

SUPREME COURT

JUN 25 2021

NASSAU, BAHAMAS

Deponent: Edmund L. Rahming

No. of Affidavit: 15

Date Sworn: 24th June 2021

**IN THE SUPREME COURT OF THE BAHAMAS
COMMERCIAL DIVISION**

CAUSE NO. COM/bnk/00077 OF 2019

IN THE MATTER OF THE COMPANIES ACT. 1992, CH. 308

AND IN THE MATTER OF PACIFICO GLOBAL ADVISORS LTD.

**FIFTEENTH AFFIDAVIT OF
EDMUND L. RAHMING**

I, **EDMUND L. RAHMING**, Founder and Managing Director of Intelisys Ltd., Chartered Accountant and Certified Public Accountant of #2 Caves Professional Centre, Caves Village, West Bay Street and Blake in the Western District of New Providence, one of the Islands of the Commonwealth of The Bahamas, make **OATH** and **SAY** as follows:

1. That I am the Official Liquidator of Pacifico Global Advisors Ltd. (In Liquidation) ("**PGA**").
2. Unless otherwise stated the facts and matters deposed hereto are within my knowledge obtained by me in my capacity as the Official Liquidator of PGA ("**OL**"). Where the matters deposed hereto are not within my knowledge, they are derived from the sources which I identify and are true to the best of my information and belief.
3. There is now produced and shown to me a paginated bundle of true copies of documents to which I will refer in this affidavit marked "**Exhibit ELR-1**". References to page numbers are to those contained in that Exhibit.

4. By an Order dated 28th October 2019 and filed herein on 8th November 2019 (“**the Supervision Order**”) the voluntary liquidation of PGA was put under the supervision of the Supreme Court of The Bahamas and I was appointed the OL of PGA. There is now produced and shown to me a true copy of the Supervision Order at pages 1 to 4 of **Exhibit ELR-1**.
5. This Affidavit is sworn in support of an application by Summons dated the 24th June 2021 (“**Summons**”) on behalf of the OL seeking that this Court *inter alia* sanction the payment apportionment of the liquidation costs (all fees, expenses, cost, disbursements and liabilities incurred by the OL (and formerly the VL) and his team in connection with the performance of his duties (including, but not limited to, the administration of the Trust Assets) amongst the assets in the liquidation.
6. The Sixteenth Affidavit sworn by me on 24th June, 2021 is incorporated herein.

PGA’S OPERATION AND ASSETS

7. PGA was incorporated on 30th September 2011. PGA was licensed and registered by the Securities Commission of The Bahamas for “Managing Securities, Dealing as Agent or Principal, Arranging Deals in Securities, and Advising on Securities”, effectively a broker-dealer license. The principal activities of PGA became managing securities, dealing as agent or principal, arranging deals in securities, and advising on securities.
8. PGA’s assets under management as at year-end December 31 were as follows: 2014: \$118M; 2015: \$282M; 2016: \$334M; 2017: \$314M; 2018: \$229M.
9. The last completed audit of PGA was performed on the 2017 fiscal year.

10. At the time of my appointment as voluntary liquidator, PGA had approximately \$67M in trust assets, i.e. in PGA's name and under its control, but beneficially owned by various clients ("**Trust Assets**"). As at 31st May 2021, PGA holds trust (customer) assets of approximately \$12.1 million.
11. I have previously transferred assets of US\$55,536,031.28 (associated with 10 sub funds that are under receivership ("**Sub Funds**") and are segregated accounts of the Lyford Diversified Global Fund, SAC ("**Lyford Fund**") to Deltec Bank & Trust Limited in accordance with Justice Mackay's Ruling dated 17th September 2020 ("**J. Mackay Ruling**").
12. I deducted from the Sub Fund assets transferred PGA administrative fees as approved by the Receiver of the Sub Funds and the negative balance coverage together totaling US\$2,318,518.36.
13. This transfer of the assets associated with the Sub Funds out of PGA's Trust Assets resulted in a significant decrease in Trust Assets and significantly impacted the original fee allocation proposal set out in the Summonses filed 26th February 2020 and 12th August 2020.
14. As at 31st May 2021, PGA has proprietary assets of approximately \$2.3 million (includes fees deducted from the Sub Fund assets). Total assets held in the name of PGA (trust and proprietary) as at 31st May 2021 is approximately \$14.4 million. The

table below summarizes the asset holdings in PGA's name:

Assets as at 31st May 2021	
Global Opportunities EUR NX Sub Fund ("NX Sub Fund") Assets	3,522,009.05
Remaining Trust Assets	8,608,890.68
PGA Assets	2,289,924.68
Total	14,420,824.41

It should be noted that many of the assets change value frequently, sometimes by the minute, and this affects the valuation of the Trust Assets. There is now produced and shown to me a true copy of a summary showing the balance, type of assets, custodians and country location of assets (trust and proprietary) in PGA's name as at 31st May 2021 at page 5 of **Exhibit ELR-1**.

COSTS

15. For the purposes of this application total costs is defined as: all fees, expenses, costs, disbursements, VAT and liabilities incurred by the OL (and formerly the VL) in connection with the performance of his duties (including, but not limited to, the administration of the Trust Assets) ("**Total Costs**"). As at 16th June 2021, the Total Costs amount to \$2,130,906.93. We have divided total Costs into four categories: **General Liquidation Costs, Sub Fund Liquidation Costs, Non Sub Fund Liquidation Costs** (trust assets which are not associated with the Sub Funds) and **NX Sub Fund** (a sub fund of Lyford Fund) that is not in receivership and was not a part of

the J. Mackay Ruling) **Liquidation Costs**. The Total Cost categories are defined below:

- a. **General Liquidation Costs** include those items such as ascertaining the assets held and by whom, managing them, attending to creditor/customer correspondence, reporting to Court, stakeholders and regulators, conducting investigations, securing and reviewing PGA's books and records, statutory duties, attending to assets under management and cash management issues and corporate issues. These aforesaid costs amounting to \$1,716,341.04 as at 16 June 2021 could not be segregated as being for the benefit of any particular customer or groups of customers, but rather effectively benefitted all customers.
- b. **Sub Fund Liquidation Costs** – include costs related to the J. Mackay Ruling and all costs related to the ten Sub Funds (in receivership) that, based on J. Mackay's dismissal of the 26th May 2020 Summons, should not be charged to the Non Sub Fund assets, NX Sub Fund assets or PGA assets. These costs total \$283,648.33 and are not currently charged in this liquidation.
- c. **Non Sub Fund Liquidation Costs** - include costs related to the customers assets held in the name of PGA which are not related to the Sub Funds. These costs total \$97,431.80. These costs relate directly to these customer assets and include the identification, review, realization, and management of these assets.
- d. **NX Sub Fund Liquidation Costs** – include legal costs directly related to the Global Opportunities EUR NX Sub Fund and total \$33,485.76.

16. The Costs are further summarized in the table below:

Category of Cost	Official Liquidator & Intelisys Ltd.	Callenders & Co.	Total
General Liquidation Costs	1,126,936.19	589,404.85	1,716,341.04
Sub Fund Liquidation Costs	152,169.01	131,479.32	283,648.33
Non Sub Fund Liquidation Costs	17,309.80	80,122.00	97,431.80
NX Sub Fund Liquidation Costs		33,485.76	33,485.76
Total Costs	1,296,415.00	834,491.93	2,130,906.93

17. The Total Costs are \$2,130,906.93. When the Sub Fund Liquidation costs of \$283,648.33 are deducted the total costs for which we are seeking to apportion amongst the assets are **\$1,847,258.60**. Of this total, **\$1,716,341.04** represents **General Liquidation Costs**.

18. We estimate additional costs of 17th June 2021 to my resignation on 16th July 2021 of \$163,296, including VAT. These costs are not included in the cost allocation schedule below at this time as they have not been incurred but we would expect the allocation thereof to be in accordance with the Court's determination of the Summons.

19. Further, we have estimated costs to complete the liquidation after 16th July 2021 ("**Estimated Future Costs**"). These costs are not included in the costs allocation schedule below at this time as they have not been incurred but we would expect the allocation thereof to be in accordance with the Court's determination of the Summons.

These estimated costs are as follows:

ESTIMATED EXPENSES & DISBURSEMENTS	SUM B\$
Official Liquidator and his back office to dissolution of the liquidation	300,00.00
VAT	36,000.00
Official Liquidators Legal Counsel to dissolution of the liquidation	170,000.00
VAT	20,400.00
Official Liquidators' Legal Counsel's Advances	1,600.00
TOTAL	528,000.00

CONSIDERATIONS SUPPORTING AN APPORTIONMENT PLAN FOR PAYMENT OF LIQUIDATION COSTS AND EXPENSES FROM CUSTOMER ASSETS

20. Since my appointment, the work undertaken by me, Intelisys staff and our attorneys, Callenders & Co., has been directly or indirectly related to customer assets and ultimately for the benefit of the beneficial owners thereof. Indeed, bearing in mind that of the assets held by PGA as at 31st May 2021, 84% is held for its customers, i.e. Trust Assets, it can in my view properly be said that virtually all the steps taken in connection with the liquidation were of benefit to them and their assets.
21. Furthermore, the steps taken on behalf of the customers were steps which customer could not have undertaken themselves, if they wished to maintain the confidentiality of their affairs which, for many of the customers, is of the utmost importance to them. Also, since the assets were in PGA's names, no individual customer could get control of their portions of the Trust Assets other than through PGA, which in liquidation is through the Official Liquidator.

22. As the Liquidator, I was not only best placed to attend to these matters, but as a part of my duties as a Liquidator, it was necessary to work to identify, recover, realize and secure the assets that PGA held for its customers, while at the same time respecting and protecting the confidentiality of their financial affairs which they had entrusted to PGA. Even if a third party trustee had been appointed, the official liquidator's assistance and involvement would still be required since the assets are held in PGA's name, and all of the information in relation to the assets is in PGA's possession or control.
23. Upon this Honourable Court's sanction of an apportionment plan the PGA customers will have the options to pay the costs directly to the PGA estate or to have the amount deducted from their assets. Immediately thereafter the customers' assets will be distributed directly to them or sent to a trustee chosen by them individually or through the PGA Liquidation Committee ("LC") once it is shown that the affected customers approve of the LC's choice of trustee.
24. It is important to note that the customers' assets were not segregated from other customer's assets into separate accounts. All of the customers' assets were mixed together in omnibus accounts in PGA's name at the custodians. This has required the Liquidator to identify, verify and reconcile (on a monthly basis) the assets of the customers. This has in the past been referred to as a "commingling" issue. The terminology has resulted in some confusion. To be clear, we are referring to the mixing of trust assets belonging to various customers and not to the mixing of PGA assets with the Trust Assets. We do have the potential, given the state of the accounting at the commencement of the liquidation, of fees due to PGA prior to the liquidation,

remaining in the custodian accounts. However, this issue appears to be relatively immaterial.

25. We have reviewed paragraph 18 of Justice Winder's Ruling of 9th March 2021 ("**J. Winder Ruling**") and have taken it into consideration when developing the proposed apportionment of costs. PGA has limited assets. In fact as at 31st May 2021, PGA's proprietary assets represented 16% of the total assets in PGA's name.

26. I seek the Court's determination as to the manner in which the Total Costs should be apportioned amongst the Trust Assets (customers' assets) and PGA assets, having regard to the following:

- a. PGA has limited assets; and
- b. a significant portion of the liquidation work has been completed and now only a few tasks remain, namely the disbursement to the beneficial owners or appointed trustee of the Trust Assets, potential recovery from the PGA shareholders, possible dividend payment to PGA creditors and the requisite statutory steps to close the liquidation.

27. Another aspect for consideration is the viability of releasing as soon as possible the customer assets, particularly the securities, held by PGA to the customers to whom we have determined they belong, since as these assets are securities it would be preferable that they be managed by the customers directly or their nominees.

PROTOCOL FOR PAYMENT OF LIQUIDATION COSTS AND EXPENSES FROM CUSTOMER ASSETS

28. In order to facilitate the above and remaining steps in the liquidation, I propose that the contribution from the Trust Assets include an appropriate proportion of the Total Costs, Estimated Future Costs and a 2% reserve, the latter of which will operate as a reserve

from which the new Official Liquidator might draw to cover further court approved costs in concluding the liquidation.

The Apportionment of the Costs

29. In the context of this liquidation I have been able to categorize the costs that have been incurred into categories (as set out in paragraph 15 herein) according to the nature of the work performed and the assets that directly and/or indirectly benefitted therefrom. In addition to those four categories, I would propose an additional category, although (excepting the NX Sub Fund work) no work can be attributed to this new category as yet. That category would be single customer costs, namely those costs that were for the direct benefit of a single customer asset.
30. **General Liquidation Costs.** Taking into consideration paragraph 18 of the J. Winder Ruling, instead of apportioning the Total Costs and Estimated Future Costs amongst the Trust Assets based on the proportionate value of each trust asset to the total value of the Trust Assets, I am humbly requesting the Court sanction the Trust Assets paying 22% of Total Costs and Estimated Future Costs based on the reasons previously described herein.
31. **Sub Fund Liquidation Costs.** This includes costs related to the court ruling of September 7, 2020 and all costs related to the ten Sub Funds (in receivership) that should not in fairness be charged to the non-sub fund assets or PGA assets. These costs are not allocated to an asset group and are not being charged in the liquidation. For the Liquidator and Intelisys this amounts to \$152,169.91. For Callenders & Co. this amounts to \$131,479.32.
32. I note that Callenders & Co. has determined that its costs associated with both the Sub

Funds and other trust assets that were incurred between 26th February 2020 (filing date of summons requesting sanction of the Official Liquidator to *inter alia* deduct general liquidation costs from all trust assets which was not heard by the Court) and the 23rd May 2020 (prior to the filing of the 26th May 2020 Summons which was heard by J. Mackay and resulted in the J. Mackay Ruling) should be included in the General Liquidation Costs category and not identified as Sub Fund costs. Essentially Callenders & Co. has advised that the J. Mackay Ruling only applies to costs solely attributable to the Sub Funds during the time period of 24th May 2020 (just prior to the 26th May 2020 Summons that resulted in the J. Mackay Ruling) and 30th September 2020 (after the J. Mackay Ruling and including consideration of appealing the ruling).

33. Non Sub Fund Liquidation Costs. Paragraph 17 of the J. Winder Ruling held that the costs directly attributable to these assets are to be paid by these assets with the caveat that the fees must be in accord with the fees PGA would otherwise have charged had the liquidation not been in place. Accordingly, the actual Non Sub Fund Liquidation Costs, which is more than what PGA would have charged in the absence of a liquidation, will not be fully covered by those assets. Therefore, I am humbly requesting the Court sanction that the costs not covered by the Non Sub Fund Assets are to be paid by the other Trust Assets, since those costs are proper and reasonable liquidation costs, just not fully indemnified by the Non Sub Fund assets. I propose that the payment of those costs by all of the other Trust Assets (i.e. excluding the Non-Sub Fund associated Trust Assets) proportionate to the other Trust Asset holdings amongst themselves.

34. NX Sub Fund Liquidation Costs include legal costs directly related to the Global

Opportunities NX Sub Fund. We are humbly requesting the Court's consideration that these costs be allocated directly to the Global Opportunities NX Sub fund assets. Alternatively, if the Court is inclined to keep the NX Sib Fund costs as general liquidation costs, then I am requesting the Court sanction that the costs associated with the pending application regarding the transfer of the assets associated with the NX Sub Fund be paid by the NX Sub Fund.

35. Further, in the context of this liquidation I have been able to categorize the assets into three categories. These categories comprise: a) NX Sub Fund assets which represent customers' assets invested in the NX Sub Fund ("**NX Sub Fund Assets**"); b) remaining trust assets which represent other trust assets held in PGA's name ("**Remaining Trust Assets**") and c) PGA proprietary assets which represents all PGA assets as at 31st May 2021 ("**PGA Proprietary Assets**").

RESULT OF PROPOSED ALLOCATION FORMULA

36. The application of the allocation formula set out hereinabove results in:
- a. **General Liquidation Costs** being allocated to the Trust Assets (**NX Sub Fund Assets** and **Remaining Trust Assets**) at 22% each and the balance of 78% being allocated to **PGA Proprietary Assets**;
 - b. **Sub Fund Liquidation Costs** not being paid by either the Trust Assets or the PGA Proprietary Assets;
 - c. **Non Sub Fund Liquidation Costs** being allocated to the Trusts Assets (**NX Sub Fund Assets** and **Remaining Trust Assets**) in proportion to their holding value, and

- d. **NX Sub Fund Liquidation Costs** being allocated to the **NX Sub Fund Assets** only.

37. This further results in:

- a. the **NX Sub Fund Assets** being allocated an aggregate of 9% of the Total Costs;
- b. **Remaining Trust Assets** being allocated an aggregate of 18% of the of the Total Costs and
- c. **PGA Proprietary Assets** being allocated an aggregate of 73% of the Total Costs.

38. Using the proposed allocation formula, **NX Sub Fund Assets** will be left with 95% of its assets and the **Remaining Trust Assets** will be left with 96% of their assets. PGA will be left with sufficient assets (approximately \$951,000) to cover **Estimated Future Costs**, costs of making a distribution and costs to close the liquidation.

39. The Costs Allocation Schedule below shows the proposed break-down of the allocation of the costs incurred to 16th June 2021 from all available assets as at 31st May 2021.

Cost Description	Asset Allocation			
	Trust Assets		Company Assets	Total
	NX	Other Trust Assets		
General Liquidation Costs	109,628.57	267,966.47	1,338,746.05	1,716,341.08
Sub Fund Liquidation Costs	-	-	-	
Non Sub Fund Liquidation Costs	28,287.73	69,144.06	-	97,431.79
NX Sub Fund Liquidation Costs	33,485.76	-	-	33,485.76
Total Costs	171,402.06	337,110.53	1,338,746.05	1,847,258.64
% borne by assets	9%	18%	73%	100%
Remaining assets	3,350,606.99	8,271,780.15	951,178.63	

40. I humbly request that this Honourable Court sanction the proposed apportionment formula provided in this affidavit which includes the Trust Assets contributing 22% with a 2% reserve towards the General Liquidation Costs.

41. The contents of this Affidavit are true and correct to the best of my knowledge,
information and belief.

SWORN TO at the City of Nassau)

New Providence, this 24th day of)

June, A.D., 2021)



BEFORE ME,


NOTARY PUBLIC

IN THE SUPREME COURT OF THE BAHAMAS

COMMERCIAL DIVISION

CAUSE NO. COM/bnk/00077 OF 2019

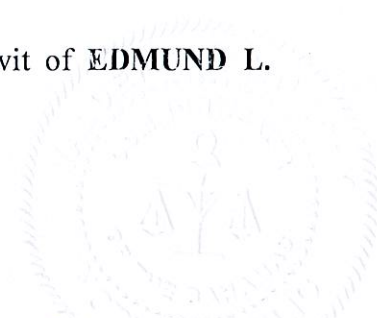
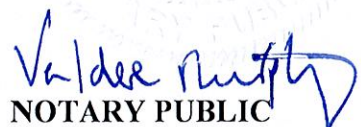
IN THE MATTER OF THE COMPANIES ACT, 1992, CH. 308

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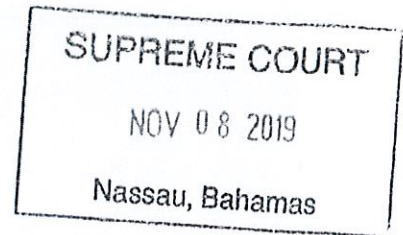
C E R T I F I C A T E

This is the **Exhibit** marked “**ELR-1**” referred to in the Affidavit of **EDMUND L. RAHMING** sworn to the 24th day of June, A.D., 2021.

DATED the 24th day of June, A.D., 2021.



NOTARY PUBLIC

IN THE SUPREME COURT OF THE BAHAMAS
COMMERCIAL DIVISION



CAUSE NO. COM/bnk/00077 OF 2019

IN THE MATTER OF THE COMPANIES ACT, 1992, CH. 308

AND IN THE MATTER OF PACIFICO GLOBAL ADVISORS LTD.

SUPERVISION ORDER

BEFORE the Honourable Mr. Justice Ian Winder, Judge of the Supreme Court,
in Chambers.

UPON HEARING Mrs. Simone Morgan-Gomez, Mrs. Courtney Pearce-Hanna
and Ms. Philisea Bethel Counsel for Mr. Edmund Rahming of INTELISYS, 2 Caves
Professional Center, Caves Village, West Bay Street & Blake Road, Nassau, The Bahamas
("**Voluntary Liquidator**") upon his petition for an order that the liquidation of Pacifico
Global Advisors Ltd. ("**the Company**") continue under the supervision of the Court and
Messrs. Gawaine Ward and Gladstone Brown of the Securities Commission of The
Bahamas.

AND UPON READING the following documents: Winding Up Petition dated 23rd
October 2019 and filed herein on 24th October 2019; Summons for Directions dated 23rd
October 2019 and filed herein on 4th October 2019; First Affidavit of Edmund Rahming:
in Support of Winding Up Petition sworn 23rd October 2019 and filed herein on 24th
October 2019; Second Affidavit of Edmund Rahming: Regarding Acceptance of

Appointment as Official Liquidator sworn 23rd October 2019 and filed herein on 24th October 2019 and Certificate of Urgency dated 24th October 2019 and filed herein on 25th October 2019.

AND UPON THE COURT BEING SATISFIED that the Voluntary Liquidator is a qualified insolvency practitioner.

IT IS HEREBY ORDERED THAT:

1. The liquidation of the Company be continued under the supervision of the Court.
2. The commencement date of the liquidation herein is 2nd October 2019.
3. Mr. Edmund Rahming, Chartered Accountant and Managing Director in the accountancy and asset recovery services company of Intelisys Ltd., situate at 2 Caves Professional Center, Caves Village, West Bay Street & Blake Road, Nassau, The Bahamas be appointed as the Official Liquidator of the Company.
4. The company INTELISYS of 2 Caves Professional Center, Caves Village, West Bay Street & Blake Road, Nassau, The Bahamas be appointed to provide back office support services to the Company.
5. The law firm of Callenders & Co. of No.1 Millars Court, Nassau, The Bahamas be appointed to provide which will provide general counsel legal services.
6. All costs incurred by Mr. Rahming and his advisors to date shall be costs in the liquidation.

7. The Official Liquidator of the Company has liberty to apply.

DATED the 28th day of October, A.D., 2019.

FILED the 8th day of November, A.D., 2019.

BY ORDER OF THE COURT

REGISTRAR

This Order was filed by **CALLENDERS & CO.**, of No. 1 Millars Court, Nassau, N.P.
Attorneys for the Official Liquidator.

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IN THE MATTER OF THE
COMPANIES ACT, 1992, CH. 308

AND IN THE MATTER OF PACIFICO
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SUPERVISION ORDER

2019

COM/bnk/00077


CALLENDERS & CO.

Chambers
One Millars Court
Nassau, N.P., The Bahamas

Attorneys for the Official Liquidator

SAM-G/PB/25078.0001

Pacifico Global Advisors Ltd. (in Official Liquidation)

Assets held in Company's name

May 31, 2021

	Total Cash Converted to USD	Total Securites Converted to USD	Total Assets Converted to USD
Summary by Custodian in The Bahamas			
Ansbacher	\$ 1,158,829.31	\$ -	\$ 1,158,829.31
CIBC	\$ 316,299.10	\$ 1,687,644.24	\$ 2,003,943.34
Deltec	\$ 78,722.93	\$ -	\$ 78,722.93
Total Assets held in the Bahamas	\$ 1,553,851.33	\$ 1,687,644.24	\$ 3,241,495.57

	Total Cash Converted to USD	Total Securites Converted to USD	Total Assets Converted to USD
Summary by Custodian in Switzerland			
Banca Credinvest	\$ 4,696,518.78	\$ 3,565,299.96	\$ 8,261,818.74
Swiss Quote	\$ 2,881,553.81	\$ -	\$ 2,881,553.81
Total Assets held in Switzerland	\$ 7,578,072.59	\$ 3,565,299.96	\$ 11,143,372.55

	Total Cash Converted to USD	Total Securites Converted to USD	Total Assets Converted to USD
Summary by Custodian in Antigua			
NIB Bank	\$ 35,956.28	\$ -	\$ 35,956.28
Total Assets held in Antigua	\$ 35,956.28	\$ -	\$ 35,956.28

Total Assets	\$ 9,167,880.21	\$ 5,252,944.21	\$ 14,420,824.41
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Callenders & Co.
CALLENDERS & CO.

Chambers

One Millars Court

Nassau, N.P., The Bahamas

Attorneys for the Official Liquidator

SAM-G/PB/25078.0001