

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.*

Civil Action No. A-12-CV-0862-DAE

**RECEIVER'S MOTION FOR APPROVAL OF THIRTY-FIFTH 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-Fifth Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from September 1, 2024, through September 30, 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).<sup>1</sup> 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

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<sup>1</sup> 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 on the Receiver's Motion for Approval of Second Interim Distribution Plan & Procedures became final.<sup>2</sup>

As previously reported, the Second Interim Distribution is underway. In August of 2024, Approved Investor Claimants began to receive their checks or wires. The distribution checks are 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.<sup>3,4</sup>

As to an update, the challenges remain the same as previously reported. Although, there are several challenges that are increasing. The main increase stems from questions regarding Investor Claimant(s) approved claim amount. They do not remember as part of the fraud the co-

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<sup>2</sup> [Dkt. # 320, 321].

<sup>3</sup> [Dkt. #'s 268, 262 and 321].

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

conspirators returned forty-percent (40%) of their initial investment amounts.<sup>5</sup> There continue to be slow response times from the Investor Claimant(s), which is one of the reasons the distribution progress is taking longer than anticipated.

As previously reported, the 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 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) as mentioned in an earlier paragraph, Investor Claimant(s) do not remember their claim amount; (5) Investor Claimant(s) 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.); 6) The last obstacle, Google flagged the Receivership emails as "unusual sending activity" and is not sending batched 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.

Based on the Receiver's previous ING Settlement and First Interim Distribution, the Receiver estimates the distribution process will continue for approximately four (4) months.

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<sup>5</sup> The paralegals research all prior records including the Investor Claimant's original claim documentation, the records the Receiver received from the Australian Liquidator as well as records provided by ING Bank. It is a time-consuming process; the Receiver expects the inquiries to continue based on this increasing trend.

## **2. Morocco – \$ 4.87 million**

Since the last Status Report, there has been favorable developments in connection with the potential repatriation of the funds in Morocco. As previously reported, the Dutch Public Prosecutor's Office ("DPPO") recently advised they sent a Mutual Legal Assistance Treaty ("MLAT") request to the Central Authority in the Netherlands who in turn will send the MLAT request to the Moroccan National Prosecutor's Office ("MNPO").

The Receiver's Moroccan counsel met with a representative of the MNPO to inquire if there are any additional steps that would assist in the expediting the lift of the freeze on the Moroccan bank accounts at issue. The Receiver understands the meeting went well. The MNPO requested the Receiver's Moroccan counsel make a written request to the Central Authority to expedite the process.

Once the freeze on the accounts have been lifted, legal counsel for the bank which is holding the accounts will provide the account holders (Emade Echade and Essadia and Rabiaa Moutaouakkil) with authorization letters which they will be required to sign.

Upon receipt of those signed letters, the bank, the Receiver's Moroccan counsel and this Court's approved Moroccan consultant will meet with the Moroccan Currency Exchange Office ("MCEO") to seek approval to have the funds wired to the Receivership estate.<sup>6</sup>

## **3. COMMUNICATIONS WITH INVESTOR CLAIMANTS**

The Second Interim Distribution communication with Investor Claimants continues 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 communications, the paralegals continue to receive emails from

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<sup>6</sup> [Dkt. # 304].

Investor Claimant(s) who stated they read the Receivership's social media update.<sup>7,8</sup> 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 of their specific distribution; (3) paralegals email via secure ShareFile W-9 forms (U.S. tax laws require 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 distributions.

#### **B. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD**

As previously reported, the paralegal's activities regarding Investor Communications were quite busy. This included changing the way the Receivership previously communicated with Investor Claimant(s); due to the challenges with internet search engines and the Receivership's emails flagged as spam, the paralegals continue to email Investor Claimants one at a time or in extremely small batches via blind carbon copy (bcc) emails.

These types of emails request the Investor Claimant(s) to 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.

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<sup>7</sup> [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](http://www.facebook.com/prophetmax.receivership), website: [www.prophetmaxreceivership.com](http://www.prophetmaxreceivership.com) as well as and via email to Investor Claimants' email addresses the Receiver has on file.

<sup>8</sup> 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.

The paralegal also continues to communicate to Investor Claimant(s) regarding U.S. Investor Claimants governed by federal tax laws and the requirement to obtain a new W-9 form reflecting any changes of address.<sup>9</sup> The senior paralegal continues with her regular monthly duties which includes updating the IB Capital ProphetMax bookkeeping spreadsheet and notebook to include all approved expenses paid by the Receiver as well as assisting with this Court's court documents.<sup>10</sup>

The paralegal continues his regular activities with updating and managing the Receivership's social media accounts.<sup>11</sup> During this Fee Period, the senior paralegal's hours were 98.5; her invoice totaled \$11,820.00. The paralegal's total hours were 127.2 and his invoice totaled \$10,176.00.<sup>12</sup>

### **C. 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 August and September; 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, the conspirators' counsel and the Moroccan consultant as well as the Receiver. Their invoice included a telephone conference call with the Receiver's Moroccan counsel regarding their strategy and next steps, as discussed

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<sup>9</sup> The paralegals send a secure ShareFile link to receive all W-9 forms.

<sup>10</sup> The IB Capital ProphetMax notebook includes all bank statements, invoices, court papers with corresponding orders and an Excel spreadsheet of account activity.

<sup>11</sup> <https://prophetmaxreceivership.com/> and <https://www.facebook.com/prophetmax.receivership>

<sup>12</sup> The Receiver's paralegal invoiced 127.2 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$10,176.00. The senior paralegal invoiced 98.5 hours at \$120.00 per hour which is a 20% discount from her normal hourly rate for a total of \$11,820.00 [Dkt. #265].

earlier in this status report. Total fees and expenses for their most recent combined invoices for August and September are EUR €4,527.80 (USD \$4,897.56).<sup>13</sup>

## **II. BRAHMA (Casablanca, Morocco)**

The Brahma's firm activities for their most recent invoice 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 and email exchanges with the co-conspirators counsel. They also attended a conference call with the Receiver's French counsel regarding the DPPO and the Moroccan consultant regarding the status of the case. Total fees and expenses for their most recent combined for September is \$1, 260.<sup>14</sup>

## **D. ADMINISTRATIVE EXPENSES**

During this fee period, The Hohmann Law Firm received three invoices from the DRC. They submitted their invoices for two matters. The first invoice related to the Second Interim Distribution in the amount of \$2,586.40. The second invoice was related to administrative expenses such as document storage and other administrative services which totaled \$238.86.

## **E. CONCLUSION AND PRAYER FOR RELIEF**

The Receiver requests the Court approve his Thirty-Fifth Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between September 1, 2024, through September 30, 2024, totaling \$8,710.00. Attached as Exhibit 1 to this Motion for Approval of Thirty-Fifth Fee Application and Brief in Support detailing all the Receiver's time entries, during the Fee Period.

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<sup>13</sup> XE: Convert EUR/USD (October 21, 2024). Respectively quoted in their order of issuance. Retrieved from

<https://www.xe.com/currencyconverter/convert/?Amount=4527.8&From=EUR&To=US>

<sup>14</sup> The Brahma firm invoices in USD.



The Receiver requests the Court enter the proposed Order filed with this motion to approve (1) the payment of interim expenses of \$21,996.00 for the invoices of his two paralegals. The total fees and expenses for this fee period are \$39,688.42 (inclusive of the Receiver's foreign counsel and administrative expense) for the Receivership Estate and IB Capital Receivership Estate during the Thirty-Fifth 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  
Guy Hohmann  
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Austin, Texas 78701  
(512) 551-9808

**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**

October 21, 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



## 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	1399
Issue Date	9/1/2024
Due Date	11/20/2024
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 9/3/2024 Conference with Ryn Hohmann regarding calculation of a particular investor's approved claim amount and review of source documents in connection with same, review and revise proposed email to investor explaining calculation and including source documents.	\$650.00	5.20	\$3,380.00
GMH 9/4/2024 Email from and to investor regarding his approved claim amount and nature of the misappropriation of funds.	\$650.00	0.40	\$260.00
GMH 9/13/2024 Review and revise 34th Fee Application, review email exchange between Ryn Hohmann and investor notice of his claim determination and recalculate his corrected approved claim amount and conference with Ryn Hohmann regarding same, email to investor regarding his new approved claim amount and calculation of his second interim distribution payment and additional forthcoming fees.	\$650.00	2.30	\$1,495.00
GMH 9/16/2024 Review of changes to 34th fee application and proposed order in connection with same and conference with Ryn Hohmann regarding same.	\$650.00	0.40	\$260.00
GMH 9/19/2024 Emails to and from investor regarding timing of second interim distribution check, conference with Ryn Hohmann regarding same and responsive emails with investor regarding same, email from my French counsel to Echade's counsel regarding follow-up email to Banque Populaire's counsel regarding execution of documents necessary to repatriate the Moroccan funds.	\$650.00	0.60	\$390.00
GMH 9/20/2024 Review of emails between Echade's counsel to Banque Populaire's counsel regarding execution of Authorization Requests and review of email from my French counsel to the DPPO regarding MLAT request to Morocco counter party agency.	\$650.00	0.50	\$325.00

### Exhibit 1

Time Entries	Rate	Hours	Sub
GMH 9/26/2024 Conference with Ryn Hohmann regarding apparent miscalculation of an investors approved claim amount and review selected source documents supporting two separate investments and recalculate corrected claim amount.	\$650.00	0.60	\$390.00
GMH 9/27/2024 Review and revise proposed email to investor who had one claim that was miscalculated and another claim that was overlooked, review selected portions of claim supporting materials and conference with Ryn Hohmann regarding same and proposed revision to same.	\$650.00	2.80	\$1,820.00
GMH 9/30/2024 Review of emails between my French counsel and the DPPO regarding the MLAT request sent by the DPPO to their counterparts in Morocco and conference with Ryn Hohmann regarding same, email from and to investor regarding status of Second Interim Distribution and repatriation efforts in Morocco.	\$650.00	0.60	\$390.00
<b>Time Entries Total</b>		<b>13.40</b>	<b>\$8,710.00</b>

Total (USD)	\$8,710.00
Paid	\$0.00
Balance	\$8,710.00

## Terms & Conditions

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Exhibit 1

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

UNITED STATES COMMODITY  
FUTURES TRADING COMMISSION,

*Plaintiff,*

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**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-DEA

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

Before the Court is the Receiver’s Motion for Approval of the Thirty-Fifth Fee Application and Brief in Support (“Motion”), covering the one-month time period from September 1, 2024, through September 30, 2024.

The Motion seeks approval to pay his fees and associated expenses of \$39,688.42 in the following amounts:

1. Receiver's fees of \$8,700.00
2. Senior paralegal total expenses of \$11,820.00
3. Paralegal total expenses of \$10,176.00
4. Archipel (France) fees and expenses of €4,527.80 (USD \$4,897.56)
5. Brahma (Morocco) fees of \$1,260.00
6. Donlin Recano & Co. Inc. (distribution agent) expenses \$2,824.86.

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 \$39,688.42 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Thirty-Fifth Fee Period is approved.

SIGNED this 22<sup>nd</sup> day of October, 2024.

  
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DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE