

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-SEVENTH 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-Seventh Fee Application, Status Update and to Pay Expenses and Brief in Support (the “Motion”) covering the one-month period from November 1, 2024, through November 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).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 on the Receiver's Motion for Approval of Second Interim Distribution Plan & Procedures became final.²

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.^{3,4}

As to an update, the challenges continue to remain the same as previously reported. Although, at this point, the challenges seem to have become status quo. As previously reported, and to further illustrate, the following list is outlined in order of frequency. The factors driving the complexity of the distribution: (1) Investor Claimant(s) are ageing and overall

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.

communication via email has become more difficult; (2) The Investor Claimant(s) receive numerous emails and the Receiver's emails are overlooked and/or lost in their vast inbox; (3) Investor Claimant(s) that received their Second Interim Distribution do not recall receiving it and inquire when they will receive it; (4) 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. which block the Receiver's paralegals for sending more than a couple emails at one time; (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) Investor Claimant(s) question their approved claim amount; they do not remember as part of the fraud the co-conspirators returned forty-percent (40%) of their initial investment amounts.⁵ In general, communications with Investor Claimant(s) continue to be slow to respond which is one of the reasons the distribution progress continues to be ongoing.

Based on the Receiver's previous ING Settlement and First Interim Distribution, the Receiver estimates the distribution process will continue for approximately two (2) months. the Receiver's paralegals continue to send emails to several investors at a time or individually to continually communicate news of the Second Interim Distribution.⁶ In an attempt to reach Investor Claimant(s) that have not responded to emails, the senior paralegal continues to contact them via telephone.

⁵ 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.

⁶ As previously reported, Google and other major search engines flagged the Receivership emails as "unusual sending activity" and is not sending batched bcc emails.

2. Morocco – \$ 4.87 million

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

On October 22, 2024, the Receiver's Moroccan counsel visited the Ministry of Justice in Rabat who informed them the file had already been forwarded to the investigating judge in Agadir, who was the authority who had ordered the freezing of the bank accounts.

On December 11, 2024, the Receiver's French counsel notified the Receiver the funds were unfrozen.

The Receiver's Moroccan and French counsel outlined the next steps which include:

- The bank needs to issue three Authorization Requests for each of the account holders (Emade Echade, Rabbia and Essadia Moutaouakkil).
- To assist in expediting this process, the Receiver's French counsel prepared a draft email to be sent by the account holder's counsel and sent to the bank's counsel. That email has been sent to the bank's counsel.

The bank's counsel has been instructed to email the completed Authorization Requests to the Receiver's French and Moroccan Counsel.

- Upon receipt of the bank's Authorization Requests, this Court's approved Moroccan consultant and the Receiver's Moroccan counsel will meet with the Moroccan Currency Exchange Office to seek approval to have the funds wired to the Receivership estate.⁷

3. COMMUNICATIONS WITH INVESTOR CLAIMANTS

During this fee period, the Second Interim Distribution communications with Investor Claimant(s) increased. It is the Receiver's belief, the increase in communication is due to the

⁷ [Dkt. # 304].

upcoming holidays. The Investor Claimant(s) continued to be engaged in communications with the Receiver's two paralegals. The majority of the contact with the Investor Claimant(s) stems from emails and telephone communications. 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); (4) providing additional documentation to financial institutions that will not release the Second Interim Distribution payments to ensure the payments are not fraudulent; (5) providing documentation to investors regarding proof of their claim amounts for previous and this most recent distribution.

B. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD

As previously reported, the paralegal's activities regarding Investor Communications were busy and made more challenging because of internet search engines flagging the Receivership's emails as spam. As a result, the paralegals continue to email Investor Claimants one at a time or in extremely small batches via blind carbon copy (bcc) emails.⁸

The paralegals persistence is paying off. They routinely re-email Investor Claimant(s) with the anticipation the email will be noticed.

Emailing much smaller groups and in some cases emailing Investor Claimant(s) individually is a time-consuming process; however, this strategy is working. The senior paralegal continues to telephone 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.

⁸ The Hohmann Law Firm is in the process of upgrading their phone systems. Once the upgrade is complete, the senior paralegal will begin calling Investor Claimants that live in the U.S.

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.⁹ 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.¹⁰

The paralegal continues his regular activities with updating and managing the Receivership's social media accounts.¹¹ During this Fee Period, the senior paralegal's hours were 104.7; her invoice totaled \$12,564.00. The paralegal's total hours were 137 and his invoice totaled \$10,946.40.¹²

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

I. Archipel (Paris, France)

The Archipel's firm most recent invoice is for the month of November; 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 and telephone communications with the Receiver's Moroccan counsel, the bank's counsel and the co-conspirators counsel regarding next steps in repatriating the funds back to the Receiver.

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

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

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

¹² The Receiver's paralegal invoiced 137 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$10,946.40. The senior paralegal invoiced 104.7 hours at \$120.00 per hour which is a 20% discount from her normal hourly rate for a total of \$12,564.00 [Dkt. #265].

Total fees and expenses for their most recent most recent invoice in November are EUR €1,500.00 (USD \$1,576.50).¹³

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, their co-counsel in France and traveling to the Court of appeal of Agadir to visit with the investigating judge in Agadir. Total fees and expenses for their most recent for November is \$4,680.00.¹⁴

D. ADMINISTRATIVE EXPENSES

During this fee period, The Hohmann Law Firm received one invoice from the DRC. The invoice related to the Second Interim Distribution in the amount of \$1,982.49.

III. CONCLUSION AND PRAYER FOR RELIEF

The Receiver requests the Court approve his Thirty-Seventh Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between November 1, 2024, through November 30, 2024, totaling \$8,563.76. Attached as Exhibit 1 to this Motion for Approval of Thirty-Seventh Application and Brief in Support 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 \$8,563.76 for the invoices of his two paralegals. The total fees and expenses for this fee period are \$40,313.15 (inclusive of the Receiver's foreign counsel and administrative expense) for the Receivership Estate and IB Capital Receivership Estate during

¹³ XE: Convert EUR/USD (December 16, 2024).

Retrieved from

<https://www.xe.com/currencyconverter/convert/?Amount=1500&From=EUR&To=USD>

¹⁴ The Brahma firm invoices in USD.

the Thirty-Seventh 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

December 17, 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

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 www.hohmannlaw.com
 O: (512) 551-9808

INVOICE

Number	1407
Issue Date	12/13/2024
Due Date	1/12/2025
Matter	ProphetMax
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	Billed By	Rate	Hours	Sub
GMH-RCVR 11/4/2024 Conference with Ryn Hohmann & Tyler Cunningham regarding status of the Second Interim Distribution and discussion Ryn Hohmann had with an investor regarding his claim, review documentation Ryn Hohmann prepared which included analysis plus his original claim documentation he submitted.	Guy Hohmann	\$658.75	2.10	\$1,383.38
GMH-RCVR 11/6/2024 Conference with Ryn Hohmann regarding an investor who provided incorrect wire information and her conversation with East West Bank and wire recall process.	Guy Hohmann	\$658.75	0.40	\$263.50
GMH-RCVR 11/14/2024 Conference with Ryn Hohmann, conference with Donlin Recano and Ryn Hohmann regarding a letter Dolin Recano received regarding a Notice of Levy letter they received for an investor that owes a significant amount of money to the IRS. I instructed the DRC to email the letter and mail original letter to me. I read letter and reviewed his claim and previous distributions. I instructed Ryn Hohmann not to distribute any future distribution to that investor. Per the IRS's instructions, his funds will be sent to the IRS, conference with Ryn Hohmann regarding invoices I received from my French and Moroccan counsel.	Guy Hohmann	\$658.75	2.40	\$1,581.00
GMH-RCVR 11/15/2024 Email to and from my Slovakian counsel regarding his purported outstanding invoice.	Guy Hohmann	\$658.75	0.40	\$263.50

Exhibit 1

Time Entries	Billed By	Rate	Hours	Sub
GMH-RCVR 11/19/2024 Emails with my Slovakian counsel regarding his outstanding invoice review of evidence of payment and conference with Ryn Hohmann regarding same and review of proposed email to my Slovakian counsel regarding same, review Ryn Hohmann's email to an estate attorney in Australia for a deceased investor to confirm their wire instructions. (The previous attorney she communicated with is no longer with the firm.)	Guy Hohmann	\$658.75	1.40	\$922.25
GMH-RCVR 11/21/2024 Conference with Ryn Hohmann regarding wiring additional funds to Donlin Recano to distribute for the weekly list of Investor Claimants that will be receiving their Second Interim Distribution checks, review East West statements in the main receivership account as well as the Second Interim Distribution account.	Guy Hohmann	\$658.75	1.80	\$1,185.75
GMH-RCVR 11/22/2024 Email from my French counsel regarding status of their and my Moroccan counsel's attempts to have the Moroccan funds repatriated. Review and revise Thirty Sixth Fee Application and Status Report, proposed orders and all outstanding invoices, email from and to an investor regarding status of repatriation efforts in Morocco, conference with Ryn Hohmann regarding all of the above.	Guy Hohmann	\$658.75	2.10	\$1,383.38
GMH-RCVR 11/25/2024 Emails from my French counsel regarding my Moroccan counsel's recent meeting with the judge that issued the freezing order and his request to the Moroccan prosecutor's office, review Investor Claimant's claim information who is questioning their Second Distribution and conference with Ryn Hohmann regarding same.	Guy Hohmann	\$658.75	1.40	\$922.25
GMH-RCVR 11/27/2024 Conference with Ryn Hohmann & Tyler Cunningham regarding status of the Second Interim Distribution and their progress contacting U.S and International Investors.	Guy Hohmann	\$658.75	1.00	\$658.75
Time Entries Total			13.00	\$8,563.76

Total (USD)	\$8,563.76
Paid	\$0.00
Balance	\$8,563.76

Terms & Conditions

Net 30

Exhibit 1

IN 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-DEA

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

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

The Motion seeks approval to pay his fees and associated expenses of \$40,313.15 in the following amounts:

1. Receiver's fees of \$8,563.76
2. Senior paralegal total expenses of \$12,564.00
3. Paralegal total expenses of \$10,946.40
4. Archipel (France) fees and expenses of €1,500.00 (USD \$1,576.50)
5. Brahma (Morocco) fees of \$4,680.00
6. Donlin Recano & Co. Inc. (distribution agent) expenses \$1,982.49

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 \$40,313.15 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Thirty-Seventh Fee Period is approved.

SIGNED this 18<sup>th</sup> day of December, 2024.

  
\_\_\_\_\_  
DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE