

Aaron Javian
Christopher P. Hoffman
Nicole Lech
REED SMITH LLP
599 Lexington Ave
New York, NY 10022
Tel: (212) 521-5400

Counsel to the Foreign Representative

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 15
)	Case No. 20-10666 (MEW)
IIG Trade Opportunities Fund N.V. ¹)	
)	
Debtor in a Foreign Proceeding.)	

**VERIFIED PETITION UNDER CHAPTER 15 FOR
RECOGNITION OF A FOREIGN MAIN PROCEEDING AND RELATED RELIEF**

¹ The last four digits of IIG TOF's company number are (5220). IIG TOF's registered office is Blenchiweg 23, Willemstad Curaçao.

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Ms. V. P. Maria LLM, in her capacity as court-appointed bankruptcy trustee of IIG Trade Opportunities Fund N.V. (“**IIG TOF**” or the “**Fund**”) and foreign representative (the “**Foreign Representative**”) of IIG TOF’s liquidation proceeding (the “**Curaçao Liquidation**”) currently pending before the Court of First Instance of Curaçao (the “**Curaçao Court**”) pursuant to the *Faillissementsbesluit 1931* (as amended, the “**Curaçao Bankruptcy Act**”), by her United States attorneys, Reed Smith LLP (“**Reed Smith**”), respectfully submits this verified petition (the “**Verified Petition**”) for recognition of the Curaçao Liquidation as a “foreign main proceeding” and for additional relief, under sections 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of title 11 of the United States Code (the “**Bankruptcy Code**”).²

In support of the Verified Petition, the Foreign Representative submits the (a) *Declaration of Ms. V. P. Maria LLM in Support of Verified Petition under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief and Emergency Application for Provisional Relief* (the “**Maria Declaration**”) and (b) *Declaration of Barbara Nagelmakers in Support of Verified Petition under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* (the “**Nagelmakers Declaration**”), each of which has been filed contemporaneously herewith and is incorporated herein by reference as if fully set forth herein.

PRELIMINARY STATEMENT

On September 3, 2019, the Foreign Representative was appointed by the Joint Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba (the “**Curaçao Court of Appeals**”) to serve as trustee of the official liquidation of IIG TOF, a company incorporated under the laws of Curaçao. IIG TOF operated as an investment vehicle intended to

² Concurrently herewith, the Foreign Representative is seeking provisional relief under section 1519 of the Bankruptcy Code to stay temporarily certain legal proceedings pending against IIG TOF in the United States that present an imminent threat to the Curaçao Liquidation.

generate high value returns by investing primarily in short-term financial instruments issued in connection with trade finance transactions on a global basis. IIG TOF's investment strategy was managed by its investment advisor, The International Investment Group LLC ("**IIG**" or "the **Investment Advisor**"), a limited liability company organized in the state of New Jersey. The principals of the Investment Advisor are David Hu ("**Hu**") and Martin Silver ("**Silver**"), whose conduct is the subject of recent enforcement actions by the Securities Exchange Commission ("**SEC**") against the Investment Advisor for alleged securities laws violations.

The Foreign Representative's appointment was precipitated by an involuntary bankruptcy petition filed by certain of IIG TOF's investors with the Curaçao Court. Such investors pursued an involuntary liquidation of the Fund because their redemption requests had gone unpaid for years, without proper justification or authority under the Fund's constitutive documents, all while IIG TOF's financial condition declined substantially and its existence became increasingly untenable.

Upon her appointment as trustee of IIG TOF, the Foreign Representative became empowered under the Curaçao Bankruptcy Act with sole authority to administer the assets and affairs of IIG TOF's estate. As a Curaçao-incorporated entity, IIG TOF is entitled to the presumption that its center of main interest ("**COMI**") is in Curaçao. In the years preceding the Curaçao Liquidation, IIG TOF conducted certain business and investment-related activities with counterparties organized and headquartered in Curaçao, maintained its registered office in Curaçao, held annual shareholder meetings in Curaçao, and at least one of its board members resided in Curaçao. Since her appointment, and for close to six months, the Foreign Representative has exercised all management functions of IIG TOF from her offices in Willemstad, Curaçao.

Curaçao’s insolvency law, which is derived from and similar to Dutch insolvency law, establishes a process for an independent, court-appointed fiduciary to manage a bankrupt company’s estate; imposes a moratorium on creditor actions adverse to the estate; establishes a process by which claims against the debtor’s estate may be evaluated, validated and, if allowed, afforded a recovery consistent with statutory priorities; and provides for robust notice to creditors and other parties-in-interest. Accordingly, the Curaçao Liquidation is a collective, judicial proceeding, commenced under Curaçao’s bankruptcy law and supervised by the Curaçao Court for the purpose of winding up IIG TOF’s estate. In short, the Curaçao Liquidation and the Foreign Representative have all the hallmarks of a “foreign main proceeding” and a “foreign representative,” respectively, as each such term is defined under the Bankruptcy Code.

Chapter 15 of the Bankruptcy Code was enacted to provide effective mechanisms for dealing with cases of cross-border insolvency such as this one. Its express objectives include fostering (a) cooperation between United States courts, trustees, examiners, debtors and debtors in possession, and the courts and other competent authorities of foreign countries; (b) greater legal certainty for trade and investment; (c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; (d) protection and maximization of the value of the debtor’s estate and facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment. These goals will be furthered by the granting of chapter 15 recognition here.

The Foreign Representative seeks recognition of the Curaçao Liquidation as a foreign main proceeding for several reasons, including: (a) to avail her estate of the stay of creditor actions in the United States, including several legal proceedings currently pending against or concerning IIG TOF in New York; (b) for assistance in fulfilling her duty under the Curaçao Bankruptcy Act to

investigate the assets, affairs, rights, liabilities, and obligations of IIG TOF; and (c) to administer and distribute certain funds of IIG TOF that are within the territorial jurisdiction of the United States in accordance with the Curaçao Bankruptcy Act. The Foreign Representative's ability to administer and repatriate certain funds currently deposited in IIG TOF's New York bank account is particularly critical in enabling the Foreign Representative to pay expenses of the Curaçao Liquidation that are necessary for her to preserve and maximize the value of IIG TOF's estate. Each of these reasons is squarely within and consistent with the broader goals underpinning the purpose of chapter 15 recognition.

BACKGROUND

1. The following is an overview of the IIG Fund's business, capital structure, events leading to the Curaçao Liquidation and this chapter 15 case as of the date of the filing of the Petition (the "**Petition Date**").³

I. Introduction to IIG TOF

A. Overview of IIG TOF Pre-Bankruptcy

2. IIG TOF was incorporated as an open-ended investment company with limited liability organized under the laws of Curaçao on December 27, 1996. Maria Declaration ¶ 6. Prior to its entry into bankruptcy, IIG TOF's registered office was at Blenchiweg 23, Curaçao. *Id.* ¶ 7.

3. IIG TOF's investment objective was to provide high value returns by investing in financial instruments, such as debt and asset-backed securities, issued in connection with global trade finance transactions through a professionally managed portfolio. *Id.* ¶ 8. Under normal market conditions, IIG TOF sought to achieve its investment objective by investing primarily in

³ For further information regarding IIG TOF's business, the Foreign Representative respectfully refers the Court to the Maria Declaration and the exhibits thereto.

short-term financial instruments issued in connection with trade finance transactions on a global basis, with a particular focus on the Latin American market. *Id.*

4. IIG TOF's shareholders consist of qualified institutional investors, such as pension funds, insurers, and hedge funds. *Id.* ¶ 9.

5. IIG TOF and the Investment Advisor entered into an investment advisory agreement dated August 1, 1998, pursuant to which the Investment Advisor agreed to manage IIG TOF's investments in accordance with the Fund's investment policies. *Id.* ¶ 11. The Investment Advisor was tasked with, among other things, (a) developing IIG TOF's investment strategy; (b) managing and reinvesting the fund's assets; (c) initiating purchase and sale orders on behalf of the fund; (d) procuring research and statistical data to IIG TOF in relation to investing; and (e) supervising the acquisition and disposition of investments on behalf of the Fund. *Id.*

6. The Investment Advisors' founders and principals are Hu and Silver. *Id.* The Investment Advisor is incorporated in New Jersey, headquartered in New York, New York, and was registered as an investment adviser with the SEC until the SEC revoked such registration on November 26, 2019 over allegations that the Investment Advisor engaged in a scheme to defraud its clients. *Id.* ¶¶ 11, 53.

7. Prior to the Curaçao Liquidation, key corporate activities for IIG TOF, including its annual shareholder meetings, occurred in Curaçao. *Id.* ¶ 12. Curaçao was also home to at least one of the Fund's board members, Cates Management, N.V., a limited liability company organized under Curaçao law, which acted on behalf of the IIG TOF through Ms. Ruby Cato, a Curaçao resident. *Id.*

B. Events Giving Rise To IIG TOF's Financial Distress⁴

8. IIG TOF has been in a state of financial decline for many years. *Id.* ¶ 13. The Fund last provided audited financial information for year-end 2013, which showed assets of \$711,301,642 against liabilities of \$468,518,600.⁵ *Id.* ¶ 13, Ex. A. Since that time, the Fund's unaudited financial statements indicated that its gross and net asset values had declined precipitously.⁶ Maria Declaration ¶ 14.

9. On December 17, 2015, IIG TOF's board of directors resolved to suspend paying investor redemption requests (the "**Suspension Resolution**"). *Id.* ¶ 15. In passing the Suspension Resolution, the Fund's board cited (a) the volume of redemption requests from the Fund's investors (totaling approximately 36% of the Fund's then-outstanding net asset value); (b) the Fund's inability to obtain a long term extension of the May 15, 2014, maturity dates from its \$100 million senior credit and loan facilities (the "**Senior Debt**") from lenders the Inter-American Development Bank ("**IADB**") and The OPEC Fund for International Development ("**OFID**"); and (c) the corresponding need to suspend redemptions until the then-outstanding balance of principal and interest under the Senior Debt could be paid in full. *Id.*

10. At the time of the Suspension Resolution, IIG TOF reported total liabilities, including the Senior Debt, in the amount of approximately \$415,000,000, total assets in the amount

⁴ The Foreign Representative is in the early stages of her investigation into IIG TOF's books and records. The information contained herein reflects a summary of the Foreign Representative's findings thus far, and is subject to material change as her investigation continues.

⁵ A true and correct copy of the Fund's audited financials for the year ending December 31, 2013 is attached to the Maria Declaration as Exhibit A.

⁶ The Fund reported unaudited year-end assets of \$614,699,100 against liabilities of \$415,170,300 in 2015; assets of \$130,900,000 against liabilities of \$27,300,000 in 2016; assets of \$64,700,000 against liabilities of \$14,800,000 as of February 2019. Maria Declaration ¶ 14. The Foreign Representative cannot validate the accuracy of the financial information as reported by the Fund at this time. *Id.*

of approximately \$615,000,000, and net assets in the amount of approximately \$200,000,000, in each case on an unaudited basis. *Id.* ¶ 16.

11. In December 2016, the Senior Debt holders commenced a debt recovery action (the “**Senior Debt Litigation**”) against IIG TOF in the United States District Court for the Southern District of New York, styled *Inter-American Development Bank, et al v. IIG Trade Opportunities Fund, N.V.* (No. 16 9782 (PAE)) (S.D.N.Y. Dec. 9, 2016), seeking to recover the Fund’s then-outstanding Senior Debt in the amount of \$19.5 million. *Id.* ¶ 17.

12. In June 2018, the Investment Advisor and each of its principals received subpoenas from the SEC seeking information regarding the Investment Advisor’s policies and assets under management, as well as other documents relating primarily to the valuation of assets in the portfolios of the funds it managed at the time, including IIG TOF. Maria Declaration ¶ 49.

13. In July 2018, IIG TOF and the Senior Debt holders reached a settlement pursuant to which IIG TOF agreed to pay the Senior Debt holders the aggregate amount of \$22.4 million to fully discharge its obligations under the Senior Debt, with payment of \$15.4 million made immediately and remaining amounts to be paid at a later date (the “**Senior Debt Settlement Agreement**”). *Id.* ¶ 18.

14. In November 2018, the Fund announced to its registered shareholders that it had retained an independent consultant to assist it in winding down. *Id.* ¶ 19.

15. On November 30, 2018, IIG TOF was named as a defendant by Girobank N.V. and Girobank International N.V. (collectively, “**Girobank**”)—the people’s bank of Curaçao—in an arbitration proceeding, styled *Girobank, N.V., et al. v. IIG Trade Opportunities Funds, N.V., et al.* (ICC Case 24098/JPA) and pending before the International Chamber of Commerce in New York (the “**Girobank Arbitration**”), in which Girobank seeks to recover over \$135 million in damages

stemming from alleged improper conduct of, among others, IIG TOF. Maria Declaration ¶ 43. Girobank is a retail bank organized in Curaçao that provides banking services in Curaçao to Curaçao residents. *Id.*

16. On January 9, 2019, Aggregator Solutions PLC (“**Aggregator**”), acting for each of its sub-funds, namely Opportunities Fund 2012, Opportunities Fund II, and Opportunities Fund III, filed an involuntary petition before the Curaçao Court to place IIG TOF into bankruptcy. *Id.* ¶ 20. Aggregator argued that the Suspension Resolution was improper and cited IIG TOF’s failure since March 2017 to redeem Aggregator’s 30,162.462 Class A shares in IIG TOF as evidence that IIG TOF was unable to make payments of its debts when due. *Id.*

17. On February 13, 2019, IIG TOF and the Senior Debt holders notified the court in the Senior Debt Litigation that IIG TOF had made such payments required pursuant to the Senior Debt Settlement Agreement. *Id.* ¶ 21. On February 20, 2019, each of the Senior Debt holders and IIG TOF stipulated and agreed to the with prejudice dismissal of the Senior Debt Litigation. *Id.*

18. On February 22, 2019, IIG TOF convened an extraordinary general meeting of shareholders to be held in Curaçao on March 8, 2019 to approve, among other things, the Fund’s retention of Curaçao counsel to defend it from the involuntary petition filed by Aggregator, the retention of US counsel to defend the Fund in the Girobank Arbitration, and the dissolution of the Fund through a voluntary liquidation to be conducted in accordance with the Fund’s constitutive documents and Curaçao law. *Id.* ¶ 22. IIG TOF did not obtain the requisite level of shareholder approval to commence voluntary liquidation. *Id.*

19. On March 22, 2019, the Curaçao Court denied Aggregator’s bankruptcy petition on the grounds that redemption payments to Aggregator were not due and owing under IIG TOF’s articles of incorporation (the “**Articles**”) as a result of the Suspension Resolution. *Id.* ¶ 23.

20. On April 1, 2019, Aggregator appealed the Curaçao Court’s decision to the Curaçao Court of Appeal, arguing, *inter alia*, that the Curaçao Court incorrectly concluded that the Suspension Resolution rendered payments to Aggregator not due and owing under Curaçao law. Maria Declaration ¶ 24.

21. On April 11, 2019, Girobank commenced a special proceeding styled *Girobank N.V., v. IIG Trade Opportunities Fund, N.V., et al*, No. 652135/2019 (the “**Girobank Litigation**”) in New York state court to attach and restrain the IIG Parties’ assets in aid of the Girobank Arbitration. *Id.* ¶ 46. On May 2, 2019, the parties to the Girobank Litigation entered into a court-ordered stipulation, whereby the IIG Parties, including IIG TOF, agreed not to dispose of or transfer any of their assets except “in the ordinary course of business,” which includes payment of rent, salaries, professionals, counsel, and administrative expenses, during the pendency of the Girobank Arbitration (the “**Stipulated Attachment**”).⁷ *Id.* ¶ 46, Ex. C.

22. On September 3, 2019, the Curaçao Court of Appeal ruled in favor of Aggregator and entered a judgment (the “**Bankruptcy Order**”) declaring IIG TOF bankrupt and appointing the Foreign Representative as a trustee in bankruptcy.⁸ *Id.* ¶ 25, Ex. B; Nagelmakers Declaration ¶ 28. The Bankruptcy Order further assigned the Honorable Ursula Luydens (the “**Supervisory Judge**”) as the supervisory judge tasked with monitoring the Foreign Representative throughout the Curaçao Liquidation. Maria Declaration ¶ 26; Nagelmakers Declaration ¶ 28.

⁷ A true and correct copy of the Stipulated Attachment is attached to the Maria Declaration as Exhibit C.

⁸ A true and correct copy of the Bankruptcy Order is attached to the Maria Declaration as Exhibit B.

II. The Curaçao Liquidation

A. Curaçao Insolvency Law⁹

23. The substantive law relating to bankruptcy in Curaçao is contained in Curaçao Bankruptcy Act, which is based on and most similar to Dutch insolvency legislation originally enacted in 1893. Nagelmakers Declaration ¶ 9. The two primary, court-based insolvency regimes under Curaçao law are suspension of payment (“*surseance van betaling*”) and bankruptcy (“*faillissement*”). Nagelmakers Declaration ¶ 9.

24. Suspension of payment proceedings are intended to provide a debtor temporary relief from its payment obligations to facilitate its reorganization. *Id.* ¶ 10. Bankruptcy proceedings are intended to facilitate the liquidation of the debtor’s assets for distribution among its creditors. *Id.* Companies organized and registered under Curaçao law, including open-ended investment companies like IIG TOF, are eligible for relief under the Curaçao Bankruptcy Act. *Id.*

25. The Curaçao Court may place a Curaçao company into bankruptcy after hearing a voluntary petition by the debtor, itself, or an involuntary petition filed by one or more of the debtor’s creditors. *Id.* ¶ 11. To adjudge a company bankrupt, the Court must be satisfied that the company has ceased to pay its debts as they come due. *Id.*

26. Immediately upon the entry of an order adjudging the debtor bankrupt, the Curaçao Bankruptcy Act automatically imposes a general arrest over the debtor’s assets, lifts any attachments that have been levied against the debtor or its assets prior to its bankruptcy, and stays unsecured creditors from commencing or continuing judicial enforcement actions against the debtor or its assets. *Id.* ¶ 12. Upon the declaration of bankruptcy, the company’s directors are no

⁹ Please see the Nagelmakers Declaration for a more detailed summary of the relevant provisions of the Curaçao Bankruptcy Act.

longer authorized to act on behalf of the company with respect to any matters relating to its assets. *Id.* In place of the company's pre-bankruptcy directors, the Curaçao Court will appoint one or more bankruptcy trustees, who are typically qualified as attorneys-at-law, to serve as independent administrators of the debtor's estate under the supervision of a bankruptcy judge, also appointed by the Curaçao Court (the "**Supervisory Judge**"). *Id.*

1. *Role of the Trustee and Supervisory Judge under the Curaçao Bankruptcy Act*

27. Under the Curaçao Bankruptcy Act, the trustee alone is empowered to pursue and enforce the rights, claims and interests of the debtor and act in its name, including in pre-bankruptcy legal proceedings concerning rights or obligations of the bankrupt estate. Nagelmakers Declaration ¶ 14. Legal proceedings concerning rights or obligations of the bankrupt estate may also be instated by the trustee in the name of the bankrupt company. *Id.*

28. The Curaçao Bankruptcy Act requires the bankruptcy trustee, among other things, to:

a. Identify and prepare an inventory and assessment of value of assets of the bankrupt estate, which assessment is subject to the approval of the Supervisory Judge;

b. Prepare a statement listing the nature and amount of the assets and debts of the bankrupt estate, the names and addresses of known creditors and the amount of claims of each of them;

c. Take direct custody of all money, valuables, transferable securities and other valuable instruments comprising assets of the bankrupt estate, unless some other means of safe custody has been determined by the supervisory judge; and

d. Issue quarterly reports on the status of the affairs of the bankrupt estate and lodge her report with the Court, where it is available for public inspection. *Id.* ¶ 15.

29. The trustee discharges her duties pursuant to the Curaçao Bankruptcy Act under the supervision of a Supervisory Judge. *Id.* ¶ 16. The Supervisory Judge is an arm of the Curaçao Court. *Id.* The Supervisory Judge's role is to monitor, consider and approve certain of the trustee's actions in the Curaçao insolvency proceeding, as required by the Curaçao Bankruptcy Act. *Id.*

30. The Supervisory Judge has the primary responsibility for overseeing a bankruptcy trustee's day-to-day actions in a Curaçao insolvency proceeding. Nagelmakers Declaration ¶ 17. The Curaçao Court, in turn, has authority over certain matters. *Id.* Common examples of the Curaçao Court's authority relate to: (i) the allowance of disputed creditor claims; (ii) the approval of a composition, which prescribes the manner in which unsecured claims will be satisfied, that is supported by requisite majority of unsecured creditors; and (iii) determinations regarding the dismissal or replacement of a trustee. *Id.*

31. The Curaçao Bankruptcy Act empowers the Court or, thereafter, the Supervisory Judge, in her discretion based on the importance or nature of an estate's assets, to appoint a committee comprised of one to three known creditors of the debtor. *Id.* ¶ 18. Such committee advises the trustee on the action she proposes to take in accordance with her duties under the Curaçao Bankruptcy Act and, to that end, the committee is authorized to request consultation of the books, documents and other data relating to the bankruptcy. *Id.*

2. Claim Verification Process and Claim Priority Waterfall

32. Article 22 of the Curaçao Bankruptcy Act establishes the claims verification process in the bankruptcy proceeding as the exclusive means by which claims may be asserted against the estate. *Id.* ¶ 19. All claims of unsecured creditors must be submitted to the trustee for adjudication and verification. *Id.* Claims must be in writing and substantiated by proof. *Id.* There is no deadline for the submission of claims unless otherwise ordered by the Curaçao Court. *Id.*

Prior to a claims validation meeting, the trustee will make a list of claims that are provisionally admitted or disputed. Creditors will have notice of a verification meeting and the opportunity to challenge the admitted claims. *Id.*

33. Under the Curaçao Bankruptcy Act, creditors that hold valid pledges or mortgages over the debtor's property may enforce their liens over collateral without being subject to the general moratorium arising upon the commencement of bankruptcy, and are entitled to be compensated up to the amount of their claims from the value of their collateral. *Id.* ¶ 20. If their claims against the debtor exceed the value of the collateral, the deficiency claim becomes an unsecured claim against the debtor's estate. *Id.*

34. The Curaçao Bankruptcy Act recognizes two classes of priority, pre-petition claims — preferred claims afforded statutory priority under the Curaçao Bankruptcy Act — and claims of creditors that have certain rights under non-bankruptcy law that afford their claims priority status vis-a-vis general unsecured claims. *Id.* ¶ 21.

35. Statutory priority claims include certain tax and pension claims. *Id.* ¶ 22. Creditors with non-bankruptcy law rights that afford their claims priority status include creditors that: (a) have a right under applicable non-bankruptcy law to retain property of the debtor to the extent the debtor has failed to pay outstanding fees and expenses; (b) have entered into retention of title arrangements, which are akin to security agreements, with the debtor; or (c) have set-off rights. *Id.* In addition, under the Curaçao Bankruptcy Act, "estate creditors," who do business with the trustee following the commencement of the bankruptcy, are entitled to be paid dollar for dollar from estate assets before pre-petition creditors are entitled to be paid. *Id.* Finally, general unsecured creditors are entitled to share pro rata in the debtor's assets after secured, priority and estate claims have been paid in full. *Id.*

36. The debtor may offer unsecured creditors a composition, which prescribes the manner in which unsecured claims will be satisfied. *Id.* ¶ 23. If a majority of unsecured creditors representing at least half of the total amount of claims support a composition, it will be submitted to the Curaçao Court for approval. *Id.* ¶ 23. All unsecured creditors will be bound by a composition that is supported by the requisite majority of unsecured creditors and by the Curaçao Court. *Id.* The Curaçao Court may decline to approve a composition on several grounds, including that the value of the estate's net assets considerably exceed the amount offered to creditors in the composition. *Id.*

B. Actions Taken by the Foreign Representative Since her Appointment as Trustee of IIG TOF

37. Upon her appointment, the Foreign Representative displaced IIG TOF's pre-bankruptcy directors to assume all management responsibility for IIG TOF. Maria Declaration ¶ 27. Consistent with her powers and duties under the Curaçao Bankruptcy Act, the Foreign Representative published notice of the Bankruptcy Order in the Official Curaçao Gazette on September 6, 2019. Maria Declaration ¶ 29; Nagelmakers Declaration ¶ 29. In addition, on September 11, 2019, the Foreign Representative further caused notice of IIG TOF's declaration of bankruptcy to be published in two local Curaçao newspapers. Maria Declaration ¶ 30; Nagelmakers Declaration ¶ 29.

38. Consistent with her duties to investigate and ultimately inventory and assess all of the assets and liabilities of the Fund, the Foreign Representative has contacted the former directors of IIG TOF, including Ms. Ruby Cato of Cates Management NV, and the principals of the Investment Advisor, Silver and Hu, as well as their respective counsel for, among other things, access to IIG TOF's books and records. Maria Declaration ¶ 31. The Foreign Representative's investigation in these respects remains ongoing. *Id.*

39. On September 17, 2019, the IIG Global Trade Finance Fund Ltd. (“GTFF”) and IIG Structured Finance Ltd. (“STFF” and, together with GTFF, the “Trade Finance Funds”) filed a petition with the Court of Appeals seated in Curaçao to challenge the Bankruptcy Order. Maria Declaration ¶ 32; Nagelmakers Declaration ¶ 30.

40. On October 3, 2019, the Foreign Representative published a letter to creditors and other parties updating them on the status of the Curaçao Liquidation and the existence of the challenge to her appointment on a public website that she established, <https://vpm-law.com/iig-trade-opportunities-fund/>, to facilitate communications with interested parties regarding the liquidation. Maria Declaration ¶ 33. This letter was communicated to IIG TOF’s investors by the Fund’s administrator, Trident Trust Company (Cayman) Ltd. via the Intralinks system established for the Fund and its investors.

41. On November 12, 2019, the Supervisory Judge entered an order appointing certain creditors of IIG TOF to serve on a creditors’ committee pursuant to Article 70 of the Curaçao Bankruptcy Act in light of the importance of IIG TOF’s estate. Maria Declaration ¶ 34; Nagelmakers Declaration ¶ 31.

42. On November 27, 2019, the Trade Finance Funds withdrew their challenge to the declaration of bankruptcy in respect of IIG TOF issued by the Curaçao Court of Appeals. Maria Declaration ¶ 35; Nagelmakers Declaration ¶ 32. On that same day, the Foreign Representative published notice of the withdrawal of the challenge by the Trade Finance Funds on her public website. Maria Declaration ¶ 35.

43. On December 4, 2019, by order of the Supervisory Judge overseeing the Curaçao Liquidation, local Curaçao counsel for GTFF and STFF was added as a member of IIG TOF’s preliminary creditor’s committee. *Id.* ¶ 36.

44. On December 17, 2019, the Foreign Representative filed her first quarterly report with the Curaçao Court in accordance with the Curaçao Bankruptcy Act, which describes the actions taken by the Foreign Representative through that date in connection with administering and liquidating IIG TOF's estate. Maria Declaration ¶ 37.

45. On January 22, 2020, the Supervisory Judge approved the Foreign Representative's decision to seek recognition of the Curaçao Liquidation in the United States under chapter 15 of the Bankruptcy Code. *Id.* ¶ 38; Nagelmakers Declaration ¶ 33.

III. IIG TOF's Connections to this Forum

A. IIG TOF Currently Maintains Assets in New York

46. The Fund owns a bank account at Bank Leumi USA ("**Bank Leumi**") located in New York, New York that, upon information and belief, contains approximately \$789,000 (the "**Bank Leumi Account**"). Maria Declaration ¶ 40. In addition, the Fund owns a custody account with the Bank of New York Mellon located in New York, New York, that, upon information and belief, contains documents (the "**BNYM Custody Account**"). *Id.* ¶ 41. The Fund is also entitled to up to approximately \$117,000 being held in an escrow account of Chaffetz Lindsey, LLP, also in New York, New York (the "**Escrow Funds**"). *Id.*

47. Finally, the Fund has property in New York consisting of a retainer (the "**Retainer**" and, together with the Bank Leumi Account, the BNYM Custody Account, and the Escrow Funds, the "**New York Assets**") deposited with counsel to the Foreign Representative, and currently funded in a nominal amount, that is being held in a client trust account located in the borough of Manhattan in the City of New York (the "**Client Trust Account**"). *Id.* ¶ 41.¹⁰

¹⁰ A true and correct copy of the Retainer Letter for the Client Trust Account deposit is attached to the Maria Declaration as Exhibit K.

48. Upon information and belief, the New York Assets represent IIG TOF's principal assets in the United States. *Id.* ¶ 40-41.

IV. Currently Pending New York Litigations Concerning IIG TOF and its Former Control Parties

A. Girobank

1. The Girobank Arbitration

49. On November 30, 2018, Girobank initiated the Girobank Arbitration against IIG TOF and certain affiliated parties, including IIG Capital, LLC ("**IIG Capital**") and the Investment Advisor (collectively, the "**IIG Parties**").¹¹ Maria Declaration ¶ 43.

50. Girobank alleges that, once Hu and Silver took control of Girobank's controlling shares as of September 2010, the IIG Parties sold Girobank approximately \$93 million of participation interests in worthless trade financing loans pursuant to a certain Master Participation Agreement ("**MPA**") drafted by Silver and Hu. *Id.* ¶ 44. Girobank claims that, pursuant to the MPA, Girobank was to share in the proceeds of loans extended by IIG TOF that Girobank elected to participate in. *Id.* During several meetings with Girobank representatives, Hu and Silver purportedly represented that the loans were appropriately vetted and legitimate and that the IIG Parties were holding Girobank's funds "in trust." *Id.* Rather than comply with those obligations, Girobank claims the Investment Advisor (a) used Girobank's funds to pay investors in hedge funds controlled by the Investment Advisor and (b) pledged Girobank's collateral it owned as a result of its participation interests in the trade finance loans to obtain additional loans. *Id.*

¹¹ On the same day Girobank initiated the Girobank Arbitration, Girobank initiated a separate action styled *Girobank N.V. et al, v. Hu et al*, No. 655968/2018, in New York state court against several of the same respondents, including Hu, Silver, and the Investment Advisor (the "**IIG Non-Signatory Parties**"). Girobank initiated this separate litigation to preserve its rights in the event the panel in the Girobank Arbitration finds the IIG Non-Signatory Parties are not obligated to arbitrate Girobank's claims. The claims alleged in this separate litigation are substantively identical to those advanced in the Girobank Arbitration.

51. Girobank further alleges that Hu and Silver breached their fiduciary duties owed as directors of Girobank and through their machinations, ultimately depleted the assets of IIG TOF. Maria Declaration ¶ 45.

2. The Girobank Litigation

52. On April 11, 2019, Girobank commenced the Girobank Litigation to attach and restrain the IIG Parties' assets in aid of the Girobank Arbitration. *Id.* ¶ 46. On May 2, 2019, the IIG Parties, including IIG TOF, and Girobank entered into the Stipulated Attachment. *Id.* ¶ 46, Ex. C. Upon information and belief, Hu and Silver were primarily responsible for causing each of the IIG Parties to enter into the Stipulated Attachment. *Id.* ¶ 46.

53. Following commencement of the Curaçao Liquidation on September 3, 2019, Girobank became subject to a stay of proceedings imposed by operation of the Curaçao Bankruptcy Act, which stays unsecured creditors from commencing or continuing judicial enforcement actions against the debtor or its assets. *See Id.* ¶ 47; Nagelmakers Declaration ¶ 12. Accordingly, in or around December 2019, Girobank informed the court in the Girobank Litigation that Girobank is no longer able to proceed against IIG TOF, but is reserving its rights to assert claims against IIG TOF in the Curaçao Liquidation. Maria Declaration ¶ 47. The Foreign Representative and Girobank are currently engaged in ongoing discussions relating to Girobank's claims against IIG TOF, the Stipulated Attachment, and the effect of same on the IIG TOF estate. *Id.* ¶ 48.

B. The SEC Action against the Investment Advisor

54. On November 21, 2019, the SEC commenced an action styled *SEC v. International Investment Group, LLC*, No. 1:19-cv-10796 (DLC) (S.D.N.Y. Nov. 21, 2019) (the "SEC Action")

against the Investment Advisor.¹² Maria Declaration ¶ 50, Ex. D. There, the SEC alleged that the Investment Advisor, through its principals, Hu and Silver, engaged in deceptive acts to hide losses in its portfolio, prop up liquidity, and manufacture loans. Maria Declaration ¶ 50. For example, Hu and Silver were alleged to have grossly overstated the value of defaulted loans in the IIG TOF portfolio to conceal losses in the fund. *Id.* ¶ 50, Ex. D, ¶¶ 19–27. When it became untenable to carry the defaulted loans on IIG TOF’s books, Hu and Silver allegedly replaced the defaulted loans with fake substitute loans purportedly extended to borrowers operating in industries controlled by a business associate of the Investment Advisor. *Id.* ¶ 50, Ex. D, ¶¶ 28–47. The SEC claimed that the Investment Advisor received inflated management and performance fees as a result of these purported manipulations. *Id.* ¶ 50, Ex. D, ¶ 27.

55. The SEC alleged additional misconduct by the Investment Advisor with respect to one of its open-end mutual funds that was marketed to retail investors (the “**Retail Fund**”). Maria Declaration ¶ 51. Specifically, the Investment Advisor recommended that the Retail Fund invest in participation interests in trade finance loans originated by the Investment Advisor, including a loan to an Argentine borrower. *Id.* ¶ 51, Ex. D, ¶¶ 49–50. In or around February 2017, the Argentine borrower defaulted on its \$6 million loan obligation. *Id.* ¶ 51, Ex. D, ¶ 51. The Investment Advisor purportedly used funds from an account under its control to satisfy the Argentine borrower’s \$6 million obligation, thereby making such borrower appear creditworthy and deserving of an additional \$6 million investment from the Retail Fund. *Id.* ¶ 51, Ex. D, ¶¶ 52–54. After the Retail Fund purchased an additional \$6 million in participation interests in March 2017, the Investment Advisor allegedly diverted those monies to reimburse the same account it

¹² A true and correct copy of the SEC’s complaint against the Investment Advisor in the SEC Action (ECF No. 1) is attached to the Maria Declaration as Exhibit D.

had raided. Maria Declaration ¶ 51, Ex. D, ¶¶ 54–57. The SEC claimed that Hu and Silver “directed” and “spearheaded” all of the misconduct alleged in the litigation. *Id.* ¶ 51.

56. Accordingly, the SEC alleged that the Investment Advisor violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940; Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; and Section 17(a) of the Securities Act of 1933. *Id.* ¶ 52, Ex. D ¶¶ 59–67.

57. On November 26, 2019, the Investment Advisor consented to a Judgment and Preliminary Asset Freeze Order with the SEC that, among other things, (i) enjoins the Investment Advisor from future violations of federal securities laws; (ii) imposes a preliminary freeze over the assets of the Investment Advisor;¹³ (iii) ordered the Investment Advisor to pay civil monetary penalties and disgorgement of ill-gotten gains in an amount to be determined; (iv) revokes the Investment Advisor’s investment adviser registration with the SEC; and (v) orders a litigation stay on any lawsuits involving the Investment Advisor (the “**Litigation Stay**”) or its assets, including the Girobank Litigation, pending a final determination by the court of the amount of monetary relief owed by the Investment Advisor (the “**SEC Order**”).¹⁴ *Id.* ¶ 53, Ex. E. The Investment Advisor further agreed that it would not argue that it did not commit the securities laws violations alleged by the SEC and would not challenge the validity of the SEC Order. *Id.*

58. On January 28, 2020, the SEC informed the court that the parties to the SEC Action reached a settlement in principal as to the amount of monetary relief owed by the Investment Advisor. *Id.* ¶ 54.

¹³ The preliminary asset freeze, however, does not apply to the Foreign Representative as trustee of the IIG TOF estate. *See* Maria Declaration, Ex. E at V.

¹⁴ A true and correct copy of the SEC Order (ECF No. 9) is attached to the Maria Declaration as Exhibit E.

59. On February 27, 2020, Bank Leumi intervened in the SEC Action for purposes of obtaining relief from that portion of the SEC Order freezing the accounts of the Investment Advisor and related parties.¹⁵ Bank Leumi acted as one of the primary banks for the Investment Advisor (and its affiliates) and the finance business it managed through (i) multiple investment funds, including IIG TOF, (ii) IIG Trade Finance, the entity that structured the trade finance loans, and (iii) Trade Finance Trust, the trust entity that would disburse loan proceeds to the trade finance borrowers and receive the borrowers' principal and interest payments on behalf of IIG TOF and the other investment funds. Maria Declaration ¶ 55. As such, Bank Leumi has represented that it is holding "over \$20 million in deposits" for multiple entities across the IIG network. *Id.* ¶ 55 Ex. F, at 4. The Foreign Representative is aware of at least one account at Bank Leumi in the name of IIG TOF, with a balance of approximately \$789,000, and IIG TOF may be entitled to other monies held at Bank Leumi as well. Maria Declaration ¶ 55.

60. In the SEC Action, Bank Leumi claims that IIG Trade Finance is indebted to the bank in the amount of at least \$200,000 on account of an unpaid Line of Credit Note that the bank extended to IIG Trade Finance in November 2017 at the request of Silver. *Id.* ¶ 56. Bank Leumi further claims that it holds a perfected, first-priority security interest and lien on all assets of IIG Trade Finance, including any "receivables" owed to IIG Trade Finance by IIG TOF or Trade Finance Trust. *Id.*

61. On this basis, Bank Leumi has asked the court in the SEC Action for partial relief from the SEC Order and to enter an order that, relevant for these purposes, (i) causes the Investment Advisor to account for all monies due and payable to IIG Trade Finance by IIG TOF,

¹⁵ True and correct copies of Bank Leumi's motion papers in the SEC Action (ECF No. 73-1, 73-2, 73-11) are attached to the Maria Declaration as composite Exhibit F.

the other investment funds, and Trade Finance Trust; and (ii) authorizes Bank Leumi to take funds up to the amount of \$200,000 from any account maintained at Bank Leumi by IIG TOF, the other investment funds, and Trade Finance Trust. Maria Declaration ¶ 57, Ex. F. Bank Leumi has requested this relief despite the fact that the Investment Advisor no longer has any authority to act on behalf of IIG TOF, let alone issue an accounting of its obligations. Moreover, Bank Leumi does not identify any outstanding debt owed by IIG TOF to IIG Trade Finance, beyond declaring that such obligation exists “upon information and belief.” *Id.* ¶ 57, Ex. F. Initial opposition papers in the Bank Leumi Intervention Action are due by no later than March 6, 2020. *Id.* ¶ 57.

C. The Trade Finance Fund Litigation

62. On December 27, 2019, the liquidators of GTFF, along with STFF, commenced an action (the “**Trade Finance Motion**”)¹⁶ against IIG TOF styled *IIG Global Trade Finance Fund Ltd., et al v. IIG Trade Opportunities Fund N.V.*, No. 657724/2019 in New York state court (the “**IIG Trade Finance Litigation**”). *Id.* ¶ 62, Ex. G. The Trade Finance Funds seek an entry of judgment pursuant Section 3213 of New York Civil Practice Law and Rules (“**CPLR**”) against IIG TOF in the amount of \$14,339,479.97.¹⁷ *Id.*

63. Specifically, the Trade Finance Funds allege that on July 17, 2018, they entered into a \$16,000,000 promissory note with IIG TOF’s wholly-owned subsidiary, TOF Cayman SPV (the “**TOF Cayman Note**”). *Id.* ¶ 63. The TOF Cayman Note was secured by a security agreement between TOF Cayman and the Trade Finance Funds. *Id.* Under the TOF Cayman Note, the Trade Finance Funds allegedly extended \$14,339,479.97 in loan proceeds to TOF Cayman (the “**TOF**

¹⁶ A true and correct copy of the Trade Finance Motion (ECF No. 2) is attached the Maria Declaration as Exhibit G.

¹⁷ On January 6, 2020, the GTFF Liquidators filed a separate petition with the Cayman Court seeking the winding up of TOF Cayman as a consequence of TOF Cayman’s purported non-payment of the same amounts due under the TOF Cayman Loan. Maria Declaration ¶ 65.

Cayman Loan”). *Id.* ¶ 63. TOF Cayman was required to use the proceeds of the TOF Cayman Loan to repay the balance of certain obligations owed by TOF Cayman under the Senior Debt. Maria Declaration ¶ 63, Ex. G at 6. As credit enhancement for the TOF Cayman Loan, IIG TOF purportedly guaranteed full repayment of the TOF Cayman Loan pursuant to a separate guarantee agreement also dated July 17, 2018 (the “**IIG TOF Guarantee**”). *Id.*, Ex. G at 3. The Trade Finance Funds allege that, despite duly noticed demands for re-payment, IIG TOF has not paid any principal or interest amounts purportedly due under IIG TOF Guarantee.¹⁸ *Id.* ¶ 63.

64. The lending transaction at issue in the Trade Finance Motion is a related party transaction overseen by Hu and Silver — the same individuals that “spearheaded” the illicit activity alleged in the SEC Litigation. *Id.* ¶ 64. For example, Hu and Silver were the signatories on the TOF Cayman Note for the Trade Finance Funds and TOF Cayman SPV, also signed the Security Agreement on behalf of those loan parties, were similarly the signatories for both IIG TOF and the Trade Finance Funds in respect of the IIG TOF Guarantee, and upon information and belief, caused the investment guidelines of the Trade Finance Funds to be formally amended in order to enter into the transaction.¹⁹ *Id.* ¶ 64.

¹⁸ On January 6, 2020, the GTFF Liquidators filed a separate petition with the Cayman Court seeking the winding up of TOF Cayman SPV as a consequence of its purported non-payment of the same amounts due under the TOF Cayman Loan. Maria Declaration ¶ 65.

¹⁹ On January 17, 2020, the GTFF Liquidators filed a chapter 15 Petition for Recognition of GTFF’s Cayman insolvency proceeding as a foreign main proceeding. A true and correct copy of the Verified Petition for Recognition of Foreign Insolvency Proceedings and Application for Additional Relief, filed by the GTFF Liquidators on January 17, 2020 is attached to the Maria Declaration as Exhibit H. In support of their petition, the GTFF Liquidators explained that they sought Chapter 15 relief “primarily to obtain this Court’s assistance in enforcing the stay of proceedings and actions against GTFF and property of its estates.” Maria Declaration ¶ 66, Ex. H ¶ 1. The GTFF Liquidators argued that recognition “would confer upon GTFF the protections of section 362 and 1520 of the Bankruptcy Code, thereby preventing any one creditor from gaining an advantage over similarly-situated creditors or otherwise interfering” with the Cayman Court. *Id.*, Ex. H. On February 19, 2020, the bankruptcy court entered an order recognizing the GTFF’s Cayman liquidation as a foreign main proceeding under chapter 15 of the Bankruptcy Code. *Id.* ¶ 67.

65. Pursuant to a stipulation between the parties, IIG TOF has until March 7, 2020, to oppose or otherwise respond to the Trade Finance Funds' motion.²⁰ Maria Declaration ¶ 68, Ex. I. As explained in the Foreign Representative's *Emergency Application for Entry of Provisional Relief Pursuant to Sections 1509 and 105(a) of the Bankruptcy Code* filed concurrently herewith, the filing of this lawsuit as well as the Bank Leumi Intervention Action violates the moratorium imposed upon the commencement of the Curaçao Liquidation under the Curaçao Bankruptcy Act and this impending deadline threatens the Foreign Representative's ability to administer IIG TOF's affairs in an orderly manner.

JURISDICTION AND VENUE

66. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York*, dated January 31, 2012 (Preska, C.J.).

67. This case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of a petition for recognition under section 1515 of the Bankruptcy Code.

68. Venue is proper in this District pursuant to 28 U.S.C. § 1410 because IIG TOF's principal assets in the United States are located in New York in the form of the New York Assets. *See In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 373-74 (Bankr. S.D.N.Y. 2014) (finding that the debtor "had property in the United States in the form of a retainer [, which] is sufficient to satisfy the requirements of section 109(a) of the Bankruptcy Code" and that "the Foreign Representatives acted in good faith in transferring the funds to the Client Trust Account" to serve as a retainer); *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 700 (Bankr. S.D.N.Y. 2017) (attorney

²⁰ A true and correct copy of the Stipulation between IIG TOF and the Trade Finance Funds (ECF No. 26) is attached to the Maria Declaration as Exhibit I.

retainer held by foreign corporate debtors' New York counsel qualified as property of foreign debtor which was present in the United States).

RELIEF REQUESTED

69. The Foreign Representative respectfully requests the entry of the recognition order attached hereto as **Exhibit A** (the “**Recognition Order**”) pursuant to sections 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of the Bankruptcy Code, finding that (i) IIG TOF is eligible to be a “debtor” under chapter 15 of the Bankruptcy Code, (ii) the Curaçao Liquidation is a “foreign main proceeding” within the meaning of section 1502 of the Bankruptcy Code, (iii) the Foreign Representative satisfies the requirements of a “foreign representative” under section 101(24) of the Bankruptcy Code, (iv) the Verified Petition was properly filed and meets the requirements of section 1515 of the Bankruptcy Code, (v) granting recognition of the Curaçao Liquidation as a foreign main proceeding under sections 1517 and 1520 of the Bankruptcy Code, (vi) granting certain additional relief under sections 1507 and 1521 of the Bankruptcy Code, and (vii) granting such other related relief as is just and proper under the Bankruptcy Code.

I. IIG TOF Is Eligible to be a “Debtor” Under Chapter 15 of the Bankruptcy Code

70. IIG TOF qualifies as a “debtor” as that term is defined in Section 1502(a)(1) of the Bankruptcy Code because it is an “entity,” which includes a corporation. *See* 11 U.S.C. §§ 101(15) (definition of “entity,” which includes a “person”) and 101(41) (definition of “person,” which includes a “corporation”). IIG TOF is a corporate entity organized under the laws of Curaçao. Maria Declaration ¶ 6.

71. Furthermore, IIG TOF is an eligible debtor under Section 109(a) of the Bankruptcy Code. Section 109(a) of the Bankruptcy Code requires that a debtor must either reside, or have a domicile, a place of business or property, in the United States. 11 U.S.C. § 109(a); *see Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 250 (2d Cir. 2013) (holding

that section 109(a) applies to chapter 15 debtors). Courts in this District have required that the debtor have only nominal property in the United States to meet Section 109(a)'s requirements. *In re B.C.I. Finances Pty Ltd. (in Liquidation)*, 583 B.R. 288, 294 (Bankr. S.D.N.Y. 2018) (“[C]ourts that have construed the ‘property’ requirement in Section 109 with respect to foreign corporations and individuals have found the eligibility requirement satisfied by even a minimal amount of property located in the United States.”); *In re Paper I Partners, L.P.*, 283 B.R. 661, 674 (Bankr. S.D.N.Y. 2002) (“[T]here is no statutory requirement as to the property’s minimum value.”).

72. IIG TOF is eligible to be a debtor under chapter 15 of the Bankruptcy Code because the New York Assets are comprised of account balances and other assets in the amount of up to approximately \$900,000 as of the date hereof that constitute IIG TOF’s property. Maria Declaration ¶¶ 40-41; see *In re Berau Capital Res. Pte Ltd.*, 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015) (noting that “cases have identified bank accounts, attorney retainers deposited in New York, or causes of action owned by the foreign debtor with a situs in New York, as satisfying the ‘property in the United States’ eligibility requirement”).

73. Accordingly, IIG TOF is eligible to be a debtor under chapter 15 of the Bankruptcy Code because it has property in the United States. Maria Declaration ¶¶ 40-41; *In re Foreign Econ. Indus. Bank*, 607 B.R. 160, 166 (Bankr. S.D.N.Y. 2019) (“Section 109(a) does not specify how much property must be present or when or for long property has had a situs in [the United States].”) (citation omitted); see *GMAM Investment Funds Trust I v. Globo Comunicacoes e Participacoes S.A (In re Globo Comunicacoes e Participacoes S.A.)*, 317 B.R. 235, 249 (Bankr. S.D.N.Y. 2004) (“For a foreign corporation to qualify as a debtor under section 109, courts have required only nominal amounts of property to be located in the United States, and have noted that

there is ‘virtually no formal barrier’ to having federal courts adjudicate foreign debtors’ bankruptcy proceedings.”).

II. The Curaçao Liquidation is a Foreign Main Proceeding

74. IIG TOF’s Curaçao Liquidation is entitled to recognition as a foreign main proceeding under chapter 15 of the Bankruptcy Code. Section 1517(a) of the Bankruptcy Code provides that, subject to section 1506 of the Bankruptcy Code, a court “shall” enter an order granting recognition of a foreign proceeding if:

- (1) such foreign proceeding is a foreign main proceeding . . . within the meaning of Section 1502 of the Bankruptcy Code;
- (2) the foreign representative applying for recognition is a person or body; and
- (3) the petitions meet the requirements of Section 1515 of the Bankruptcy Code.

11 U.S.C. § 1517(a); *see* H.R. Rep. 109-31, pt. 1 (2005) (“The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings . . . [t]he requirements of this section . . . are all that must be fulfilled to attain recognition.”). Section 1517(b) of the Bankruptcy Code provides that a foreign proceeding “shall be recognized . . . (1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1517(b)(1). Here, all of the requirements for recognition of the Curaçao Liquidation as a foreign main proceeding are satisfied.

A. The Curaçao Liquidation Constitutes a “Foreign Proceeding”

75. The Curaçao Liquidation is a “foreign proceeding” under chapter 15 of the Bankruptcy Code. Section 101(23) of the Bankruptcy Code defines a “foreign proceeding” as:

[A] collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). Based on this definition, courts have held that a “foreign proceeding” is one:

- a. in which acts and formalities are set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice;
- b. that has either a judicial or an administrative character;
- c. that is collective in nature, in the sense that the proceeding considers the rights and obligations of all creditors;
- d. that is located in a foreign country;
- e. that is authorized or conducted under a law related to insolvency or the adjustment of debt, even if the debtor that has commenced such proceedings is not actually insolvent;
- f. in which the debtor's assets and affairs are subject to the control or supervision of a foreign court or other authority competent to control or supervise a foreign proceeding; and
- g. that is for the purpose of reorganization or liquidation.

See Armada (Singapore) Pte Ltd. v. Shah (In re Ashapura Minechem Ltd.), 480 B.R. 129, 136 (S.D.N.Y. 2012) (citing *In re Betcorp Ltd.*, 400 B.R. 266, 277 (Bankr. D. Nev. 2009)); *see also In re ENNIA Caribe Holding N.V.*, 594 B.R. 631, 638-39 (Bankr. S.D.N.Y. 2018) (discussing factors).

76. Courts in this district have granted recognition to a Curaçao and Dutch insolvency proceedings as a “foreign proceeding” under Section 1517 of the Bankruptcy Code. *See In re ENNIA Caribe Holding N.V.*, 594 B.R. at 634 (recognizing a Curaçao insolvency proceeding as a “foreign proceeding” under Section 1517); *see also In re Upper Deck Int’l B.V.*, No. 12-14294, (Bankr. S.D.N.Y. Nov. 20, 2012), ECF No. 12 (recognizing a Dutch insolvency proceeding as a foreign proceeding); *In re Grupo Isolux Corsán, S.A.*, No. 16-12202 (Bankr. S.D.N.Y. Nov. 17, 2016), ECF No. 50 (recognizing a Dutch suspension of payments proceeding as a foreign proceeding). In addition, Courts in this district have routinely granted recognition to similar liquidation proceedings pending in other offshore jurisdictions. *See, e.g., In re Platinum Partners Value Arbitrage Fund L.P. (In Provisional Liquidation), et al.*, No. 16-12925 (SCC) (Bankr.

S.D.N.Y. Oct. 18, 2016), ECF No. 27 (recognizing Cayman Islands liquidation as foreign main proceeding); *In re Tranen Capital Alt. Invs. Fund Ltd.*, No. 15-12620 (Bankr. S.D.N.Y. Oct. 29, 2015), ECF No. 14 (recognizing liquidation of British Virgin Island Fund structure as a foreign main proceeding); *In re Lawndale Grp. S.A.*, No. 15-11352 (SCC) (Bankr. S.D.N.Y. Jul. 6, 2015), ECF No. 3 (recognizing liquidation of British Virgin Islands entity as foreign main proceeding).

77. Moreover, the Maria Declaration and the Nagelmakers Declaration provide facts to support a finding that the Curaçao Liquidation constitutes a “foreign proceeding” under Section 101(23) of the Bankruptcy Code.

78. First, the Curaçao Liquidation is a “proceeding” commenced pursuant to the Curaçao Bankruptcy Act. Nagelmakers Declaration ¶ 9; *see also In re Betcorp Ltd.*, 400 B.R. at 278 (a proceeding is characterized by “acts and formalities set down in law so that courts, merchants and creditors can know them in advance and apply them evenly in practice”). The Curaçao Bankruptcy Act establishes certain formalities that set consistent expectations for IIG TOF’s creditors subject to the Curaçao Liquidation. Nagelmakers Declaration ¶¶ 34-35.

79. Second, the Curaçao Liquidation is “judicial” because it has been commenced by and before the Curaçao Court. *Id.* ¶ 28. A proceeding is administrative where a non-judicial party performs tasks such as managing assets and conducting investigations, while a proceeding is judicial when a court exercises its supervisory powers. *See In re ABC Learning Centres Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010), *aff’d*, 728 F.3d 301 (3d Cir. 2013). Here, the Curaçao Liquidation is subject to the control and supervision of the Supervisory Judge and the Curaçao Court. Nagelmakers Declaration ¶ 16. The Supervisory Judge has the primary responsibility for overseeing a bankruptcy trustee’s day-to-day actions in a Curaçao insolvency proceeding. *Id.* The Curaçao Court, in turn, has authority over certain matters. Common examples of the Curaçao

Court's authority are to approve or disapprove a bankruptcy trustee's: (i) assumption of agreements that have either not been performed or have only been performed in part by both the debtor and its counterparty; (ii) entering into settlement agreements; (iii) private sale of the debtor's assets, as opposed to by way of public execution; (iv) allowance or disallowance creditor claims; and (v) approval of a composition, which prescribes the manner in which unsecured claims will be satisfied, that is supported by requisite majority of unsecured creditors. Nagelmakers Declaration ¶ 17.

80. Third, the Curaçao Liquidation is collective in nature in that it considers the rights and obligations of all of IIG TOF's creditors. *Id.* ¶¶ 19-23, 34-37. The Curaçao Liquidation is accordingly intended to benefit each of IIG TOF's creditors according to their interests collectively, rather than to benefit any single creditor. *See Betcorp Ltd.*, 400 B.R. at 281 (a proceeding is collective where such proceeding "considers the rights and obligations of all creditors" in contrast to a non-collective proceeding, such as a "receivership remedy instigated at the request, and for the benefit, of a single secured creditor"); *In re PT Bakrie Telecom Tbk*, 601 B.R. 707, 719 (Bankr. S.D.N.Y. 2019); *In re Ashapura Minechem Ltd.*, No. 11-14668 (JMP) (Bankr. S.D.N.Y. Nov. 22, 2011), ECF No. 34, at 6. Specifically, the Curaçao Bankruptcy Act requires the Foreign Representative to notify parties-in-interest regarding the declaration of bankruptcy, to establish a process by which parties may submit proofs of their claims against the bankrupt entity and to determine the allowed amount of all priority and unsecured claims for the just and equitable distribution of estate assets. Nagelmakers Declaration ¶¶ 13, 15, 19, 34-37. Indeed, a proceeding under the Dutch Insolvency Act — nearly identical in form and substance to the Curaçao Bankruptcy Act — has been recognized as a collective proceeding. *See, e.g., In re Upper Deck Int'l B.V.*, No. 12-14294 (Bankr. S.D.N.Y. Nov. 20, 2012), ECF No. 12.

81. Fourth, the Curaçao Liquidation is pending in Curaçao. Maria Declaration ¶¶ 25.

82. Fifth, the Curaçao Liquidation is conducted under the Curaçao Bankruptcy Act, which is a law related to insolvency that governs, among other things, corporate reorganization and liquidation. Nagelmakers Declaration ¶¶ 9-12.

83. Sixth, IIG TOF's assets and affairs are subject to the control of the Curaçao Court because, pursuant to the Curaçao Bankruptcy Act, the declaration of bankruptcy entered with respect to IIG TOF automatically imposed a moratorium on creditor actions against it. Nagelmakers Declaration ¶ 12. Moreover, IIG TOF's assets and affairs are subject to the supervision of the Curaçao Court and the Supervisory Judge during the pendency of the Curaçao Liquidation. *See, infra* Sec. II, A. ¶ 79; Nagelmakers Declaration ¶ 16.

84. Seventh, the objective of the Curaçao Liquidation is to wind down and liquidate IIG TOF for the benefit of the Fund's creditors. Nagelmakers Declaration ¶ 10.

85. Accordingly, as all of the criteria required by Section 101(23) have been satisfied, this Court should find that the Curaçao Liquidation constitutes a "foreign proceeding" as required by Section 1517 of the Bankruptcy Code.

B. The Curaçao Liquidation is a "Foreign Main Proceeding"

86. Chapter 15 of the Bankruptcy Code applies where a foreign representative seeks assistance in a United States court. *See* 11 U.S.C. § 1501(b)(1). The stated objectives of chapter 15 include: (i) cooperation between U.S. courts and foreign courts in cross-border insolvency cases, (ii) "legal certainty for trade and investment," (iii) protection of all interested parties in a cross-border insolvency, and (iv) "maximization of the value of the debtor's assets." 11 U.S.C. § 1501(a); *see In re Oversight & Control Comm'n. of Avánzit, S.A.*, 385 B.R. 525, 534 (Bankr. S.D.N.Y. 2008). The Foreign Representative respectfully submits that each of these goals can best

be achieved by recognizing that Curaçao is IIG TOF's COMI and thus, that the Curaçao Liquidation is a "foreign main proceeding."

87. In addition to qualifying as a "foreign proceeding" under section 101(23) of the Bankruptcy Code, the Curaçao Liquidation also qualifies as a "foreign main proceeding," which is defined in the Bankruptcy Code as "a foreign proceeding pending in the country where the debtor has the center of its main interests." *See* 11 U.S.C. § 1502(4); *see also* 11 U.S.C. § 1517(b)(1) (providing that an order of recognition as a foreign main proceeding shall be entered if the foreign proceeding that is subject to the petition "is pending in the country where the debtor has the center of its main interests"). The relevant time period to determine the location of a debtor's COMI is the date on which the chapter 15 petition is filed. *See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137 (2d Cir. 2013); *In re Ocean Rig UDW Inc.*, 570 B.R. at 705; *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014).

88. While the Bankruptcy Code does not expressly define COMI, it provides that, in the absence of evidence to the contrary, a foreign debtor's registered office is presumed to be its COMI. *See* 11 U.S.C. § 1516(c); *see also In re Gerova Fin. Grp., Ltd.*, 482 B.R. 86, 91 (Bankr. S.D.N.Y. 2012); *In re Tri-Continental Exch.*, 349 B.R. 627, 635 (Bankr. E.D. Cal. 2006) ("In effect, the registered office . . . is evidence that is probative of, and that may in the absence of other evidence be accepted as proxy for, 'center of main interest.'"). Here, IIG TOF's registered office is located in Curaçao. Maria Declaration ¶ 7. Accordingly, IIG TOF is entitled to the statutory presumption that its COMI is located in Curaçao.

89. In addition, courts consider the following factors relevant to the determination of a foreign debtor's COMI: (i) the location of the debtor's headquarters; (ii) the location of those who

actually manage the debtor; (iii) the location of the debtor's primary assets; (iv) the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; (v) and/or the jurisdiction whose law would apply to most disputes. *In re Inversora Eléctrica de Buenos Aires S.A.*, 560 B.R. 650, 654 (Bankr. S.D.N.Y. 2016) (internal citations omitted); *see In re Fairfield Sentry Ltd.*, 714 F.3d at 130 ("Among other factors that may be considered [in determining COMI] are the location of headquarters, decision-makers, assets, creditors, and the law applicable to most disputes."). Importantly, "a court may consider the period between the commencement of the foreign insolvency proceeding and the filing of the Chapter 15 petition" in determining COMI. *Id.*, 714 F.3d at 137.

90. From the moment that she was appointed as IIG TOF's bankruptcy trustee, the Foreign Representative assumed sole authority to manage IIG TOF's assets and administer its estate. Maria Declaration ¶ 27. In exercising this authority, the Foreign Representative has taken multiple measures required under the Curaçao Bankruptcy Act, including: publishing statutorily-required notices regarding the declaration of IIG TOF's bankruptcy; specifically notifying the IIG TOF's pre-bankruptcy management, its Investment Advisor, its known creditors and litigation claimants regarding the declaration of IIG TOF's bankruptcy; seeking IIG TOF's books and records from its former directors, its Investment Advisor and the principals of its Investment Advisor and their counsel; updating creditors on developments in the Curacao Liquidation by publishing open letters on IIG TOF's liquidation website established and maintained for the purposes of the Curacao Liquidation by the Foreign Representative. Maria Declaration ¶¶ 28-31, 33-36. Additionally, the Foreign Representative has, among other things:

- Defended and obtained, on November 27, 2019, the consensual withdrawal of the challenge to IIG TOF's declaration of bankruptcy filed by the Trade Finance Funds on September 17, 2019;

- Liaised with representatives of Girobank and the Trade Finance Funds regarding the Curacao Liquidation and various litigation proceedings pending against IIG TOF in the United States;
- Obtained approval of the Supervisory Judge to provisionally appoint certain creditors of IIG TOF to serve on a creditors' committee pursuant to Article 70 of the Curacao Bankruptcy Act;
- filed a Public Bankruptcy Report with the Curaçao Court on December 17, 2019, outlining IIG TOF's assets, creditor picture, litigations, and actions taken by the Foreign Representative;
- Obtained the approval of the Supervisory Judge to seek recognition of the Curacao Liquidation in the United States under chapter 15 of the Bankruptcy Code; and
- Retained U.S. counsel to advise the Foreign Representative on US law matters.

Maria Declaration ¶¶ 34-38; 48.

91. The Foreign Representative has conducted these activities from her offices in Curaçao, which has served as IIG TOF's *de facto* headquarters for nearly six months. *Id.* ¶ 39. Moreover, all of the Foreign Representative's actions in respect of the IIG TOF estate are subject to supervision by the Supervisory Judge, who is also located in Curaçao. Nagelmakers Declaration ¶¶ 16-17; *see In re Fairfield Sentry Ltd.*, 714 F.3d at 137 (“[A]ny relevant activities, including liquidation activities and administrative functions, may be considered in the COMI analysis.”); *In re Suntech Power Holdings Co.*, 520 B.R. at 416 (“A “court may consider the location of the debtor's ‘nerve center,’ including from where the debtor's activities are directed and controlled, in determining a debtor's COMI.”).

92. In addition, Curaçao is the jurisdiction whose law will apply to most disputes. IIG TOF's Articles, which are governed by Curaçao law, will apply to the claims of investors that submitted redemption requests. Certain creditors, such as Girobank, GTFF and STFF have asserted claims against the estate governed under New York law. These claims will be adjudicated in Curaçao in connection with the claims validation process with regard to principles of New York

law to the extent that that New York law does not conflict with the Curaçao Bankruptcy Act. Nagelmakers Declaration ¶ 37.

93. Finally, while Curaçao does not feature as prominently with respect to the location of IIG TOF's primary assets or where the majority of its creditors are located, neither of these factors clearly point to another jurisdiction that would be regarded as the location of IIG TOF's COMI. For example, IIG TOF's assets are located in numerous jurisdictions across Central and South America, the United States, Curaçao, other Islands in the Caribbean and in Europe. Maria Declaration ¶ 40. IIG TOF's creditors, likewise, span numerous jurisdictions, including Curaçao, the United States, Europe, the Cayman Islands, and other offshore jurisdictions where IIG TOF's investors may be located. *Id.* ¶ 10

94. The totality of circumstances, and, in particular, the fact that IIG TOF's nerve center, since the Foreign Representative's appointment, is unquestionably in Curaçao, strongly weigh in favor of the conclusion that IIG TOF's COMI is located in Curaçao. Because the Curaçao Liquidation is pending in the location of IIG TOF's COMI, the Curaçao Liquidation should be recognized as a foreign main proceeding.

C. Alternatively, the Curaçao Liquidation Qualifies as a “Foreign Nonmain Proceeding”

95. For the reasons set forth above, the Curaçao Liquidation qualifies as a “foreign main proceeding,” under Section 1502 of the Bankruptcy Code. However, in the event the Court determines that Curaçao is not IIG TOF's COMI, this Court should still grant the Curaçao Liquidation recognition as a “foreign nonmain proceeding” as defined in section 1517(b)(2) of the Bankruptcy Code.

96. Section 1502(5) of the Bankruptcy Code defines a foreign nonmain proceeding as “a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor

has an establishment.” 11 U.S.C. § 1502(5). “Establishment” is broadly defined as “any place of operations where the debtor carries out a non-transitory economic activity.” 11 U.S.C. §1502(2); *see In re Mood Media Corp.*, 569 B.R. 556, 562 (Bankr. S.D.N.Y. 2017) (establishment “contemplates the existence of a place of business in the foreign country from which market-facing activities are conducted.”).

97. The Foreign Representative respectfully submits that at a minimum, IIG TOF maintains an establishment in Curaçao where non-transitory economic activity takes place. As explained above, the Foreign Representative is continuing IIG TOF’s remaining business activities and winding up its affairs from her office in Curaçao. Maria Declaration ¶ 39. Moreover, there are no foreign or domestic insolvency proceedings concerning IIG TOF other than the Curaçao Liquidation and a recognition proceeding commenced in late February 2020, before the First Hall of the Civil Court in Malta, to obtain recognition of the Curaçao Liquidation in Malta (the “**Malta Proceeding**”). *Id.* ¶ 74.

98. Accordingly, there are sufficient grounds for this Court to grant non-main recognition of the Curaçao Liquidation pursuant to chapter 15 of the Bankruptcy Code. *See In re SPhniX, Ltd.*, 351 B.R. 103, 122 (Bankr. S.D.N.Y. 2006) *aff’d*, 371 B.R. 10 (S.D.N.Y. 2007) (finding “no negative consequences would appear to result from recognizing the [foreign] proceedings as nonmain proceedings that is the better choice.”).

III. The Foreign Representative Satisfies the Requirements of a “Foreign Representative” Under Section 101(24) of the Bankruptcy Code

99. For recognition under chapter 15, a foreign proceeding must also have a foreign representative. *See* 11 U.S.C. § 1517(a)(2). The Foreign Representative submits that this chapter 15 case was commenced by a duly appointed and authorized “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code. Section 101(24) provides as follows:

The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

100. Under the Curaçao Bankruptcy Act, the Foreign Representative is exclusively empowered to administer the liquidation of IIG TOF’s assets and affairs. Maria Declaration ¶ 27; Nagelmakers Declaration ¶ 14. In addition, on January 22, 2020, the Supervisory Judge authorized the trustee to act as a representative of the Curaçao Liquidation in connection with seeking its recognition in the United States under chapter 15 of the Bankruptcy Code. Maria Declaration ¶ 38. Thus, the Foreign Representative has met the requirements of section 101(24) of the Bankruptcy Code and is IIG TOF’s “foreign representative” as defined thereunder. *In re SPhinX, LTD.*, 351 B.R. at 116–17 (noting that the foreign representatives had submitted a “copy of the Cayman Court’s order appointing them to administer the Debtors’ winding up under the Companies Law and authorizing their commencement of these chapter 15 cases, thereby satisfying Bankruptcy Code section 101(24)”).

IV. The Petition Was Properly Filed and Satisfies the Requirements of Section 1515 of the Bankruptcy Code

101. The Foreign Representative duly and properly commenced this chapter 15 case in accordance with sections 1504 and 1509 of the Bankruptcy Code, which require the filing of a petition for recognition under section 1515 of the Bankruptcy Code. *See* 11 U.S.C. §§ 1504, 1509(a). In accordance with section 1515(b)(1) and (d), the Foreign Representative attached a certified and translated copy of the Bankruptcy Order commencing the Curaçao Liquidation and appointing the Foreign Representative to act as IIG TOF’s bankruptcy trustee. *See* Maria Declaration ¶ 25, Ex. B. In accordance with section 1515(c) of the Bankruptcy Code, the Foreign Representative also submitted a declaration containing a statement identifying the only known

“foreign proceedings” with respect to IIG TOF: (i) the Curaçao Liquidation; and (ii) the Malta Proceeding. Maria Declaration ¶ 74, Ex. J. Accordingly, the requirements of section 1515 have been satisfied.

V. IIG TOF is Entitled to the Automatic Relief Under Section 1520 of The Bankruptcy Code

102. Section 1520(a) of the Bankruptcy Code sets forth a series of statutory protections that automatically result from the recognition of a foreign proceeding as a foreign main proceeding, *see* 11 U.S.C. § 1520(a), including the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to IIG TOF and to its property that is located within the territorial jurisdiction of the United States. Given that the protections set forth in section 1520(a) flow automatically from the recognition of a foreign main proceeding under section 1517, the Foreign Representative respectfully submits that no further showing is required to the extent the Court recognizes the Curaçao Liquidation as a foreign main proceeding.

VI. Recognition of the Curaçao Liquidation is not Manifestly Contrary to United States’ Public Policy.

103. Recognition of a foreign proceeding is “subject to section 1506” of the Bankruptcy Code, which provides that a bankruptcy court may decline to grant relief requested if the action would be “manifestly contrary to the public policy of the United States.” 11 U.S.C. §§ 1506, 1517(a). The legislative history indicates that the “public policy” exception is narrow, applying only to the “most fundamental policies of the United States.” H. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess. 109 (2005). Furthermore, courts that have addressed the “public policy” exception in section 1506 of the Bankruptcy Code have noted that the exception is narrow, its application restricted to the most fundamental policies of the U.S., and a foreign judgment should generally be accorded comity if the foreign jurisdiction’s proceedings meet fundamental standards of fairness. *See Collins v. Oilsands Quest Inc.*, 484 B.R. 593, 597 (Bankr. S.D.N.Y. 2012).

104. Section 1506 has no application here. Like United States law, the Curaçao Liquidation under the Curaçao Bankruptcy Act is a collective process that recognizes the priority of charges on property (*i.e.*, liens) and provides for *pari passu* treatment of unsecured creditors. Nagelmakers Declaration ¶¶ 20-22. Curaçao creditors do not receive any priority simply because they are residents of Curaçao. *Id.* ¶ 36. Recognizing the Curaçao Liquidation as a “foreign main proceeding” would advance one of the express objectives of chapter 15; namely, the fair and efficient administration of a cross-border insolvency that protects the interests of all creditors and other interested entities, including a debtor and the protection and maximization of a debtor’s assets. *See* 11 U.S.C. § 1501(a).

VII. Certain Additional Relief Upon Recognition is Both Necessary and Appropriate to Effectuate the Purpose of Chapter 15 for the Benefit of the Curaçao Liquidation and Should be Granted

105. Upon recognition of a foreign proceeding, section 1521 of the Bankruptcy Code provides specific grounds for additional relief. Section 1521 authorizes the Court to grant “any appropriate relief,” including “any relief that may be available to a trustee” subject to certain limitations and provided that “the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. §§ 1521, 1522.

106. Here, the Foreign Representative respectfully requests that this Court grant the following appropriate relief under section 1521(a) and (b): (i) granting the Foreign Representative the right, upon recognition, to examine witnesses, take evidence or obtain information concerning the Fund’s assets, affairs, rights, obligations or liabilities, pursuant to section 1521(a)(4); (ii) entrusting the Foreign Representative with the administration or realization of IIG TOF’s assets within the territorial jurisdiction of the United States, pursuant to section 1521(a)(5); and (iii) entrusting the Foreign Representative with the distribution of certain assets located in the United States for distribution in the Curaçao Liquidation in accordance with the Curaçao

Bankruptcy Act. Such relief may include, “entrusting the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative” and, except for certain avoidance provisions, “any additional relief that may be available to a trustee. . . .” 11 U.S.C. § 1521(a)(5) and (7).

107. The ultimate goal of the Foreign Representative is to preserve and maximize realization on the assets of the Fund for the benefit of its creditors. The additional relief requested by the Foreign Representative under section 1521 of the Bankruptcy Code will assist the Foreign Representative in carrying out her duties as bankruptcy trustee to achieve this goal, and will promote the effective administration of the Curaçao Liquidation.

A. The Foreign Representative Should be Authorized to Take Discovery Under Section 1521(a)(4) of the Bankruptcy Code to Assist her in Investigation of IIG TOF’s Assets and Affairs

108. In order to investigate, identify and fully realize the value the Fund’s assets, the Foreign Representative requests the right to examine witnesses, take evidence, and obtain information concerning the Fund’s assets, affairs, rights, obligations and liabilities. In particular, the Foreign Representative, as bankruptcy trustee, is tasked with inventorying IIG TOF’s assets and liabilities and investigating the events and circumstances leading to the Curaçao Liquidation. Maria Declaration ¶ 28; Nagelmakers Declaration ¶ 15. As part of that investigation, the Foreign Representative may need to obtain evidence from parties in the United States and other jurisdictions. Maria Declaration ¶ 28. Parties likely to have information relevant to IIG TOF in connection with the Curaçao Liquidation include, without limitation, Silver, Hu, and the Investment Advisor. This relief is all the more appropriate because the Foreign Representative is already vested with the power under the Curaçao Bankruptcy Act to take such discovery in connection with the Curaçao Liquidation. Nagelmakers Declaration ¶ 40. Accordingly, section 1521(a)(4) expressly authorizes the Court to grant discovery, which is needed to properly

administer the Fund's estate, and such relief is routinely granted by Courts in this district. *See IIG Global Trade Finance Fund Ltd.*, No. 20-10132 (MEW) (Bankr. S.D.N.Y. Jan. 17, 2020), ECF No. 9 (ordering that Liquidators are authorized to issue subpoenas in accordance with applicable procedural rules for the examination of witnesses and/or the production of documents within the U.S. concerning the assets, affairs, rights, obligations or liabilities of GTFF and GTFF's affiliates); *HITS AFRICA LTD.*, No. 18-11822 (MEW) (Bankr. S.D.N.Y. Jun. 19, 2018), ECF No. 11 (granting liquidators the right to obtain information and evidence concerning the assets, affairs, rights, obligations or liabilities, pursuant to section 1521(a)(4)); *In re Air Berlin PLC & Co. Luftverkehrs KG*, No. 17 -12282 (MEW) (Bankr. S.D.N.Y. Aug. 18, 2017), ECF. No. 24 (granting 1521(a)(4) relief as per the recognition order).

B. IIG TOF'S Assets in the United States Should be Entrusted to the Foreign Representation for Administration and Distribution in the Curaçao Liquidation Pursuant to Sections 1521(a)(5) and 1521(b)

109. To enable her to identify, protect, and preserve the assets of IIG TOF's estate for the benefit of all of its creditors, the Foreign Representative requests the right to be entrusted with certain funds of IIG TOF in the United States so that they may administered or realized within the United States pursuant to section 1521(a)(5) and, subsequently, distributed in the Curaçao Liquidation pursuant to section 1521(b).

110. The Curaçao Bankruptcy Act provides that a bankruptcy trustee immediately and automatically assumes exclusive authority to manage the assets of the bankrupt entity, wherever located. Nagelmakers Declaration ¶¶ 14, 39. Consistent with her authority under Curaçao law, the Foreign Representative should be entrusted to administer or realize all of IIG TOF's assets in the territorial jurisdiction of the United States pursuant to section 1521(a)(5) of the Bankruptcy Code. *See IIG Global Trade Finance Fund Ltd.*, No. 20-10132 (MEW) (Bankr. S.D.N.Y. Jan. 17, 2020) ECF No. 9 (ordering that the administration or realization of all or parts of the assets of GTFF

within the territorial jurisdiction of the U.S. is entrusted to its liquidators); *In re Frontera Resources Caucasus Corp.*, No. 19-13418 (MEW) (Bankr. S.D.N.Y Oct. 25, 2019) ECF No. 19 (ordering that the liquidators are entrusted with the administration and realization of [the debtor's] assets within the territorial jurisdiction of the United States); *In re Air Berlin PLC & Co. Luftverkehrs KG*, No. 17 -12282 (MEW) (Bankr. S.D.N.Y Aug. 18, 2017) ECF. No. 24 (granting 1521(a)(5) relief).

111. At the time IIG TOF was declared bankrupt, it had no cash or other liquid assets available to it in Curaçao. Maria Declaration ¶ 28. In addition, as described above, on May 6, 2019, the New York State Court entered the Stipulated Attachment, which, by its terms, attached all property of IIG TOF (as well as the other respondents) wherever located, subject to permitting IIG TOF (and the other respondents) to make certain payments in the ordinary course of business, while retaining jurisdiction to hear any party's request to vacate the Stipulated Attachment in whole or in part. Maria Declaration ¶ 46, Ex. C. Payments permitted by the Stipulated Attachment included payment of rent, salaries, professionals retained by IIG TOF at such time, payment of counsel in any proceedings with Girobank, and other administrative expenses. *Id.*

112. The Foreign Representative is aware that IIG TOF owns and maintains the Bank Leumi Account in New York containing, upon information and belief, approximately \$789,000. *Id.* ¶ 40. The Foreign Representative seeks to be entrusted with \$375,000 at this time for distribution in the Curaçao Liquidation pursuant to section 1521(a)(5) of the Bankruptcy Code. The Foreign Representative has an urgent and critical need to access funds owned by IIG TOF so she can retain and compensate professionals and make other necessary disbursements that, in her judgment, are required to assist her in preserving and maximizing the value of IIG TOF's assets for all creditors. Maria Declaration ¶ 72.

113. Accordingly, the Foreign Representative seeks relief from this Court, without prejudice to further requests for relief, authorizing \$375,000 of the funds in the Bank Leumi Account to be entrusted to the Foreign Representative for distribution in the Curaçao Liquidation in accordance with the Curaçao Bankruptcy Act.²¹ See *IIG Global Trade Finance Fund Ltd.*, No. 20-10132 (MEW) (Bankr. S.D.N.Y. Jan. 17, 2020), ECF No. 9 (ordering that Liquidators may transfer funds or property belonging to GTFF into or out of the US in accordance with their respective obligations to GTFF or under the Cayman Liquidation); *In re Awal Bank BSC.*, No. 09-15923 (MEW) (Bankr. S.D.N.Y. Sept. 30, 2009), ECF No. 67 (ordering that the distribution, pursuant to Bankruptcy Code 1521(b) of the settlement amount is entrusted to the external administrator in the proceedings regarding Awal Bank BSC.).

C. All Creditors in the U.S. will be Sufficiently Protected

114. Section 1521(b) cautions that entrusting the distribution of assets in the United States to a foreign representative should only be granted if the interests of local creditors are “sufficiently protected.” One court has described “sufficient protection” as embodying three basic principles: “the just treatment of all holders of claims against the bankruptcy estate, the protection of U.S. claimants against prejudice and inconvenience in the processing of claims in the [foreign] proceeding, and the distribution of proceeds of the [foreign] estate substantially in accordance with the order prescribed by U.S. law.” *In re Artimm, S.r.l.*, 335 B.R. 149, 159-60 (Bankr. C.D. Cal) (analyzing under § 304(c) of the old Code, but noting that the analysis would be “essentially the same” under § 1521(b)). In other words, section 1521(a)(5) of the Bankruptcy Code allows the foreign representative to collect property in the United States, and section 1521(b) of the

²¹ The Foreign Representative reserves right to seek further discretionary relief from this Court, including without limitation, with respect to the entrustment of additional of IIG TOF’s assets in the United States for distribution in the Curaçao Liquidation.

Bankruptcy Code allows the foreign representative to distribute the property in the foreign case, provided that creditors in the U.S. are sufficiently protected pursuant to sections 1521(b) and 1522(a) of the Bankruptcy Code.

115. Here, the relief requested affords sufficient protection to creditors IIG TOF. Releasing \$375,000 of funds to the Foreign Representative to administer and distribute will benefit all creditors because it will better equip the Foreign Representative to take necessary measures to protect and preserve the value of IIG TOF's estate for the benefit of all stakeholders. The distribution of proceeds under the Curaçao Bankruptcy Act, including the payment of the equivalent of administrative priority claims, substantially accords with the claims distribution waterfall under the Bankruptcy Code. Nagelmakers Declaration ¶¶ 19-23, 35. To the extent that Girobank, as a Curaçao-based creditor, is entitled to sufficient protection, it too will be sufficiently protected because the distribution of proceeds of the estate is being carried out substantially in accordance with U.S. law as embodied in the Stipulated Attachment, with respect to which Girobank agreed to permit IIG TOF to continue to pay its expenses in the ordinary course of business.

D. The Foreign Representative is Entitled to the Entrustment and Distribution of IIG TOF'S Assets in the United States as Additional Assistance Under Section 1507 of the Bankruptcy Code

116. Alternatively, the Foreign Representative respectfully submits that this court has the authority to grant the relief that it seeks under sections 1521(a) and 1521(b) pursuant to its power to provide additional assistance to a foreign proceeding under section 1507 of the Bankruptcy Code. Consistent with principles of comity, permitting the entrustment of \$375,000 of funds held in the Bank Leumi Account to the Foreign Representative for distribution in the Curaçao Liquidation will assure each of the following: (a) just treatment of all holders of claims against or interests in the debtor's property; (b) protection of claim holders in the United States

against prejudice and inconvenience in the process of claims in such foreign proceeding; (c) prevention of preferential or fraudulent disposition of property of the debtor; and (d) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this Bankruptcy Code.²² Because the Curaçao Liquidation provides reasonable assurance of each of the factors above, it should be afforded comity. Nagelmakers Declaration ¶¶ 20-24, 34-37.

117. Under article 64 of the Curaçao Bankruptcy Act, the Foreign Representative, as IIG's TOF bankruptcy trustee, has the sole right and power to administer the assets of IIG TOF's in the Curacao Liquidation. Nagelmakers Declaration ¶ 14. Therefore, in order to maximize the recovery to creditors, the Foreign Representative respectfully request that she be entrusted to realize and administer the Funds' assets within the territorial jurisdiction of the United States pursuant to section 1521(a)(5) of the Bankruptcy Code and distribute them, pursuant to 1521(b) of the Bankruptcy Code, or, alternatively, as additional assistance pursuant to Section 1507 of the Bankruptcy Code, including by repatriating certain funds to Curacao, to the extent requested herein and without prejudice to seeking further relief.

WAIVER OF STAY

118. The Foreign Representative respectfully requests that, to the extent applicable, the Court cause the proposed Recognition Order to become effective immediately upon entry notwithstanding the fourteen (14) day stay of effectiveness of the order imposed by operation of the Bankruptcy Code or the Bankruptcy Rules, including Bankruptcy Rules 1018, 3020(e), 6004(h), 7062 and 9014. Such a waiver is appropriate in these circumstances to allow the Foreign Representative to proceed immediately with the orderly distribution of the IIG TOF estate.

²² The final consideration in section 1507, which relates to the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns, is not applicable here because the debtor is subject to a proceeding in Curacao, the Curacao Liquidation, for the purpose of liquidation rather than reorganization.

119. Courts in this district routinely provide full or partial waivers of the 14-day stay of effectiveness period in chapter 15 cases. *In re CGG S.A.*, No. 17-11636 (MG) (Bankr. S.D.N.Y. June 14, 2017), ECF No. 25; *In re Boart Longyear Ltd.*, No. 17-11156 (MEW) (Bankr. S.D.N.Y. Apr. 27, 2017) ECF No. 45; *In re Pac. Expl. & Prod. Corp.*, No. 16-11189 (JLG) (Bankr. S.D.N.Y. Apr. 29, 2016), ECF No. 31; *In re Metcalfe & Mansfield Alt. Inv.*, No. 09-16709 (MG) (Bankr. S.D.N.Y. Nov. 10, 2009), ECF No. 28; *In re Landsbanki Islands HF.*, No. 08-14921 (RDD) (Bankr. S.D.N.Y. Dec. 8, 2008), ECF No. 65; *In re Quebecor World Inc.*, No. 08-13814 (JMP) (Bankr. S.D.N.Y. Sept. 30, 2008), ECF No. 12.

SATISFACTION OF LOCAL RULE BANKRUPTCY RULE 9013-1(A)

120. The Verified Petition includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to the Verified Petition. Accordingly, the Foreign Representative submits that the Verified Petition satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

NOTICE

121. Notice of this Verified Petition has been provided to: (i) the United States Trustee for the Southern District of New York; (ii) IIG TOF; (iii) all persons or bodies authorized to administer foreign proceedings of IIG TOF, including the Curaçao Liquidation; (iv) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (v) all known creditors of IIG TOF in the United States; (vi) all parties to litigation pending in the United States to which any of IIG TOF is a party at the time of the filing of the Verified Petition; and (vii) all parties that have filed a notice of appearance in this chapter 15 case. The Foreign Representative submits that no other or further notice of this Verified Petition is necessary or required.

NO PRIOR REQUEST

122. No prior request for the relief sought in this Verified Petition has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, for the reasons set forth herein, the Foreign Representative respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as is just and proper.

New York, New York
Dated: March 2, 2020

Respectfully submitted,

/s/ Aaron Javian _____

Aaron Javian
Christopher P. Hoffman
Nicole Lech
REED SMITH LLP
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 521-5400

Counsel to the Foreign Representative

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Chapter 15
)	
IIG Trade Opportunities Fund N.V.)	Case No. 18-12739 (MG)
)	
Debtors in a Foreign Proceeding.)	
_____)	

STATEMENT OF VERIFICATION

Pursuant to 28 U.S.C. § 1746, Valerie Maria hereby declares as follows under penalty of perjury:

1. I am a foreign representative of IIG TOF, duly authorized in the Curaçao Liquidation to act as foreign representative. I am duly authorized to file this Verified Petition and to commence and act in this Chapter 15 Case.

2. I have read the foregoing Verified Petition and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information and belief.

3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: March 2, 2020

/s/ Valerie Maria
Valerie P. Maria LLM

Exhibit A

Recognition Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 15
)	Case No. 20-10666 (MEW)
IIG Trade Opportunities Fund N.V. ¹)	
)	
Debtor in a Foreign Proceeding.)	

**[PROPOSED] ORDER RECOGNIZING FOREIGN
PROCEEDING AND GRANTING OTHER RELIEF**

Upon the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* (together with the Form of Voluntary Petition, the “**Petition**”)² of Ms. V. P. Maria LLM, in her capacity as court-appointed bankruptcy trustee of IIG Trade Opportunities Fund N.V. (“**IIG TOF**” or the “**Fund**”), and foreign representative (the “**Foreign Representative**” or the “**Trustee**”) of IIG TOF’s liquidation proceeding (the “**Curaçao Liquidation**”) currently pending before the Court of First Instance of Curaçao (the “**Curaçao Court**”) pursuant to the *Faillissementsbesluit 1931* (as amended, the “**Curaçao Bankruptcy Act**”) for entry of an order: (a) finding that IIG TOF is eligible to be a “debtor” under chapter 15 of the Bankruptcy Code; (b) the Curaçao Liquidation is a “foreign main proceeding” within the meaning of section 1502 of the Bankruptcy Code; (c) the Foreign Representative satisfies the requirements of a “foreign representative” under section 101(24) of the Bankruptcy Code; (d) the Petition was properly filed and meets the requirements of section 1515 of the Bankruptcy Code; (e) granting recognition of the Curaçao Liquidation as a foreign main proceeding under sections 1517 and 1520 of the Bankruptcy Code; (f) granting certain additional relief under sections 1507

¹ The last four digits of IIG TOF’s company number are (5220). IIG TOF’s registered office is Blenchiweg 23, Curaçao.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Petition.

and 1521 of the Bankruptcy Code; and (g) granting such other relief as is just and proper under the Bankruptcy Code; all as more fully described in the Petition; and upon the record of this case; the hearing held on March [], 2020 to consider the relief requested in the *Emergency Application of the Foreign Representative For Entry of Provisional Relief under sections 105(a) and 1519(a) of the Bankruptcy Code* and the hearing held on [], 2020 (the “**Hearing**”) on the Petition and this Court’s review and consideration of the Petition, the Nagelmakers Declaration and the Maria Declaration; and the Court having found and determined that the relief sought in the Petition is consistent with the purposes of chapter 15 of the Bankruptcy Code and is in the best interests of IIG TOF and its creditors; and after due deliberation and sufficient cause appearing therefor, and for the reasons stated on the record at the Hearing,

IT IS HEREBY FOUND AND DETERMINED THAT:³

1. This Court has jurisdiction to consider the Petition and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York*, dated January 31, 2012 (Preska, C.J.).
2. The consideration of the Petition and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).
3. IIG TOF has property in New York in the form of the New York Assets. Therefore, IIG TOF is “eligible” to be a debtor in a chapter 15 case pursuant to sections 109 and 1501 of the Bankruptcy Code.

³ The findings and conclusions set forth herein and in the record of the hearing on the Petition constitute this Court’s findings of facts and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

4. Venue is proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3).

5. Good, sufficient, appropriate, and timely notice of the filing of the Petition and the Hearing on the Petition has been given by the Foreign Representative, pursuant to Bankruptcy Rules 1011(b) and 2002(q), to: (a) the Office of the United States Trustee; (b) IIG TOF; (c) all persons or bodies authorized to administer foreign proceedings of IIG TOF, including the Curaçao Liquidation; (d) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (e) all known creditors of IIG TOF in the United States; (f) all parties to litigation pending in the United States to which IIG TOF is a party at the time of the filing of the Petition; and (g) all parties that have filed a notice of appearance in this chapter 15 case. In light of the nature of the relief requested and prior orders of this Court, no further notice is required.

6. This chapter 15 case was properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

7. The Foreign Representative is a “person” as such term is defined in section 101(41) of the Bankruptcy Code and has been duly appointed, made responsible for administering the restructuring of IIG TOF, and designated as the “foreign representative” of IIG TOF as such term is defined in section 101(24) of the Bankruptcy Code.

8. The Petition satisfies the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).

9. The Curaçao Liquidation is a “foreign proceeding” as such term is defined in section 101(23) of the Bankruptcy Code.

10. The Curaçao Liquidation is pending in Curaçao, which is where IIG TOF has its “center of main interests,” as referred to in section 1517(b)(1) of the Bankruptcy Code and, as such, the Curaçao Liquidation is a “foreign main proceeding” pursuant to section 1502(4) of the

Bankruptcy Code, and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

11. The Foreign Representative and IIG TOF are entitled to the additional assistance and discretionary relief requested in the Petition under sections 1507 and 1521 of the Bankruptcy Code.

12. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, not inconsistent with the public policy of the United States, warranted pursuant to sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520, and 1521 of the Bankruptcy Code, and will not cause hardship to any party in interests. To the extent that any hardship or inconvenience may result to such parties, it is outweighed by the benefits of the requested relief to the Foreign Representative, IIG TOF, its creditors, and other parties in interest.

13. The relief granted herein is necessary to effectuate the purposes and objectives of chapter 15 of the Bankruptcy Code and to protect IIG TOF and the interests of its creditors and all parties in interest.

14. In accordance with section 1507(b) of the Bankruptcy Code, the relief granted herein will reasonably assure: (i) the just treatment of all holders of claims against or interests in IIG TOF's property; (ii) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Curaçao Liquidation; (iii) the prevention of preferential or fraudulent dispositions of property of IIG TOF; and (iv) the distribution of proceeds of IIG TOF substantially in accordance with the order prescribed in the Bankruptcy Code.

15. All creditors and other parties in interest, including IIG TOF, are sufficiently protected in the grant of the relief ordered hereby in compliance with section 1522(a) of the Bankruptcy Code.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

A. The Petition and the relief requested therein are granted, and any objections or responses thereto that have not been withdrawn or resolved are overruled with prejudice.

B. The Curaçao Liquidation is recognized as a “foreign main proceeding” pursuant to section 1517(a) and 1517(b)(1) of the Bankruptcy Code.

C. The Foreign Representative is recognized as the “foreign representative” as defined in section 101(24) of the Bankruptcy Code in respect of the Curaçao Liquidation.

D. IIG TOF is entitled to all of the protections under section 1520 of the Bankruptcy Code, including the application of the automatic stay under section 362 of the Bankruptcy Code to its property that is within the territorial jurisdiction of the United States. All entities (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative and her authorized representatives and agents are hereby permanently enjoined from:

1. executing against any asset of IIG TOF;
2. commencing or continuing, including issuing or employing process, of any judicial, administrative or any other action or proceeding involving or against IIG TOF or its assets or proceeds thereof, or to recover a claim or enforce any judicial, quasi-judicial, regulatory, administrative or other judgment, assessment, order, lien or arbitration award against IIG TOF or its assets or proceeds thereof, or to exercise any control over IIG TOF’s assets located in the United States;
3. creating, perfecting, seizing, attaching, enforcing, or executing liens or judgments against IIG TOF’s property in the United States or transferring, encumbering or otherwise disposing of or interfering with IIG TOF’s assets in the United States;
4. taking any act to collect, assess, or recover a claim against IIG TOF that arose before the commencement of its chapter 15 case;
5. setting off any debt owing to IIG TOF that arose before the commencement of its chapter 15 case against any claim against IIG TOF; and

6. transferring, relinquishing, or disposing of any property of IIG TOF to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative and her expressly authorized representatives and agents;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States.

E. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362 of the Bankruptcy Code, or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed. Pursuant to section 1520(a)(3) of the Bankruptcy Code, the Foreign Representative is entitled to operate IIG TOF's business and administer its assets, including without limitation, all bank and custodial accounts. All banks, escrow agents and other custodians at which IIG TOF maintains accounts are authorized to (i) honor the Foreign Representative's instructions with respect to accessing any such accounts; and (ii) accept, hold, or permit withdrawal, transfer, or other disposition of funds in accordance with the Foreign Representative's instructions.

F. The Foreign Representative is hereby authorized to issue subpoenas in accordance with applicable procedural rules for the examination of witnesses and/or the production of documents within the territorial jurisdiction of the United States concerning the assets, affairs, rights, obligations or liabilities of IIG TOF and its affiliates, including subpoenas to intermediary banks that process U.S. dollar denominated wire transfers and maintain records of such transfers; provided that any subpoenas served pursuant to this authority set forth in this paragraph shall be without prejudice to the recipients' rights to object in accordance with the applicable procedural rules.

G. The Foreign Representative is authorized to take possession and to seek turnover of any and all documents, records, filings or other information, however stored, that belongs to IIG TOF and that is found within the territorial jurisdiction of the United States.

H. The administration or realization of all or part of the assets of IIG TOF within the territorial jurisdiction of the United States is hereby entrusted to the Foreign Representative and the Foreign Representative is hereby established as the exclusive representative of IIG TOF and the Curaçao Liquidation in the United States.

I. Notwithstanding the Stipulated Attachment, IIG TOF's funds in the amount of up to \$375,000 held in the Bank Leumi Account are hereby entrusted to the Foreign Representative for distribution in the Curaçao Liquidation.

J. Except as otherwise provided herein, this Order shall not have any effect on that certain Stipulation and Order entered by the Supreme Court for the State of New York, New York County, Commercial Division, on May 7, 2019, in a special proceeding styled *Girobank N.V., v. IIG Trade Opportunities Fund, N.V., et al*, No. 652135/2019, with respect to which Girobank N.V. and the Foreign Representative reserve all of their rights.

K. Under section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Foreign Representative or IIG TOF by this Court under section 1519(a) of the Bankruptcy Code shall be extend and the *Order Granting the Emergency Application of the Foreign Representative for Provisional Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* [ECF No. []] shall remain in full force and effect, notwithstanding anything to the contrary herein.

L. No action taken by the Foreign Representative in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of this Recognition Order, this chapter 15 case, any further order for additional relief in this chapter 15 case, or any adversary

proceedings in connection therewith, will be deemed to constitute a waiver of the immunity afforded the Foreign Representative in her capacity as such under section 1510 of the Bankruptcy Code.

M. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Recognition Order.

N. The Foreign Representative and her respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

O. Notwithstanding Bankruptcy Rule 7062, made applicable to this chapter 15 case by Bankruptcy Rule 1018, this Recognition Order shall be immediately effective and enforceable upon its entry, and upon its entry, shall be final and appealable.

P. This Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Recognition Order, any requests for additional relief or any adversary proceeding brought in and through this Chapter 15 Case, and any request by an entity for relief from the provisions of this Recognition Order that is properly commenced and within the jurisdiction of this Court.

New York, New York
Dated: _____, 2020

UNITED STATES BANKRUPTCY JUDGE