

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

UNITED STATES COMMODITY
 FUTURES TRADING COMMISSION,

Plaintiff,

v.

SENE 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 MOTION FOR APPROVAL OF TWENTY-NINTH 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 Twenty-Ninth Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from March 1, 2024, through March 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.

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. June 24, 2008); *SEC v. Ninth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

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 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. FIRST INTERIM DISTRIBUTION

As previously reported, the Receiver completed the First Interim Distributions. During the beginning of this fee period, correspondence from Investor Claimants remained consistently steady. There were several Investor Claimants that required assistance with communications to their financial institutions, due to the vast amount of wire fraud. The other main category of communication stemmed from the IRS required MISC-1099 form. Investors Claimants emailed or telephoned to discuss income tax filing requirements and why they were required to receive a MISC-1099 form. However, later in this fee period, the correspondence slowed down.

B. RECEIVER'S ACTIVITIES FOR THIS FEE PERIOD

1. Slovakia - \$7.1 million

In early March, the Receiver previously reported, there was possibly another attachment on the Slovakian funds, the Receiver contacted the Dutch Public Prosecutor's Office ("DPPO") to gain more insight on that possible attachment.

In response to that request, in late March, the Receiver received new information from the DPPO. In mid-March, the Municipal Court in Bratislava decided the seized funds must be released to the IB Capital receivership estate.

The DPPO emailed a copy of the Order issued by the City Court sitting in Bratislava, Slovakia to the Receiver. The Receiver's Slovakian counsel translated the Order into English. The translated version is attached as Exhibit "1".

The Enforcement Agent spoke with a representative at the bank; the bank confirmed they have received the Order of Municipal Court Bratislava. The bank is currently assessing the Order and stated they will "proceed accordingly".

2. Morocco – \$ 4.87 million

It is the Receiver's understanding the account holders (Emade Echade, Essadia and Rabiaa Moutaouakil) signed the letters addressed to Banque Populaire (the "Bank"). The letters requested they be provided with required specific information regarding the accounts that will be provided to the Moroccan Currency Exchange Office.² The account holders counsel were requested to provide scanned copies of the executed letters to Receiver's French counsel.

As previously reported, the account holders executed Irrevocable Transfer Orders ("ITOs") instructing Banque Populaire to transfer the funds to the Receivership estate. The DPPO was

² The Receiver would note this step was a recently imposed by the Bank.

provided copies of the ITOs. The DPPO will attach the ITOs to an MLAT request and provide that request to the Moroccan Public Prosecutors Office.³

Once this occurs, the Receiver's French and Moroccan counsel will communicate with both Banque Populaire's counsel and the Moroccan Currency Exchange Office and seek to have the funds transferred to the receivership estate.⁴

C. COMMUNICATIONS WITH INVESTOR CLAIMANTS

As previously stated, the First Interim Distribution is complete. During this fee period, the Investor Claimants continued to be engaged in their communications with the Receiver's two paralegals. The two categories: (1) revolved around international investors whose financial institutions flagged their First Interim Distribution wire and required the Receivership's assistance to have the funds released into their accounts (2) Investor Claimants governed by U.S. federal tax law inquired why they received a MISC-1099 form and why/how do they need categorize it on the income tax forms.

As previously mentioned, later in this fee period, the communication slowed down. Receiver believes the communication will continue at a slower pace until further distributions are announced.

D. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD

As previously outlined above, in the beginning of this fee period, the paralegal's activities were and continue to be substantial. In part, it was due to email communications to and from the international Investor Claimants; in some instances, their financial institutions questioned the

³ Prior to the DPPO attaching the ITOs to an MLAT request, the DPPO is waiting for the Bank to comply to the specific information regarding the account holders account details.

⁴ As noted in previous filings, the Receiver has been advised that it is likely the Kingdom of Morocco may impose a fee or tax before allowing the funds to be repatriated to the receivership estate.

validity of the wire transfer and required proof of validity of the wires. In other instances, the Investor Claimants opened new accounts to receive their First Interim Distributions.

The other main category for the paralegals was to provide proof of previous distributions. Numerous investors governed by U.S. tax laws questioned their distribution amounts received on their MISC-1099 forms. The paralegals researched and contacted the distribution agent for copies of canceled checks and emailed them to the investors for their records. Due to the constraints on the U.S.P.S, the Receiver's paralegals continue to email e-copies of the Investor Claimants MISC-1099 forms via secure ShareFile.

The paralegals also managed general communications and updates pertaining to the receivership. The senior paralegal's total hours during this fee period were 42.2; her invoice totaled \$5,064.00. The paralegal's total hours were 57 and his invoice totaled \$4,560.00.⁵

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

I. Munsch, Hardt

As previously reported, the Munsch Hardt firm is the Receiver's United States ("U.S.") law firm. His time in June related to communications with the Receiver on receivership related tax questions. Total fees and expenses for their most recent invoice for March was \$140.00.

F. ADMINISTRATIVE EXPENSES

During this fee period, The Hohmann Law Firmed incurred GoDaddy annual renewal expenses for the receivership website, domain and domain protection in the amount of \$707.17.

⁵ The Receiver's paralegal invoiced 57 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$4,560.00. The senior paralegal invoiced 42.2 hours at \$120.00 per hour which is a 20% discount of her normal hourly rate for a total of \$5,064.00 [Dkt. 265].

CONCLUSION AND PRAYER FOR RELIEF

The Receiver requests the Court approve his Twenty-Ninth Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between March 1, 2024, through March 31, 2024, totaling \$13,938.41 Attached as Exhibit 2 to this Motion for Approval of Twenty-Ninth Fee Application and Brief in Support is the redacted invoice detailing all the Receiver's time entries, during the Fee Period.

The Receiver requests the Court enter the proposed Order filed with this Motion to approve (1) the payment of interim expenses of \$9,624.00 for the invoices of his two paralegals (2) the payment of the Receiver's foreign counsel's invoices totaling \$140.00. The Hohmann Law Firm's administrative expense totaling \$707.17 The total fees and expenses for this fee period are \$24,409.55 for the Receivership Estate and IB Capital Receivership Estate during the Twenty-Ninth 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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guyh@hohmannlaw.com
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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, 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

April 8, 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

File No.: 4Tcud/151/2022 - 138
IČS: 1122011731

28-03-2024

C o u r t O r d e r
for the revocation of the freezing of funds

The Municipal Court Bratislava I, judge JUDr. Branislav Harabin, pursuant to Section 551(4) of the Code of Criminal Procedure, on 13 March 2024, **on the basis of a motion by the Dutch judicial authority**, has

d e c i d e d :

Pursuant to Section 551(4) of the Code of Criminal Procedure, **I revoke the seizure of funds in:**

- bank account number 4014688262/7500 in the name of Riknik & Sons Ltd, Crystal Offices, OT Centre, Victoria, Mahe, Seychelles; and

- bank account number 4014665757/7500 in the name of Riknik & Sons Ltd, Crystal Offices, OT Centre, Victoria, Mahe, Seychelles

both held with Československá obchodná banka, a. s., with registered office at Žižkova 11, Bratislava 811 02, Company ID No: 36 854 140, which were provisionally seized on the basis of the Order of the District Court Bratislava I dated 20 September 2012, File no. OS BA I-V-25- 1/2012-0Tp-364/2012.

R e a s o n i n g

By the order of the judge for preliminary proceedings of the District Court Bratislava I dated 20 September 2012, file no. OS BA I-V-25-1/2012-0Tp-364/2012, bank accounts no. 4014688262/7500 and no. 4014665757/7500 held with Československá obchodná banka, a. s. in the name of the company Riknik & Sons Ltd., Crystal Offices, OT Center, Victoria, Mahé, Seychelles, were provisionally seized under Section 551(1) of the Criminal Procedure Code, with appropriate application of Section 95(1) of the Criminal Procedure Code, on the basis of a proposal by the District Prosecutor's Office Bratislava I, processed pursuant to a request from the Dutch judicial authority.

The judgment of the North Holland District Court, file no. 15/996517-12 of 28 October 2021, lists 19 victims who have made a claim for damages against the convict and who are under compulsory administration and for whom their legal representative, Mr Hohmann, is acting before the Dutch court.

According to information from CSOB, a.s., cash was withdrawn from account no. 4014665757/7500 on 13 September 2012, and after that only bank charges were charged and the account went into overdraft. The account was closed with a debit of EUR -20.36.

According to information from the bank, there is an amount blocked in the account no. 4014688262/7500 since 13 September 2012 (although the court order is dated 20 September 2012), which amounts to USD 7,194,496.43 as at 9 March 2022. As of 16 December 2020, the account in question (no. 4014688262/7500) is subject to enforcement (enforcement blocking) no. 336EX 664/20, by the office of the bailiff JUDr. Juraj Kovács, in relation to the beneficiary Michael Guy Hohmann (EUR 7,228,843.69), in the amount of EUR 8,786,659.51 (the above is also apparent from the associated document from CSOB, a.s. dated 9 March 2022).

By a submission dated 11 September 2023, the Dutch judicial authority informed the local court that, following an agreement between the Dutch authorities and the U.S. receiver, it had been decided that the most appropriate course of action would be for the bailiff to proceed in favour of the U.S. receiver, and therefore the Dutch central authority had revoked the Dutch confiscation order on the basis of Article 27 of EU Regulation 2018/1805, and the Dutch authorities were preparing an application for the revocation of the seizure applied for under the European seizure order.

On 3 November 2023, the court received the submission of the Ministry of Justice dated 31 October 2023 together with the submission of the Amsterdam Public Prosecutor's Office dated 2 October 2023, requesting the earliest possible termination of the seizure of the bank's assets (which the Court has carried out on the basis of the Prosecutor's Office's motion and the Dutch request), namely the assets in Československá komerčná banka, PLC, Michalská 18, Bratislava, PSC 815 63 /previous registered office address/, relating to bank account no. 4014688262/7500, held in the name of Riknik & Sons Ltd., Crystal Offices, OT Centre, Victoria, Mahé, Seychelles and any other assets.

According to the information submitted, the Court at Haarlem on 28 October 2021 confiscated the said bank balance which was seized in Slovakia. The Slovak party was informed that in the judgment, the court considered that the Dutch prosecution had entered into agreements with the U.S. Receiver and that the seizure in question was made for the benefit of the victims, who must be compensated from the available assets. In the meantime, it has come to light that the U.S. Receiver himself has a valid title to claim the seized funds in Slovakia. Moreover, he himself had them seized. Therefore, for reasons of efficiency, it was agreed, in consultation with their central authority responsible for the transmission of the Dutch confiscation order (the Central Court Collection Agency) to Slovakia, that a certificate be sent to Slovakia under the European Confiscation Regulation for the recognition and transmission of the enforcement of the Dutch confiscation order, is revoked. In addition, an agreement has been reached that the Dutch Prosecutor's Office will request that the seizure be terminated in order to allow the U.S. receiver (whether through its contacts in Slovakia or not) to seek the funds itself for the benefit of the

fraud victim in the context of the U.S. receivership. They therefore seek termination of the seizure solely for this purpose.

Pursuant to Article 551(4) of the Code of Criminal Procedure, the district court shall revoke the seizure on the basis of an initiative of the foreign authority that requested the detention or on the basis of an international treaty. The district court may also revoke the seizure if the foreign state fails to request the enforcement of a foreign property judgment relating to the seized property within a reasonable time.

In the light of the requests received for the seizure of the funds and the cancellation of the seizure of the accounts, i.e. on the basis of the foreign authorities' (Dutch judicial authorities) requests for the cancellation of the seizure by submissions of 11 September 2023 and 2 October 2023, in connection with the above-mentioned provision of the Code of Criminal Procedure, the court has granted those requests as manifestly well-founded, since the seizure of the funds is being carried out for the benefit of the victims. At the same time, it can be noted that the foreign state (the Netherlands) did not apply for the enforcement of the foreign judgment concerning the seized property within a reasonable time (since the seizure in 2012) or withdrew the certificate for the confiscation order of the seized funds in its entirety, which also fulfils the conditions for the revocation of the seizure pursuant to Section 551(4) of the Code of Criminal Procedure, second sentence.

In the light of the foregoing, the Court has decided as set out in the verdict.

In Bratislava, 13 March 2024.

JUDr. Branislav Harabin
judge

Responsible for correctness:
Terézia Eliášová



The Hohmann Law Firm

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 1100 Norwood Tower
 Austin, Texas , 78701
 Guyh@hohmannlaw.com
 www.hohmannlaw.com
 O: (512) 551-9808

INVOICE

Number	1379
Issue Date	3/1/2024
Due Date	3/31/2024
Email	guyh@hohmannlaw.com

Bill To:

Guy Hohmann Receiver for ProphetMax and IB Capital
 114 West Seventh Street
 Suite 1100
 Austin, Texas 78701
 O: 512-495-1438

Time Entries

Time Entries	Rate	Hours	Sub
GMH-RCVR 3/5/2024 Review lengthy email from Emade Echadi regarding past history and particulars of their previous cooperation and expense of doing same, email from Mr. Jonk requesting my French counsel prepare the letters for the debtors to sign, prepare responsive emails to Mr. Echadi and Mr. Jonk. Review incoming email from investor summarizing my status report of 1/31/24 and asking whether her summary is accurate and inquiring if I have received Slovakian or Moroccan funds and respond to same.	\$658.75	1.20	\$790.50
GMH-RCVR 3/6/2024 Review of lengthy email from my French counsel with six letters that Essadia and Rabiaa Moutaouakkil and Emade Echadi must sign, complete and send to my Moroccan counsel with several attachments to each letter, review of English translated versions of the letters and responsive email to my French counsel regarding [REDACTED] Moroccan counsel.	\$658.75	2.10	\$1,383.38
GMH-RCVR 3/7/2024 Email to my Slovakian counsel regarding [REDACTED].	\$658.75	0.20	\$131.75
GMH-RCVR 3/8/2024 Further review of six letters from Essadia and Rabiaa Moutaouakkil and Emade Echadi to two separate individuals at Banque Populaire and enclosure to those letters (Passports and Irrevocable Transfer Orders) email to Mike Jonk and Emade Echade regarding the email addresses for Essadia and Rabiaa Moutaouakkil, enclosures to me mailed with the executed letters to my Moroccan counsel [REDACTED].	\$658.75	2.40	\$1,581.00
GMH-RCVR 3/11/2024 Lengthy email from my Slovakian counsel regarding [REDACTED], responsive [REDACTED].	\$658.75	0.70	\$461.13

Exhibit 2

Time Entries	Rate	Hours	Sub
GMH-RCVR 3/14/2024 Emails from and to investors regarding status of repatriation efforts.	\$658.75	0.20	\$131.75
GMH 3/20/2024 Multiple emails with the DPPO regarding status of Slovakian judgment recognition proceeding and expected repatriation approximately USD 7.1 million from Slovakia. Email with investor regarding use of 1099-Misc vs. 1099-DIV, links to IRS website regarding distributions from a Ponzi scheme.	\$650.00	3.10	\$2,015.00
GMH-RCVR 3/20/2024 Email from and to my Slovakian counsel regarding [REDACTED] and email exchange with Mr. Geurkink and Peter Vargas Puskas. Email from Emade Echadi regarding executed request for access to Bank Records and Information and funds which may have been in his aunt's bank account prior to the misappropriations from IB Capital. Email to my French counsel regarding [REDACTED]	\$658.75	3.20	\$2,108.00
GMH-RCVR 3/21/2024 Emails with Mr. Echadi regarding emailing a signed copy of the executed letters and email with my French Counsel regarding [REDACTED] emails with Mr. Echadi's counsel regarding same and notifying the DPPO that I am not making any claim on the Moroccan properties, email to the DPPO regarding same, review of executed documents and email with my French counsel regarding [REDACTED].	\$658.75	1.20	\$790.50
GMH-RCVR 3/22/2024 Emails to and from my French counsel forwarding materials from the account holder's counsel (Mike Jonk), email to Mr. Jonk regarding obtaining his client's signature on the letters and three letters that were not provided. Review and revise Twenty-Eighth Fee Application, email from Emade Echadi regarding execution of letters requesting account information.	\$658.75	0.70	\$461.13
GMH-RCVR 3/23/2024 Final review of 28th Fee Application.	\$658.75	0.70	\$461.13
GMH-RCVR 3/25/2024 Email from and to Emade Echadi regarding three additional letters to be sent to Banque Populaire and signatures for all six letters.	\$658.75	0.30	\$197.63
GMH-RCVR 3/26/2024 Email to Emade Echadi regarding number of letters (2) needed from each account holder to two specific addressees, email to my French counsel regarding [REDACTED] and email request to the DPPO requesting the Slovakian prosecutor allow the funds to be repatriated to the receivership estate given the three account holders' execution of the Irrevocable Transfer Orders, email the DPPO requesting same.	\$658.75	1.30	\$856.38
GMH-RCVR 3/27/2024 Email the recent Slovakian Court decision to my paralegal requesting that it be translated to English, review of translated Slovakian Court decision into English and conference with Ryn Hohmann regarding same, email with my paralegal regarding the effect of the order and multiple emails with my Slovakian counsel regarding [REDACTED]	\$658.75	2.20	\$1,449.25
GMH-RCVR 3/28/2024 Email from the DPPO regarding Slovakian and Moroccan funds, email to my French counsel regarding [REDACTED] email to my Slovakian [REDACTED], email from my Slovakian counsel regarding [REDACTED]	\$658.75	1.70	\$1,119.88

Exhibit 2

Time Entries	Rate	Hours	Sub
Time Entries Total		21.20	\$13,938.41

Total (USD)	\$13,938.41
Paid	\$0.00
Balance	\$13,938.41

[Terms & Conditions](#)

Net 30