

**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.)
_____)

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on the Application; and (vii) with no objections or other responses having been filed that have not been overruled, withdrawn or otherwise resolved, the Court finds and concludes as follows: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. 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 and that the other prerequisites to recognition of the foreign proceeding will be established. Accordingly, the Foreign Representative has shown a substantial likelihood of success that recognition will be granted and that the automatic stay set forth in 11 U.S.C. § 1520 will be applicable.

g. IIG TOF is presently subject to two litigations in New York, namely: (i) 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**”), and (ii) 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.

h. The only matter presently pending in the action brought by the Trade Finance Funds is a summary judgment motion to which IIG TOF must file responsive papers. The summary judgment motion is not scheduled for hearing until late April 2020 (after the hearing on recognition). As noted above, it is likely that this Court will recognize the foreign proceeding as a foreign main proceeding and therefore that the action brought by the Trade Finance Funds will be stayed well before the summary judgment motion is scheduled to be heard. Counsel to the Trade Finance Funds stated that the Trade Finance Funds represented that they likely would not seek relief from such a stay. Accordingly, any time and expense that IIG TOF were to devote to a summary judgment response at this time would be unnecessary and wasteful. IIG TOF would have no remedy to obtain recovery of any such wasted expense.

i. Bank Leumi seeks relief from an asset freeze. If the asset freeze is lifted as to funds in which IIG TOF has an interest, and if IIG TOF is not otherwise the beneficiary of a stay, then Bank Leumi could pursue offsets or claims against assets of IIG TOF in ways that would be contrary to the rights of the foreign representative or to the interests of other creditors of IIG TOF, including such other creditors' rights to equal recoveries on their claims.

j. Protection of IIG TOF's assets in the United States is appropriate to preserve creditors' rights to equal treatment and to preserve the ability of the authorities in the Curaçao proceeding to enforce the provisions of Curaçao law.

k. There is accordingly a risk of irreparable harm if the provisional relief set forth in this Order is not granted. The relief set forth herein will not prejudice any other parties, and the balance of hardships favors the grant of such relief. The public policy of ensuring the even-handed enforcement of the rules of the foreign proceeding also favors the requested relief.

1. 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 THEREFOR, AND FOR THE REASONS STATED ON THE RECORD AT THE HEARING ON THE APPLICATION, 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 period beginning with the entry of this Order and continuing until such time as this Court has entered an Order with respect to the Foreign Representative’s request for the recognition of the Curaçao Liquidation as a “foreign main proceeding” and the Foreign Representative as a “foreign representative” is referred to herein as the “**Interim Period.**”

3. During the Interim Period 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; *provided, however,* that during the Interim Period the Foreign Representative may not remove any assets of IIG TOF from the United States.

4. Section 362 of the Bankruptcy Code shall be applicable during the Interim Period pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code with respect to IIG TOF and its property located within the territorial jurisdiction of the United States; *provided,* that nothing herein modifies or limits the exceptions to the automatic stay that are set forth in section 362 or elsewhere in the Bankruptcy Code. Without limiting the generality of the foregoing, and

subject to the exceptions set forth in section 362, 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. Notwithstanding any provision in the Bankruptcy Rules to the contrary, (i) this Order shall be effective immediately and enforceable upon its entry.

7. For the avoidance of doubt, nothing in this Order shall 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,

8. 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;

9. Chaffetz Lindsey LLP shall not be subject to provisional relief granted herein. As to the remaining arbitration settlement funds held by Chaffetz Lindsey in an escrow or attorney's trust account respecting IIG Trade Opportunities Fund B.V., Chaffetz Lindsey LLP shall provide Reed Smith LLP (Attn: Aaron Javian and Christopher P. Hoffman) 14 days advance notice of any transfer of such funds; provided, however, that if a transfer of such funds is required by any court order, Chaffetz Lindsey LLP shall only be required to provide the amount of advance notice permitted by such court order.

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.

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: March 5, 2020
New York, New York

/s/Michael E. Wiles
THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE