

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 03-C-3904
)	
v.)	Hon. Robert W. Gettleman
)	
KEVIN TRUDEAU,)	
)	
Defendant.)	
)	
)	

**FEDERAL TRADE COMMISSION'S OPPOSITION TO PYRAMID SCHEME
PARTICIPANTS' MOTION TO INTERVENE**

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I. INTRODUCTION

In the latest obstacle to achieving consumer redress and concluding this matter, twenty-five participants in Kevin Trudeau's Global Information Network ("GIN") pyramid scheme (collectively, "the GIN Participants") seek to intervene—apparently because the Receiver halted their pyramid payments. For several reasons, however, their misguided motion is both legally meritless and factually baseless. First, because the GIN Participants neither own GIN nor have any right to unlawful pyramid payments, they lack a sufficient stake in this litigation to satisfy Article III standing requirements. Second, their motion is untimely because, through its attorneys, GIN knew about this litigation for nearly two years before anyone moved to intervene—after extensive litigation concluded, after the Court resolved the key factual issues, and after the Court created a receivership that the GIN Participants now seek to unravel.

Third, even if the motion were timely—and it is not—the GIN Participants still fail to satisfy the requirements of either Rule 24(a) or (b) because they lack any cognizable interest in this case, they raise no question of law or fact that has not already been litigated, and their intervention would prejudice the FTC substantially. If everyone involved with Trudeau's machinations were permitted to intervene, there will be thousands of parties before the Court. It makes no sense to spend public resources and the balance of the Receivership Estate sorting through the mess that intervention will precipitate. In short, the interests of justice demand that the Court deny the motion.

II. BACKGROUND

A. GIN FDN and Its Extensive Role in This Litigation

As the Court will recall, the Global Information Network FDN ("GIN FDN") is a Nevis-organized "multiform foundation" that owns GIN USA.¹ The FTC long suspected that Trudeau

¹ See Order (July 26, 2013) (DE729) (adopting FTC's proposed findings of fact); Proposed Findings of Fact ("Proposed FOF") at 3-4 (July 15, 2013) (DE713). The Proposed FOF contains numerous citations to hearing exhibits and testimony, *see id.* (identifying six transcript segments and eighteen exhibits related to the formation of GIN USA and GIN FDN), and the FTC will not include those references here.

used GIN FDN and GIN USA as asset protection vehicles. Therefore, the FTC subpoenaed their bank accounts almost two years ago. *See* PXA:1 (Feb. 10, 2012) (subpoena to First Merit Bank seeking both entities' account information); PXA:2 (Feb. 10, 2012) (similar subpoena to Fifth Third Bank). The GIN entities retained Faruki, Ireland & Cox ("Faruki") and moved to quash both subpoenas.

These motions establish that GIN knew about this litigation and the FTC's position that both entities held assets Trudeau controlled. *See* PXA:3, *FTC v. Trudeau*, GIN FDN's Mem., No. 1:12-mc-22 (S.D. Ohio Mar. 1, 2012) (DE1) at 1 ("After obtaining judgments against Trudeau in the underlying action in the United States District Court for the Northern District of Illinois, the FTC presumably seeks post-judgment discovery from Fifth Third Bancorp ('Fifth Third') regarding Trudeau's assets in order to satisfy the judgments."); PXA:4, *FTC v. Trudeau*, GIN USA's Mem., No. 5:12-mc-35 (N.D. Ohio Mar. 20, 2012) (DE1) at 1 (same language as the first motion, but substituting "First Merit" for "Fifth Third").² Writing in late 2012, both Ohio courts denied GIN's motions largely because GIN "'may have been created to evade the contempt sanction and conceal Trudeau's assets.'" *FTC v. Trudeau*, No. 5:12-mc-35, 2012 WL 6100472, *5 (S.D. Ohio Dec. 7, 2012) (quoting *FTC v. Trudeau*, No. 1:12-mc-22, 2012 WL 5463829, *5 (N.D. Ohio Nov. 8, 2012)). Significantly, neither GIN FDN nor any GIN Participants moved to intervene until twenty months after GIN knew that the FTC sought information about its assets to satisfy the judgment against Trudeau.

Additionally, GIN USA (GIN FDN's subsidiary) appeared in this action ten months ago, to fight another subpoena. The same lawyers—the Faruki firm—represented GIN USA again. *See* (Feb. 21, 2013) (DE562). Suffice it to say, because Faruki formally appeared on GIN's

² Significantly, neither GIN FDN nor its subsidiary (GIN USA) characterized themselves as "unincorporated associations" or any other sort of member-owned entity. *See* PXA:3-4.

behalf, the Faruki firm received electronic copies of every subsequent filing in this action, including the FTC's proposed findings of fact.

Furthermore, as the Court is aware, APC Trading ("APC") served as the sole member of GIN FDN's management board.³ Nataliya Babenko owns APC,⁴ and the same lawyers—the Faruki firm—represented Babenko in subpoena enforcement proceedings in New York, *see* PXA:5, and then represented her at her May, 2013 deposition, *see* PXA:6. There is no doubt that GIN FDN knew about this litigation, and the FTC's goals in this litigation, long before the Court's August 7, 2013 Receivership Order. *See* DE742 (Aug. 7, 2013).

B. The Court's Findings

On July 26, 2013, following months of discovery and a comprehensive evidentiary hearing involving voluminous exhibits and testimony from Trudeau's asset protection advisor, Marc Lane, the Court found the following facts: (i) GIN FDN is a Nevis "multiform foundation"; (ii) Trudeau created GIN FDN; (iii) Lane organized GIN FDN; and (iv) Lane intentionally recommended the "multiform foundation" structure for protection of GIN FDN's assets.⁵ Thorough evidence supported these findings—which Trudeau did not appeal.

C. The GIN Membership Agreement

Significantly, the GIN Participants electronically signed a "Membership Agreement" with terms inconsistent with any notion that they somehow "own" GIN as an "unincorporated association."⁶ Specifically, their agreement provides:

³ *See* Order (July 26, 2013) (DE729); Proposed FOF at 4 (July 15, 2013) (DE713).

⁴ *See* Order (July 26, 2013) (DE729); Proposed FOF at 4 (July 15, 2013) (DE713).

⁵ *See* Order (July 26, 2013) (DE729); Proposed FOF at 4 (July 15, 2013) (DE713).

⁶ K. Johnson Dec. ¶ 3. Two of the twenty-five GIN Participants had "family accounts" (Timothy and Cheryl Hampton are both GIN Participants, but apparently only Cheryl Hampton signed; likewise, proposed intervenor Yon Cole may not have signed, but family member Lisa Cole did). *See id.* at ¶ 4.

- “GIN makes no representations, warranties, or guarantees as to the amount of information that will be provided, when or how often that information will be provided, if or when requests from Members will be answered or by whom, if or when Members will receive mentoring or by whom, and if, when or where, webinars or other seminars or workshops will be offered.”
- “All material on this website, including, but not limited to, text, graphics, logos, audio clips, video clips, links, digital downloads, and trademarks is owned, controlled by or licensed by GIN and is protected by copyright, trademark, and other intellectual property laws. As between you and GIN, **GIN exclusively owns** all rights, titles and interest in and to the site content. You agree not to do anything that might impair such rights, **nor will you assert an ownership claim** in any of the above-referenced intellectual property or in the site content.”

PXA:7, Membership Agreement §§ 6.2, 10.1 (emphasis added). Furthermore, the GIN Participants agreed that “GIN reserves the right to cancel [their] membership at any time for any reason or no reason at all, in its sole discretion.” *Id.* at § 9.1. These terms are impossible to reconcile with the new theory that the GIN Participants each “jointly own[s]” GIN. *See* Proposed Cmpl. ¶ 37 (Nov. 18, 2013) (DE793).

D. The Pyramid Scheme Participants

Significantly, more than half of the twenty-five GIN Participants received payments from GIN for their “recruiting” efforts. K. Johnson Dec., PXB ¶ 2 (Dec. 19, 2013). In fact, their own alleged “expert,” Thayer Lindauer, opines that GIN operated as an illegal pyramid scheme:

My review of the current sales program of Global Information Network indicates that [it] was **almost certainly operating as a pyramid promotional scheme** as defined by various administrative decisions of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act.

PXA:8, Letter from T. Lindauer to T. Shimko (Dec. 2, 2013) (emphasis added). The FTC’s pyramid scheme expert concurs. Specifically, economist Peter Vander Nat—arguably the country’s preeminent expert on pyramids—provides an expert report including thorough economic analysis.⁷ Dr. Vander Nat “conclude[s] that GIN is a pyramid scheme.” PXC:1 at 1,

⁷ Dr. Vander Nat has been deposed or testified at trial as an expert witness in fourteen pyramid scheme cases brought by various public agencies, including the FTC, DOJ, and the Florida Attorney General’s office. To date, no court has ever rejected his conclusion that an enterprise was a pyramid scheme. *See, e.g., FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp.2d 502, 532 (S.D.N.Y. 2000) (finding defendants operated unlawful pyramid scheme based on Dr.

Expert Report of Dr. Vander Nat (Dec. 18, 2013). Among other things, he opines that the overwhelming majority of GIN pyramid participants will lose money:

GIN promotes its business opportunity as a “perpetual money-making machine.” In reality, it is a perpetual recruitment scheme that **dooms the vast majority of the participants (well above 90%) to financial losses** by the very design of the compensation plan.

PXC:1 at 1 (emphasis added). Dr. Vander Nat’s conclusions are consistent with the Receiver’s preliminary findings that almost everyone in the pyramid loses. *See* Receiver’s First Report (Sept. 6, 2013) (DE747) at 15 (finding that, on average, 98.47% of GIN members earn less than their \$1800 annual membership dues).⁸

Although almost everyone loses,⁹ a very few do not. Perry Kiraly, the lead proposed intervenor, made almost \$48,000, and would stand to make more if the Receiver had not dismantled Trudeau’s pyramid.¹⁰ K. Johnson Dec., PXB at ¶ 5 (Dec. 19, 2013). Several other GIN Participants who seek to intervene also made money, and stand to make more at the expense of lower-ranking members. *See id.* at ¶ 6. Many others have not yet recouped their pyramid payments, but apparently hope to do so if Trudeau’s pyramid continues functioning, *see id.* at ¶ 7 (as Dr. Vander Nat explains, for this reason, it is typical for middle-level pyramid scheme

Vander Nat’s expert analysis).

⁸ Depending on the year, the percentage of members who earn more than their annual dues ranged from 6.74% in 2010 to .51% in 2013. *See* Receiver’s First Report (Sept. 6, 2013) (DE747) at 15.

⁹ At its peak, GIN had more than 35,000 members. *See id.* at 16 (reporting 35,938 active members in 2013).

¹⁰ The Receiver terminated the GIN pyramid program effective December 1. K. Johnson Dec., PXB ¶ 9. In 2010, out of 32,123 then-active members, only 78 people (other than Trudeau and Babenko) made more than \$20,000. *See id.* Two of those people, Perry Kiraly and Douglas Hine, seek to intervene here. K. Johnson Dec., PXB ¶ 8. Interestingly, Kiraly apparently obtained a donation used to help fund this motion from Ed Foreman, a former Congressman, Trudeau associate, and paid speaker at GIN events. *See* PXA:10 (the reference to meeting at the “Washington, D.C. event” may be a reference to Trudeau’s recent Washington, D.C. legal defense fundraiser). After ABC News found Trudeau in Zurich, Trudeau instructed Neil Sant and Lee Kenny to “get ed forman” to “send letters” and “call” on his behalf. *See* PXA:11.

participants to want the pyramid to continue—so they can recover their “investment” from lower-ranking members, *see* P. Vander Nat Dec., PXC at ¶ 3 (Dec. 19, 2013)). This is why the GIN Participants allege that they “benefit financially from their membership in [GIN] in the form of residual income paid to members for attracting new members,” Proposed Cmpl. ¶ 44 (Nov. 18, 2013) (DE793), and why they complain that the Receiver deprived them of their purported “rights to income disbursements,” *see id.* at ¶ 79.¹¹

III. ARGUMENT

A. Article III Bars Intervention Because the GIN Participants Lack Standing.

Under Seventh Circuit law, “the proposed intervenor must have a stake in the litigation ‘in order to satisfy Article III.’” *Bond v. Uteras*, 585 F.3d 1061, 1070 (7th Cir. 2009) (quotation omitted); *see also Gautreaux v. Kemp*, 132 F.R.D. 193, 195 (N.D. Ill. 1990) (“Obviously, before a party is permitted to intervene in a dispute, it must be evident that this party has standing under Article III of the Constitution.”). Article III standing requires the GIN Participants to prove “an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical[.]”¹² *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and quotations omitted). For two reasons, the GIN Participants cannot meet this test. First, any theory of injury that depends on

¹¹ Although FRCP 24(c) required the GIN Participants to serve the FTC with their motion to intervene “as provided in Rule 5,” they failed to do so. PXA ¶¶ 2-9, J. Cohen Dec. (Dec. 20, 2013); *see also Retired Chi. Police Ass’n v. City of Chi.*, 7 F.3d 584, 595 (7th Cir. 1993) (“Whether to permit a procedurally defective motion to intervene is within the sound discretion of the district court.”). Particularly given the costs to the receivership estate (and ultimately to consumers) if intervention is allowed, *see infra* at 12-13 and 15, the Court should not excuse the failure, and thus need not proceed further. *See Retired Chi. Police*, 7 F.3d at 595 (affirming denial of motion to intervene when proposed intervenors attempted to adopt existing pleadings in violation of FRCP 24(c); “In this instance, the district court refused to permit such a deviation from the requirement of the Rule.”); *FTC v. Med Resorts Int’l, Inc.*, 199 F.R.D. 601, 606 (N.D. Ill. 2001) (“Some leniency is available under [FRCP 24(c)], but total dereliction of the Rule warrants dismissal of the motion.”) (mag. op.).

¹² “The burden to establish standing is on the party invoking federal jurisdiction[.]” *DH2, Inc. v. SEC*, 422 F.3d 591, 596 (7th Cir. 2005) (citation omitted).

their purported ownership of GIN FDN runs contrary to this Court's well-founded findings (which the "law of the case" doctrine prevents them from relitigating). Second, any theory of injury that depends on their "rights" as participants fails because any purported right to pyramid payments is not legally cognizable, and their apparent fear that they will lose access to GIN seminars and social events is too speculative to satisfy Article III.

1. The GIN Participants Have Not Proven a Legally Cognizable Injury Because They Do Not Own GIN FDN.

The GIN Participants' motion includes no declarations, documents, or other evidence suggesting that they own GIN FDN, which is unsurprising given this Court's contrary finding that GIN FDN was an asset protection vehicle designed to shield Trudeau's wealth.¹³ Notwithstanding this finding—which followed months of discovery and a full evidentiary hearing—the GIN Participants allege that GIN FDN "is not a Trudeau asset," *see* Proposed Complaint ¶ 77 (Nov. 18, 2013) (DE793), and is purportedly "owned by its current dues-paying members." *Id.* at ¶ 35. In reality, GIN FDN is a Nevis-organized "multiform foundation" that has no owners.¹⁴ *See* PXD:1, M. Lane Aff. (July 2, 2012) (attaching Nevis multiform foundation ordinance). In fact, when deposed, Lane—who formed GIN FDN¹⁵—testified that it has "no owners":

QUESTION: Who owns GIN USA?

LANE: GIN USA is owned by Global Information Network Foundation.

¹³ *See supra* at 3; *see also* Order (July 26, 2013) (DE729); Proposed FOF at 18-19 (July 15, 2013) (DE713) (discussing Trudeau's asset concealment efforts).

¹⁴ The fact that a Nevis "multiform foundation" has no owners is one of the reasons it functions as an asset protection vehicle.

¹⁵ *See* Order (July 26, 2013) (DE729); Proposed FOF at 4 (July 15, 2013) (DE713).

QUESTION: Who owns GIN FDN?

LANE: **Global Information Network Foundation has no owners.**

PXA:9, M. Lane Dep. 298:21-25 (May 16, 2013). Ultimately, the Proposed Complaint's *ipse dixit* suggesting that the GIN Participants somehow own GIN FDN is irrelevant because conclusory allegations cannot support a motion to intervene. *See, e.g., SEC v. Falor*, 270 F.R.D. 372, 373 (N.D. Ill. 2010) ("In deciding a motion to intervene, the court must accept as true the **non-conclusory** allegations of the movant's motion and complaint.") (citation omitted) (emphasis added); *Schultz v. Connery*, No. 84 C 5761, 1987 WL 28272, *2 (N.D. Ill. Dec. 11, 1987) ("This court must take as true all **nonconclusory** allegations supporting a motion to intervene absent sham, frivolity or other objections.") (quotation omitted) (emphasis added).

Additionally, it is impossible to reconcile the Court's finding that Trudeau created GIN FDN as an asset protection vehicle with the GIN Participants' unsupported assertion that they actually own GIN FDN's assets, and the "law of the case" doctrine prevents GIN Participants from relitigating the finding that Trudeau created GIN FDN for asset protection purposes. Specifically, under the "law of the case" doctrine, courts "should be loathe" to reconsider prior findings "in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1986). The opposite is true here: the Court's decision was exactly right, and allowing the GIN Participants to relitigate the finding that GIN FDN functioned as an asset protection vehicle for Trudeau's wealth would work a manifest injustice against the more than 800,000 consumers Trudeau victimized through his *Weight Loss Cures* book.

Furthermore, the Membership Agreement underscores that the GIN Participants do not "own" GIN. As quoted above, the Agreement disclaims any promises regarding what club information GIN will provide members, states that GIN "exclusively owns" its web content, and ensures GIN the absolute right to terminate memberships "**at any time for any reason or no**

reason at all.” PX:A7, Membership Agreement §§ 6.2, 9.1, 10.1 (emphasis added). This Agreement plainly establishes a commercial relationship, not a jointly-owned unincorporated association. In short, because the GIN Participants have not proven that they own GIN FDN, and because they cannot prove that, they lack a sufficient stake in this litigation to establish Article III standing. *See Gautreaux*, 132 F.R.D. at 195 (rejecting alleged injury based on violation of consent decree when proposed intervenor had produced no support that a violation occurred; “Therefore, **in the absence of any factual support for this contention**, the claimed violation of the consent decree is insufficient to create Article III standing.”) (emphasis added).¹⁶

2. The GIN Participants’ Interest in GIN’s Benefits Is Either Not Legally Cognizable or Too Speculative To Satisfy Article III.

The GIN Participants assert two additional “interests” in this litigation: (1) the right to pyramid proceeds; and (2) their alleged interest in GIN seminars, training materials, and other undefined social benefits they apparently obtain as GIN Participants. Neither of these interests is sufficient to support Article III standing. First, standing requires a “legally protected interest.” *See, e.g., Raines v. Byrd*, 521 U.S. 811, 820 (1997) (quotation omitted); *Edgewood Manor Apartment Homes, LLC v. RSUI Indem. Co.*, 733 F.3d 761, 771 (7th Cir. 2013) (requiring

¹⁶ The fact that the GIN Participants lack a legally cognizable interest in this action is also conclusive evidence that, even if the Court allowed them to intervene, they could not prevail. Put differently, both of their claims require that they establish their alleged ownership interest in GIN. *See Proposed Cmpl.* ¶¶ 75, 77, 79 (Nov. 18, 2013) (DE793) (“first claim for relief”; alleging, *inter alia*, that “GIN FDN was formed as a member-owned foundation,” and that, “[a]s a member-owned foundation, GIN FDN is not a ‘Trudeau Asset’”; thus, the Receiver acted improperly when it “seized control” of GIN FDN’s assets that allegedly belong to the GIN Participants); *id.* at ¶¶ 82-86 (“second claim for relief”; alleging “conversion” and seeking damages stemming from “the Receiver’s actions in seizing [GIN FDN’s] assets”). Because it “appears to a certainty that the intervenor is not entitled to relief under any set of facts which could be proved under the complaint,” *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995), the motion to intervene should be denied for this reason as well, *see also SEC v. Falor*, 270 F.R.D. 372, 373 (N.D. Ill. 2010) (acknowledging that a motion to intervene can be denied if it “appears to a certainty that the intervenor is not entitled to relief under any set of facts which could be proved under the complaint”) (quotation omitted).

“legally protected interest”). Because pyramid schemes are unlawful,¹⁷ any purported entitlement to their proceeds is not a “legally protected interest” that can satisfy Article III.

Second, to satisfy Article III, the injury must be “actual or imminent, not conjectural.” *Lujan*, 504 U.S. at 561 (quotation omitted); *see also Wisconsin Right to Life, Inc. v. Schober*, 366 F.3d 485, 489 (7th Cir. 2004) (“Mere speculation is not enough to establish an injury in fact.”). Presently, the GIN Participants have access to GIN seminars, trainings, and other non-monetary benefits in accordance with their Membership Agreement. K. Johnson Dec., PXB ¶ 10. The Receiver does not intend to alter this arrangement imminently, and it may never be altered. *Id.* If the Receiver ultimately sells GIN to a third party, the purchaser is unlikely to terminate GIN Participants’ access to non-monetary member benefits (no one would purchase GIN simply to dissolve it). *Id.* at ¶ 11. In short, any possible lost access to membership benefits is neither certain nor likely—and the GIN Participants have not proven otherwise. For this reason as well, they lack Article III standing. *See, e.g., Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774, 793 (9th Cir. 2012) (“[I]f the contingent events do not occur, the plaintiff likely will not have suffered an injury that is concrete and particularized enough to establish the [injury-in-fact] element of standing.”); *United States v. Diekemper*, 604 F.3d 345, 350 (7th Cir. 2010) (“[E]ach element of standing must be supported by more than unadorned speculation.”) (quotation and Seventh Circuit’s alterations omitted).¹⁸

¹⁷ *See, e.g., Webster v. Omnitrition Int’l*, 79 F.3d 776, 782 (9th Cir. 1996) (“We adopt the *Koscot* standard here and hold that the operation of a pyramid scheme constitutes fraud for purposes of several federal antifraud statutes.”) (citing *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1181 (1975), *aff’d mem. sub nom., Turner v. FTC*, 580 F.2d 701 (D.C. Cir. 1978)); *United States v. Gold Unlimited, Inc.*, 177 F.3d 472, 480 (6th Cir. 1999) (following *Omnitron* and *Koscot* to affirm conviction for operating a pyramid scheme); *FTC v. Equinox Int’l, Corp.*, No. 990969, 1999 WL 1425373, *9 (D. Nev. Sept. 14, 1999) (imposing preliminary injunction; “Because Equinox satisfies the test of a pyramid scheme . . . the Equinox program will likely be found an unfair or deceptive practice in violation of the FTC Act.”); *Five-Star*, 97 F. Supp.2d at 533 (“Defendants’ failure to disclose that due to the structure of the Five Star scheme, the vast majority of consumers could not achieve the promised rewards of a free automobile lease and substantial income constituted a material omission in violation of the FTC Act.”).

¹⁸ The GIN Participants have also failed to demonstrate, and cannot demonstrate, that

B. The GIN Participants Fail To Satisfy Rule 24's Requirements.

1. The Motion Is Untimely.

Both FRCP 24(a) (intervention of right) and 24(b) (permissive intervention) mandate that the motion to intervene be timely. *See, e.g., United States v. City of Chi.*, 908 F.2d 197, 199 (7th Cir. 1990) (“Both forms of intervention require that a motion to intervene be **timely**.”; “[A]n untimely motion will fail even if the other requirements of the Rule are satisfied.”) (Seventh Circuit’s emphasis).¹⁹ In a well-established test the GIN Participants’ brief conspicuously omits, the Seventh Circuit considers four factors to determine whether a motion to intervene is timely: “(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; (4) any other unusual circumstances.” *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797-98 (7th Cir. 2013) (quotation omitted). All four factors weigh heavily against intervention.²⁰

they have a perpetual right to GIN’s non-monetary benefits. Assuming that they do not own GIN (and they do not), there is no reason why GIN could not cease to collect monthly dues from GIN members and terminate its relationship with them. In fact, the Membership Agreement makes clear that GIN can cancel memberships “**at any time for any reason or no reason at all, in its sole discretion**.” PXA:7, Membership Agreement § 9.1 (emphasis added). The GIN Participants’ unsustainable position is analogous to a satisfied customer suing an independent company to enjoin it from declaring bankruptcy, dissolving, or otherwise ceasing operations.

¹⁹ Timeliness only becomes an issue if—notwithstanding the facts—the GIN Participants have a legally cognizable interest as “joint owners” of an “unincorporated association.” However, they face an insurmountable problem because, assuming *arguendo* that GIN is an unincorporated association that the GIN Participants jointly own, then they had notice years ago when (1) GIN’s attorneys (Faruki) and (2) APC (the Babenko-owned sole member of GIN FDN’s management board) both knew the FTC sought to collect GIN FDN’s assets to satisfy the judgment against Trudeau. *See supra* at 1-3. Put differently, if GIN FDN is an unincorporated association, then notice to its attorneys or its management board is notice to its members. *Cf. Jaser v. New York Prop. Ins. Underwriting Ass’n*, 815 F.2d 240, 244 (2d Cir. 1987) (noting that service on the agent of an unincorporated association “constitutes service on all the individual members”); *Hanson v. Chicago, B. & Q. R. Co.*, 282 F.2d 758, 760 (7th Cir. 1960) (holding that, for purposes of diversity of citizenship, an unincorporated association is a deemed a citizen of all states in which any member resides). The GIN Participants cannot have it both ways: they cannot have an ownership interest sufficient to establish standing, yet so insufficient that notice to their agent and management board was not notice to members.

²⁰ “Determining whether an application to intervene is timely is committed to the sound

a. The GIN Participants Knew or Should Have Known About Any Interest in this Case Almost Two Years Ago.

The GIN Participants argue that they filed their motion only three months after the Court appointed the Receiver, *see* DE793-2 (Nov. 18, 2013) at 9,²¹ but this is not the relevant time. Rather, the relevant time began when the GIN Participants knew or should have known that their “interests might be adversely affected by the outcome of the litigation.” *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 948 (7th Cir. 2000) (quotation omitted). GIN knew no later than March 2012 that the FTC claimed its assets belonged to Trudeau, *see supra* at 1-2 (discussing GIN’s motions to quash FTC subpoenas), but the motion to intervene was not filed until November 2013. This twenty-month delay renders the motion untimely.²²

b. Intervention Would Prejudice the FTC and the Receiver.

Prejudice to the existing parties is “[t]he most important consideration,” and the GIN Participants’ delayed intervention would be prejudicial in at least two ways.²³ First, intervention will force the FTC to spend limited public resources relitigating issues the Court already resolved. Second, the Receiver will have to spend money that would otherwise go to compensate Trudeau’s victims re-litigating issues with the GIN Participants. This relitigation discretion of the district court.” *Shea v. Angulo*, 19 F.3d 343, 348 (7th Cir. 1994).

²¹ Or, at least, this is what the GIN Participants apparently mean to argue. Inexplicably, in their November 18 filing, they contend that “Intervenors’ application should be deemed timely as the Order appointing the Receiver is less than 60 days old.” DE793-2 at 9. Actually, the Court appointed the Receiver on August 7—101 days earlier. *See* DE749 (Aug. 7, 2013).

²² *See, e.g., Heartwood, Inc. v. United States Forest Serv.*, 316 F.3d 694, 701 (7th Cir. 2003) (finding District Court’s decision allowing intervention only two weeks after a settlement was “erroneous as a matter of law” when intervenors should have known about their interest in the case earlier; “The relevant inquiry in determining timeliness, however, is not on the time between the settlement and the motion to intervene, but instead is on the time between the [intervenors’] knowledge that the suit could impact their interests and the motion to intervene.”).

²³ *See, e.g., People Who Care v. Rockford Bd. of Educ. Sch. Dist. No. 205*, 179 F.R.D. 551, 560 (N.D. Ill. 1998) (“The most important consideration in deciding whether a motion to intervene is untimely is whether the delay will prejudice the existing parties to the case.”); *PAC for Middle Am. v. State Bd. of Elections*, No. 95 C 827, 1995 WL 571893, *3 (N.D. Ill. Sept. 22, 1995) (“The most important consideration in this regard is whether the delay will prejudice the original parties to the case.”) (citation omitted).

would be unnecessary had the GIN Participants intervened earlier. Simply put, if the GIN Participants had intervened earlier, they would not now be seeking to force the FTC and the Receiver (and the Court) to undo, redo, or re-argue the complex series of motions and events that have occurred over the past twenty months. Accordingly, the Court should deny the GIN Participants' untimely motion.

c. Denying the Motion Will Not Prejudice the GIN Participants.

There is no prejudice to the GIN Participants because: (1) they cannot prevail anyway, *see supra* at 9 n.17; (2) lost pyramid payments are not a cognizable form of "prejudice," *see id.* at 9-10; and (3) they currently have access to GIN's non-monetary benefits, *see id.* at 10; and (4) they likely will retain this access in the future, *see id.*

d. Other Circumstances Militate Against Intervention.

The unique circumstances this case presents also counsel very strongly against intervention, which would be a remarkable step backward after moving toward consumer redress for nearly a decade. *See Sokaogon*, 214 F.3d at 949 ("The purpose of the [timeliness] requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal.") (quotation omitted). Furthermore, adding twenty-five new parties would unnecessarily complicate this action, and leave the door open to intervention by potentially thousands of others involved with Trudeau's schemes. *See People Who Care v. Rockford Bd. of Educ.*, 68 F.3d 172, 176 (7th Cir. 1995) (denying intervention in part because it "would be significantly disruptive"). In short, the Seventh Circuit's fourth consideration—the presence of unusual circumstances, *see Grochocinski*, 719 F.3d at 797-98, also counsels against intervention.

2. **The GIN Participants Fail To Establish a Right To Intervene Under Either FRCP 24(a) or (b).**
 - a. **The GIN Participants Fail To Meet Their Burden Under FRCP 24(a).**

Even assuming the GIN Participants had standing and acted timely, they still fail to meet FRCP 24(a)'s requirements. Notably, the Seventh Circuit requires a proposed intervenor to "have a direct and **substantial** interest in the subject matter of the litigation," *see, e.g., Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985) (emphasis added),²⁴ and this formulation demands an even greater interest than Article III requires, *City of Chicago v. FEMA*, 660 F.3d 980, 985 (7th Cir. 2011) (noting that, if no interest greater than Article III standing was required for intervention of right, then "intervention would be too easy and clutter too many lawsuits with too many parties," so "[m]ore must be required").²⁵ Thus, even if the GIN Participants have an interest that barely scrapes past Article III—which it does not—they still have not satisfied Rule 24(a)'s requirement that the interest be "substantial."²⁶

Additionally, under Rule 24(a), "the applicant's interest must not be represented adequately by one of the existing parties to the action." *Keith*, 764 F.2d at 1268. "[T]his requirement is taken seriously because intervention can impose substantial costs on the parties

²⁴ *See also Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs*, 101 F.3d 503, 506 (7th Cir. 1996) ("Our cases say that the prospective intervenor's interest must be direct, significant, and legally protectable."). As with standing, the GIN Participants have the burden to prove this interest. *See, e.g., Reid L. v. Illinois State Bd. of Educ.*, 289 F.3d 1009, 1017 (7th Cir. 2002).

²⁵ Fifteen years earlier, the Seventh Circuit suggested that, although intervention would not require an interest greater than Article III demands, "the would-be intervenor will not be permitted to push out the already wide-boundaries of Article III standing." *Solid Waste*, 101 F.3d at 507. Not only is *City of Chicago* much more recent, it is better reasoned because the alternative approach renders Rule 24(a)'s "interest" requirement duplicative of Article III's standing requirement.

²⁶ *See, e.g., Standard Heating & Air Conditioning Co. v. City of Minneapolis*, 137 F.3d 567, 571 (8th Cir. 1998) ("An interest that is remote from the subject matter of the proceeding, **or that is contingent upon the occurrence of a sequence of events before it becomes colorable**, will not satisfy [Rule 24(a)."] (quoting *Washington Elec. v. Massachusetts Mun. Wholesale Elec.*, 922 F.2d 92, 97 (2d Cir.1990)) (emphasis added).

and the judiciary.” *Med Resorts*, 199 F.R.D. at 607. Here, Trudeau argued (through highly competent counsel) that he did not control GIN. The GIN Participants have not shown why Trudeau’s failed effort to establish GIN’s independence did not adequately represent that (mistaken) view. In brief, the GIN Participants have not satisfied Rule 24(a)’s requirements.

b. Intervention Under FRCP 24(b) Would Prejudice the FTC and Run Contrary to the Interests of Justice.

The GIN Participants also have failed to show that permissive intervention is appropriate under FRCP 24(b), which requires the GIN Participants to prove that “(1) their claim and the main action have a common question of law or fact and (2) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.” *United States v. Board of Educ. of City of Chi.*, 102 F.R.D. 873, 876-77 (N.D. Ill. 1984).²⁷ Initially, there is no common question of law or fact (at least now) because Court already resolved the question that the GIN Participants seek to litigate. Furthermore, “[a]dditional parties always take additional time.” *United States v. American Inst. of Real Estate Appraisers of Nat’l Ass’n of Realtors*, 442 F. Supp. 1072, 1083 (N.D. Ill. 1977). Forcing both the FTC and the Receiver to re-litigate matters the Court already resolved would lead to significant additional delay as the new parties potentially would seek discovery and undertake other efforts to undo the Court’s findings. Worse still, allowing intervention would invite further parties to seek to intervene—exacerbating the delay and expense. Most important, allowing intervention would require the Receiver to spend limited Receivership Estate assets on litigation rather than consumer redress. Consequentially, permissive intervention would be substantially prejudicial.

IV. CONCLUSION

For the foregoing reasons, the FTC asks the Court to deny the motion to intervene.

²⁷ *SEC v. Homa*, 17 Fed. App’x 441, 447 (7th Cir. 2001) (noting District Court’s “considerable discretion” under FRCP 24(b) and affirming denial of motion to intervene by creditor seeking to assert rights against receivership property; court created receivership to unravel ponzi scheme).

Dated: December 20, 2013

David O'Toole (dotoole@ftc.gov)
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Respectfully Submitted,

/s/ Jonathan Cohen
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600 Pennsylvania Ave., N.W. M-8102B
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Fax: 202-326-2551

CERTIFICATE OF SERVICE

I, Jonathan Cohen, hereby certify that on December 20, 2013, I caused to be served true copies of the foregoing by electronic means, by filing such documents through the Court's Electronic Case Filing System, which will send notification of such filing to:

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/s/ Jonathan Cohen
Jonathan Cohen (jcohen2@ftc.gov)
Attorney for Plaintiff
Federal Trade Commission

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 03-C-3904
)	
v.)	Hon. Robert W. Gettleman
)	
KEVIN TRUDEAU,)	
)	
Defendant.)	
)	
)	

**EXHIBITS IN SUPPORT OF FEDERAL TRADE COMMISSION'S OPPOSITION TO
PYRAMID SCHEME PARTICIPANTS' MOTION TO INTERVENE**

FTC
EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Case No. 03-C-3904
)	
v.)	Hon. Robert W. Gettleman
)	
KEVIN TRUDEAU,)	
)	
Defendant.)	
)	
)	

**DECLARATION OF JONATHAN COHEN
IN SUPPORT OF FEDERAL TRADE COMMISSION'S OPPOSITION TO PYRAMID
SCHEME PARTICIPANTS' MOTION TO INTERVENE**

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

- (1) I am co-counsel for Plaintiff Federal Trade Commission ("FTC") in the above-captioned action, and I have personal knowledge of the matters contained herein.
- (2) Federal Rule of Civil Procedure ("FRCP") 24(c) requires that motions to intervene "be served on the parties as provided in Rule 5." To my knowledge, proposed intervenors did not ask the FTC to accept service of their motion.
- (3) FRCP 5(b)(1) provides that service must be made on a party's attorney unless the Court orders otherwise. FRCP 5(b)(2) provides six means of service.
- (4) FRCP 5(b)(2)(A) permits service by hand delivery, but I did not receive the proposed intervenors' motion by hand delivery. To my knowledge, no other FTC attorney received service by hand delivery.
- (5) FRCP 5(b)(2)(B) permits service by leaving the motion at the FTC's offices; to my knowledge, this did not occur.
- (6) FRCP 5(b)(2)(C) permits service by mail. To my knowledge, proposed intervenors did not mail their motion to the FTC.
- (7) FRCP 5(b)(2)(D) is inapplicable here because it applies only when the party or its attorney has no known address.
- (8) FRCP 5(b)(2)(E) provides for service by electronic mail, but only if the party consents in writing, and the proposed intervenors did not ask the FTC to consent.

(9) FRCP 5(b)(2)(F) provides for service by any other means to which the party has consented in writing, but the proposed intervenors did not ask the FTC to consent to service by an alternative means.

(10) Attached hereto as **Attachment 1** is a true and correct copy of a subpoena in the above-captioned action issued to First Merit Bank, NA on February 10, 2012.

(11) Attached hereto as **Attachment 2** is a true and correct copy of a subpoena in the above-captioned action issued to Fifth Third Bancorp on February 10, 2012.

(12) Attached hereto as **Attachment 3** is a true and correct copy of a Global Information Network Motion and Memorandum filed in *FTC v. Trudeau*, No. 1:12-mc-22 (S.D. Ohio Mar. 1, 2012) (DE1).

(13) Attached hereto as **Attachment 4** is a true and correct copy of a GIN USA Motion and Memorandum filed in *FTC v. Trudeau*, No. 5:12-mc-35 (N.D. Ohio Mar. 20, 2012) (DE1).

(14) Attached hereto as **Attachment 5** is a true and correct copy of a Memorandum in Support of Nataliya Babenko's Motion To Quash, filed in *FTC v. Trudeau*, No. 1:13-mc-116 (S.D.N.Y. May 8, 2013) (DE10).

(15) Attached hereto as **Attachment 6** as a true and correct copy of excerpts of the deposition of Nataliya Babenko, taken in the above-captioned action on May 17, 2013.

(16) Attached hereto as **Attachment 7** is a true and correct copy of a Global Information Network Membership Agreement.

(17) Attached hereto as **Attachment 8** is a true and correct copy of a letter from Thayer Lindauer to Timothy Shimko, dated December 2, 2013, and a true and correct copy of Thayer Lindauer's resume, which Timothy Shimko provided to the FTC.

(18) Attached hereto as **Attachment 9** is a true and correct copy of excerpts of a deposition of Marc Lane, taken in the above-captioned action on May 16, 2013.

(19) Attached hereto as **Attachment 10** is a true and correct copy of a handwritten note from Ed Foreman to Perry Kiraly, dated December 9, 2013.

(20) Attached hereto as **Attachment 11** are true and correct copies of two emails from Kevin Trudeau to various parties including Neil Sant and Lee Kenny, both dated March 18, 2013.


Jonathan Cohen

Executed on December 20, 2013 in Washington, D.C.

FTC PXA:1

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises

UNITED STATES DISTRICT COURT

for the Northern District of Ohio

Federal Trade Commission Plaintiff v. Kevin Trudeau, et al. Defendant Civil Action No. 03 C 3904 (If the action is pending in another district, state where: Northern District of Illinois)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: FirstMerit Bank, NA

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See attached Schedule.

Table with 2 columns: Place (U.S. Attorney's Office, 2 South Main Street, Akron, Ohio 44308) and Date and Time (03/05/2012 09:00)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/10/12

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk OR [Handwritten Signature] Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Federal Trade Commission, who issues or requests this subpoena, are: Michael Mora, 600 Pennsylvania Ave. NW M-8102B, Washington, DC 20580, mmora@ftc.gov, (202) 326-3373

Civil Action No. 03 C 3904

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because _____ ; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE TO SUBPOENA ISSUED TO FIRSTMERIT BANK

I. DEFINITIONS

A. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. **“Any”** shall be construed to include **“all,”** and **“all”** shall be construed to include the word **“any.”**

C. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. **“Document” shall also include Electronically Stored Information.**

D. **“Electronically Stored Information”** or **“ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any information created, manipulated, communicated, stored, or utilized in digital form, requiring the use of computer hardware or software. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media. **“ESI”** also includes such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

E. **“Referring to”** or **“relating to”** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

F. **“Subpoena”** shall mean the Subpoena issued to FirstMerit Bank, including this attached Schedule.

G. **“You”** and **“Your”** shall mean FirstMerit Bank and includes its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under

assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. The Commission may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this document request, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

C. **Scope of Search:** This Subpoena covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

D. **Document Production:** In lieu of producing the documents at the location specified on the Subpoena, you may elect to send all responsive documents to

Ronald Lewis, Investigator
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Mailstop M-8102B
Washington, DC 20580

Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by mail or telephone to Michael Mora, (202) 326-3373, at least five days prior to the return date.

E. **Document Identification:** Documents that may be responsive to more than one specification of this Subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this Subpoena have been previously supplied to the Commission, you may comply with this Subpoena by

identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

F. Production of Copies: Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this Subpoena. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.

G. Electronic Submission of Documents: The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, you must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

1. **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:

a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- b) All ESI other than those documents described in (1)(a) above must be provided in its native electronic format with extracted text or Optical Character Recognition (OCR) and all related metadata with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF);
- c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.

2. **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. Such documents in this format should be true, correct, and complete copies of the original documents as converted to TIFF images with corresponding document-level OCR text. Such a production is subject to the following requirements:

- a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number);
- b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
- c) Documents shall be produced in color where necessary to interpret them or render them intelligible.

3. For each document electronically submitted to the FTC, You should include the following metadata fields in a standard ASCII delimited Concordance DAT file:

- a) **For electronic mail:** begin Bates or DocID, end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
- b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
- c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or

DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.

4. If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact Commission counsel to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.

5. Submit electronic productions as follows:

a) With passwords or other document-level encryption removed or otherwise provided to the FTC;

b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;

c) All electronic media shall be scanned for and free of viruses;

d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.

6. Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

7. All electronic files and images shall be accompanied by a production transmittal letter that includes:

a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and

b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with these instructions.

H. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I. **Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this Subpoena. You are asked to execute this Certification and provide it with your response.

J. **Right to Financial Privacy:** The documents demanded by this Subpoena are exempt from the notice requirements of the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401 *et seq.*

The specifications in this Subpoena are intended to demand production only for the following exempt records, under the cited exemption:

1. Account records maintained in the name of any customer who is a party in litigation to which the Federal Trade Commission is also a party. *See* 12 U.S.C. § 3413(e). The RFPA defines "customer" as any individual or partnership of five or fewer individuals. *See* 12 U.S.C. § 3401 (defining "customer" and "person").

2. Account records maintained in the name of any corporation or other entity that is not an individual or partnership of five or fewer individuals. These accounts are not "customer" accounts within the meaning of the RFPA and fall outside the protection of the Act. *Id.*

These RFPA exemptions do not require the Federal Trade Commission to notify the customer of this Subpoena. Accordingly, we request that such notification of the Subpoena not be provided to such account holders.

In the event that you believe the specifications of this Subpoena demand production of records from the "customer" account of any individual or partnership of five or fewer individuals other than the customer(s) described above, you are directed not to produce such records. Should such records be responsive, please contact Michael Mora at (202) 326-3373, to discuss whether the FTC may wish to seek production of such third-party account records under other applicable exemption(s).

K. **Exclusion of Suspicious Activity Reports:** The documents demanded by this Subpoena exclude Suspicious Activity Reports, which should not be produced.

III. SPECIFICATIONS

"Subject Account" shall mean any bank account, including but not limited to the accounts identified below, held by or titled in the name of: (1) Kevin M. Trudeau, and any account held for his benefit or for which he is a signatory or authorized user; (2) K.T. Corporation Limited (KT Corp.), Acct. # [REDACTED]; (3) International Pool Tour, Inc., Acct. [REDACTED]; (4) KT Capital Corporation, Acct. [REDACTED]; (5) Natural Cures Health Institute, Acct. # [REDACTED]; (6) TRUCOM, LLC, Acct. [REDACTED]; (7) Trustar Productions, Inc., Acct. # [REDACTED]; (8) Trudeau Approved Products, Inc., Acct. [REDACTED]; (9) Alliance Publishing Group, Inc., Acct. [REDACTED]; (10) Natural Cures Holdings, Inc., Acct. # [REDACTED]; (11) KT Radio Network, Inc., Acct. # [REDACTED]; (12) Web Site Solutions USA, Inc., Acct. # [REDACTED]; and (13) GIN USA, Inc., Acct. [REDACTED].

For each **Subject Account**, produce the following:

A. **Signature cards, corporate resolutions, internal documents, notes, memoranda, letters, emails, research, case reports, database searches, cash deposit summaries, and any other files, work product, communications, or documents referring to or relating to the account holders, signatories, or authorized users on the Subject Account.** This request includes, but is not limited to:

1. All documents relating to or referring to any investigation into the activities of the Subject Account holders, signatories, or authorized users, and any decision to close the Subject Account or allow the Subject Account to remain open.

2. All documents referring to or relating to the Subject Account, account holders, signatories, or authorized users on the Subject Account that also relate to:

- a) Kevin M. Trudeau
- b) Suneil Sant
- c) Nataliya Babenko
- d) Manal Sughayer
- e) Global Information Network FDN
- f) Asia Capital Markets Ltd
- g) Valartis Bank (Lichtenstein)
- h) NBX Merchant Services Inc. (Bank of Montreal)
- i) American Business Bank
- j) Cardflex Financial Services
- k) Integrated Management Associates

3. All documents related to complaints by third parties.

B. Copies of monthly or periodic bank statements.

C. All documents relating to any withdrawal from or debit to the Subject Account, including:

1. Copies of checks, drafts, wire transfers, ACH transfers, cashier's checks and other debit instruments.
2. All documents related to any debit instruments, including any agreements or instructions regarding such debit instruments.
3. All documents identifying or related to the recipient of funds transferred from the account.
4. All documents relating to instructions from:
 - a) Kevin M. Trudeau
 - b) Suneil Sant
 - c) Nataliya Babenko

D. All documents relating to any deposit or credit to the Subject Account, including:

1. Copies of all deposit tickets, checks, bank checks, money orders, cashier's checks, wire transfers, ACH transfers, and any other negotiable instrument or deposit instruments.
2. All documents related to any credit instruments, including instructions, original requests, and other documents relating to or otherwise supporting any deposits.

3. All documents identifying or relating to the source of funds deposited in the account.

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by FirstMerit Bank and attached hereto.
3. The documents produced and attached hereto by FirstMerit Bank are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of FirstMerit Bank; and
 - c) Were made by the regularly conducted activity as a regular practice of FirstMerit Bank.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2012.

Signature

FTC PXA:2

AO 88B (Rev. 01/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises

UNITED STATES DISTRICT COURT

for the
Southern District of Ohio

Federal Trade Commission)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 03 C 3904
Kevin Trudeau, et al.)	
<i>Defendant</i>)	(If the action is pending in another district, state where: Northern District of Illinois

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES**

To: Fifth Third Bancorp

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See attached Schedule.

Place: U.S. Attorney's Office 221 E. Fourth Street, Suite 400 Cincinnati, OH 45202	Date and Time: 03/05/2012 09:00
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 2/10/12

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR


Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* _____
Federal Trade Commission _____, who issues or requests this subpoena, are:
Michael Mora, 600 Pennsylvania Ave. NW M-8102B, Washington, DC 20580, mmora@ftc.gov, (202) 326-3373

Civil Action No. 03 C 3904

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____; or

other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

SCHEDULE TO SUBPOENA ISSUED TO FIFTH THIRD BANCORP

I. DEFINITIONS

A. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. **“Any”** shall be construed to include **“all,”** and **“all”** shall be construed to include the word **“any.”**

C. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. **“Document” shall also include Electronically Stored Information.**

D. **“Electronically Stored Information”** or **“ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any information created, manipulated, communicated, stored, or utilized in digital form, requiring the use of computer hardware or software. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media. **“ESI”** also includes such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

E. **“Referring to”** or **“relating to”** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

F. **“Subpoena”** shall mean the Subpoena issued to Fifth Third Bancorp, including this attached Schedule.

G. **“You”** and **“Your”** shall mean Fifth Third Bancorp and includes its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under

assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this Subpoena. The Commission may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this document request, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

C. **Scope of Search:** This Subpoena covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

D. **Document Production:** In lieu of producing the documents at the location specified on the Subpoena, you may elect to send all responsive documents to

Ronald Lewis, Investigator
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Mailstop M-8102B
Washington, DC 20580

Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by mail or telephone to Michael Mora, (202) 326-3373, at least five days prior to the return date.

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- b) All ESI other than those documents described in (1)(a) above must be provided in its native electronic format with extracted text or Optical Character Recognition (OCR) and all related metadata with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF);
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- a) **For electronic mail:** begin Bates or DocID, end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
- b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
- c) **For loose electronic documents** (as retrieved directly from network file stores, hard drives, etc.): begin Bates or DocID, end Bates or

DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.

4. If you intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in your computer systems or electronic storage media, or if your computer systems contain or utilize such software, you must contact Commission counsel to determine whether and in what manner you may use such software or services when producing materials in response to this Subpoena.

5. Submit electronic productions as follows:

a) With passwords or other document-level encryption removed or otherwise provided to the FTC;

b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;

c) All electronic media shall be scanned for and free of viruses;

d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.

6. Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

7. All electronic files and images shall be accompanied by a production transmittal letter that includes:

a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and

b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with these instructions.

H. Sensitive Personally Identifiable Information: If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I. Certification of Records of Regularly Conducted Activity: Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this Subpoena. You are asked to execute this Certification and provide it with your response.

J. Right to Financial Privacy: Except as set forth in the attached Certificate of Compliance related to account records in the name of Nataliya Babenko, the documents demanded by this Subpoena are exempt from the notice requirements of the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. §§ 3401 *et seq.*

In all other respects, the specifications in this Subpoena are intended to demand production only for the following exempt records, under the cited exemption:

1. Account records maintained in the name of any customer who is a party in litigation to which the Federal Trade Commission is also a party. *See* 12 U.S.C. §

3413(e). The RFPA defines “customer” as any individual or partnership of five or fewer individuals. *See* 12 U.S.C. § 3401 (defining “customer” and “person”).

2. Account records maintained in the name of any corporation or other entity that is not an individual or partnership of five or fewer individuals. These accounts are not “customer” accounts within the meaning of the RFPA and fall outside the protection of the Act. *Id.*

These RFPA exemptions do not require the Federal Trade Commission to notify the customer of this Subpoena. Accordingly, we request that such notification of the Subpoena not be provided to such account holders.

In the event that you believe the specifications of this Subpoena demand production of records from the “customer” account of any individual or partnership of five or fewer individuals other than the customer(s) described above, you are directed not to produce such records. Should such records be responsive, please contact Michael Mora at (202) 326-3373, to discuss whether the FTC may wish to seek production of such third-party account records under other applicable exemption(s).

K. **Exclusion of Suspicious Activity Reports:** The documents demanded by this Subpoena exclude Suspicious Activity Reports, which should not be produced.

III. SPECIFICATIONS

“**Subject Account**” shall mean any bank account held by or titled in the name of: (1) Kevin M. Trudeau, and any account held for his benefit or for which he is a signatory or authorized user; (2) Global Information Network FDN, [REDACTED] and (3) Nataliya Babenko, Acct. # [REDACTED] and any account held for her benefit or for which she is a signatory or authorized user.

For each **Subject Account**, produce the following:

A. Signature cards, corporate resolutions, internal documents, notes, memoranda, letters, emails, research, case reports, database searches, cash deposit summaries, and any other files, work product, communications, or documents referring to or relating to the account holders, signatories, or authorized users on the Subject Account. This request includes, but is not limited to:

1. All documents relating to or referring to any investigation into the activities of the Subject Account holders, signatories, or authorized users, and any decision to close the Subject Account or allow the Subject Account to remain open.
2. All documents referring to or relating to the Subject Account, account holders, signatories, or authorized users on the Subject Account that also relate to:

- a) Kevin M. Trudeau
- b) Suneil Sant
- c) Nataliya Babenko
- d) KT Radio Network, Inc.
- e) NBT Trading Ltd
- f) Salkom Law Firm LLC (Ukraine)
- g) Olga Veniaminivna Babenko
- h) OPL Payments Ltd
- i) OPC Payments, Inc.
- j) Integrated Management Associates
- k) Terra Cognita Estate Solutions

3. All documents related to complaints by third parties.

B. Copies of monthly or periodic bank statements.

C. All documents relating to any withdrawal from or debit to the Subject Account, including:

1. Copies of checks, drafts, wire transfers, ACH transfers, cashier's checks and other debit instruments.
2. All documents related to any debit instruments, including any agreements or instructions regarding such debit instruments.
3. All documents identifying or related to the recipient of funds transferred from the account.
4. All documents relating to instructions from:
 - a) Kevin M. Trudeau
 - b) Suneil Sant
 - c) Nataliya Babenko

D. All documents relating to any deposit or credit to the Subject Account, including:

1. Copies of all deposit tickets, checks, bank checks, money orders, cashier's checks, wire transfers, ACH transfers, and any other negotiable instrument or deposit instruments.
2. All documents related to any credit instruments, including instructions, original requests, and other documents relating to or otherwise supporting any deposits.
3. All documents identifying or relating to the source of funds deposited in the account.

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Fifth Third Bancorp and attached hereto.
3. The documents produced and attached hereto by Fifth Third Bancorp are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Fifth Third Bancorp; and
 - c) Were made by the regularly conducted activity as a regular practice of Fifth Third Bancorp.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2012.

Signature

CERTIFICATE OF COMPLIANCE
WITH THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

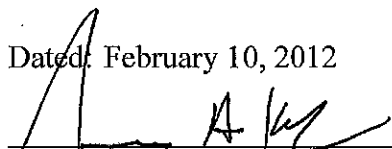
TO: Fifth Third Bancorp

FROM: Federal Trade Commission

I hereby certify that the applicable provisions of the Right To Financial Privacy Act of 1978, 12 U.S.C. Secs.3401-3422, have been complied with as to the enclosed Subpoena presented on February 10, 2012, for the financial records of NATALIYA BABENKO.

Pursuant to the Right To Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

Dated: February 10, 2012



James Kohm, Associate Director
Division of Enforcement
Federal Trade Commission
600 Pennsylvania Ave. NW, M-8012B
Washington, DC 20580

CUSTOMER NOTICE
RIGHT TO FINANCIAL PRIVACY ACT

February 10, 2012

Nataliya Babenko
601 DEL ORO APT 1010
OJAI, CA 93023

130 QUAIL RIDGE
WESTMONT, IL 605559

Dear Ms. Babenko:

Records or information concerning your transactions held by the financial institution named **Fifth Third Bancorp** in the attached subpoena are being sought by the Federal Trade Commission in accordance with the Right To Financial Privacy Act of 1978, 12 U.S.C. Secs. 3401-3422, for the following purpose(s): Discovery in aid of execution of judgment in FTC v. Trudeau, No. 03 C 3904 (N.D. Ill.).

If you desire that such records or information not be made available, you must:

- (1) Fill out the accompanying motion paper and sworn statement (as indicated by the instructions beneath each blank space) or write one of your own, stating that you are the customer whose records are being requested by the Government, and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.
- (2) File the motion and sworn statement by mailing or delivering them to the Clerk of the United States District Court for the Southern District of Ohio, in Cincinnati. (It would simplify the proceeding if you would include with your motion and sworn statement a copy of the attached subpoena, as well as a copy of this notice.).
- (3) Serve the Government authority requesting the records by mailing (by registered or certified mail) or by delivering a copy of your motion and sworn statement to Michael Mora, Federal Trade Commission, 600 Pennsylvania Ave. NW, M-8102B, Washington, DC 20580.
- (4) Be prepared to come to court and present your position in further detail.

You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information

requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

Very truly yours,

Michael Mora, Attorney
Federal Trade Commission
600 Pennsylvania Ave. NW, M-8102B
Washington, DC 20580
(202) 326-3373

Enclosures: Subpoena, Motion Form, Sworn Statement Form

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

NATALIYA BABENKO,

MISC. PROCEEDING NO.

Movant,

v.

FEDERAL TRADE COMMISSION,

Respondent.

MOTION FOR ORDER PURSUANT TO CUSTOMER CHALLENGE PROVISION OF
RIGHT TO FINANCIAL PRIVACY ACT OF 1978

Nataliya Babenko hereby moves this Court , pursuant to Section 1110 of the Right To Financial Privacy Act of 1978, 12 U.S.C. Sec. 3410, for an order preventing the government from obtaining access to my financial records. The agency seeking access is the Federal Trade Commission. My financial records are held by Fifth Third Bancorp. In support of this motion, the Court is respectfully referred to my sworn statement filed with this motion.

Respectfully submitted,

Date: _____

Nataliya Babenko

(Your Address)
(Your Telephone #)

CERTIFICATE OF SERVICE

I have mailed or delivered a copy of this motion and the attached sworn statement to Michael Mora, Attorney, Federal Trade Commission, 600 Pennsylvania Ave. NW, M-8102B Washington, DC 20580, on _____, 2012.

Nataliya Babenko

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

NATALIYA BABENKO,

MISC. PROCEEDING NO.

Movant,

v.

FEDERAL TRADE COMMISSION,

Respondent.

SWORN STATEMENT OF MOVANT

I, _____, (am presently/was previously)(Indicate One)

a customer of Fifth Third Bancorp, and I am the customer whose records are being requested by the Government. The financial records sought by the Federal Trade Commission are not relevant to the legitimate law enforcement inquiry stated in the Customer Notice that was sent to me because _____,

or should not be disclosed because there has not been substantial compliance with the Right To Financial Privacy Act of 1978 in that _____,

or should not be disclosed on the following other legal basis:

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

_____, 2012

Nataliya Babenko

FTC PXA:3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FEDERAL TRADE COMMISSION,	:	CASE NO. 1:12-MC-22
Plaintiff,	:	Judge _____
v.	:	
KEVIN TRUDEAU, <u>et al.</u> ,	:	
Defendants,	:	MOTION OF NON-PARTY GLOBAL INFORMATION NETWORK TO QUASH SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT <u>INSPECTION OF PREMISES</u>
v.	:	
THIRD PARTY	:	
	:	

Pursuant to Federal Rules of Civil Procedure 45(c)(3), Global Information Network (“GIN”) moves to quash or modify the February 10, 2012 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (“Subpoena”) issued by Plaintiff Federal Trade Commission (“FTC”) to Fifth Third Bank. The FTC’s Subpoena stems from an action between the FTC and Kevin Trudeau in the United States District Court for the Northern District of Illinois. The FTC presumably is requesting post-judgment discovery by sending a subpoena to non-party Fifth Third Bancorp (“Fifth Third”) to produce financial information. Mr. Trudeau is not, and never has been, an owner, manager, officer or director of GIN and GIN is not a party to this action; therefore, under the Federal Rules, the FTC is not permitted to obtain information about a third party's assets when the third party is unrelated to the case. Pursuant to Federal Rules of Civil Procedure 69(a)(2) and 26, the FTC’s post-judgment discovery requests must be limited in scope to information regarding the judgment debtor.

GIN's financial information is both irrelevant and unrelated to the pending civil action between the FTC and Kevin Trudeau. Accordingly, this Court should quash the FTC's Subpoena or modify the Subpoena by limiting it to information solely regarding parties to this litigation.

GIN was never served with notice of this subpoena and the return date is March 5, 2012. Therefore, GIN's motion is timely under Fed. R. Civ. P. 45.

The FTC's failure to serve GIN with notice of the Subpoena and the "fishing expedition" nature of seeking random discovery of unrelated parties, but with specific account information, begs the question of whether FTC has filed numerous other subpoenas of which GIN is unaware. The Court should therefore grant to GIN the equitable remedy of forcing the FTC to reveal all post-judgment subpoenas and other discovery requests that it has issued in relation to the litigation against Kevin Trudeau, as well as the contents of what it has received regarding GIN. The Court should also prevent the FTC from conducting any further discovery regarding GIN with that litigation.

Respectfully submitted,

/s/ Daniel J. Donnellon
Daniel J. Donnellon (0036726)
Kenjiro D. LeCroix (0087922)
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201 East Fifth Street
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Attorneys for Non-Party
Global Information Network

**MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA TO
PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR
TO PERMIT INSPECTION OF PREMISES OF THIRD PARTY
GLOBAL INFORMATION NETWORK**

The underlying case giving rise to this Miscellaneous Docket Motion does not involve Global Information Network (“GIN”), but involves a dispute between Plaintiff Federal Trade Commission (“FTC”) and Defendant Kevin Trudeau (“Trudeau”). After obtaining judgments against Trudeau in the underlying action in the United States District Court for the Northern District of Illinois, the FTC presumably seeks post-judgment discovery from Fifth Third Bancorp (“Fifth Third”) regarding Trudeau's assets in order to satisfy the judgments. The FTC's February 10, 2012 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (“Subpoena”), however, goes beyond the scope of post-judgment discovery and should be quashed. GIN is a multi-form foundation formed under the laws of the country of Nevis. Mr. Trudeau is not, and never has been, an owner, manager, officer or director of GIN.

This Subpoena ostensibly seeks banking information in aid of execution on behalf of a judgment creditor, the FTC. Accordingly, the requirements of the Federal Rules of Civil Procedure relating to judgment creditor discovery apply. Fed. R. Civ. P. 69(a)(2) provides:

“In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person – including the judgment debtor – as provided in these rules or by the procedure of the state where the court is located.”

Under Rule 69, judgment debtors may utilize the discovery devices permitted under the Federal Rules, but the inquiries “must be kept pertinent to the goal of discovering concealed assets of the judgment debtor and not be allowed to become a means of harassment of the debtor or third persons.” Caisson Corp. v. County West Bldg. Corp., 62 F.R.D. 331, 334 (E.D. Pa. 1974) (citing

Monticello Tobacco Co., Inc. v. American Tobacco Co., 12 F.R.D. 344(S.D.N.Y. 1952); Moore's Federal Practice § 69.05(1) (1974); and 12 Wright and Miller, Federal Practice and Procedure § 3014 (1973)). Third parties “can only be examined about assets of the judgment debtor and cannot be required to disclose their own assets.” Id. (citing Burak v. Scott, 29 F. Supp. 775 (D.D.C. 1939) and 12 Wright and Miller, Federal Practice and Procedure § 3014 (1973)).

Here, the FTC seeks discovery of not only assets of Kevin Trudeau, the judgment debtor, but it also requests financial information regarding GIN, a non-party to this litigation. The Federal Rules do not permit a party to request discovery regarding a non-party’s assets. The Subpoena must be limited to obtaining information regarding assets of parties to the litigation, such as Trudeau. By requesting GIN's financial information, the FTC’s Subpoena goes beyond the scope of discovery permitted under the Federal Rules.

Not only should the Court quash the Subpoena because it exceeds the parameters of Fed. R. Civ. P. 69, but also because it is beyond the constraints of Fed. R. Civ. P. 26. Fed. R. Civ. P. 26(b)(1) limits the scope of discovery to information “regarding any nonprivileged matter that is relevant to any party's claim or defense” The FTC’s Subpoena should be quashed because it seeks discovery that is irrelevant and overbroad. In the present matter, the FTC seeks banking statements, deposits, and various other documents regarding GIN. However, GIN’s financial information is irrelevant to this litigation. GIN is not a party to the litigation and the FTC has not provided any evidence as to how this information is pertinent to this litigation against Kevin Trudeau. Such an overbroad request suggests that the FTC is attempting to use its discovery request to conduct a “fishing expedition” in hopes of finding evidence that is damaging to GIN. However, the Federal Rules do not allow the use of Subpoenas and discovery tools in this manner.

GIN's motion to quash is also timely under the Federal Rules. Under Fed. R. Civ. P. 45, “[s]erving a subpoena requires delivering a copy to the named person” The FTC failed to take reasonable steps to notify GIN regarding the Subpoena. Instead, the FTC chose to serve the Subpoena upon Fifth Third and hoped to obtain information beyond what is permitted under the Federal Rules. By not serving GIN with a copy of the Subpoena, the time limits under Fed. R. Civ. P. 45(c) are inapplicable as to GIN.

Finally, the FTC’s shotgun approach to discovery regarding assets that may tangentially have a remote relation to Mr. Trudeau is well beyond the scope of the Federal Rules and its failure to notify GIN (and likely others named in the Subpoena) is inexcusable. The FTC’s overbroad Subpoena, along with its failure to serve GIN with notice, begs the question of whether the FTC has issued any other post-judgment discovery in relation to the litigation against Kevin Trudeau. GIN was only able to learn about this Subpoena through second-hand information. GIN is therefore concerned that this is not the first instance, nor the last, that the FTC has acted with patent disregard towards the Federal Rules in relation to GIN. In this Subpoena, for instance, the FTC identifies GIN’s account information with Fifth Third, despite the fact that GIN never provided such information to the FTC in this action. GIN is also unaware of any other occasion where it disclosed its financial information to the FTC. Therefore, it is reasonable to surmise that the FTC obtained this information by filing other subpoenas without serving GIN with notice. GIN therefore requests the Court to grant equitable relief to GIN by forcing the FTC to disclose all other post-judgment discovery requests and subpoenas that the FTC has issued in connection with the litigation against Kevin Trudeau, and to force the FTC to provide to GIN all of the information that the FTC has obtained thus far as a result of other discovery requests and subpoenas in relation to this litigation. The Court should

also prevent the FTC from filing any future subpoenas or discovery requests regarding GIN in relation to the instant action.

The FTC's Subpoena is contrary to Fed. R. Civ. P. 26, 45, and 69. Accordingly, this Court should quash the Subpoena or, in the alternative, modify the Subpoena so that it is limited to information regarding relevant parties to this litigation. This Court should also force the FTC to disclose all post-judgment subpoenas and other discovery requests it has issued in connection with the litigation against Kevin Trudeau, as well as the contents of what it has obtained regarding GIN, and should prevent the FTC from issuing any further discovery relating to GIN in connection with that litigation.

Respectfully submitted,

/s/ Daniel J. Donnellon
Daniel J. Donnellon (0036726)
Kenjiro D. LeCroix (0087922)
FARUKI IRELAND & COX P.L.L.
201 East Fifth Street
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Cincinnati, OH 45202
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Email: ddonnellon@ficlaw.com
klecroix@ficlaw.com

Attorneys for Non-Party
Global Information Network

CERTIFICATE OF SERVICE

I certify that on the 1st day of March, 2012, I filed the foregoing Motion of Non-Party Global Information Network to Quash Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises with the Clerk of Courts using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service the document to the non-CM/ECF parties:

Michael Mora
Sandhya P. Brown
Elizabeth Tucci
Lauren Kapin
Federal Trade Commission
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Mailstop NJ-2122
Washington, DC 20580

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Chicago, IL 60606

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Deonna Enterprises, Inc.

James R. Hubbard
Senior Vice President and Chief Legal
Officer
Fifth Third Bancorp
38 Fountain Square Plaza, MD 10AT76
Cincinnati, OH 45263

/s/ Kenjiro D. LeCroix
Kenjiro D. LeCroix

FTC PXA:4

the case. Pursuant to Federal Rules of Civil Procedure 69(a)(2) and 26, the FTC's post-judgment discovery requests must be limited in scope to information regarding the judgment debtor. The Non-Party Movants' financial information is both irrelevant and unrelated to the pending civil action between the FTC and Kevin Trudeau. Accordingly, this Court should quash the FTC's Subpoena or modify the Subpoena by limiting it to information solely regarding parties to this litigation.

The Non-Party Movants were never served with notice of this subpoena.

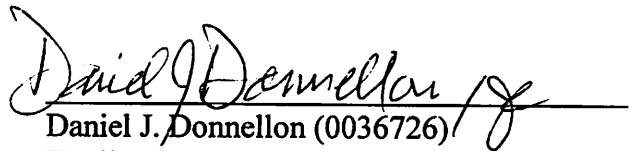
Therefore, this motion is timely under Fed. R. Civ. P. 45.

The FTC's failure to serve any of the Non-Party Movants with notice of the Subpoena and the "fishing expedition" nature of seeking random discovery of unrelated parties, but with specific account information, begs the question of whether the FTC has filed numerous other subpoenas about which the Non-Party Movants are unaware. The FTC issued at least four subpoenas on February 10, 2012, all of which requested a bank to disclose financial information about non-parties to the pending litigation. In response to one of the subpoenas, non-party Nevis multiform foundation Global Information Network ("GIN Foundation") filed a motion to quash in the Southern District of Ohio, stating that the FTC did not provide any evidence as to how financial information of a non-party is pertinent to the litigation between the FTC and Kevin Trudeau. Counsel for the FTC claimed to have gained information about Mr. Trudeau's connection with that particular non-party movant through information contained on a website suggesting Mr. Trudeau was a "founder" of GIN Foundation. The particular website in question, however, was not created by Mr. Trudeau or GIN Foundation, and contains no reliable nexus to support banking inquiries that could potentially interfere with the orderly business operation of such a non-party. Accordingly, these Non-Party Movants fear the FTC is similarly acting on

unreliable evidence, with no foundation, to make broad fishing expedition inquiries into their business.

In response to this Subpoena, FirstMerit already provided to the FTC a copy of the Non-Party Movants' banking statements and signature cards in February. Without any reliable information to hail these parties into court to quash the abuses of the FTC, this Court should grant to the Non-Party Movants the equitable remedy of forcing the FTC to reveal all post-judgment subpoenas and other discovery requests that it has issued in relation to the litigation against Kevin Trudeau, as well as the contents of what it has received regarding any of the Non-Party Defendants. The Court should also prevent the FTC from conducting any further discovery regarding the Non-Party Movants in connection with that litigation.

Respectfully submitted,



Daniel J. Donnellon (0036726)
Kenjiro D. LeCroix (0087922)
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klecroix@ficlaw.com

Attorneys for Non-Party
Global Information Network USA, Inc.

**MEMORANDUM IN SUPPORT OF MOTION OF NON-PARTY MOVANTS TO
QUASH SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES**

The underlying case giving rise to this Miscellaneous Docket Motion does not involve Global Information Network USA, Inc. (“GIN USA”), KT Radio Network, Inc. (“KT Radio”), and Web Site Solutions USA, Inc. (“Web Site Solutions”) (collectively “Non-Party Movants”), but involves a dispute between Plaintiff Federal Trade Commission (“FTC”) and Defendant Kevin Trudeau (“Trudeau”). After obtaining judgments against Trudeau in the underlying action in the United States District Court for the Northern District of Illinois, the FTC presumably seeks post-judgment discovery from FirstMerit Bank, NA (“FirstMerit”) regarding Trudeau’s assets in order to satisfy the judgments. The FTC’s February 10, 2012 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (“Subpoena”), however, goes beyond the scope of post-judgment discovery and should be quashed. Mr. Trudeau is not, and never has been, an owner, manager, officer, or director of any of the Non-Party Movants.

This Subpoena ostensibly seeks banking information in aid of execution on behalf of a judgment creditor, the FTC. Accordingly, the requirements of the Federal Rules of Civil Procedure relating to judgment creditor discovery apply. Fed. R. Civ. P. 69(a)(2) provides:

“In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person – including the judgment debtor – as provided in these rules or by the procedure of the state where the court is located.”

Under Rule 69, judgment debtors may utilize the discovery devices permitted under the Federal Rules, but the inquiries “must be kept pertinent to the goal of discovering concealed assets of the judgment debtor and not be allowed to become a means of harassment of the debtor or third persons.” Caisson Corp. v. County West Bldg. Corp., 62 F.R.D. 331, 334 (E.D. Pa. 1974) (citing

Monticello Tobacco Co., Inc. v. American Tobacco Co., 12 F.R.D. 344 (S.D.N.Y. 1952); Moore's Federal Practice § 69.05(1) (1974); and 12 Wright and Miller, Federal Practice and Procedure § 3014 (1973)). Third parties “can only be examined about assets of the judgment debtor and cannot be required to disclose their own assets.” Id. (citing Burak v. Scott, 29 F. Supp. 775 (D.D.C. 1939) and 12 Wright and Miller, Federal Practice and Procedure § 3014 (1973)).

Here, the FTC seeks discovery of not only assets of Kevin Trudeau, the judgment debtor, but it also requests financial information regarding the Non-Party Defendants, all of which are non-parties to this litigation. The Federal Rules do not permit a party to request discovery regarding a non-party's assets. The Subpoena must be limited to obtaining information regarding assets of parties to the litigation, such as Trudeau. By requesting financial information regarding the Non-Party Defendants, the FTC's Subpoena goes beyond the scope of discovery permitted under the Federal Rules.

Not only should the Court quash the Subpoena because it exceeds the parameters of Fed. R. Civ. P. 69, but also because it is beyond the constraints of Fed. R. Civ. P. 26. Fed. R. Civ. P. 26(b)(1) limits the scope of discovery to information “regarding any nonprivileged matter that is relevant to any party's claim or defense” The FTC's Subpoena should be quashed because it seeks discovery that is irrelevant and overbroad. In the present matter, the FTC seeks banking statements, deposits, and various other documents regarding the Non-Party Movants. However, this financial information is irrelevant to the pending litigation. The Non-Party Movants are not parties to the litigation and the FTC has not provided any evidence as to how this information is pertinent to this litigation against Kevin Trudeau. Such an overbroad request suggests that the FTC is attempting to use its discovery request to conduct a “fishing expedition”

in hopes of finding evidence that is damaging to the Non-Party Movants. However, the Federal Rules do not allow the use of Subpoenas and discovery tools in this manner.

This Non-Party Movants' motion to quash is also timely under the Federal Rules. Under Fed. R. Civ. P. 45, "[s]erving a subpoena requires delivering a copy to the named person" The FTC failed to take reasonable steps to notify any of the Non-Party Movants regarding the Subpoena. Instead, the FTC chose to serve the Subpoena upon FirstMerit and hoped to obtain information beyond what is permitted under the Federal Rules. By not serving the Non-Party Movants with a copy of the Subpoena, the time limits under Fed. R. Civ. P. 45(c) are inapplicable as to the Non-Party Movants.

The FTC's shotgun approach to discovery regarding assets that may tangentially have a remote relation to Mr. Trudeau is well beyond the scope of the Federal Rules and its failure to notify the Non-Party Movants (and likely others named in the Subpoena) is inexcusable. The FTC's overbroad Subpoena, along with its failure to serve the Non-Party Movants with notice, begs the question of whether the FTC has issued any other post-judgment discovery in relation to the litigation against Kevin Trudeau. Upon information and belief, the FTC issued at least three other subpoenas on February 10, 2012, requesting financial information regarding non-parties, including (1) a subpoena in the U.S. District Court for the Western District of Pennsylvania issued to PNC Bank for information regarding KT Radio and Web Site Solutions, (2) a subpoena in the U.S. District Court for the Western District of North Carolina issued to Banc of America, NA, for information regarding GIN USA, and (3) a subpoena in the U.S. District Court for the Southern District of Ohio issued to Fifth Third Bank for information regarding Nevis multiform foundation Global Information Network ("GIN Foundation"). GIN Foundation, who also never received notice of the subpoena, filed a motion to quash in the

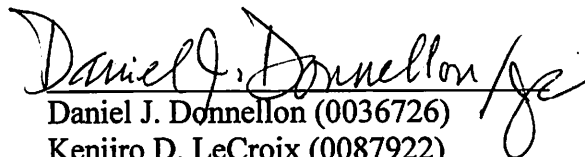
Southern District of Ohio, stating that the FTC did not provide any evidence as to how financial information of a non-party is pertinent to the litigation between the FTC and Kevin Trudeau. Upon information and belief, counsel for the FTC claims there is a connection between Mr. Trudeau and GIN Foundation by relying upon information on a website suggesting that Mr. Trudeau was a “founder” of GIN Foundation. The particular website in question, however, was not created by Mr. Trudeau or GIN. Furthermore, information on the particular website contains no reliable nexus to support banking inquiries that could potentially interfere with the orderly business operation of such a non-party.

Finally, the Non-Party Movants were only able to learn about this Subpoena through second-hand information. The Non-Party Movants are therefore concerned that this is not the first instance, nor the last, that the FTC has acted with patent disregard towards the Federal Rules in relation to the Non-Party Movants. In this Subpoena, for instance, the FTC identifies account information at FirstMerit for KT Radio, Web Site Solutions, and for GIN USA, despite the fact that the Non-Party Movants never provided such information to the FTC in this action. The Non-Party Movants are also unaware of any other occasion where it disclosed its financial information to the FTC. Therefore, it is reasonable to surmise that the FTC obtained this information by filing other subpoenas without serving the Non-Party Movants with notice. The Non-Party Movants therefore request the Court to grant equitable relief to them by forcing the FTC to disclose all other post-judgment discovery requests and subpoenas that the FTC has issued in connection with the litigation against Kevin Trudeau, and to force the FTC to provide to the Non-Party Movants all of the information that the FTC has obtained thus far as a result of other discovery requests and subpoenas in relation to this litigation. The Court should also

prevent the FTC from filing any future subpoenas or discovery requests regarding the Non-Party Movants in relation to the instant action.

The FTC's Subpoena is contrary to Fed. R. Civ. P. 26, 45, and 69. Accordingly, this Court should quash the Subpoena or, in the alternative, modify the Subpoena so that it is limited to information regarding relevant parties to this litigation. This Court should also force the FTC to disclose all post-judgment subpoenas and other discovery requests it has issued in connection with the litigation against Kevin Trudeau, as well as the contents of what it has obtained regarding the Non-Party Movants, and should prevent the FTC from issuing any further discovery relating to the Non-Party Movants in connection with that litigation.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on the 20th day of March, 2012, the foregoing Motion of Non-Party Movants to Quash Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises was filed with the Clerk of Courts, and I hereby certify that I have mailed by United States Postal Service the document to the following:

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FTC PXA:5

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,	:	
	:	Case No. 1:13-MC-00116-P1
Plaintiff,	:	
v.	:	(Judge Naomi Reice Buchwald)
KEVIN TRUDEAU,	:	
Defendant.	:	

**MEMORANDUM OF LAW IN SUPPORT OF
NON-PARTY NATALIYA BABENKO'S MOTION TO QUASH
THE SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION**

I. INTRODUCTION AND SUMMARY

Pursuant to Fed. R. Civ. P. 45(c)(3), Non-Party Nataliya Babenko moves to quash the Federal Trade Commission's ("FTC's") April 27, 2013 Subpoena to Testify at a Deposition in a Civil Action ("Subpoena"). Ms. Babenko must seek this Court's protection in order to limit the scope of the Subpoena and, to the extent such discovery is necessary or permitted at all, to proceed in a less burdensome manner including alternative means to oral examination. The Subpoena is improper for at least three reasons: (1) post-judgment discovery to enforce the FTC's judgment against Kevin Trudeau ("Trudeau"), the defendant in the underlying action, would violate the automatic stay resulting from Trudeau's bankruptcy filing; (2) Ms. Babenko has no information concerning the FTC's discovery relating to the narrow "police power" exception to the automatic stay; and (3) forcing Ms. Babenko to attend a deposition while she completes her semester at New York University's Tisch School of the Arts would be unduly burdensome.

First, to the extent that the FTC seeks information in connection with its money judgment against Kevin Trudeau ("Trudeau"), the defendant and judgment debtor in the underlying case, such testimony violates the automatic stay provisions of 11 U.S.C. § 362(a). On April 22, 2013, Trudeau filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Illinois. On the same day, Ms. Babenko filed a suggestion of stay in this Court. The FTC has not responded to Ms. Babenko's suggestion of stay. Instead, the FTC sought relief from the stay from the U.S. District Court for the Northern District of Illinois presiding over the underlying action. As that Court found, all efforts by the FTC to collect on its money judgment **are stayed** and subject to the bankruptcy court's jurisdiction. Accordingly, this Court should grant this Motion to the extent the FTC seeks any testimony from Ms. Babenko to locate assets to satisfy its money judgment against Trudeau.

Second, this Court should also quash the FTC's Subpoena because it does not fall within the very narrow exception to the stay to exercise the FTC's police power to seek "an accounting of Trudeau's assets." In the underlying action, the FTC argued that although the enforcement of its money judgment is stayed, the contempt proceedings against Trudeau were not subject to the automatic stay because the contempt proceedings purportedly fell under the "police power" exception to the automatic stay under 11 U.S.C. § 362(b)(4). The FTC requested that the district court find the automatic stay inapplicable to the extent the FTC seeks an accounting of Trudeau's assets. The district court in the underlying action granted the FTC's motion, finding that the relief sought by the FTC in the contempt proceedings is not the payment of the \$37.6 million remedial sanction, but a full accounting of Trudeau's assets. The court, however, limited the FTC's discovery to information relating to its proposed "police power" and stated that an attempt to enforce the money judgment would violate the automatic stay.

Ms. Babenko should not be deposed where the FTC has already gathered sufficient information and where Ms. Babenko has no knowledge. Ms. Babenko previously agreed to a deposition in connection with the FTC's post-judgment discovery efforts to enforce its money judgment against Trudeau. The scope of the FTC's instant Subpoena, however, is limited. The FTC may obtain discovery relating only to an accounting of Trudeau's assets. In connection with the underlying litigation, the FTC has already received thousands of documents and is in the process of taking other discovery that allegedly falls within its "police power" exception. This deposition, as subpoenaed, does not. Although Ms. Babenko is married to Trudeau and is the nominee officer of several corporations that have business relations with Mr. Trudeau, the FTC has conceded in court filings in the underlying action that Ms. Babenko has "never made any business decisions." In an effort to cooperate and verify the FTC's own filings, counsel for Ms. Babenko offered an opportunity for the FTC to submit written questions to determine whether Ms. Babenko possesses any relevant information, before allowing the FTC to move forward with any oral examination of Ms. Babenko; a less burdensome discovery tool that Civil Rule 45 requires the FTC to explore before subjecting a non-party to a disruptive and burdensome oral examination. The FTC has rejected this opportunity. In order to prevent any undue burden or expense upon Ms. Babenko, this Court should also grant this Motion to narrow the Subpoena to an "accounting of Trudeau's assets" by the least burdensome means.

Finally, if the Court directs the deposition of Ms. Babenko to proceed, then Ms. Babenko requests that the deposition take place after she has completed her graduate school courses this semester at New York University's Tisch School of the Arts. The FTC is fully aware of Ms. Babenko's schedule this semester, given the fact that the FTC subpoenaed her class schedule from NYU. The semester ends for Tisch students on the week of May 21, and Ms.

Babenko is working hard to complete her work as early as possible, which may be as early as May 20th or the 21st. Accordingly, counsel for Ms. Babenko offered the FTC an opportunity to depose Ms. Babenko a couple days after she completes her studies this semester, in order to permit time for Ms. Babenko to conclude her graduate studies in these final weeks and prepare for her first ever deposition which the FTC proposes to conduct in English, which is not her native language.¹

For the foregoing reasons, this Court should quash the Subpoena to the extent the FTC seeks testimony relating to its money judgment against Trudeau as such discovery is stayed by Trudeau's bankruptcy filing. This Court should also quash the Subpoena to the extent the FTC seeks an accounting of Trudeau's assets, because the FTC has suggested that Ms. Babenko possesses no substantive knowledge regarding this issue. If any testimony from Ms. Babenko is required, this Court should limit the scope of the FTC's inquiries to testimony relevant to an accounting of Trudeau's assets which may be within the FTC's narrow police power exception to a bankruptcy stay. Finally, to the extent this Court finds that certain testimony is required of Ms. Babenko, this Court should first require the FTC to submit written questions. If an oral examination is also required, then the oral examination should take place after Ms. Babenko has completed her final exams and has time to prepare for her deposition.

II. PROCEDURAL POSTURE

The underlying case giving rise to this Miscellaneous Docket Motion to Quash does not involve Nataliya Babenko, but involves a dispute between Plaintiff FTC and Defendant

¹ In prior discussions about this deposition before the bankruptcy stay and at a proposed time that was not within the final weeks of the semester, counsel for Ms. Babenko offered the FTC assistance in arranging a Russian or Ukrainian interpreter for Ms. Babenko. Although she studies in the U.S. and is conversant in English, it is her fourth language. The FTC rebuffed this assistance and insisted on proceeding in English.

Trudeau. After obtaining a judgment against Trudeau in the underlying action in the United States District Court for the Northern District of Illinois, the FTC took the following actions: (1) the FTC moved to hold Trudeau in contempt for failing to pay the judgment, and (2) sought post-judgment discovery from various third parties, including Ms. Babenko, regarding Trudeau's assets in order to satisfy the judgment.

On January 25, 2013, Kevin Trudeau submitted his sworn financial statement in the underlying action, of which the FTC received a copy.

In connection with its post-judgment discovery efforts, the FTC subpoenaed several corporate entities, including GIN USA Inc. ("GIN USA"), KT Radio Network Inc. ("KT Radio"), and WebSite Solutions USA Inc. ("WSU"), arguing that Trudeau "controls" these entities. On March 22, 2013, these corporations produced over 1,000 pages in financial documents. On May 2, 2013, WSU produced an additional 18,000 pages of emails and texts of Neil Sant, its officer and director. Moreover, these corporations have designated Trudeau as their Rule 30(b)(6) designee, and his deposition is scheduled for May 18, 2013.

The FTC also subpoenaed several individuals in relation to the underlying action: (1) Neil Sant, who is an officer and director of KT Radio and WSU, and who the FTC believes is familiar with Trudeau's finances; (2) Michael Dow, an accountant for WSU; and (3) Marc Lane, who acts as Trudeau's attorney and financial advisor. The FTC is conducting the deposition of Neil San on May 9th. The FTC has conducted the depositions of Michael Dow and Marc Lane on May 8th and May 7th, respectively.

On March 22, 2013, the FTC improperly served a subpoena upon Ms. Babenko. The FTC not only attempted to serve Ms. Babenko personally, despite knowing she was

represented by counsel, but also did not allow a reasonable time to comply with the subpoena.² Accordingly, Ms. Babenko filed a motion to quash [Dkt. Nos. 3-4]. After the FTC and Ms. Babenko agreed to conduct the deposition on April 23, 2013, Ms. Babenko withdrew her prior motion to quash [Dkt. No. 7].

On April 22, 2013, prior to Ms. Babenko's deposition, Trudeau filed a Chapter 7 Bankruptcy proceeding in the United States Bankruptcy Court for the Northern District of Illinois (Case No. 13-16784), prompting counsel for Ms. Babenko to file a Notification of Bankruptcy and Suggestion of Stay [Dkt. No. 8]. The FTC acknowledged the existence of the automatic stay at that time; no one from the FTC appeared for the deposition and the FTC cancelled the court reporter.

On April 24, 2013, the FTC filed a motion in the underlying action for a determination that, while the automatic stay is applicable to its collection of a money judgment, the stay should not apply to the FTC's contempt proceedings against Trudeau. The FTC conceded that enforcement of a money judgment is subject to the automatic stay, but argued that the automatic stay does not apply to the extent the FTC seeks to hold Trudeau in contempt and seeks an "accounting of Trudeau's assets." The FTC claimed that contempt proceedings fell under the "police power" exception under 11 U.S.C. § 362(b)(4) and constituted "the enforcement of a judgment other than a money judgment." The court in the underlying action granted the FTC's motion, finding that the relief sought by the FTC in the contempt proceedings "is not the payment of the \$37.6 million remedial sanction, but a full accounting of Trudeau's

² The FTC's prior subpoena improperly required Ms. Babenko to appear for a deposition within six days of serving the subpoena, which was not a reasonable time to comply with a subpoena, pursuant to Second Circuit precedent.

assets." April 26 Order (attached as Exhibit A to Declaration of Kenjiro D. LeCroix ("LeCroix Decl.") (attached as Exhibit 1)), p. 6, n. 3. Although the court permitted the FTC to proceed with very limited and narrow discovery relating to its proposed "police power," the court specifically stated that "any attempt to enforce or collect the judgment is subject to the Automatic Stay Provisions." Id.

On April 27, 2013, the FTC issued a Subpoena to Testify at a Deposition in a Civil Action ("Subpoena") (attached as Exhibit B to LeCroix Decl.), seeking testimony from Ms. Babenko in connection with the underlying action. The Subpoena did not specify the content of, or any limitation on, the testimony sought. Nor did the FTC explain how the Subpoena could be anything other than enforcement or collection of the money judgment against Trudeau. Pursuant to Local Civil Rule 37.3(a), counsel for Ms. Babenko conferred with the FTC, offered the FTC an opportunity to narrow the scope of the examination, to select alternative dates, and to explore alternative means to gain any discovery that falls within the FTC's "police power," such as stipulations or deposition by written questions. If, after exhausting such alternative means, the FTC still believed an oral examination of Ms. Babenko is necessary, counsel offered to make her available in a matter of days after the conclusion of the current semester of her graduate studies.

The FTC rejected all reasonable efforts at threshold alternative means; therefore, counsel for Ms. Babenko offered dates after Ms. Babenko completes her semester of graduate school studies at New York University's Tisch School of the Arts. Despite the FTC's knowledge of Ms. Babenko's schedule, especially given the fact that the FTC already subpoenaed NYU for Ms. Babenko's class schedule, the FTC has refused to accept any compromises and argues that Ms. Babenko should be forced to go through a deposition on May 10, 14, 15, or 16, which fall

during NYU's final examination period. Accordingly, Ms. Babenko has been forced to seek court intervention by filing the instant Motion.

III. THE COURT SHOULD QUASH THE FTC'S SUBPOENA TO THE EXTENT THE FTC SEEKS TESTIMONY FROM MS. BABENKO RELATING TO TRUDEAU'S ASSETS BECAUSE IT WOULD VIOLATE THE AUTOMATIC STAY

The FTC should not be permitted to proceed with obtaining any discovery that would violate the bankruptcy automatic stay under 11 U.S.C. § 362(a). It is unclear what discovery the FTC seeks from Ms. Babenko, but to the extent it relates to enforcing its money judgment against Trudeau, this Court must quash the FTC's Subpoena as a violation of the automatic stay.

Under 11 U.S.C. § 362(a), a petition for bankruptcy operates as a stay to "the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title" and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(2)-(3). The automatic stay provision is intended "to allow the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." United States Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re United States Lines, Inc.), 197 F.3d 631, 640 (2d Cir. 1999) (internal quotation marks and citation omitted), cert. denied, 529 U.S. 1038, 120 S. Ct. 1532 (2000). Accord: SEC v. Brennan, 230 F.3d 65, 70 (2d Cir. 2000) ("The general policy behind this section is to grant complete, immediate, albeit temporary relief to the debtor from creditors, and also to prevent dissipation of the debtor's assets before orderly

distribution to creditors can be effected.") (internal quotation marks and citation omitted) (attached as Exhibit C to LeCroix Decl.).

Here, the FTC has already obtained a money judgment against Trudeau. Any and all efforts by the FTC to act upon the judgment are stayed. Brennan, 230 F.3d at 73 (reversing the district court's order to repatriate assets, stating that "once liability is fixed and a money judgment has been entered, the government necessarily acts only to vindicate its own interest in collecting its judgment."). Indeed, even the underlying court has noted that "any attempt to enforce or collect the judgment is subject to the Automatic Stay Provisions." April 26 Order, p. 6, n. 3.

The FTC's Subpoena does not specify the testimony it seeks from Ms. Babenko. To the extent the FTC seeks testimony from Ms. Babenko in relation to its money judgment against Trudeau, such discovery is impermissible under the bankruptcy stay. This Court should, therefore, grant this Motion and quash the FTC's efforts to elicit any testimony relating to its money judgment against Trudeau.

IV. THE FTC SHOULD NOT BE ALLOWED TO PROCEED WITH A DEPOSITION OF MS. BABENKO REGARDING INFORMATION SHE DOES NOT POSSESS AND WHICH THE FTC HAS ALREADY OBTAINED FROM OTHER SOURCES

This Court should also quash the FTC's Subpoena to the extent the FTC seeks to depose Ms. Babenko for purposes of conducting an accounting of Trudeau's assets. The FTC has suggested that Ms. Babenko does not possess such information, and the FTC is already obtaining such testimony from other sources.

The issuing court must quash or modify a subpoena that "subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv). In ruling on a motion to quash, the court applies its general power to limit discovery under Fed. R. Civ. P. 26(b)(2), in addition to the court's specific power to quash under Fed. R. Civ. P. 45. Official Comm. of Unsecured Creditors of Hechinger Inv. Co. of Del., Inc. v. Friedman (In re Subpoena Issued to Dennis Friedman), 350 F.3d 65, 69 (2d Cir. 2003). Fed. R. Civ. P. 26(b)(2) permits a district court to limit "the frequency or extent of use of the discovery methods otherwise permitted under [the federal] rules' if it determines that (1) the discovery sought is unreasonably cumulative or duplicative, or more readily obtainable from another source; (2) the party seeking discovery already has had ample opportunity to obtain the information sought; or (3) the burden or expense of the proposed discovery outweighs its likely benefit." Id. (quoting Fed. R. Civ. P. 26(b)(2)(i)-(iii)) (alteration in original). Accord: MedStar Health, Inc. v. Becton Dickinson & Co. (In re Hypodermic Prods. Antitrust Litg.), No. 09-MC-6027, 2010 U.S. Dist. LEXIS 25873, at *8-9 (W.D.N.Y. Mar. 4, 2010) (denying the application to reconsider the court's prior decision granting a motion to quash a subpoena, stating that "the Court must limit discovery to the extent that it would be 'unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.'").

The FTC's Subpoena purportedly seeks information regarding an accounting of Trudeau's assets, which is both unreasonably cumulative and duplicative of information and testimony that the FTC has already obtained. The FTC has already had ample opportunity to obtain the information it seeks, and will continue to have the opportunity to do so. On January 25, 2013, Kevin Trudeau submitted his sworn financial statement in the underlying action, of which the FTC received a copy. The subpoenaed corporations have already produced over 1,000

pages in financial documents and an additional 18,000 pages of emails and texts. The FTC is also conducting three additional, responsive depositions: (1) on May 7, 2013, the deposition of Marc Lane, who acted as Trudeau's attorney and financial advisor and possesses substantial information regarding Trudeau; (2) on May 9, 2013, the deposition of Neil Sant, who was a director and officer of KT Radio and WSU, which are companies that the FTC argues are controlled by Trudeau; and (3) on May 8, 2013, the deposition of Michael Dow, the accountant for WSU. The FTC will also be conducting the deposition of Kevin Trudeau, who will testify as the Fed. R. Civ. P. 30(b)(6) designee for GIN USA, KT Radio, and WSU. The FTC has never suggested that there were any deficiencies in the testimony it has already obtained and has not suggested that there will be any deficiencies from the upcoming deposition of Trudeau. Thus, the FTC seeks testimony from Ms. Babenko that is entirely duplicative of the other testimony the FTC has already obtained or will obtain.

The FTC's Subpoena also imposes an undue burden upon Ms. Babenko by requiring her to undergo the expense of the proposed post-judgment discovery. The burden on Ms. Babenko outweighs the likely benefit of any testimony that the FTC will obtain from the deposition. As the FTC has pointed out, Ms. Babenko is married to Trudeau and is the nominee owner of GIN USA, KT Radio, and WSU, but she is a non-party to the underlying litigation and, as the FTC admits, she possesses no information that would assist the FTC in conducting an accounting of Trudeau's assets. Ms. Babenko and her counsel are mindful of precedent in this District that permits parties to proceed with depositions in order to test any asserted lack of knowledge. E.g., *Consol. Rail Corp. v. Primary Indus. Corp.*, Nos. 92 Civ. 4927, 92 Civ. 6313, 1993 U.S. Dist. LEXIS 12600, at *2 (S.D.N.Y. Sept. 10, 1993) ("[A] claim that the witness lacks knowledge is subject to testing by the examining party.") (citation omitted). However, where a

witness has no unique personal knowledge, district courts in the Second Circuit have limited the discovery available by first requiring written discovery. Retail Brand Alliance, Inc. v. Factory Mut. Ins. Co., No. 05 Civ. 1031, 2008 U.S. Dist. LEXIS 17746, at *16-19 (S.D.N.Y. Mar. 7, 2008) (finding that the affidavit of a CEO with no "unique personal knowledge" satisfied the "initial burden of demonstrating a lack of relevant knowledge"; allowing a "limited probing" of the witness by allowing the defendant to serve up to 25 written interrogatories to determine whether "there is some valid basis for an oral examination.") (emphasis added).

Here, the FTC has conceded previously that Ms. Babenko takes no active role in the businesses and would, therefore, have no information relating to an accounting of Trudeau's assets. On October 15, 2012, the FTC submitted an affidavit of a former employee of a so-called "Trudeau-affiliated entity," which states, in relevant part, that "Nataliya Babenko . . . had no role managing GIN or any other Trudeau-affiliated entity. To my knowledge, she never made any business decisions, nor did she attend any business meetings." Declaration of Peter Wink (attached as Exhibit 8 to the FTC's October 15, 2012 Reply in Support of its Motion to Hold Defendant Trudeau in Contempt) (attached as Exhibit D to LeCroix Decl.).

Moreover, counsel for Ms. Babenko has offered the FTC ample opportunity to present information that would demonstrate the necessity of Ms. Babenko's deposition. In fact, counsel for Ms. Babenko requested the FTC to submit written questions to determine whether there is a need for an oral examination of Ms. Babenko. The FTC rejected this request, stating that "[w]e don't consider depositions on written questions, or interrogatories, or stipulations to have the same value as a routine oral deposition" May 5, 2013 Email from Jonathan Cohen to Daniel J. Donnellon (attached as Exhibit E to LeCroix Decl.). The FTC's rejection of Ms. Babenko's offer to compromise is unreasonable and will result in an unnecessary waste of time

and expenses to Ms. Babenko, which are particularly burdensome and harassing given the current status of her studies at a prestigious local graduate school.

For the foregoing reasons, Ms. Babenko requests that this Court grant this Motion and quash the FTC's Subpoena. To the extent this Court believes any testimony is required from Ms. Babenko, Ms. Babenko respectfully requests this Court to require the FTC to first submit written questions to Ms. Babenko, to which Ms. Babenko will respond within a reasonable time as established by the Court and in compliance with the FTC's allegedly pressing schedule.

V. IF THE COURT FINDS THAT THE DEPOSITION OF MS. BABENKO SHOULD PROCEED, THEN THIS COURT SHOULD SET THE DEPOSITION DATE AFTER MS. BABENKO'S GRADUATE SCHOOL SEMESTER IS FINISHED

The FTC not only rejected the proposal for written questions, but also rejected Ms. Babenko's request for the deposition to take place after May 21, 2013, when the semester is finished at NYU. If this Court finds that any oral examination of Ms. Babenko is necessary, then Ms. Babenko respectfully requests that the deposition take place after May 27th.

As mentioned previously, this Court must quash or modify a subpoena that "subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv). Ms. Babenko is currently enrolled in graduate school program at New York University's Tisch School of the Arts. The FTC is already aware of this fact, especially given the fact that the FTC issued a subpoena to NYU on January 2, 2013, requesting Ms. Babenko's address and her class schedule for the spring term of 2013. January 2, 2013 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises (attached as Exhibit F to LeCroix Decl.). NYU's Office of General Counsel responded to the subpoena and provided the FTC with Ms. Babenko's class

schedule. January 10, 2013 Letter from Paul Bryant to Jonathan Cohen (attached as Exhibit G to LeCroix Decl.).

Ms. Babenko is unavailable on the dates proposed by the FTC as she will still be finishing her graduate school courses this semester at NYU. Ms. Babenko is currently in the process of finishing her film work, which will be completed by May 21, 2013, the final day of examinations at NYU. NYU Academic Calendar Spring 2013 (available at <http://www.nyu.edu/registrar/calendars/academic-calendar.html#spring13>). Despite the FTC's knowledge of Ms. Babenko's schedule, the FTC proposed deposition dates of May 10, May 14, May 15, and May 16, 2013. The FTC's unreasonable requests must end, and the FTC must allow Ms. Babenko to at least finish her final exams at NYU.

Accordingly, if the Court finds that an oral examination of Ms. Babenko is necessary, then Ms. Babenko respectfully requests that this Court schedule the deposition for a date subsequent to May 27, 2013, in order to allow Ms. Babenko to complete her final exams and to grant time for Ms. Babenko to prepare for her first ever deposition.

VI. CONCLUSION

For the foregoing reasons, this Court should quash the Subpoena. To the extent the FTC seeks testimony relating to its money judgment against Trudeau, such discovery is stayed by Trudeau's bankruptcy filing. This Court should also quash the Subpoena to the extent the FTC seeks an accounting of Trudeau's assets. As the FTC is aware, Ms. Babenko possesses no substantive knowledge and, even if she does, such information would be redundant and duplicative of all the information and testimony already made available to the FTC. If any testimony from Ms. Babenko is required, then this Court should limit the scope of the FTC's

inquiries to testimony relevant to an accounting of Trudeau's assets and to information that is not redundant of the FTC's other depositions. Finally, to the extent this Court finds that certain testimony is required of Ms. Babenko, this Court should first require the FTC to submit written questions. If an oral examination is also required, then the oral examination should take place after Ms. Babenko has completed her final exams and has time to prepare for her deposition.

Respectfully submitted,

/s/ Daniel J. Donnellon

Daniel J. Donnellon (*Pro Hac Vice*)
Kenjiro D. LeCroix (*Pro Hac Vice*)
FARUKI IRELAND & COX P.L.L.
201 East Fifth Street, Suite 1420
Cincinnati, OH 45402
Telephone: (513) 632-0308
Telecopier: (513) 632-0319
Email: ddonnellon@ficlaw.com
klecroix@ficlaw.com

Attorneys for Non-Party
Nataliya Babenko

CERTIFICATE OF SERVICE

I certify that on the 8th day of May, 2013, I sent to be filed the foregoing Memorandum of Law in Support of Nataliya Babenko's Motion to Quash the Federal Trade Commission's Subpoena to Testify at a Deposition in a Civil Action to the Clerk of Courts, and I hereby certify that I have sent by electronic mail the document to the following:

Jonathan Cohen
Michael Mora, Esq.
Amanda Kostner, Esq.
Federal Trade Commission
600 Pennsylvania Avenue NW M-8102B
Washington, DC 20580

Attorney for Plaintiff

/s/ Daniel J. Donnellon

Daniel J. Donnellon

FTC PXA:6

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 In the Matter of:)
4 Federal Trade Commission,) No. 03-C-3904
5 Plaintiff,)
6 vs.)
7 Kevin Trudeau,))
8 Defendant.)

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Friday, May 17, 2013
Federal Trade Commission

One Bowling Green
New York, New York

The above-entitled matter came on for
deposition, pursuant to order at 10:30 a.m.

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4

5 JONATHAN COHEN, ESQ.

6 600 Pennsylvania Avenue, NW

7 Mall Stop M-8102B

8 Washington, DC 20580

9

10 ON BEHALF OF THE DEFENDANT:

11

12 DANIEL DONNELLON, ESQ.

13 Faruki, Ireland & Cox

14 201 East Fifth Street

15 Cincinnati, Ohio 45202

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1 P R O C E E D I N G S

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3 N A T A L I Y A B A B E N K O, having first been duly
4 sworn by a Notary Public of the State of New York, was
5 examined and testified as follows:

6 MR. COHEN: If we could have Counsel present
7 identify themselves for the record.

8 MR. DONNELLON: Dan Donnellon, Faruki,
9 Ireland and Cox, for Ms. Babenko.

10 MR. BOYD: My name is David Boyd. I am a
11 third-party in interest as I currently represent Mr.
12 Trudeau in a bankruptcy proceeding in the Northern
13 District of Illinois.

14 MR. COHEN: As you know, Ms. Babenko, my name
15 is Jonathan Cohen. I represent the Plaintiff, the
16 Federal Trade Commission, in the action Federal Trade
17 Commission versus Kevin Trudeau.

18 Q. Have you ever had your deposition taken before?

19 MR. DONNELLON: Yes or no. You can answer
20 that.

21 A. No.

22 Q. I'm going to be asking you a series of
23 questions, to which you are under oath to provide full
24 and complete answers. Do you understand that?

25 A. Yes.

FTC PXA:7

MEMBERSHIP AGREEMENT

1. INTRODUCTION

2. CONTRACT

2.1. This is a legally binding agreement between you and Global Information Network FDN, a multiform foundation established in Nevis. If you do not agree with all of the terms and conditions contained herein, do not submit an application to become a Member of GIN.

2.2. As used herein, GIN shall include Global Information Network FDN, its affiliates and related companies, and each of their subscribers, agents, directors, officers, employees and assigns.

2.3. By submitting an application to become a Member of GIN, you are representing and warranting that you have reviewed, fully understand and agree to all of the following terms and conditions.

3. MEMBERSHIP REQUIREMENTS

3.1. You represent and warrant that you have been referred to GIN by a Member and/or an Affiliate that is currently in good standing.

3.2. You represent and warrant that if you are an employee, agent or other representative of any federal, state or other governmental agency, including without limitation the Federal Trade Commission or the Food and Drug Administration, you agree to comply with the terms stated in 3.5

3.3. You represent and warrant that if you are an employee, agent or other representative of, or otherwise affiliated with, any media outlet or organization, including without limitation any news or entertainment publication or broadcast agency, you agree to comply with the terms stated in 3.5

3.4. You represent and warrant that you are not falsely representing yourself as a consumer and you further represent that you will not share material, ideas, or intellectual property from the Global Information Network in any way for use in other businesses, media outlets, or potential lawsuits.

3.5. GIN reserves the right to reject any membership application for any reason or no reason at all, in its sole discretion. If you are now or ever have been a member of the Media (print, web, radio or television) or Regulatory Government Agency, please submit your request in writing to join the Global Information Network at compliance@globalinformationnetwork.com. Approval is at the sole discretion of the officers of the Global Information Network. You will be required to provide proof of identity along with details of your role within that organization. Any person or agent who falsely represents their intention when joining the GIN Affiliate or Member organization, is subject to immediate termination from the organization.

3.6. Any Sponsor who knowingly endorses a member who is intentionally defrauding and/or not pursuing the best interests of the Global Information Network is subject to suspension or termination of their membership. If you

suspect that you may in violation of these terms, please email the Global Information Network at compliance@globalinformationnetwork.com for clarification.

4. FEES& MEMBERSHIP LEVELS

4.1. There are 12 membership levels in GIN. Each Member starts in the first level of membership, and must qualify for successive membership levels by meeting specific conditions and requirements and being approved by GIN. There is no obligation or requirement for any Member to ever upgrade to a higher level.

4.2. For the first level of membership, you authorize and agree that your credit card will be charged the amount of the payment option of your choosing on the Membership Application, and a reoccurring charge of \$150 USD each month until such time as you cancel your membership pursuant to the cancellation procedure described herein. You agree that your membership will be automatically renewed and your credit card will be automatically charged unless you affirmatively cancel your membership.

4.3. Each successive membership level will require an additional non-refundable fee and a reoccurring monthly charge. The information regarding the fees and benefits for each membership level will only be revealed to those Members in the membership level directly below that particular membership level. For example, Level 1 Members may request information on the requirements to qualify for level 2, and its benefits. Level 2 Members may request information on the requirements to qualify for level 3, and its benefits. This continues through to level 12.

4.4. All transactions with GIN shall be in U.S. dollars. All payments made to GIN are non-refundable.

4.5. Payment of fees to GIN does not entitle Members to any ownership or equity interest in GIN.

5. INFORMATION& CONFIDENTIALITY

5.1. The information contained on this site, as well as any other information provided directly or indirectly by GIN, is for your personal information and education only. None of the information is intended to invite, induce, or encourage any person to make a legal, medical, financial, or investment decision. You should consult with a licensed professional in the appropriate field before acting upon any information or recommendations that are made directly or indirectly by GIN.

5.2. The information you receive as a result of your membership in GIN shall be treated as Confidential Information, whether or not it is labeled as such. You agree not to copy, exploit, sell, distribute or otherwise disclose any Confidential Information to anyone except (a) to other Members of GIN that are in good standing or (b) to the extent required by judicial or governmental order provided that you have given GIN reasonable written notice prior to such disclosure to allow GIN a reasonable opportunity to protect the Confidential Information.

5.3. You acknowledge that if you breach any of the confidentiality obligations, any of the representations made herein, or the Code of Conduct GIN will suffer irreparable harm for which monetary damages would be inadequate. You agree that, in the event of such a breach, your membership will be cancelled immediately and GIN will be entitled to extraordinary relief in any court of competent jurisdiction, including, but not limited to, a temporary restraining order and preliminary and permanent injunctive relief to protect its rights, in addition to any and all remedies available at law. You agree to assign to GIN your right to bring any action for violation of any proprietary rights against any third parties in possession of Confidential Information received by you.

5.4. You agree to never share your membership account login credentials with anyone for any reason. You agree to never allow anyone for any reason to log into your GIN account, or to impersonate you in any way, and to maintain the confidentiality of the GIN web property.

6. DISCLAIMERS& WARRANTY

6.1. While GIN hopes to provide its Members with accurate and up-to-date information, we make no warranties or representations as to the accuracy of the information and assume no liability or responsibility for any error or omission in the information. No one shall be entitled to claim that there is a duty to update or correct any such information.

6.2. GIN shall provide information directly or indirectly to its Members in the manner, format, and at such times as GIN chooses, in its sole discretion. GIN makes no representations, warranties, or guarantees as to the amount of information that will be provided, when or how often that information will be provided, if or when requests from Members will be answered or by whom, if or when Members will receive mentoring or by whom, and if, when or where, webinars or other seminars or workshops will be offered.

6.3. GIN may modify, suspend, discontinue, or restrict the use of any portion of this site, without liability. GIN may deny access to any person or user at any time for any reason.

6.4. GIN does not represent, warrant or guarantee that, as a result of your connection with GIN or the information, products or services you receive directly or indirectly from GIN, THAT you will receive any money, bonuses, PROFITS, LOANS, CREDIT, personal or real property, business offers or anything else of monetary value, minimize your tax liability, improve your health, lose weight, or live a longer, healthier, or happier life. THIS INFORMATION IS NOT INTENDED TO REPLACE PROFESSIONAL ADVICE. GIN IS NOT AFFILIATED WITH ANY MEDICAL INSTITUTION AND THE INFORMATION IT PROVIDES HAS NOT BEEN APPROVED BY THE Federal Trade Commission or any other government agency. Neither GIN nor the information it provides can be relied upon TO prevent, cure, or treat any disease or medical condition.

6.5 GIN does not represent, warrant or guarantee that, as a result of your connection with GIN or the information, products or services you receive directly or indirectly from GIN, THAT you will receive any money, bonuses, PROFITS, LOANS, CREDIT, personal or real property, business offers or anything else of monetary value, minimize your tax liability, improve your health, lose weight, or live a longer, healthier, or happier life. THIS INFORMATION IS NOT INTENDED TO REPLACE PROFESSIONAL ADVICE. GIN IS NOT AFFILIATED WITH ANY MEDICAL INSTITUTION AND THE INFORMATION IT PROVIDES HAS NOT BEEN APPROVED BY THE Federal Trade Commission or any other government agency. Neither GIN nor the information it provides can be relied upon TO prevent, cure, or treat any disease or medical condition.

6.6. Your use of this site and any other information, products and services provided directly or indirectly by GIN is at your own risk. GIN assumes no responsibility, and shall not be liable for any resulting damages to, or viruses that may affect, your computer equipment or other property. GIN does not represent or warrant that use OF such information will not infringe on the rights of third parties.

6.7. ALL OF THE INFORMATION, SERVICES AND PRODUCTS PROVIDED DIRECTLY OR INDIRECTLY BY GIN IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE REGARDING SUITABILITY OF THE INFORMATION, ACCURACY, RELIABILITY,

COMPLETENESS, AND TIMELINESS. GIN DOES NOT WARRANT THAT THIS SITE IS FREE FROM ALL BUGS, ERRORS OR OMISSIONS. YOUR USE OF THIS SITE IS AT YOUR OWN RISK.

7. LIMITATION OF LIABILITY

7.1. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, NEITHER GIN NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THIS SITE SHALL be liable for (1) LOST PROFITS OR ANY OTHER INCIDENTAL OR Consequential DAMAGES, REGARDLESS OF THE FORM OF THE ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF GIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (2) punitive OR SPECIAL damages; OR (3) DAMAGES PROXIMATELY CAUSED BY YOUR FAILURE OR REFUSAL TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT OR AS REQUIRED BY LAW.

8. INDEMNIFICATION

8.1. You agree to indemnify, defend and hold harmless, at your sole expense, GIN from any claim or action brought by a third party relating to (a) your use of the site and/or (b) your breach of the Membership Agreement or the Terms of Use.

9. CANCELLATION& REMEDIES

9.1. GIN reserves the right to cancel your membership at any time for any reason or no reason at all, in its sole discretion.

9.2. You may cancel your membership at any time by visiting the Account Cancellation page located in the membership section of the GIN website. Canceling your Membership account will not affect your free Affiliate account. Upon downgrading to a free Affiliate status, you agree to be bound by the terms in the Affiliate Agreement at the time of cancellation. If you wish to cancel your Affiliate account, please email Support@GlobalInformationNetwork.com with your intentions and an agent will happily assist you.

9.3. If your membership is cancelled for any reason, you agree that (a) you will return the original and all copies of Confidential Information to GIN within 10 business days of the cancellation and (b) you will not be permitted to rejoin or sign up again as a Member of GIN within 12 calendar months of your cancellation. Any acceptance shall be at the sole discretion of GIN and must be reviewed and approved in advance by a GIN Compliance Officer. You must submit your case in advance in writing via Compliance@GlobalInformationNetwork.com. If your new application is accepted you are required to pay the appropriate enrollment fee at Level 1 and you will be treated as a new Member. Upon cancellation and rejoining, you will forfeit all previous status, Affiliateships, downlines, and Membership Levels, and any associated permissions or recognition.

9.4. You agree that you, the company you represent, any of its officers and directors, or any affiliated companies and their officers and directors, will never file suit for any reason, at any time, in any court, against GIN or any of its members.

9.5. Except as otherwise provided herein, if either party ever has a disagreement regarding any issue, both parties agree to try to work out such disagreements in a fair and reasonable manner. If the parties cannot work out their disagreements, your only remedy is to request a binding arbitration with a single arbitrator.

9.6. The party that wants to initiate arbitration shall call a well-established arbitration organization in the country of Nevis and request arbitration with a single arbitrator to begin on a date and time that is mutually agreeable to both parties and the arbitrator, but no later than fourteen business days from the date of the request. The party that initiates the arbitration will notify the other party in writing of the arbitration within one day of making that request.

9.7. Both parties agree to the following arbitration format:

9.8. The arbitration shall be attended by each party either in person or via telephone with or without attorneys present.

9.9. Each party will privately discuss with the arbitrator the facts as they see it, and their viewpoint regarding the disagreement.

9.10. The arbitrator will listen to both parties and ask questions or request information to clarify or verify facts.

9.11. The arbitrator will then take all the facts and make a decision, which will be binding, within 24 hours.

9.12. The arbitrator will be required to base his decision not on the technicalities of the law, or the technicalities or wording in any specific contract, but he will base his decision on "fairness and equality", and "under the spirit of true justice and original intention", and what is "fair" for all parties concerned today.

9.13. The arbitrator may award compensatory damages and legal fees, as he or she deems appropriate.

9.14. The arbitration award shall be final and binding upon both parties and may be enforced in any court of competent jurisdiction.

10. INTELLECTUAL PROPERTY

10.1. All material on this website, including, but not limited to, text, graphics, logos, audio clips, video clips, links, digital downloads, and trademarks is owned, controlled by or licensed by GIN and is protected by copyright, trademark, and other intellectual property laws. As between you and GIN, GIN exclusively owns all rights, titles and interest in and to the site content. You agree not to do anything that might impair such rights, nor will you assert ownership claim in any of the above-referenced intellectual property or in the site content.

10.2. You may download one copy of the site on a single computer for your personal, non-commercial use only, provided you maintain all copyright and trademark notices. No other use is permitted without the prior written consent of GIN.

10.3. The site may link to or frame third party websites. Framing allows a visitor to view content provided (and managed) by a third party without losing access to this site's navigational menu. GIN is not responsible or liable for content, products or services on framed sites or any other third party websites and does not promote or endorse any third party websites or the content on those sites.

11. MISCELLANEOUS

11.1. GIN reserves the right to change this Membership Agreement from time to time at its discretion and to notify Members of any such changes by posting a notice on the site, posting the new Membership Agreement on the site, sending the new Membership Agreement to the Members, or in any other way that GIN deems fit. Your continued membership in GIN after a new Membership Agreement is in place will constitute your agreement to be bound by that new agreement.

11.2. This Membership Agreement will be governed by and construed in accordance with the laws of the country of Nevis, without regard to its choice of law provisions.

11.3. If for any reason, any provision of this Membership Agreement is found unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties as reflected in that provision, and the remainder of the Membership Agreement shall continue in full force and effect. The failure of GIN to enforce or exercise any provisions of the Membership Agreement shall not constitute a waiver of that right or provision.

11.4. I give GIN express permission to call any and all telephone numbers listed on my account, to speak to me in person, or to deliver a previously recorded message, for any purpose including but not limited to informational, promotional, or the marketing of new goods or services. I give GIN expressed permission to call my telephone numbers with such calls, even if those numbers are registered on national and/or state do not call lists, while I am an Affiliate and/or Member in GIN. I also give GIN express permission to contact me via email, direct mail, or any other method of communication, for any reason, while I am an Affiliate or Member of GIN.

11.5. I give GIN express permission to use any testimonial I submit, in any format for sales and marketing promotion including, but not limited to, use on the GIN website, in written mail and email materials, audio and video productions, any form of Social Media, and any other method of communication.

12. MEMBER CODE OF CONDUCT

12.1. All GIN Members & Affiliates agree to strictly adhere to the GIN Code of Conduct. Violation of this Code of Conduct may, at the discretion of GIN, result in the termination of your account.

12.2. I agree to abide by this Code of Conduct at all times.

12.3. I agree to adhere to all GIN guidelines, rules, policies and procedures.

12.4. I acknowledge that this Code of Conduct may change, with or without notice, and that it is my responsibility to regularly review and understand this Code of Conduct.

12.5. I acknowledge that any violation of this Code of Conduct may, at the discretion of GIN and in accordance with GIN procedures, result in the termination of my account.

12.6. I agree that my actions will be in compliance with all applicable laws and regulations.

12.7. I acknowledge that I am not able to participate in, or benefit by, any promotion that is prohibited by applicable law.

12.8. I agree to never jeopardize the reputation of GIN, any of its Members and Affiliates, staff, speakers, presenters, and contractors, in any way, including but not limited to using any social media platform (Facebook, Twitter, Google+, etc.), email, telephone, print, or public announcement.

12.9. I agree never to attempt entry to a GIN event without registration and/or payment.

12.10. I agree to conduct myself in a professional and ethical manner at all times.

12.11. I agree to make an honest and fair representation of GIN and GIN's affiliate program.

12.12. I agree to make an honest and fair representation of the Affiliate Compensation Plan.

12.13. I agree to never make any false income claims or suggestions.

12.14. I agree to never solicit, suggest, entice, in any way, any Member and/or Affiliate to change to another sponsor.

12.15. I agree to abide by all Affiliate promotions' terms and conditions at all times.

12.16. I agree to maintain a positive and professional relationship with all whom I have sponsored.

12.17. I agree to never solicit Members and/or Affiliates, directly or indirectly, to promote other business opportunities, loans, investments, products, or services.

12.18. I agree to never use the GIN website, my account or status within GIN for any fraudulent purpose, including but not limited to allowing non members and or affiliates access to the GIN website or any of GIN's published information.

12.19. I agree to never promote illegal activity of any kind.

12.20. I agree to never harass any Member and/or Affiliate in any way, including but not limited to physical stalking, bullying, on-line stalking, using email or telephone calls.

12.21. I agree to never misrepresent myself, or my status within the organization, including but not limited to my affiliate pin level, my relationship with speakers, staff, presenters, contractors, or other members or affiliates.

12.22. I acknowledge that GIN, at its sole discretion, can terminate my Affiliate account, in accordance with GIN procedures, if GIN believes that I have violated this Code of Conduct.

13. ENFORCEMENT OF AFFILIATE AGREEMENT, AND AFFILIATE CODE OF CONDUCT

13.1. GIN reserves the right to enforce the terms and conditions of this Affiliate Agreement, and the Affiliate Code of Conduct. In order to insure compliance with the Affiliate Agreement and Code of Conduct, GIN shall have the right to impose any of the following:

13.1.1. Warning- A written warning to an Affiliate, or group of Affiliates, identifying the violation and offering a fair amount of time to remedy the violation. Letter shall also advise that failure to comply may result in more severe sanctions.

13.1.2. Probation- a period of probation can be issued at the sole discretion of GIN. GIN shall disclose to an Affiliate the specific reason(s) for the probation. Should an Affiliate continue to violate the reason for the probation, or violate any other clause herein during the period of probation, it may result in more severe sanctions.

13.1.3. Suspension- a period of suspension can be issued at the sole discretion of GIN. GIN shall disclose to an Affiliate the specific reason(s) for the suspension. During a suspension, all Affiliate privileges are suspended, including but not limited to commissions, website access, affiliate codes, promotions and eligibility for promotions.

13.1.4. Expulsion- GIN at its sole discretion can expel an Affiliate for any violation. GIN shall disclose to an Affiliate the specific reason for expulsion. Once an Affiliate is expelled, the Affiliate's downline will shift up to the expelled Affiliate's sponsor. The expelled Affiliate shall no longer have any right to commissions, website access, or any other Affiliate privileges. Expelled Affiliates may never sign up as a Member and/or Affiliate.

13.2. Appeals-Affiliates may appeal, in writing, any of the above sanctions. To appeal, an Affiliate shall do all of the following:

13.2.1. Submit a written statement addressing the specific accusation(s) against the Affiliate.

13.2.2. Submit any/all evidence pertaining to the specific accusation(s).

13.2.3. Be available for a telephone or in-person interview to discuss the accusation(s).

13.2.4. Act in a professional manner at all times.

13.3. During an appeal, the sanction imposed shall stay in force until a final verdict has been rendered.

13.4. Once an appeal has been submitted, a committee of two (2) GIN staff representatives, and one (1) Platinum Affiliate, will review all documentation and issue a final decision based on the majority vote.

FTC PXA:8



December 2, 2013

Timothy A Shimko

Timothy A. Shimko & Associates Co., LPA

1010 Ohio Savings Plaza

1801 East Ninth St.

Cleveland, Ohio 44114

Re: Global Information Network Sales Program

Dear Mr. Shimko:

You have asked me to review the materials of the network marketing program Global Information Network as to its current legal compliance status and to recommend what, if anything, must be undertaken by a new owner in order that effective legal compliances be in effect in future operations.

My review of the current sales program of Global Information Network indicates that was almost certainly operating as a pyramid promotional scheme as defined by various administrative decisions of the Federal Trade Commission under Section 5 of the Federal Trade Commission act. This is so because at least some of the types of commissions earned by participants are capable of being earned on the condition of the participant being an active (paying) member, but without the commissions paid being connected to and based upon sales to non-commission earning customer members.

Should your client acquire the assets of Global Information Network, my recommendations as to sales program changes needed to achieve effective legal compliances are as follows:

1. The Owners and operating personnel should be clearly defined with program ownership in a U.S. licensed and based corporation or limited liability company.

2. That there be but two (2) positions available to participants, a-that of a Member with specific consumer contractual terms, cancellation notices, etc. and b-that of an Affiliate Member, being a Member who has expressly elected to be an Affiliate Member and subject to additional contractual terms applicable to selling memberships and earning commissions, including enhanced (12 month) cancellation and refund rights.


3. That in order to be commission eligible in each month or other commission period the Affiliate Member must:

a. Be a paying Member in good standing and,

b. Have personally sponsored a paying Member (at any time) who is in good standing during the commission period and who is not an Affiliate Member; and whose membership payments during the commission period equal or exceed those of their Affiliate Member sponsor.

In this way the company will have connected commissions earned by the Affiliate Members to customer purchases and based the commissions paid to Affiliate Members upon non-Affiliate end user customer sales.

Please feel free to contact me at any time regarding this matter.


Thayer C. Lindauer

805-587-9700

Thayer C. Lindauer
2632 Richard Avenue
Cayucos CA 93430
(618) 698-822
Fax (888) 752-2246
Email: tlindauer@gmail.com

Legal Practice Limited
To Arizona and
Federal Courts

State Bar of
Arizona No.1531
Member Washington D.C. Bar

RESUME

EDUCATION

Attended grammar school and high school at Phoenix, Arizona. University of Chicago 1957-1963. Degrees and Honors: Bachelor of Arts – 1961; Doctor of Laws – 1965. Phi Delta Theta Social Fraternity. Director of American Bar Foundation Court Congestion Project. Technical Director University of Chicago Theatre.

PROFESSIONAL BACKGROUND.

Member of Arizona and multiple Federal Bars. Admitted to practice before the Ninth Circuit Court of Appeals, the United States Tax Court and the United States Supreme Court. General commercial and administrative law practice at Phoenix, Arizona 1963 – 1985. Senior partner law firm Lindauer, Girard and Gormley and predecessors, 1968 - 1885. U.S. and international marketing regulation practice 1968 to present. General Counsel, Excel Communications, Inc. 1994 – 1995, established Legal Regulatory Dept.

PROFESIONAL AWARDS AND HONORS.

Featured speaker at Multi-Level Marketing Symposiums at Miami, Florida and Las Vegas Nevada. Featured speaker at Prepaid Legal Services Institute Symposium at Miami, Florida, March 1988. Seminar presenter Marketing Law Symposium, Las Vegas, Nevada.

MARKETING EXPERIENCE.

Marketing legal counsel and consultant to network marketing and direct sales companies in the United States and internationally since 1968. Legal practice limited to marketing regulation, franchising, and international trade regulation matters. Consultant on marketing plans and MLM compensation plan structures. Pioneered use of network marketing to offer and sell business opportunities.

REPRESENTATIVE CLIENTS.

Excel Communications, Inc. 1990-2004 (Long Distance Telephone Services). Your Travel Biz.com (Travel Agency Business Opportunities). Everyday Wealth (Financial Services Subscription). Royal Body Care (Nutritional Products). Evangelical Concerns, Inc. (Church and Mission Funding). Provided marketing legal representation and consulting services to more than 2,500 network marketing and direct selling companies.

FTC PXA:9

1 APPEARANCES:
2
3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:
4 JONATHAN COHEN, ESQ.
5 Federal Trade Commission
6 Mail Stop M-8102B
7 600 Pennsylvania Avenue, N.W.
8 Washington, D.C. 20580
9 (202) 326-2551
10 jcohen2@ftc.gov
11

12 ON BEHALF OF DEFENDANT TRUDEAU AND THE WITNESS:
13 THOMAS L. KIRSCH, II, ESQ., and
14 Winston & Strawn, LLP
15 Suite 4200
16 35 West Wacker Drive
17 Chicago, Illinois 60601
18 (312) 558-5600
19 tkirsch@winston.com
20
21
22
23
24
25

1 or indirectly owns or manages.

2 Q. What entities are those?

3 A. May I refer to my notes?

4 Q. Yes, you may.

5 MR. COHEN: In fact, let's mark this, and just
6 in the interest of keeping things organized, I'm going
7 to skip some numbers here, if it's all right with
8 counsel. I'm going to call this, I believe, Lane 42.

9 (Lane Exhibit Number 42, List of Babenko
10 Entities, was marked for identification.)

11 THE WITNESS: I actually have two documents.

12 MR. COHEN: We'll mark them both.

13 This is going to be Lane 42. Lane 42 is a list
14 of entities, and then we're going to mark Lane 43, which
15 is an organizational chart.

16 (Lane Exhibit Number 43, Organizational Chart,
17 was marked for identification.)

18 A. Yes. I may refer to either or both of those?

19 BY MR. COHEN:

20 Q. Absolutely.

21 A. You're asking the entities --

22 Q. That you consider to be Babenko entities.

23 A. Okay. Advantage Solutions, Ltd., APC Trading,
24 Ltd., Sovereign Trust, NT Trading S.A., NBT Trading,
25 Ltd., KT Radio Network, Inc., Website Solutions

1 Switzerland GmbH, Website Solutions USA, Inc., Global
2 Information Network Foundation, GIN USA, Inc.

3 Q. Which of these entities does Babenko directly or
4 indirectly own?

5 A. Okay. Advantage Solutions, Ltd., APC Trading
6 Limited, NBT Trading Limited, KT Radio Network, Inc.,
7 Website Solutions Switzerland GmbH, Website Solutions
8 USA, Inc. -- and I'll interpret ownership expansively to
9 beneficial interest.

10 Q. Yes, please.

11 A. On that basis, Sovereign Trust and NT Trading
12 S.A.

13 Q. She neither owns nor has a beneficial
14 interest -- I may have just missed this -- but she
15 neither owns nor has a beneficial interest in GIN FDN?

16 A. That's correct.

17 Q. And she neither owns or has a beneficial
18 interest in GIN USA?

19 A. That is correct.

20 Q. Who owns GIN USA?

21 A. GIN USA is owned by Global Information Network
22 Foundation.

23 Q. Who owns GIN FDN?

24 A. Global Information Network Foundation has no
25 owners.

1 Q. Who controls Global Information Network FDN?

2 A. Ultimately, Ms. Babenko.

3 Q. Through what relationship does she control --
4 strike that.

5 How does she control Global Information Network
6 FDN?

7 A. The management board of Global Information
8 Network Foundation is APC Trading, Ltd., of which she is
9 the sole owner.

10 Q. Let me move quickly -- and thank you.

11 Let me move quickly. I'm going to just show you
12 again -- this will be no surprise -- but this was
13 previously marked as Lane 2. You'll see a list of --
14 actually, let me give you -- if I could give you -- you
15 can have that Lane 2 or this Lane 2. It doesn't matter.
16 They're all copies of your exhibit, and, Counsel,
17 there's copies for you as well.

18 MR. KIRSCH: I have my copies, yeah, from last
19 time.

20 BY MR. COHEN:

21 Q. If you would take a look at page 3 which is the
22 specifications. We won't go one by one but -- let me
23 know when you've gotten to that page, and if you could
24 please review Specifications A through I.

25 MR. KIRSCH: It's Schedule A, I think.

FTC PXA:10

SUCCESS
IS AN
ATTITUDE OF MIND.

9 December '13

Perry - Congratulations on your determined efforts & dedicated leadership on recovery of G.I.N.!

Since our brief visit w/you at the Washington, B.C. event, we've been traveling, speaking in on the go - Sorry to have been 'missin' the action -

Here's a check for \$1000 to assist the worthy battle you are waging - Thanks for your wisdom & tenacity - U.R. TERRIFIC -

Keep Smiling!
Thanks, Perry
Luv. ya!
Carlene Young
Ed

WIN OR LOSE
You Get To Choose

Ed Foreman

FTC PXA:11

Neil Sant

From: kevintrudeau@aol.com
Sent: Monday, March 18, 2013 11:01 AM
To: Neilsant@miint.net; lee@snowflakemedia.co.uk

talk to levivk..

- get ed forman and troy to send letters ..call..
 - send BOXES of comments
 - send video testes from cruise..level 6 candidates saying how much they love gin
 - get the reporters email out to members so members can write and say how much they love gin
 - find out who is owed money or wants a refund and respond to abc about it...if none is due because of violations to afficitae and members agreements it should be pointed out.
 - he has a copy of IC audio training cds..and maybe others.a legal letter has to be sent saying those are stolen goods and he must tell us where they came from so we can press charges..
 - he needs to be told all auiods are coywritten and tm and he cannot use them on the air and needs to tell us who is criminally viloting copyrites and tms and affiiate and members confidentialyt agreements
 - invite him to dallas under controlled circumstances
 - send him dr c email proloting HIS deal...showing his TRUE motives for lying about me and gin
 - send stuff about dr c abe and wink showing they are NOT credible
- Kevin Trudeau

Neil Sant

From: kevintrudeau@aol.com
Sent: Monday, March 18, 2013 9:32 AM
To: Neilsant@miint.net; deno.andrews@websolutionsus.com;
lee@snowflakemedia.co.uk

ABC Dateline crew showed up outside my apartment in Zurich. I DID talk with them. I think we should consider giving them some video clips of people from cruise saying how gin impacted them and send them BOXES of testimonials..... I thought I did a good job of not being defensive....maybe I can talk with levick about what they asked me. Neil...take the lead here ..work fast...and get levick invovled..

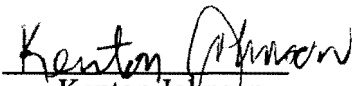
Kevin Trudeau

FTC
EXHIBIT B

(10) Presently, the proposed intervenors have access to GIN seminars, trainings, and other non-monetary benefits in accordance with their Membership Agreement. The Receiver does not intend to alter this arrangement imminently, and it may not ever be altered.

(11) If the Receiver ultimately sells GIN to a third party, the purchaser is unlikely to terminate GIN Participants' access to non-monetary member benefits (no one would purchase GIN simply to dissolve it).

(12) If the Receiver knew that there was an issue regarding GIN's ownership, the Receiver may have managed GIN differently over the past three months (including different hiring and firing decisions, and different programmatic decisions).


Kenton Johnson

Executed on December 18, 2013 in Sun Valley, California.

FTC PXB:1

MEMBERSHIP AGREEMENT

1. INTRODUCTION

2. CONTRACT

2.1. This is a legally binding agreement between you and Global Information Network FDN, a multiform foundation established in Nevis. If you do not agree with all of the terms and conditions contained herein, do not submit an application to become a Member of GIN.

2.2. As used herein, GIN shall include Global Information Network FDN, its affiliates and related companies, and each of their subscribers, agents, directors, officers, employees and assigns.

2.3. By submitting an application to become a Member of GIN, you are representing and warranting that you have reviewed, fully understand and agree to all of the following terms and conditions.

3. MEMBERSHIP REQUIREMENTS

3.1. You represent and warrant that you have been referred to GIN by a Member and/or an Affiliate that is currently in good standing.

3.2. You represent and warrant that if you are an employee, agent or other representative of any federal, state or other governmental agency, including without limitation the Federal Trade Commission or the Food and Drug Administration, you agree to comply with the terms stated in 3.5

3.3. You represent and warrant that if you are an employee, agent or other representative of, or otherwise affiliated with, any media outlet or organization, including without limitation any news or entertainment publication or broadcast agency, you agree to comply with the terms stated in 3.5

3.4. You represent and warrant that you are not falsely representing yourself as a consumer and you further represent that you will not share material, ideas, or intellectual property from the Global Information Network in any way for use in other businesses, media outlets, or potential lawsuits.

3.5. GIN reserves the right to reject any membership application for any reason or no reason at all, in its sole discretion. If you are now or ever have been a member of the Media (print, web, radio or television) or Regulatory Government Agency, please submit your request in writing to join the Global Information Network at compliance@globalinformationnetwork.com. Approval is at the sole discretion of the officers of the Global Information Network. You will be required to provide proof of identity along with details of your role within that organization. Any person or agent who falsely represents their intention when joining the GIN Affiliate or Member organization, is subject to immediate termination from the organization.

3.6. Any Sponsor who knowingly endorses a member who is intentionally defrauding and/or not pursuing the best interests of the Global Information Network is subject to suspension or termination of their membership. If you

suspect that you may in violation of these terms, please email the Global Information Network at compliance@globalinformationnetwork.com for clarification.

4. FEES& MEMBERSHIP LEVELS

4.1. There are 12 membership levels in GIN. Each Member starts in the first level of membership, and must qualify for successive membership levels by meeting specific conditions and requirements and being approved by GIN. There is no obligation or requirement for any Member to ever upgrade to a higher level.

4.2. For the first level of membership, you authorize and agree that your credit card will be charged the amount of the payment option of your choosing on the Membership Application, and a reoccurring charge of \$150 USD each month until such time as you cancel your membership pursuant to the cancellation procedure described herein. You agree that your membership will be automatically renewed and your credit card will be automatically charged unless you affirmatively cancel your membership.

4.3. Each successive membership level will require an additional non-refundable fee and a reoccurring monthly charge. The information regarding the fees and benefits for each membership level will only be revealed to those Members in the membership level directly below that particular membership level. For example, Level 1 Members may request information on the requirements to qualify for level 2, and its benefits. Level 2 Members may request information on the requirements to qualify for level 3, and its benefits. This continues through to level 12.

4.4. All transactions with GIN shall be in U.S. dollars. All payments made to GIN are non-refundable.

4.5. Payment of fees to GIN does not entitle Members to any ownership or equity interest in GIN.

5. INFORMATION& CONFIDENTIALITY

5.1. The information contained on this site, as well as any other information provided directly or indirectly by GIN, is for your personal information and education only. None of the information is intended to invite, induce, or encourage any person to make a legal, medical, financial, or investment decision. You should consult with a licensed professional in the appropriate field before acting upon any information or recommendations that are made directly or indirectly by GIN.

5.2. The information you receive as a result of your membership in GIN shall be treated as Confidential Information, whether or not it is labeled as such. You agree not to copy, exploit, sell, distribute or otherwise disclose any Confidential Information to anyone except (a) to other Members of GIN that are in good standing or (b) to the extent required by judicial or governmental order provided that you have given GIN reasonable written notice prior to such disclosure to allow GIN a reasonable opportunity to protect the Confidential Information.

5.3. You acknowledge that if you breach any of the confidentiality obligations, any of the representations made herein, or the Code of Conduct GIN will suffer irreparable harm for which monetary damages would be inadequate. You agree that, in the event of such a breach, your membership will be cancelled immediately and GIN will be entitled to extraordinary relief in any court of competent jurisdiction, including, but not limited to, a temporary restraining order and preliminary and permanent injunctive relief to protect its rights, in addition to any and all remedies available at law. You agree to assign to GIN your right to bring any action for violation of any proprietary rights against any third parties in possession of Confidential Information received by you.

5.4. You agree to never share your membership account login credentials with anyone for any reason. You agree to never allow anyone for any reason to log into your GIN account, or to impersonate you in any way, and to maintain the confidentiality of the GIN web property.

6. DISCLAIMERS& WARRANTY

6.1. While GIN hopes to provide its Members with accurate and up-to-date information, we make no warranties or representations as to the accuracy of the information and assume no liability or responsibility for any error or omission in the information. No one shall be entitled to claim that there is a duty to update or correct any such information.

6.2. GIN shall provide information directly or indirectly to its Members in the manner, format, and at such times as GIN chooses, in its sole discretion. GIN makes no representations, warranties, or guarantees as to the amount of information that will be provided, when or how often that information will be provided, if or when requests from Members will be answered or by whom, if or when Members will receive mentoring or by whom, and if, when or where, webinars or other seminars or workshops will be offered.

6.3. GIN may modify, suspend, discontinue, or restrict the use of any portion of this site, without liability. GIN may deny access to any person or user at any time for any reason.

6.4. GIN does not represent, warrant or guarantee that, as a result of your connection with GIN or the information, products or services you receive directly or indirectly from GIN, THAT you will receive any money, bonuses, PROFITS, LOANS, CREDIT, personal or real property, business offers or anything else of monetary value, minimize your tax liability, improve your health, lose weight, or live a longer, healthier, or happier life. THIS INFORMATION IS NOT INTENDED TO REPLACE PROFESSIONAL ADVICE. GIN IS NOT AFFILIATED WITH ANY MEDICAL INSTITUTION AND THE INFORMATION IT PROVIDES HAS NOT BEEN APPROVED BY THE Federal Trade Commission or any other government agency. Neither GIN nor the information it provides can be relied upon TO prevent, cure, or treat any disease or medical condition.

6.5 GIN does not represent, warrant or guarantee that, as a result of your connection with GIN or the information, products or services you receive directly or indirectly from GIN, THAT you will receive any money, bonuses, PROFITS, LOANS, CREDIT, personal or real property, business offers or anything else of monetary value, minimize your tax liability, improve your health, lose weight, or live a longer, healthier, or happier life. THIS INFORMATION IS NOT INTENDED TO REPLACE PROFESSIONAL ADVICE. GIN IS NOT AFFILIATED WITH ANY MEDICAL INSTITUTION AND THE INFORMATION IT PROVIDES HAS NOT BEEN APPROVED BY THE Federal Trade Commission or any other government agency. Neither GIN nor the information it provides can be relied upon TO prevent, cure, or treat any disease or medical condition.

6.6. Your use of this site and any other information, products and services provided directly or indirectly by GIN is at your own risk. GIN assumes no responsibility, and shall not be liable for any resulting damages to, or viruses that may affect, your computer equipment or other property. GIN does not represent or warrant that use OF such information will not infringe on the rights of third parties.

6.7. ALL OF THE INFORMATION, SERVICES AND PRODUCTS PROVIDED DIRECTLY OR INDIRECTLY BY GIN IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE REGARDING SUITABILITY OF THE INFORMATION, ACCURACY, RELIABILITY,

COMPLETENESS, AND TIMELINESS. GIN DOES NOT WARRANT THAT THIS SITE IS FREE FROM ALL BUGS, ERRORS OR OMISSIONS. YOUR USE OF THIS SITE IS AT YOUR OWN RISK.

7. LIMITATION OF LIABILITY

7.1. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, NEITHER GIN NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THIS SITE SHALL be liable for (1) LOST PROFITS OR ANY OTHER INCIDENTAL OR Consequential DAMAGES, REGARDLESS OF THE FORM OF THE ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF GIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (2) punitive OR SPECIAL damages; OR (3) DAMAGES PROXIMATELY CAUSED BY YOUR FAILURE OR REFUSAL TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT OR AS REQUIRED BY LAW.

8. INDEMNIFICATION

8.1. You agree to indemnify, defend and hold harmless, at your sole expense, GIN from any claim or action brought by a third party relating to (a) your use of the site and/or (b) your breach of the Membership Agreement or the Terms of Use.

9. CANCELLATION& REMEDIES

9.1. GIN reserves the right to cancel your membership at any time for any reason or no reason at all, in its sole discretion.

9.2. You may cancel your membership at any time by visiting the Account Cancellation page located in the membership section of the GIN website. Canceling your Membership account will not affect your free Affiliate account. Upon downgrading to a free Affiliate status, you agree to be bound by the terms in the Affiliate Agreement at the time of cancellation. If you wish to cancel your Affiliate account, please email Support@GlobalInformationNetwork.com with your intentions and an agent will happily assist you.

9.3. If your membership is cancelled for any reason, you agree that (a) you will return the original and all copies of Confidential Information to GIN within 10 business days of the cancellation and (b) you will not be permitted to rejoin or sign up again as a Member of GIN within 12 calendar months of your cancellation. Any acceptance shall be at the sole discretion of GIN and must be reviewed and approved in advance by a GIN Compliance Officer. You must submit your case in advance in writing via Compliance@GlobalInformationNetwork.com. If your new application is accepted you are required to pay the appropriate enrollment fee at Level 1 and you will be treated as a new Member. Upon cancellation and rejoining, you will forfeit all previous status, Affiliateships, downlines, and Membership Levels, and any associated permissions or recognition.

9.4. You agree that you, the company you represent, any of its officers and directors, or any affiliated companies and their officers and directors, will never file suit for any reason, at any time, in any court, against GIN or any of its members.

9.5. Except as otherwise provided herein, if either party ever has a disagreement regarding any issue, both parties agree to try to work out such disagreements in a fair and reasonable manner. If the parties cannot work out their disagreements, your only remedy is to request a binding arbitration with a single arbitrator.

9.6. The party that wants to initiate arbitration shall call a well-established arbitration organization in the country of Nevis and request arbitration with a single arbitrator to begin on a date and time that is mutually agreeable to both parties and the arbitrator, but no later than fourteen business days from the date of the request. The party that initiates the arbitration will notify the other party in writing of the arbitration within one day of making that request.

9.7. Both parties agree to the following arbitration format:

9.8. The arbitration shall be attended by each party either in person or via telephone with or without attorneys present.

9.9. Each party will privately discuss with the arbitrator the facts as they see it, and their viewpoint regarding the disagreement.

9.10. The arbitrator will listen to both parties and ask questions or request information to clarify or verify facts.

9.11. The arbitrator will then take all the facts and make a decision, which will be binding, within 24 hours.

9.12. The arbitrator will be required to base his decision not on the technicalities of the law, or the technicalities or wording in any specific contract, but he will base his decision on "fairness and equality", and "under the spirit of true justice and original intention", and what is "fair" for all parties concerned today.

9.13. The arbitrator may award compensatory damages and legal fees, as he or she deems appropriate.

9.14. The arbitration award shall be final and binding upon both parties and may be enforced in any court of competent jurisdiction.

10. INTELLECTUAL PROPERTY

10.1. All material on this website, including, but not limited to, text, graphics, logos, audio clips, video clips, links, digital downloads, and trademarks is owned, controlled by or licensed by GIN and is protected by copyright, trademark, and other intellectual property laws. As between you and GIN, GIN exclusively owns all rights, titles and interest in and to the site content. You agree not to do anything that might impair such rights, nor will you assert ownership claim in any of the above-referenced intellectual property or in the site content.

10.2. You may download one copy of the site on a single computer for your personal, non-commercial use only, provided you maintain all copyright and trademark notices. No other use is permitted without the prior written consent of GIN.

10.3. The site may link to or frame third party websites. Framing allows a visitor to view content provided (and managed) by a third party without losing access to this site's navigational menu. GIN is not responsible or liable for content, products or services on framed sites or any other third party websites and does not promote or endorse any third party websites or the content on those sites.

11. MISCELLANEOUS

11.1. GIN reserves the right to change this Membership Agreement from time to time at its discretion and to notify Members of any such changes by posting a notice on the site, posting the new Membership Agreement on the site, sending the new Membership Agreement to the Members, or in any other way that GIN deems fit. Your continued membership in GIN after a new Membership Agreement is in place will constitute your agreement to be bound by that new agreement.

11.2. This Membership Agreement will be governed by and construed in accordance with the laws of the country of Nevis, without regard to its choice of law provisions.

11.3. If for any reason, any provision of this Membership Agreement is found unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties as reflected in that provision, and the remainder of the Membership Agreement shall continue in full force and effect. The failure of GIN to enforce or exercise any provisions of the Membership Agreement shall not constitute a waiver of that right or provision.

11.4. I give GIN express permission to call any and all telephone numbers listed on my account, to speak to me in person, or to deliver a previously recorded message, for any purpose including but not limited to informational, promotional, or the marketing of new goods or services. I give GIN expressed permission to call my telephone numbers with such calls, even if those numbers are registered on national and/or state do not call lists, while I am an Affiliate and/or Member in GIN. I also give GIN express permission to contact me via email, direct mail, or any other method of communication, for any reason, while I am an Affiliate or Member of GIN.

11.5. I give GIN express permission to use any testimonial I submit, in any format for sales and marketing promotion including, but not limited to, use on the GIN website, in written mail and email materials, audio and video productions, any form of Social Media, and any other method of communication.

12. MEMBER CODE OF CONDUCT

12.1. All GIN Members & Affiliates agree to strictly adhere to the GIN Code of Conduct. Violation of this Code of Conduct may, at the discretion of GIN, result in the termination of your account.

12.2. I agree to abide by this Code of Conduct at all times.

12.3. I agree to adhere to all GIN guidelines, rules, policies and procedures.

12.4. I acknowledge that this Code of Conduct may change, with or without notice, and that it is my responsibility to regularly review and understand this Code of Conduct.

12.5. I acknowledge that any violation of this Code of Conduct may, at the discretion of GIN and in accordance with GIN procedures, result in the termination of my account.

12.6. I agree that my actions will be in compliance with all applicable laws and regulations.

12.7. I acknowledge that I am not able to participate in, or benefit by, any promotion that is prohibited by applicable law.

12.8. I agree to never jeopardize the reputation of GIN, any of its Members and Affiliates, staff, speakers, presenters, and contractors, in any way, including but not limited to using any social media platform (Facebook, Twitter, Google+, etc.), email, telephone, print, or public announcement.

12.9. I agree never to attempt entry to a GIN event without registration and/or payment.

12.10. I agree to conduct myself in a professional and ethical manner at all times.

12.11. I agree to make an honest and fair representation of GIN and GIN's affiliate program.

12.12. I agree to make an honest and fair representation of the Affiliate Compensation Plan.

12.13. I agree to never make any false income claims or suggestions.

12.14. I agree to never solicit, suggest, entice, in any way, any Member and/or Affiliate to change to another sponsor.

12.15. I agree to abide by all Affiliate promotions' terms and conditions at all times.

12.16. I agree to maintain a positive and professional relationship with all whom I have sponsored.

12.17. I agree to never solicit Members and/or Affiliates, directly or indirectly, to promote other business opportunities, loans, investments, products, or services.

12.18. I agree to never use the GIN website, my account or status within GIN for any fraudulent purpose, including but not limited to allowing non members and or affiliates access to the GIN website or any of GIN's published information.

12.19. I agree to never promote illegal activity of any kind.

12.20. I agree to never harass any Member and/or Affiliate in any way, including but not limited to physical stalking, bullying, on-line stalking, using email or telephone calls.

12.21. I agree to never misrepresent myself, or my status within the organization, including but not limited to my affiliate pin level, my relationship with speakers, staff, presenters, contractors, or other members or affiliates.

12.22. I acknowledge that GIN, at its sole discretion, can terminate my Affiliate account, in accordance with GIN procedures, if GIN believes that I have violated this Code of Conduct.

13. ENFORCEMENT OF AFFILIATE AGREEMENT, AND AFFILIATE CODE OF CONDUCT

13.1. GIN reserves the right to enforce the terms and conditions of this Affiliate Agreement, and the Affiliate Code of Conduct. In order to insure compliance with the Affiliate Agreement and Code of Conduct, GIN shall have the right to impose any of the following:

13.1.1. Warning- A written warning to an Affiliate, or group of Affiliates, identifying the violation and offering a fair amount of time to remedy the violation. Letter shall also advise that failure to comply may result in more severe sanctions.

13.1.2. Probation- a period of probation can be issued at the sole discretion of GIN. GIN shall disclose to an Affiliate the specific reason(s) for the probation. Should an Affiliate continue to violate the reason for the probation, or violate any other clause herein during the period of probation, it may result in more severe sanctions.

13.1.3. Suspension- a period of suspension can be issued at the sole discretion of GIN. GIN shall disclose to an Affiliate the specific reason(s) for the suspension. During a suspension, all Affiliate privileges are suspended, including but not limited to commissions, website access, affiliate codes, promotions and eligibility for promotions.

13.1.4. Expulsion- GIN at its sole discretion can expel an Affiliate for any violation. GIN shall disclose to an Affiliate the specific reason for expulsion. Once an Affiliate is expelled, the Affiliate's downline will shift up to the expelled Affiliate's sponsor. The expelled Affiliate shall no longer have any right to commissions, website access, or any other Affiliate privileges. Expelled Affiliates may never sign up as a Member and/or Affiliate.

13.2. Appeals-Affiliates may appeal, in writing, any of the above sanctions. To appeal, an Affiliate shall do all of the following:

13.2.1. Submit a written statement addressing the specific accusation(s) against the Affiliate.

13.2.2. Submit any/all evidence pertaining to the specific accusation(s).

13.2.3. Be available for a telephone or in-person interview to discuss the accusation(s).

13.2.4. Act in a professional manner at all times.

13.3. During an appeal, the sanction imposed shall stay in force until a final verdict has been rendered.

13.4. Once an appeal has been submitted, a committee of two (2) GIN staff representatives, and one (1) Platinum Affiliate, will review all documentation and issue a final decision based on the majority vote.

FTC
EXHIBIT C

FTC PXC:1

EXPERT REPORT OF PETER J. VANDER NAT, Ph.D.

1. My name is Dr. Peter J. Vander Nat. I have a doctoral degree in economics from the University of Notre Dame. I am an economist employed by the Federal Trade Commission (FTC) and for approximately twenty-five years I have advised the Commission on consumer protection matters. I have testified in federal district court as an expert witness in a number of previous pyramid scheme cases brought by various federal government agencies, including the FTC, Securities and Exchange Commission, and the Department of Justice. A true and correct copy of my resume is attached as **Vander Nat Attachment (Att.) A**.

2. In examining Global Information Network (“GIN”; “the company”), I have reviewed a variety of materials, including the Membership Agreement, the Affiliate Agreement, the Commission Structure, the first report from the receiver, and various postings at GIN’s website (see below).

Overview and Summary of Conclusions

3. GIN’s program offers the participants an educational and business opportunity. By enrolling others in the firm’s educational seminars on personal development, business acumen, and the like, a participant can obtain financial rewards; see *Commission Structure* (infra). The commissions are open to Affiliates and Members –the two forms of participation in GIN’s program. A Member is a participant who undertakes a certain level of training via the firm’s seminars, with fees ranging from \$1,000 – \$25,000. An Affiliate is a person who earns financial rewards by recruiting new Members (recruitment of Affiliates earns no rewards).¹ An Affiliate does not pay fees, unless the Affiliate becomes a Member. As explained below, GIN has structured the incentives so that it strongly behooves an Affiliate to become a Member. From inception in 2009 to August 2013 when the receiver took control, more than 90% of the commissions were paid to participants specifically as Members, reaching 98% by August 2013.

4. Each Member can qualify for financial rewards by progressively enrolling new Members. The *Commission Structure* pays rewards over 7 levels of recruitment, then adding a 4% commission on as many levels as a participant may accomplish; indeed “on potentially thousands of levels deep.” GIN promotes its business opportunity as a “perpetual money-making machine.” In reality, it is a perpetual recruitment scheme that dooms the vast majority of the participants (well above 90%) to financial losses by the very design of the compensation plan. GIN’s “opportunity” pays rewards (only) for recruiting new Members; more specifically, recruitment rewards are tied to, and paid by, the continual recruitment of new Members. There are no sales of product or service to people outside GIN’s network, so there cannot be any relation between retail (or external) sales and financial rewards paid in connection with recruitment. Using both the general economic characterization of pyramid schemes and the deeper analysis under the Koscot test (see below), I conclude that GIN is a pyramid scheme. Over 2009–2013, GIN took in about \$92 million in Membership revenue, while 90% of Members earned nothing at all. A most conservative estimate of harm comes to \$83 million.²

¹ By GIN’s rules, an Affiliate need not be a Member; however, any Member is an Affiliate and can automatically participate in the rewards under the GIN Compensation Plan.

² I estimate the harm that results from GIN’s pyramid scheme, which is actively promoted as a business venture by which participants may obtain substantial income. Presently, I do not have data on individual payments to GIN, nor corresponding individual rewards received. Considering that 90% of Members earned nothing, a low-side estimate of harm is $\$83M = .90 \times \$92M$. This calculation of economic harm excludes intangible, social, and educational benefits that a person might receive from membership. While certain people may appreciate these potential benefits, the latter are not relevant to an analysis of whether a program is a pyramid scheme.

The Meaning of a Pyramid Scheme

5. There are two closely related descriptions of a pyramid scheme. The first is a general economic characterization in use for many years: a pyramid scheme is a perpetual recruitment chain in which the design of the scheme's compensation plan dooms the vast majority of participants to financial failure.³ The *Koscot test*—adopted by federal courts—applies this meaning to ongoing recruitment in the context of multilevel marketing (MLM), focusing on an MLM firm that sells a product or service and pays recruitment rewards that are unrelated to the sale of the product/service to people outside the MLM's network. The Koscot analysis moves from a general characterization to a specific application in a multilevel marketing context; as shown below, both exactly fit GIN.

6. In general economic terms, a pyramid scheme is an organization that hinges on the continual recruitment of new members, all of whom need to recruit others to recoup their own investment. The primary benefit—indeed, often the sole benefit—from ongoing recruitment is that the participants receive a certain portion of the monies paid by the set of subsequent recruits. The latter comprise a person's "downline," which refers to all direct and indirect recruits of a given person. In order for participants to recoup their own fees—and ostensibly much more as expected by the participants—they all need to generate further downline enrollment. The specific rules regarding recruitment and the related recoupment of fees vary from one scheme to another but the common thread is this: monetary returns are tied to an ongoing ability to recruit others into the same venture. Thereby, a situation is created in which the desired recoupment will not, and *cannot*, come true for the vast majority of participants. As recruitment continues, the number of people at or near the base of the recruitment structure grows very rapidly, often at an exponential rate for as long as a successful recruitment pattern is maintained. At whatever current enrollment level the program is considered (saturation or not; see below), the most recent recruitment layers typically do not qualify for financial rewards because their own downlines are either empty or do not have the sufficient numbers required by the compensation plan to secure rewards. In sum, a pyramid scheme is a money-transfer scheme in which the foreseen losses of the vast majority become winnings for a small minority at the top of the recruitment structure.

7. In broad outline, this same characterization applies to Ponzi schemes. It is equally true of Madoff's Ponzi scheme that it was a money-transfer scheme in which the foreseen losses of the vast majority became winnings for a few at the top. The two schemes may become differentiated in an MLM context, but for many MLM pyramids this essential characteristic remains the same. Below, I examine the growth of an organization in which each person is incentivized to recruit, respectively, 3 others, 6 others, and 10 others. These are programs that GIN promotes and they doom the vast majority to financial losses by the very design of the firm's compensation plan.

8. A pyramid scheme may seek to hide its real nature (essentially, a chain letter) by introducing a product or service to fool people into thinking that they are engaged in a business or income opportunity. The "Koscot test" (1975) addresses this version of the scheme.⁴ The analysis

³ As an example, see Att. B regarding a 1973 NYT press in connection with pyramid schemes.

⁴ *In re Koscot* (1975), the Federal Trade Commission articulates its test for a pyramid scheme, specifically noting that the absence or paucity of retail sales dooms the MLM to be an endless chain that is "nothing more than an elaborate chain letter device..." (*Koscot*, 86 F.T.C. 1180). Further, it held that a pyramid scheme is an organization in which participants pay money to the company "in return for which they receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users" (*Koscot* at 1106). Federal courts have adopted and elaborate upon the Koscot test, most notably in *Omnitrition* (1998), *Gold* (1999), *Five Star* (2000), and *BurnLounge* (2011). All of these federal

assumes a multilevel marketing context in which people pay fees and buy product to participate in the venture. If all purchases/sales were internal to the MLM (no sales of product or service to people outside this network), ongoing recruitment would doom the vast majority of participants to inevitable losses because, just as in the above analysis, monetary rewards would be critically tied to an ongoing ability to recruit others into the same venture; i.e., others who pay fees and buy product, who in turn recruit others who pay fees and buy product, and so forth, indefinitely. In considering the impending losses that such a recruitment chain would create, Koscot looks to income that would not depend on recruitment but rather on product sales to people outside the venture. Koscot thus looks to retail sales and addresses certain *factually based* questions about the MLM's program, namely (a) whether there are any retail sales (product sales to people outside the MLM) and (b) what relation exists, in practice, between such external sales and the rewards paid in connection with recruitment. If there is no relation between recruitment rewards and sales to the ultimate users outside the MLM's network, the organization is just a perpetual recruitment chain; indeed, in Koscot's words, "nothing more than an elaborate chain letter device." Such an MLM thereby dooms the vast majority of participants to financial failure. Concomitantly, Koscot renders the same organization to be an unlawful pyramid scheme.⁵

9. I underscore that the large-scale failure to obtain financial rewards in a pyramid scheme is *not* postponed until market saturation. Although the names of the most recent enrollees may quickly change as recruitment continues, the *percentage* of members comprising the most recent layers of recruits does not appreciably change for as long as a successful recruitment pattern is maintained. At whatever enrollment level the program may be considered, whether the total membership is large or small, saturation or not, the rules and implementation of the program ensure that the vast majority are not in a position to recoup their own investment. (Regarding GIN on this same point, see Tables 1 & 2 below.) Clearly, the losses are not accidental; they are determined by the design of a compensation plan that ties financial rewards to a continual ability to recruit others into the same venture – manifestly, a false premise. Most notably, the absolute number of people who hold losing positions in the scheme increases exponentially for as long as a successful recruitment pattern is maintained. And when recruitment begins to falter, many at the bottom just drop out. Recruitment then continues in an effort to replace the dropouts (a churning of the base), while a few fortunate people move higher on the recruitment ladder. In any event, the vast majority of participants do not recoup their investment.

Analysis of Global Information Network (GIN)

10. In promotional materials, GIN represents that one of the primary benefits of participating in the company's program is the opportunity to build a business having the potential for substantial income. In a taped recording at the firm's main website (www.globalinformationnetwork.com/), Mr. Trudeau explains how to get started in GIN's Affiliate program, claiming it is "one of the best money-making opportunities of all time" and "people all over the world are making hundreds or even thousands of dollars every month in residual income month after month." He

court rulings concur that for purposes of pyramid analysis under Koscot, "ultimate users" are people who are not participants in the proposed venture (thus, consumers outside the MLM's network).

⁵ Again, regarding GIN there is the added fact that there are no product sales at all outside this MLMs network. The rewards for recruitment are tied to, and paid by, the continual recruitment of new Members. For a further description of multilevel marketing and the similarities and differences with pyramid schemes, see Vander Nat, Peter J. and William W. Keep, "Marketing Fraud: An Approach for Differentiating Multilevel Marketing from Pyramid Schemes," *Journal of Public Policy & Marketing*, Vol21(1), Spring 2002, 139-151.

gives an example of an Affiliate who has made almost \$4 million in 18 months. He explains that the way to make money with GIN is by selling Memberships and building a downline of participants who sell Memberships, generating income for everyone from all products sold by everyone in their downline.⁶ Also at the website, in another taped presentation on “How to Build a Downline,” Mr. Trudeau states that people have the potential to earn \$10,000, \$20,000, \$30,000 or \$40,000 or \$50,000 per month. He goes on to say if a person spends a few hours a day for a year in company-sponsored training on how to operate a GIN business, they can be in a position to receive a \$10,000 check every month. GIN offers a course to people who want to build their business, comprised basically of training on how to recruit others and create a large downline. This course comes in a three-part series with a total price tag of about \$1,000 and is very notably called “How to Create a Perpetual Money-Making Machine.”

The Structure of GIN’s Compensation Plan

11. Regarding Members, there are 12 “Levels of Membership,” where each level offers more extensive training on enhancing your personal development, business acumen, and the like. From the materials, this part of the program has been developed for Membership Levels I –VI; deeper levels are apparently pending. An initial \$1,000 fee is paid for Level I, plus monthly dues of \$150. Successive levels retain the monthly dues and require further *upgrade fees* as follows: Level II at \$1,500; Level III at \$1,500; Level IV at \$3,000; Level V at \$10,000; and Level VI at \$25,000. These Membership levels are sequential; i.e., a Member cannot qualify for a higher level without first completing the lower levels –along with the related upgrade fees.

12. An Affiliate is a participant who receives commissions for recruiting Members. The rewards are a percentage of (a) the Member’s initial fee, (b) the monthly dues, and (c) any upgrade fees. A general participant, John Doe Affiliate (“JDA”) earns commissions for Members that JDA has directly or indirectly sponsored. As in all multilevel marketing, each participant has a *downline* that is comprised of the members whom the participant has directly or indirectly enrolled. Below, I provide an illustration of a downline and GIN’s related commissions.

13. For clarity, I note GIN’s “Membership Levels” are different from downline recruitment levels. At the website (www.globalinformationnetwork.com/members/faqs) the firm posts “Questions Regarding Commissions,” stating that a participant may achieve any number of downline recruitment levels while remaining at a designated Membership Level. GIN states that in order for a person to receive *upgrade commissions* on any Member’s upgrade fees, the person receiving this reward must have at least the same Membership Level as the person who pays the upgrade. The further import of this requirement is explained below. Although not strictly required to pay fees, John Doe Affiliate is strongly incentivized to be a Member (and thus pay fees). The overall *Commission Structure* is the following (from GIN’s website, December 2, 2013):

⁶ The reference to “products” is somewhat ambiguous. GIN’s main “product” is comprised of seminars. Also, at the website there is a link to the GIN store where business tools are sold, such as various CD lecture series on wealth management and how to make your financial dreams come true, including books and tapes on the same topics.

Welcome to the Global Information Network

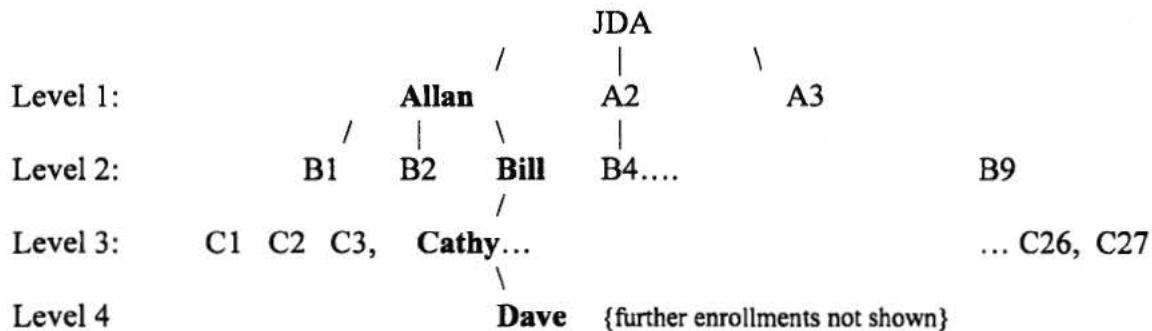
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Level #	Affiliate	Bronze Affiliate	Silver Affiliate	Gold Affiliate	Platinum Affiliate	One-Star Platinum Affiliate	Two-Star Platinum Affiliate	Three-Star Platinum Affiliate*	Four-Star Platinum Affiliate*	Five-Star Platinum Affiliate*	Presidential Platinum Affiliate*	Chairman Affiliate*
Level-1	20%	20%	20%	20%	20%	20%	20%	22%	23%	23%	23%	24%
Level-2	20%	20%	20%	20%	20%	20%	20%	22%	23%	23%	23%	24%
Level-3		2%	2%	2%	2%	2%	2%	4%	5%	5%	5%	6%
Level-4		2%	2%	2%	2%	2%	2%	4%	5%	5%	5%	6%
Level-5		2%	2%	2%	2%	2%	2%	4%	5%	5%	5%	6%
Level-6			2%	2%	2%	2%	2%	4%	5%	5%	5%	6%
Level-7				2%	3%	4%	5%	7%	8%	8%	8%	9%

* This includes breakaway bonuses. Pays up to 4% on potentially thousands of levels deep. These commissions percentages are paid on all membership dues collected. Until you are a Platinum Affiliate, you must make at least one sale to qualify for commission in that month.

Illustration of a Downline and Related Commissions

14. I illustrate commissions by a scenario in which each person enrolls 3 Members –not just Affiliates since financial rewards are paid for enrolling Members (as in the *Get 3 Program*, which incentivizes participants to sponsor 3 new Members in their first 60 days; see below). As each person enrolls 3 Members, a progressive downline is created. At the head of this downline is John Doe Affiliate (JDA, or briefly “John”) who, strictly speaking, need not be a Member, though very likely he would be, as affirmatively promoted and incentivized by GIN (see Para. 10, 13, 17, 18).



15. Upon meeting certain qualifiers (*infra*), the commissions are two-fold: (I) *direct commissions* paid to those who personally enroll new Members (a percentage of the membership fees), and (ii) *override commissions*, which are additional commissions paid to indirect sponsors of any participant who directly enrolls Members. In regard to the diagram, the rewards to JDA are: (a) for each Member personally enrolled by JDA (thus placements at his level 1), John receives a 20%

commission from the enrollment fee; (b) in turn, for Memberships enrolled by his level 1 (his indirect sponsorships placed at his level 2), he receives a 20% override commission; and (c) for Membership placements by his level 2 (thus creating John's level 3, which are also his indirect sponsorships), he receives a 2% override commission. GIN's commission chart presents further overrides for levels 4–7 with the highest override at level 7, namely a 9% override on each enrollee's membership fee, monthly dues, and any upgrade fees that occur at that level.

16. The key to a multilevel marketing structure is that, through progressive enrollment, various downlines are imbedded in each other. For example, when JDA enrolls Allan, and Allan then enrolls Bill, the member Bill is a level-1 recruit for Allan, who is his direct sponsor, and equally a level-2 recruit for JDA, his indirect sponsor. Thereafter, Bill's downline becomes a subset of Allan's downline and of JDA's downline. To illustrate specific rewards under this structure, say that Cathy is at John's 3rd level and enrolls a Member Dave, who pays a \$1,000 membership fee. Dave is placed at Cathy's 1st level and simultaneously at John's 4th level. The rewards for this placement are the following. Cathy receives a \$200 direct commission (20% of \$1000) and the override commissions to her upline sponsors are: (1) Cathy's sponsor, Bill, also obtains \$200 (as Cathy's enrollment of Dave is a level 2 recruit for Bill); then Bill's sponsor, Allan, receives \$20 (as Dave is a level 3 recruit for Allan); and Allan's sponsor, who is JDM, receives \$20 (Dave's placement by Cathy is a level 4 recruit for John). This recruitment generates collective rewards of \$440 to the upline sponsors of Dave. It exemplifies the general principle that all *qualified upline sponsors* (see below) obtain multilevel rewards for recruiting new downline members.

17. JDA may also qualify for *upgrade commissions* when downline Members undertake and pay upgrade fees. Regarding the above sponsorships in which JDA enrolls Allan and Allan enrolls Bill, suppose Bill subsequently upgrades to Level II Membership and pays a \$1,500 upgrade fee. For JDA to receive an override of 20% on Bill's fee (\$300 reward), JDA also needs to have Level II Membership (see, www.globalinformationnetwork.com/members/faqs). Under the *Get 3 Program* in which each participant recruits 3 Members, this \$300 upgrade commission would apply to as many as 12 people at JDA's enrollment levels 1–2; potentially, a total reward of \$3,600 (= \$300 x 12). This prospect warrants John's own upgrade to Level II. Better still, he need not pay the \$1,500 fee out of pocket and could obtain Level II for free. By qualifying for the *Get 3 Program* (enrolling 3 Members in his first 60 days), part of John's reward is \$1,500 in *upgrade credits* (see Para. 22 below). The requirement is that JDA has paid the initial \$1,000 Membership fee and is current on his monthly dues. And there are further prospects for upgrade commissions since any of these same enrollees may upgrade to Level III or higher. Once JDA is a (paying) Member, he can become qualified for further commissions in regard to any of his downline Members who undertake an upgrade.⁷

18. For the business venture, override/upgrade commissions comprise an important potential source for long-term income. Regarding those who are interested in the business venture, the promotional materials underscore the prospect of “thousands of dollars every month in residual

⁷ By GIN's rules, when a downline person upgrades to a higher level of Membership, any upline sponsor (direct or indirect) can qualify for upgrade commissions by achieving (paying for) the same Level of Membership in the same month that the enrollee pays the upgrade fee. Here are some illustrations. If JDA upgrades to Level III, he again qualifies for a reward of \$300 per person for any of the referenced 12 enrollees who also upgrade to Level III. Ultimately, at Level VI the enrollment fee is \$25,000 and renders a potential reward of \$5,000 (= 20% of \$25,000) to JDA for anyone of these 12 recruits who undertakes Level VI. If some Members in his downline do upgrade to Level VI, then JDA can assess potential rewards in commissions of up to 12 x \$5,000 (= \$60,000) over against his own upgrade payment of \$25,000.

income, month after month” (Para. 10). Clearly, GIN has structured the financial incentives so that it behooves John Doe Affiliate to become a Member.

19. GIN pays commissions on a monthly basis for certain enrollment fees (initial fees, monthly dues, and upgrades) paid out in a prior month. To receive rewards, upline sponsors must meet certain qualifiers. For the Get 3 Program, the opening requirement is that each person enrolls 3 Members over their first 60 days. To obtain override commissions, a participant needs to sponsor some number of Members to reach a specific Affiliate status, such as Bronze, Silver, Gold, Platinum, etc. Each of these positions offers certain override commissions to ever-deeper levels. As an example, the status of Silver Affiliate entitles JDA to overrides for 6 levels in his downline and requires him to sell at least one new Membership in the current month and have personally enrolled at least *four active Members* (an “active Member” is a person who is current on paying Membership fees, monthly dues, and any upgrades). The highest Affiliate status is “Chairman Affiliate”; it pays an override of 9% for any level 7 recruit in this person’s downline and thereafter a residual reward of “up to 4% on potentially thousands of levels deep.” Among the qualifiers for this status are: (i) this Affiliate has personally enrolled 100 active Members and (ii) has sponsored at least 5,000 Members over the first 7 levels of the Affiliate’s downline.

20. From the materials, and specifically GIN’s Compensation Plan, it is evident that all qualifiers for financial rewards stipulate particular recruitment levels that a participant needs to achieve. Equally, all the financial rewards *paid out* by GIN are tied to the recruitment of new Members. As analyzed below, GIN’s income opportunity is a perpetual recruitment scheme in which most participants do not recoup their joining fees.

The Get 3 Program

21. The *Get 3 Program* incentivizes participants to “sponsor a minimum of 3 new Members at the \$1,000 level in their first 60 days.” In keeping, I track this program by a scenario in which each Member enrolls 3 others, each one of whom in turn enrolls 3 others, and so forth. In view of the stated terms, the scenario assumes each person can recruit 3 Members over a period of 60 days. Over the same period, any such Member pays an initial fee of \$1,000 plus two months of dues at \$150/ month, rendering \$1,300 for the total payment. As a business venture, the question for participants is whether they can recoup their own payments and then make additional returns.

22. By recruiting 3 Members, a participant in the program initially obtains \$600 (= 3 x \$200). After the first 60 days, this participant is offered a choice between another \$600 in cash (*double commission*) or \$1,500 in upgrade credits for a higher level of Membership. In favor of the company, I assume that the participants believe in GIN’s program and thus want the higher levels of Membership and the more extensive instruction. As a business proposition, it is beneficial to receive \$1,500 in upgrade credits to a higher Membership Level by letting go of the second \$600 (available in cash). For specificity, I assume that *qualified participants* take their rewards as follows: an initial \$600 in cash and \$1,500 in upgrade credits.

23. By GIN’s rules, this two-fold reward is limited to *direct sponsorships* achieved. As stated in the program’s brochure (p. 4), beyond the level-1 enrollees, an upline sponsor receives regular commissions for further recruits. That is, when the various participants sponsor their respective level-2 recruits, the reward for each such recruit is 20% of the \$1,000 Membership fee (a \$200 reward). So, participants will want at least 4 indirect recruits at their level 2 to recoup their own

payment of \$1,300.⁸ In the table below, I compute the percentage of participants who will not recoup their own payments in the Get 3 Program *under the best of circumstances* for the participants; i.e., they all meet the rules of the program and qualify for all rewards under the plan:

Table 1. Proportion of Members who do not recoup their fees in the Get 3 Program

recruitment level n	Members at level n	total number of Members	Percent of Members at combined levels n-1 and n (bottom 2 levels); these do not recoup their fees.
n= 0	JDA	1	
n = 1	3	4	100%
n = 2	9	13	92.3%
n = 3	27	40	90.0%
n = 4	81	121	89.3%
n = 5	243	364	89.0%
n = 6	729	1093	88.9%
n = 7	2,187	3,280	88.9%
n = 8	6,561	9,841	88.9%
n = 9	19,683	29,524	88.9%
n = 10	59,049	88,573	88.9%
n > 10			88.9%

24. To understand how this table is constructed via ongoing recruitment, consider “n = 6” to be the most recent level of recruitment (deeper levels are not yet formed). In the recruitment of this 6th level, 729 Members enter the Get 3 Program and the total membership at that point is 1,093 individuals. The proportion of participants over the bottom two levels (using level 6 as the base and level 5 as one step above this base) thus comes to $(243 + 729) / 1093 = 88.9\%$. A similar calculation can be made by using any stated level (generically, level n) as the most recent level of recruitment. In each case, when one compares the bottom two levels (levels n-1 and n) to all Members who have joined by that point, the resulting ratio is at least 88.9%.

25. To convey the import of this mathematically provable result, I first note that by the terms of the Get 3 Program, a participant must have downline that is active at their own level 2 in order to recoup their own payment. As explained above, people who do not have any level-2 recruits are not in a position to recoup their own payment. So, people at the base of the recruitment structure (no matter where that base is considered) are certainly not in a position to recoup since they have no level beneath them. For people who are at one level above the base, they do not recoup either, since they have just one level beneath them (and not any level-2 recruits). And it is mathematically provable that the bottom two levels continually comprise at least 88.9% of the participants for as long as each member recruits 3 others.⁹ Thus, at least 88.9% of the participants are not in a position to recoup their own payments.

⁸ With just three recruits at their own level 2, the participant receives an additional cash reward of \$600; thus a total reward of \$1200 at that point. And even if the participant took the *double commission* in cash (i.e., \$1,200 with no upgrade credits), they would still need at least one recruit at their own level 2 in order to recoup the \$1,300 payment.

⁹ Under the assumption that qualified participants take their rewards as \$600 in cash and \$1,500 in upgrade credits, the result is that at least 88.9% of the participants lose \$700 per person. For those who take the double commission is cash (thus \$1,200), they are still short \$100.

26. Even not yet considering eventual market saturation for GIN's program, it will be difficult to maintain this recruitment and at some point it cannot be maintained in the way that the program envisions. As recruitment begins to falter (not necessarily stop) and the bottom begins to drop out, most participants are made *worse off* by not having the requisite downline. The empirical failure rate in recouping the \$1,300 payment is thus bound to be greater than 88.9%; e.g., readily 90% or more.¹⁰

The Platinum Club

27. Among other requirements, GIN's Platinum program requires the following: (a) each participant must personally sponsor 10 Members, and (b) each of these Members must sponsor at least one new Member.¹¹ The table below displays the associated growth pattern under the best of circumstances for the participants (i.e., they meet the rules of the program):

Table 2. The Growth of a Club in which each Member recruits 10 other Members

recruitment level n	Members at level n	total number of Members in the club	percent of Members at combined levels n-1 and n (bottom 2 levels)
n= 0	JDA	1	
n = 1	10	11	100%
n = 2	100	111	99.1%
n = 3	1,000	1,111	99.0%
n = 4	10,000	11,111	99.0%
n ≥ 5			99.0%

28. *Qualified participants* (i.e., those who meet conditions (a) & (b) just above) need to have some level-2 recruits, since each direct enrollee of a participant must sponsor someone else, thus having at least one recruit at the participant's 2nd level. Much of the prior analysis is applicable. No matter what level (generically level n) one may consider as the most recent recruitment level, the bottom two levels have no level-2 recruits of their own. As the table shows, these two levels comprise 99% of the participants. Consequently, for as long as a successful recruitment pattern is maintained, 99% of participants do not qualify for the rewards specific to the Platinum program.¹²

29. Of course, it will be exceedingly difficult to maintain recruitment in which each Member enrolls 10 others. But again, this difficulty only makes the general participant worse off upon failing to meet the qualifiers. As recruitment falters and many drop out, the vast majority will not have the requisite downline for two reasons: (a) even under the best of circumstances for the participants, 99% do not qualify, and (b) as recruitment falters, the failure to qualify can only get

¹⁰ GIN also has a Get 6 Program, which incentivizes participants to enroll 6 Members in their first 60 days. The analysis is very similar. A participant will need a least one level-2 recruit to recoup the payment of \$1,300 and the bottom two levels will not have any such recruits. For a pattern in which each person enrolls 6 Members, the bottom two levels comprise 97.2% of the participants for as long as a successful recruitment pattern is maintained. Using the same reasoning as above, the empirical failure rate in this program will thus be greater than 97.2%.

¹¹ GIN's Compensation Plan states all the requirements to reach the status of Platinum Affiliate.

¹² Platinum status has 7 positions: Platinum, One Star, Two Star, Three, Four, and Five Star, and Presidential Platinum. Each status grants progressively higher overrides for achieving recruits at the 7th level. In addition, qualified Members receive 2% of monthly revenues from initial Membership fees, any upgrades, and monthly dues.

worse. By these considerations alone, the empirical failure rate to achieve the rewards specific to the Platinum program is bound to be above 99%.

30. For the tiny minority that qualifies (less than 1%), the rewards are significant. For the period from January 2012 through July 2013, the receiver prepared a spreadsheet¹³ of certain monthly rewards paid to qualified participants in the Platinum Club, reckoning only that portion of their reward that grants 2% of gross revenue received by GIN; further Platinum rewards are not given in the spreadsheet. There are 397 qualified participants in January 2012 and this dwindles down to 53 by July 2013. In all likelihood, the 53 are a subset of the 397. Considering only these 53 Members, I calculate that they obtained, at least, \$11,238/person for this period, or an average of at least \$591/month per person (again, based on just 2% of revenue). To understand the disparity between Members who qualify and those who do not, I compare this outcome to data for all Members over this same period (using p.15 of the receiver's report). First, 97.7% of all Members over all GIN's programs for the stated period received zero rewards. Further, 99.1% of all Members over all programs recouped less than their monthly dues of \$150/ month (let alone any consideration of Membership payments of at least \$1,000 per person). If initial Membership payments were factored into the calculations, the failure rate for recouping a participant's own payments would surely rise above 99.1%.

31. The Platinum Club and the Get 3 Program are illustrative of the general outcome for GIN's proposed business opportunity: by design of the program, the vast majority of participants will not be in a position to recoup their own payments.

General Losses for GIN Participants

32. The receiver's report reviews data on Membership payments received, gross revenue to GIN, Commissions paid out, and much more. For purposes of this declaration, I focus mainly on the Membership payments received by GIN and the commissions that GIN paid out. The report indicates that as an annualized average for 2009 – 2013, close to 90% of Members obtained no commissions at all. Further, again on an annualized basis for this same total period, 98.5% of Members did not even recoup their payments for monthly dues (i.e., \$1,800 = 12 x \$150) – let alone any consideration of Membership fees of \$1,000 or more per Member. These data comport well with the prediction derived from the structure of the Get 3 program that, at a minimum, 88.9%, of the participants would not recoup their own payments and that the empirical failure rate would thus be considerably higher than 88.9%. The data also indicate that less than 1% of Members received the majority of all commissions.

33. On a comparison basis, the report shows that the outcome became even worse for most Members in 2013. Regarding 8 months of data for 2013, which was a peak period for number of active Memberships,¹⁴ approximately 98.3% of all commissions were paid to Members, while 97.4% of Members in the same period received zero commissions. Further, 99.5% of Members did not recoup even their monthly dues for the period. These data further support the analysis of the structure of GIN's programs, namely that the very terms of the compensation plan doom the vast majority of participants to financial failure. Contrary to GIN's claim that its business opportunity provides a Perpetual Money-Making Machine (Para. 10), the company's programs

¹³ Receiver's spreadsheet, *Platinum club_2012—2013_payouts* (Att. C).

¹⁴ See receiver's report, p. 15.

are better described as a Perpetual Money-Losing Machine for the vast majority of Members.¹⁵

Conclusion

34. A critical inquiry for determining whether a pyramid exists in an MLM context is given by the Koscot test, namely whether the firm pays recruitment rewards that are unrelated to the sale of product outside the MLM network. GIN's program fully meets this test for being a pyramid. The firm offers substantial rewards for recruiting members without any requirement for retail sales; i.e., product sales outside the network.¹⁶ By the structure of this plan, and in practice, there are no retail sales and thus no relation between payment of recruitment rewards and retail sales. The ultimate consequences are predictable and exactly what one would expect of a classic pyramid scheme: the vast majority of the rewards go to the few at the top, while the vast majority of participants (well above 90%) lose money. This outcome is dictated by the very terms of GIN's compensation plan. And since there are no sales of product outside the network, the rewards for recruitment are paid by the continual recruitment of new Members -- a hallmark of a classic endless recruitment scheme. It is exactly such an MLM organization that Koscot declared to be an elaborate chain letter device.

35. While it is true that there is no charge to be an Affiliate and it is possible to receive rewards for recruitment without being a Member, and thus not meeting the element of "the payment of money" in the Koscot test *regarding Affiliates (only)*, this possibility does not alter my conclusion that GIN's program is a pyramid scheme. In determining whether a pyramid exists, a further critical element to consider is how the program operates in practice. This emphasis is given throughout the court's review in *Omnitrition (1996)*. As explained earlier, an Affiliate can receive commissions on people he directly or indirectly enrolls, *but only* if those enrolled people are Members who pay a \$1,000 membership fee and monthly dues. Likewise, all of the recruited Members, in order to be entitled to commissions themselves, must equally recruit new Members, who again pay the initiation fees and monthly dues, and so forth. And as also explained above, an Affiliate is strongly incentivized to be a Member and thus pay fees. The totality of this incentive structure secures the inevitable outcome that, over time, more and more people would join GIN as Members; it equally secures the outcome that participation in GIN *via Memberships* would, in due course, comprise an ever-growing majority of the participants.

36. The data in the receiver's report verify that, over time, more and more people in fact join GIN's program as Members. Starting at 31% in 2009, by August 2013 when the receiver took control, 50% of the participants were Members. Of equal and perhaps greater importance is the fact that over 90% of the commissions paid by GIN were to Members, culminating at 98% by August 2013. Further, GIN's training materials stress the importance of becoming a Member if a person wants to participate in the business opportunity. In Mr. Trudeau's presentation regarding getting started (Para. 10), he highlights the importance of becoming a Member if a person is serious about the business opportunity and wants to build a downline. The argument made there, which is hard to refute, is that it is difficult to persuade someone to spend \$1,000 for Member-

¹⁵ For reference below, I take note of a particular summary page in the receiver's report, (p. 37 of 45; also called Exhibit 10). This exhibit shows that in 2009, approximately 31% of all participants in GIN's programs were Members. By August 2013 when the receiver took control, 50% of the participants were Members. Over this same period from 2009 -- 2013, more than 90% of the commissions paid out by GIN were to Members, culminating at 98% in 2013.

¹⁶ As explained earlier (Para. 8), when there are no product sales outside the network then there is no source of income beyond a reliance on continual recruitment.

ship if you, the very promoter, decline this same Membership. The fact that some non-Member Affiliates can make commissions without paying money does not negate the reality that Global Information Network, as it operates in practice, is a pyramid. The “income opportunity” by which Members receive rewards for recruiting new Members –using ongoing recruitment as both the qualifier and the source for the payment of the rewards – describes the core of the operation and confirms GIN to be a classic pyramid scheme.¹⁷

37. I understand that this declaration may be used in a law enforcement proceeding.

Pursuant to 28 USC Section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on December 18, 2013, at Washington, D.C.

A handwritten signature in black ink, reading "Peter J. Vander Nat". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.

Peter J. Vander Nat, Ph. D.

¹⁷ The fact that GIN created a carve-out so that some people can receive rewards without paying money may go, at most, to the extent of harm that the scheme causes, not whether a pyramid scheme exists. As the Omnitrition court noted, that some portion of an MLM's program may not be a pyramid does not exempt the firm from liability when the rest of the program is a pyramid scheme.

**FTC PXC:1
ATTACHMENT A**

RESUME

Peter J. Vander Nat, Ph.D.

Telephone: (202) 326-3518 [office]

EMPLOYMENT EXPERIENCE

September, 1988 to Present: Senior Economist, Bureau of Economics, Federal Trade Commission, Washington, D.C. Nature of duties: analysis and evaluation of FTC consumer protection cases and trade rules pertaining to unfair or deceptive business practices, including the determination of consumer financial injury and civil penalties. Expert witness regarding fraudulent business opportunities; have presented federal court testimony in a number of pyramid scheme cases (see below).

September, 1983 to May, 1988 and Sept. 1978 to May 1981: Asst. Professor of Economics, Hope College, Holland, MI. Courses taught: Principles of Economics, Macroeconomics (Intermediate), International Economics.

September, 1976 to May, 1977: Instructor of Economics, Calvin College, Grand Rapids, MI. Courses taught: Principles of Economics, Intermediate Microeconomics, Seminar in Economics of Underdevelopment.

January, 1975 to May, 1975: Instructor of Mathematics, Calvin College, Grand Rapids, MI. Courses taught: Calculus I and II.

EXPERT TESTIMONY, DEPOSITIONS, AND FORMAL DECLARATIONS

Federal Court Testimony

FTC v. BurnLounge, Inc., (2008) CV 07-3654 GW FOMx (C.D. California, April 26).

United States v. James Ray Phipps (2007), No. 3:06-CR-00114-1 (Dallas, TX, Apr. 30).

United States v. Robert L. Hall, Jr. (2006), Civ. No. 05-0030 (HHK) (Wash., D.C., Feb. 24).

FTC v. SkyBiz.com (2001), 01-CV-396-K(E) (N.D. Oklahoma., May 30).

FTC v. Equinox International Corporation (1999), CV-S-99-0969 JBR-RLH (Nevada, August 3).

FTC v. Five Star Auto Club, Inc. (1999), Civ. No. 99-1693 (CM) (S.D.N.Y., March 8).

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Deposition Testimony

FTC v. BurnLounge, Inc., (2007) CV 07-3654 GW FOMx (C.D. California, April 26).

State of Florida v. Larry B. Groover (Life Without Debt) (2006), Civ. No.03-CF-5603 (Pensacola, Fl., Jan. 25).

FTC v. Trek Alliance, Inc. (2003), CV-02-9270 DSF (AJWx) (C.D. California., March 4).

FTC v. SkyBiz.com (2001), 01-CV-396-K(E) (N.D. Oklahoma., May 30).

State of Florida v. Unique Gems Int'l, Corporation (2001), Civ. No. 97-4977 CA 11 (Florida, December 12)*

FTC v. Equinox International Corporation (1999) , CV-S-99-0969 JBR-RLH (Nevada, August 3).

FTC v. Future Net (1998), Civ. No. 98-1113 GHK (AIJx) (C.D. California., February 17).

FTC v. Fortuna Alliance, LLC (1996), Civ. No. C96-799M (W.D. Washington, May 23).

*Further referenced under: Lewis B. Freeman v. First Union (US District Court Case No. 00-2013-CIV-HUCK, S.D. Florida).

Formal Declarations Submitted to a Court

FTC, et al. v. Fortune Hi-Tech Marketing, Inc., et al., (2013), 13-cv-123-KSF-REW (E.D. KY).

FTC v. BurnLounge, Inc., (2007) CV 07-3654 GW FOMx (C.D. California, April 26).
– submitted several supplemental declarations and final Rebuttal Declaration (Oct. 28, 2008).

FTC v. Trek Alliance, Inc. (2002), CV-02-9270 DSF (AJWx) (C.D. California, Nov. 27).

FTC v. SkyBiz.com (2001), 01-CV-396-K(E) (N.D. Oklahoma., May 30).

FTC v. Streamline International, Inc., (2001), Civ. No. 01-6885 (S.D. California, May 19).

FTC v. Bigsmart.com, LLC, (2001) Civ. No. 01-0466 (U.S.D.C., D. Arizona).

FTC v. 2Xtreme Performance International, LLC., (1999), JFM-99CV-3679 (N.D. Maryland, Dec. 9).

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Formal Declarations Submitted to a Court (continued)

FTC v. Equinox International Corporation, (1999), CV-S-99-0969 JBR-RLH (Nevada, Aug. 3).

FTC v. Five Star Auto Club, Inc. (1999), Civ. No. 99-1693 (CM) (S.D.N.Y., March 8).

FTC v. Jewelway International Inc. (1997), Civ. No. 97-383 TUC JMR (D. Ariz., June 24).
State of Florida v. Unique Gems Int'l, Corporation (1997), Civ. No. 97-4977 CA 11
(Florida, March 5)

FTC v. World Class Network, Inc. (1997), No. SACV-97-162 AHS (EEEx) (C.D. California, February 28).

FTC v. Global Assistance Network for Charities (1996), Civ. No. 96-2494 PHX RCB
(D. Arizona Nov. 5).

FTC v. Fortuna Alliance, LLC (1996), Civ. No. C96-799M (W.D. Washington, May 23).

PUBLIC SPEAKING AND PROFESSIONAL CONFERENCES

- Television Interview, Fox 5 Evening News, July 2002, Washington, D.C. I was interviewed regarding local and U.S. pyramid schemes.
- American Marketing Association, Annual Conference, June 2001, Washington, D.C. I spoke on the analysis of pyramid schemes and contrast with legitimate business activities, including multilevel marketing (MLMs).
- Sixth Annual Pyramid, Franchise & Business Opportunity Law Enforcement Summit Between Federal and State Agencies, March 2000, New Orleans, Louisiana. I spoke on analysis of pyramid schemes and the likely impact of the proposed Direct Selling Association (DSA) legislation regarding multilevel marketing (MLMs) and pyramid schemes.
- National Law Enforcement Summit on Pyramid Schemes Between Federal and State Agencies, March 1998, Atlanta, Georgia. I was a speaker on analysis of pyramid schemes and the role of an expert witness.
- United States Technical Assistance Mission to Albania, U.S.A.I.D., Department of State, January 1997. I was appointed by the U.S. Department of Justice to confer with government officials about Albanian pyramid schemes.

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PUBLICATION

Vander Nat, Peter J. and William W. Keep, "Marketing Fraud: An Approach for Differentiating Multilevel Marketing from Pyramid Schemes," Journal of Public Policy & Marketing, Volume 21 (1), Spring 2002.

ACADEMIC TRAINING AND DEGREES:

Education:

September, 1981 to May, 1983: University of Notre Dame, IN.

Major Field: Public Policy Economics.

Degrees: Ph.D. [Economics], May 1987; M.A. [Economics] 1985.

September, 1974 to September, 1976: Michigan State University, East Lansing, MI.

Major: Economic Theory (M.A. Graduate Studies).

September, 1969 to September, 1973: Michigan State University, East Lansing, MI.

Major: Mathematics (Graduate Studies).

Degrees: M.A. [Mathematics], 1974; A.B.D.*, 1974.

September, 1964 to May, 1968: Calvin College, Grand Rapids, MI.

Major: Mathematics.

Degree: B.A., 1968.

*beyond the Ph.D. in economics, I have completed all requirements for the doctoral degree in mathematics, except for dissertation. Doctoral exams completed in mathematics in Topology and Real/Complex Analysis.

**FTC PXC:1
ATTACHMENT B**

Pyramid Sales Are Now Chief Consumer Fraud Here City Studies Complaints

By GRACE LICHTENSTEIN

James Green is an energetic black civil servant in his 40's who signed on with a sales outfit called the P.R.I.C.E. Club in July, 1971. He had visions of finally making "big money." Today, James Green is \$5,000 in debt and his life savings are gone. He is another victim of the pyramid sales scheme.

Pyramid sales — those get-rich-quick business propositions that work on the chain-letter principle, involving an everincreasing number of participants — are currently the number one consumer fraud in the metropolitan area.

Consumer protection officials in New York, New Jersey and Connecticut say that despite mounting adverse publicity in dozens of states, including a \$3.5-million suit here against a company called Holiday Magic, the schemes are simply too alluring for hundreds of gullible investors to resist.

"We explain to people that it's a fraud, that they'll probably lose money, that they'll

wind up cheating their friends, and when we get all through, they still say, 'I'm going to try it,'" says Howard J. Rubin, staff attorney for the New York City Consumers Affairs Department.

The department has identified at least 19 companies now allegedly involved in pyramiding here in the city. "There's a new name every week," declared Bruce C. Ratner, the department's law-enforcement chief. "Nearly a third of our staff is bogged down with this."

And in Connecticut and New Jersey, officials also report a growing pyramiding problem. Last month New Jersey obtained \$696,700 in restitution for residents who lost money in Glen W. Turner's "Dare to Be Great" program, a motivational course. Mr. Turner also created Koscot Interplanetary, a cosmetics company like Holiday Magic.

Furthermore, the experts say that the pyramiding companies, having been hurt among white middle-class potential investors by bad pub-

licity, are now concentrating with great success on blue-collar and white-collar blacks and Puerto Ricans.

In several of the operations, investigations have turned up alleged frauds-within-frauds, involving, among other things, multiple bank loans and planned bankruptcies.

The story of the P.R.I.C.E. Club is, in some ways, typical of many unpublicized pyramiding companies.

The club was formed in Massachusetts in 1970 as a discount buying club, offering \$10 yearly memberships that supposedly would entitle consumers to fat discounts on merchandise in selected stores.

Under this scheme, potential investors are told they can make huge sums of money for an initial investment of up to \$5,000. They buy "distributorships," to make back their investment, they must each sign up still lower-level distributors, and so on.

At the bottom of this infinite pyramid are the salesmen selling membership cards in the club (or in the case of other pyramid schemes, cos-

metics, gasoline additives, clothing, wigs, etc.).

The basic pyramid scheme has been labeled inherently fraudulent by almost every consumer protection official in the country. Virginia H. Knauer, the White House consumer adviser, explained why in a recent speech:

"The bubble bursts just like the old chain letter. The problem is that within a short period of time mathematically one runs out of people [to sign up]. Two [original distributors] carried to the 29th power equals the approximate population of the United States."

In Massachusetts, P.R.I.C.E. Club quickly came under surveillance by the Attorney General. But before any legal action could be taken, the club declared bankruptcy in March, 1971, and left the state.

That same summer, P.R.I.C.E. Club Inc., headed by a Long Island entrepreneur named Roy Jaeger, became active in New York, working in almost the same

way as the Massachusetts club.

Potential investors like James Green were invited to "opportunity meetings" — sales sessions, usually held in respectable hotels, in which frantic pitchmen described the pot of gold awaiting distributors.

James Green (that is not his real name) said he was told he could make \$4,000 in three months for an initial investment of \$105 just for selling membership cards. Soon, he was lured into a bigger investment for a distributorship.

Mr. Green did not have the required \$2,500 in his savings account. That was no problem, the club officers told him, because First National City Bank was writing personal loans for just such investments.

In fact, the August, 1971, club newsletter advertised such loans saying that "after thorough investigation" the bank had found the club to have "definite value." Citibank loan applications were

prominently displayed at "opportunity meetings."

Mr. Green and at least 10 others got Citibank loan. Last week, a bank spokesman said that the bank "didn't know" the club was involved in pyramid sale. "We did not know it was fraud. Should we investigate the proceeds of every loan," the spokesman asked. He added that the club had been recommended to the bank as a good outlet for loans to one of the bank's "good customers."

With his loan, and subsequent loans, Mr. Green and other distributors enthusiastically went about luring friends, relatives and colleagues into investment. They also tried to line up additional stores at which members could get discounts. They were promised a cut of commissions paid by the store to the club on member sales.

According to Mr. Green and other distributors, all whom asked to remain anonymous because of their embarrassing financial predicament, a black man nam-

The New York City Department of Consumer Affairs is investigating complaints about the following companies allegedly using pyramid sales:

Action Industries (fuel additive), Alexander Taylor (clothes), Amperprise (home cleaning products), Bestline (soap products), Bob Cummings Inc. (vitamins), Cash-chek (buying club), Computerex (buying club), Dare to Be Great (motivation course), Futuristic Foods, Galaxy Foods, Golden Products (household items), Guardiante (fire and burglar alarms), Holiday Magic (cosmetics), Koscot (cosmetics), P.R.I.C.E. Club (buying club), Princess Club of America (hosiery and cosmetics), Regency Ltd., Sta-Power (fuel additive and Steed (fuel additive).

According to the department, one parent company, U. S. Universal Inc., owns Holiday Magic, Amperprise, Sta-Power, Alexander Taylor and Bob Cummings. Koscot and Dare to Be Great are both Glen W. Turner enterprises.

Arthur Moore, the club's manager, played a major role in lining up investors, about 80 per cent of whom were black.

By January, 1972, the club was having difficulties. Members complained that the commissions they were getting were tiny; distributors were not getting their commissions.

In June, 1972, the club filed a Chapter XI petition in bankruptcy court, a procedure that allows a debtor to retain possession of his company.

by this time, according to John Snyder, a Brooklyn man who is president of the distributors' association, there were about 700 major and minor investors in the scheme.

At the same time, Mr. Jaeger's lawyer, William J. Henry, negotiated a deal turning over operations of the old club to a new, separate one, P.R.I.C.E. Club Ltd., headed by William J. Peters.

Thus, the new club was able to continue to solicit without paying renewals and collect commissions from stores without paying anything to the distributors, whose contracts were with the old club. The old club was finally adjudicated bankrupt last November.

The distributors attempted to get help from the bankruptcy referee, Edward J. Ryan, and from consumer agencies by charging in person and in letters that the bankruptcy had been planned all along, just as it had been in Massachusetts, that Mr. Jaeger and others had somehow made \$600,000 in funds disappear, that the new P.R.I.C.E. Club was swindling them out of commissions and that the old club had used a false business address.

The letters to Mr. Ryan were never answered, according to Mr. Snyder.

Question of Jurisdiction

Consumer protection agencies offered the distributors little relief, saying they were not sure they had jurisdiction over the case. When the distributors complained to Attorney General Louis J. Lefkowitz, they were told to try District Attorney Frank S. Hogan. Mr. Hogan's office told them to try United States Attorney Whitney North Seymour Jr. Mr. Seymour's office told them to try the Federal Bureau of Investigation. The F.B.I. is now looking into the case.

The city's Consumer Affairs Department sent former letter replies to two letters. Mr. Ratner, the law-enforcement chief, explained that the department felt it would have only a slim chance of getting refunds from a bankrupt company.

"Our strategy was to get the biggest [pyramider] and make an example of it," he said, referring to the city's suit against Holiday Magic.

Roy Jaeger, the old club's president, now lives in Florida. Attempts to find him there were unsuccessful and his lawyer, Mr. Henry, was unavailable.

The old club apparently did list a false address on its court papers—320 East 23d Street. Neither Mr. Jaeger nor the club is listed as a tenant in the modern high-rise apartment building now, and the managing agent, Goodstein Building Corporation, said the building has never had such tenants.

New Club's Stand

Mr. Peters, head of the new club, says multilevel distributorships are no longer being sold. He says the old club's distributors could start selling memberships again if they wanted to, but have instead made an attempt in the bankruptcy court to get their money back. The distributors say Mr. Peters will not honor their cards unless they sign a new agreement with him.

"I have no legal obligation to them," Mr. Peters said in a telephone interview.

Mr. Moore, the old club's sales manager, is now president and a major stockholder in a new discount buying outfit, the Diamond Club, that says it does not use multilevel sales. Mr. Moore says he personally lost \$18,000 in the P.R.I.C.E. Club. But he added, "It's a tax loss." He has \$60,000 invested in the Diamond Club.

As for James Green, there no longer seems a pot of gold at the end of the pyramid rainbow. "We thought it would work," he says now. "We were so naive. We were so gullible."

Alexander H. Rockmore, lawyer for the bankruptcy trustee, summed up the entire bankruptcy case by saying, "The whole thing smells."

Mr. Rockmore said that the bankruptcy court could have done hardly anything to help the distributors because, along with other creditors, "under the Bankruptcy Act, they're all equally stuck." The court "should have gone deeper" in investigating the deal that turned operations from the old club over to Mr. Peter's new club, he said.

Of the victims, Mr. Rockmore concluded sorrowfully: "Unfortunately, the world is full of saps."

**FTC PXC:1
ATTACHMENT C**

Platinum club_2012--2013_payouts (from Receiver)

Month Earned	Quantity Eligible	Per Person	Total Payout 2% of revenue	Indicated Revenue
1/1/2012	397	\$ 200.37	\$ 79,546.89	3,977,344.50
2/1/2012	319	\$ 200.10	\$ 63,831.90	3,191,595.00
3/1/2012	238	\$ 264.18	\$ 62,874.84	3,143,742.00
4/1/2012	153	\$ 418.75	\$ 64,068.75	3,203,437.50
5/1/2012	117	\$ 505.77	\$ 59,175.09	2,958,754.50
6/1/2012	148	\$ 351.22	\$ 51,980.56	2,599,028.00
7/1/2012	99	\$ 494.72	\$ 48,977.28	2,448,864.00
8/1/2012	87	\$ 953.49	\$ 82,593.63	4,129,681.50
9/1/2012	78	\$ 774.58	\$ 60,417.24	3,020,862.00
10/1/2012	84	\$ 1,159.90	\$ 97,431.60	4,871,580.00
11/1/2012	73	\$ 812.21	\$ 59,291.33	2,964,566.50
12/1/2012	80	\$ 752.50	\$ 60,200.00	3,010,000.00
1/1/2013	78	\$ 787.61	\$ 61,433.58	3,071,679.00
2/1/2013	74	\$ 607.38	\$ 44,946.12	2,247,306.00
3/1/2013	74	\$ 525.36	\$ 38,876.64	1,943,832.00
4/1/2013	70	\$ 604.92	\$ 42,344.40	2,117,220.00
5/1/2013	58	\$ 592.97	\$ 34,392.26	1,719,613.00
6/1/2013	53	\$ 647.06	\$ 34,294.18	1,714,709.00
7/1/2013	53	\$ 584.76	\$ 30,992.28	1,549,614.00
	avg -->	\$ 591.47	\$ 1,077,668.57	
	months =	19.00		
	total =	\$ 11,237.85		

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FEDERAL TRADE COMMISSION	:	CASE NO. 1:12-MC-022
Plaintiff,	:	Judge Susan J. Dlott
v.	:	Magistrate Judge Karen L. Litkovitz
KEVIN TRUDEAU, <u>et al.</u>	:	<u>AFFIDAVIT OF MARC J. LANE</u>
v.	:	
THIRD PARTY	:	
Defendants.	:	

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

1. I am the President and Founder of the Law Offices of Marc J. Lane, P.C., and I am licensed to practice law in the State of Illinois. I serve as counsel to Movant Global Information Network Foundation ("GIN") in this matter.

2. I make this affidavit upon my own personal knowledge. I am over 18 years of age and I am competent to testify to the matters set forth.

3. Attached as Exhibit 1 to this Affidavit is a genuine and authentic copy of the Multiform Foundations Ordinance, 2004, for the Island of Nevis ("Nevis Multiform Foundation Ordinance"). Pursuant to the Nevis Multiform Foundation Ordinance, GIN's structure contains the following: (1) a registered agent; (2) a management board; and (3) a secretary. GIN is registered as an ordinary foundation and does not have a supervisory board.

Kevin Trudeau is not the registered agent of GIN. Kevin Trudeau is not a member of the management board of GIN. Furthermore, Kevin Trudeau is not the secretary of GIN.

4. Attached as Exhibit 2 to this Affidavit is a genuine and authentic copy of the letter, dated June 5, 2012, from Willard K. Tom, General Counsel for the Federal Trade Commission ("FTC"), to counsel for GIN.

5. Attached as Exhibit 3 to this Affidavit is a genuine and authentic copy of the letter, dated June 14, 2012, from counsel for GIN to Willard K. Tom, General Counsel for the FTC.

6. Attached as Exhibit 4 to this Affidavit is a genuine and authentic copy of the Laws of Saint Christopher and Nevis Chapter 3.01: Arbitration Act.

7. Attached as Exhibit 5 to this Affidavit is a genuine and authentic copy of the United Kingdom, Arbitration Act, 1950.

8. As there will be no oral argument concerning the supplemental evidence, counsel for GIN has prepared a demonstrative flowchart describing the structure of GIN. Specifically, the demonstrative illustrates the following: (1) GIN has a registered agent who is not Kevin Trudeau; (2) GIN has a management board, of which Kevin Trudeau is not a member; (3) GIN has a secretary who is not Kevin Trudeau; and (4) GIN has two bank accounts at Fifth Third Bank, to which Nataliya Babenko is a signatory. I have reviewed this demonstrative and determined that it is accurate. A copy of the demonstrative, titled GIN Structure, is attached as Exhibit 6.

9. As there will be no oral argument concerning the supplemental evidence, counsel for GIN has prepared a demonstrative flowchart describing evidence attached to the Federal Trade Commission's Notice of Supplementation of the Record ("FTC Notice"),

specifically exhibits 2 and 3 of the FTC Notice. Exhibit 2 of the FTC Notice contains purported copies of bank statements of GIN, International Pool Tour Inc. ("IPT"), and KT Radio Network Inc. ("KT Radio"). Exhibit 3 of the FTC Notice contains, among other thing, copies of the certificates of incorporation for IPT and KT Radio. The demonstrative illustrates the FTC's statements that: (1) GIN allegedly sent a check in the amount of \$8,000 to KT Radio; (2) GIN allegedly sent checks in the amounts of \$150,000 and \$103,000 to IPT; (3) KT Radio and IPT share some common information in their certificates of incorporation; and (4) Kevin Trudeau is an officer and director of IPT. I have reviewed this demonstrative and determined that it is accurate. A copy of the demonstrative, titled GIN Checks, is attached as Exhibit 7.

10. As there will be no oral argument concerning the supplemental evidence, counsel for GIN has prepared a demonstrative flowchart describing evidence attached to the FTC Notice, specifically exhibits 4 through 6 of the FTC Notice. Exhibit 4 of the FTC Notice contains purported copies of bank statements of Nataliya Babenko and KT Radio. Exhibit 5 of the FTC Notice contains purported copies of various checks to Nataliya Babenko, and purported copies of the corresponding deposit slips. Exhibit 6 of the FTC Notice contains copies of certificates of incorporation for Natural Cures Inc. ("Natural Cures") and Alliance Publishing Group, Inc. ("APG"). The demonstrative illustrates the FTC's statements that: (1) IPT, Natural Cures, KT Radio, APG, Suniel Sant, and Kevin Trudeau have allegedly wired or transferred money to Nataliya Babenko's bank account; (2) IPT, Natural Cures, KT Radio, and APG share some common information in their certificates of incorporation; (3) Kevin Trudeau is an officer and director for both IPT and Natural Cures; and (4) Nataliya Babenko allegedly wired money to an unknown recipient. I have reviewed this demonstrative and determined that it is accurate. A copy of the demonstrative, titled Babenko Transactions, is attached as Exhibit 8.

11. As there will be no oral argument concerning the supplemental evidence, counsel for GIN has prepared a demonstrative flowchart describing evidence attached to the FTC Notice, specifically exhibit 7 of the FTC Notice. Exhibit 7 of the FTC Notice contains a purported copy of bank statements of GIN. The demonstrative illustrates the FTC's statements that: (1) GIN's account ending in *1239 allegedly received an incoming wire transfer in the amount of \$869,117.50 from an unknown source; (2) GIN's account ending in *1239 allegedly received several deposits totaling \$80,690.00 from unknown sources ; (3) GIN's account ending in *1239 allegedly transferred \$418,860.00 and \$35,625.60 to GIN's account ending in *4321; (4) GIN's account ending in *4321 allegedly received an incoming wire transfer in the amount of \$200.00 from Nataliya Babenko; and (5) GIN's account ending in *4321 allegedly issued a bank check in the amount of \$454,685.60 to an unknown recipient. I have reviewed this demonstrative and determined that it is accurate. A copy of the demonstrative, titled GIN Transactions, is attached as Exhibit 9.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct.

Executed on July 2ND, 2012, in Chicago, Illinois.

Marc J. Lane
Marc J. Lane

Before me appeared Marc J. Lane this 2ND day of July, 2012, who acknowledged

under oath that the above statements are true.



Isabel O. Alvarado
Notary Public

EXHIBIT 1

No. 2 of 2004.

Multiform Foundations Ordinance, 2004.

Island of Nevis.

ARRANGEMENT OF SECTIONS

Section

PART I – PRELIMINARY MATTERS

1. Short title.
2. Interpretation.

PART II – ESTABLISHMENT AND CONSTITUTION

3. Registration.
4. Registration documents.
5. Establishment and sovereignty of the law of Nevis.
6. Status of by-laws and proper law.
7. Form of constitution.
8. Amendments to the constitution.
9. Foundation established by will.

PART III – MULTIFORM, PURPOSE AND SUBSCRIPTION PROVISIONS

10. Multiform.
11. Purpose or object.
12. Restricted activities.
13. Subscriptions.

PART IV – MULTIFORM AND CHANGE OF NAME PROVISIONS

14. Foundation names.
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I assent,

EUSTACE JOHN, CMG
Deputy Governor-General
6th December 2004.

ISLAND OF NEVIS

No. 2 of 2004

AN ORDINANCE for the promotion, development and furtherance of the financial services industry, businesses and trades in and from Nevis and the general economic development of Nevis and any matter incidental or supplementary thereto by providing for the establishment, continuation or transformation, or conversion, merger or consolidation and subsequent operation and management of foundations from within Nevis as multiform foundations and for such other purposes or objects as may be incidental or supplementary thereto.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Nevis Island Assembly, and by the authority of the same, as follows:

PART I – PRELIMINARY MATTERS

1. This Ordinance may be cited as the **MULTIFORM FOUNDATIONS ORDINANCE, 2004**, and shall come into force on such date as the Minister may, by Order appoint.

Short title.

2. (1) In this Ordinance, unless the context otherwise requires:

Interpretation.

“**auditor**” means a person who:

- (i) is approved by an accountancy body or institute which is either internationally recognized or recognized by regulation made by the Minister under this Ordinance, and
- (ii) is a practicing member in good standing with any such recognised body or institute;

“**absolute beneficiary**” means a beneficiary whose beneficial entitlement has vested and is held

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absolutely and unconditionally, provided that it may be limited in time or duration;

“**beneficial entitlement**” means a right or interest, howsoever described, held or owned, whether or not vested, absolute or contingent, conditional or unconditional, limited or unlimited, defeasible or in the future, deferred or immediate, potential or notional, in or to the multiform foundation, or any of its assets or property;

“**beneficiary**” means a person who has a beneficial entitlement under or by virtue of the constitution of the multiform foundation or otherwise under this Ordinance and howsoever designated, classified, treated or expressed by its multiform, and which shall include, but without prejudice to the generality of the foregoing:

- (i) with respect to a multiform stated as a trust or an ordinary foundation, a beneficiary or potential beneficiary, or class of beneficiaries or potential beneficiaries, of that trust or ordinary foundation, and
- (ii) with respect to a multiform stated as a company, a shareholder, guarantor or member of that company, and
- (iii) with respect to a multiform stated as a partnership, a partner, whether limited or unlimited in liability, of the partnership,

and whether or not such beneficial entitlement is capable of transfer or assignment or sale or other disposition; and a 'beneficiary' may include a subscriber, but shall not include a creditor who is not a subscriber;

“**body corporate**” means an incorporated entity, wherever or however incorporated, other than a corporation sole or partnership which is not incorporated, and shall include a multiform foundation, unless its constitution upon establishment shall require otherwise;

“**by-laws**” mean the regulations governing the multiform foundation and which shall be separate from the memorandum of establishment and adopted or incorporated as part of the constitution in accordance with the provisions of this Ordinance or otherwise under the constitution;

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“**company**” means a body corporate and includes a company limited by shares or by guarantee or by both, or a limited liability company;

“**company foundation**” means a multiform foundation whose stated multiform is a company, or limited company or a limited liability company;

“**constitution**” means, with respect to a multiform foundation, its memorandum of establishment and by-laws;

“**Corporation Ordinance**” means the Nevis Business Corporation Ordinance, 1984 (as amended);

“**Court**” means the High Court of St Christopher and Nevis or any court with similar jurisdiction established in succession to that Court;

“**creditor**” means a person to whom a financial obligation is owed;

“**dollars**” means the currency of the United States of America;

“**entity**” includes a body corporate, a trust, the estate of a deceased individual, a partnership or an unincorporated association of persons;

“**Financial Intelligence Unit**” means the body created by the Financial Intelligence Unit Act, 2000;

“**Financial Services Commission**” means the body created by the Financial Services Commission Act, 2000 (as amended);

“**foundation**” means any entity or proposed entity which is capable of establishment under Part II, by continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII, and shall include a multiform foundation which has been so established;

“**Gazette**” means the *Official Gazette* of St Christopher and Nevis;

“**Government**” means the Nevis Island Administration;

“**initial subscription**” means the initial or first subscription upon or subsequent to the establishment of a multiform foundation;

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“**intent to defraud**” means to act intentionally dishonestly with a view to defeating an obligation owed to, or gaining an advantage over, another person;

“**interdict**” means a person in respect of whom a curator has been appointed by any court having jurisdiction, whether in St Christopher and Nevis or elsewhere, in matters concerning mental disorder;

“**Legal Adviser**” means the person appointed by the Nevis Island Administration to carry out the function of legal adviser;

“**legally acknowledged**” shall have the meaning given to that expression in section 111(4);

“**limited**” means, with respect to a company or partnership, where the liability of the shareholder or guarantor or partner or member as described or defined under the constitution to contribute to, or discharge any obligations or liabilities of, the company or partnership is limited to a monetary amount or its equivalent;

“**limited liability company**” means a company incorporated under The Limited Liability Company Ordinance 1995 (as amended) or an equivalent statute, enactment or law in any other country or jurisdiction, and includes a limited liability partnership;

“**Limited Liability Company Ordinance**” means The Nevis Limited Liability Company Ordinance, 1995 (as amended);

“**liquidator**” shall have the meaning given to that expression in section 78(2);

“**management board**” means the person or persons appointed pursuant to the provisions of section 17 to manage the business and affairs of the multiform foundation in accordance with its constitution and otherwise under the provisions of this Ordinance, and howsoever called or described in the constitution, and which shall include but without prejudice to the generality of the foregoing;

- (i) with respect to a trust foundation, the trustee or trustees of that trust foundation, or

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- (ii) with respect to a company foundation, the board of directors or management, or council, of that company foundation, or
- (iii) with respect to a partnership foundation, the partner or partners designated as the managing partner or management board of that partnership foundation,

and a member or members of the management board shall be construed accordingly;

“memorandum of establishment” means the original memorandum of establishment delivered to the Registrar on establishment under Part II or, as the case may be, the original or derived memorandum of establishment delivered to the Registrar on establishment by continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII;

“Minister” means the Minister of Finance in the Nevis Island Administration;

“minor” means a person who under the law of St Christopher and Nevis or under the laws of his or her domicile has not reached the age of legal capacity;

“multiform” means, subject to the provisions of section 10, the form of the foundation as provided for in its constitution and stated in its certificate of establishment or, as the case may be, its certificate of establishment by continuation or transformation or conversion or consolidation or merger, and which may be amended in accordance with, but subject to, the provisions of section 10; and references in this Ordinance to a **“stated multiform”** or any expression similar thereto shall mean a multiform which is referred to in section 10(9) or otherwise in regulations made by the Minister under section 10(10);

“multiform foundation” means a foundation established under Part II, or established by continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII and with a multiform designated, or deemed designated, upon registration as provided for in section 10(1);

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“officer” means a member of the management board or the supervisory board or the secretary or any other person who under the constitution of the foundation or otherwise under this Ordinance has fiduciary duties and responsibilities to the foundation; and shall include, with respect to the management board, a person in accordance with whose directions or instructions the management board is accustomed to act provided that such a person shall not be deemed to be so included on the basis that the management board only acts on advice given by that person in a professional capacity;

“Official Seal” means the official seal of the Registrar referred to in section 85;

“ordinary foundation” means a multiform foundation whose stated multiform is unclassified, or which does not have a designated multiform on registration and upon registration whose multiform shall be deemed designated as unclassified;

“ordinary resolution” means, unless the constitution provides otherwise;

- (i) an affirmative resolution passed by a simple majority of all those persons who are present and entitled to vote thereon on a show of hands at a duly convened and constituted meeting of such persons, and
- (ii) in the case of absolute beneficiaries, an affirmative resolution passed by a simple majority of the holders in value of beneficial entitlements having voting rights who are present and entitled to vote thereon at a duly convened and constituted meeting of such persons on a show of hands or by way of poll, and
- (iii) in the case of subscribers, an affirmative resolution passed by a simple majority of subscribers in value of subscriptions having voting rights who are present and entitled to vote thereon at a duly convened and constituted meeting of such persons on a show of hands or by way of poll;

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“**partnership**” means any partnership, including a limited partnership, limited liability partnership or limited liability company which is to be treated as a partnership notwithstanding it is a body corporate, or any other unincorporated association wherever and however established;

“**partnership foundation**” means a multiform foundation whose stated multiform is a partnership, or a limited partnership or limited liability partnership, or a limited liability company to be treated as a partnership;

“**person**” includes a legal person;

“**prescribed fee**” means a fee prescribed by the Minister by regulations made under this Ordinance with respect to a given matter;

“**prescribed form**” means a form prescribed by the Minister by regulations made under this Ordinance with respect to a given matter and to be completed, signed and filed with the Registrar as provided for under the regulations or otherwise under this Ordinance;

“**promoter**” means the person who, alone or jointly with another, and without regard to his or their residence, domicile or jurisdiction of establishment, establishes a multiform foundation under this Ordinance;

“**Register**” means the Register of Foundations kept by the Registrar as required by section 86(3);

“**registered agent**” means a person resident in Nevis authorized or licensed under the law of Nevis to act as an agent with respect to the incorporation, establishment or registration of an entity in Nevis;

“**registered office**” means the office in Nevis of the registered agent for the time being of the multiform foundation to whom all communications and notices may be addressed;

“**Registrar**” means the Registrar of Foundations appointed pursuant to section 84(1);

“**Regulator**” means the person appointed by the Minister to perform, inter alia, the regulatory function of supervisor for financial services businesses in Nevis,

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including the business of registered agents, and includes any person acting as his assistant or deputy regulator;

“**secretary**” means a person appointed to be the secretary of a multiform foundation pursuant to the provisions of section 18;

“**subscriber**” means the person who makes the initial subscription or any subsequent subscription to the multiform foundation, and howsoever called or described in the constitution, including a founder, a settler, a guarantor or shareholder or partner or any other beneficiary who makes such a subscription;

“**subscription**” means the assets or capital, irrevocably transferred or contributed or disposed, or covenanted to be transferred, contributed or disposed, with or without consideration, or any act by which title is effectively and irrevocably transferred, contributed or disposed of, upon or subsequent to the establishment of a foundation (whether under this Ordinance or otherwise) and vested in and being the property of the foundation; and “**assets**” includes any right, interest or title whatsoever in property and howsoever called or described and wherever existing or situate, whether absolute or contingent, and “**capital**” includes any asset in money or money's worth subscribed or contributed by the giving or making of a loan or guarantee;

“**supervisory board**” means the person or persons appointed pursuant to the provisions of section 21 and having the powers and responsibilities of supervision, protectorship or guardianship of the multiform foundation in accordance with the constitution and otherwise under the provisions of this Ordinance, and howsoever called or described, and which shall include, but without prejudice to the generality of the foregoing, a supervisor, protector, an enforcer, guardian or other such named person;

“**tax resident foundation**” means a multiform foundation which has elected to be tax resident in Nevis pursuant to the provisions of section 93;

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“**trust foundation**” means a multiform foundation whose stated multiform is a trust;

“**Trust Ordinance**” means the Nevis International Exempt Trust Ordinance, 1994 (as amended);

“**unanimous resolution**” means a resolution passed by all those persons entitled to vote thereon who are present at a duly convened and constituted meeting of such persons; which may be affirmed in writing or by telex, telegram, cable, facsimile, email or other written electronic communication signed by or on behalf of all such persons and, if so, shall be deemed to have effect as if passed at a duly convened and constituted meeting of such persons; and

“**will constitution**” shall have the meaning given to that expression in section 9(2).

(2) A reference in this Ordinance to a Part or section by number only is a reference to the Part or section of that number contained in the Ordinance.

(3) A reference in a section or other division of this Ordinance to a subsection or paragraph or subparagraph by number or letter only is a reference to the subsection, or paragraph or subparagraph of that number or letter contained in the section or other division of the Ordinance in which the reference occurs.

(4) A reference to the masculine shall include the feminine or neuter.

(5) In this Ordinance:

(a) every multiform foundation shall, if carrying on business anywhere outside of Nevis, be deemed to be also carrying on business from within Nevis; and

(b) the expression “**carrying on business from within Nevis**” includes carrying on business outside of Nevis from a place of business or a registered office within Nevis; and

(c) the expression “**management and control**” shall mean the principal decision making function and mind of the multiform foundation.

(6) The Minister may recognize any country or jurisdiction for the purposes of this Ordinance and shall cause a notice of such recognition to be published in the *Gazette*.

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PART II – ESTABLISHMENT AND CONSTITUTION

Registration.

3. (1) A subscriber or promoter, or a registered agent acting on behalf of the subscriber or promoter, may on delivering to the Registrar the documents referred to in section 4 and on payment of the prescribed fee apply in the manner provided for in that section to have a foundation registered in accordance with the provisions of this Ordinance as a multiform foundation.

(2) Upon the registration of a foundation as a multiform foundation, the foundation shall be a separate and independent legal entity in its own right, capable of suing and being sued in its own name and resident and domiciled in Nevis.

(3) The memorandum of establishment and the by-laws (if any) of the foundation delivered to the Registrar shall be in the English language and shall be in such form and contain such particulars as are set out in section 7.

(4) The establishment of a foundation under this Ordinance as a separate and legal entity shall not be effective until:

- (a) the memorandum of establishment and by-laws (if any) are registered in accordance with the provisions of this Ordinance; and
- (b) a certificate of establishment is issued in accordance with section 5(2)(b).

Registration documents.

4. In order to register a foundation under this Ordinance, there shall be delivered to the Registrar an original copy of the memorandum of establishment and by-laws (if any) of the foundation accompanied by a statement in the prescribed form signed by the subscriber and legally acknowledged, or signed by the registered agent on his behalf and duly witnessed, setting out:

- (a) the foundation's name and address of its registered office in Nevis;
- (b) the particulars of the initial subscription transferred, or to be transferred, to the foundation;
- (c) the particulars prescribed by the Registrar with respect to the registered agent;
- (d) the particulars prescribed by the Registrar with respect to any person or persons who are to be the first management board;
- (e) the particulars prescribed by the Registrar with respect to any person or persons who are to be the first supervisory board;

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- (f) the particulars prescribed by the Registrar with respect to any person who is to be the first secretary;
- (g) an undertaking, in the case of a tax resident foundation, that the management board shall forthwith notify the Minister, by notice in writing, if the multiform foundation ceases to be a tax resident foundation;
- (h) a statement as to its initial multiform and which, in the absence of any such statement, shall presumed to be an ordinary foundation;
- (i) a statement as to whether or not the by-laws are to be made available for public inspection; and
- (j) any other particulars required by the Registrar to be provided for under or in accordance with this Ordinance.

5. (1) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the registration of a foundation as a multiform foundation have been complied with, he shall register the memorandum and by-laws (if any) delivered to him under section 4.

Establishment
and sovereignty
of the law of
Nevis.

(2) Upon the registration of the memorandum of establishment and by-laws (if any) referred to in subsection (1), the Registrar shall:

- (a) allocate a registration number to the multiform foundation in accordance with section 86(1); and
- (b) issue a certificate of establishment in respect of the multiform foundation stating:
 - (i) the name of the multiform foundation,
 - (ii) its registration number,
 - (iii) the date of registration of its constitution, and
 - (iv) its initial multiform.

(3) Each certificate of establishment shall be signed by the Registrar and be sealed with the Official Seal.

(4) The certificate of establishment shall be conclusive evidence of the establishment of the foundation as a multiform foundation.

(5) The proper law governing the establishment of a multiform foundation under this Part, or established by continuation or transformation under Part XI, or by conversion or consolidation or merger under Part XII, shall for the purposes of the rules of private and public international law be the law of Nevis if questioned in any other country or jurisdiction.

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(6) The courts of any other country or jurisdiction shall have no power or authority to question the validity of any act or omission of a multiform foundation established under this Part, or established by continuation or transformation under Part XI, or by conversion or consolidation or merger under Part XII, unless that act or omission shall be a criminal offence under the law of Nevis.

Status of by-laws
and proper law.

6. (1) The by-laws of a foundation may be delivered to the Registrar upon application for registration pursuant to section 3(1), or subsequently after registration and establishment pursuant to the provisions of section 8(4), provided that if no by-laws have been adopted by the foundation the by-laws of the foundation shall be those prescribed in regulations made by the Minister under this Ordinance and as may apply to the multiform for that foundation following registration as a multiform foundation.

(2) The by-laws shall be confidential and in respect of which the provisions of section 113 shall apply and they shall not be made available for public inspection on the Register, unless notice has been given by the foundation to the Registrar in the prescribed form that the by-laws are to be made available for public inspection, and which notice may be withdrawn by application made to the Registrar in the prescribed form.

(3) Without prejudice to the generality of the provisions of sections 5(5) and 5(6) with respect to the proper law governing the establishment of a multiform foundation, the proper law or laws governing the by-laws shall be stated in the memorandum of establishment of the multiform foundation and in the event that no proper law or laws are expressed, then the proper law governing the by-laws shall be the law of Nevis.

(4) The provisions of the by-laws may provide for a severable aspect of the multiform foundation (particularly, but without prejudice to the generality of the foregoing, the administration of the multiform foundation) to be governed by a different law from that governing other aspects of the multiform foundation and in which event the same shall be provided for in the memorandum of establishment.

(5) The by-laws may provide for the proper law governing the by-laws to be changed, or the law governing one aspect of the by-laws to be changed, or in the absence of any such provision the same may be changed by way of an amendment to the constitution in accordance with the provisions of section 8, and in the event of such a change a duly amended copy of the amended memorandum of establishment and by-laws (if any) incorporating the change in proper law signed and legally acknowledged by the secretary, or signed by the registered agent and

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duly witnessed, together with an original copy of resolution(s) approving the change in proper law and the amendments (if any) signed by the secretary, together with the prescribed form and prescribed fee shall, within 14 days of the latest date of the resolution(s) giving effect to the change, be delivered to the Registrar, who shall retain and file the same in the Register, subject to the provisions of subsection (6).

(6) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the change in proper law have been complied with, he shall register the amended memorandum of establishment and by-laws (if any) delivered to him under subsection (5) and shall issue an amended certificate of establishment incorporating the change in proper law which shall be conclusive evidence of the foundation's amended proper law and the change shall take effect from the date the certificate is issued.

(7) A change in the proper law of the by-laws (or any part thereof) shall not in any way affect the existence of the multiform foundation as a separate and independent legal entity, and shall not affect any rights or obligations of the multiform foundation or render defective any legal proceedings by or against it, and any legal proceedings which have been continued or commenced by or against it under its former proper law may be continued or commenced by or against it under its new proper law.

7. (1) The memorandum of establishment of a multiform foundation shall state:

Form of
constitution.

- (a) the name of the foundation;
- (b) the situation of the registered office in Nevis;
- (c) the details of the subscriber or promoter, that is to say,
 - (i) the name and address of the subscriber or promoter, and
 - (ii) where the subscriber or promoter is a legal person, the number and place of registration of that legal person;
- (d) the purpose or object of the foundation;
- (e) the initial subscription and a statement (as appropriate) of the assets and property of the foundation sufficient to identify the assets and property;
- (f) the multiform and the particulars required with respect to that multiform (if any) as provided for in regulations made by the Minister under this Ordinance;

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- (g) whether or not the foundation is established for a definite or indefinite period and, where it is established for a definite period, that period;
 - (h) whether or not the foundation is revocable or irrevocable, and if revocable, the identity of the person who holds the power of revocation, or the event giving rise to revocation;
 - (i) the proper law or laws governing the by-laws; and
 - (j) any other matters that the Minister may prescribe by regulations made under this Ordinance.
- (2) Subject to the provisions of this Ordinance, the by-laws of a multiform foundation may include provisions:
- (a) for the reservation of rights or powers to subscribers or promoters or beneficiaries;
 - (b) for the appointment, removal, period of office and representative authority of the members of the management board, including the number and description of those members;
 - (c) for the appointment, removal and period of office of the auditor, if any, and may provide that the appointment of an auditor is at the discretion of the supervisory board;
 - (d) for the appointment of a supervisory board and specifying the duties, functions, powers, rights and remuneration of the supervisory board, if appointed, and how it shall be appointed or removed and also how it shall conduct itself whilst in office;
 - (e) for the appointment of persons to act by power of attorney or otherwise to carry out particular duties on behalf of the foundation;
 - (f) permitting amendment to the by-laws, and specifying circumstances in which they may be amended;
 - (g) providing for subscriptions in addition to the initial subscription; and
 - (h) for the addition or removal or qualification of beneficiaries, or any class or classes of beneficiaries.
- (3) The memorandum of establishment and by-laws (if any) shall be signed and legally acknowledged by the subscriber or promoter, or signed by the registered agent and duly witnessed.

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- (4) The constitution of a multiform foundation shall be:
 - (a) typed or printed; and
 - (b) divided into paragraphs and numbered consecutively.

8. (1) Unless the constitution provides otherwise, the constitution may (subject to any provision in the by-laws to the contrary) be amended:

Amendments to
the constitution.

- (a) by ordinary resolution of the management board, and by ordinary resolution of the supervisory board (if any) and absolute beneficiaries (if any); or
- (b) by unanimous resolution of the absolute beneficiaries (if any); or
- (c) in the absence of absolute beneficiaries, by unanimous resolution of the supervisory board (if any) and ordinary resolution of the subscribers.

(2) If it is not possible to comply with the relevant provisions of subsection (1) for any reason, or no provision was made in the constitution for amendment of the constitution after registration, the management board:

- (a) may by ordinary resolution resolve on such amendments as in their opinion are necessary in the circumstances to maintain the purpose or object of the multiform foundation; and
- (b) apply to the Court for its approval of the proposed amendments.

(3) On any such application under subsection (2) the Court may make an order confirming the amendments, either wholly or in part, and on such terms and conditions as it thinks fit, or may make such other orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(4) A duly amended copy of the amended memorandum of establishment or by-laws signed and legally acknowledged by the secretary, or signed by the registered agent and duly witnessed, together with an original copy of resolution(s) approving the amendments signed by the secretary, together with the prescribed fee shall, within 14 days of the amendment coming into effect, be delivered to the Registrar, who shall retain and file the same in the Register, subject to the provisions of section 6(2).

(5) For the purpose of this section, “**amendment**” or “**amended**”, shall include any alteration, variation or substitution of the constitution.

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Foundation
established by
will.

9. (1) A foundation may be established as a multiform foundation by means of a duly executed will and, in that case, subject to subsection (11), there shall be only one subscriber who shall be the testator and the following provisions of this section shall apply.

(2) Where the constitution of a foundation proposed as a multiform foundation is the will of the subscriber and complies with the provisions of this Ordinance (a “**will constitution**”), the executor of the estate of the subscriber shall:

- (a) act as if he were the subscriber for the purposes of registering the foundation as a multiform foundation; and
- (b) cause the first management board and secretary to be appointed in accordance with the memorandum of establishment and the by-laws (if any).

(3) The executor referred to in subsection (2) shall periodically, and in any case at intervals of no more than 90 days, keep the management board appointed according to that subsection informed of the progress of the probate of the will to constitute the foundation.

(4) Where the provisions of section 3(1) cannot be satisfied at the end of a 12 month period in order for application to be made after the death of the subscriber, an application shall be made:

- (a) by the executor; or
- (b) if no application is made by the executor, by a person named or identified in the will as a member of the management board or supervisory board or the secretary,

to the Court for the appointment of a person to act as administrator for the purpose of ensuring:

- (i) the proper appointment of the management board, supervisory board (if any) and secretary;
- (ii) the subscription of property from the estate of the deceased subscriber to the foundation in accordance with the provisions of the will constitution; and
- (iii) the registration of the foundation under this Ordinance as a multiform foundation,

and the Court may appoint a fit and proper person as the administrator.

(5) An administrator appointed under subsection (4) shall be subject to the supervision of the Court.

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(6) Where provision is made in the will constitution for the appointment of a supervisory board, the administrator appointed under subsection (4) shall appoint a supervisory board in accordance with the will constitution and this Ordinance.

(7) Where an administrator is appointed under subsection (4) he shall:

- (a) if no management board has been appointed in accordance with subsection (2), appoint:
 - (i) the persons specified in the will constitution as the management board, or
 - (ii) where the will constitution does not specify by name or some other identifying description the person or persons to be appointed as the management board, appoint such person or persons who are fit and proper and qualified under this Ordinance to act as the management board;
- (b) take steps, including, if in his opinion it is necessary, the institution of legal proceedings in Nevis or elsewhere, to ensure that the initial subscription is duly made to the proposed multiform foundation; and
- (c) administer, or cause to be administered, in a proper manner and to the best advantage to conserve and improve without undue risk the property to be the initial subscription of the proposed multiform foundation until such time as the initial subscription is vested in the proposed multiform foundation; and
- (d) take such steps as are, in his opinion, necessary to ensure that the title in the assets and capital comprising the initial subscription is properly vested in the proposed multiform foundation.

(8) As soon as the Court is satisfied that application can be made to the Registrar to register the will constitution as a multiform foundation as provided for in sections 4 and 5 and the application under those sections has been made, the Court shall cause the appointment of the administrator under this section to terminate.

(9) The costs of the administrator appointed under this section, including his remuneration, as approved by the Court, shall be met by the executor:

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- (a) out of property specified in the will constitution to be the subscriptions to the proposed multiform foundation; or
- (b) in the event that the foundation is not registered as a multiform foundation, out of the property of the estate of the deceased subscriber.

(10) Where a subscriber dies after subscribing to a foundation but before the registration of the foundation as a multiform foundation under this Ordinance, notwithstanding that the subscriber was not the sole subscriber, the provisions of subsections (1) to (9) shall apply *mutatis mutandis* as if the constitution of the foundation was contained in his will and is a will constitution for the purposes of this section.

(11) Where two or more testators have made mutual wills and those wills take effect simultaneously, the testators shall be deemed to be one subscriber for the purposes of subsection (1).

**PART III - MULTIFORM, PURPOSE
AND SUBSCRIPTION PROVISIONS**

Multiform.

10. (1) The initial multiform of the multiform foundation shall be designated in the prescribed form on registration of a foundation whether under Part II or Part XI or Part XII, and upon registration shall be stated in the certificate of establishment or, as the case may be, certificate of continuation or transformation or conversion or consolidation or merger as the multiform of the multiform foundation.

(2) Following establishment or, as the case may be, continuation or transformation or conversion or consolidation or merger, a stated multiform may be changed by amendment to the constitution, and together with, if appropriate, a change in name, and in respect of which the provisions of subsections (3) to (6) below shall apply.

(3) A duly amended copy of the amended memorandum of establishment and by-laws (if any) incorporating the change in multiform, and change in name, as appropriate, signed and legally acknowledged by the secretary, or signed by the registered agent and duly witnessed, together with an original copy of resolution(s) approving the change in multiform and the amendments signed by the secretary, together with the prescribed form and prescribed fee shall, within 14 days of the latest date of the resolution(s) giving effect to the change, be delivered to the Registrar, who shall retain and file the same in the Register, subject to the provisions of section 6(2).

(4) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the change in multiform have been complied

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with, he shall register the amended memorandum of establishment and by-laws (if any) delivered to him under subsection (3) and shall issue an amended certificate of establishment incorporating the change in multiform and change in name, as appropriate, which shall be conclusive evidence of the foundation's amended multiform and the change shall take effect from the date the certificate is issued.

(5) A change in the multiform shall not in any way affect the existence of the multiform foundation as a separate and independent legal entity, and shall not affect any rights or obligations of the multiform foundation or render defective any legal proceedings by or against it, and any legal proceedings which have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

(6) A multiform foundation shall have only one stated multiform from time to time and in the event none is designated on registration in the prescribed form the multiform shall be deemed to be unclassified, and characterised or interpreted as to its form by the provisions of its constitution and this Ordinance; provided that if the stated multiform is unclassified, the by-laws may provide for more than one form of entity within its by-laws.

(7) If, in the opinion of the Registrar, the proposed constitution for the multiform foundation does not correspond or conform in all material respects to the proposed multiform stated in the memorandum of establishment and the proposed proper law or laws governing the multiform, he shall be entitled to reject any constitution delivered to him for the purposes of either:

- (a) applying for registration of a foundation with that multiform under sections 3 and 4 or, as the case may be, by way of continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII, or
- (b) a change in multiform under subsection (2) of this section,

and, if rejected under paragraph (b), any resolution(s) passed with respect to a change in multiform under subsection (2) of this section shall be deemed to be invalid and ineffective for the purposes of this Ordinance, notwithstanding any provision in the constitution to the contrary or any other provisions of any applicable law governing the constitution.

(8) A multiform foundation shall have as its stated multiform any of those multiforms stated in subsection (9) or otherwise stated by regulation made by the Minister under subsection (10) and with respect to any multiform the Minister may specify by regulations made under

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this Ordinance such matters as should be provided for in the memorandum of establishment or by-laws with respect to that multiform, or in the event no by-laws are adopted, the provisions of the by-laws that would be deemed to apply to that multiform.

(9) With respect to a stated multiform the following provisions shall apply:

- (a) if the multiform is stated to be a trust and the multiform foundation is a trust foundation, the by-laws shall be treated as the trust deed or settlement for the purposes of the trust foundation and in the event that the constitution shall fail to specify any other proper law as governing the by-laws, the provisions of the Trust Ordinance shall, subject to section 13(2), apply, *mutatis mutandis*, as if references therein to the 'trust' shall refer to the trust foundation; the 'trustees', the management board, the 'settlor', the subscriber; and the 'protector' the supervisory board, provided that it shall not be a requirement to have a protector for a trust foundation for the purposes of section 8 of the said Ordinance which has no beneficiary and the sole purpose is non-charitable;
- (b) if the multiform is stated to be a company and the multiform foundation is a company foundation, in the event that the constitution shall fail to specify any other proper law as governing the by-laws, the provisions of the Corporation Ordinance shall apply, *mutatis mutandis*, as if references therein to the 'company' referred to the company foundation; the 'directors', the management board; and the 'shareholders', the absolute beneficiaries; or in the case of a multiform which is stated to be a limited liability company, the provisions of the Limited Liability Company Ordinance shall apply, *mutatis mutandis*, as if references therein to the 'limited liability company' referred to the company foundation; the 'manager' or 'member' as manager, a member of the management board; and the 'members', the absolute beneficiaries; and
- (c) if the multiform is stated to be a partnership and the multiform foundation is a partnership foundation, in the event that the constitution shall fail to specify any other proper law as governing the by-laws, the

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provisions of the law of Nevis governing partnerships shall apply or, if the partnership is a limited liability company and to be treated as a partnership, the provisions of the Limited Liability Company Ordinance shall apply, *mutatis mutandis*, as if references therein to the 'company' referred to the partnership foundation; the 'manager' or 'member' as manager, a member of the management board; and the 'members', the absolute beneficiaries.

(10) The Minister may make regulations under this Ordinance permitting any other form of multiform and specifying any particular restrictions or conditions that may apply to a multiform, including which proper law shall govern the constitution and the relevant provisions of the law of Nevis governing such multiform.

(11) Without prejudice to the generality of sections 46 and 110, nothing in the constitution of the multiform foundation or the foregoing provisions of subsection (9) shall have the effect in anyway of:

- (i) overriding or qualifying or restricting any of the provisions of this Ordinance, in respect of which in matters of construction or interpretation the decision of the Court shall prevail for all purposes and be conclusive, including, without prejudice to the generality of the foregoing, as to proper establishment under Part II, or establishment by continuation and transformation under Part XI or conversion, consolidation and merger under Part XII, recognition of the multiform, administration and management, governance and dissolution or winding up of the multiform foundation in accordance with its constitution and this Ordinance; and
- (ii) removing the jurisdiction of the Court to render or provide a binding decision as against the multiform foundation or any of its officers with respect to the matters referred to in subparagraph (i) above or any other matters.

11. (1) A foundation established under this Ordinance as a multiform foundation shall have any purpose or object whatsoever and may have more than one purpose or object, and which purpose or object shall be set out in its memorandum of establishment, provided that such purpose or object is permissible and not contrary to public policy under the law of Nevis.

Purpose or object.

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(2) A subscriber or beneficiary may or may not benefit from any purpose or object of the multiform foundation as set out in its memorandum of establishment and such purpose or object may be for a charitable or non-charitable purpose or object, or may be for a commercial or non-commercial purpose or object or a combination of any or all of the foregoing or as may be otherwise prescribed in its memorandum of establishment, subject to the provisions of subsection (1) above.

(3) There shall be no requirement for a multiform foundation to have a beneficiary.

Restricted activities.

12. (1) The Minister may, by Order, provide that multiform foundations, which intend to carry on or which are carrying on any business specified in the Order as being banking, trust, insurance or reinsurance business or the carrying on of any activity in Nevis which requires authorization, consent, licence or permission under any ordinance or regulation, shall be subject to such regulations as the Minister may prescribe.

(2) An Order made under this section may provide for the payment of annual and other fees, and for the imposition of fines for any breach of the matters specified in the Order.

Subscriptions.

13. (1) A subscription to a multiform foundation shall:

- (a) be irrevocable but without prejudice to any provision in its memorandum of establishment providing for revocation, whether of the multiform foundation itself to which Part XIII applies, or any power or authority conferred on the management board or the supervisory board (if any) after subscription with respect to the assets or property of the multiform foundation in favour of beneficiaries, and whether or not, immediately following transfer, for a limited or unlimited period or otherwise on specified terms;
- (b) result in the assets or capital the subject matter of the subscription at the time of transfer, contribution or disposition ceasing to be under the ownership of the subscriber, but under the ownership of the multiform foundation, subject to its constitution, but without prejudice to any beneficial entitlement the subscriber may have under or by virtue of the constitution following any such transfer, contribution or disposition; and
- (c) result in the assets or capital the subject matter of the subscription immediately following transfer, contribution or disposition being held by the

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multiform foundation in accordance with its constitution, unless and until distributed or passed to a beneficiary in accordance with the provisions of the constitution,

provided that nothing in the foregoing shall affect or diminish any beneficial entitlement that a beneficiary may hold under or by virtue of the constitution as a result of, or following such subscription.

(2) With respect to a trust foundation, the subscription to the trust foundation shall be held, subject to the constitution:

- (a) for the benefit of a beneficiary, whether or not yet ascertained or in existence; or
- (b) for any valid charitable or non-charitable purpose, which is not for the benefit only of the trust foundation; or
- (c) for such benefit as is mentioned in subparagraph (a) and also for any such purpose mentioned in subparagraph (b),

and the expression “**trust**” in this Ordinance shall be construed accordingly; and the expression “**trust**” in section 53 of the Trust Ordinance shall be modified accordingly with respect to a trust foundation whose proper law governing the constitution is stated to be the Trust Ordinance.

(3) With respect to a multiform foundation the sole subscription to which shall be held, subject to the constitution, only for the benefit of the multiform foundation per se shall be an ordinary foundation whose multiform is unclassified.

(4) Where a subscriber has made an undertaking to make a subscription to a foundation, whether that undertaking is given before or after registration of the foundation as a multiform foundation, the multiform foundation after registration:

- (a) may enforce that undertaking against the subscriber, and
- (b) shall do so in respect of the initial subscription, if at the end of a period of 12 months from the date of registration, the subscription which is the subject matter of the undertaking has not become the assets of the multiform foundation,

and where the undertaking is in the form of an irrevocable covenant:

- (i) subsection (4)(b) shall have effect as if the reference date of registration was a reference to

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the date on which the subscription should have been subscribed to the foundation in fulfillment of the irrevocable covenant; and

- (ii) the period of 12 months referred to shall be the period of 12 months from that date.

PART IV – MULTIFORM AND CHANGE OF NAME PROVISIONS

Foundation names.

14. (1) The name of a multiform foundation shall end with the word “Foundation” or an abbreviation thereof as “FDN”, together with such other appropriate name or abbreviation thereof (if any) as shall state its multiform and the Minister may provide by regulations made under this Ordinance.

(2) The Registrar shall enter the name of every multiform foundation on the Register.

(3) The Registrar may refuse to register:

- (a) a foundation; or
- (b) a resolution changing the name of a multiform foundation,

where the name to be registered is, in the Registrar's opinion, in any way misleading or undesirable or confusing or similar to or like an existing name of a legal entity registered in Nevis.

(4) The Registrar may reserve names for foundations proposed to be registered as multiform foundations under this Ordinance for a period of one month or such longer period or periods as he may in his absolute discretion consider fit.

(5) A multiform foundation that:

- (a) is a trust foundation, shall include in its name the word “Trust” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;
- (b) is a company foundation and whose stated multiform is a company but not a limited company or limited liability company, shall include in its name the word “Company” or “Co.” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;
- (c) is a company foundation and whose stated multiform is a limited company, shall include in its name the word “Limited” or “Ltd.” or

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“Incorporated” or “Inc.” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;

- (d) is a company foundation and whose stated multiform is a limited liability company, shall include in its name the words “Limited Liability Company” or “L.L.C.” or “LLC” or “L.C.” or “LC” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;
- (e) is a partnership foundation and whose stated multiform is a partnership but not a limited partnership, a limited liability partnership or limited liability company to be treated as a partnership, shall include in its name the word “Partnership” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;
- (f) is a partnership foundation and whose stated multiform is a limited partnership, shall include in its name the words “Limited Partnership” or “L.P.” or “LP” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”; or
- (g) is a partnership foundation and whose stated multiform is a limited liability partnership, or a limited liability company to be treated as a partnership, shall include in its name the words “Limited Liability Partnership” or “L.L.P.” or “LLP” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”

15. (1) Subject to section 16, a multiform foundation may, by unanimous resolution of the management board, change its name, unless the constitution shall provide otherwise.

Change of name.

(2) An original copy of the resolution approving the change in name signed by the secretary, together with the prescribed fee shall, within 14 days of the latest date of the resolution giving effect to the change, be delivered to the Registrar, who shall retain and file the same in the Register.

(3) If the Registrar is satisfied that all the requirements of this Ordinance with respect to the name change have been complied with, the Registrar shall enter the new name on the Register in place of the former name, and shall issue a certificate of registration on change

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of name to meet the circumstances of the case, and the change of name shall have effect from the date on which the certificate is issued.

(4) A change of name by a multiform foundation under this Ordinance shall not affect any rights or obligations of the multiform foundation or render defective any legal proceedings by or against it, and any legal proceedings which have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

(5) Any entity established, incorporated or registered in Nevis having in its name the word “foundation” shall within six months of the coming into force of this Ordinance change its name to omit the word “foundation”, unless it has prior to the expiry of the six months period subsequently established itself by conversion or transformation into a multiform foundation in accordance with the provisions of this Ordinance; and, accordingly, the provisions of section 16 shall apply to any requirement under this section, save the provisions of subsections (3) and (4) of that section.

Directions to
change name.

16. (1) If, in the opinion of the Registrar, the name by which a multiform foundation is registered is misleading or undesirable or confusing or similar to or like an existing name of an entity registered in Nevis, he may direct the multiform foundation to change its name.

(2) The direction, if not made the subject of an application to the Court under subsection (3), shall be complied with within three months from the date of the direction or such longer period as the Registrar may allow.

(3) The multiform foundation may, within 21 days from the date of the direction given under subsection (1), apply to the Court to set it aside, and upon any such application the Court may set the direction aside or confirm it, or make such other direction as it thinks fit.

(4) If the Court confirms the direction, it shall specify a period not being less than 28 days within which the direction shall be complied with, and may order the Registrar to pay the multiform foundation such sum, if any, as it thinks fit in respect of the reasonable expenses to be incurred by the multiform foundation in complying with the direction.

(5) A multiform foundation which fails to comply with a direction under this section commits an offence and shall be liable to a fine not exceeding 5,000 dollars and, in the case of a continuing offence, to a further fine not exceeding 500 dollars for each day in respect of which the offence continues or such amount as may from time to time be prescribed in regulations made by the Minister hereunder.

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(6) The Minister may make regulations under this Ordinance prohibiting or restricting the use of any name or names for the purposes of a multiform foundation.

**PART V – MANAGEMENT BOARD,
SECRETARY AND REGISTERED AGENT**

17. (1) The business and affairs of a multiform foundation shall be managed by a management board which shall consist of one or more persons and, unless the constitution provides otherwise, every member of the management board shall have an equal vote at any proceedings of the management board.

Management
board.

(2) Subject to subsection (5), the first members of the management board of a multiform foundation shall be appointed upon establishment of the multiform foundation.

(3) Subject to subsections (2) and (9), the appointment and removal of members of the management board shall be effected in accordance with the provisions of the constitution or otherwise the provisions of this Ordinance.

(4) The remuneration of the members of the management board shall be fixed in accordance with the provisions of the by-laws of the multiform foundation; and any dispute in respect of the amount of the remuneration of the members of the management board may be referred by any member of the management board or the supervisory board or the auditor (if any) to the Court which shall determine the remuneration.

(5) A person shall not qualify as a member of the management board of a multiform foundation:

- (a) in the case of a natural person, if that person is a minor or an interdict, or if he is an undischarged bankrupt;
- (b) in the case of a legal person, if that person is a subject of any legal proceeding which may result in that person being wound up or otherwise dissolved;
- (c) if the person is a member of the supervisory board of a multiform foundation of which that person is the sole member; or
- (d) if the person is disqualified from being a member of the management board under this Ordinance or any other law.

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(6) The appointment of a person as a member of the management board is personal to that person and shall not be assigned or delegated by him, except that where the member is a legal person, it may act through its duly authorized officers or agents.

(7) There shall be filed with the Registrar by the secretary or registered agent in the prescribed form particulars of every member of the management board who has been appointed as a member and who has consented to act as a member, and unless the Registrar has received notice to the contrary, such particulars shall not be made available for public inspection on the Register.

(8) A member of the management board who wishes to resign shall give notice in writing of his intention to the secretary and remaining members of the board (if any); and such notice shall be given no later than seven days before the member intends to cease to act or such shorter notice as the management board may decide by unanimous resolution; and notice of resignation of a member of the management board shall be given to the Registrar in the prescribed form.

(9) The appointment of a member of the management board shall continue until:

- (a) he has been discharged or removed from office in accordance with the constitution or has resigned in accordance with this Ordinance;
- (b) the multiform foundation is dissolved or revoked in accordance with Part XIII;
- (c) if a natural person, the death or bankruptcy of the natural person, or a legal person the winding up or dissolution of the legal person; or
- (d) the occurrence of any event which otherwise disqualifies that member from so acting.

(10) Where there are no members of the management board or the number of board members is less than the number prescribed by the constitution and there is no provision in the constitution for the appointment of new or additional members, an application may be made to the Court by a member of the management board or the secretary, or a member of the supervisory board or an absolute beneficiary or subscriber, for the appointment by the Court of one or more persons to act as members; and if the Court is satisfied that the application is well founded and without the order of the Court the requirements of the constitution or this Ordinance will not be met, it may make an order appointing one or more persons duly qualified under this Ordinance to be members of the management board and whose appointment shall take effect from the making of the order by the Court.

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18. (1) A multiform foundation shall have a secretary.

Secretary.

(2) The secretary of a multiform foundation may be a natural or legal person, except that a multiform foundation shall not have as its secretary a person who is also the sole member of the management board.

(3) Subject to this Ordinance, the secretary shall be appointed by the management board for such term, and at such remuneration, and upon such conditions as they make think fit, and a secretary so appointed may be removed by them.

(4) Anything required or authorized to be done by or to the secretary may, if the secretary's office is vacant or for any other reason when the secretary is unable to, be done by or to a member of the management board authorized generally or specially in that behalf by the management board.

(5) There shall be filed with the Registrar by any member of the management board or the secretary or the registered agent in the prescribed form particulars of every secretary who has been appointed as secretary and who has consented to act as secretary.

(6) The appointment of a secretary is personal to that person and shall not be assigned or delegated by him, except that, where the secretary is a legal person, it may act through its duly authorized officers and agents.

(7) Nothing in this section shall be construed as making the secretary of a multiform foundation liable in any legal proceedings (whether criminal or civil) for any act or admission of the multiform foundation, but without prejudice to any other provision of this Ordinance which imposes on the secretary an obligation or responsibility with respect to the business and affairs of the multiform foundation and its compliance with the provisions of this Ordinance.

(8) A person shall not qualify as a secretary of a multiform foundation:

- (a) in the case of a natural person, if that person is a minor or an interdict, or if he is an undischarged bankrupt;
- (b) in the case of a legal person, if that person is a subject of any legal proceeding which may result in that person being wound up or otherwise dissolved
- (c) if the person is a member of the management board or the supervisory board of a multiform foundation of which that person is the sole member; or

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- (d) if the person is disqualified from being a member of the management board under this Ordinance or any other law.

(9) A secretary who wishes to resign shall give notice in writing of his intention to the members of the management board; and such notice shall be given no later than seven days before the member intends to cease to act or such shorter notice as the management board may decide by unanimous resolution, and notice of resignation of the secretary shall be given to the Registrar in the prescribed form.

(10) The appointment of a secretary shall continue until:

- (a) he has been discharged or removed from office in accordance with the constitution or has resigned in accordance with this Ordinance.
- (b) the multiform foundation is dissolved or revoked in accordance with Part XIII;
- (c) if a natural person, the death or bankruptcy of the natural person, or a legal person the winding up or dissolution of the legal person; or
- (d) the occurrence of any event which otherwise disqualifies that member from so acting.

(11) The secretary to a multiform foundation shall have all the duties, powers and responsibilities provided for in this Ordinance for his office and in particular but with limitation to the generality of the foregoing, shall on behalf of the multiform foundation:

- (a) accept service of all documents in respect of legal proceedings against the multiform foundation which may be served on the multiform foundation under the provisions of this Ordinance or any other statute or law whether in Nevis or outside of Nevis; and
- (b) where the Registrar by notice served on the multiform foundation requires the multiform foundation to take any action or step or give any information concerning itself, take such action or give such information within the specified time in the notice or, if no such time is specified reasonable time,

and where in this or in other statute or law there is reference to any notice being served on a multiform foundation, the foundation shall be deemed to have notice of that service or knowledge of that requirement if the secretary appointed to that multiform foundation shall have been served with the notice or shall have had notice of the requirement.

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19. (1) A multiform foundation shall have at all times a registered agent in Nevis and a multiform foundation which fails to maintain a registered agent in accordance with the provisions of this section shall be in contravention of this Ordinance and shall be subject to dissolution in accordance with Part XIII.

Registered agent.

(2) Service of process on a registered agent may be made by registered mail addressed to the registered agent or in any other manner provided by law for the service of summons as if the registered agent were a defendant and upon receipt the registered agent shall forward a copy of the same to the secretary of the multiform foundation by registered mail at the secretary's address last notified to the Registrar; and evidence of forwarding by registered mail by affidavit by the registered agent shall be conclusive evidence of compliance by the registered agent with the provisions of this subsection.

(3) Any registered agent of a multiform foundation may resign upon delivering written notice thereof in the form prescribed to the Registrar as well as to the secretary and which notice shall take effect on the expiration of 30 days from the filing of the written notice with the Registrar, or sooner if the secretary shall consent.

(4) If for any other reason the registered agent ceases to act, or is disqualified from acting, and in respect of which the registered agent is obliged to give notice to the secretary, within 30 days of the secretary becoming aware that the registered agent has ceased to act, he must file written notice in the prescribed form with the Registrar.

(5) Following the resignation of the registered agent or his ceasing to act, the multiform foundation shall appoint a new registered agent; and upon appointment of the new registered agent, the secretary or the registered agent must file with the Registrar the prescribed form duly signed by the secretary and the registered agent providing particulars of the new registered agent and whose appointment shall take effect on the day of filing of the prescribed form with the Registrar.

20. (1) A multiform foundation shall have a registered office in the Island of Nevis which shall be the address of the registered agent in Nevis and to which all communications and notices may be addressed.

Registered office.

(2) Notice of any change in the situation of the registered office shall be given within 28 days to the Registrar in the prescribed form signed by the secretary or the registered agent or a member of the management board, who shall file and retain the notice on the Register.

(3) Where by virtue of this Ordinance, a person ceases to be the registered agent:

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- (a) the office of that person shall cease to be the registered office of the multiform foundation; and
- (b) until such time as the Registrar has received notice of the situation of a new registered office in accordance with subsection (2);
 - (i) the multiform foundation and every member of the management board and the secretary shall be in default; and
 - (ii) the address of the registered office shall be deemed to be the address in Nevis of the Registrar and the requirements of the service of any document shall be satisfied by service to that address, subject to subsection (4).

(4) Service on the Registrar pursuant to subsection (3)(b)(ii) shall be made personally delivering to and leaving with him or his deputy or with any person authorized by the Registrar to accept service, at the office of the Registrar, duplicate copies of such process together with the prescribed fee; and the Registrar or his appointee shall promptly send one of such copies by registered mail, return receipt requested, to such multiform foundation at the last given address of the secretary or any member of the management board as shown on the files retained by the Registrar; and shall, if requested within five years of service, provide a certificate of due service of process in accordance with this provision.

PART VI – THE SUPERVISORY BOARD

Supervisory
board.

21. (1) There shall be no requirement for a multiform foundation to have a supervisory board and this section applies where the constitution provides for the appointment of a supervisory board.

(2) Where the constitution of a multiform foundation provides for the appointment of a supervisory board, the member or members of the supervisory board may be a natural or legal person and the appointment of members shall take place in accordance with the provisions of the constitution.

(3) The subscriber or a beneficiary of a multiform foundation may be appointed as a member of the supervisory board, but a sole member of the management board may not also act as sole member of the supervisory board.

(4) Subject to the provisions of the constitution, where more than one person is appointed to act as the supervisory board such persons shall act by ordinary resolution and every member shall have an equal vote at any proceedings of the supervisory board.

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(5) The first supervisory board of a multiform foundation may be appointed in the constitution of the foundation, and upon registration of the multiform foundation that person or persons shall be deemed appointed as the supervisory board, and where the supervisory board is appointed subsequent to the registration of the multiform foundation that person or persons may be appointed by the subscriber or such other person as may be provided in the constitution of the multiform foundation to make the appointment.

(6) The appointment of a person as a member of the supervisory board of a multiform foundation is personal to that person and shall not be assigned or delegated by him, except that, where the supervisory board is a legal person, it may act through its duly authorized officers or agents.

(7) There shall be filed with the Registrar by the secretary or registered agent in the prescribed form particulars of every member of the supervisory board who has been appointed as a member and who has consented to act as a member, and unless the Registrar has received notice to the contrary, such particulars shall not be made available for public inspection on the Register.

(8) A member of the supervisory board who wishes to resign shall give notice in writing of his intention to the secretary and remaining members of the board (if any); and such notice shall be given no later than seven days before the member intends to cease to act or such shorter notice as the supervisory board may decide by unanimous resolution; and notice of resignation of a member of the supervisory board shall be given to the Registrar in the prescribed form.

(9) A supervisory board is duly appointed under the terms of the constitution and this Part shall cease to have effect in the event of:

- (a) the resignation of the supervisory board as a whole;
- (b) the discharge or removal of the supervisory board in accordance with the constitution of the multiform foundation;
- (c) the dissolution or revocation of the multiform foundation in accordance with Part XIII;
- (d) the death, incapacity or bankruptcy of the members of the supervisory board, being a natural person, or the winding up or dissolution of the members of the supervisory board, being a legal person; or
- (e) the occurrence of any other event which disqualifies the person from being a member of the supervisory board as provided for in the constitution.

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(10) Where, for the time being, no supervisory board is appointed to a multiform foundation and one is required by the constitution, or the number of persons so appointed is less than that required by the constitution and there is no provision in the constitution for the appointment of a new or additional members of the supervisory board, an application may be made to the Court by:

- (a) the subscriber or an absolute beneficiary;
- (b) a member of the management board; or
- (c) a remaining member of the supervisory board,

for the appointment by the Court of one or more persons to be a member of the supervisory board.

(11) Where the Court is satisfied that an application made under subsection (10) is justified, the Court may appoint one or more persons who satisfy the requirements of this section as a member of the supervisory board of the multiform foundation.

(12) A person who is a member of the supervisory board shall not be liable in damages for anything done or omitted to be done in the discharge, or purported discharge of the functions, of the supervisory board under this Ordinance or any regulations made under this Ordinance, unless it is shown that the act or omission was in bad faith or the members of the supervisory board was in default of any obligation or responsibility imposed upon him under this Ordinance.

Powers of
supervisory
board.

22. (1) A supervisory board of a multiform foundation shall:

- (a) take such action as the supervisory board may deem necessary to ensure compliance by the multiform foundation with the provisions of its constitution and this Ordinance; and
- (b) generally supervise the management and conduct of the business and affairs of the multiform foundation by the management board.

(2) Subject to subsection (1), the constitution may:

- (a) specify the power of the supervisory board; and
- (b) provide powers in addition to those provided in this Ordinance.

(3) The supervisory board of a multiform foundation shall have full right of access to the books, records and accounts of the foundation.

(4) The supervisory board shall, in addition to the rights conferred on the supervisory board by the constitution, or this Ordinance, have the right, unless expressly excluded by the constitution:

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- (a) to be informed of all meetings of the management board or beneficiaries;
- (b) to table business to be considered at meetings of the management board or beneficiaries;
- (c) to attend and be heard, but not to vote, at such meetings; and
- (d) where any business of a multiform foundation is conducted by
 - (i) the circulation of documents, to be included in the circulation of documents at the time that they are circulated to the members of the management board or beneficiaries, or
 - (ii) the delegation of powers to a member or an agent of the management board, to be informed of the terms and any exercise of the delegation.

(5) References in subsections (3) and (4) to the supervisory board of a multiform foundation apply to all members holding office at the relevant time acting jointly and severally.

PART VII – ADMINISTRATION AND MANAGEMENT

23. (1) A multiform foundation shall manage, administer, invest and disburse its assets and otherwise carry on its business and affairs in accordance with the provisions of its constitution and this Ordinance for the attainment of any of its purposes or objects as set out in its memorandum of establishment or for the benefit of its beneficiaries (if any), or both.

Administration
and management.

(2) The management and control of a multiform foundation shall vest in the management board and shall presumed to be in Nevis if at least one member of the management board is in Nevis and meetings of the management board are regularly convened from Nevis, even though no member of the management board may be present in person but only present by telephonic or electronic communication; and the expression resident in Nevis shall have the same meaning given to that expression in section 93(5)(b).

(3) A multiform foundation may, in the course of the management of its assets and property or the carrying on of its business and affairs, do such things as are necessary for the proper administration of its assets and property or the carrying on of its business and affairs, including but not limited to buying and selling the assets and property and engaging in any other acts or activities which are not prohibited under any law of Nevis, provided that such acts and activities are ancillary or incidental to any of its main purposes or objects.

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(4) A member of the management board or supervisory board on behalf of the multiform foundation may apply to the Court for directions as to how he should or might act in any of the business and affairs of the multiform foundation, and the Court may make such order as it thinks fit.

(5) The provisions of this section shall not prevent the administration of a multiform foundation being carried out in another jurisdiction, provided that the administration of the entity shall be carried out in accordance with the proper law of the by-laws and the constitution of the multiform foundation.

Powers,
privileges, etc.

24. (1) Subject to this Ordinance, a multiform foundation has the capacity, rights, powers and privileges of an individual person.

(2) Subsection (1) does not authorize a multiform foundation to carry on any transaction in breach of:

- (a) any law that prohibits the transaction; or
- (b) any law that requires permission or licence to carry on the transaction.

(3) A multiform foundation shall not carry on any transaction or exercise any power that it is restricted by its constitution from carrying on or exercising, nor shall a multiform foundation exercise any of its powers in a manner contrary to its constitution.

(4) A transaction carried out by a multiform foundation, including the transfer of property, shall not be invalid by reason only that the act is contrary to its constitution.

Ultra vires.

25. (1) Any person dealing with a multiform foundation in good faith shall be entitled to assume that the members of the management board have power to bind the multiform foundation or authorize others to do so.

(2) The management board shall observe any limitations on their powers derived from the constitution and this Ordinance, and any action by any member of the management board which, but for this section, would be beyond the powers of the multiform foundation may only be ratified by the multiform foundation, unless the constitution provides otherwise:

- (a) by ordinary resolution of the management board and by ordinary resolution of the supervisory board and absolute beneficiaries (if any); or
- (b) by unanimous resolution of the absolute beneficiaries (if any); or

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- (c) in the absence of absolute beneficiaries, by unanimous resolution of the supervisory board (if any) and ordinary resolution of the subscribers.

26. (1) A member of the management board, in exercising his powers and discharging his duties, shall:

Duties of management board.

- (a) act honestly and in good faith with a view to the interests of the multiform foundation; and
- (b) exercise the care, diligence and skill which a reasonably prudent person would exercise in comparable circumstances.

(2) The duties of a member of the management board imposed by this section are owed to the multiform foundation alone, unless otherwise provided by the constitution.

27. (1) Subject to subsection (2) and otherwise the provisions of this Ordinance or any law of Nevis, and except as is necessary for the proper administration of a multiform foundation and is required to be disclosed by this Ordinance or its constitution, the management board shall keep confidential all information regarding the nature and amount of the assets and property of the multiform foundation and the conduct of their administration.

Information provided.

(2) The management board shall so far as is reasonable, and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the nature and amount of the assets and property of the multiform foundation and the conduct of their administration:

- (a) to the Regulator in respect of any investigation made under Part X;
- (b) subject to the constitution, to;
 - (i) a subscriber,
 - (ii) the supervisory board (if any), or
 - (iii) any beneficiary of the multiform foundation, who is not a minor or interdict; or
- (c) pursuant to an order of the Court.

(3) Subject to the provisions of this Ordinance, the constitution and to any order of the Court, the management board shall not be required to produce and make available to any person any document which:

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- (a) discloses their deliberations as to the manner in which they have exercised or not exercised a power or discretion or performed a duty or responsibility conferred or imposed on them; or
- (b) discloses the reason for, or relates to, any particular exercise or non-exercise of the power or discretion or performance or non-performance of any duty or responsibility the material on which such reason was or might have been based.

Indemnification.

28. (1) Subject to subsection (2) and to the constitution, a multiform foundation may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings, any person who:

- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a member of the management board or supervisory board, a secretary or a liquidator of the multiform foundation; or
- (b) is or was, at the request of the multiform foundation, serving as a member of the management board or supervisory board, a secretary or liquidator of, or in any other capacity is or was acting for, another foundation.

(2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the interests of the multiform foundation or that other foundation and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) For the purposes of subsection (2), the decision of the management board as to whether the person acted honestly and in good faith and with a view to the interests of the multiform foundation or that other foundation and as to whether the person had no reasonable cause to believe that his conduct was unlawful, in the absence of fraud, shall be sufficient for the purposes of this section, unless a question of law is involved, when the matter shall be decided by the Courts.

(4) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

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29. A multiform foundation may purchase and maintain insurance in relation to any person who is or was a member of the management board or supervisory board, a secretary or a liquidator of the multiform foundation or who, at the request of the multiform foundation, is or was serving as a member of the management board or supervisory board, a secretary or a liquidator of, or in any other capacity is or was acting for, another foundation, against any liability asserted against the person and incurred by the person in that capacity, whether or not the multiform foundation has or would have had the power to indemnify the person against the liability under section 28(1). Insurance.

30. (1) Each multiform foundation shall keep, at its registered office, a register of past and present members of its management board and supervisory board (if any) and secretary and their respective particulars and their interests with respect to the multiform foundation, whether as subscriber or beneficiary. Registers.

(2) The register referred to in subsection (1) shall contain the following particulars:

- (a) in the case of a natural person,
 - (i) his or her present forenames and surnames,
 - (ii) his or her former forenames and surnames,
 - (iii) his or her business or usual residential address,
 - (iv) his or her nationality,
 - (v) his or her business occupation, and
 - (vi) his or her date of birth;
- (b) in the case of a legal person,
 - (i) its name and any former names, and
 - (ii) the address of its registered or principal place of business; and
- (c) such particulars as the Registrar may otherwise require.

(3) The register referred to in subsection (1) shall, during business hours, be open to inspection by the Registrar at the registered office, a subscriber, a member of the management board or supervisory board (if any), the secretary and a beneficiary.

(4) If an inspection required under this section is refused, or if there is a failure to comply with subsection (1), the multiform foundation, every member of the management board and the secretary who is in default commits an offence and shall be liable to a fine not exceeding 500 dollars for each day in respect of which the offence

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continues, or such other amount as may from time to time be prescribed in regulations made by the Minister hereunder.

Meetings.

31. (1) Subject to any limitations contained in the constitution of the multiform foundation, the management board shall meet at such times and in such manner and places within or outside Nevis as they may determine.

(2) Subject to the provisions of the constitution, a member of the management board shall be deemed to be present at a meeting of the management board if he participates by telephone or other electronic means, and all the management board participating in the meeting are able to hear each other.

First Meeting.

32. Every multiform foundation shall, within a period of not less than one month nor than three months from the date of registration, hold a meeting of the management board which shall be convened by the secretary and of which notice shall be given of the business of the meeting and the matters to be discussed and resolved thereat.

Annual Meeting.

33. (1) The multiform foundation shall, in each year, hold at least one meeting of the management board as its annual meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.

(2) Subject to the provisions of the constitution, the supervisory board, the absolute beneficiaries and the subscribers shall be entitled to:

- (a) be notified of the meeting; and
- (b) table business to be considered at the meeting; and
- (c) attend and be heard at the meeting but shall not be entitled to vote at such a meeting.

Requisitions.

34. (1) Subject to the provisions of the constitution, the management board shall, on the requisition of:

- (a) the subscriber or an absolute beneficiary; or
- (b) the supervisory board,

forthwith proceed to convene a meeting of the management board.

(2) The requisition shall:

- (a) state the objects of the meeting and propose the business of the meeting;
- (b) be signed by the requisitioner; and
- (c) be deposited at the registered office,

and at which the requisitioner shall be entitled to attend but not vote.

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(3) If the management board does not within 21 days from the date of the requisition convene a meeting, the requisitionist may convene the meeting, provided that the said meeting is held within 60 days from the said date.

(4) A meeting convened under this section by the requisitionist shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the management board.

(5) Any reasonable expenses incurred by the requisitionist by reason of the failure of the management board to convene a meeting shall be repaid to the requisitionist by the multiform foundation, and any sum so repaid shall be retained by the multiform foundation out of any sums due or to become due from the multiform foundation by way of fees or other remuneration in respect of service to such of the management board as were in default.

35. The quorum for a meeting of the management board shall be that fixed by the constitution; but where no quorum is so fixed, a meeting of the management board shall be properly constituted for all purposes if at the commencement of the meeting one half of the total number of management board are present in person or by alternate.

Quorum.

36. Subject to any limitations in the constitution, an action which may be taken by the management board at a meeting, other than an annual meeting convened in accordance with section 33(1), may also be taken by a resolution of the management board consented to in writing or by telex, telegram, cable, facsimile, email or other written electronic communication, without the need for any notice.

Written resolutions.

37. (1) Subject to any limitations in the constitution, a member of the management board may by a written instrument appoint an alternate who need not be a member of the management board.

Alternates.

(2) An alternate for a member of the management board appointed under this section is entitled to attend meetings in the absence of the member who appointed him and to vote or consent in the place of the member.

38. (1) The management board may, by ordinary resolution of the management board, appoint any person, including a person who is a member of the management board, to be an agent of the multiform foundation.

Agents.

(2) Subject to any limitations in the constitution, any agent shall have such powers and authority of the management board as are set forth in the constitution or in the ordinary resolution of the management board appointing the agent, except that no agent has any power or authority with respect to the matters requiring a resolution of the management board under this Ordinance.

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(3) The ordinary resolution of the management board appointing any person to be an agent of the multiform foundation may authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the multiform foundation.

Minutes.

39. (1) The secretary shall cause minutes of all proceedings at meetings of the management board to be entered in books kept for that purpose.

(2) The minutes referred to in subsection (1), if purporting to be signed by the Chairman of the meeting at which the proceedings took place, or by the Chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes are made in accordance with the provisions of this section, minutes shall be conclusive evidence of the proceedings at any meeting of the management board and, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings which took place at that meeting to have duly taken place.

Documents, seals,
etc.

40. (1) A multiform foundation may, but need not, have a seal for use in Nevis and, unless otherwise permitted by the constitution, where it has such a seal, the seal shall be affixed in the presence of and witnessed by a member of the management board or the secretary.

(2) Any contract, including any deed, instrument or other document, entered into by or on behalf of a multiform foundation may be made as follows:

- (a) a contract which, if made between private persons, would by law be required to be in writing and under seal may be made on behalf of the multiform foundation in writing;
 - (i) if the multiform foundation has a seal for use in Nevis or abroad, under that seal, or
 - (ii) signed by the authorized signatories of the multiform foundation, each signing or under the seal of the signatory, as the case may be;
- (b) a contract which, if made between private persons would by law be required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the multiform foundation in writing signed by the authorized signatories; and
- (c) a contract which if made between private persons would by law be valid although made by parol only,

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and not reduced into writing, may be made by parol on behalf of the multiform foundation by any person acting under an express authority.

(3) A contract made according to this section shall be effectual in law, and shall bind a multiform foundation and all other parties thereto.

(4) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

(5) Where a multiform foundation executes a deed, instrument or other document, whether or not the multiform foundation has a seal, it shall be sufficient and the multiform foundation and any other party to that deed, instrument or document shall be bound if that deed, instrument or other document is signed by the authorized signatories of the multiform foundation intending it to be executed by way of a deed.

(6) A multiform foundation may, by writing:

- (a) if the multiform foundation has a seal for use in Nevis under that seal; or
- (b) signed by the authorized signatories of the multiform foundation, each signing or under the seal of the signatory, as the case may be,

empower any person either generally or in respect of any specified matters, as its attorney, to execute deeds, instruments or other documents on its behalf in any place outside Nevis.

(7) A deed, instrument or other document signed by an attorney appointed according to subsection (6) for and on behalf of a multiform foundation:

- (a) if it has a seal, under that seal; or
- (b) signed by him or, where the attorney is a legal person, authorized signatories of the attorney,

shall bind the foundation and have the same effect as if the deed, instrument or other document had been sealed or signed as provided for in subsection (2).

(8) A multiform foundation may have for use in any territory, district or place outside Nevis an official seal, which -

- (a) if the multiform foundation has a seal for use in Nevis, shall be a facsimile of that seal; or

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- (b) if the multiform foundation does not have a seal for use in Nevis, shall bear the name of the multiform foundation engraved in legible characters,

with the addition on its face of the name of every territory, district or place where it is to be used.

(9) Where a multiform foundation executes a deed, instrument or other document outside Nevis, whether or not the multiform foundation has an official seal for use in the territory, district or place outside Nevis, it shall be sufficient, and the multiform foundation shall be bound, if that deed, instrument or other document is signed by the authorized signatories of the multiform foundation intending it to be executed by way of a deed.

(10) A multiform foundation having an official seal for use in any territory, district or place outside Nevis may:

- (a) by ordinary resolution of the management board; or
- (b) by instrument in writing, sealed or signed as provided for in subsection (2),

authorize any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed, instrument or other document to which the multiform foundation is a party in that territory, district or place.

(11) The authority of a person appointed in accordance with subsection (10) shall, as between a multiform foundation and any person dealing with that person, continue during the period (if any) mentioned in the resolution or instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the person's authority has been given to the person dealing with him.

(12) The person affixing any official seal outside Nevis shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

(13) The signature of a member of the management board or the secretary when acting on behalf of a multiform foundation shall be prefixed by the statement that he is so acting.

(14) A document or proceeding requiring authentication by a multiform foundation may be signed by any of the authorized signatories of the multiform foundation.

Name
requirements.

41. (1) Every multiform foundation:

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- (a) shall have its name engraved in legible characters on any seal; and
- (b) shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the multiform foundation, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the multiform foundation, and in all bills of parcels, invoices, receipts and letters of credit of the multiform foundation.

(2) If a multiform foundation fails to comply with paragraph (a) or paragraph (b) of subsection (1), the multiform foundation is in default.

(3) A member of the management board or any person on its behalf who-

- (a) uses or authorizes the use of any seal purporting to be a seal of the multiform foundation on which its name is not engraved as required by subsection (1)(a); or
- (b) issues or authorizes the issue of any notice, advertisement or other official publication of the multiform foundation, or signs or authorizes to be signed on behalf of the multiform foundation any bill of exchange, promissory note, endorsement, cheque or order for money or goods, in which its name is not mentioned as required by subsection (1)(b); or
- (c) issues or authorizes the issue of any bill of parcels, invoice, receipt or letter of credit of the multiform foundation, in which its name is not mentioned as required by subsection (1)(b),

is in default and is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the multiform foundation.

42. (1) Every multiform foundation shall have the following particulars mentioned in legible characters in all business letters, order forms and receipts for goods and services of the multiform foundation, that is to say:

- (a) the place of registration of the multiform foundation, and the number with which it is registered; and

Name on
business letters,
etc.

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(b) the address of its registered office.

(2) If:

(a) a multiform foundation fails to comply with the requirements of this section; or

(b) the multiform foundation or any person on its behalf issues or authorizes the issue of any business letter, order form or receipt for goods or services not complying with this section,

it and he is in default.

Declaration of interests.

43. (1) Subject to the provisions of this section, it shall be the duty of an officer of a multiform foundation who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the multiform foundation:

(a) to declare the nature of his interest at a meeting of the management board of the multiform foundation; and

(b) to advise the supervisory board (if any) of the interest.

(2) In the case of a proposed contract the declaration required by this section to be made by the officer shall be made at the meeting of the management board at which the question of entering into the contract is first taken into consideration, or if the officer was not at the date of that meeting interested in the proposed contract, at the next meeting of the management board held after he became so interested, and in a case where the officer becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the management board held after the officer becomes so interested.

(3) Subject to the constitution, for the purposes of this section, a general notice given to the management board by an officer to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Where a multiform foundation has no supervisory board, any contract made between the multiform foundation and a member of the management board, other than a contract to serve the multiform foundation, shall require the unanimous resolution of the management board.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting officers from having any interests in contracts with a multiform foundation.

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(6) This section shall also apply to the auditor (if any) where references to the officer shall be substituted with a reference to the auditor.

PART VIII – ACCOUNTS AND AUDIT

44. (1) A multiform foundation shall cause to be kept proper books of account with respect to its business and affairs, assets and property as follows and in particular:

Accounts.

- (a) all sums of money received, expended and distributed by the multiform foundation and the matters in respect of which the receipt, expenditure and distribution take place;
- (b) all sales and purchases; and
- (c) the assets and liabilities.

(2) The books of account shall be kept at the registered office of the multiform foundation or at such other place as the management board determines by ordinary resolution, and shall at all times be open to inspection by the management board, the supervisory board and the auditor (if any), and, if the constitution permits, a subscriber or beneficiary and the books of account required by this section to be kept shall be preserved for a period of 6 years from the date on which they are made.

(3) Where a member of the management board fails to take all reasonable steps to secure compliance by the multiform foundation with the requirements of this section, or has by his own wilful act been the cause of any default thereunder by the multiform foundation, that member is in default.

45. Unless the constitution otherwise provides, it shall not be obligatory for the management board to appoint an auditor.

Auditor.

PART IX – FORCED HEIRSHIP, RESTRICTION ON ALIENATION AND FORFEITURE OF BENEFITS

46. (1) No multiform foundation governed by the laws of Nevis, and no subscription of property to a multiform foundation which is valid under the law of Nevis, shall be void, voidable, or liable to be set aside or defective in any manner by reference to the law of a foreign jurisdiction.

Forced heirship.

(2) The capacity of a subscriber or promoter or of any other person who subscribes to a multiform foundation, shall not be questioned nor shall any beneficiary or other person be subjected to any liability or deprived of any right by reason that:

- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a foundation, a multiform foundation or any stated multiform; or

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- (b) the subscription of property to the foundation, or any provision of its constitution avoids or defeats rights, claims or interest conferred by foreign law on any person by reason of a personal relationship to the subscriber or beneficiary or transferee of any beneficial entitlement or by way of heirship rights, or contravenes any rule of foreign law or any foreign, judicial or administrative order or action intended to recognize, protect, enforce or give effect on any such rights, claims or interest, or the provisions of this Ordinance or the law of Nevis is inconsistent with any foreign law,

and for the purposes of this subsection and this Ordinance generally, “**heirship rights**” shall have the meaning given to that expression in section 2 of the Nevis International Exempt Trust Ordinance 1994, as amended.

Restriction on alienation.

47. (1) Notwithstanding any rule of law to the contrary, a provision of the constitution, or an unanimous resolution by the management board or supervisory board, may provide that any assets or property of the multiform foundation available for distribution to a beneficiary shall not be alienated or pass by bankruptcy, insolvency or liquidation or be liable to be seized, sold, attached, or taken in execution by process of law and, where so provided, the provision shall take effect accordingly.

(2) Where any of the assets or property of the multiform foundation are subject to any of the restrictions contained in subsection (1), the right to derive income from such assets or property by a beneficiary and any income derived from those assets or property shall not pass by bankruptcy, insolvency or liquidation or be liable to be seized, attached or taken in execution by process of law.

(3) Where any of the assets of the multiform foundation are subject to a restriction against alienation then the right to derive income from that property shall not be alienable for as long as that restriction remains in force.

(4) A restriction imposed pursuant to this section may at any time be removed in accordance with any provisions for such removal.

(5) A person who is a subscriber and in his capacity as a subscriber to a multiform foundation may benefit from the provisions of this section.

Forfeiture of benefits.

48. The constitution of a multiform foundation may provide that any beneficiary or any creditor of the beneficiary or trustee-in-bankruptcy or liquidator of the beneficiary shall forfeit his

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beneficial entitlement in the event that he or any creditor of the beneficiary or trustee-in-bankruptcy or liquidator of the beneficiary challenges the creation of the multiform foundation, any subscriptions to the multiform foundation, the constitution or any provision thereof or any decision of the management board or the supervisory board.

PART X – POWERS OF INVESTIGATION

49. (1) Where the Regulator has prima facie evidence that:

Grounds for investigation.

- (a) a multiform foundation was created, or is to be dissolved or revoked, or discontinued in Nevis for an unlawful or fraudulent purpose; or
- (b) any transaction with respect to the affairs of a multiform foundation is or has been conducted unlawfully or with intent to defraud any person; or
- (c) persons concerned with the establishment, continuation or transformation, conversion, merger, or consolidation or otherwise of the affairs of a multiform foundation have in connection therewith acted fraudulently or dishonestly; or
- (d) in any case it is in the public interest that an investigation of the multiform foundation be made,

the Regulator may investigate the affairs of the multiform foundation and make a report to the Financial Services Commission and send a copy to the Financial Intelligence Unit, the Registrar, the Legal Adviser and the Minister.

(2) The investigation may be made on the application of the Registrar, any person who is a member of the management board or supervisory board, a beneficiary, a subscriber, a creditor or a liquidator of the multiform foundation sought to be investigated.

(3) The Regulator may require the applicant, other than the Registrar, to give security, up to an amount not exceeding 50,000 dollars or such other sum as may be prescribed for payment of the costs of the investigation.

(4) This section applies whether or not the multiform foundation is being dissolved or discontinued.

50. The Regulator may at any time in the course of his investigation, without the necessity of making an interim report, inform the Financial Services Commission and the Financial Intelligence Unit of matters coming to his knowledge as a result of the investigation which, in his opinion, shows that an offence has been committed.

Reporting.

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Production of records.

51. (1) If the Regulator considers that any person is or may be in possession of information relating to a matter which he believes to be relevant to the investigation, he may, subject to sections 99 and 100, require that person:

- (a) to produce and make available to him all records which are in that person's custody or power relating to that matter;
- (b) at reasonable times and on reasonable notice to attend before him; and
- (c) otherwise to give him such assistance in connection with the investigation which he may reasonably require for the purpose of the investigation, and that person is reasonably able to give.

(2) The Regulator may, for the purposes of the investigation, examine on oath any person referred to in subsection (1), and may administer an oath accordingly.

(3) Subject to sections 99 and 100, an answer given by a person to, or the failure to answer, a question put to that person by the Regulator in exercise of the powers conferred by this section may be used in evidence against that person in any subsequent proceedings.

Bank records.

52. If the Regulator has reasonable grounds to believe that an officer of the multiform foundation whose affairs he is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person, and whether in Nevis or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which in the opinion of the Regulator constitutes misconduct, whether fraudulent or not, on the part of that officer towards the multiform foundation, the Regulator may require the officer to produce and make available to them all records in the member's possession or under the officer's control relating to that bank account.

Search warrants.

53. (1) The Regulator may, for the purpose of an investigation, request any police officer above the rank of inspector or the Financial Intelligence Unit to apply to the Court for a warrant under this section in relation to specified premises.

(2) If the Court is satisfied that the conditions specified in subsection (3) are fulfilled, it may issue a warrant authorizing a police officer or any other person named in the warrant to enter the specified premises, using such force as is reasonably necessary for the purpose, and search the premises.

(3) The conditions referred to in subsection (2) are the following:

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- (a) that there are reasonable grounds for suspecting that there is on the premises material, whether or not it can be particularised, which is likely to be of material assistance, whether by itself or together with other material, to the investigation for the purpose of which the application is made; and
- (b) that the investigation for the purposes of which the application is made might be prejudiced unless immediate entry can be secured to the premises.

(4) Where a person enters premises in the execution of a warrant issued under this section, that person may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of material assistance, whether by itself or together with other material to the investigation for the purpose of which the warrant was issued.

(5) In this section, “**premises**” includes any place and, in particular, includes:

- (a) a vehicle, vessel, aircraft or hovercraft:
- (b) an offshore installation; or
- (c) a tent or movable structure.

54. A person who wilfully obstructs a person acting in the execution of a warrant issued under section 53 commits an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or a fine of up to 10,000 dollars, or both and, in addition, where a continuing offence, the Court may institute a fine of up to 500 dollars per day until the matter is corrected.

Obstruction.

55. (1) Where a person:

- (a) fails to comply with the provisions of section 52 or 53; or
- (b) refuses to answer any question put to that person by the Regulator for the purpose of the investigation,

Refusing to answer.

that person commits an offence, and the Regulator, by certifying in writing that the person has refused to comply with any of the provisions referred to in this Part may refer the matter to the Court for determination in accordance with subsection (2).

(2) The Court shall, upon receipt of a certificate referred to in subsection (1), inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may, if satisfied that such person has committed an offence under this Part, impose a penalty on the offender as if the offender committed the offence of contempt of the Court.

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(3) Notwithstanding subsections (1) and (2), no proceedings for an offence or for the recovery of any penalty shall be instituted under this Part against any person who refuses to answer any question if the refusal is made pursuant to sections 99 and 100.

Interim and final reports.

56. (1) The Regulator may, and if so directed by the Financial Services Commission shall, make interim reports to the Financial Services Commission with a copy to the Minister, the Legal Adviser and the Financial Intelligence Unit, and on the conclusion of his investigation shall make a final report to the Financial Services Commission with a copy to the Minister, the Legal Adviser and the Financial Intelligence Unit.

(2) The Regulator may:

- (a) forward a copy of a report made to the multiform foundation's registered office;
- (b) on request and on payment of the prescribed fee, furnish a copy to:
 - (i) a member of the management board of the multiform foundation,
 - (ii) a member of the supervisory board of the multiform foundation,
 - (iii) a person whose conduct is referred to in the report,
 - (iv) the auditors of the multiform foundation,
 - (v) the applicants for the investigation, or
 - (vi) any other person whose financial interests appear to the Regulator to be affected by the matters dealt with in the report, whether as a subscriber, beneficiary, creditor or liquidator of the multiform foundation, or otherwise; and
- (c) cause the final report to be printed and published.

Proceedings.

57. (1) If, from any report made or information obtained under this Part, it appears to the Regulator that, having been so advised by the Legal Adviser after consultation with the Financial Services Commission and the Financial Intelligence Unit, civil proceedings ought, in the public interest, to be brought by the multiform foundation, the Legal Adviser may bring the proceedings in the name and on behalf of the multiform foundation.

(2) The Regulator shall, at the expense of the Government, indemnify the multiform foundation against any costs or expenses incurred by it in connection with proceedings brought under this section, and not recovered under section 58.

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58. (1) The expenses of, and incidental to, an investigation by Regulator shall be defrayed in the first instance by the Regulator, but the following shall be liable to make repayment to the Regulator to the extent specified: Expenses.

- (a) a person who:
 - (i) is convicted in proceedings on a prosecution instituted as a result of the investigation, or
 - (ii) is ordered to pay the costs of the whole or any part of the proceedings brought under section 57;
- (b) a multiform foundation in whose name proceedings are brought under section 57(1) up to the amount or value of any sums or property recovered by it as a result of the proceedings;
- (c) a multiform foundation which has been the subject of the investigation except so far as the Regulator otherwise directs; and
- (d) the applicant or applicants for the investigation, other than the Registrar, to the extent, if any, which the Regulator may direct.

(2) For the purposes of this section, costs or expenses incurred by the Regulator in connection with proceedings brought under section 57(1) shall be treated as expenses of the investigation giving rise to the proceedings.

(3) A person liable under subsection (1) is entitled to a contribution from any other person liable under the same subsection according to the amount of their respective liabilities under that subsection.

(4) Expenses to be defrayed by the Regulator under this section shall, so far as not recovered under this section, be paid out of money provided by the Government.

(5) There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Regulator may determine in respect of his general staff costs and overheads.

59. (1) A copy of any report of the investigation, certified by the Regulator to be a true copy, shall be admissible in legal proceedings as evidence of the opinion of the Regulator in relation to a matter contained in the report. Evidence of report.

(2) A document certified as mentioned in subsection (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

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Disclosure
limitations.

60. Nothing in this Part requires the disclosure or production to the Regulator:

- (a) by a person, of information or records which that person would in an action in the Court or under section 99 be entitled to refuse to disclose or produce on the grounds of legal professional privilege except, if that person is a lawyer, the name and address of that person's client; or
- (b) by the bankers, as such, of a multiform foundation of information or records relating to the affairs of any of their customers, other than the multiform foundation or any person concerned with the multiform foundation under section 49(1)(c) and who is the subject of investigation.

Appeal.

61. (1) A multiform foundation, or any person concerned with the multiform foundation under section 49(1)(a) and who is under investigation, with respect to the investigation and any action or step taken by the Regulator against the multiform foundation or that person in consequence thereof or any findings published by the Regulator as a result of that investigation, shall be entitled to appeal within 14 days after receiving notice of the decision to the Financial Services Commission and serve a copy of the notice of appeal on the Minister and Registrar.

(2) The appellant shall be entitled to have legal representation at the hearing of the appeal.

(3) The Financial Services Commission shall set a date for hearing within 14 days of receiving the notice of appeal and the date of the hearing of the appeal shall be within 30 days of receiving the notice of appeal in accordance with the rules of natural justice.

(4) Any person aggrieved by the decision of the Financial Services Commission may appeal within 14 days to a Judge or Master of the High Court in chambers by way of Form 6 of the Civil Procedure Rules 2000 and the decision of the Judge or Master shall be final.

(5) The bringing of an appeal suspends the decision appealed against pending the determination or abandonment of the appeal.

PART XI – CONTINUATION OR TRANSFORMATION

Overseas
foundation.

62. (1) A foundation (and, for the avoidance of doubt, having the meaning given to that expression in section 2):

- (a) organized in a jurisdiction other than Nevis; and

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- (b) that, if it were in Nevis, could be continued as, or its constitutional documents amended or varied or substituted such that it could be transformed into, a multiform foundation under this Ordinance,

and in this Ordinance called an “**overseas foundation**” may, if not prohibited under the law of that other jurisdiction, apply to the Registrar for a certificate of continuance or transformation under this Ordinance by delivering the documents to the Registrar referred to section 64 and on payment of the prescribed fee apply in the manner provided for in that section to have the foundation registered in accordance with the provisions of this Ordinance as a multiform foundation.

(2) Upon applying for continuance or transformation under this Ordinance as a multiform foundation any amendment to the constitutional documents of the overseas foundation necessary to give effect to the continuance or transformation under this Part shall be deemed effective if the amendment:

- (a) is authorized in accordance with the law applicable to the overseas foundation before continuance or transformation under this Ordinance; and
- (b) is an amendment that a multiform foundation under this Ordinance is entitled to make.

63. (1) The constitution of the overseas foundation shall be written in the English language, but if it is written in a language other than English shall be accompanied by a certified translation in the English Language.

Constitution.

(2) The constitution of the overseas foundation shall:

- (a) be signed by all of the members of the management board or equivalent officers of the overseas foundation;
- (b) state the name of the overseas foundation and the name under which it is being continued or transformed;
- (c) state the jurisdiction under which it is established;
- (d) state the date on which it was established; and
- (e) state such other provisions as are required for the constitution of a multiform foundation under this Ordinance.

64. (1) In order to apply for a certificate of continuance or transformation, there shall be delivered to the Registrar a statement in the form prescribed by the Registrar signed by a member of the proposed

Registration documents.

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management board or secretary of the overseas foundation under the Ordinance and legally acknowledged, or signed by the registered agent on his behalf and duly witnessed, setting out:

- (a) the overseas foundation's name and address of its registered office in Nevis;
- (b) the particulars of the assets or property of the overseas foundation;
- (c) the particulars prescribed by the Registrar with respect to the registered agent;
- (d) the particulars prescribed by the Registrar with respect to any person or persons who are to be the members of the management board;
- (e) the particulars prescribed by the Registrar with respect to any person or persons who are to be the members of the supervisory board;
- (f) the particulars prescribed by the Registrar with respect to any person who is to be the secretary,
- (g) an undertaking, in the case of a tax resident foundation, that the management board shall forthwith notify the Minister, by notice in writing, if the multiform foundation ceases to be a tax resident foundation;
- (h) a statement as to its initial multiform and which in the absence of any such statement shall be deemed to be an ordinary foundation;
- (i) a statement that in applying for continuance as, or transformation into, a multiform foundation that it is authorized to do so under the existing law of establishment or governance of the overseas foundation; and
- (j) any other particulars required by the Registrar to be provided under or in accordance with this Ordinance,

and together with the supporting documents referred to in subsection (2).

(2) The supporting documents referred to in subsection (1) and in each case duly signed by a member of the proposed management board or secretary and legally acknowledged or signed by the registered agent and duly witnessed are:

- (a) the constitution of the overseas foundation referred to in section 63(2) and which shall be deemed to be the by-laws of the overseas foundation;

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- (b) a form of memorandum of establishment derived from the constitution referred to in paragraph (a) above containing the particulars set out in section 7(1); and
- (c) a copy of the certificate, or an irrevocable undertaking that the application has been made for discontinuance or dissolution or striking off on the foreign register, if applicable.

65. (1) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the registration of an overseas foundation as multiform foundation have been complied with, he shall register the overseas foundation as a multiform foundation.

Establishment by
continuance or
transformation.

(2) Upon the registration of the overseas foundation, the Registrar shall:

- (a) allocate a registration number to the multiform foundation in accordance with section 86(1); and
- (b) issue a certificate of continuance or transformation in respect of the multiform foundation stating:
 - (i) the name of the multiform foundation,
 - (ii) its registration number,
 - (iii) the date of registration of its constitution, and
 - (iv) its initial multiform.

(3) Each certificate of continuance or transformation shall be signed by the Registrar and be sealed with the Official Seal.

(4) The certificate of continuance or transformation shall be conclusive evidence of the continuance or transformation of the overseas foundation as a multiform foundation.

(5) On the date shown in the certificate of continuance or transformation:

- (a) the overseas foundation becomes a multiform foundation to which this Ordinance applies as if the overseas foundation had been established under this Ordinance and was for all purposes the same entity that existed prior to continuance or transformation;
- (b) the constitution of the overseas foundation, together with the derived memorandum of establishment, becomes the constitution of the overseas foundation as a multiform foundation under this Ordinance; and

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- (c) the certificate of continuance or transformation is the certificate of establishment of the overseas foundation as a multiform foundation.

Effect of
continuance or
transformation.

66. (1) When an overseas foundation is continued as, or transformed into, a multiform foundation under this Part:

- (a) the assets or property of the overseas foundation becomes the assets or property of the multiform foundation;
- (b) the multiform foundation continues to be liable for the obligations of the overseas foundation;
- (c) an existing cause of action, claim or liability to prosecute of or against the multiform foundation is unaffected and assumed by the multiform foundation;
- (d) a civil, criminal or administrative action or proceeding pending by or against the overseas foundation may be continued by or against the multiform foundation; and
- (e) a conviction against, or ruling, order or judgment against or in favour of, the overseas foundation may be enforced against the multiform foundation,

and, in each case, without further act or deed.

Discontinuance.

67. Subject to section 68 and the provisions of its constitution, a multiform foundation may:

- (a) if it is authorized by unanimous resolution of its management board and an ordinary resolution of the supervisory board and absolute beneficiaries (if any); and
- (b) if it is established to the satisfaction of the Registrar that the multiform foundation's proposed continuance in another jurisdiction will not adversely affect the multiform foundation's creditors,

apply to the appropriate official or public body of the other jurisdiction to be continued as an entity in the other jurisdiction as if it had been established under the laws of the other jurisdiction.

Restrictions on
discontinuance.

68. A multiform foundation may not apply for continuance in another jurisdiction, nor may it be continued under the laws of another jurisdiction, as an entity established in that other jurisdiction pursuant to section 67, unless the laws of that other jurisdiction provide that:

- (a) the assets or property of the multiform foundation continues to be the assets or property of the entity;

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- (b) the entity continues to be liable for the obligations of the multiform foundation;
- (c) any existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the multiform foundation may be continued by or against the entity; and
- (e) a conviction, ruling, order or judgment against or in favour of the multiform foundation may be enforced by or against the entity.

69. (1) Upon receipt of a notice satisfactory to him in the prescribed form together with the prescribed fee that a multiform foundation that has made an application under section 67 has been continued as an entity under the laws of another jurisdiction, the Registrar must file the notice and issue a certificate of discontinuance in accordance with this Ordinance.

Certificate of discontinuance.

(2) After a certificate of discontinuance is issued under subsection (1) in respect of a multiform foundation that is continued as an entity under the laws of another jurisdiction, the multiform foundation's name shall be removed from the Register, but such removal does not affect the provisions of Part X.

(3) For the purposes of this Part and Part XII, “**entity**” includes a body, whether or not a body corporate, recognized as an entity in another jurisdiction and with its principal place of residence or domicile or establishment in that jurisdiction under such laws or regulations that are equivalent to the recognition of the entity or its previous multiform under the provisions of this Ordinance or otherwise under the law of Nevis; and the words “**establish**” and “**establishment**” with respect to that entity shall be construed accordingly.

PART XII – CONVERSION, CONSOLIDATION AND MERGER

70. (1) This Part shall apply:

Interpretation.

- (a) to an existing Nevisian entity or entities wishing to convert into a multiform foundation established under this Ordinance, and the word “**convert**” or “**conversion**” shall be construed accordingly; and
- (b) as may involve or include a multiform foundation:
 - (i) to any two or more of an existing Nevisian entity or non-Nevisian entity wishing to consolidate

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into a new multiform foundation or a new entity, and the word “**consolidate**” or “**consolidation**” shall be construed accordingly; or

- (ii) an existing Nevisian entity or non-Nevisian entity wishing to merge into an existing multiform foundation, or an existing Nevisian entity or non-Nevisian entity, respectively; and the words “**merge**” and “**merger**” shall be construed accordingly,

and the surviving entity following such merger or consolidation is referred to herein as the “**surviving entity**”.

(2) For the purposes of this Part:

- (a) “**existing Nevisian entity**” means a multiform foundation established or registered under this Ordinance or an entity established or registered in Nevis under the Corporation Ordinance, the Limited Liability Ordinance or the Trust Ordinance or otherwise under the law of Nevis; and with reference to such an entity, its governing Ordinance and constitution shall be construed accordingly; and
- (b) “**non-Nevisian entity**” means an entity organized in a jurisdiction other than Nevis.

Conversion plan.

71. (1) An existing Nevisian entity wishing to convert into a multiform foundation must set forth in a plan of conversion the terms and conditions and rationale for the conversion of the interests of the shareholders, members or beneficiaries, as the case may be, into interests in the multiform foundation or the cash or other consideration to be paid as a result of the conversion and which must be approved in the manner required by the governing Ordinance and constitution of the existing Nevisian entity.

(2) After the plan referred to in subsection (1) is approved, the Nevisian entity may apply to the Registrar for a certificate of establishment by conversion under this Ordinance by delivering the documents to the Registrar referred to in section 74 and on payment of the prescribed fee apply in the manner provided for in that section to have the existing Nevisian entity registered in accordance with the provisions of this Ordinance as a multiform foundation.

Consolidation or merger plan.

72. (1) A multiform foundation wishing to consolidate or merge and to be established or discontinued as a result of consolidation or merger must set forth in a plan of consolidation or merger:

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- (a) the name and jurisdiction of formation of each entity that is party to the consolidation or merger;
 - (b) the name and address of the surviving entity and the type and organization of the surviving entity; and
 - (c) the terms and conditions and rationale for the consolidation or merger, and the basis of converting or merging the interests of the shareholder, members or beneficiaries, as the case may be, into interests of the surviving entity or the cash or other consideration to be paid as a result of the consolidation or merger and which must be approved in the manner required by the constitution of the multiform foundation as well as by the respective constitutions of the other parties to the merger or consolidation.
- (2) After the plan referred to in subsection (1) is approved, either the parties to the plan of consolidation or merger referred to in subsection (1):
- (a) may apply to the Registrar in the prescribed form for a certificate of consolidation or merger under this Ordinance by delivering the documents to the Registrar referred to in section 74 and on payment of the prescribed fee apply in the manner provided for in that section to have the consolidated or merged entities registered in accordance with the provisions of this Ordinance as a multiform foundation; or
 - (b) subject to the provisions of section 75, if it is established to the satisfaction of the Registrar that the multiform foundation's proposed discontinuance as a result of the consolidation or merger will not adversely affect the multiform foundation's creditors, may apply to the Registrar in the prescribed form for a certificate of discontinuance in accordance with the provisions of section 76.
- (3) A consolidation or merger involving or including an entity which is not a multiform foundation must be permitted in accordance with the governing law of the entity.

73. (1) Upon applying for a certificate of conversion under section 71(2) as a multiform foundation any amendment to the constitutional documents of the existing Nevisian entity necessary to give effect to the conversion under this Part shall be deemed effective if the amendment:

Constitution for conversion.

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- (a) is authorized under the governing Ordinance or other governing law; and
- (b) is an amendment that a multiform foundation under this Ordinance is entitled to make,

and complies with subsection (2).

(2) In the case of an existing Nevisian entity to be converted under section 71, its amended constitution shall:

- (a) be signed by all of the management board or equivalent officers of the existing Nevisian entity;
- (b) state the name of the existing Nevisian entity and the name under which it is being converted;
- (c) state the Ordinance under which it is established;
- (d) state the date on which it was established; and
- (e) state such other provisions as are required for the constitution of a multiform foundation under this Ordinance.

Registration documents.

74. (1) In order to apply for a certificate of conversion under section 71(2), or certificate of consolidation or merger under section 72(2)(a), there shall be delivered to the Registrar a statement in the prescribed form signed by the proposed management board or secretary of the existing Nevisian entity or the surviving entity and legally acknowledged, or signed by the registered agent on his behalf and duly witnessed, setting out:

- (a) the existing Nevisian entity's, or the surviving entity's, name and address of its registered office in Nevis;
- (b) the particulars of the assets of the existing Nevisian entity or the surviving entity,
- (c) the particulars prescribed by the Registrar with respect to the registered agent;
- (d) the particulars prescribed by the Registrar with respect to any person or persons who are to be the members of the management board;
- (e) the particulars prescribed by the Registrar with respect to any person or persons who are to be the members of the supervisory board;
- (f) the particulars prescribed by the Registrar with respect to any person who is to be the secretary;

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- (g) an undertaking, in the case of a tax resident foundation, that the management board shall forthwith notify the Minister, by notice in writing, if the multiform foundation ceases to qualify as a tax resident foundation;
- (h) a statement as to its initial multiform and which in the absence of any such statement shall be deemed to an ordinary foundation;
- (i) a statement that in applying for conversion into a multiform foundation that it is authorized to do so under its governing Ordinance and the constitution of the existing Nevisian entity; or, as the case may be, that in applying for consolidation or merger into a multiform foundation as the surviving entity that each party to the consolidation or merger is authorized to do so under its governing law or constitution; and
- (j) any other particulars required by the Registrar to be provided under or in accordance with this Ordinance,

and together with the supporting documents referred to in subsection (2).

(2) The supporting documents referred to in subsection (1) and in each case signed by a member of the proposed management board or secretary and legally acknowledged or signed by the registered agent and duly witnessed are:

- (a) the plan of conversion referred to in section 71(1), or plan of consolidation or merger referred to in section 72(1);
- (b) if a plan of conversion, the constitution of the existing Nevisian entity referred to in section 73, and which shall be deemed to be the by-laws of the existing Nevisian entity as amended;
- (c) a form of memorandum of establishment, either derived from the constitution referred to in paragraph (b) or, as the case may be, of the surviving entity, containing the particulars set out in section 71(1); and
- (d) a copy of the certificate of, or an undertaking that the application has been made for, discontinuance or dissolution or striking off on the register under the governing Ordinance or other applicable law of the existing Nevisian entity or, as the case may be,

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the other party or parties to the plan of consolidation or merger which are not the surviving party (as applicable).

Establishment by conversion or consolidation or merger.

75. (1) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the conversion or, as the case may be, consolidation or merger have been complied with, he shall register, if a conversion, the existing Nevisian entity as a multiform foundation and, if a consolidation or merger, the surviving entity as a multiform foundation and in substitution for any prior registration, if applicable.

(2) Upon registration, the Registrar shall:

- (a) allocate a registration number to the multiform foundation in accordance with section 86(1); and
- (b) issue a certificate of establishment by conversion or, as the case may be, consolidation or merger, in respect of the multiform foundation stating:
 - (i) the name of the multiform foundation,
 - (ii) its registration number,
 - (iii) the date of registration of its constitution, and
 - (iv) its initial multiform.

(3) Each certificate of establishment by conversion or, as the case may be, certificate of consolidation or merger shall be signed by the Registrar and be sealed with the Official Seal.

(4) The certificate of establishment by conversion or, as the case may be, consolidation or merger, shall be conclusive evidence of the establishment by conversion of the existing Nevisian entity as a multiform foundation or, as the case may be, by consolidation or merger of the surviving entity as a multiform foundation.

(5) On the date shown in the certificate of establishment by conversion or, as the case may be, consolidation or merger:

- (a) the existing Nevisian entity or surviving entity becomes a multiform foundation to which this Ordinance applies and as if the existing Nevisian entity or, as the case may be, the entities existing prior to the consolidation or merger had been established under this Ordinance and were for all purposes the same entity or, as the case may be, the same entities that had existed prior to conversion or consolidation or merger;
- (b) the constitution of the existing Nevisian entity or, as the case may be, the surviving entity becomes the

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constitution of the multiform foundation under this Ordinance; and

- (c) the certificate of establishment by conversion or, as the case may be, consolidation or merger is evidence of the establishment of the existing Nevisian entity or surviving entity as a multiform foundation.

76. (1) A certificate of discontinuance under section 72(2)(b) shall not be issued unless the laws of that other jurisdiction provide that:

Certificate of discontinuance.

- (a) the property of the multiform foundation continues to be the property of the surviving entity;
- (b) the surviving entity continues to be liable for the obligations of the multiform foundation;
- (c) any existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the multiform foundation may be continued by or against the surviving entity; and
- (e) a conviction, ruling, order or judgment against or in favour of the multiform foundation may be enforced by or against the surviving entity.

(2) Upon receipt of a notice in the prescribed form satisfactory to the Registrar that a multiform foundation that has made an application under section 72(2)(b) has complied with subsection (1), the Registrar must file the notice and issue a certificate of discontinuance in accordance with this Ordinance.

(3) After a certificate of discontinuance is issued under subsection (2) in respect of a multiform foundation, the multiform foundation's name shall be removed from the Register, but such removal does not affect the provisions of Part X.

77. Following the issuance of a certificate of conversion or, as the case may be, the certification of consolidation or merger, with respect to the existing Nevisian entity or the entity or entities which are not the surviving party or parties:

Effect of conversion or consolidation or merger.

- (a) the property, real and personal, of such entity or entities becomes the property of the multiform foundation;
- (b) the multiform foundation continues to be liable for the obligations of such entity or entities;

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- (c) an existing cause of action, claim or liability to prosecute of or against such entity or entities is unaffected and assumed by the multiform foundation;
- (d) a civil, criminal or administrative action or proceeding pending by or against such entity or entities may be continued by or against the multiform foundation; and
- (e) a conviction against, or ruling, order or judgment against or in favour of, such entity or entities may be enforced against or by the multiform foundation,

and in each case without further act or deed.

PART XIII – DISSOLUTION AND REVOCATION

Grounds for
dissolution.

78. (1) A multiform foundation shall be dissolved where:
- (a) the multiform is revoked in accordance with powers of revocation provided for in its constitution;
 - (b) the multiform foundation is established for a definite period and that period expires;
 - (c) the purpose of the multiform foundation is fulfilled or becomes incapable of fulfillment as determined:
 - (i) by ordinary resolution of the management board and by ordinary resolution of the supervisory board and absolute beneficiaries (if any), or
 - (ii) by unanimous resolution of the absolute beneficiaries (if any), or
 - (iii) in the absence of absolute beneficiaries, by unanimous resolution of the supervisory board (if any) and ordinary resolution of the subscribers;
 - (d) any provision of the constitution of the multiform foundation so requires;
 - (e) the multiform foundation is unable to pay its debts as they fall due; or
 - (f) the Court orders that the multiform foundation be dissolved.
- (2) Where a multiform foundation is dissolved pursuant to the provisions of subsection (1), a person shall be appointed by ordinary resolution of the management board or otherwise under the constitution

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of the multiform foundation to supervise the dissolution of the multiform foundation (and such person is referred to in this Ordinance as the “**liquidator**”), and who shall have all authority, powers and discretions to do all things that are necessary or desirable for the orderly supervision of the dissolution of the multiform foundation and the winding up of its business and affairs, and shall collect the assets and property of the multiform foundation and, after discharging or making adequate provision for the discharge of the liabilities or obligations of the multiform foundation, shall distribute the remaining assets and property of multiform foundation in the manner provided in section 80.

(3) Notice of dissolution shall be given by the secretary or registered agent to the Registrar in the prescribed form and which shall be filed on the Register.

79. (1) A multiform foundation may, upon application, by an order of Court be dissolved if the Court is of the opinion that it is just and equitable that the multiform foundation be dissolved.

Court dissolution.

(2) An application for the dissolution of a multiform foundation may be made to the Court by any member of the management board or supervisory board, an absolute beneficiary or by a creditor of the multiform foundation.

(3) Where the Court orders that a multiform foundation be dissolved under this section, the Court may appoint a person to supervise the dissolution of the multiform foundation and act as liquidator and may, from time to time, direct the manner in which the dissolution is to be conducted by the liquidator.

80. (1) Subject to subsection (2), where a multiform foundation is dissolved and there remains some assets or property after its dissolution those assets shall be the assets or property of the beneficiary or other person who, according to the constitution, is entitled to receive any assets or property remaining after the dissolution of the multiform foundation.

Distribution of assets.

(2) In the event that:

- (a) there is no person entitled to receive the remaining assets or property of the multiform foundation as provided in subsection (1); or
- (b) the person entitled to receive the remaining assets or property refuses to accept the transfer of the assets or property; or
- (c) there is no relevant provision in the constitution providing for who in such circumstances shall be entitled to receive such assets or property,

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the remaining assets or property shall vest in the Government and shall be dealt with accordingly.

Dissolution by Registrar.

81. (1) Subject to subsection (2), the Registrar may dissolve a multiform foundation where the multiform foundation fails to file its annual return pursuant to section 95, or fails to pay the prescribed annual fees within the time specified by this Ordinance, or fails to comply with any other provision of this Ordinance and provide notice on the Register to that effect.

(2) A multiform foundation shall not be dissolved under subsection (1) unless:

- (a) the Registrar gives the multiform foundation not less than 90 days' notice of the proposed dissolution, stating the reasons for the proposed dissolution, and addressed to its registered office; and
- (b) the multiform foundation has failed prior to the dissolution to correct the omission.

Revival.

82. (1) A multiform foundation that has been dissolved under section 81 may be revived upon application to the Registrar by any interested person in the prescribed form and on payment of the prescribed fees.

(2) Upon receipt of the application referred to in subsection (1), the Registrar may, if the circumstances justify, approve the application for the revival of the multiform foundation, in which case the applicant shall deliver to the Registrar a copy of the constitution and prescribed fee, together with a statement in the prescribed form and made by a former member of the management board or the secretary signed and legally acknowledged, or signed by the registered agent on his behalf and duly witnessed, requesting the reinstatement of the multiform foundation on the Register and thereafter the Registrar shall issue a certificate of revival confirming the revival of the multiform foundation and which shall take effect from the date of dissolution as if the multiform foundation had not been dissolved.

(3) The Minister may, for the purposes of this Part, make such regulations as may be necessary for the dissolution and revival of multiform foundations.

Creditor's rights.

83. (1) Every creditor before bringing any action or proceeding against any multiform foundation under section 79(2) shall first deposit with the Minister a bond in the sum of 50,000 dollars from a financial institution in Nevis for securing the payment of all costs as may become payable by the creditor in the event of his action or claim not succeeding or prevailing against the multiform foundation.

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(2) On application to a court of competent jurisdiction by any judgment creditor of a beneficiary of a multiform foundation, the court may charge the beneficiary's beneficial entitlement as security for payment of the unsatisfied amount of the judgment debt (together with interest) and to the extent so charged the judgment creditor has only the rights of an assignee of the beneficiary's beneficial entitlement.

(3) Unless otherwise provided for in the constitution, the beneficiary's beneficial entitlement charged under subsection (2) may, but need not, be redeemed at fair market value at any time:

- (a) by any beneficiary or beneficiaries whose interests are not charged from that beneficiary; or
- (b) by the multiform foundation from the assets or property of the multiform foundation for the benefit of any one or more of the beneficiaries whose interests are not charged, unless the constitution provides otherwise:
 - (i) by ordinary resolution of the management board and by ordinary resolution of the supervisory board and absolute beneficiaries (if any); or
 - (ii) by unanimous resolution of the absolute beneficiaries (if any); or
 - (iii) in the absence of absolute beneficiaries, by unanimous resolution of the supervisory board (if any) and ordinary resolution of the subscribers.

(4) Notwithstanding the provisions of any other law, the remedies provided by subsection (2) shall be the sole remedies available to any creditor with respect to a beneficiary's beneficial entitlement.

(5) For the purposes of subsection (3), the fair market value of the beneficial entitlement shall be determined by the auditor of the multiform foundation or, if there is no auditor, an auditor appointed by the management board for the purposes of making such a determination.

PART XIV – REGISTRAR

84. (1) For the purposes of the registration of multiform foundations under this Ordinance, there shall be appointed by the Minister a person to be known as the Registrar of Foundations and such other officers as may be necessary to assist the Registrar in the exercise of his functions under this Ordinance who shall establish in Nevis a principal registry for the registration of multiform foundations.

Registrar and
Registry.

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(2) The Registrar, with the approval of the Minister, who may impose such terms and conditions as he may consider appropriate, shall be entitled to establish a sub-registry of the principal registry in any country or jurisdiction if the Registrar considers it necessary or desirable in furtherance of the purposes and objects of this Ordinance.

(3) Any functions of the Registrar under this Ordinance may, to the extent authorized by the Registrar, be exercised by any of the officers referred to in subsection (1).

(4) The Minister may, at any time and from time to time, by Order, require that the Registrar of Companies appointed pursuant to the Corporation Ordinance shall also be the Registrar of Foundations for such period as the Minister may determine.

(5) In this section, “**officer**” means a person on the staff of the Registrar or a duly appointed representative agent of the Registrar as approved by the Minister and whether for engagement in the principal registry or any sub-registry established under subsection (2).

Official seal.

85. The Minister shall direct that a seal or seals to be known as the Official Seal be prepared for use by the Registrar in the authentication or other issue of documents required for or in connection with the registration of foundations under this Ordinance and whether for use in the principal registry or any sub-registry established under section 84(2).

Register and
Registration.

86. (1) The Registrar, upon registration, shall allocate to every multiform foundation a number which shall be its registration number.

(2) The registration numbers of multiform foundations shall be in such form and consisting of one or more sequences of figures or letters or any combination thereof as the Registrar may, from time to time, determine.

(3) A register shall be maintained by the Registrar of all multiform foundations registered under this Ordinance and their respective registration numbers, names, multiforms and all and every other particulars required to be notified to or filed with the Registrar under this Ordinance; and such register shall be open to public inspection, save where any particulars are not made available for public inspection as a result of notice being given in the prescribed form pursuant to the provisions of this Ordinance.

(4) The register maintained by the Registrar under subsection (3) shall be divided into such parts as the Registrar may determine for the purposes of registration and shall include a part for multiform foundations established under Part II, or, as the case may be, establishment by continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII.

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87. (1) For the purpose of ensuring that documents delivered to the Registrar are of standard size, durable and easily legible, the Minister may prescribe such requirements as the Minister considers appropriate, and different requirements may be prescribed for different document or classes of documents.

Documents delivered.

(2) Where a document is delivered to the Registrar, whether an original document or a copy, which in the Registrar's opinion does not comply with the prescribed requirements, the Registrar shall serve on a person by whom the document was delivered a notice stating his opinion to that effect and indicating the requirements with which in his opinion the documents does not comply.

(3) Where the Registrar serves a notice under subsection (2), then for the purposes of any enactment, law or ordinance which enables a penalty to be imposed in respect of a failure to deliver to the Registrar a document required to be delivered and, in particular where the penalty imposed may be by reference to each day during which the failure continues, a duty to deliver a document to the Registrar shall be treated as having been discharged by the delivery of that document, except that no account is to be taken of days beginning with the day on which the document was delivered to the Registrar and ending with the fourteenth day after the date of service of the notice under subsection (2).

88. (1) Where this Ordinance requires a document to be delivered to the Registrar, and the form of the document has not been prescribed, it shall be sufficient compliance with that requirement if:

Form of documents.

- (a) the document is delivered in a form which is acceptable to the Registrar; or
- (b) the information in question is delivered in material other than a document, being material which is acceptable to the Registrar; and
- (c) the document or information, as the case may be, is accompanied by the prescribed fee.

(2) In this section, any reference to delivering a document includes, in the case of a notice, the giving of such notice.

89. The Registrar shall, on request by any person and on payment of the prescribed fee, certify that a multiform foundation registered under this Ordinance is of good standing, if the Registrar is satisfied that:

Good standing certificate.

- (a) the name of the multiform foundation is on the Register;

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- (b) the multiform foundation has filed with the Registrar all documents required by this Ordinance to be filed; and
- (c) the multiform foundation has paid all fees and penalties required by this Ordinance to be paid.

Regulations.

90. (1) The Minister may, by regulations made under this Ordinance, require the payment to the Registrar of such fees as may be prescribed in respect of:

- (a) the performance by the Registrar of such functions under this Ordinance as may be specified in the regulations, including the receipt by the Registrar of any document under this Ordinance which is required to be delivered to the Registrar; and
- (b) the inspection of documents or other material held by the Registrar under this Ordinance.

(2) Where a fee is provided for or charged under this section, no action need be taken by the Registrar until the fee is paid and, where the fee is payable on the receipt by the Registrar of a document required to be delivered to the Registrar, the Registrar shall be deemed not to have received the document until the fee is paid.

(3) The Minister may prescribe forms to be used for any of the purposes of this Ordinance and the manner in which any document to be delivered to the Registrar is to be authenticated.

(4) Unless otherwise provided in this Ordinance, any document required to be delivered to the Registrar by a multiform foundation shall be signed by a member of the management board or the secretary or the registered agent of the multiform foundation.

(5) Fees paid to the Registrar shall be paid to such fund or funds as shall be specified by the Minister for the benefit of the Nevis Island Administration.

Inspection.

91. (1) Subject to the provisions of this section, no inspection or production of documents kept by the Registrar under this Ordinance shall be permitted unless those documents have been made available for public inspection under and subject to the provisions of this Ordinance, except that any of the members of the management board or the supervisory board of a multiform foundation may, by notice in writing to the Registrar, authorize the person named in the notice:

- (a) to inspect a document of the multiform foundation delivered to the Registrar under this Ordinance or, if the Registrar thinks fit, obtain a copy thereof; or

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- (b) to require a certificate of establishment or, as the case may be, the certificate of establishment by continuance or transformation or conversion, consolidation or merger of the multiform foundation or a copy, certified or otherwise, of any other document or part of any other document referred to in paragraph (a),

and a certificate given under paragraph (b) shall be signed by the Registrar and sealed with the Official Seal.

(2) A copy of or an extract from a record kept by the Registrar, certified in writing by the Registrar to be an accurate copy, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated in the copy or extract of which direct evidence would be admissible.

92. (1) Where a multiform foundation which fails to comply with a requirement to deliver to the Registrar any document or to give notice to the Registrar of any matter, and does not make good the failure within 14 days after the service of a notice on the multiform foundation requiring it so to do by the Registrar, the Court may, on an application made to it by a member of the supervisory board (if any) or any beneficiary of the multiform foundation or by the Registrar, make an order directing the multiform foundation to make good the failure within a time specified in the order.

Failure to deliver documents.

(2) The order of the Court may provide that all or any part of the costs of and incidental to the application shall be borne by the multiform foundation or by any member of the management board or secretary responsible for the failure or shall be apportioned between the multiform foundation and any member of the management board or secretary so responsible.

(3) Nothing in this section shall prejudice the application of any provision imposing penalties on the multiform foundation or its management board or secretary in respect of a failure mentioned in subsection (1).

PART XV – GENERAL PROVISIONS

93. (1) Subject to subsection (2), notwithstanding any provision to the contrary in any law of Nevis, a multiform foundation shall not be subject to assessment or liable for any tax in Nevis, and the beneficiaries of a multiform foundation shall similarly be exempt from all income, capital gains and withholding taxes which may arise out of their beneficial entitlement in or to the multiform foundation or any of its assets or property.

Taxation.

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(2) Unless the multiform foundation is a tax resident foundation, the provisions of subsection (1) shall only apply to a multiform foundation which effects transactions exclusively with persons who are not resident in Nevis, provided that a multiform foundation and its beneficiaries shall not lose their exemption under subsection (1) by reason only that the multiform foundation:

- (a) effects transactions with, or buys or sells or otherwise deals in any securities issued or created by, any person resident in Nevis who is exempt from all income, capital gains and under any law of Nevis;
- (b) effects or concludes in Nevis any contract or arrangement, including contracts or arrangements with any person resident in Nevis for employment with, or of the supply of goods and services to, the multiform foundation, and exercises in Nevis all other powers, so far as may be necessary for their proper performance;
- (c) carries on any part of its administration within Nevis, and holds meetings in Nevis;
- (d) owns or leases property in Nevis for the carrying on of any part of its administration or as a residence for its management board, supervisory board or beneficiaries; or
- (e) transacts banking business with any person resident in Nevis who is authorized to carry on banking business under any law of Nevis.

(3) A multiform foundation may apply to the Minister for a tax resident certificate and elect to pay such tax or taxes as the Minister may by regulations made under this Ordinance prescribe at a rate of not greater than one percent, and upon issue of such a certificate the provisions of subsection (1) shall apply, except with respect to any of the prescribed taxes payable, and the multiform foundation shall be tax resident in Nevis for all purposes.

(4) Notwithstanding any provision to the contrary in any law of Nevis, no estate, inheritance, succession or gift tax, rate, duty, levy or other charge shall be assessed on or be payable by any person with regard to any assets or property transferred to or held by or securities issued or created by or relating to a multiform foundation to which the provisions of this section shall apply.

(5) In this section:

- (a) “**person**” includes an individual or an entity; and

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- (b) “**resident in Nevis**” means a person (other than a beneficiary of a multiform foundation) who ordinarily resides within Nevis or carries on business from an office or other fixed place within Nevis and “**not resident in Nevis**” shall be construed accordingly.

94. Notwithstanding any provision to the contrary in any law of Nevis, no stamp duties shall be payable by any person with regard to any transaction in any securities issued or created by or relating to transfer of assets or property to a multiform foundation.

Stamp duties.

95. (1) A multiform foundation shall, in each year, before the end of the month following the month in which the anniversary of its registration took place:

Annual return.

- (a) complete an annual return in the prescribed form containing the information current as at the anniversary of its registration in that year; and
- (b) deliver to the Registrar a copy of the return signed by the secretary or the registered agent of the multiform foundation together with the prescribed filing fee.

(2) The annual return shall state, with respect to the multiform foundation:

- (a) the name of the registered agent;
- (b) the registered address of the multiform foundation;
- (c) its multiform;
- (d) whether the multiform foundation is a tax resident foundation;
- (e) the full name and address of each member of the management board or, in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered office;
- (f) the full name and address of the secretary or, in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered office; and
- (g) that the information contained in the annual return is current as at the anniversary of its registration in the year in which it is required to be delivered.

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(3) If default is made in compliance with subsection (1) or (2) every member of the management board and the secretary is in default commits an offence and shall be liable to a fine not exceeding four times the prescribed filing fee and, in the case of an offence under subsection (1)(b), to a fine not exceeding one half of the prescribed filing fee for each day in respect of which the offence continues.

Records.

96. (1) The records which a multiform foundation is required by this Ordinance to keep, may be kept in the form of a bound or loose-leaf book or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device which is capable of reproducing the required information in intelligible written form within a reasonable time.

(2) A multiform foundation shall take reasonable precautions:

- (a) to prevent loss or destruction of;
- (b) to prevent falsification of entries in; and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by this Ordinance to be kept.

(3) A multiform foundation which fails to comply with the provisions of subsection (2) and any member of the management board or the secretary responsible for such failure commits an offence and shall be liable to a fine not exceeding 2,500 dollars.

Admission of evidence.

97. (1) If any record referred to in section 96 (1) is kept otherwise than in intelligible written form, any duty imposed on the multiform foundation by this Ordinance to allow examination of, or to furnish extractions from, that record shall be treated as a duty to allow examination of, or to furnish a copy of the extractions from, the record in intelligible written form.

(2) The records kept by a multiform foundation in compliance with this Ordinance shall be admissible as evidence in the form in which they are made intelligible under subsection (1) as prima facie evidence of all facts and other matters stated in the records.

Order to produce records.

98. If on an application by the Legal Adviser there is shown to be reasonable cause to believe that a person has whilst a member of the management board or the supervisory board committed an offence in connection with the management of the multiform foundation's affairs and that evidence of the commission of the offence may be found in any records of or under the control of the multiform foundation, the Court may make an order:

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- (a) authorizing the person named in the order to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring any member of the management board or the supervisory board named in the order to produce and make available the records or any of them to a person at a place and by a time specified in the order.

99. Where any proceedings are instituted under this Ordinance against any person, nothing in this Ordinance is to be taken to require any person to disclose any information which that person is entitled to refuse to disclose on grounds of legal professional privilege.

Professional privilege.

100. A person may refuse to answer any question put to him pursuant to any provision of this Ordinance if that person's answer would or might tend to expose that person, or the spouse of that person, to proceedings under the law of Nevis or elsewhere for an offence or for the recovery of any penalty.

Right to silence.

101. (1) If in any proceeding for negligence, default or breach of duty against a member of the management board or supervisory board or the secretary, it appears to the Court that the person is or may be liable in respect of the negligence, default or breach of duty, but that the person acted honestly and that having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach of duty, the Court may relieve that person, either wholly or partly, from liability on such terms as the Court thinks fit.

Relief of Court for liability.

(2) If a member of the management board or supervisory board or the secretary has reason to believe that a claim will or might be made against him in respect of negligence, default or breach of duty he may apply to the Court for relief, and the Court shall have the same power to relieve him as it would have had if proceedings for negligence, default or breach of duty had been brought against him.

102. (1) A person who:

False statements.

- (a) makes a statement in any form or document required to be filed, furnished or delivered under this Ordinance or any regulations made thereunder which, at the time and in the light of circumstances under which it is made, is false or misleading with respect to any material fact, or omits to state any material fact the omission of which makes the statement false or misleading; or

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- (b) fails to disclose any fact or information required to be disclosed for the purposes of this Ordinance or any regulations made under this Ordinance; or
- (c) being in charge of, or having possession of or control over any information records, books or other documents referred to in section 98 refuses or wilfully neglects to comply with any lawful direction given under that section,

commits an offence and shall be liable on summary conviction to a fine of not more than 10,000 dollars or to imprisonment for a term not exceeding 6 months, or both.

(2) It shall be a defence for a person accused of committing an offence under subsection (1)(a) to prove that he did not know that the statement was false or misleading, and could not reasonably have known that the statement was false or misleading at the time of making it.

Aiding and abetting offence.

103. Any person who knowingly or wilfully aids, abets, counsels, causes or procures the commission of an offence under this Ordinance shall be liable to be dealt with, tried and punished as a principal offender.

Court order to comply.

104. (1) Where, on the application of the Legal Adviser or the Registrar, the Court is satisfied that any person has failed to comply with any requirement made by or pursuant to this Ordinance, or committed any breach of duty as a member of the management board or the supervisory board or as a secretary, the Court may order the multiform foundation or that person to comply with the requirement or, so far as the breach of duty is capable of being made good, to make good the breach.

(2) The Court shall not make an order against any person under this section unless that person is given the opportunity of adducing evidence and being heard in relation to the matter to which the application relates.

General power to make regulations.

105. (1) The Minister may generally make regulations to give effect to the provisions of this Ordinance as may appear to the Minister to be necessary or expedient for the purpose of giving full effect to the provisions of this Ordinance and for the due administration thereof and, without prejudice to the generality of the foregoing, the Minister may make regulations prescribing any matter which is required to be prescribed under this Ordinance.

(2) The power conferred on the Minister by subsection (1) may, except in so far as this Ordinance otherwise provides, be exercised:

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to

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specified exceptions, or in relation to any specified cases or classes of cases; and

- (b) so as to make in relation to the case with respect to which it is exercised:
 - (i) the full provision to which the power extends or any less provision, whether by way of exception or otherwise, or
 - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class for different purposes of this Ordinance, or
 - (iii) any such provision either unconditionally or subject to any specified conditions.

(3) Without prejudice to any provision of this Ordinance, regulations made under this Ordinance may contain such transitional, consequential, incidental or supplementary provisions as may appear to the Minister to be necessary or expedient for the purposes of the regulations.

(4) Without limiting the general powers conferred by subsections (1), (2) and (3), the Minister may make regulations for all or any of the following purposes:

- (a) prescribing fees payable under this Ordinance;
- (b) designating or varying a class or classes of multiform;
- (c) prescribing the contents of the constitution for an ordinary foundation or, as the case may be, a stated multiform;
- (d) prescribing the content of form or forms required to be filed or completed with respect to any matter under this Ordinance;
- (e) generally with respect to the formation and administration of any sub-registry established under section 84(2); or
- (f) generally with respect to the administration of this Ordinance and for carrying the intent and purposes of its provisions into effect.

106. For the purposes of discharging his duties under this Ordinance and the regulations made thereunder and without prejudice

Direction to
furnish
information.

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to the provisions of Part X, the Registrar or any person acting under his authority may, at all reasonable times, in writing direct any person to whom this Ordinance applies or is subject:

- (a) to furnish information; or
- (b) to provide access to any records, books or other documents,

relating to the business or affairs of that person being carried out under or by virtue of any of the provisions of this Ordinance which, in the opinion of the Registrar, are necessary to enable him to ascertain compliance with the provisions of this Ordinance or any regulations made thereunder.

Immunity from suits.

107. (1) No liability shall be incurred by and no suit, action or proceeding shall be brought against the Government, the Regulator, the Financial Services Commission, the Financial Intelligence Unit, the Registrar or any person acting under his or its authority for any act done or omitted to be done in good faith:

- (a) in the performance or intended performance of any function or duty; or
- (b) in the exercise or intended exercise of any power, under this Ordinance or the regulations made thereunder.

(2) The Registrar may bring an action and institute proceedings in his name of office for the enforcement of any provision of this Ordinance or any regulation made thereunder, or for the recovery of fees or other sums payable under this Ordinance or any regulation made thereunder.

Avoidance for fraud.

108. (1) Where it is proved beyond reasonable doubt by a creditor that a multiform foundation was subscribed to:

- (a) by or on behalf of a subscriber with principal intent to defraud the creditor of the subscriber; and
- (b) did at the time such subscription take place render the subscriber insolvent or without property by which that creditor's claim (if successful) could have been satisfied,

then such subscription shall not be void or voidable and the multiform foundation shall be liable to satisfy the creditor's claim but such liability shall only be to the extent of the interest that the subscriber had in the property representing or comprising the subscription prior to subscription and any other accumulation to the property (if any) subsequent thereto.

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(2) In determining whether the subscription has rendered the subscriber insolvent or without property by which a creditor's claim (if successful) may be satisfied, regard shall be had to the fair market value of the subscriber's property (not being property of or relating to the multiform foundation) at the time immediately after the subscription referred to in subsection (1)(b) and in the event that the fair market value of such property exceeded the value of the creditor's claim, at that time, after the subscription, then the subscription made shall for the purposes of this Ordinance be deemed not to have been so subscribed, or the property disposed of with intent to defraud the creditor.

(3) A subscription shall not be deemed to have been subscribed with principal intent to defraud a creditor of a subscriber:

- (a) if subscribed after the expiration of one year from the date that such creditor's cause of action accrued; or
- (b) where the subscription takes place before the expiration of one year from the date that the creditor's cause of action accrued, that creditor fails to commence such action before the expiration of six months from the date such subscription took place.

(4) A subscription to the foundation shall not be fraudulent as against a creditor of a subscriber if the subscription of property took place before that creditor's cause of action against the subscriber accrued or had arisen.

(5) A subscriber shall not have imputed to him an intent to defraud a creditor, solely by reason that the subscriber:

- (a) has subscribed to such foundation within one year from the date of that creditor's cause of action accruing; and
- (b) has retained, possesses or acquires with respect to the foundation or the administration of its affairs any of the powers or benefits as a result of being a beneficiary, or member of the management board or supervisory board, as the case may be.

(6) Where a foundation is liable to satisfy a creditor's claim in the manner provided for in subsection (1), that creditor's rights to recovery shall be limited to the property referred to in subsection (1), or to the proceeds of that assets or property, to the exclusion of any claim right or action against the foundation or any other assets or property of the foundation.

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(7) For the purpose of this section, the onus of proof of the subscriber's intent to defraud the creditor lies on the creditor.

(8) For the purpose of this section:

- (a) the date of the cause of action accruing shall be, the date of that act or omission which shall be relied upon either partly or wholly to establish the cause of action, and if there is more than one act or the omission shall be a continuing one, the date of the first act or the date that the omission shall have first occurred, as the case may be, shall be the date that the cause of action shall have accrued; and
- (b) the term “**cause of action**” means the earliest cause of action capable of assertion by a creditor against the subscriber or, as the case may be, against the subscription on which the creditor has established (or may establish) an enforceable claim; and
- (c) the entry of judgment in the proceedings shall not constitute a separate cause of action.

(9) The provisions of this section shall apply to all actions and proceedings brought in any court, however described, against any person (whether a party to the proceedings or not) with regard to a subscription to a foundation, or receipt of property by or for such a foundation and the remedy conferred by subsection (1) shall be the sole remedy available in such an action or proceeding to the exclusion of any relief or remedy against any party to the action or proceeding.

(10) Failure by a creditor to present all claims arising out of any controversy and join all parties with a material interest shall prevent that creditor from presenting such claims and bringing an action against such parties in a subsequent proceeding.

(11) For the purposes of this section, the term “**creditor**” means a creditor of the subscriber, including a judgment creditor and an assignee from such creditor of any claim and includes any person who alleges a cause of action against a subscriber.

Invalidity of
subscriptions.

109. (1) Nothing in this Ordinance shall validate any subscription of assets or property which is neither owned nor the subject of a power in that behalf vested in the subscriber.

(2) This Ordinance shall not affect the recognition of any foreign laws in determining whether the subscriber is the owner of such assets or property or the holder of such power referred to in subsection (1) of this section.

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(3) No subscription shall be invalid or questioned on the grounds that it is at an undervalue, unless being a subscription in respect of which the provisions of section 108 apply.

110. (1) Notwithstanding the provisions of any treaty or convention or the provisions of any statute or any rule of law or equity to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than Nevis against:

Foreign judgments.

- (a) a multiform foundation;
- (b) a subscriber;
- (c) a member of the management board;
- (d) a member of the supervisory board;
- (e) a beneficiary;
- (f) a person appointed or instructed in accordance with the express or implied provisions of the constitution or an instrument to undertake any act, matter or thing in connection with a multiform foundation; or
- (g) the assets or property of the multiform foundation or any beneficiary thereof,

shall be entertained by the Court if:

- (i) the judgment is based upon the application of any law inconsistent with the provisions of this Ordinance; or
- (ii) that judgment relates to a matter or particular aspect that is governed by the law of Nevis.

111. (1) Whenever any provision of this Ordinance requires any form or instrument to be filed with the Registrar, such form or instrument shall comply with the provisions of this section, unless otherwise expressly provided for under this Ordinance or by any regulation made by the Minister thereunder.

Filing of documents.

(2) Every form or instrument referred to herein, filed or required to be filed, shall be in English language, except that the corporate name may be in another language if written in English letters or characters.

(3) All forms or instruments shall be signed by a member of the management board or the secretary or the registered agent or a person otherwise authorized on behalf of the multiform foundation.

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(4) Whenever any provision of this Ordinance requires a form or instrument to be “**legally acknowledged**”, such requirement means in the case of execution of a form or instrument within Nevis that:

- (a) the person signing the form or instrument shall acknowledge that it is his act and deed or that it is the act and deed of the multiform foundation, as the case may be; and
- (b) the form or instrument shall be acknowledged before a notary public, commissioner for oaths or other person authorized to take acknowledgments, who shall attest that he knows the person making the acknowledgment to be the person who executed the form or instrument.

(5) In the case of the execution of a form or instrument outside of Saint Christopher and Nevis, an acknowledgment for the purposes of subsection (4) shall mean:

- (a) the person signing the form or instrument shall acknowledge that it is his act and deed or that it is the act and deed of the multiform foundation, as the case may be; and
- (b) the form or instrument shall be acknowledged before a notary public or any other person authorized to take acknowledgments according to the laws of the place of execution, or a consul or vice-consul of Saint Christopher and Nevis or other governmental official of Saint Christopher and Nevis authorized to take acknowledgments or, in their absence, a consular official of another government having diplomatic relations with Saint Christopher and Nevis, and such notary, person, consul or vice-consul shall attest that he knows the person making the acknowledgment to be the person who executed the form or instrument; and
- (c) when the acknowledgment shall be taken by a notary public or any other person authorized to take acknowledgments pursuant to subparagraph (b), except a governmental official of Saint Christopher and Nevis or foreign consular official, the signature of such person who has authority shall be attested to by a consul or vice-consul of Saint Christopher and Nevis or, in his

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absence, by a consular official of another government having diplomatic relations with Saint Christopher and Nevis, or a government official of the place of execution who is authorized to make such attestation, or an Apostille according to the Convention de la Haye de 5 Octobre 1961.

(6) Whenever any provision of this Ordinance requires any form or instrument to be filed with the Registrar, subject to any regulations made under this Ordinance, such requirement means that:

- (a) an appropriate receipt evidencing payment of all appropriate fees shall be delivered to the office of the Registrar and, within 10 days of the date of the receipt, the original instrument together with a duplicate instrument, both duly signed and legally acknowledged (if appropriate); and
- (b) upon delivery of the original signed and legally acknowledged (if appropriate) for an instrument with the required receipt and an exact signed and duly acknowledged copy (if appropriate), the Registrar shall certify that the form or instrument has been filed in his office by endorsing the word “Filed” and the date of the required receipt upon the original instrument and said date shall be the filing date; and
- (c) the Registrar shall compare the duplicate signed and acknowledged copy with the original signed and legally acknowledged (if appropriate) form or instrument, and if he finds that the text is identical, shall affix on the duplicate copy the same endorsement of filing as he affixed on the original; and the said original, as endorsed, shall be returned to the multiform foundation; and the endorsement constitutes the certificate of the Registrar that the document is a true copy of the form or instrument filed in his office and that it was filed as of the date stated in the endorsement; and
- (d) any instrument filed in accordance with subsection (b) shall be effective as of the filing date stated thereon; and
- (e) upon the filing of any form or instrument the Registrar may issue a certificate of endorsement under his hand and seal certifying that the form or instrument is filed.

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(7) Any form or instrument relating to a multiform foundation and filed with the Registrar under this Ordinance may be corrected with respect to any error apparent on the face or defect in the execution thereof by filing with the Registrar a certificate of correction, executed and acknowledged in the manner required for the original form or instrument. The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the form or instrument in correct form; and the corrected form or instrument when filed shall be effective as of the date the original form or instrument was filed.

(8) Whenever any provision of this Ordinance requires a form or instrument to be signed by a registered agent and “**duly witnessed**”, the signature of the registered agent may be either duly witnessed by the Registrar or any of his officers (as defined in section 84(5)) or by any other person who is a registered agent or a duly appointed representative of a registered agent or otherwise as may be prescribed in regulations made under this Ordinance.

Certified copies.

112. All certificates issued by the Registrar in accordance with the provisions of this Ordinance and all copies of documents filed in his office in accordance with the provisions of this Ordinance shall, when certified by him, be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated and of the execution of such instruments.

Confidentiality.

113. (1) The Confidential Relationships Act, No. 2 of 1985 of Saint Christopher and Nevis shall apply to every multiform foundation established under this Ordinance.

(2) All judicial proceedings, other than criminal proceedings, relating to foundations shall be heard in camera and no details of the proceedings shall be published by any person without leave of the Court.

(3) Subject to the provisions of this section, the Registrar, the Regulator and every other person having any official duty in the administration of this Ordinance shall regard and deal with all documents and information filed with or notified to the Registrar or any officer under the provisions of this Ordinance as confidential, unless made available for public inspection in accordance with the provisions of this Ordinance.

(4) A person having possession of or control over:

- (a) any document relating to a multiform foundation which is registered and retained by the Registrar, but not available for public inspection; or
- (b) information relating to a multiform foundation which is not contained:

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- (i) in the entry in the Register in respect of that multiform foundation, or
 - (ii) in a document retained by the Registrar, shall regard that document and information as confidential and shall not communicate that document, or anything contained in that document, or that information, or any part of that information, to any person, other than a person:
 - (c) who by virtue of any provision of this Ordinance or any other statute or law is entitled to inspect that document or receive that information.
 - (d) to whom he is authorized by the subscriber, the members of the management board or secretary or members of the supervisory board to disclose the document or information for attaining the purpose or object of the multiform foundation; or
 - (e) subject to subsection (6), to whom he is required to disclose that information by order of a court of competent jurisdiction.
- (5) A person who acts in contravention of:
- (a) subsection (4) shall be guilty of an offence punishable on conviction on indictment by a fine not exceeding 50,000 dollars, or up to 6 months imprisonment, or both; and
 - (b) subsection (4):
 - (i) where he is a member of the management board or supervisory board or is an auditor of the multiform foundation, is in default; or
 - (ii) otherwise is in breach of his statutory obligations and the multiform foundation may proceed against him.
- (6) No person employed in carrying out the provisions of this Ordinance shall be required to produce in any court or before any authority or person for any purpose whatsoever any document made in pursuance of this Ordinance or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under this Ordinance, except as may be necessary for the purpose of:
- (a) carrying into effect the provisions of this Ordinance and discharging his duties and responsibilities thereunder; or

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- (b) any criminal proceedings in which such document, matter or thing is material.

Remedy for default.

114. (1) Where a multiform foundation or an officer is in default of any duty or obligation imposed upon him under this Ordinance, an application may be made to the Court by another officer or a beneficiary or a subscriber specifying the default and seeking a remedy.

(2) Where the Court is satisfied that it is just and equitable in the circumstances to do so, it may order the remedy sought, or may make such other order as it sees fit:

- (a) for the attainment of the purposes or objects of this Ordinance; and
- (b) to obtain compliance with this Ordinance.

(3) Where the order of the Court under subsection (2) has the effect of granting the application, it shall order that the costs of bringing the application as well as the costs of the action shall be met:

- (a) where the application and the order is in respect of default by the multiform foundation; and
- (b) where the application and the order is in respect of default by the multiform foundation but, in the opinion of the Court, the default was the responsibility of an officer, by that officer.

Statute of Elizabeth.

115. The enactment entitled 13 Elizabeth 1 Ch 5 (1571) shall have no application to any multiform stated to be a trust, nor any provision thereof nor to any subscription to such a multiform foundation in consequence that the multiform is stated to be a trust.

Notices.

116. (1) Where there is provision in this Ordinance for the service of notice on any person, the notice shall be in writing and may be served in person, by post, by fax or electronically.

(2) In respect of service:

- (a) in person, the date of service shall be the date on which the notice was deposited at the address last notified to the secretary of the multiform foundation by the person entitled to receive service as his address for service or, where no address has been so notified, the last known address of that person for the receipt of written communications;
- (b) by post, the date of service shall be the fifth day following the day upon which the properly addressed and stamped envelope containing the notice was delivered into the postal service and

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service shall be at the address last notified to the secretary of the multiform foundation by the person entitled to receive service as his address for service or, where no address has been so notified, the last known address of that person for the receipt of written communications; or

- (c) by fax or electronic means, the date of service shall be the date of transmission recorded by the transmitter and the address shall be the fax number or electronic address last notified to the secretary by the person entitled to receive service as his number and address for receipt of fax or electronic communications.

MARJORIE MORTON
President

Passed in the Nevis Assembly this 16th day of November 2004.

ST CLAIR WALLACE
Clerk of the Nevis Island Assembly