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

In re:)

IIG Trade Opportunities Fund N.V.¹)

Debtor in a Foreign Proceeding.)
_____)

) Chapter 15

) Case No. 20-10666 (MEW)

**EMERGENCY APPLICATION FOR ENTRY OF PROVISIONAL RELIEF
PURSUANT TO SECTIONS 1519 AND 105(A) OF THE BANKRUPTCY CODE**

¹ The last four digits of IIG TOF's company number are (5220). IIG TOF's registered office is Blenchiweg 23, 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**” 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**”), by her United States attorneys, Reed Smith LLP (“**Reed Smith**”), respectfully submits this application (the “**Application**”), pursuant to Rule 65 of the Federal Rules of Civil Procedure, made applicable to this proceeding through Rule 7065 of the Federal Rules of Bankruptcy Procedure, and sections 105(a), and 1519 of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Provisional Relief Order**”).

In support of the Application, the Foreign Representative respectfully incorporates the following herein by reference: (i) the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* (the “**Verified Petition**”),² (ii) the *Declaration of Valerie Maria in Support of the Verified Petition and Emergency Application For Provisional Relief* (the “**Maria Declaration**”), and (iii) the *Declaration of Barbara Nagelmakers in Support of The Verified Petition Under Chapter 15 For Recognition of A Foreign Main Proceeding and Related Relief* (the “**Nagelmakers Declaration**”). In support of the relief requested herein, the Foreign Representative states as follows:

PRELIMINARY STATEMENT

By this application, the Foreign Representative is seeking limited — but highly necessary and urgent — provisional relief relative to two New York litigations that concern IIG TOF: (i) an

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

action in the Supreme Court of New York brought against IIG TOF by the liquidators of IIG Global Trade Finance Fund Ltd. (“**GTFF**”) and IIG Structured Trade Finance Fund Ltd. (“**STTF**,” and together with GTFF, the “**Trade Finance Funds**”), two Cayman hedge funds that, like IIG TOF, had been managed by The International Investment Group LLC (the “**Investment Advisor**”); and (ii) an intervention action brought by Bank Leumi USA (“**Bank Leumi**”) in a litigation the Securities and Exchange Commission (the “**SEC**”) is pursuing against the Investment Advisor (the “**Bank Leumi Intervention Action**”). Both of these litigations should be stayed insofar as they relate to IIG TOF.

In the lawsuit by the Trade Finance Funds (the “**Trade Finance Funds Litigation**”), IIG TOF is being sued on an expedited basis pursuant to Section 3213 of the New York Civil Practice Law and Rules (“**CPLR**”) over an allegedly defaulted loan to one of IIG TOF’s subsidiaries and the Fund’s purported guarantee of same. The Trade Finance Funds are seeking recovery of more than \$14 million dollars — the second largest creditor claim that has emerged in these early days of the IIG TOF estate.

In the Bank Leumi Intervention Action, to which IIG TOF is not a party, Bank Leumi is claiming that IIG TOF could be made to answer for more than \$200,000 of debt incurred by IIG Trade Finance, LLC (“**IIG Trade Finance**”), an entity that was responsible for structuring the trade finance loans that were funded by IIG TOF and other funds managed by the Investment Advisor. The amounts sought by Bank Leumi represent a significant portion of IIG TOF’s available cash on hand. The Foreign Representative has only until March 6 and March 7, respectively, to respond to the significant claims raised in Bank Leumi Intervention Action and the Trade Finance Fund Litigation. If made to respond by those deadlines, the Foreign

Representative will be forced to do so without having had a meaningful opportunity to investigate the propriety of the claims alleged, thereby prejudicing the IIG TOF estate.

Since her appointment in early September 2019, the Foreign Representative has endeavored to collect documents and information from IIG TOF's former control parties, including the Investment Advisor and its principals, David Silver (“**Silver**”) and Martin Hu (“**Hu**”). While those efforts have resulted in the provision of limited information, the Investment Advisor, Silver, and Hu have been largely uncooperative, leaving the Foreign Representative without full insight into the pre-liquidation affairs of IIG TOF. That dynamic is particularly problematic given the circumstances surrounding the Investment Advisor.

The Investment Advisor recently entered into a consent judgment with the SEC over allegations of securities laws violations stemming from deceptive and manipulative accounting practices, the hiding of portfolio losses, and the falsification of loan documents. Hu and Silver are alleged to have “spearheaded” this illicit conduct on the part of the Investment Advisor, and IIG TOF and the Trade Finance Funds appear to have been victimized by the fraud. The loan and guarantee in the Trade Finance Funds Litigation is purely an insider, related party transaction insofar as Hu and Silver entered into the transaction on behalf of both IIG TOF and the Trade Finance Funds. The loan at issue in the Bank Leumi Intervention Action was similarly signed by Silver on behalf of IIG Trade Finance. These circumstances demand that the Foreign Representative be afforded adequate time to investigate the claims in the Trade Finance Funds Litigation and Bank Leumi Intervention Action, which will not be possible without the relief requested herein.

The Foreign Representative also submits that she satisfies the injunctive relief standard in section 1519(e) of the Bankruptcy Code. *First*, as set forth in the accompanying Verified

Petition and Declaration, the Foreign Representative is likely to succeed in obtaining chapter 15 recognition from this Court because the Curaçao Liquidation has all the hallmarks of a foreign proceeding that is entitled to recognition. *Second*, the estate of IIG TOF will be irreparably harmed absent a stay of the Bank Leumi Intervention Action and Trade Finance Funds Litigation because it will allow creditor claims to be adjudicated in disparate fora outside of the claims process provided by the Curaçao Bankruptcy Act, and will expose the estate to sizeable claims without full evaluation of all potential defenses. *Third*, a stay will not prejudice the Trade Finance Funds or Bank Leumi because there is no risk of improper dissipation of IIG TOF during the temporary period during which provisional relief is being requested, or thereafter. Both parties, like each of IIG TOF's creditors, have the opportunity to pursue their claims in the Curaçao Liquidation irrespective of the entry of the provisional relief the Foreign Representative is seeking in the United States.

Moreover, this provisional relief will foster the broader goals of chapter 15 of the Bankruptcy Code. Specifically, a stay of the Bank Leumi Intervention Action and Trade Finance Funds Litigation will enable the Foreign Representative to prioritize her statutory obligation under the Curaçao Bankruptcy Act to liquidate IIG TOF's estate in a manner that maximizes value for all stakeholders, without forcing the estate to expend its limited resources and managerial time on the distraction of defending claim-related litigation brought against IIG TOF in the United States. Granting provisional relief will also immediately effectuate in the United States the moratorium imposed by the Curaçao Bankruptcy Act, thereby leveling the playing field between local creditors in Curaçao who are bound to observe the moratorium, and non-Curaçao based creditors who do not similarly feel compelled to abide by Curaçao law. These ends fully accord with chapter 15's emphasis on the "fair and efficient administration of cross-

border insolvencies” and “protection and maximization of the value of the debtor’s estate.” In their own recent petition for chapter 15 relief, the liquidators of GTFF recognized the importance of these same goals as critical to the fair administration of a foreign insolvency proceeding.

In sum, this provisional relief is urgently necessary to preserve the status quo because IIG TOF’s response deadlines in the Trade Finance Funds Litigation and Bank Leumi Intervention Action are scheduled to come due before the hearing to recognize the Curaçao Liquidation can take place. The Foreign Representative therefore respectfully requests that the Court grant the provisional relief requested herein and enter a stay of the Trade Finance Funds Litigation and Bank Leumi Intervention Action.

FACTUAL BACKGROUND

1. A detailed factual background regarding IIG TOF, including an overview of IIG TOF’s business, capital structure, and the events leading to the Curaçao Liquidation and this chapter 15 case, is set forth in the Verified Petition and the Maria Declaration, which are incorporated by reference as if fully set forth herein. To avoid redundancy, the Foreign Representative here summarizes only those facts most relevant to this Application.

I. The SEC Action against the Investment Advisor

2. In or around June 2018, the SEC served subpoenas on the Investment Advisor and its principals, Hu and Silver, seeking documents and information relating to the Investment Advisor’s policies and asset valuations relative to several funds managed by the Investment Advisor, including IIG TOF and the Trade Finance Funds. Maria Declaration ¶ 49.

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

Action”) against the Investment Advisor.³ Maria Declaration ¶ 50, Ex. D. Therein, the SEC alleged that the Investment Advisor Hu, and Silver engaged in deceptive acts and securities laws violations, including hiding portfolio losses, propping up liquidity, and manufacturing loans. *Id.* ¶ 50. For example, the SEC alleged that the Investment Advisor Hu, and Silver 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.

4. The SEC alleged additional misconduct by the Investment Advisor with respect to one of its open-end mutual fund’s that was marketed to retail investors (the “**Retail Fund**”). 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 had

³ A true and correct copy of the SEC’s complaint in the SEC Action (ECF No. 1) is attached to the Maria Declaration as **Exhibit D**.

raided. *Id.* ¶ 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.

5. 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.

6. 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;⁴ (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 stay of any litigation involving the Investment Advisor or its assets pending a final determination of the amount of disgorgement and civil penalties to be paid by the Investment Advisor (the “**SEC Order**”).⁵ *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.*

7. 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.

⁴ The preliminary asset freeze, however, does not apply to the Foreign Representative as a bankruptcy trustee of IIG TOF appointed by the Curaçao Court. *See* Maria Declaration, Ex. E at V.

⁵ A true and correct copy of the SEC Order (ECF No. 9) is attached to the Maria Declaration as **Exhibit E**.

8. 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.⁶ 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.* 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. *Id.*

9. 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, Ex. F. 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.*

10. 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, the other investment funds, and Trade Finance Trust; and (ii) to the extent such accounting

⁶ True and correct copies of Bank Leumi's motion papers (ECF Nos. 73-1, 73-2, 73-11) in the SEC Action are attached to the Maria Declaration as composite **Exhibit F**.

reveals debts owed to IIG Trade Finance by account holders at Bank Leumi, 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. *Id.* ¶ 57. 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. Maria Declaration ¶ 57. 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.* Initial opposition papers in the Bank Leumi Intervention Action are due by no later than March 6, 2020. *Id.*

II. The Trade Finance Funds’ Litigation

11. On August 22, 2019, an investor in GTFF petitioned the Grand Court of the Cayman Islands (“**Cayman Court**”) for an involuntary liquidation of GTFF. *Id.* ¶ 58. Specifically, the investor alleged that GTFF failed to satisfy the investor’s redemption notice in respect of \$5 million of its shares in GTFF, thereby turning the investor into a *bona fide* creditor of GTFF and demonstrating GTFF’s insolvency. *Id.*

12. One month later, on September 22, 2019, the directors of STFF passed a resolution appointing Arthur G. Jakoby as interim liquidator of the fund. *Id.* ¶ 59.

13. On October 23, 2019, the Cayman Court entered an order directing the winding up of GTFF and the appointment of Alexander Lawson and Christopher Kennedy (the “**GTFF Liquidators**”) as joint official liquidators of GTFF. *Id.* ¶ 60. On December 4, 2019, by order of the Supervisory Judge overseeing the Curaçao Liquidation, local Curaçao counsel for the Trade Finance Funds was added as a member of IIG TOF’s preliminary creditors’ committee. *Id.* ¶ 36.

14. On December 4, 2019, an investor of STFF filed an application with the Cayman Court seeking an order that STFF be wound up. *Id.* ¶ 61.

15. On December 27, 2019, the GTFF Liquidators, along with STFF, commenced the Trade Finance Funds Litigation in New York state court, styled *IIG Global Trade Finance Fund Ltd., et al v. IIG Trade Opportunities Fund N.V.*, No. 657724/2019. In that litigation, the Trade Finance Funds seek an entry of judgment pursuant to Section 3213 of the New York Civil Practice Law and Rules (“CPLR”) against IIG TOF in the amount of \$14,339,479.97 (the “**Trade Finance Funds Motion**”).⁷ Maria Declaration ¶ 62, Ex. G.

16. 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. Under the TOF Cayman Note, the Trade Finance Funds allegedly extended \$14,339,479.97 in loan proceeds to TOF Cayman (the “**TOF Cayman Loan**”). *Id.* TOF Cayman was required to use the proceeds of the TOF Cayman Loan to repay the balance of certain obligations owed by TOF Cayman to one of its creditors, Inter-American Development Bank. *Id.* ¶ 63, Ex. G at 2. As partial security for the TOF Cayman Loan, IIG TOF purportedly guaranteed full repayment of the 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.⁸ *Id.* ¶ 63.

⁷ A true and correct copy of the Trade Finance Funds Motion (ECF No. 2) is attached to the Maria Declaration as **Exhibit G**.

⁸ On January 6, 2020, the GTFF Liquidators filed a separate petition with the Cayman Court seeking the winding up

17. The lending transaction at issue in the Trade Finance Litigation is a related party transaction overseen by Hu and Silver — the same individuals that “spearheaded” the illicit activity alleged in the SEC Litigation. Maria Declaration ¶ 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. *Id.*

18. 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.⁹ *Id.* ¶ 66, Ex. 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.” *Id.*, Ex. H ¶ 2. The GTFF Liquidators argued that recognition “would confer upon GTFF the protections of sections 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.*

19. On February 19, 2020, following a recognition hearing, this Court granted the GTFF Liquidators’ petition and ordered the following relief: (i) recognizing GTFF’s Cayman insolvency proceeding as a foreign main proceeding; (ii) granting relief and protection afforded under sections 1520 and 362 of the Bankruptcy Code to GTFF and its property; (iii) empowering

of TOF Cayman SPV as a consequence of its purported non-payment of the same amounts due under the TOF Cayman Loan.

⁹ 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 (ECF No. 2), and the Court’s Order granting Recognition and Relief dated February 19, 2020 (ECF No. 9), is attached to the Maria Declaration as **Exhibit H**.

the GTFF Liquidators to transfer funds or property belonging to GTFF into or out of the United States, issue subpoenas for the examination of witnesses and/or the production of documents, take possession of any documents belonging to GTFF, and operate the business of GTFF and administer the fund's assets. Maria Declaration ¶ 67.

20. IIG TOF has until March 7, 2020 to oppose or otherwise respond to the Trade Finance Litigation.¹⁰ *Id.* ¶ 68, Ex. I. For the reasons set forth below, this impending deadline constitutes an imminent threat to the Foreign Representative's orderly administration of IIG TOF's affairs and should therefore be enjoined.

JURISDICTION AND VENUE

21. 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.). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

22. Venue is proper in this District pursuant to 28 U.S.C. § 1410 because IIG TOF (i) has accounts located in New York in the name of IIG TOF, including a bank account with Bank Leumi containing approximately \$789,000 and a custody account with the Bank of New York Mellon, (ii) has an ownership interest in up to approximately \$117,000, upon information and belief, held in an escrow account established by Chaffetz Lindsey LLP, and (iii) has additional property in New York by way of a retainer deposited in the client trust account of the Foreign Representative's New York counsel. Maria Declaration ¶¶ 40, 41; *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

¹⁰ A true and correct copy of a Stipulation between counsel for the Trade Finance Funds and IIG TOF (ECF No. 26) is attached to the Maria Declaration as **Exhibit I**.

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

23. The statutory bases for relief are sections 105(a) and 1519 of the Bankruptcy Code.

RELIEF REQUESTED

24. The Foreign Representative respectfully requests entry of the Provisional Relief Order, substantially in the form attached hereto as **Exhibit A**, granting the following provisional relief effective immediately and until such time as this Court enters a final order with respect to the Foreign Representative’s petition for recognition of the Curaçao Liquidation as a foreign main proceeding:

- a. The Foreign Representative shall be the representative of IIG TOF with full and sole authority to administer IIG TOF’s assets and affairs in the United States on a provisional basis.
- b. Section 362 of the Bankruptcy Code shall apply with respect to IIG TOF and its property located within the territorial jurisdiction of the United States. Without limiting the generality of the foregoing, the Provisional Relief Order shall impose a stay within the territorial jurisdiction of the United States of:
 - i. the commencement or continuation, including the issuance or employment of 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, except as otherwise authorized by the Foreign Representative in writing;

- ii. the creation, perfection, seizure, attachment, enforcement, or execution of liens or judgments against IIG TOF's property in the United States or from transferring, encumbering or otherwise disposing of or interfering with IIG TOF's assets in the United States without the express written consent of the Foreign Representative;
 - iii. any act to collect, assess, or recover a claim against IIG TOF that arose before the commencement of its chapter 15 case;
 - iv. the setoff of any debt owing to IIG TOF that arose before the commencement of its chapter 15 case against any claim against IIG TOF; and
 - v. the transfer, relinquishment or disposal 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 its expressly authorized representatives and agents;
- c. Authorizing the Foreign Representative 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;
- d. authorizing the Foreign Representative 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;
- e. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) the Provisional Relief Order shall be effective immediately and enforceable upon entry, (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in the Provisional Relief Order, and (iii) the Foreign Representative is authorized and empowered, and may, in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the Provisional Relief Order; and
- f. Such other relief as may be just and proper.

BASIS FOR RELIEF

I. The Relief Requested is Authorized by Sections 1519 and 105 of the Bankruptcy Code

25. Section 1519 of the Bankruptcy Code provides that “from the time of filing of a petition for recognition until the court rules on the petition, the court may at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor . . . grant relief of a provisional nature.” 11 U.S.C. § 1519. Section 1519(a)(1) of the Bankruptcy Code authorizes the Court to grant provisional relief to stay execution against the debtor’s assets. Section 1519(a)(2) of the Bankruptcy Code authorizes the Court to entrust the administration or realization of all or part of the debtor’s assets located in the United States to the Foreign Representative in order to protect and preserve the value of assets. Section 1519(a)(3), which incorporates section 1521(a) of the Bankruptcy Code, permits the Court to suspend the right of persons or entities to transfer, encumber, or otherwise dispose of assets of IIG TOF, authorizes the Court to provide for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations and liabilities for the benefit of the Foreign Representative, and further authorizes the Court to stay commencement or continuation of actions against IIG TOF and its assets within the territorial jurisdiction of the United States.

26. Pursuant to sections 1519 and 105(a) of the Bankruptcy Code, the Foreign Representative seeks provisional relief to impose section 362 of the Bankruptcy Code to maintain the *status quo* until a determination on recognition of the Curaçao Liquidation can be made, and ensure that the Foreign Representative is able to properly and efficiently administer IIG TOF’s estate for the benefit of its creditors. The Foreign Representative also seeks provisional relief to avail itself of the benefit of the discovery powers provided for under section

1521(a)(4) of the Bankruptcy Code during this same period. The Foreign Representative intends to seek, among other relief, a continuation of the automatic stay through the application of sections 1520(a)(1) and, if necessary, 1521(a) of the Bankruptcy Code, as well a continuation of its discovery powers under section 1521(a)(4), at the recognition hearing. *See Vitro v. ACP Master, Ltd. (In re Vitro)*, 455 B.R. 571,579 (Bankr. N.D. Tex. 2011) (“The Court finds that it is empowered under sections 1519(a), 362 and 105 of the Bankruptcy Code to issue the Preliminary Injunction in favor of [debtor] to protect its assets, until such time as a determination on recognition is made.”).

II. The Foreign Representative Satisfies the Standards for Injunctive Relief

27. Section 1519(e) of the Bankruptcy Code provides that all of the “standards, procedures and limitations applicable to injunctions shall apply” when determining whether provisional relief, including emergency relief, under Section 1519 is appropriate. 11 U.S.C. § 1519(e); *see also In re Beechwood RE*, No. 19-11560 (MG), 2019 WL 3025283, at 2* (Bankr. S.D.N.Y. July 10, 2019) (concluding “the standards for issuance of a preliminary injunction” apply to determine whether provisional relief should be granted under section 1519).

28. The Second Circuit applies a four factor test when considering whether to grant injunctive relief in chapter 15 actions, namely whether: (i) there is a likelihood of success on the merits; (ii) there is an imminent threat of irreparable harm to the debtor’s assets in the absence of the provisional relief; (iii) the balance of harms tips in favor of the moving party; and (iv) the public interest weighs in favor of an injunction. *In re Lyondell Chem. Co.*, 402 B.R. 571, 588 (Bankr. S.D.N.Y. 2009) (applying the “traditional preliminary injunction standard as modified to fit the bankruptcy context”); *In re STX Pan Ocean Co.*, No. 13-12046 (SCC) (Bankr. S.D.N.Y. July 1, 2013), ECF. No. 30 (granting provisional relief after petitioner satisfied preliminary

injunction standard); *In re Cozumel Caribe, S.A., de C.V.*, No. 10-13913 (SCC) (Bankr. S.D.N.Y. July 20, 2010), ECF No. 23 (granting provisional relief because there is a substantial likelihood that the foreign representative could demonstrate that [the debtor] is a subject of foreign insolvency proceedings, the balance of harm tips in favor of the moving party here, there is an imminent threat of immediate and irreparable injury, and it is in the public interest.). Courts adopt a “flexible approach” in evaluating these factors and “no one factor is determinative.” *In re Calpine Corp.*, 365 B.R. 401, 409 (Bankr. S.D.N.Y. 2007). Each of the requirements for injunctive relief is satisfied here.

A. The Foreign Representative is Likely to Succeed on the Merits

29. In connection with a request for provisional relief in a chapter 15 case, the petitioner must show that he or she is likely to obtain recognition of the relevant foreign proceeding. *See In re Qimonda*, No. 09-14766-RGM, 2009 WL 2210771, at *3 (Bankr. E.D. Va. July 16, 2009) (“The issue upon which [the petitioner] must prevail for an injunction to issue is whether an order of recognition will be entered . . .”). For the reasons set forth in the Verified Petition, the Foreign Representative is likely to succeed in obtaining recognition of the Curaçao Liquidation as a foreign main proceeding.

30. *First*, 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”). Moreover, IIG TOF is an eligible debtor under section 109(a) of the Bankruptcy Code because it has property in the United States, including a its ownership of a bank account with Bank Leumi containing approximately \$789,000, its ownership of a custody account with the Bank of New York Mellon, its ownership interest in certain funds in an amount

up to approximately \$117,000 escrowed with Chaffetz Lindsey LLP, and a retainer 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. Maria Declaration ¶¶ 40-41; *see In re Berau Capital Res. Pte Ltd.*, 540 B.R. 80, 82, 84 (Bankr. S.D.N.Y. 2015) (noting that “cases have identified bank accounts [and] attorney retainers deposited in New York . . . as satisfying the ‘property in the United States’ eligibility requirement”).

31. *Second*, the Curaçao Liquidation is entitled to recognition as a foreign main proceeding. Specifically, the Curaçao Liquidation is a collective judicial proceeding that considers all potential creditors and was commenced under the Curaçao Bankruptcy Act, the Curaçao statutory law governing reorganizations and liquidations. Nagelmakers Declaration ¶¶ 19-23, 35-37; *see In re Betcorp Ltd.*, 400 B.R. 266, 281 (Bankr. D. Nev. 2009) (a proceeding is collective where such proceeding “considers the rights and obligations of all creditors”). Moreover, the Curaçao Liquidation is subject to the control and supervision of the Curaçao Court, the forum tasked with applying the Curaçao Bankruptcy Act for purposes of liquidating IIG TOF’s assets. *See* Nagelmakers Declaration ¶ 17.

32. *Third*, the Curaçao Liquidation is a “foreign main proceeding” because IIG TOF’s center of main interest (“COMI”) is in Curaçao, the forum where IIG TOF is organized and incorporated. Maria Declaration ¶¶ 6-7; *see In re Gerova Fin. Grp., Ltd.*, 482 B.R. 86, 91 (Bankr. S.D.N.Y. 2012) (a foreign debtor’s registered office is presumed to be its COMI). Since her appointment in September 2019, the Foreign Representative has assumed sole authority to manage IIG TOF’s assets and administer its estate from her office in Curaçao, which has served as IIG TOF’s de facto headquarters for nearly six months. Maria Declaration ¶ 39; *Morning Mist*

Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127,137 (2d Cir. 2013) (“[A]ny relevant activities, including liquidation activities and administrative functions, may be considered in the COMI analysis.”)

33. *Fourth*, the Foreign Representative — authorized by the Curaçao Court to administer the liquidation of IIG TOF’s assets — is a duly appointed and authorized “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code. Nagelmakers Declaration ¶ 14.

34. *Fifth*, the Verified Petition meets the requirements of section 1515 of the Bankruptcy Code because (i) the Verified Petition is accompanied by a certified and translated copy of the order commencing the Curaçao Liquidation and authorizing the Foreign Representative to act as foreign representative; (ii) the Foreign Representative submitted a declaration containing a statement identifying the Curaçao Liquidation and the Malta Proceeding as the only known “foreign proceedings” with respect to IIG TOF; (iii) all documents provided pursuant to section 1515(b) of the Bankruptcy Code have been translated into English; and (iv) the Verified Petition satisfies Bankruptcy Rule 1007(a)(4).

35. Accordingly, the Foreign Representative will successfully demonstrate that the Curaçao Liquidation constitutes a “foreign main proceeding” entitled to chapter 15 recognition. *See In re STX Pan Ocean Co.*, No. 13-12046 (SCC) (Bankr. S.D.N.Y. July 1, 2013), ECF. No. 30 (granting provisional relief because the petitioner demonstrated a likelihood of success that the company is subject to a pending foreign main proceeding.); *In re Gerova Fin. Grp., Ltd.*, No.12-13641 (MEW) (Bankr. S.D.N.Y. Aug. 24, 2012), ECF No. 21 (same).

B. IIG TOF will Suffer Irreparable Harm Absent the Requested Provisional Relief

36. Absent the requested relief, purported creditors, like the Trade Finance Funds and Bank Leumi, will continue pursuing claims against IIG TOF and irreparably harm the fund's estate, the Foreign Representative, and other interested parties.

37. *First*, actions taken by creditors to assert claims against IIG TOF or threaten to exercise rights and remedies against IIG TOF's assets outside of the Curaçao Liquidation jeopardize the orderly reconciliation of IIG TOF's creditor claims and assets in a single centralized forum. The Curaçao Bankruptcy Act automatically imposes a moratorium on creditors from filing lawsuits against a bankrupt debtor from and after its declaration of bankruptcy. Nagelmakers Declaration ¶ 12. In addition, the Curaçao Bankruptcy Act requires the trustee to establish a process pursuant to which creditors, wherever located, may file their claims against the bankrupt's estate for determination by the trustee under the supervision of the Curaçao Court. *Id.* ¶¶ 19-22. The Curaçao Bankruptcy Act provides that the claims validation process should be the exclusive means for unsecured creditors and other parties-in-interest to assert their claims against a debtor in liquidation. *Id.* ¶ 19.

38. Notwithstanding the existence of the moratorium and a claims process in connection with the Curaçao Liquidation, the Trade Finance Funds commenced the Trade Finance Litigation pursuant to CPLR 3213, a New York state remedy that provides for expedited relief in actions based upon an instrument for the payment of money only. Maria Declaration ¶ 62. Importantly, CPLR 3213 permits courts to resolve disputes "on the papers" without necessarily affording the parties any discovery.

39. Although Bank Leumi has not asserted a direct claim against IIG TOF by way of the Bank Leumi Intervention Action *per se*, it has threatened to circumvent the Curaçao

Liquidation altogether to exercise rights and remedies against funds it is holding for IIG TOF arising from a debt Bank Leumi alleges it is owed by another entity, IIG Trade Finance. The Bank Leumi Intervention Action is scheduled to proceed in relatively short order, with initial opposition papers to the bank's motion due to be filed with the court no later March 6, 2020. Maria Declaration ¶ 57.

40. If the Trade Finance Funds and Bank Leumi are permitted to continue to prosecute their respective proceedings, doing so would irreparably undermine Curaçao's principle of providing equal treatment to creditors holding similar claims in a single, centralized forum. Nagelmakers Declaration ¶ 36; *see, e.g., In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. July 31, 2003) ("irreparable harm is present when the failure to enjoin local actions will disrupt the orderly reconciliation of claims and fair distribution of assets in a single, centralized forum") (quoting COLLIER ON BANKRUPTCY ¶ 304.05 (15th ed. Rev. 2003)); *In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) ("[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors."); *In re Banco Nacional de Obras y Servicios Publicos, S.N.C.*, 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (stating that injunctive relief is necessary "to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group"); *In re Brierley*, 145 B.R. 151, 168 (Bankr. S.D.N.Y. 1992) ("Harm to the estate exists from the failure to grant injunctive relief in the form of disruption of an orderly determination of claims and the fair distribution . . . in a single case.") (internal quotation marks and citation omitted); *In re Rubin*, 160 B.R. 269, 283 (Bankr. S.D.N.Y. 1993) ("[T]here appears to be little dispute regarding the notion that the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury.") (citation omitted); *In re Gercke*,

122 B.R. 621, 626 (Bankr. D.D.C 1991) (“Harm to the estate also exists in the form of disruption of an orderly determination of claims and the fair distribution in a single case.”) (*citing Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987)).

41. *Second*, IIG TOF will suffer irreparable harm if the Foreign Representative is forced to respond to the Trade Finance Funds Litigation and Bank Leumi Intervention Action without a sufficient opportunity to evaluate potential defenses relating to the allegations asserted therein. The Foreign Representative was appointed as trustee of IIG TOF on September 3, 2019. Maria Declaration ¶ 25. Almost immediately thereafter, on September 17, 2019, the Trade Finance Funds filed an application with the Curaçao Court of Appeal challenging the Bankruptcy Order and the Foreign Representative’s appointment. *Id.* ¶ 32. Two months later, on November 27, 2019, the Trade Finance Funds voluntarily withdrew their appeal, only then extinguishing any uncertainty around the legitimacy of the Curaçao Liquidation or the Foreign Representative’s status as trustee of the IIG TOF estate. *Id.* ¶ 35. Since her appointment, the Foreign Representative has attempted to adduce documents and information from the former control parties of IIG TOF, all of which would bear upon the claims raised in the Bank Leumi Intervention Action and the Trade Finance Funds Litigation, but has only received limited information. Maria Declaration ¶¶ 31, 71.

42. Moreover, there is a limited pool of assets and financial resources presently available to the Foreign Representative given the illiquid, cash-strapped status of the IIG TOF estate. *Id.* ¶¶ 28, 72. The Fund’s limited cash on hand will only be further depleted if Bank Leumi is permitted to seize monies belonging to IIG TOF that are held at the bank. *Id.* ¶ 72.

43. In light of these extenuating circumstances, the Foreign Representative has not yet had time to meaningfully confer with Hu and Silver, the individuals that negotiated and executed

the agreements at issue in the Trade Finance Litigation and the Bank Leumi Intervention Action. *Id.* ¶ 71. Likewise, the Foreign Representative has been unable to access or review the appropriate files and correspondence relating to same. *Id.*

44. To be sure, it is imperative that the Foreign Representative thoroughly investigate the facts underlying the Trade Finance Litigation and Bank Leumi Intervention Action given the SEC's allegations that the Investment Advisor engaged in rampant self-dealing and other misconduct with respect to IIG TOF and the Trade Finance Funds. Indeed, the circumstances surrounding the TOF Cayman Loan and related IIG TOF Guarantee at least facially resemble certain of the misconduct at issue in the SEC Litigation. For example, the Investment Advisor and its principals, (i) managed each of the funds involved in the litigation; (ii) entered into the relevant loan documents on behalf each loan counterparty; (iii) upon information and belief, formally amended the Trade Finance Fund's investment guidelines to consummate the related party transaction; and (iv) disbursed loan proceeds to generate the necessary liquidity required to pay off TOF Cayman's creditor. *Id.* ¶ 50, Ex. D. Hu and Silver were similarly the control parties for IIG Trade Finance and Silver executed the Line of Credit Note and related documents at issue in the Bank Leumi Intervention Action. Maria Declaration ¶ 55, Ex. F.

45. Thus, despite the Foreign Representative's best efforts, she does not have the knowledge or information necessary to evaluate the allegations made by Bank Leumi and the Trade Finance Funds allegations against IIG TOF, including the legitimacy of the underlying loan documents such as the TOF Cayman Note and the IIG TOF Guarantee. Forcing the Foreign Representative to respond to claims in excess of \$14 million (the Trade Finance Funds Litigation) and representing a substantial amount of IIG TOF's cash on hand (the Bank Leumi Intervention Action) without affording her meaningful access to the basic facts necessary to

defend the claims would be a denial of fundamental due process and irreparably harm IIG TOF. *See Bray v. City of N.Y.*, No. 04-8255 (WHP), 2005 WL 2429504, at *9 (S.D.N.Y. Sep. 30, 2005).¹¹

46. *Third*, the Foreign Representative will be forced to expend significant time, energy, and costs defending the Bank Leumi Intervention Action and Trade Finance Funds Litigation, thereby depleting an already limited pool of available resources. Maria Declaration ¶ 72; *see In re Netia Holdings, S.A.*, 278 B.R. 344, 352 (Bankr. S.D.N.Y. 2002) (“It is well established, at least in this district, that the dissipation of the finite resources of an insolvent estate constitutes irreparable injury.”); *In re Caldas*, 274 B.R. 583, 598 (Bankr. S.D.N.Y. 2002) (same). For example, the Foreign Representative will have to, among other things, (i) devote significant time and energy reviewing materials related to the Trade Finance Funds Litigation and Bank Leumi Intervention Action, instead of addressing other pressing matters that require her undivided attention and (ii) incur significant legal fees in engaging U.S. counsel to prepare an emergency response in the litigations. Maria Declaration ¶ 72; *In re Gercke*, 122 B.R. at 626 (finding in a former section 304 case that expending available resources on litigation outside the bankruptcy process “would constitute a diversion of funds needed for the purpose of maximizing value,” which “would constitute irreparable harm”); *In re MMG LLC*, 256 B.R. at 555 (“Irreparable harm may result if the foreign representative is forced to participate in expensive litigation that threatens to drain the assets of the estate.”).

¹¹ The Foreign Representative is seeking provisional relief for immediate authorization to take evidence and discovery from parties who are likely to have information relevant to IIG TOF’s operations, assets, liabilities and obligations. The Bank Leumi Intervention Action, and its reference to holding over \$20 million in deposits subject to the SEC Order, underscores the urgent need for IIG TOF to access the information it will require to determine with greater certainty its ownership interest in funds formerly controlled by its Investment Advisor and deposited into various accounts on behalf of itself, IIG TOF and its other managed funds.

C. The Hardships Balance in Favor of the Foreign Representative

47. Granting the Provisional Relief Order will not result in significant hardships to creditors and other interested parties. Section 1522 of the Bankruptcy Code permits courts to grant relief under section 1519 if the “interests of the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522. Section 1522’s legislative history suggests this section was intended to ensure “the foreign proceeding [is not] *seriously and unjustifiably* injuring United States creditors.” H. Rep. No. 109-31, 109th Cong., 1st Sess. 11 (2005) (emphasis added).

48. Here, all interested parties are sufficiently protected because the requested relief will simply preserve the *status quo* until the Court decides the Verified Petition and will not impose any serious or unjustifiable harm. Under Curaçao law, the Foreign Representative is required to consider the rights and obligations of all of IIG TOF’s creditors and afford each party in interest a full and fair opportunity to participate in the Curaçao Liquidation. Nagelmakers Declaration ¶¶ 36-38. The Trade Finance Funds and Bank Leumi, however, seek to expeditiously pursue their claims in New York against IIG TOF or its assets and bypass the Foreign Representative — the party tasked with evaluating any creditor claims brought against IIG TOF and administering and preserving IIG TOF’s estate. Further, certain of IIG TOF’s local Curaçao creditors, namely Girobank N.V. and Girobank International N.V. (collectively, “**Girobank**”), are abiding by the stay imposed under the Curaçao Bankruptcy Act and are not pursuing their claims in New York litigations they commenced prior to the Foreign Representative’s appointment. The requested relief is therefore necessary to empower the Foreign Representative to properly evaluate each creditor claim in the context of a single claims verification process and prevent the piecemeal distribution of assets in the United States, with the

ultimate end of achieving a fair distribution of the Fund's assets. Nagelmakers Declaration ¶ 38; see *In re Innua Canada Ltd.*, No. 0916362, 2009 WL 1025088, at *4 (Bankr. D.N.J. Mar. 25, 2009) (finding a temporary maintaining of the *status quo* pending recognition of the foreign proceedings actually served to benefit creditors "by allowing for an orderly administration of the Foreign Debtors' financial affairs," tipping the balance of harm in favor of the foreign representative); *In re STX Pan Ocean Co.*, No. 13-12046 (SCC), (Bankr. S.D.N.Y. July 1, 2013), ECF. No. 30 (noting "the commencement or continuation of any action or proceeding in the United States against the Company or any of its assets within the territorial jurisdiction of the United States . . . shall be enjoined . . . as it will maintain the status quo until the recognition hearing.") Moreover, the requested relief will allow the Foreign Representative to conserve limited assets that would otherwise be spent on engaging U.S. counsel to prepare a response to the Trade Finance Litigation and Bank Leumi Intervention Action.

49. On the other hand, temporarily maintaining the *status quo* will not significantly harm IIG TOF's creditors and other interested parties. The provisional relief will only stay litigations pending against IIG TOF for several weeks until a hearing on the Foreign Representative's petition to recognize the Curaçao Liquidation. Moreover, there is no risk that IIG TOF's funds in the United States or its other assets during this period will be dissipated because the Foreign Representative is an independent fiduciary appointed by the Curaçao Court. Finally, the Foreign Representative submits that parties asserting claims against IIG TOF or its assets, such as Bank Leumi and the Trade Finance Funds, will not be harmed by the imposition of a more permanent stay of actions against IIG TOF in the United States because they will remain free to pursue their claims in the Curaçao Liquidation — where, in the case of the Trade Finance Funds, they already applied for and were granted membership on IIG TOF's creditors'

committee. Maria Declaration ¶¶ 34, 70; *see In re Innua Canada Ltd.*, No. 09-16362, 2009 WL 1025088, at *4 (granting provisional relief to stay litigation and finding “creditors or interested parties will not suffer significant harm or hardship because the provisional relief is temporary, pending the hearing on recognition”); *In re Atlas Shipping A/S*, 404 B.R. 726, 742 (Bankr. S.D.N.Y. 2009) (denying certain creditors an advantage over the debtor’s other creditors is not a valid reason to deny relief to the foreign representative).

50. In fact, the GTFF Liquidators, who themselves sought chapter 15 relief “primarily to obtain this Court’s assistance in enforcing the stay of proceedings and actions against GTFF,” recognize the importance of ensuring that *all creditors* are afforded an equal opportunity to pursue their claim in a single forum. *See* Maria Declaration ¶ 66, Ex. H ¶ 2 (arguing recognition of the GTFF liquidation “would confer upon GTFF the protections of sections 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).

D. The Requested Relief is in the Public Interest

51. The requested relief is consistent with the Bankruptcy Code’s underlying purpose. For example, imposing an immediate stay will promote the Bankruptcy Code’s goal of avoiding the depletion of IIG TOF’s estate, a piecemeal distribution of IIG TOF’s estate, and the inequitable distribution of IIG TOF’s property to its creditors. *See* 11 U.S.C. § 1501(a)(4) (identifying the Bankruptcy Code’s goal of “protection and maximization of the value of the debtor’s assets”); *Cunard S.S. Co. v. Salen Reefer Servs. AB*, 773 F.2d 452, 459 (2d Cir. 1985) (noting in case under former section 304 the strong “public interest in the fair and efficient distribution of assets in a bankruptcy”); *Atlas Shipping*, 404 B.R. at 738 (“The discretion that is

granted is ‘exceedingly broad’ since a court may grant ‘any appropriate relief’ that would further the purposes of chapter 15 and protect the debtor’s assets and the interests of creditors.”)

52. Finally, the requested relief promotes chapter 15’s stated purpose of “cooperation between courts of the United States . . . and the courts and other competent authorities of foreign counties,” “greater legal certainty for trade and investment,” and “fair and efficient administration of cross-border insolvencies that protect the interest of creditors, and other interested entities.” 11 U.S.C. § 1501(a); *see also* *Argo Fund Ltd. v. Bd. of Dirs. Of Telecom Arg., S.A. (In re Bd. of Dirs. of Telecom Arg., S.A.)*, 528 F.3d 162, 169 n.7. (2d Cir. 2008) (quoting 11 U.S.C. § 1501). Here, the Foreign Representative requires the Court’s intervention to ensure that the Foreign Representative (and the Curaçao Court) have a full and fair opportunity to administer the fund’s liquidation in a single forum for the benefit of all interested parties. Nagelmakers Declaration ¶ 38; *see In re Beechwood RE*, No. 19-11560 (MG), 2019 WL 3025283, at 3* (“Caselaw in this Circuit supports applying international comity and requiring that claims be centralized and resolved in a foreign proceeding even if the claims are governed by New York law if the foreign proceeding is procedurally fair.”); *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 424 (2d Cir. 2005) (“We have repeatedly held that U.S. courts should ordinarily decline to adjudicate creditor claims that are the subject of a foreign bankruptcy proceeding. Since [t]he equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding, American courts regularly defer to such actions.”) (citations omitted).

III. The Requested Relief is Urgently Needed

53. Section 1519 of the Bankruptcy Code allows courts to grant provisional relief “where relief is urgently needed to protect the assets of the debtor or the interest of creditors.”

11 U.S.C. § 1519(a). In chapter 15 cases, there is an inevitable gap between the date a petitioner files its verified petition for recognition and the date the Court determines whether the foreign proceeding should be recognized. *See* 11 U.S.C. § 1517(c) (noting a “petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time”). Critically, the petitioning debtor is not entitled to an automatic stay throughout this interim period, meaning creditors are still able to enforce against the debtor and its U.S. assets.

54. Here, the requested relief is urgently needed to protect IIG TOF and other interested parties from adverse creditor actions outside of the judicially supervised Curaçao Liquidation. As explained, IIG TOF’s response in the Bank Leumi Intervention Action is due as early as March 6, 2020, and its response to the Trade Finance Litigation is currently due on March 7, 2020. Maria Declaration ¶¶ 57, 68. Absent the requested relief, the Foreign Representative must respond without a full understanding of the legitimacy of the Trade Finance Litigation and the Bank Leumi Intervention Action and IIG TOF’s potential defenses thereto. *Id.* ¶ 73. Moreover, the Foreign Representative will deplete the estate’s limited funds and resources and thus impede her ability to carry out her responsibilities. *Id.* Finally, absent this relief, creditors outside of the Curaçao Court’s jurisdiction, including the Trade Finance Funds and Bank Leumi, will continue their aggressive efforts to enforce against IIG TOF’s assets located in the United States to the detriment of the estate and to creditors such as Girobank that are abiding by the stay that went into effect upon the commencement of the Curaçao Liquidation. For all of these reasons, the requested provisional relief is urgently needed.

IV. There is Extensive Precedent Granting the Requested Relief

55. Courts in this District routinely order provisional relief in chapter 15 cases pursuant to section 1519 of the Bankruptcy Code. *In re Imperial Tobacco Canada Ltd.*, No. 19-

10771 (SCC) (Bankr. S.D.N.Y. Mar. 14, 2019 & Mar. 25, 2019), ECF Nos. 14, 22 (applying section 1519 of the Bankruptcy Code and granting the protection of section 362 of the Bankruptcy Code); *In re Mood Media Corp.*, No. 17-11413 (MEW) (Bankr. S.D.N.Y. May 24, 2017), ECF No. 21 (same); *In re Karhoo Inc.*, No. 16-13545 (MKV) (Bankr. S.D.N.Y. Dec. 22, 2016), ECF No. 20; *In re Tervita Corp.*, No. 16-12920 (MEW) (Bankr. S.D.N.Y. Oct. 26, 2016), ECF No. 18(same); *In re Grupo Isolux Corsan, S.A.*, No. 16-12202 (SHL) (Bankr. S.D.N.Y. Aug. 3, 2016), ECF Nos. 20, 21, 22 (same); *In re Oi S.A.*, No. 16-11791 (SHL) (Bankr. S.D.N.Y. June 22, 2016), ECF No. 22 (same); *In re Daiichi Chuo Kisen Kaisha*, No. 15-12650 (MEW) (Bankr. S.D.N.Y. Sept. 29, 2015 & Oct. 7, 2015), ECF Nos. 11, 16 (same); *In re Caledonian Bank Limited*, No. 15-10324 (MG) (Bankr. S.D.N.Y. Feb. 16, 2015 & Feb. 25, 2015), ECF Nos. 8, 20 (same); *In re SIFCO S.A.*, No. 14-11179 (MKV) (Bankr. S.D.N.Y. May 7, 2014), ECF No. 21 (same); *In re Compania Mexicana de Aviacion. S.A. de C.V.*, No. 10-14182 (MG) (Bankr. S.D.N.Y. Aug. 5, 2010), ECF No. 140.

WAIVER OF FEDERAL RULE OF CIVIL PROCEDURE 65(C)

56. Bankruptcy Rule 7065 provides that “a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c)” of the Federal Rules of Civil Procedure. To the extent the Court applies Rule 65(c), the Foreign Representative believes that the security requirements imposed by that rule are unwarranted under the circumstances and therefore respectfully requests a waiver of such requirements pursuant to Bankruptcy Rule 7065.

SATISFACTION OF LOCAL RULE 9013-1(a)

57. This Application 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

Application. Accordingly, the Foreign Representative submits that the Application satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

NOTICE

58. Notice of this provisional relief application will be served by email or overnight mail to all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code. Notice of this provisional relief application will be served to the following parties in the manner set forth in the *Motion for Order Specifying Form and Manner of Service of Notice and Scheduling Recognition Hearing*, filed contemporaneously herewith: (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 known creditors of IIG TOF in the United States; (v) 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 (vi) 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 application is necessary or required.

NO PRIOR REQUEST

59. No prior request for the relief sought in this application 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 _____

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EXHIBIT A

Proposed Order Granting Provisional Relief

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

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

[PROPOSED] ORDER GRANTING PROVISIONAL RELIEF

Upon consideration of (i) the *Emergency Application of the Foreign Representative For Entry of Provisional Relief under sections 105(a) and 1519(a) of the Bankruptcy Code* (the “**Application**”)² filed by 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**”); (ii) the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* (the “**Verified Petition**”); (iii) all documents submitted in support of the Verified Petition; (iv) the *Declaration of Valerie Maria in Support of the Verified Petition and Emergency Application For Provisional Relief*; (v) the *Declaration of Barbara Nagelmakers in Support of The Verified Petition Under Chapter 15 For Recognition of A Foreign Main Proceeding and Related Relief*; (vi) the record established at the hearing on the Application; and (vii) with no objections or other responses having been filed that have not been overruled, withdrawn or otherwise resolved, the Court finds and concludes as follows:

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 defined herein shall have the meanings given to them in the Application.

a. This Court has jurisdiction to consider the Application 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.);

b. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P);

c. Venue is proper before this Court pursuant to 28 U.S.C. § 1410;

d. This chapter 15 case has been commenced by the appointed Foreign Representative;

e. This Court has the authority to grant the provisional relief requested by the Application (“**Provisional Relief**”) under 11 U.S.C. §§ 105(a), 362, 1519, 1521, 1522.

f. The Provisional Relief is urgently needed to (i) stay a lawsuit commenced in December 2019 against IIG TOF in New York by the liquidators of IIG Global Trade Finance Fund Ltd. and IIG Structured Trade Finance Fund Ltd. (the “**Trade Finance Funds**”), (ii) stay an intervention action brought by Bank Leumi USA (“**Bank Leumi**”) insofar as it relates to IIG TOF in a litigation the Securities and Exchange Commission is pursuing against the Investment Advisor, (iii) protect the limited assets and resources of IIG TOF and the interests of its creditors and other parties in interests, and (iv) avoid disparity among IIG TOF’s creditors;

g. There is a substantial likelihood that the Foreign Representative will successfully demonstrate that the Curaçao Liquidation constitutes a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code;

h. There is a material risk that IIG TOF’s creditors or other parties-in-interest in the United States will continue pursuing claims against IIG TOF. Such acts could (i) interfere with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, (ii) interfere

with and cause harm to the Foreign Representative's efforts to administer the Curaçao Liquidation, (iii) interfere with the Foreign Representative's management of and control over IIG TOF's assets, and (iv) undermine the Foreign Representative's efforts to achieve an equitable result for the benefit of all of IIG TOF's creditors. Accordingly, there is a material risk that IIG TOF, the Foreign Representative, and other interested parties will suffer immediate and irreparable harm, and it is therefore necessary that the Court enter this Order.

i. 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;

j. Granting the Provisional Relief will serve the public interest in that, among other things, the Provisional Relief will promote the Bankruptcy Code's goal of avoiding the depletion of IIG TOF's estate, a piecemeal distribution of IIG TOF's estate, and the inequitable distribution of IIG TOF's property to its creditors;

k. Appropriate, sufficient and timely notice of the filing of the Motion and the hearing have been given pursuant to Rule 2002(q) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**");

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

1. The findings and conclusions set forth in this Order constitute the Court's findings of fact and conclusions of law under Rule 7052 of the Bankruptcy Rules, made applicable to this proceeding under Bankruptcy Rule 90014. To the extent any of the following findings of fact constitute conclusions of the law, they are adopted as such; to the extent any of the following conclusions of law constitute findings of fact, they are adopted as such;

2. The Provisional Relief is GRANTED effective immediately on an interim basis and until such time the Court conducts the final hearing on the Foreign Representative's request for the recognition of the Curaçao Liquidation as "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code and the Foreign Representative as a "foreign representative" as defined in section 101(24) of the Bankruptcy Code and enters a final order with respect to such request (the "**Interim Period**");

3. The Foreign Representative shall be the representative of IIG TOF with full and sole authority to administer IIG TOF's assets and affairs in the United States on a provisional basis;

4. During the Interim Period, under sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 362 of the Bankruptcy Code will apply in this chapter 15 case to IIG TOF and its property that is located within the territorial jurisdiction of the United States. Without limiting the generality of the foregoing, during the Interim Period, all persons or entities, including without limitation, the Trade Finance Funds and Bank Leumi, are stayed from:

- a. the commencement or continuation, including the issuance or employment of 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, except as otherwise authorized by the Foreign Representative in writing;
- b. the creation, perfection, seizure, attachment, enforcement, or execution of liens or judgments against IIG TOF's property in the United States or from transferring, encumbering or otherwise disposing of or interfering with IIG TOF's assets in the United States without the express written consent of the Foreign Representative;
- c. any act to collect, assess, or recover a claim against IIG TOF that arose before the commencement of its chapter 15 case;

- d. the setoff of any debt owing to IIG TOF that arose before the commencement of its chapter 15 case against any claim against IIG TOF; and
- e. the transfer, relinquishment or disposal 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 its expressly authorized representatives and agents.

5. During the Interim Period, under sections 1519(a)(3) and 1521(a)(4) of the Bankruptcy Code, 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;

6. During the Interim Period, under sections 1519(a)(3) and 1521(a)(4) of the Bankruptcy Code, 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;

7. Notwithstanding any provision in the Bankruptcy Rules to the contrary, (i) this Order shall be effective immediately and enforceable upon entry, (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and (iii) the Foreign Representative is authorized and empowered, and may, in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order;

8. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (i) 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 (ii) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed;

9. Notwithstanding anything to the contrary contained herein, this Order shall not have any effect on any actions taken prior to the date hereof by Girobank N.V. in accordance with 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;

10. The Foreign Representative and her successors, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code;

11. Pursuant to Bankruptcy Rule 7065, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived;

12. This Order shall be served on: (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;

13. Service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purposes. The Foreign Representative, IIG TOF, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court; and

14. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this 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 Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

Dated: _____, 2020
New York, New York

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE