

(In Official Liquidation)

21 July 2020

Update to Creditors and Clients of Pacifico Global Advisors Ltd. (In Official Liquidation)

### Objective

The purpose of this memorandum is to provide a further update to creditors and clients of Pacifico Global Advisors Ltd. (in Official Liquidation) (the “Company”).

### Events Subsequent to the First Creditors and Clients Meeting of 16 January 2020

Since the above referenced meeting, the Official Liquidator and his team have undertaken the following:

1. Conducted a review of the Segregated Accounts (“**Sub Funds**”) of the Lyford Diversified Global Fund, SAC (“**Lyford Diversified**”), related to clients of the Company. This effort was undertaken to determine whether the Receiver of the Sub Funds or the underlying investors are the lawful creditors in the Company’s liquidation. A legal opinion addressing this issue was provided by Counsel for the Liquidator.<sup>1</sup> The Official Liquidator was advised that the assets associated with the Sub Funds (“**Sub Fund Trust Assets**”) are not assets of the Company. He was further advised that based on the Company’s records, the main legal arguments concerning the assets associated with the Sub Funds are that either: the resulting trust principle could be applied resulting in the Company’s clients who invested in the Sub Funds being recognized as Company creditors or the equitable maxim of “equity treats that as done which ought to have been done” could be applied resulting in the Receiver, representing the Sub Funds through Lyford Diversified, being recognized as the Company’s creditor concerning the Sub Fund Trust Assets. The Official Liquidator was further advised that the issue of whether the Receiver or the underlying investors are the creditors in the Company’s liquidation with regards to the Sub Fund Trust Assets was an issue to be determined and sanctioned by the Supreme Court of the Bahamas (“**Court**”). A summary of the legal opinion has been emailed to Liquidation Committee and posted on the liquidation website.
2. Conducted a first review of the filed Proof of Debt forms based on the Call for Proof of Debts advertised on 22 November 2019. The adjudication of the filed Proof of Debt forms is ongoing and creditors will be communicated with, as necessary.
3. On 26 February 2020, the Official Liquidator filed a Summons for a hearing before Justice Winder seeking court sanction to deduct or cause to be deducted from the trust assets being held by the Company for its clients and others (“**Trust Assets**”) such costs in the liquidation that are solely attributable to the identification, realization, preservation, protection, recovery, distribution and administration of those Trust Assets (“**Trust Costs**”). In addition, the Official Liquidator sought sanction to deduct or cause to be deducted from the Trust Assets the balance of the liquidation costs that are not solely attributable to the Trust Assets (“**General Liquidation Costs**”) since the Trust Assets constitute approximately 99.6% of the Company’s estate and the General

Liquidation Costs maintain the liquidation process thereby enabling the Official Liquidator to attend to the Trust Assets. The matter was scheduled to be heard on 22 May 2020. [It should be noted that the Company is owed a substantial amount in fees for its services, pre and post liquidation, related to the Trust Assets associated with the Sub Funds. This amount when collected will substantially increase the Company's assets balance and will impact the extent to which General Liquidation Costs are applied to Trust Assets].

On 22 May 2020, J. Winder recused himself from the matter on the basis that Davis & Co., counsel for the Receiver of the Sub Funds, was involved in the matter. The matter was referred to J. McKay and rescheduled to be heard for 2 June 2020.

On 26 May 2020, the Official Liquidator filed a Summons reframing the subject matter of the pending hearing before J. McKay so that it reflected the limitations of the transfer to J. McKay, as set by J. Winder, i.e. the pending hearing was limited in scope to the matters related to Davis & Co.'s representation of its client. Since Davis & Co.'s client was the Receiver of the Sub Funds, the summons was limited to the Sub Fund Trust Assets. The Summons sought sanction to deduct or cause to be deducted from Sub Fund Trust Assets the following: the Sub Fund Trust Costs (i.e. trust costs solely attributable to the identification, realization, preservation, protection, recovery, distribution and administration of the Sub Funds) and 90% of the balance of the General Liquidation Costs, which are beneficial to the Sub Fund Trust Assets, but not solely attributable to the Sub Fund Trust Assets.

On 2 June 2020, a case management hearing was held before J. McKay regarding the reframed Summons and the substantive hearing was scheduled for 9 June 2020.

On 9 June 2020, the matter was heard before J. McKay. Counsel for: the Official Liquidator, Liquidation Committee, Receiver, Deltec Fund Services, Deltec Fund Directors Ltd. and Deltec Fund Governors Ltd. were all heard on the matter. We now await the ruling from J. McKay.

4. Convened three (3) meetings with the Liquidation Committee. The first meeting held on 19 March 2020 provided an update on our Sub Fund review findings, the proposed access to trust assets court application, the financial position of the Company and proposed next steps in the liquidation.

The second meeting was held on 1 June 2020 at which a resolution for the appointment of Legal Counsel for the Liquidation Committee was passed and the Official Liquidator requested a copy of the engagement letter be provided for the customary review and commentary procedures. A financial update was also provided.

The third meeting was held on 9 July 2020 at which the approval of the Liquidator and his team's hourly fee rates and the Liquidator's remuneration agreement was discussed. Also, at this meeting a proposal was presented by the Liquidator for engaging the Receiver in negotiations regarding *inter alia* the transfer of the Sub Fund Trust Assets to the Receiver. The result of such negotiations, if successful, would be presented to the Court for its consideration and sanction prior to being enforced by the relevant parties.

5. Concluded our investigation into the causes of the failure of the Company. We will provide the details of our findings in the Second Interim Report of the Official Liquidator. We also conducted investigations into allegations made by former executives of the Company with regards to the conduct of Deltec Fund Services (the administrator for the Sub Funds) and the impact this had on the Company. In addition, we concluded our investigations into potential fraudulent trading, antecedent transactions, regulatory breaches and filed suspicious transaction reports. Our findings, where possible, will be provided in the Second Interim Report of the Official Liquidator.
6. We are currently preparing a separate court application seeking court sanction to deduct or cause to be deducted from the trust assets that are not Sub Fund assets (Non Sub Fund Assets) such costs that are solely attributable to the Non Sub Fund Assets (Trust Costs) and costs that are beneficial to, but not solely attributable to the Non Sub Fund Assets (General Liquidation Costs).
7. We are also currently preparing a court application to seek sanction of the hourly rates of the Official Liquidator and his team.
8. As at June 30, 2020, the Company's assets included approximately \$150K in cash and approximately \$1.7M in receivables for Custody and Investment Management fees. The assets in custody in the Company's name (Trust Assets) consist of approximately \$64M in cash and securities of which approximately \$53M relates to the assets of Sub Funds in receivership. The Liquidator and his team continue to manage all assets in the Company's name to ensure the protection and preservation of the value of the assets.

If you have any queries or require any additional information, please either contact myself or Robyn Curtis at [rcurtis@intelisysltd.com](mailto:rcurtis@intelisysltd.com) or direct telephone +1 (242) 327 4003/1.

Yours sincerely,



**Edmund L. Rahming**  
Official Liquidator

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<sup>i</sup> References to the legal advice received by the Official Liquidation are not in any way a waiver of the client attorney privilege concerning same.