

**IN THE MATTER OF NORTHSTAR FINANCIAL SERVICES (BERMUDA) LTD (“NORTHSTAR”)**  
**AND IN THE MATTER OF OMNIA LTD (“OMNIA”)**  
**TOGETHER (THE “COMPANIES”)**

**SUPREME COURT OF BERMUDA,**  
**COMMERCIAL COURT**  
**2020 NO. 304 & 305**

**SEGREGATED ACCOUNT**  
**CLASS REPRESENTATION – FAQ’s**

**1. In outline, what issues have arisen over the segregation of the Companies’ accounts?**

You may recall that the Joint Provisional Liquidators (“JPLs”) had taken advice from their legal counsel in Bermuda and the United Kingdom (together their “**Legal Advisors**”) on the question of segregation of the Companies’ accounts under the Segregated Accounts Companies Act 2000 and/or the private Acts to which the Companies have been subject to from time to time.

The present views of the JPLs’ are that:

- Mutual fund assets (i.e. investments made on the instructions of policyholders holding variable products) *do* bear the hallmarks of segregation.
- Investments made with the proceeds of funds advanced by policyholders holding fixed products *do not* bear those hallmarks.
- Investments made with the proceeds of funds advanced by policyholders holding indexed products *may or may not* bear those hallmarks.

Those views will *not*, however, be dispositive of the issues and it will be for the Court to determine the true extent of segregation.

As part of that process, the JPLs filed *ex parte* applications with the Court on 19 May 2021 to obtain directions from the Court on the conduct of a substantive hearing meant to determine the issues arising in relation to segregation. The *ex parte* applications were aimed at ensuring that the process for conducting any substantive hearing will be fair and that all of the relevant arguments for the various classes of investors/policyholders and creditors will be before the Court at this hearing.

By the *ex parte* applications, the JPLs sought the Court’s approval of class representatives to represent the interests of various classes of creditors of the Companies. Specifically, the JPLs sought the Court’s approval of the following class representatives: (1) one representative to represent the interests of those investors or policyholders holding variable investments (2) one representative to represent the interests of investors or policyholders holding fixed and indexed investments and (3) one representative to represent the interests of creditors not holding fixed, indexed or variable investments.

The *ex parte* applications were heard by the Supreme Court of Bermuda on the 26 July 2021 (the “**Directions Hearing**”).

## 2. What was the outcome of the Directions Hearing?

The Court has ordered that there shall be a substantive hearing to determine the issues relating to segregation and also that the JPLs shall appoint a representative to represent each of the three classes of investors/policyholders.

### The Substantive Hearing

First, the Court has ordered that there shall be a hearing (the “**Substantive Hearing**”) for the Court to hear arguments as to the following issues (the “**Segregation Issues**”):

- (i) To what extent, if any, has Northstar and/or Omnia established segregated or separate accounts in respect of investments made in it or policies issued by it (the “**Segregated Accounts**”)?
- (ii) To what extent, if any, are the assets of Northstar and/or Omnia to be held exclusively for the benefit of any such Segregated Accounts?
- (iii) To what extent, if any, do claimants in respect of any Segregated Accounts have claims against the general assets of Northstar and/or Omnia?

### The Classes and the Class Representatives

The Court also ordered that classes of investors or policyholders will be represented by class representatives. The class representatives will include the following:

- (i) an investor or policyholder in Northstar and/or Omnia Ltd holding only variable investments shall be appointed as the “**Variable Representative**” and shall represent the interests of those investors or policyholders in the Companies holding variable investments (the “**Variable Class**”);
- (ii) an investor or policyholder in Northstar and/or Omnia holding only fixed or indexed investments shall be appointed as the “**Fixed Representative**” and shall represent the interests of those investors or policyholders in the Companies holding fixed and indexed investments (the “**Fixed Class**”); and
- (iii) a creditor of Northstar and/or Omnia not holding any such investments or policies shall be appointed as the “**Creditor Representative**” and shall represent the interests of creditors in the Companies not holding fixed, indexed or variable investments (the “**General Creditor Class**”).

(the Variable Representative, Fixed Representative, and Creditor Representative together being the “**Class Representatives**”).

It is important to note that if a policyholder holds investment in both variable and fixed, they will not be able to act as a class representative. They will still have the right to engage with both appointed Class Representative who will represent them at the Substantive Hearing.

If you do not know what class you belong to, please contact the JPLs at [cbcbmomnia@deloitte.com](mailto:cbcbmomnia@deloitte.com) or [cbcbmnfs@deloitte.com](mailto:cbcbmnfs@deloitte.com).

### **3. What is the purpose of the Class Representatives?**

The Class Representatives, with the assistance of their legal counsel, will be responsible for ensuring that the interests of their respective classes are represented before the Court at the Substantive Hearing. Each Class Representative will advance arguments on the Segregation Issues for the benefit of their class as a whole.

### **4. How many Class Representatives will be appointed?**

There will be three Class Representatives. There will be one representative for the Fixed Class, one for the Variable Class, and one for the General Creditor Class: see FAQ point 2 (“*What was the outcome of the Directions Hearing?*”)

### **5. Who can address the Court at the Substantive Hearing?**

No person other than the JPLs and the Class Representatives will be able to address the Court at the Substantive Hearing without the permission of the Court.

If a creditor, policyholder or investor wishes to appear before the Court at the Substantive Hearing (otherwise than through their Class Representative) then that person must notify the JPLs of their intention to do so before seeking the permission of the Court. Any such application to the Court (and any subsequent individual representation at the Substantive Hearing) will be at the cost of the party making the application. The JPLs request that the notification required be given as soon as possible in advance of the Substantive Hearing, and (in the interests of administrative efficiency) in any event by no later than 1 October 2021.

### **6. What are the relevant criteria for acting as a Class Representative?**

Each of the following criteria will be relevant when the JPLs determine whether a creditor can or should be appointed as a Class Representative:

- (a) *The nature of the creditor’s claim* - each Class Representative must only hold only one type of investment. For example, the representative for the Variable Class must hold only variable investments. Furthermore, the JPLs are of the view that distributors cannot properly be appointed as Class Representatives.
- (b) *Capability of proving* – The JPLs would seek a creditor whose debt/claim can be verified.
- (c) *Assumption of responsibility* – The JPLs consider that such a creditor would need to be willing to accept responsibility for the proper representation of their class as a whole, including in the instruction of counsel and on all other relevant matters.
- (d) *Absence of insolvency, criminal or regulatory proceedings* – The JPLs consider that it is important that the Class Representative is not subject to any ongoing insolvency, criminal or regulatory proceedings.
- (e) *Absence of conflict* – The JPLs consider it important that the relevant creditor is not likely to be precluded from acting as a Class Representative due to actual or potential conflicts of interest.

## **7. Can I be a Class Representative?**

If you are interested in being appointed as a Class Representative, you should only put yourself forward after:

- Considering the criteria set out in FAQ point 6 (*“What are the relevant criteria for acting as a Class Representative?”*); and
- Considering the duties and responsibilities of a Class Representative as set out in FAQ point 9 (*“What are the duties and obligations of a Class Representative?”*)

If, having considered carefully the information in these FAQs, you wish to propose yourself as a potential Class Representative, you should comply with the instructions given at FAQ point 11 (*“What do I do if I want to be a Class Representative?”*)

If you do not wish to be, or are not able to be, a Class Representative, you will still have the right to engage with your appointed Class Representative who will represent you at the Substantive Hearing.

## **8. How will the JPLs choose a Class Representative for each class?**

The procedure by which creditors can put themselves forward for appointment as a Class Representative is set out in FAQ point 11 (*“What do I do if I want to be a Class Representative?”*).

Once the JPLs have received nominations to act as a Class Representative, the JPLs will review those nominations. Should there be more than one nominee for each Class Representative position, the JPLs will consider those nominations carefully and select the nominee who (in the JPLs’ view) would be the most appropriate Class Representative.

In the event that the JPLs are unable to identify suitable Class Representatives, or in the event of a dispute as to which creditor should act as Class Representative, the JPLs may seek further directions from the Court.

## **9. What are the duties and obligations of a Class Representative in connection with the Substantive Hearing?**

In outline, the Variable Representative, the Fixed Representative and the Creditor Representative shall each be asked, with the support and assistance of their legal counsel, to:

- a) advise (and, so far as may be necessary, consult with) those persons whom they have been appointed to represent on the Segregation Issues);
- b) meet with the JPLs (on a date fixed by the JPLs) to identify the precise questions to be determined (by agreement or, failing agreement, by the Court);
- c) advise (by a date to be fixed by the JPLs) on those questions by way of written Opinion;

- d) prepare a skeleton argument on those questions (which they would seek to use at the Substantive Hearing) and provide a copy of that skeleton argument to the JPLs;
- e) thereafter, meet with the JPLs for the purpose of seeking to agree the answers to the questions identified by them and the JPLs; and
- f) thereafter, to the extent that it shall be necessary, represent the class of persons whom they have been appointed to represent at the Substantive Hearing;

In addition, the Class Representatives will be required to appoint and instruct legal counsel to provide advice in relation to the Segregation Issues, assist them with the above duties and to provide representation at the Substantive Hearing. The Class Representatives will also need to keep an accurate record of all reasonable and proper expenses which are incurred by them and by their appointed legal counsel.

#### **10. How will the costs of the Class Representatives be paid?**

The reasonable and proper costs of the Class Representatives up to and including the Substantive Hearing (but including not any appeal) are to be paid as an expense of the Companies' liquidations and/or out of the assets of the Segregated Accounts (or any of them). The JPLs will engage with the Class Representatives on the issue of costs incurred throughout the process of preparing for the Substantive Hearing.

Class Representatives will not be remunerated for their role.

#### **11. What do I do if I want to be a Class Representative?**

Should you be interested in putting yourself forward as a possible representative, please complete the attached **Expression of Interest Form** and send it to [cbcbmomnia@deloitte.com](mailto:cbcbmomnia@deloitte.com) or [cbcbmfnfs@deloitte.com](mailto:cbcbmfnfs@deloitte.com) on or before the 17 September 2021.

### **NEXT STEPS - FAQs**

#### **12. What are the next steps after the appointment of the Class Representatives? What happens if I am appointed as a Class Representative?**

Following the appointment of the Class Representatives, the JPLs shall provide to each of them a bundle of documents comprising copies of (a) a report by the JPLs which shall set out the facts relevant to the Issues; (b) an estimated statement of affairs; (c) the Private Acts relating to the Company and/or its business and the Segregated Accounts Companies Act 2000; and (d) *pro forma* investment contracts and policies.

The JPLs shall further provide all Class Representatives with a copy of such other documents as may reasonably be requested by any Class Representative from time to time and such further or other documents as the Court may direct.

The JPLs shall also provide to the Class Representatives a list of law firms who are not conflicted from acting in connection with the Substantive Hearing, such that the Class Representatives can instruct legal advisers to provide all necessary advice and representation.

The Class Representatives will then undertake the actions set out at FAQ point 9 (*“What are the duties and obligations of a Class Representative in connection with the Substantive Hearing?”*).

**13. How will the Class Representatives communicate with their class?**

Initially, the JPLs will assist the Class Representative with communicating with members of their relevant class. After this initial communication has been made, the JPLs will assist the Class Representatives in providing class updates from time to time.

Communication between Class Representatives and members of their class will generally be the responsibility of the Class Representative and their respective legal advisors. The JPLs will provide such assistance as is necessary to enable this communication to take place. The JPLs currently envisage that the Class Representatives may wish to hold a class meeting virtually (though this will be a matter for the Class Representative to decide in conjunction with their legal advisors).

**14. What is the proposed timeline and what are the proposed key dates?**

The JPLs currently propose that the following actions are completed by the following dates. However, it is possible that events beyond the JPLs’ control will mean that the actions set out below may not be completed by these dates, and as such these proposed deadlines are estimates only.

<b>Action</b>	<b>Proposed Deadline</b>
Final date for submission of the Expression of Interest Form	17 <sup>th</sup> September 2021
Next Hearing Date	Date will be set by the court  Hearing will be set on the basis of the first available date after the 21 October 2021 (being 56 days from the date or the order dated 26 August 2021)