

**Fill in this information to identify the case:**

United States Bankruptcy Court for the:

Southern District of New York

Case number (if known): \_\_\_\_\_ Chapter 15

☐ Check if this is an amended filing

# Official Form 401

## Chapter 15 Petition for Recognition of a Foreign Proceeding

12/15

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write debtor's name and case number (if known).

1. Debtor's name Archetype Investments Fund SPC Ltd

2. Debtor's unique identifier

**For non-individual debtors:**

☐ Federal Employer Identification Number (EIN) \_\_\_\_ - \_\_\_\_ - \_\_\_\_

☒ Other BVI Professional Fund. Describe identifier \_\_\_\_\_.

**For individual debtors:**

☐ Social Security number: xxx - xx- \_\_\_\_ - \_\_\_\_

☐ Individual Taxpayer Identification number (ITIN): 9 xx - xx - \_\_\_\_ - \_\_\_\_

☐ Other \_\_\_\_\_. Describe identifier \_\_\_\_\_.

3. Name of foreign representative(s)

Owen Walker and Martin Trott

4. Foreign proceeding in which appointment of the foreign representative(s) occurred

Claim No. BVIHC 2017/27, High Court of Justice, Eastern Caribbean Super. Ct.

5. Nature of the foreign proceeding

Check one:

☐ Foreign main proceeding

☐ Foreign nonmain proceeding

☒ Foreign main proceeding, or in the alternative foreign nonmain proceeding

6. Evidence of the foreign proceeding

☒ A certified copy, translated into English, of the decision commencing the foreign proceeding and appointing the foreign representative is attached.

☐ A certificate, translated into English, from the foreign court, affirming the existence of the foreign proceeding and of the appointment of the foreign representative, is attached.

☐ Other evidence of the existence of the foreign proceeding and of the appointment of the foreign representative is described below, and relevant documentation, translated into English, is attached.

7. Is this the only foreign proceeding with respect to the debtor known to the foreign representative(s)?

☐ No. (Attach a statement identifying each country in which a foreign proceeding by, regarding, or against the debtor is pending.)

☒ Yes

Debtor Archetype Investments Fund SPC Ltd Case number (if known)  
Name

8. Others entitled to notice Attach a list containing the names and addresses of:
- (i) all persons or bodies authorized to administer foreign proceedings of the debtor,
  - (ii) all parties to litigation pending in the United States in which the debtor is a party at the time of filing of this petition, and
  - (iii) all entities against whom provisional relief is being sought under § 1519 of the Bankruptcy Code.

9. Addresses

Country where the debtor has the center of its main interests:

British Virgin Islands

Debtor's registered office:

c/o R&H Restructuring, Woodbourne Hall  
Number Street

3162

P.O. Box

Road Town, Tortola

City State/Province/Region ZIP/Postal Code

Country

Individual debtor's habitual residence:

Address of foreign representative(s):

c/o R&H Restructuring, Woodbourne Hall

Number Street

3162

P.O. Box

Road Town, Tortola

City State/Province/Region ZIP/Postal Code

Country

VG 1110, British Virgin Islands

Country

10. Debtor's website (URL)

11. Type of debtor

Check one:

☒ Non-Individual (check one):

☒ Corporation. Attach a corporate ownership statement containing the information described in Fed. R. Bankr. P. 7007.1.

☐ Partnership

☐ Other. Specify: \_\_\_\_\_

☐ Individual

Debtor Archetype Investments Fund SPC Ltd  
Name

Case number (if known) \_\_\_\_\_

**12. Why is venue proper in this district?**

Check one:

- ☐ Debtor's principal place of business or principal assets in the United States are in this district.  
☐ Debtor does not have a place of business or assets in the United States, but the following action or proceeding in a federal or state court is pending against the debtor in this district:

☒ If neither box is checked, venue is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative, because:  
Debtor possess assets within the District.

**13. Signature of foreign representative(s)**

I request relief in accordance with chapter 15 of title 11, United States Code.

I am the foreign representative of a debtor in a foreign proceeding, the debtor is eligible for the relief sought in this petition, and I am authorized to file this petition.

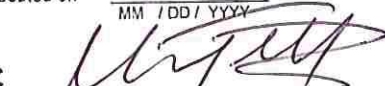
I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct,

☒   
Signature of foreign representative

Owen Walker  
Printed name

Executed on 06/06/2019  
MM / DD / YYYY

☒   
Signature of foreign representative

Martin Trott  
Printed name

Executed on 06/06/2019  
MM / DD / YYYY

**14. Signature of attorney**

☒ \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Attorney for foreign representative MM / DD / YYYY

Warren Gluck  
Printed name

Holland & Knight LLP  
Firm name

31 W. 52nd St.  
Number Street

New York NY 10019  
City State ZIP Code

(212) 513-3200  
Contact phone

warren.gluck@hklaw.com  
Email address

4701421 NY  
Bar number State

Debtor Archetype Investments Fund SPC LTD Case number (if known) \_\_\_\_\_  
Name

12. Why is venue proper in *this district*?

Check one:

- ☐ Debtor's principal place of business or principal assets in the United States are in this district.  
☐ Debtor does not have a place of business or assets in the United States, but the following action or proceeding in a federal or state court is pending against the debtor in this district:

☒ If neither box is checked, venue is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative, because:  
Debtor possess assets within the District.

13. Signature of foreign representative(s)

I request relief in accordance with chapter 15 of title 11, United States Code.

I am the foreign representative of a debtor in a foreign proceeding, the debtor is eligible for the relief sought in this petition, and I am authorized to file this petition.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct,

**X**

\_\_\_\_\_  
Signature of foreign representative

Owen Walker

\_\_\_\_\_  
Printed name

Executed on

\_\_\_\_\_  
MM / DD / YYYY

**X**

\_\_\_\_\_  
Signature of foreign representative

Martin Trott

\_\_\_\_\_  
Printed name

Executed on

\_\_\_\_\_  
MM / DD / YYYY

14. Signature of attorney

**X**

Warren Gluck  
Signature of Attorney for foreign representative

Date

06 17 2019  
MM / DD / YYYY

Warren Gluck

\_\_\_\_\_  
Printed name

Holland & Knight LLP

\_\_\_\_\_  
Firm name

31 W. 52nd St.

\_\_\_\_\_  
Number Street

New York

\_\_\_\_\_  
City

NY

\_\_\_\_\_  
State

10019

\_\_\_\_\_  
ZIP Code

(212) 513-3200

\_\_\_\_\_  
Contact phone

warren.gluck@hklaw.com

\_\_\_\_\_  
Email address

4701421

\_\_\_\_\_  
Bar number

NY

\_\_\_\_\_  
State

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
In re: : Chapter 15  
: :  
: Case No. 19-\_\_\_\_\_( )  
ARCHETYPE INVESTMENTS FUND :  
SPC LTD :  
: :  
Debtor in a :  
Foreign :  
Proceeding. :  
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**LIST FILED PURSUANT TO BANKRUPTCY RULE 1007(a)(4)**

I, Owen Walker, who, along with my colleague Martin Trott, are the duly appointed joint liquidators and foreign representatives (together, the “**Liquidators**”) of Archetype Investments Fund SPC Ltd (“**Archetype**”), a British Virgin Islands (“**BVI**”) professional fund in liquidation under the supervision of the Commercial Division of the Virgin Islands, High Court of Justice, of the Eastern Caribbean Supreme Court (the “**BVI Court**”), Claim No. BVIHC (COM) 2017/27, pursuant to the Insolvency Act, 2003, hereby submit the following information as required by Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure, which provides:

In addition to the documents required under § 1515 of the Code, a foreign representative filing a petition for recognition under chapter 15 shall file with the petition: (A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the name and address of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is sought under § 1519 of the Code.

Fed. R. Bankr. P. 1007(a)(4).

**Statement under Fed. R. Bankr. P. 7007.1**

The Liquidators hereby state that Archetype Investments Ltd. owns more than ten percent or

more of Archetype.

**Name and Address of the Liquidators in Foreign Proceedings of the Foreign Debtor**

The following individuals, with the corresponding business addresses, have been duly appointed as the Liquidators by the BVI Court:

Owen Walker	R&H Restructuring (BVI) Ltd., Woodbourne Hall, P.O. Box 3162, Road Town, Tortola, VG1110, British Virgin Islands
Martin Trott	R&H Restructuring (Cayman) Ltd., 2nd Floor, Windward 1, Regatta Office Park, P.O. Box 897, Grand Cayman KY-1103, Cayman Islands

**All Parties to Litigation in which the Foreign Debtor is a Party that is  
Pending in the United States at the time of the Filing of the Petition**


There is no known pending litigation in the United States in which the Foreign Debtor is a party.

**All Entities Against Whom Provisional Relief Is Sought under 11 U.S.C. § 1519**

The Liquidators do not seek provisional relief at this time.

I declare, under penalty of perjury under the laws of the United States of America, that the information set forth above is based on my current knowledge, information and belief after reasonable inquiry, and in contemplation of and subject to supplementation, true and correct.

Dated: \_\_\_\_\_  
June 6, 2019

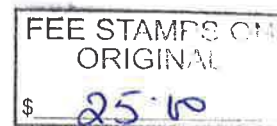
  
**OWEN WALKER**  
*Joint Liquidator of Archetype Investments Fund*  
*SPC Ltd*





THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
VIRGIN ISLANDS  
COMMERCIAL DIVISION  
CLAIM NO.: BVI HC (COM) 2017/0027

BETWEEN:



ARCHETYPE INVESTMENTS FUND SPC LTD

Applicant

and

ARCHETYPE INVESTMENTS FUND SPC LTD

Respondent

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ORDER

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**BEFORE:** The Honourable Justice Roger Kaye QC

**DATED:** 27 March 2017

**ENTERED:** 3 APRIL March 2017

**UPON THE ORIGINATING APPLICATION** filed on behalf of the Applicant on 20 February 2017 for an order that a Liquidator be appointed over the Respondents pursuant to section 162(1)(a) of the Insolvency Act, 2003 coming on for hearing

**AND UPON READING** the Affidavit of Stéphane Le Cam and Alexander Muksinov

**AND UPON HEARING** Nicholas Brookes, Counsel for the Applicant

**IT IS ORDERED THAT:**

1. Martin Trott of RHSV, Woodbourne Hall, Romasco Place, PO Box 3162, Road Town, VG1110 British Virgin Islands be appointed Liquidator of the Respondent.
2. The Liquidator may exercise all those powers set out in section 186 and Schedule 2 of the Insolvency Act 2003 as set out in the annex hereto.
3. The Applicant's costs of this Application be costs in the liquidation.

**BY THE COURT**

  
.....  
REGISTRAR



**ANNEX**

**Schedule 2 of Insolvency Act 2003**

**POWERS OF LIQUIDATOR**

**(Section 186)**

**WITH SANCTION OF THE COURT**

1. Power to pay any class of creditors in full.
2. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the Company, whether present or future, certain or contingent, ascertained or not.
3. Power to compromise, on such terms as may be agreed
  - a. Calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the Company and any person; and
  - b. Questions in any way relating to or affecting the assets or the liquidation of the Company; and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
4. Power to commence, continue or defend any action or other legal proceedings in the name and on behalf of the Company.

**WITHOUT SANCTION OF THE COURT**

5. Power to carry on the business of the Company so far as may be necessary for its beneficial liquidation.
6. Power to sell or otherwise dispose of property of the Company.
7. Power to do all acts and execute, in the name and on behalf of the Company, any deeds, receipts or other document.
8. Power to use the Company's seal.
9. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankruptcy or insolvent, and rateably with the other separate creditors.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company with the same effect with respect to the Company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the Company in the course of its business.
11. Power to borrow money, whether on the security of the assets of the Company or otherwise.
12. Power to take out in his official name letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any

money due from a member or past member or debtor, or his estate, that cannot conveniently be done in the name of the Company.

For the purpose of enabling the liquidator to take out letters of administration or do any other act under this paragraph, to be due to the liquidator himself.

13. Power to call meetings of creditors or members for
  - a. the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;
  - b. the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or
  - c. such other purpose connected with the liquidation as the liquidator considers fit.
14. Power to appoint a solicitor, accountant or other professionally qualified person to assist him in the performance of his duties.
15. Power to appoint an agent to do any business that the liquidator is unable to do himself, or which can be more conveniently done by an agent.

The Insolvency Act 2003  
The Insolvency Rules 2005

Originating Application  
(Company)

Rule 14

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
VIRGIN ISLANDS  
COMMERCIAL DIVISION  
Claim No.: BVI HC (COM) 2017/0027**

**BETWEEN**

**ARCHETYPE INVESTMENTS FUND SPC LTD**

Applicant

**-and-**

**ARCHETYPE INVESTMENTS FUND SPC LTD**

Respondent

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**ORDER**

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**Ogier**

Ritter House  
Wickham's Cay II  
Road Town, Tortola  
British Virgin Islands  
VG1110  
Tel: +1 284 852 7300

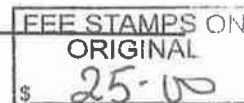
Ref: BRL /ECS-171889.00001  
Legal Practitioners for the Applicant

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
VIRGIN ISLANDS  
COMMERCIAL DIVISION  
CLAIM NO.: BVIHC (COM) 215/2018



IN THE MATTER OF THE INSOLVENCY ACT 2003  
AND IN THE MATTER OF ARCHETYPE INVESTMENTS FUND SPC LTD (IN LIQUIDATION)

ORDER



**Before:** The Honourable Justice Neville Adderley

**Dated:** 18 January 2019

**Entered:** 18 January 2019

**UPON THE APPLICATION** dated 5 December 2018 of Martin Trott (**Mr Trott**), the liquidator of Archetype Investments Fund SPC Ltd (in Liquidation) (the **Company**) for a block transfer order

**AND UPON** hearing Mr Stuart Cullen of Harney Westwood and Riegels for Mr Trott


**AND UPON READING** the Affidavit of Mr Owen Walker sworn on 5 December 2018 and the exhibits thereto.

**IT IS HEREBY ORDERED** that:-

1. Mr Owen Walker be appointed as Liquidator of the Company in place of Mr Trott.

2. Advertisement of the appointment Mr Owen Walker in the Official Gazette on or before 14 January 2019 shall constitute valid notification of the appointment to creditors.

BY ORDER OF THE COURT

  
\_\_\_\_\_

 REGISTRAR

*Approved*  
*Michael Green*  
*10/4/19*

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
COMMERCIAL DIVISION  
BRITISH VIRGIN ISLANDS  
BVI HC (COM) Claim No.: 2017/27  
IN THE MATTER OF THE INSOLVENCY ACT 2003  
AND IN THE MATTER OF ARCHETYPE INVESTMENTS FUND SPC LTD (in liquidation)

**BETWEEN:**

**OWEN WALKER**

**(as liquidator of Archetype Investments Fund SPC Ltd)**

Applicant

**-and-**

**ARCHETYPE INVESTMENTS FUND SPC LTD  
(In Liquidation)**

Respondent

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**[DRAFT] ORDER**

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**BEFORE:** The Honourable Justice Michael Green QC [Ag]

**DATED:** 10 April 2019

**ENTERED:** 2019

**UPON THE ORDINARY APPLICATION** filed on behalf of the then Liquidator Martin Trott on 26 November 2018

**UPON THE AMENDED ORDINARY APPLICATION** filed on behalf of the Liquidator Owen Walker on 5 April 2019

**AND UPON READING** the Second Affidavit of Martin Trott sworn on 21 November 2018 and Witness Statement of Owen Walker sworn on 5 April 2019

**AND UPON HEARING** Nicholas Brookes, Counsel for the Liquidator

**IT IS HEREBY ORDERED THAT:**

- 1 There be sanction for the Liquidator to bring applications for orders to obtain recognition of foreign insolvency proceedings under Chapter 15 of the United States Bankruptcy Code;
- 2 An interim payment to the Liquidator in relation to work done in the course of the liquidation of Archetype Investments Fund SPC Ltd (the "**Company**") for the period between 1 December 2017 and 31 March 2019, and including the legal disbursements of the Liquidator, be fixed pursuant to s. 433(3) of the Insolvency Act 2003 at US\$ 373,099.84;
- 3 Mr Martin Trott be appointed as a foreign liquidator of the Company; and
- 4 The costs of this application be costs in the liquidation.

**BY THE COURT**

**REGISTRAR**



**THE INSOLVENCY ACT 2003  
THE INSOLVENCY RULES 2005**

**ORDINARY APPLICATION  
(COMPANY)**

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
BRITISH VIRGIN ISLANDS  
CLAIM NO. 2017/27**

**IN THE MATTER OF THE INSOLVENCY ACT 2003  
AND IN THE MATTER OF ARCHETYPE  
INVESTMENTS FUND SPC LTD (in liquidation)**

**BETWEEN:**

**OWEN WALKER**

**(as liquidator of Archetype Investments Fund SPC  
Ltd)**

Applicant

**-and-**

**ARCHETYPE INVESTMENTS FUND SPC LTD  
(In Liquidation)**

Respondent

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**[DRAFT] ORDER**

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**Ogier**

Ritter House  
Wickham's Cay II  
Road Town, Tortola  
British Virgin Islands  
VG1110  
Tel.: +1 284 852 7300  
Ref.: BRL/XAM/171889.00001

Legal Practitioners for the Applicant

Warren E. Gluck, Esq.  
Richard A. Bixter Jr., Esq.  
(*pro hac vice* forthcoming)  
Elliot A. Magruder, Esq.  
HOLLAND & KNIGHT LLP  
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*Counsel for the Joint Liquidators of Archetype  
Investments Fund SPC Ltd*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
In re: : Chapter 15  
: :  
: Case No. 19-\_\_\_\_\_( )  
ARCHETYPE INVESTMENTS FUND :  
SPC LTD :  
: :  
Debtor in a :  
Foreign :  
Proceeding. :  
-----

**VERIFIED PETITION FOR RECOGNITION OF  
FOREIGN INSOLVENCY PROCEEDING AND APPLICATION  
FOR ADDITIONAL RELIEF PURSUANT TO SECTIONS  
1504, 1507, 1509, 1515, 1517, 1520 AND 1521 OF THE BANKRUPTCY CODE**

Martin Trott and Owen Walker, the duly appointed joint liquidators and foreign representatives (together, the “**Liquidators**”) of Archetype Investments Fund SPC Ltd (“**Archetype**”), a British Virgin Islands (“**BVI**”) professional fund, in liquidation under the supervision of the Commercial Division of the Virgin Islands, High Court of Justice, of the Eastern Caribbean Supreme Court (the “**BVI Court**”), Claim No. BVIHC (COM) 2017/27 (the “**BVI**

**Liquidation**”), pursuant to the Insolvency Act, 2003 (the “**Insolvency Act**”),<sup>1</sup> by its undersigned United States counsel, Holland & Knight LLP, respectfully submit the Official Form Petition, this Verified Petition (together, the “**Petition**”), the accompanying Declaration of Grant Carroll, and the exhibit thereto, executed on June 12, 2019 (the “**Carroll Declaration**”), the Declaration of Owen Walker, and the exhibits thereto, executed on June 6, 2019 (the “**Walker Declaration**”), and the Declaration of Warren E. Gluck, and the exhibits thereto, executed on June 17, 2019 (the “**Gluck Declaration**”), for entry of an Order pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”):

- (i) recognizing the BVI Liquidation as a foreign main proceeding or, in the alternative, a foreign nonmain proceeding, pursuant to chapter 15 of the Bankruptcy Code, and recognizing the Liquidators as Archetype’s foreign representatives under sections 1509 and 1517 of the Bankruptcy Code;
- (ii) granting automatic relief pursuant to section 1520 of the Bankruptcy Code;
- (iii) granting other and additional relief pursuant to sections 1507 and 1521(a) and (b) of the Bankruptcy Code, including authorizing the Liquidators to examine witnesses, take evidence and seek the production of documents concerning the assets, affairs, rights obligations or liabilities of Archetype by:
  - (a) issuing discovery requests to Rocky Point Holdings, Inc. (“**Rocky Point**”) and Peter Vanderbruggen (“**Vanderbruggen**”), each of which maintain a presence in New York; Vanderbruggen is responsible for many of Archetype’s investments, including a promissory note issued by Tremont International, LLC (“**Tremont**”) to Archetype (the “**Tremont Notes**”), the default of which contributed to Archetype’s insolvency; and, on information and belief, Rocky Point is a holding company to which Vanderbruggen may have transferred assets in order to avoid repaying the Tremont Notes and other outstanding debts to Archetype;
  - (b) issuing discovery requests to intermediary banks (collectively, the “**New York Banks**”) located in the Southern District of New York (the “**District**”) that process U.S. dollar-denominated and foreign currency wire transfers, and maintain records of such transfers with respect to Archetype, as well as any related persons and entities that may have received loans from Archetype or its Portfolios (as defined below), or

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<sup>1</sup> Excerpts of the relevant provisions of the Insolvency Act are attached as Exhibit 1 to the Carroll Declaration.

in which Archetype invested (collectively, the “**Discovery Subjects**”), so as to ascertain information concerning Archetype’s assets prior to the commencement of the BVI Liquidation, as well as claims against Tremont, Vanderbruggen, Rocky Point, and other borrowers who defaulted on notes issued to Archetype (as set forth in detail below and in the accompanying Walker and Carroll Declarations);

- (c) granting the Liquidators authority to assert claims of Archetype against parties that are subject to the jurisdiction of courts in the United States;
- (d) ordering that the administration or realization of any assets of Archetype within the territorial jurisdiction of the United States be entrusted to the Liquidators as the exclusive representatives of Archetype in the United States; and
- (e) granting such other and further relief as the Court may deem just and proper.

### **PRELIMINARY STATEMENT**

1. The Second Circuit holds that “[u]nique to the Bankruptcy Code,” Chapter 15 contains a statement of purpose, which is: “to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency . . . .” *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 132 (2d Cir. 2013) (citing 11 U.S.C § 1501(a)).

2. Specifically, Chapter 15 and the Model Law “are designed to optimize disposition of international insolvencies by facilitating appropriate access to the court system of a host country (the United States, in the case of Chapter 15) by a representative of an insolvency proceeding pending in a foreign country.” *In re B.C.I. Fin. Pty Ltd.*, 583 B.R. 288, 292 (Bankr. S.D.N.Y. 2018) (citations omitted). Accordingly, when “interpreting Chapter 15” the court shall “consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.” *In re Oi Brasil Holdings Coöperatief U.A.*, 578 B.R. 169, 193 (Bankr. S.D.N.Y. 2017) (citing 11 U.S.C. § 1508).

3. Consequently, “Chapter 15 expresses a strong preference for providing assistance to foreign representatives in appropriate circumstances. *That congressional preference is not to*

*be lightly disturbed.” In re Platinum Partners Value Arbitrage Fund L.P.*, No. 18CV5176 (DLC), 2018 WL 3207119, at \*4 (S.D.N.Y. June 29, 2018) (emphasis added and footnote omitted) (“*Platinum Partners IP*”).

4. Among the additional express objectives of Chapter 15 is to promote the “fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor[.]” 11 U.S.C. § 1501(a)(3). *See In re Fairfield Sentry*, 440 B.R. 60, 67 (Bankr. S.D.N.Y. 2010) (Section 1501(a)(3) is satisfied by “ensuring that one unbiased party – the Liquidators – quarterback the Debtors’ causes of action”), *aff’d*, 714 F.3d 127 (2d Cir. 2013). Therefore, “Chapter 15 ... provides courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter[.]” *In re Oi S.A.*, 587 B.R. 253, 264 (Bankr. S.D.N.Y. 2018).

5. Moreover, this Court has “frequently understood the importance of judicial deference to foreign bankruptcy proceedings,” as “the equitable and orderly distribution of a debtor’s property requires assembling *all* claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.” *In re Agrokor d.d.*, 591 B.R. 163, 184 (Bankr. S.D.N.Y. 2018) (emphasis in original) (citations omitted); *see also In re Platinum Partners Value Arbitrage Fund L.P.*, 583 B.R. 803, 809 (Bankr. S.D.N.Y.) (“Comity plays a significant role in cross-border insolvency proceedings.”), *recons. denied*, 2018 WL 3207119 (S.D.N.Y. June 29, 2018) (“*Platinum Partners I*”).

6. The Liquidators request recognition of the BVI Liquidation as a foreign main proceeding primarily to obtain this Court's assistance in obtaining critical discovery from entities subject to the jurisdiction of this Court.

7. First, the Liquidators seek discovery of documents from Rocky Point, a New York corporation that is managed by Vanderbruggen's wife Sylvie Vahuylenbroeck ("Vahuylenbroeck"), and discovery from Vanderbruggen, who is believed to maintain a residence in New York, and who executed the Tremont Notes in favor of Archetype, and who also managed and made loans to entities in which Archetype invested.

8. These documents in the possession, custody, or control of Rocky Point and/or Vanderbruggen may well provide information concerning the Tremont Notes, the use of proceeds of the Tremont Notes, and other loans or investments involving Vanderbruggen that may have precipitated the insolvency of Archetype. The documents could also indicate whether Vanderbruggen is using Rocky Point to shield assets that could be used to repay the amounts owed to Archetype pursuant to, among other potential obligations, the Tremont Notes.

9. The Liquidators also seek discovery of records from banks concerning transactions involving Archetype, Vanderbruggen, Tremont, and the Discovery Subjects, including multiple Discovery Subjects based in the United States which transacted business in U.S. dollars. In particular, the Liquidators seek discovery concerning any use of proceeds of the four promissory notes issued by Archetype, including the Tremont Notes, as the use of the proceeds could provide information as to why each borrower defaulted on their note.

10. The Liquidators also seek discovery to determine the asset position of Archetype, and to investigate potential claims arising from the defaulted loans that drained Archetype of its assets and precipitated the BVI Liquidation.

11. Although certain of its loans were denominated in Euros, Archetype and its counterparties, including entities based in the United States, transacted business in U.S. dollars. For instance, percentages of the principal amounts due on the defaulted notes were denominated

in U.S. dollars. Moreover, Archetype held indirect investments in BeoCare Group, Inc., a United States entity, which undoubtedly transacted business in U.S. dollars.

12. As this Petition, the accompanying declarations and the exhibits thereto demonstrate, the BVI Liquidation should be recognized as a foreign main proceeding. In the event that the BVI Liquidation is recognized as a foreign nonmain proceeding, this Court has the discretion to order whatever protections and relief it deems appropriate pursuant to sections 1507 and 1521 of the Bankruptcy Code, including the requested discovery relief.

13. The BVI Liquidation should be recognized as a foreign main proceeding because the Liquidators request precisely the type of relief that chapter 15 was designed to provide. Moreover, the BVI Liquidation and this Petition meet all the requirements for recognition and the requested relief.

14. The BVI Liquidation is a collective judicial proceeding located in a foreign country under a law relating to insolvency or adjustment of debt, as set forth in 11 U.S.C. § 101(23).

15. The BVI Liquidation is a collective judicial proceeding because Mr. Walker and Mr Trott are officers of the BVI Court, the rights and obligations of all creditors are considered, and the BVI Liquidation is governed by the Insolvency Act, which establishes a comprehensive framework determining how Archetype's assets will be administered, retrieved and distributed.

16. Moreover, Archetype is unquestionably subject to the oversight and control of the BVI Court. While the Liquidators have broad authority, a number of the Liquidators' powers must be pre-approved by the BVI Court. For instance, the Liquidators obtained BVI Court sanction to file the instant Petition.

17. Archetype's liquidation takes place in a foreign country, since Archetype was placed into liquidation in the BVI, where it was incorporated and registered.



18. Finally, the BVI Liquidation proceeds under the Insolvency Act, which is the primary law governing corporate insolvency procedures in the BVI.

19. The Liquidators are the foreign representatives of Archetype as is understood in 11 U.S.C. § 101(24). On March 27, 2017, pursuant to section 162(1)(a) of the Insolvency Act, the BVI Court appointed Mr. Trott as the Liquidator of Archetype (the “**Liquidation Order**”), and on December 13, 2018, the BVI Court appointed the Mr. Walker as the Liquidator of Archetype (the “**Appointment Order**”). On April 10, 2019, the BVI Court re-appointed Mr. Trott as a foreign joint Liquidator (the “**Sanction Order**”).

20. Accordingly, the Liquidators are duly authorized to act as the foreign representatives of Archetype and are responsible for all aspects of the winding-up of Archetype.

21. Specifically, the Liquidators are authorized to, among other things, sell or otherwise dispose of any property of Archetype, rank any claim submitted against Archetype, call meetings of creditors, and, with sanction of the BVI Court, commence, continue, or defend any action or legal proceedings in the name and on behalf of Archetype. In so doing, the Liquidators act as direct or *de facto* officers of the BVI Court.

22. In addition, since Archetype was placed into liquidation in March 2017, substantially all efforts on behalf of Archetype, including all financial, administrative and legal functions, have been conducted in the BVI by the Liquidators and their colleagues.

23. Therefore, the Liquidators are duly authorized to act as the foreign representatives of Archetype and are entitled to represent Archetype in this Chapter 15 action.

24. Moreover, pursuant to section 1516(c) of the Bankruptcy Code, the BVI is presumed to be Archetype’s center of main interests (“**COMI**”) because Archetype was

incorporated as a BVI professional fund subject to the securities laws of the BVI, and maintains its registered office in the BVI.

25. Accordingly, the BVI is the COMI of Archetype. *See In re Pirogova*, 593 B.R. 402, 408 (Bankr. S.D.N.Y. 2018) (“The location of the debtor’s COMI is the sole criterion for qualifying as a foreign main proceeding.”); *see also Fairfield Sentry*, 714 F.3d at 137 (“[A]ny relevant activities, including liquidation activities and administrative functions, may be considered in the COMI analysis.”).

26. In addition, the BVI Liquidation is pending in the BVI, the country in which Archetype was formed, maintained its books and records, and where the Liquidators engage in substantial, non-transient economic activity associated with the wind-down and liquidation of Archetype’s business and affairs.

27. In sum, this Petition and the accompanying declarations further demonstrate that Archetype’s counterparties, directors and creditors have clear and actual knowledge that Archetype was a BVI entity. Since the commencement of the BVI Liquidation, the BVI is the obvious and demonstrable “nerve center” of Archetype’s ongoing liquidation. Hence, the BVI Liquidation is a “foreign main proceeding” within the meaning of sections 101(23), 1502(4), 1516(c), and 1517(b)(1) of the Bankruptcy Code.

28. Finally, this Court and other courts have recognized as foreign main proceedings similar liquidation proceedings of BVI entities. *See, e.g., Fairfield Sentry*, 714 F.3d at 137-140 (rejecting “public policy” objection to BVI liquidation proceeding and affirming this Court’s recognition as a foreign main proceeding); *In re Cinque Terre Fin. Grp. Ltd.*, No. 16-11086 (JLG) (S.D.N.Y. June 21, 2016); *In re Am. Alt. Inv. Inc.*, No. 15-12273-mkv (Bankr. S.D.N.Y. Sept. 15, 2015); *In re Lawndale Grp. S.A.*, No. 15-11352 (SCC) (Bankr. S.D.N.Y. July 6, 2015) (recognizing

liquidation of BVI entity as a foreign main proceeding); *In re Farencos Shipping Co., Ltd.*, No. 11-14138 (Bankr. S.D.N.Y. 2011); *In re British Am. Isle of Venice (BVI) Ltd.*, 441 B.R. 713, 722-723 (Bankr. S.D. Fla. 2010) (recognizing as foreign main proceeding a proceeding pending in the BVI Court); *In re Transfield Cape Ltd. (BVI)*, No. 10-16270 (MB) (Bankr. S.D.N.Y. 2010).

29. Moreover, the precise relief requested here – authorization to take discovery from Rocky Point, Vanderbruggen, and the New York Banks in support of the BVI Liquidation and prospective claims arising from Archetype’s loans to and transactions within that BVI Liquidation – has been granted recently by this and other courts in virtually identical contexts. *See, e.g., Lawndale Grp. S.A.*, No. 15-11352 (SCC) (Bankr. S.D.N.Y. July 6, 2015) (granting 1521(a)(4) request to engage in intermediary bank discovery from New York Banks); *Farencos Shipping Co., Ltd.*, No. 11-14138 (Bankr. S.D.N.Y. 2011) (same); *Fairfield Sentry*, No. 13164 (BRL) (S.D.N.Y. July 22, 2010) (authorizing BVI liquidator to conduct discovery concerning the debtors’ “assets, affairs, rights, obligations, or liabilities”); *Platinum Partners I*, 583 B.R. at 811 (authorizing discovery in support of liquidation of Cayman Islands-based hedge funds because its auditors had a “unique set of documents and analyses concerning the Funds’ assets, liabilities and financial affairs which would assist the liquidators’ investigation and understanding of the Funds’ affairs for the two years immediately prior to the Funds’ liquidations”); *In re Platinum Partners Value Arbitrage Fund L.P.*, No. 16-12925 (SCC) (Bankr. S.D.N.Y.) (recognition order) (recognizing Cayman Islands liquidation as a foreign main proceeding and authorizing issuance of subpoenas to New York Banks); *In re HiTs Africa Ltd.*, No. 18-11822-mew (Bankr. S.D.N.Y.) (same).

30. For all of these reasons and as will be shown below, the Liquidators respectfully submit that: (i) the BVI Liquidation is a foreign main proceeding within the meaning of sections 101(23) and 1502(4) of the Bankruptcy Code; (ii) the Liquidators are the duly appointed foreign

representatives of Archetype within the meaning of section 101(24); (iii) the Liquidators and the Petition comply with all the requirements of section 1515 and Bankruptcy Rule 1007(a)(4); and (iv) recognition of the BVI Liquidation would not be contrary to public policy under Bankruptcy Code section 1506. *See, e.g., Fairfield Sentry*, 714 F.3d at 139-140 (rejecting application of the public policy exception to a BVI liquidation and noting that “the statutory wording requires a narrow reading”); *In re ENNIA Caribe Holding*, 594 B.R. 631, 640 (Bankr. S.D.N.Y. 2018) (noting that the public policy exception is a “narrow one that should be applied sparingly”).

31. Under the circumstances, this Court can and should enter an order recognizing the BVI Liquidation as a foreign main proceeding under section 1517(b)(1), or in the alternative, as a foreign nonmain proceeding under section 1517(b)(2) of the Bankruptcy Code, and granting additional relief as set forth in sections 1507, 1520 and 1521 of the Bankruptcy Code.

### **JURISDICTION AND VENUE**

32. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and sections 109 and 1501 of the Bankruptcy Code.

33. Venue of this proceeding is proper in this District pursuant to 28 U.S.C. § 1410(3) because Archetype has property in the United States and within this District.

34. Archetype satisfies the property requirement in 11 U.S.C. § 109(a). *See, e.g., In re Barnet*, 737 F.3d 238, 247-51 (2d Cir. 2013).

35. Additionally, entities from which the Liquidators will be seeking discovery, Rocky Point, Vanderbruggen and the other New York Banks, are subject to jurisdiction in this District.

36. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

### **FACTUAL BACKGROUND**

#### **A. Location and Investments of Archetype**

37. On March 7, 2008, Archetype was established as a Professional Fund under the Securities and Investment Act of the British Virgin Islands (2010 update).

38. The sole member of Archetype is Archetype Investments Ltd., a BVI limited company. Archetype appointed three directors.

39. Archetype maintained a registered office at SR Corporate Services Limited, Wattley Building, 2nd Floor, Road Town, Tortola VG1110, British Virgin Island, and now maintains a registered office at c/o R&H Restructuring (BVI) Limited, Woodbourne Hall, P.O. Box 3162, Road Town, Tortola VG1110, British Virgin Islands.

40. In or around October 2006 (and most recently in 2014), Archetype issued offering memoranda in respect of its segregated investment portfolios, which focused on interest rate, fixed income and both EURO and U.S. Dollar asset class investments (collectively, the “**Portfolios**”).

**B. Archetype Invest in Promissory Notes**

41. Archetype used the Portfolios to invest in promissory notes issued by four entities, including Tremont and three non-United States entities (together with Tremont, the “**Borrowers**”).

42. Tremont was formed in Delaware. In at least one of Tremont’s certificates of good standing, Vanderbruggen is listed as the authorized signatory. In addition, publicly available corporate documents list Vanderbruggen as the “Permanent Representative” of Tremont. Upon information and belief, Vanderbruggen remains a member and manager of Tremont.

43. Vanderbruggen’s wife, Vahuylenbroeck, is the CEO and director of Rocky Point, a New York domestic corporation maintaining a principal executive office at 8 Rocky Point, Shelter Island, New York 11965.

44. Publicly available real estate records indicate that Vanderbruggen also maintains a residence in this District.

**C. Tremont Defaults on the Tremont Notes**

45. In order to refinance existing loans from Archetype, Tremont issued the Tremont Notes to Archetype in the aggregate principal amount of roughly EURO 25.5 million, plus interest.

46. On or about March 31, 2016, Tremont drew down on the Tremont Notes pursuant to Note Purchase Agreements between Archetype and Tremont. Vanderbruggen signed the Note Purchase Agreements on behalf of Tremont.

47. Vanderbruggen claims that Tremont reinvested the funds from the Tremont Notes into special-purpose vehicles which then acquired shares in Leeward Ventures SICAR (“LVS”). LVS is currently in court-ordered liquidation in Luxembourg.

48. Tremont failed to repay any amounts owed under the Tremont Notes.

49. Prior to its liquidation in February 2017, Archetype communicated with Vanderbruggen concerning Tremont’s payment obligations, and also served Tremont with demands for repayment that went unfulfilled.

50. Tremont currently owes roughly EURO 29.7 million under the Tremont Notes.

**D. Archetype’s Additional Investments and Connections to the United States**

51. Through the Portfolios, Archetype held roughly 38% of the non-voting, participating shares of a Hong Kong Company, BeoCare International Limited (“**BeoCare International**”). One of the two voting shares of BeoCare International is owned by a Hong Kong entity called Haipo Limited (“**Haipo Asia**”).

52. Vanderbruggen is a director and shareholder of Haipo Asia. Vanderbruggen is also the co-manager of Haipo LLC (“**Haipo America**”). Haipo America and Haipo Asia are hereinafter referred to collectively as “**Haipo**.”

53. The principal asset of BeoCare International was a majority holding in BeoCare Group, Inc. (“**BeoCare Group**”), a Delaware-registered pharmaceutical company.

54. Vanderbruggen was the executive chairman of BeoCare Group until on or about August 2018.

55. However, upon information and belief, BeoCare International pledged its shares in BeoCare Group as collateral for a \$2 million loan from Haipo Asia. When BeoCare International defaulted on the loan in April 2017, Haipo Asia took ownership of the BeoCare Group shares. BeoCare Group was recently or currently is engaged in restructuring negotiations with its lenders.

**E. Archetype’s Insolvency, the BVI Liquidation and the Appointment of the Liquidator**

56. In mid-2015, the Borrowers’, including Tremont’s, inability to pay the amounts due under their loans caused Archetype to informally suspend redemptions, though redemptions requests were honored through to August 2016.

57. As a result, Archetype and the Portfolios became insolvent.

58. Following unsuccessful negotiations with the Borrowers to restructure their debts, on February 20, 2017, Archetype sought approval from the BVI Court to voluntarily wind-up the operations of Archetype and the Portfolios (the “**BVI Petition**”).

59. Archetype filed the BVI Petition primarily because neither Archetype, nor the Portfolios, had sufficient funds to satisfy outstanding redemption requests or pursue litigation against the Borrowers.

60. The Borrowers’ liquidity crises is the primary cause of the insolvency of Archetype and the Portfolios. As of February 10, 2017, the four borrowers under the notes owed Archetype more than EURO 90 million.



61. On March 27, 2017, the BVI Court issued the Liquidation Order, appointing Mr. Trott as the Liquidator of Archetype.

62. On November 28, 2018, Mr. Trott petitioned the BVI Court to file a chapter 15 petition in New York to recognize the BVI Liquidation as a foreign main proceeding and to take discovery that would: (1) identify potential assets of Archetype in the United States; and (2) subsequently recover such assets for the benefit of Archetype and its creditors and stakeholders.

63. On December 13, 2018, Mr. Walker replaced Mr. Trott as the Liquidator following Mr Trott's relocation from the BVI.

64. On April 10, 2019, the BVI Court issued the Sanction Order authorizing the Chapter 15 petition and re-appointing Mr. Trott as a foreign Joint Liquidator.

**F. The Progress of the BVI Liquidation and the Liquidators' Investigation**

65. The Liquidators have investigated from the BVI the assets of Archetype, and the causes of its insolvency and performed other administrative and legal obligations.

66. In the course of the investigation, the Liquidators have discovered that Vanderbruggen is responsible for many of Archetype's investments, including some of the investments that *in toto* precipitated Archetype's insolvency, such as the Tremont Notes, and subsequent investment of those proceeds into LVS.

67. In particular, disinterested investors in Archetype informed the Liquidators that Vanderbruggen was and/or is secretly transferring his assets to, among others, family members such as Vahuylenbroeck, the nominal owner of Rocky Point. Specifically, Vanderbruggen may be transferring assets into Rocky Point, which seems to serve as his New York holding company.

68. It appears that Vanderbruggen may be transferring his assets to thwart both the Liquidators' efforts to investigate and recover Archetype's assets, *i.e.*, a potential recovery against

Tremont based on its default under the Tremont Notes, as well as the Liquidators' broader efforts to wind-up Archetype for the benefit of its creditors, investors, and other stakeholders.

69. At the moment, Archetype's primary assets, counterparties and investments are being investigated. In particular, the Liquidators are investigating, *inter alia*, potential claims to recover amounts due from Tremont, Vanderbruggen, Vahuylenbroeck, the Borrowers, Haipo, and related parties in connection with Archetype's failed investments (the "**Third-Party Claims**").

70. In particular, the Liquidators have filed this application, *inter alia*, to obtain: (1) discovery from Rocky Point, a New York entity likely owned and managed by Vanderbruggen and/or Vahuylenbroeck that transacted business in U.S. Dollars; and (2) documents in the form of wire transfer records maintained by intermediary banks located in the State of New York, as well as bank statements and other documents.

71. These banking records likely relate to Archetype's loans, investments and counterparties (known and unknown), which involve at a minimum, four United States entities affiliated with Vanderbruggen: Rocky Point, Haipo America, Tremont and BeoCare Group.

72. These records are crucial to understanding the causes of Archetype's insolvency and asset position, and to tracing the flow of funds among Archetype, the Borrowers, Vanderbruggen, Tremont, Rocky Point, BeoCare Group, Haipo, and additional borrowers, investors and counterparties.

73. Moreover, conducting discovery in connection with intermediary banks is critical to the Liquidators' investigation and to their ability to obtain a recovery for Archetype's creditors and investors.

## **THE INSOLVENCY LAWS GOVERNING BVI COMPANIES**

### **A. Overview**

74. The BVI is an Overseas Territory of the United Kingdom. The United Kingdom retains the power to adopt legislation for the BVI, and also maintains the ability to extend the implementation of international treaties to the BVI, such that the legislation and treaties form part of the laws of the BVI. The BVI has its own legislature called the House of Assembly, which enacts statutory legislation.

75. The Common Law (Declaration of Application) Act (Cap 13) extends the common law of England to the BVI. Section 13 of the Act (Cap 80), governing the BVI Court, also provides that equitable principles of English jurisprudence apply in the BVI.

76. It follows that the common law of the BVI is largely identical to that of England.

77. Concerning the judicial system of the BVI, decisions by the Judicial Committee of the Privy Council in the United Kingdom are binding on the BVI Courts, and decisions of the Privy Council on appeal from other Courts are highly persuasive (to the extent that they are routinely followed). In the absence of any authority from the BVI Court on any issue of law, which is often the case, decisions of other common law courts, and in particular decisions of the English courts, are of strong persuasive authority.

**B. The Liquidation of a BVI Entity by the BVI Court**

78. The BVI has modern insolvency laws, such as the Insolvency Act, which governs liquidation, creditor arrangement, receivership and administrative receivership. The BVI insolvency laws contain provisions close to those of the insolvency laws of the United Kingdom. In fact, the Insolvency Act is in part modelled on the English Insolvency Act 1986.

79. Liquidation proceedings are primarily governed by the Insolvency Act. According to its enacting statement, the Insolvency Act provides “a mechanism for insolvent persons to enter

into arrangement with their creditors, an administration procedure for companies, the receivership of companies and foreign companies, [and] the liquidation of companies ....”

80. The BVI court system is also well-developed in the context of corporate restructuring and liquidation proceedings.

81. Insolvency proceedings are not for the benefit of any single creditor. Rather, the Liquidators operate to determine all of the rights of stakeholders, including investors and creditors, with respect to any claims against Archetype. Payment of the claims to the assets of Archetype accord with statutory priorities, and if the assets are insufficient to pay claims in full, dividends are paid *pro rata* per class of claimants.

82. Any person or entity with a claim against Archetype may prove such claim in the BVI Liquidation.

83. Section 175(c) of the Insolvency Act, entitled “Effect of Liquidation,” states that “unless the Court otherwise orders, no person may (i) commence or proceed with any action or proceeding against the company or in relation to its assets, or (ii) exercise or enforce, or continue to exercise or enforce any right of remedy over or against the assets of the company.” Secured creditors, however, maintain certain self-help rights under BVI law notwithstanding the BVI Liquidation.

84. Thus, the Insolvency Act and the BVI Liquidation encompass all of Archetype’s assets worldwide, including an interest in any investment made by Tremont with the proceeds of its notes.

85. Moreover, a general principle underlying the BVI’s insolvency regime is that the claims of investors and creditors within the same class are treated on a *pari passu* basis. All

creditors and interest holders have an opportunity to be heard by the BVI Court and no creditor is prejudiced because it is foreign-based.

**C. The Qualifications and Responsibilities of the Liquidators**

86. The Insolvency Act expressly sets forth the powers and duties of the Liquidators, the Liquidators' removal and resignation, and it includes comprehensive guidance for the Liquidators' conduct. A BVI liquidator must be a licensed insolvency practitioner and a resident of the BVI (unless acting jointly with a licensed insolvency practitioner and a resident of the BVI). Accordingly, although he has relocated from the BVI, Mr. Trott can act alongside Mr. Walker as the joint foreign liquidator of Archetype, as set forth in the Sanction Order.

87. The Liquidators are direct or *de facto* fiduciaries and officers of the BVI Court, that are required to take possession of, protect, and realize the assets of the company in liquidation, wherever they may be located, for the benefit of its creditors.

88. Post-liquidation, the directors of Archetype have little to no authority. As a matter of law, the management functions of Archetype are vested entirely in the Liquidators, subject to BVI Court approval. In other words, the Liquidators "step into the shoes" of Archetype's directors and shareholder.

89. A liquidator may be appointed by: (1) a resolution of the members of the company passed by a super majority of seventy-five percent of all members present or represented by proxy at a meeting of members (or such higher majority as the articles of the company may provide), or (2) by the BVI Court upon application by the company itself, a creditor, a shareholder, a supervisor of a creditors' arrangement, the BVI Financial Services Commission, or the Attorney General.

90. In the alternative, a liquidator may be appointed by the BVI Court if: (1) the company is insolvent; (2) it is “just and equitable” that a liquidator be appointed; or (3) that liquidation of the company is in the public interest.

91. Upon appointment, the Liquidators gained custody and control of Archetype’s assets, and Mr. Trott advertised his appointment in the BVI via publication in the newspaper and the official gazette of the BVI.

**D. The Powers of the Liquidators in the BVI Liquidation**

92. The Liquidation Order states that the “Liquidator may exercise all those powers set out in section 186 and Section 2 of the Insolvency Act 2003 as set out in the annex hereto.” Liquidation Order at ¶ 2.

93. The powers set forth in the Liquidation Order are as follows:

**WITH SANCTION OF THE COURT**

1. Power to pay any class of creditors in full.
2. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the Company, whether present or future, certain or contingent, ascertained or not.
3. Power to compromise, on such terms as agreed
  - a. calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the Company and any person; and
  - b. questions in any way relating to or affecting the assets or the liquidation of the Company; and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
4. Power to commence, continue or defend any action or other legal proceedings in the name and on behalf of the Company.

**WITHOUT SANCTION OF THE COURT**

5. Power to carry on the business of the Company so far as may be necessary for

its beneficial liquidation.

6. Power to sell or otherwise dispose of property of the Company.
7. Power to do all acts and execute, in the name and on behalf of the Company, any deeds, receipts or other document.
8. Power to use the Company's seal.
9. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankruptcy or insolvent, and rateably with the other separate creditors.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company with the same effect with respect to the Company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the Company in the course of its business.
11. Power to borrow money, whether on the security of the assets of the Company or otherwise.
12. Power to take out in his official name letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any money due from a member or past member or debtor, or his estate, that cannot conveniently be done in the name of the Company.
13. Power to call meetings of creditors or members for
  - a. the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;
  - b. the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or
  - c. such other purpose connected with the liquidation as the liquidator considers fit.
14. Power to appoint a solicitor, accountant or other professionally qualified person to assist him in the performance of his duties.
15. Power to appoint an agent to do any business that the liquidator is unable to do himself, or which can be more conveniently done by an agent.

94. As noted above, Paragraph 1 of the Sanction Order explicitly permits the filing of this Chapter 15 Petition, and the fourteenth power in the Liquidation Order permits the Liquidators to “appoint a solicitor ... to assist him in the performance of his duties.”

95. Moreover, the Liquidators are also empowered to investigate: (i) the causes of the insolvency of Archetype; and (ii) the general business, investments and counterparties of Archetype.

**E. Archetype’s Activities in the BVI**

96. Archetype was formed in the BVI as a Professional Fund, subject to the Securities and Investment Act of the British Virgin Islands (2010 update).

97. Archetype’s sole shareholder, Archetype Investments, is also a BVI company. The Liquidators obtained the books and records of Archetype from its BVI-based administrator, IFINA (BVI) Ltd.

98. Archetype maintained its registered office in the BVI both prior to and since the beginning of the BVI Liquidation. Mr. Trott, and now Mr. Walker, resided in the BVI during the BVI Liquidation

99. Virtually all of the work to date relating to the BVI Liquidation has been conducted in the BVI and is supervised by and subject to the approval and sanction of the BVI Court.

100. Upon issuance of the Liquidation Order, Mr. Trott contacted all stakeholders and advertised his appointment in both a BVI newspaper and its Official Gazette.

101. On April 7, 2017, Mr. Trott wrote to each director of Archetype requesting a Statement of Affairs of the Company (“SOA”). By the first week of May, the SOAs had been obtained and filed with the BVI Court.



102. The Liquidators have taken control of Archetype's assets. All creditors of Archetype may submit their claims in the BVI Liquidation. In fact, multiple creditors have already submitted claim forms to the Liquidators via Archetype's BVI-based fund administrator. Moreover, the realization of the remaining assets of Archetype, including but not limited to, its bank account assets, have been administered and liquidated from the BVI.

103. Based upon the above, as well as the BVI Petition, the Liquidation Order, Appointment Order and Sanction Order, it is clear that all relevant creditors, directors, the Borrowers, stakeholders, and shareholders regard Archetype to be a BVI company.

104. The Liquidators have protected Archetype's assets and increased the likelihood of realizing the amounts it is owed, by investigating Tremont, Haipo, Vanderbruggen, Rocky Point, BeoCare Group, and other third parties involved in: (1) the negotiation and execution of the Tremont Notes; (2) Archetype's investment in BeoCare Group; (3) the loan from Haipo Asia to BeoCare International; and (4) the Borrowers' default on the four notes in which Archetype invested. The investigation has unfolded primarily from R&H Restructuring's offices in the BVI.

105. To that end, the Liquidators also have taken steps to investigate and secure Archetype's assets in hopes of eventual recovery, including by contacting Vanderbruggen, the Borrowers, Tremont, Archetype's investors, and its service providers and registered agent.

106. As a result, the Liquidators have engaged in significant negotiations with the non-Tremont Borrowers to which Archetype subscribed. The Liquidators also contacted Vanderbruggen and Tremont on multiple occasions, but thus far neither Vanderbruggen nor Tremont has submitted a proposal to satisfy the nearly EURO 29.7 million owed under the Tremont Notes. Mr. Vanderbruggen also has refused to submit information concerning LVS.

107. The Liquidators likewise have conducted numerous conference calls with creditors, the Borrowers, and service providers to understand, among other things, the Borrowers' defaults, Archetype's investment portfolio (in the Portfolios and elsewhere), including the investments in the Tremont Notes, Archetype's use of funds, and its ownership structure and day-to-day operations.

108. The Liquidators also have retained BVI-counsel and have arranged for the issuance of numerous letters requesting further information regarding Archetype's assets located throughout the world prior to its entry into liquidation.

109. The Liquidators have performed a thorough review of Archetype's books and records to the extent possible, including Archetype's investor records, all of which are stored in the BVI (now with the Liquidators and previously with the BVI fund administrator) to attempt to understand Archetype's assets and investments. The Liquidators continues to follow up on outstanding document requests.

110. The Liquidators also have spent many hours corresponding with stakeholders and responding to their queries and concerns surrounding the BVI Liquidation.

111. The Liquidators also prepared three comprehensive reports for investors, creditors and other stakeholders. Based on investigations to date, the Liquidators are developing a litigation strategy with BVI and United States counsel.

112. As the Liquidators' investigations continue, the relationships between Archetype, Tremont, Vanderbruggen, Rocky Point, the Borrowers, Haipo and BeoCare Group, among others, are crystallizing. As a result, potential claims are becoming clearer. However, further investigation is essential.

113. Virtually all of the foregoing activities have been directed from the Liquidators' offices in the BVI. Ultimately, any potential claims will be overseen, managed and resolved (by litigation or negotiation) by the Liquidators from the BVI.

### **ARGUMENT**

#### **I. THE BVI LIQUIDATION SHOULD BE RECOGNIZED UNDER CHAPTER 15**

##### **A. Legal Standards**

114. As noted above, "Chapter 15 expresses a strong preference for providing assistance to foreign representatives in appropriate circumstances. That congressional preference is not to be lightly disturbed." *Platinum Partners II*, 2018 WL 3207119, at \*4. The Second Circuit has "frequently understood the importance of judicial deference to foreign bankruptcy proceedings," as "the equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail." *Agrokor d.d.*, 591 B.R. at 184.

115. Section 1517 of the Bankruptcy Code mandates entry of an order recognizing a "foreign proceeding" if it appears that recognition will not undermine U.S. public policy and: "(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515." 11 U.S.C. § 1517(a).

116. Each of those requirements is met here, and entry of an order in the form of **Exhibit 1** to this Petition will significantly aid the Liquidators' efforts to investigate and administer Archetype's assets and liabilities, discover information necessary to the winding-up of Archetype, including information in the possession, custody or control of Vanderbruggen, the manager of

Tremont, and ensure a fair and equitable treatment of and greater distributions to Archetype's creditors and interest holders.

**B. The BVI Liquidation is a Foreign Proceeding under 11 U.S.C. § 101(23)**

117. Section 101(23) of the Bankruptcy Code defines a foreign proceeding as:

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

11 U.S.C. § 101(23).

118. Therefore, a proceeding will be recognized as a foreign proceeding under chapter 15 of the Bankruptcy Code if the following seven elements are satisfied: “(i) [the existence of] a proceeding; (ii) that is either judicial or administrative; (iii) that is collective in nature; (iv) that is in a foreign country; (v) that is authorized or conducted under a law related to insolvency or the adjustment of debts; (vi) in which the debtor's assets are subject to the control or supervision of a foreign court; and (vii) which proceeding is for the purpose of reorganization or liquidation.” *In re Ashapura Minechem Ltd.*, 480 B.R. 129, 136 (S.D.N.Y. 2012) (citations omitted).

119. This Court and other courts have held that, as a general matter, BVI liquidation proceedings constitute foreign proceedings under section 101(23) of the Code, as they are “collective judicial or administrative proceeding[s] in a foreign country ... under a law relating to insolvency ... in which ... the assets of affairs of the debtor are subject to control or supervision by a foreign court for the purpose of ... liquidation.” *Fairfield Sentry*, 440 B.R. at 63; *see also British Isle of Venice*, 441 B.R. at 716-722.

120. The BVI Liquidation satisfies each of these requirements.

121. For purposes of recognition pursuant to Chapter 15, a proceeding is a “statutory framework that constrains a company’s actions and that regulates the final distribution of a company’s assets.” *In re Betcorp Ltd.*, 400 B.R. 266, 278 (Bankr. D. Nev. 2009). The BVI Liquidation is governed by the Insolvency Act, which establishes a comprehensive framework determining how Archetype’s assets will be administered, retrieved and distributed.

122. The BVI Proceeding is a judicial proceeding because the Liquidators are officers of the BVI Court and cannot exercise certain of their powers without prior BVI Court approval.

123. The BVI Liquidation is a “collective ... proceeding” because it “considers the rights and obligations of all creditors.” *See, e.g., In re ENNIA Caribe*, 594 B.R. at 638. Put another way, a collective proceeding is “designed to provide equitable treatment to creditors by treating similarly situated creditors in the same way.” *Ashapura Minechem Ltd.*, 480 B.R. at 136.

124. All claims against Archetype may be submitted in the BVI Liquidation and all claimants have the right to access the BVI Court to have their claims adjudicated by the Liquidators *pari passu* and according to statutory priority. In fact, the Liquidators have already accepted multiple claim forms and are in the process of adjudicating the claims on equal footing.

125. Archetype’s liquidation takes place in a foreign country, as Archetype was placed into liquidation in the BVI, where it was incorporated. Moreover, since the respective appointments of the Liquidators, each have administered the liquidation of Archetype from their offices in the BVI, with assistance from multiple BVI-based service providers. In sum, virtually all events relevant to the BVI Liquidation have occurred in the BVI, a foreign country.

126. The Insolvency Act and related rules that govern the BVI Liquidation specifically relate to proceedings in the BVI that deal with “insolvency or adjustment of debt.” *Ashapura Minechem Ltd.*, 480 B.R. at 138. As in *Ashapura*, the BVI Liquidation is authorized by the

Insolvency Act, the primary law governing corporate insolvencies in the BVI, which provides for several insolvency procedures, including liquidations, creditor arrangements, or receiverships. 480 B.R. at 144 (noting that there “is no doubt” that a foreign insolvency law deals with corporate insolvency and the adjustment of debts because the law “arranges a scheme of rehabilitation”).

127. Archetype’s assets and affairs are subject to the “control or supervision” of the BVI Court. Although the Liquidators function as officers of the BVI Court, the BVI Act and the Liquidation Order provide that certain of the Liquidators’ powers, including the power to pay any class of creditors in full, or to settle claims, must be pre-approved by the BVI Court. *See ENNIA Caribe*, 594 B.R. at 639-640 (listing various pre-approval rights of the Curacao insolvency court in concluding that “this element of the definition of foreign proceeding is met”) (citation omitted).

128. Finally, the BVI Liquidation is for the purpose of liquidation because it exists to ensure the equitable liquidation and ratable distribution of Archetype’s assets to creditors.

**C. The Liquidators are the Foreign Representatives of Archetype  
under 11 U.S.C. § 101(24)**

129. A chapter 15 case must be commenced by a duly appointed and authorized “foreign representative,” which Section 101(24) of the Bankruptcy Code defines as “a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.” 11 U.S.C. § 101(24).

130. There is no question that the Liquidators and the BVI Liquidation satisfy each of these requirements.

131. First, for the reasons set forth *supra*, the BVI Liquidation constitutes a foreign proceeding as defined in Chapter 15.

132. Second, the BVI Liquidation is being conducted by the Liquidators, who were each appointed by the BVI Court pursuant to the Insolvency Act as the joint Liquidators to oversee the winding-up of Archetype according to the provisions of the Insolvency Act.

133. When exercising such duties, the Liquidators consider the rights and obligations of all creditors. To that end, the Liquidators have invited all creditors to submit claim form for the Liquidators' review and BVI Court's ultimate sanction. *See In re Kemsley*, 489 B.R. 346, 358 (Bankr. S.D.N.Y. 2013) (foreign representative petitioning for recognition who is "acting ... in a representative capacity for the collective good of creditors ... is consistent with the objectives of chapter 15 and is a factor that favors recognition").

134. In addition, the Liquidation Order grants the Liquidators wide-ranging powers, of which some require pre-approval by the BVI Court.

135. As such, the Liquidators are "person[s] authorized in a foreign proceeding to administer the reorganization or the liquidation of [Archetype's] assets or affairs," within the meaning of section 101(24).

136. Additionally, in recent years, courts in this District have held that a liquidator appointed and overseen by the BVI Court qualifies as a "foreign representative" for purposes of section 101(24). *See, e.g., Fairfield Sentry*, 714 F.3d at 137-140; *Cinque Terre Fin. Grp. Ltd.*, No. 16-11086 (JLG) (S.D.N.Y. June 21, 2016); *Am. Alt. Inv. Inc.*, No. 15-12273-mkv (Bankr. S.D.N.Y. Sept. 15, 2015); *Lawndale Grp. S.A.*, No. 15-11352 (SCC) (Bankr. S.D.N.Y. July 6, 2015); *Farenco Shipping Co., Ltd.*, No. 11-14138 (Bankr. S.D.N.Y. 2011); *British Am. Isle of Venice (BVI) Ltd.*, 441 B.R. 713, 722-723 (Bankr. S.D. Fla. 2010); *Transfield Cape Ltd. (BVI)*, No. 10-16270 (MB) (Bankr. S.D.N.Y. 2010).

**D. The BVI Liquidation is a Foreign Main Proceeding**

137. In the absence of evidence to the contrary, the debtor's registered office, in this case the BVI, is presumed to be its COMI. 11 U.S.C. § 1516(c); *see Fairfield Sentry*, 714 F.3d at 133.

138. Here, there is no such contrary evidence that would rebut the presumption that Archetype's COMI is the BVI.

139. The Second Circuit has held "that a debtor's COMI should be determined based on its activities at or around the time the Chapter 15 petition is filed, as the statutory text suggests." *Id.* at 137.

140. In determining a debtor's COMI, courts consider a non-exhaustive list of factors, including: (i) the location of the debtor's assets; (ii) the location of the debtor's books and records; (iii) the location of the majority of creditors; (iv) the commercial expectations and knowledge of creditors; and (v) the location of those who actually manage the debtor. Though a "helpful guide ... consideration of these specific factors is neither required nor dispositive." *Id.*

141. In *Fairfield Sentry*, 714 F.3d at 139 (quoting 440 B.R. at 64), the Second Circuit upheld this Court's order that a debtor undergoing liquidation in the BVI maintained its COMI in the BVI because, among other reasons:

[T]he Debtors have no place of business, no management, and no tangible assets located in the United States. Rather, the Debtors' activities for an extended period of time have been conducted only in connection with winding up the Debtors' business ... The Court finds that the facts now extant provide a sufficient basis for finding that the Debtors' COMI for the purpose of recognition as a main proceeding is in the BVI, and not elsewhere.

142. That the "administration of [the debtors'] affairs in the relevant time was orchestrated from the BVI" further confirmed that the COMI was the BVI. *Id.*

143. Applying the non-exhaustive list of factors, and following the reasoning in *Fairfield Sentry*, there is no doubt that Archetype's COMI is the BVI.



144. Most important, Archetype maintained a registered office in the BVI prior to its liquidation, and does so today. Archetype also maintains an address for service of process in the BVI.

145. Here, since the issuance of the Liquidation Order on March 27, 2017, the near totality of the activities of Archetype have been conducted or overseen by the Liquidators solely in connection with the BVI Liquidation.

146. The Liquidators have investigated potential claims and causes against various parties based on the events that led to Archetype's insolvency, obtained the books and records of Archetype from its BVI-based administrator, IFINA (BVI) Ltd., and then reviewed the books and records for purposes of an investigation of the causes of Archetype's insolvency. Upon issuance of the Liquidation Order, Mr. Trott advertised his appointment in both a BVI newspaper and its Official Gazette, and issued SOAs to all interested parties, which were then filed with the BVI Court shortly thereafter.

147. Almost entirely from their offices in BVI, the Liquidators have provided specific notices to creditors, investors, services providers, and other interested parties, prepared the creditors' reports, and conducted the bulk of its investigation of the causes of Archetype's insolvency, including by investigating Tremont, Haipo, Vanderbruggen, Rocky Point, BeoCare Group, and other third parties involved in: (1) the negotiation and execution of the Tremont Notes; (2) Archetype's investment in BeoCare Group; (3) the loan from Haipo Asia to BeoCare International; and (4) the Borrowers' default on the four notes in which Archetype invested.

148. Also from their offices in the BVI, the Liquidators have conducted numerous conference calls with creditors, the Borrowers, and service providers to understand, among other things, the Borrowers' defaults, Archetype's investment portfolio (in the Portfolios and

elsewhere), including the investments in the Tremont Notes, Archetype's use of funds, and its ownership structure and day-to-day operations.

149. The Liquidators also have retained BVI-counsel and have arranged for the issuance of numerous letters requesting further information regarding Archetype's assets located throughout the world prior to its entry into liquidation. Each letter requests specific information concerning the acts alleged in this Petition.

150. Finally, from their offices in the BVI, the Liquidators have engaged in significant negotiations with the non-Tremont Borrowers to which Archetype issued loans. The Liquidators also contacted Vanderbruggen and Tremont on multiple occasions, but thus far neither Vanderbruggen nor Tremont has submitted a proposal to satisfy the nearly EURO 27 million owed under the Tremont Notes.

151. Under the circumstances, the Liquidators submit that there is ample evidence and precedent to support recognition of the BVI Liquidation as a foreign main proceeding.

**E. Alternatively, the BVI Liquidation Should Be Recognized as a Foreign Nonmain Proceeding**

152. Section 1502(5) of the Bankruptcy Code defines a foreign nonmain proceeding as "a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment." In turn, "establishment" is defined by 11 U.S.C. § 1502(2) as being "any place of operations where the debtor carries out nontransitory economic activity."

153. The Liquidators respectfully submit that, at a minimum, their activities in the BVI constitute nontransitory economic activity. For instance, Archetype maintained a fund administrator and counsel in the BVI. *See generally In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 84-86 (Bankr. S.D.N.Y. 2011).

154. Moreover, the Liquidators continue to attempt to realize any assets of Archetype and investigate any potential claims or actions on behalf of Archetype as part of the winding-up of Archetype's affairs, from the Liquidators' offices in the BVI. There is no foreign or domestic insolvency proceeding other than the BVI Liquidation.

155. As such, there can be no dispute that the BVI Liquidation is a legitimate insolvency proceeding. Under the circumstances, at a minimum, this Court can recognize the BVI Liquidation as a foreign nonmain proceeding pursuant to chapter 15 and, further grant the Liquidators the discretionary relief requested.

**F. The BVI Liquidation Meets All Other Requirements for Recognition**

156. In addition to being a foreign main (or nonmain) proceeding brought by a duly appointed foreign representative, the BVI Liquidation meets all other requirements for recognition under section 1515 of the Bankruptcy Code.

157. Under Section 1515(b) and (c), a Chapter 15 petition "must be accompanied by certain evidentiary documents that are *presumed to be authentic in the absence of contrary evidence.*" *Oi Brasil Holdings*, 578 B.R. at 194 (citation omitted and emphasis added).

158. The Petition is accompanied by a certified copies of the Liquidation Order, Appointment Order and Sanction Order, each issued by the BVI Court, which evidences the commencement of the BVI Liquidation, the appointment of Mr. Trott as the Liquidator, his replacement by Mr. Walker, and the sanction to file this Petition and re-appointment of Mr. Trott as the joint foreign liquidator.

159. The Petition also is accompanied by a declaration from Mr. Walker that contains a statement identifying all foreign proceedings with respect to Archetype that are known to the Liquidators. *See* 11 U.S.C. §§ 1515(b), (c).

160. The Petition likewise is accompanied by a declaration from Mr. Walker containing the information required by Bankruptcy Rule 1007, including the disclosures required by Bankruptcy Rule 7007.1, a statement indicating that there are no other persons or entities known to the Liquidators that are authorized to administer foreign proceedings with respect to Archetype, and a list of all parties to litigation with Archetype in the United States.

161. All documents supporting the Petition are in English. *See* 11 U.S.C. § 1515(d).

162. For all of these reasons, this Court can and should find that all of the requirements for recognition of the BVI Liquidation as a foreign main proceeding under chapter 15 have been satisfied.

## **II. DISCOVERY RELIEF IS WARRANTED HERE**

163. Section 1521(a) provides that “[u]pon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief including . . . (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities[.]” *See also In re Inversora Eléctrica de Buenos Aires*, 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016) (in the context of section 1521(a), the “Bankruptcy Code confers exceedingly broad discretion . . . that would further the purposes of chapter 15 and protect the debtor’s assets and the interests of creditors.”)

164. This District has recognized the broad scope of section 1521(a)(4). *See, e.g., Platinum Partners I*, 583 B.R. at 810-811; *In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 471 B.R. 342, 346 (Bankr. S.D.N.Y. 2012) (citation and footnote omitted) (“Section 1521(a)(4) provides specifically that the Court may enter an order providing for ‘the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations

or liabilities.’ ... By its terms, this provision enables a Foreign Representative to take broad discovery concerning the property and affairs of a debtor.”).

165. Any third-party who can be shown to have a relationship with a debtor can be made subject to investigation by a bankruptcy trustee or examiner since the purpose of such an investigation is to aid in discovery of assets. *See In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993) (citing, *e.g.*, *In re Vantage Petroleum Corp.*, 34 B.R. 650, 651 (Bankr. E.D.N.Y. 1983)).

166. This Court routinely orders similar relief in cases under chapter 15. *See, e.g.*, *Platinum Partners I*, 583 B.R. at 811, 818-22 (exercising broad discretion to compel production of debtor’s accounting records under section 1521(a)(4)); *Millennium Glob. Corp.*, 471 B.R. at 346-47 (noting that “there is no authority in chapter 15 limiting the discovery available to foreign representatives”); *In re Fairfield Sentry Ltd. Litig.*, 458 B.R. 665, 679 n. 5 (S.D.N.Y. 2011) (noting that section 1521(a)(4) “allows for discovery in the United States whether or not the debtor has assets here”).

167. As discussed in further detail above, the Liquidators may bring Third-Party Claims, including, but not limited to, claims against multiple entities or individuals located in the United States: Vanderbruggen, Rocky Point, Tremont, BeoCare Group and Haipo America.

168. Critical information concerning the Third-Party Claims is located in the United States in the form of wire transfer records maintained by the New York Banks, as well as bank statements and other documents reachable through bank discovery.

169. Although the Tremont Notes and other Archetype investments were funded in Euros, these potential claims of Archetype require the Liquidators to trace and recreate accurately

the flow of funds pertaining to U.S. dollar-denominated transactions, as the United States-based entities, if nothing else, transacted business in U.S. dollars.

170. Moreover, a settlement made to Archetype subsequent to the BVI Liquidation was made in U.S. dollars, which is a further indicator that Archetype's counterparties transacted business in U.S. dollars.

171. In conclusion, conducting discovery from Vanderbruggen, Rocky Point and the New York Banks is critical to the investigation and to the Liquidators' ability to obtain a recovery for Archetype's creditors and investors.

172. Indeed, and as previously noted in the introduction to this Petition, the precise relief sought by the Liquidators in this case, documents from Vanderbruggen and Rocky Point, and intermediary bank discovery and bank account discovery in respect of a debtors' assets, affairs, rights, obligations, or liabilities, has been routinely granted by this Court. *See, e.g., Lawndale Grp. S.A.*, No. 15-11352 (SCC) (Bankr. S.D.N.Y. July 6, 2015) (recognizing BVI liquidation and granting 1521(a)(4) request to engage in intermediary bank discovery regarding claims); *Farenco Shipping Co. Ltd.*, 11-14138 (REG) (Bankr. S.D.N.Y. Sept. 7, 2011); (recognizing BVI liquidation and granting 1521(a)(4) request to engage in intermediary bank discovery regarding claims); *Fairfield Sentry, Ltd.*, No. 10-13164 (BRL) (S.D.N.Y. July 22, 2010) (order recognizing as a main proceeding and authorizing petitioner to "conduct discovery" concerning the foreign debtor's "assets, affairs, rights, obligations or liabilities" in respect of companies in liquidation in the British Virgin Islands); *HiTs Africa Ltd.*, No. 18-11822 (MEW) (Bankr. S.D.N.Y. 2018) (recognizing liquidation as foreign main proceeding and allowing subpoenas to New York Banks); *Platinum Partners Value Arbitrage Fund LP*, No. 16-12925 (SCC) (Bankr. S.D.N.Y. 2016) (recognizing

liquidation as a foreign main proceeding and authorizing discovery almost identical to that sought here).

173. It should also be noted that perhaps because of the obvious relevance of such information to foreign liquidation proceedings, no bank has objected to the resultant subpoenas issued. Moreover, New York law provides these are the banks' records and the banks' records alone. *AQ Asset Mgmt. v. Levine*, 974 N.Y.S.2d 332, 342 (1st Dep't 2013) (financial records are the banks' records; customers have no standing to object to subpoenas for financial records).

174. Discovery and turnover of information concerning Archetype's assets, affairs, rights, obligations and liabilities from Vanderbruggen, Rocky Point, and the Discovery Subjects is precisely what the Liquidators seek here, and is essential to the Liquidators' efforts to fully investigate their claims against third-parties so as to eventually recover Archetype's assets. Under the circumstances, the Liquidators respectfully request that, upon recognition, this Court enter an Order:

- a. permitting the Liquidators to issue discovery requests to Rocky Point and Vanderbruggen, each of which maintain a presence in New York; Vanderbruggen is responsible for many of Archetype's investments, including the Tremont Notes, the default of which contributed to Archetype's insolvency, and Rocky Point is a holding company to which, on information and belief, Vanderbruggen may have transferred assets in order to avoid repaying the Tremont Notes and other outstanding debts to Archetype;
- b. permitting the Liquidators to issue discovery requests to the New York Banks located in the District that process U.S. dollar-denominated and foreign currency wire transfers, and maintain records of such transfers with respect to Archetype, as well as the Discovery Subjects, so as to ascertain information concerning Archetype's assets prior to the commencement of the BVI Liquidation, as well as claims against Tremont, Vanderbruggen, Rocky Point, and other borrowers who defaulted on notes issued to Archetype (as set forth in detail below and in the accompanying Walker and Carroll Declarations);
- c. granting the Liquidators the authority to assert claims of Archetype against parties that are subject to jurisdiction in the United States;

- d. ordering that the administration or realization of any assets of Archetype within the territorial jurisdiction of the United States be entrusted to the Liquidators as the exclusive representatives of Archetype in the United States; and
- e. granting such other and further relief as the Court may deem just and proper.

**REQUEST FOR WAIVER OF LOCAL BANKRUPTCY RULE 9013-1(a)**

175. It is respectfully requested that this Court waive and dispense with the requirement set forth in Rule 9013-1(a) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York that any motion filed shall be accompanied by a memorandum of law on the grounds that the relevant authorities in support of the Petition are contained herein.

**HEARING DATES AND NOTICES**

176. Section 1517(c) of the Bankruptcy Code requires that “[A] petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time.” Bankruptcy Rule 2002 sets forth a twenty-one day notice requirement to parties in interest with certain exceptions to approve the Petition. If no objections to this Petition are filed by the date ordered for such objections, the Liquidators request that the Court enter the proposed order recognizing the BVI Liquidation as a foreign main proceeding without a hearing pursuant to Local Rule 2002-2. Notwithstanding this request, the Liquidators and their counsel are of course willing to appear and will be prepared to answer any questions that the Court may have.

177. Subsection (q)(1) of Rule 2002 governs notice of a petition for recognition of a foreign proceeding. As per the rule, and as per the practice in similar cases where neither provisional relief is sought nor is there pending United States litigation, the Liquidators propose that once a hearing date has been set by the Court, notice will be given as reasonable and appropriate under the circumstances and pursuant to Rule 2002.



178. No previous application for the relief requested in this Petition has been made in this or any other court in the United States.

**CONCLUSION**

WHEREFORE, the Liquidators respectfully request that this Court enter an Order, substantially in the form of Exhibit 1 to this Petition, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: New York, New York  
June 17, 2019

Respectfully submitted,

HOLLAND & KNIGHT LLP

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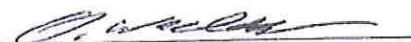
### VERIFICATION

Pursuant to 28 U.S.C. § 1746, Owen Walker declares as follows:

Martin Trott and I are the duly appointed joint liquidators and foreign representatives (together, the “**Liquidators**”) of Archetype Investments Fund SPC Ltd, a British Virgin Islands professional fund in liquidation under the supervision of the Commercial Division of the Virgin Islands, High Court of Justice, of the Eastern Caribbean Supreme Court, Claim No. BVIHC (COM) 2017/27. I have full authority to verify the foregoing *Verified Petition for Recognition of Foreign Insolvency Proceedings and Application for Additional Relief, Pursuant to Sections 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of the Bankruptcy Code* (the “**Verified Petition**”). I have read the Verified Petition, am informed, and believe that the allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6th day of June, 2019, in \_\_\_\_\_

  
Owen Walker

*Joint Liquidator of Archetype Investments Fund  
SPC Ltd*