

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

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

SENEEN 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

**UNOPPOSED MOTION TO APPOINT THE
NATIONAL FUTURES ASSOCIATION AS MONITOR**

Comes now Guy M. Hohmann, this Court’s appointed Receiver (“Receiver”), and files this Motion to appoint the National Futures Association (“NFA”) as Monitor (“Monitor”) in order to effect restitution payments to the Defendant IB Capital’s (hereinafter, the “Defendant”) investors.

I. RECOVERED ASSETS

The Receiver has recovered certain assets wrongfully misappropriated from IB Capital (the “Recovered Assets”). As the Receiver recovers additional assets the Receiver will transfer additional funds to the Monitor for further distributions.

The Receiver shall retain a portion of the Recovered Assets in the receivership estate for ongoing asset recovery efforts, the fees and expenses of his retained legal counsel in pursuing additional assets wrongfully misappropriated from IB Capital, and to pay his future fees and expenses and any winddown activities that may occur.

The Monitor shall then make distributions of the Recovered Assets it receives as set forth below at no cost to the Receivership or to any investor. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

II. PAYMENTS AND DISTRIBUTION

The Receiver will wire transfer payments, and any post-judgment interest payments to the Monitor in the name of "Defendant IB Capital, Emade Echade and Michel Geurkink– Restitution Fund" to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606. (Defendants IB Capital, Emade Echade and Michel Geurkink will hereinafter be referred to collectively as the "Defendants".) Concurrent with the wire transfer payment referenced above, the Receiver will send a letter that identifies the Defendants and the name and docket number of this proceeding. The Receiver shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant's investors identified by the Commission or may defer distribution until such time as the Monitor deems appropriate.

The Receiver shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant's investors to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments.

The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendant's investors during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The amounts payable to each investor shall not limit the ability of any investor from proving that a greater amount is owed from Defendant or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any investor that exist under state or common law.

Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each investor of Defendant who suffered a loss is explicitly made an intended third-party beneficiary of the Consent Order previously entered by this Court on October 14, 2016, [Dkt. 24] (the "Consent Order") and may seek to enforce obedience of the Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendants, to ensure continued compliance with any provision of the Consent Order, and to hold Defendants in contempt for any violations of any provision of the Consent Order.

To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants' Restitution Obligation as defined in the Consent Order, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

Partial Satisfaction: Acceptance by the Commission or the Monitor of any payments from the Receiver towards the satisfaction of Defendants' Restitution Obligation shall not be deemed a waiver of Defendants' obligations to make further payments pursuant to the Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

III. PRAYER FOR RELIEF AND CONCLUSION

The Receiver requests the Court enter the proposed Order filed with this Motion to appoint the NFA as Monitor.

Respectfully submitted,
GUY HOHMANN

By: /s/ Guy Hohmann
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 is not opposed to this Motion and the relief requested therein.

/s/ Guy Hohmann
Guy Hohmann

CERTIFICATE OF SERVICE

On March 27, 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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**ORDER GRANTING UNOPPOSED MOTION TO APPOINT THE
NATIONAL FUTURES ASSOCIATION AS MONITOR**

Before the Court is the Receiver’s Motion to appoint the National Futures Association (“NFA”) as Monitor (“Monitor”) in order to effect restitution payments to the Defendant IB Capital’s investors.

Having considered the Motion, the evidence presented, and arguments of counsel, The Court concludes the Motion should be, and is hereby, GRANTED.

SIGNED this _____ day of _____, 2020.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE