the DPPO and my French counsel. | \$650.00 | 0.20 | \$130.00 |
| GMH 8/29/2024 Conference with Ryn Hohmann regarding the Second Interim Distribution and progress of distribution checks and wires. | \$650.00 | 0.40 | \$260.00 |
| GMH 8/30/2024 End of week conference with Ryn Hohmann and Tyler Cunningham regarding the Second Interim Distribution and progress of distribution checks and wires. | \$650.00 | 0.50 | \$325.00 |
| | Time Entries Total | 10.60 | \$6,890.00 |

| | |
|-------------|------------|
| Total (USD) | \$6,890.00 |
| Paid | \$0.00 |
| Balance | \$6,890.00 |

Terms & Conditions

Net 30

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

| | | |
|---|--|-----------------------------------|
| UNITED STATES COMMODITY FUTURES TRADING COMMISSION, <i>Plaintiff,</i> | § § § § § § § § § § § § | Civil Action No. A-12-CV-0862-DEA |
| v. SENEN POUSA, INVESTMENT INTELLIGENCE CORPORATION, <i>DBA</i> PROPHEMAX MANAGED FX, JOEL FRIANT, MICHAEL DILLARD, and ELEVATION GROUP, INC., <i>Defendants.</i> | | |

**ORDER GRANTING RECEIVER'S
 MOTION FOR APPROVAL OF THIRTY-FOURTH FEE APPLICATION AND
 EXPENSES**

Before the Court is the Receiver's Motion for Approval of the Thirty-Fourth Fee Application and Brief in Support ("Motion"), covering the one-month time period from August 1, 2024, through August 31, 2024.

The Motion seeks approval to pay his fees and associated expenses of \$39,925.71 in the following amounts:

1. Receiver's fees of \$6,890.00
2. Senior paralegal total expenses of \$13,200.00
3. Paralegal total expenses of \$10,296.00
4. Archipel (France) fees and expenses of €2,685.00 (USD \$2,972.20)
5. Brahma (Morocco) fees of \$1,260.00
6. Donlin Recano & Co. Inc. expenses \$5,307.51

Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver were reasonable and necessary for the Receiver to perform his Court-ordered duties. The Court concludes the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that payment for interim fees and expenses listed above totaling \$39,925.71 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Thirty-Fourth Fee Period is approved.

SIGNED this _____ day of _____, 2024.

DAVID A. EZRA
SENIOR UNITED STATES DISTRICT JUDGE