



FIXED DATE CLAIM FORM



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO.: SU 2021 000 226

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

The Claimant, **JNFM MUTUAL FUNDS LIMITED**, a company limited by shares incorporated under the Companies Act, of 2-4 Constant Spring Road, Kingston 10 in the parish of Saint Andrew, claims for the following relief:

1. An Order that notwithstanding the provisions of the Companies Act, the provisions of its Articles of Incorporation regarding the holding of annual general meetings and any notice of an annual meeting, information circular or other documents that may be or already have been disseminated the Claimant may call and conduct its 2020 annual general meeting ("the Annual Meeting", which term includes Annual Meetings conducted following an adjournment or postponement) in accordance with this order and any Annual Meeting called or held in accordance with this order shall be valid.
2. An Order that the Company is permitted to conduct its Annual General Meeting (which said meeting is proposed to be held during the week of July 25, 2021) by either:

- a) Holding a meeting with one or more shareholders/members present at a physical venue with a live stream or broadcast of the meeting by electronic means or software (including webcasting/video conferencing, teleconferencing, a combination of these and/or other electronic means) which allows all shareholders/members access to see and hear the proceedings, ask questions in such reasonable order and manner as the chairman may allow, and to vote electronically including before the meeting or by a proxy chosen from among the persons the company indicates will be physically present at the meeting; or
  - b) Holding a meeting entirely by live stream or broadcast of the meeting by electronic means or software (including webcasting, videoconferencing, teleconferencing, a combination of these and/or other electronic means) which allows all shareholders/members access to see and hear the proceedings, ask questions in such reasonable order and manner as the chairman may allow, and to vote electronically including before the meeting.
3. An Order that the company is permitted to provide its shareholders and members with notices of the Annual Meeting, resolutions, draft resolutions proposed to be passed, circulars, proxy forms, financials including profit and loss accounts, balance sheets and auditor's reports and any other documents necessary or relevant for the conduct of an annual general meeting by one or more of the following means: electronic mail, pre-paid mail, posting links to access the documents on its website.
  4. A declaration that any notice or document delivered in accordance with this order shall satisfy the requirements for serving documents for an Annual Meeting notwithstanding any provision to the contrary in the

Companies Act or the Company's Articles of Incorporation.

5. An order that the failure or inability of a shareholder to attend or remain in an Annual Meeting held in accordance with paragraph 2 above as a result of mistake or of events beyond the control of a Company shall not constitute a defect in the calling of the Annual Meeting and shall not invalidate any resolutions passed or proceedings taken at that Annual Meeting.
6. Liberty to apply.
7. Such further and other relief as this Honourable Court deems appropriate or which may be necessary to give effect to the orders sought.

**The Claimant is seeking the orders on the following grounds:**

1. The Claimant is a public company limited by shares incorporated under the Companies Act. It is also a Collective Investment Scheme governed by the Securities (Amendment) Act, 2013 and its accompanying regulations, The Securities (Collective Investment Scheme) Regulations, 2013. The membership of the Company is in excess of two thousand (2,000) and if a majority of those members were to attend, there is no suitable venue which is an appropriate size to accommodate all shareholders entitled to attend at the required physical distance of more than six (6) feet apart.
2. The Company is due to hold an Annual General Meeting in accordance with the Companies Act on or about August 18, 2021. At annual general meetings all shareholders are entitled to attend, be heard and vote. It is proposed to hold the next annual general meeting during the week of July 26, 2021, subject to the granting of the orders sought herein.
3. On March 13, 2020, the prime minister of Jamaica, The Honourable Andrew Holness, under

and by virtue of the Disaster Risk Management (Enforcement Measures) Order declared Jamaica a disaster area due to the effects of SARS- CoV2 (Coronavirus COVID- 19) on the Island.

4. Since that date the Government has implemented several measures to limit the spread of SARS- CoV2 (Coronavirus COVID- 19) by the promulgation of a series of orders under the Disaster Risk Management Act.
5. The most recent of these orders is the Disaster Risk Management (Enforcement Measures) (No. 6) Order, 2021 was brought into effect on May 5, 2021.
6. Although the Order (in the Fourth Schedule) exempts annual general meetings from the prohibition of public gatherings of more than ten (10) persons, the restrictions regarding the physical distancing of persons and other protocols remain applicable to persons attending annual general meetings. In addition the Clamant has a very large membership base.
7. Further, Order 23 (1) of the Order states that no annual general meeting of a company may be held from May 5 to Jun 2, 2021. However, pursuant to Order 23 (2) a), companies are allowed to hold annual general meetings solely by electronic means, if a court grants the entity concerned an order for such a meeting to be held solely by electronic means.
8. The Order, at Order 11 (4) also prohibits persons over the age of sixty years old from leaving their place of residence except for specified purposes, none of which include attending a Company's annual general meeting.
9. Having regard to the nature of the SARS- CoV2 (Coronavirus COVID- 19) it is likely that there will be further extensions and orders and even if there are no further extensions the medical advisory is for persons to limit social contact, including public gatherings, as much as possible.
10. Section 126 (1) of the Companies Act provides that **“Every company shall in each year hold a general meeting as its annual general meeting...; and not more than fifteen months shall elapse between the date of one general meeting of a company and that of**

the next”.

11. Unlike directors’ meetings in relation to which section 141 of the Companies Act provides that **“a director may if all the directors of the company, consent, participate in a meeting of directors of the company or of a committee of the directors by means of such telephone or other communicating facilities as permit all persons participating in the meeting to hear each other”** there are no similar provisions in relation to annual general meetings and the Companies Act therefore does not appear to allow the meeting to be held or conducted by electronic means. Annual General Meetings must generally be held at a physical venue where shareholders attend in person.
12. Section 130(2) of the Companies Act provides that:

**“If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in a manner prescribed in the company's articles, the Court may, either of its own motion or on the application of any director if the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purpose be deemed to be a meeting of the company duly called, held and conducted”.**
13. In the present circumstances it is impracticable for the Company to call and hold a meeting in the manner in which the annual general meetings are to be called.
14. In the absence of an order of the court allowing for an annual general meeting by electronic means the Company would either be forced to hold an annual general meeting in breach of

the Order or at great risk to the health of its shareholders and officers who attend or to not hold a meeting which would breach the Companies Act.

15. The relief sought in this claim is therefore appropriate, necessary and urgent so that the Companies may comply with both the Order and the requirements of the Companies Act to hold annual general meetings.

I certify that all facts set out in this Fixed Date Claim Form are true to the best of my knowledge, Information and belief.

Dated the 19<sup>th</sup> day of May, 2021

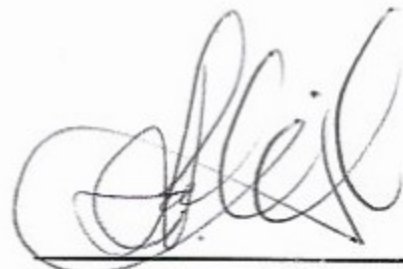


**ALLAN LEWIS**

**Director**

**JNFM MUTUAL FUNDS LIMITED**

**SETTLED**



**VANESSA LALASINGH**

**ATTORNEY-AT-LAW**

NOTICE OF HEARING:

THE FIRST HEARING of this Claim will be heard at Supreme Court Public Building East, King Street, Kingston on the            day of            **2021 at            for 2 hours.**

If you do not, attend at that hearing, judgment may be entered against you in accordance with the claim.

A Particulars of Claim or an Affidavit giving full details of the Claimant's claim should be served on you with this Claim Form. If this has not been done and there is no order permitting the Claimant not to serve the Particulars of Claim or Affidavit you should contact the court immediately. You should complete the form of Acknowledgement of Service served on you with this Claim Form and deliver it to the registry (address below) so that they receive it within **FOURTEEN (14) days** of service of this Claim Form on you. The form of Acknowledgement of Service may be completed by you or an Attorney-at-Law, acting for you. See Rules 9.3(1) and 9.4(3).

You should consider obtaining legal advice with regard to this claim. See notes in form 2A served with this Claim Form.

This Claim Form has no validity if it is not served within six months of the date below unless it is accompanied by an order extending that time. See Rule 8.14(1).

[SEAL]

The Registry is at King Street, Kingston, telephone numbers (876) 922-8300 - 9, fax (876) 967-0669. The office is open between 9:00a.m. and 4:00p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays except on Public Holidays.

DATED THE            DAY OF MAY, 2021

**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)



**PRESCRIBED NOTES FOR DEFENDANTS  
(FIXED DATE CLAIM FORM)**

Form 2A [Rule 8.16(1)(c)]

**This Form is important.**

**When you get this document you should consider getting legal advice.**

The Claimant is seeking an order from the court as set out in the Claim Form on the basis of the facts or evidence set out in the Particulars of Claim or Affidavit which was served with it. The Claimant will not be entitled to enter judgment against you without a hearing.

**You may:**

**A. Admit the Claim**

If so, you should complete and return the form of Acknowledgement of Service to the registry within FOURTEEN DAYS stating this. You may attend the first hearing if you wish to do so.

**B. Dispute the Claim**

If so, you should complete and return the form of Acknowledgement of Service as under A. You should also file at the registry and serve on the Claimant's Attorney-at-Law (or the Claimant if he has no Attorney-at-Law):

- (a) a Defence if the Claim Form was accompanied by the Claimant's Particulars of Claim, or
- (b) an Affidavit in answer if the Claim Form was accompanied by an Affidavit sworn by or on behalf of the Claimant. See Rule 10.2(2)

within FORTY TWO DAYS of the day on which the Claim Form was served on you. Your Defence or Affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

**C. Make a claim against the Claimant**

If so, you should complete and return the form of Acknowledgement of Service as under A. You must file a Particulars of Claim (a counterclaim) setting out full details of what you claim against the Claimant and the facts on which you will rely. This must be done within FORTY TWO DAYS of the date on which the claim form was served on you. The Particulars of Claim should set out ALL the facts on which you rely in disputing any part of the Claimant's claim against you.

**YOU SHOULD ALSO ATTEND THE FIRST HEARING. IF YOU DO NOT THE JUDGE MAY DEAL WITH THE CLAIM IN YOUR ABSENCE.**

**Copies of forms may be obtained from the registry or at [www.sc.gov.jm](http://www.sc.gov.jm)**

**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)





**ACKNOWLEDGEMENT OF SERVICE OF FIXED DATE  
CLAIM FORM**

Form 4 [Rule 8.16(1)(a)]

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COMMERCIAL DIVISION  
CLAIM NO.**

**IN THE MATTER OF THE  
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**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**

**WARNING:** This form should be completed and returned to the registry at the address below within FOURTEEN days of service of the Claim Form on you. See Rule 9.3(1). However, the Claimant will not be entitled to have judgment entered against you except at the first or subsequent hearing of the claim.

1. Have you received the Claim Form with the above number? YES/NO
2. If so when did you receive it? \_/\_/\_
3. Did you also receive the Claimant's Particulars of Claim or Affidavit in support?  
YES/NO
4. If so, on what date did you receive them? \_/\_/\_
5. Are your names properly stated on the Claim Form? YES/NO
6. If not what are your full names?  
.....

7. Do you want to defend the claim? YES/NO

If so you should file a Defence or Affidavit in answer within 42 days of the service of the Claim Form on you. See Rule 10.3(1)

- 8. Do you admit the whole claim? YES/NO
- 9. Do you admit any part of the claim? YES/NO
- 10. If so what do you admit?

.....

11. What is your own address?

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.....  
.....

12. What is your address for service?

If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and fax number if any.

.....  
.....  
.....

Dated                      day of                      20

Signed.....  
[Defendant in person]  
[Defendant's attorney-at-law]

**Filed by** (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Acknowledgement of Service)



**DEFENCE**

Form 5 [Rule 8.16(1)(b)]

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**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
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CLAIM NO.**

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I dispute the claim on the following grounds-

I certify that all the facts set out in my Defence are true to the best of my knowledge information and belief.

Dated                      day of                      20

Signed.....

Defendant

## COUNTERCLAIM

I claim against the Claimant  
(Set out details of the remedy or relief sought)

on the following grounds –

I certify that all the facts set out in my counterclaim are true to the best of my knowledge, information and belief and that I am entitled to the remedy claimed

Signed .....

Defendant

Dated                      day of                      20

**Filed by** (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the Defence)

### NOTES:

- (a) The Defendant may set out his defence in any way he chooses - it is not necessary to use this form.
- (b) The Defendant must state-
  - which allegations in the claim he admits
  - which he denies
  - which he neither admits or denies because he does not know whether they are true
  - identify any documents which he considers necessary to his case
- (c) The Defendant must give his reasons for denying any allegations made by the Claimant.
- (d) The Defendant must set out clearly all the facts on which he relies to dispute the Claim and must set out any different version of the events on which he relies.
- (e) The Defendant may not be allowed at the trial to give evidence about any fact which is not set out in the defence.
- (f) If the Defendant wishes to counterclaim he must-
  - specify any remedy that he seeks against the claimant
  - include a short statement of all facts on which he relies
  - identify any documents which he considers necessary to his case
- (g) Where the Defendant is represented by an attorney-at-law, he must also sign the Form and give his address for service.
- (h) A Defendant who defends in a representative capacity must say:-
  - what that capacity is and
  - whom he represents.