

Sworn on behalf of: Claimant

Sworn by: ALLAN LEWIS

Affidavit No: 1

Exhibit: "AL-1 to AL-2"

Date sworn: May 20 21

Date Filed: May 20 21



**AFFIDAVIT OF ALLAN LEWIS  
IN SUPPORT OF FIXED DATE CLAIM FORM**

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**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**COMMERCIAL DIVISION**

**CLAIM NO.: SU2021 CD00226**

**IN THE MATTER OF THE  
COMPANIES ACT OF JAMAICA**

**AND**

**IN THE MATTER OF AN  
APPLICATION BY JNFM MUTUAL  
FUNDS LIMITED FOR DIRECTIONS  
PURSUANT TO SECTION 130(2) OF  
THE COMPANIES ACT OF JAMAICA**

I, **ALLAN LEWIS**, being duly sworn make oath and say as follows:

1. I am a Director of the Claimant, and my address for the purpose of these proceedings is in care of 2-4 Constant Spring Road, Kingston 10, in the parish of Saint Andrew.
2. In so far as the facts herein are within my knowledge, they are true and in so far as they are not within my personal knowledge, they are true to the best of my knowledge information and belief.
3. The Claimant is a public company limited by shares. It is a Collective Investment Scheme governed by the Securities (Amendment) Act, 2013 and its accompanying

regulations, The Securities (Collective Investment Scheme) Regulations, 2013. A copy of the Claimant's Articles of Incorporation is exhibited and attached hereto, marked "AL-1" for identification.

4. On March 13 2020, the Prime Minister of Jamaica, the Most Honourable Andrew Holness, by the Disaster Risk Management Act (Enforcement Measures) Order declared Jamaica a disaster area due to the effect of the SARS- CoV2 (Corona virus COV119- 19). This order which was made pursuant to the Disaster Risk Management Act, Imposed various restrictions including restricting the size of public gatherings.
5. Since the first Order, the Prime Minister has issued a series of other extending the period for which Jamaica is deemed a disaster area. The latest such Order issued is the Disaster Risk Management (Enforcement Measures) (No. 6) Order, 2021 ("the Order") which took effect on May 5, 2021. A copy of the said Order is exhibited and attached hereto and marked "AL-2" for identification.
6. Although the Order exempts annual general meetings from the prohibition of public gatherings of more than 10 persons, there are still restrictions in place regarding the physical distancing of persons attending annual general meetings. Persons are still required to maintain a distance of six (6) feet in public spaces.
7. Further, under the said Order persons over the age of sixty years old are prohibited from leaving their places of residence except in specific circumstances. The exceptions to this prohibition do not include the attending of annual general meetings.
8. The Prime Minister and the public medical authorities have indicated repeatedly that there is no certainty as to when the risks caused by the SARS-CoV2 (Coronavirus COVID-19) will end or be brought under control, or further when these restrictions will end.
9. The number of cases have been steadily increasing and based on the information now available, it appears likely that the restrictions on public gatherings, 'stay at home' measures and physical distancing will continue for several more months, possibly into


2022.


10. Further, out of an abundance of caution, even after the restrictions have been lifted it appears to be prudent to not host large public gatherings.
11. I am advised by the Claimant's General Counsel and verily believe that the Companies Act requires that the Companies hold annual General Meetings within 15 months of their last General Meeting ("the Annual Meetings"). Further, based on information received from the Claimant's Corporate Secretary, Shakira Pickersgill, which I verily believe, the next deadline for a General Meeting to be held would be before August 18, 2021. I am also advised, by the said Shakira Pickersgill and verily believe, that the number of members on record and thus entitled to attend currently stands at over 2,000 (two thousand).
12. Though eager to bring the company into compliance with the requirements of the Companies Act, we have waited to see whether the COVID -19 situation would improve or whether the Government would amend the laws to enable companies to hold virtual meetings without having to apply to the Court for directions. Neither has happened to date. It is therefore proposed to hold the next annual general meeting during the week of July 26, 2021, subject to the granting of the orders sought herein.
13. I am further advised by the Claimant's General Counsel and verily believe that the Companies Act contemplates that the Annual Meetings must be held at a physical venue where shareholders attend in person and all shareholders are entitled to attend these meetings and vote. I am aware that the Companies Office has issued guidance, including case law to support this position.
14. In light of the measures implemented under the several Disaster Risk Management Orders and the conditions caused by the SARS-CoV2 (Coronavirus COVID 19) I believe it is impracticable for the Company to hold the Annual Meetings in accordance with the Companies Act and its articles of incorporation.

15. It is impracticable because of the number of shareholders entitled to attend such meetings and the absence of suitable venues which are the appropriate size to accommodate all attendees (if they were to attend in large numbers) at the required six feet physical distance. As at May 2021 the number of members of the company numbered Two Thousand and Eighty-Five (2,085).
16. Holding such a meeting in a physical space only, would also expose the shareholders, the officers of the Companies and all persons associated with hosting the Annual meetings to the increased risk of exposure to the SARS-CoV2 (Corona Virus COVID-19 and expose the company to possible liability if anyone were to suffer personal injury as a result.
17. I am further advised by the Claimant's General Counsel, and verily believe, that where it, is impracticable to hold an annual general meeting in the manner prescribed, a director or member of a company may apply to the court pursuant to section 130 of the Companies Act for the court to order the manner in which the meeting may be called, held and conducted.
18. The Company is minded to call, hold and conduct Annual Meetings using technology or electronic means that will allow the shareholders and members to participate in a similar manner as in person meetings and intend to use such service providers as are necessary and financially prudent in order to achieve this objective.
19. If the Company calls, holds and conducts the Annual Meeting in the manner set out in the orders sought in the fixed Date Claim Form I believe the shareholders will have an opportunity to attend, participate and vote in the annual general meeting and that they are unlikely to be prejudiced.
20. In the absence of an order of the court allowing for annual general meetings by electronic means the Company would be forced to either hold an Annual Meeting in breach of the Order and/or at risk to the health of their shareholders and officers who attend, or to not hold a meeting at all, which would breach the Companies Act.

21. In these circumstances, the Claimant seeks orders in the terms of the Fixed Date Claim Form.

Sworn to by the said **ALLAN LEWIS** )  
At 2 Belmont Road, Kingston 5 )  
In the Parish of Saint Andrew )  
on this 19 day of May, 2021 )  
Before me )

  
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**ALLAN LEWIS**

  
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**JUSTICE OF THE PEACE  
FOR THE PARISH OF:**

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**JOSEMAR A. BELNAVIS**  
**JUSTICE OF THE PEACE**  
St. Andrew - D01869

**FILED** by Vanessa Lalasingh, Attorney-at-Law of The Legal Department, The Jamaica National Group Limited, 2-4 Constant Spring Road, Kingston 10, Attn: Vanessa Lalasingh for and on behalf of the Claimant/Applicant JNFM MUTUAL FUNDS LIMITED whose address for service is that of its Attorney-at-Law. Telephone 1 876 -926-1344 ext 4825 Email: [vanessal@jngroup.com](mailto:vanessal@jngroup.com) (Atty # 5461)