INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
AMERICAN ARBITRATION ASSOCIATION

EMERGENCY ARBITRAL TRIBUNAL

Genesis Asia Pacific PTE. LTD.

Claimant

v.

Three Arrows Capital, Ltd.

Respondent

Case No. 01-22-0002-5568

PROCEDURAL ORDER No. 1

The Emergency Arbitrator
Mr. Jay L. Alexander

Date
June 22, 2022

PROCEDURAL ORDER No. 1

The above-captioned arbitration is governed by the AAA Commercial Arbitration Rules (amended and effective as of October 1, 2013) ("**Rules**"). This Procedural Order ("**Procedural Order No. 1**" or "**P.O. #1**") sets out particulars of procedure and the schedule for the Rule 38 proceedings in this arbitration. P.O. #1 also rules upon Claimant's request for an "*interim order*" pending a ruling on Claimant's Rule 38 emergency application. P.O. #1 is issued after the oral conference, held on June 21, 2022.

I - THE PARTIES AND THEIR REPRESENTATIVES

1. Claimant is Genesis Asia Pacific PTE. LTD.

2. In this arbitration Claimant is represented by:

   Jason P. Gottlieb
   Michael Mix
   jgottlieb@morrisoncohen.com
   mmix@morrisoncohen.com
   Morrison Cohen LLP
   909 Third Avenue
   New York, NY 10022

   T: +1 212 735 8600

3. Respondent is Three Arrows Capital Ltd.

4. In this arbitration Respondent is represented by:

   Dan Tan
   Mark Beckett
   Dan Tan Law
   dan@dantanlaw.com
   mark@dantanlaw.com
   305 Broadway
   Suite 750
   New York, NY 10007

   and

   162 South Park St.
   San Francisco, CA 94107

   T: +1 646 580 0080

5. To preserve the integrity of these proceedings, any proposed supplementation or change in representation of any party shall be promptly disclosed, and the Emergency Arbitrator is empowered to reject any change that creates a conflict of interest.

II - EMERGENCY ARBITRATOR

6. The Emergency Arbitrator has been duly appointed and is as follows:

Mr. JAY L. ALEXANDER
Alexander Arbitration LLC
487 Summerwood Drive
Dillon, Colorado 80435
jay.alexander@alexanderarbitration.com

T: + 1 970.368.6301

7. Pursuant to Rule 18 of the Rules, the arbitrator is and shall remain impartial and independent.

III - NOTIFICATIONS AND COMMUNICATIONS

8. All notifications and communications arising in this emergency proceeding, including all written submissions and documents, shall be addressed and sent as required to the counter-party, the Emergency Arbitrator and the ICDR Case Administrator, respectively, at the following addresses:

To Claimant

To their counsel at the email coordinates set out in Section I above.

To Respondent

To their counsel at the email coordinates set out in Section I, above.

To the Emergency Arbitrator

To the Emergency Arbitrator at the email coordinates set out in Section II above.

To the AAA/ICDR Case Administrator

Miroslava Schierholz
Assistant Vice President
American Arbitration Association
+ 1 212 484 3270
MiroslavaSchierholz@adr.org

9. A Party shall immediately inform the Emergency Arbitrator, the Case Administrator, and the other Party in the event of any change to the identity or address of any of its representatives as set out above.

IV - PROCEDURAL BACKGROUND

10. On June 15, 2022, Claimant initiated this arbitration by submitting to the American Arbitration Association ("**AAA**") its (i) Demand for Arbitration, (ii) Arbitration Demand and Statement of Claim, and (iii) Rule 38 Request for Emergency Arbitrator for Emergency Relief ("**Application**").

11. On June 17, 2022, once Claimant perfected the filing to comply with the requirements of Rule 4, the AAA's International Center for Dispute Resolution ("**ICDR**") acknowledged receipt of the Demand for Arbitration and the Application, confirmed that the arbitration is commenced, and

notified the parties that it was moving forward with the emergency arbitrator appointment. Later that same day, the ICDR notified the parties that "*pursuant to Section R-38, the ICDR has appointed Jay Alexander to serve as Emergency Arbitrator* …." The parties were directed to advise of any circumstance giving rise to justifiable doubts regarding the Emergency Arbitrator's impartiality or independence by June 21, 2022.

12. Also on June 17, 2022, the ICDR notified the parties that pursuant to Rule 38, an initial video conference ("**Initial Conference**") "*to establish a schedule for the consideration of the application for emergency relief*" would be held on June 21, 2022 at 7 p.m. EDT (June 22, 2022 at 7:00 a.m. SGT).

13. Mr. Gottlieb and Mr. Mix, together with Claimant's General Counsel and Associate General Counsel, appeared at the Initial Conference on behalf of Claimant. Mr. Beckett and Mr. Tan appeared at the Initial Conference on behalf of Respondent. This was Respondent's first appearance in this arbitration.

14. Following presentations by both parties regarding, *inter alia*, the nature of this dispute and the adequacy of the Application, the parties addressed the scheduling of this emergency proceeding. Claimant agreed that it could make its submission in support of its Application by Thursday, June 23, 2022. Respondent sought one week to make its reply submission. The parties agreed that they were both available for an oral hearing on the Application on July 5, 2022. Claimant stated that if its request for an "*interim order*" pending a ruling on Claimant's emergency application were granted, the foregoing schedule could be relaxed.

15. Neither party has advised the ICDR of any circumstance giving rise to justifiable doubts regarding the Emergency Arbitrator's impartiality and independence.

V - DECISION ON REQUEST FOR AN INTERIM ORDER

16. Claimant's Application alleges that Respondent has defaulted under two umbrella master loan agreements ("**MLAs**") by failing to post "*Additional Collateral*" in response to margin calls. (Application, p.2.) The Application further alleges that the entire outstanding loan balance of US$ 2,360,302,065 came due following Claimant's issuance of a Notice of Default. (Application, page 2.)

17. The Application then states that the "*reason for Genesis's application for emergency relief is that Three Arrows has not just failed to deliver Additional Collateral as required; but upon information and belief, Three Arrows is in the midst of an extreme liquidity crisis, throwing into significant* [sic] *Three Arrows' ability to pay its debts. Even worse, upon information and belief, Three Arrows is negotiating or even entering into side deals with other creditors/lenders, prioritizing those lenders over Genesis….*" (Application, page 2.)

18. The Application seeks an order requiring Respondent either:

    i. *to deposit $2,360,302,065 – the current value of the outstanding loans borrowed by Three Arrows from Genesis – into a third-party escrow account for safekeeping pending the resolution of this arbitration;*

    ii. *in the alternative, requiring Three Arrows to deposit Additional Collateral* [fn omitted] *in the amount of $462,224,747 (the amount of Additional*

Collateral currently required by Three Arrows to be delivered to Genesis), as well as the shares and cryptocurrency comprising the 2020 Pledge Agreement Security and the 2022 Pledge Agreement Security, as well as the Deribit Shares, as well as the StarkWare Shares, as well as all other assets or amounts due and owing to make Genesis whole, into a third-party escrow account for safekeeping pending the resolution of this arbitration; or

iii. *in the alternative, restraining and enjoining Three Arrows from taking any action to withdraw, transfer, sell, encumber, or hypothecate the $2,360,302,065 that Three Arrows currently owes to Genesis, or from taking any action to withdraw, transfer, sell, encumber, or hypothecate the $462,224,747 in Additional Collateral currently required to be delivered to Genesis, or the shares and cryptocurrency comprising the 2020 Pledge Agreement Security and the 2022 Pledge Agreement Security, or the Deribit Shares, or the StarkWare Shares, or all other assets or amounts due and owing to make Genesis whole.*

19. During the Initial Conference, Claimant clarified that it already has constructive possession of certain shares that are the subject of the 2020 Pledge Agreement. Accordingly, Claimant explained, it now seeks relief regarding certain pledged AVAX and NEAR tokens (with a value of US$ 91.293 million) and additional assets, in the amount of US$ 1.142 billion, that would be needed to make Claimant whole.

20. Pending the emergency arbitrator's consideration of the requested third-party escrow, the Application:

> *also respectfully requests that the emergency arbitrator issue an interim order, pending any hearing on the above emergency requests, restraining Three Arrows from taking any action to withdraw, transfer, sell, encumber, or hypothecate the $2,360,302,065 that Three Arrows currently owes to Genesis, or, alternatively, from taking any action to withdraw, transfer, sell, encumber, or hypothecate the $462,224,747 in Additional Collateral currently required to be delivered to Genesis, or the shares and cryptocurrency comprising the 2020 Pledge Agreement Security and the 2022 Pledge Agreement Security, or the Deribit Shares, or the StarkWare Shares, or all other assets or amounts due and owing to make Genesis whole.*

21. During the Initial Conference, Claimant re-urged this request for an interim order ("**Request for Interim Order**") from the Emergency Arbitrator pending a decision on the Application. Claimant explained that there can be no dispute that Respondent is in default, and that Claimant risks suffering massive losses if the interim relief it seeks is not granted. With regard to Rule 38(d)'s requirement that the emergency arbitrator "*shall provide a reasonable opportunity to all parties to be heard*," Claimant stated that Respondent has that opportunity at the Initial Conference.

22. Respondent first addressed Claimant's Request for Interim Order at the Initial Conference. Respondent stated that Rule 38(d) and due process require a meaningful opportunity to be heard, which it has not yet been given. In that regard, Respondent further stated that Claimant has not yet fully substantiated its request and that Claimant has altered the relief it seeks during the course of the Initial Conference.

23. The Emergency Arbitrator agrees with Respondent that it cannot grant the Request for Interim Order at this time. One of the features of arbitration under the Rules (and, indeed, under many well-established systems of arbitration) that distinguishes it from litigation in United States courts is the right of all parties to be notified and heard: the principles of equal treatment and the right to be heard. There is no right under the Rules to seek an emergency temporary restraining order on an *ex parte* basis, which differs from the procedures available in federal and state courts in the United States.

24. Rule 38(d) reflects these fundamental principles in its requirement that the emergency arbitrator set "*a schedule for consideration of the application for emergency relief.*" That rule continues "*Such a schedule shall provide a reasonable opportunity to all parties to be heard*." (Emph. added.)

25. Recognizing that this feature of arbitration under the Rules may not always be satisfactory to a party, Rule 38(h) permits a party to seek interim measures from a judicial authority without waiving its right to arbitrate: "*A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this rule, the agreement to arbitrate or a waiver of the right to arbitrate.*"

26. The Emergency Arbitrator recognizes that Claimant is not seeking *ex parte* relief. Claimant states that it provided a copy of its Application to Respondent on June 15, 2022, when it submitted it to the AAA, and Claimant states that Respondent has had an opportunity at the Initial Conference to oppose the Request for Interim Order. Claimant further states that it cannot be faulted if Respondent failed to retain and prepare counsel sufficiently in advance of the Initial Conference to be prepared to address the Request for Interim Order.

27. Regardless, however, of whether or not Respondent was diligent in appointing counsel, the Initial Conference was not scheduled for argument on the Request for Interim Order, and Respondent was not placed on notice that that issue would be argued. Rather, the June 17, 2022 letter from the ICDR, notifying the parties of the date and time of the Initial Conference, states that "*the ICDR has arranged for a conference with the parties to establish a schedule for the consideration of the application for emergency relief.*" (June 17, 2022, letter from the ICDR to the Parties (emph. added).)

28. Equally important, Claimant's Application is only its request under Rule 38(b), albeit with justification, for the appointment of an emergency arbitrator. Respondent argued during the hearing that the Application is factually incomplete (*e.g.*, it omits loan term sheets, which it contends are key contractual documents), and that Claimant in fact altered the emergency relief it seeks during the Initial Conference. Moreover, Claimant has accepted the invitation to make a further submission in support of its request for an order directing assets to be placed in a third-party escrow, at least suggesting that it has not yet presented its full case in support of its request for emergency protection.

29. Rule 38(d)'s requirement of "*a reasonable opportunity to all parties to be heard*" entitles all parties to a meaningful chance to present their position before the emergency arbitrator rules. Anything less would render the right futile. For the reasons stated in the preceding two paragraphs, Respondent has not yet had that chance. The Initial Conference was not scheduled to hear substantive arguments, but to provide a schedule for the making of those arguments. The details of Claimant's request, perhaps as a result of time pressures, is not a complete recitation of its

position and would not have afforded Respondent full notice of the case it needed to face even if it had been given notice of the need to respond at the Initial Conference.

30. As set out in Part VI, below, this P.O.#1 sets a very abbreviated schedule for submissions and a hearing on the Application as a whole. No substantially shorter schedule would have provided the Respondent with a reasonable opportunity to address the Request for Interim Order and, accordingly, the Emergency Arbitrator declines to 'front load' the Application by separating the Request for Interim Order from the Application, itself.

31. Accordingly, Claimant's Request for Interim Order is denied. This decision is without prejudice to the merits of the Application, which will be decided on the record following the expedited submissions and hearing scheduled in Part VI of P.O.#1.

VI - THE SCHEDULE FOR THE EMERGENCY PROCEEDINGS ON THE APPLICATION

32. Following the Initial Conference, and with the input of the Parties as to what each considered reasonable, the following schedule is set for these proceedings:

Step	Date
Claimant's Initial Submission in support of its Application for Emergency Relief, together with all factual evidence and legal authorities upon which it relies	June 23, 2022
Respondent's Initial Submission in opposition to the Application for Emergency Relief, together with all factual evidence and legal authorities upon which it relies ("Opposition")	June 30, 2022
Claimant's delivery of any rebuttal factual evidence and/or legal authorities that is responsive to Respondent's Opposition	July 2, 2022
Respondent's delivery of any rebuttal factual evidence and/or legal authorities that is responsive to Claimant's July 2nd delivery	July 3, 2022
Hearing on Application for Emergency Relief	July 5, 2022 (time to be set)

33. Except as may be otherwise ordered by the Emergency Arbitrator, time limits and deadlines shall expire at midnight (12:00 p.m.) at the seat of arbitration, New York, on the date of the relevant time limit or deadline.

34. Written notifications and communications will be considered on time if sent by email or uploaded to an appropriate FTP site as set out below, by the sending Party prior to the expiry of the relevant time limit or deadline.

35. Extensions or modifications of time limits or deadlines may not be agreed between the Parties, without the advance approval of the Emergency Arbitrator. Absent extraordinary circumstances, a disputed request for extension or modification will be denied.

VII - THE ARBITRATION AGREEMENT

36. Claimant invokes the arbitration agreement that appears at Section XIII of the Master Loan Agreements dated January 10, 2019 and January 24, 2020, both of which read as follows:

> *If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation it shall be finally resolved by arbitration administered in the County of New York, State of New York by the American Arbitration Association under its Commercial Arbitration Rules, or such other applicable arbitration body as required by law or regulation, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The parties agree to waive their rights to a jury trial….*

VIII - LANGUAGE OF THE ARBITRATION

37. The two MLAs in dispute are written in the English language. The language of this emergency proceeding shall be English. Accordingly, as a general rule, any document submitted to the Emergency Arbitrator in any language other than English shall be accompanied by a translation into the English language. English translations shall be submitted simultaneously with the original text.

38. For ease of reference, any translation shall, to the extent feasible, follow the same pagination, page layout and formatting as the original text.

39. Documents (including legal authorities) may be produced with only the parts on which the producing Party relies translated, clearly indicating the original pagination. Any partial translation shall not misrepresent the overall content of the document. If a Party objects to the partial translation, and the Parties cannot agree on a compromise, the Emergency Arbitrator may order a full translation.

40. Translations shall be considered correct unless their accuracy is expressly and promptly challenged by the other Party. If any translation remains disputed despite the Parties' efforts to reach agreement, the Emergency Arbitrator may require that the translation be made by a certified translator, including by a translator appointed by the Emergency Arbitrator.

41. Any fact or expert witness giving oral evidence at the hearing may give such evidence in a language other than English, in whole or in part, provided that interpretation into English is provided by an independent interpreter agreed by the Parties or, in the alternative, hired by the Party presenting the witness. A Party intending to present oral evidence from a witness in a language other than English shall notify the Emergency Arbitrator and the other Party within five (5) calendar days of the date of this P.O.#1.

42. The costs of any translation or interpretation are to be borne initially by the Party needing it, without prejudice to any decision of the Emergency Arbitrator as to the allocation of the costs of the arbitration. As an exception, if both Parties need interpretation and agree on what interpreter to use, then the cost of interpretation will be borne by Claimant and Respondent in equal shares (“50-50”), without prejudice to any decision of the Emergency Arbitrator as to the allocation of the costs of the arbitration.

IX - CONDUCT OF THE EMERGENCY PROCEEDING

43. Except when the Rules or an otherwise applicable provision sets out a different deadline, each Party will provide written notice to the Emergency Arbitrator within 2 (two) calendar days of becoming aware of any complaint, protest or objection that it currently has, or in the future may have, with respect to any matter affecting the conduct of the arbitration; and, if such notice is not given, such Party shall be considered to have waived any such complaint, protest or objection.

X - PROCEDURAL MEASURES

A. Means of Communication

44. Routine administrative or procedural correspondence or requests shall be communicated by email.

45. *Inter partes* communications concerning the emergency proceedings should not be copied to the Emergency Arbitrator, provided that any such communications may be included as an exhibit to any application or submission to the Emergency Arbitrator.

46. Written submissions, including all evidence and all legal authorities relied upon, shall be submitted electronically, either by email or through a file transfer protocol site ("**FTP site**"). All electronic documents shall be provided in PDF searchable format, except for Excel files. All written narrative argument shall also be provided in Word format.

47. Claimant shall submit a hard copy of Claimant's Arbitration Demand and Statement of Claim, together with all exhibits and all legal authorities cited therein, to the Emergency Arbitrator by FedEx or other overnight service that guarantees delivery on or before June 24, 2022.

B. Written Submissions, Evidence and Authorities

48. Claimant's Initial Submission and Respondent's Initial Submission (*see* para. 31, above) shall each set out all of the relevant arguments asserted by the Party submitting it, including the facts alleged and arguments made in relation to the relief being sought. Those Submissions shall also include reference to all evidence (*e.g.*, documentary, witness statements and/or expert reports), and all legal authorities (*e.g.*, statutes, case law, doctrine or other legal writings), upon which the Party relies.

49. All evidence and all legal authorities that are referenced in a Submission shall be submitted with the Submission. No evidence or legal authorities that are not submitted in accord with the schedule set out in Part VI of this P.O.#1 shall be considered absent a showing of good cause.

50. Claimant's Exhibits shall be marked sequentially from the start of the emergency proceeding in the format C-1, C-2, etc.; and its Legal Authorities shall be marked sequentially CL-1, CL-2, etc. Respondent's Exhibits shall be marked sequentially R-1, R-2, etc.; and its Legal Authorities shall be marked sequentially RL-1, RL-2, etc.

51. Each exhibit and legal authority shall be contained in a distinct PDF file or, if contained in a single PDF file, shall be bookmarked.

52. Each Party shall provide with its exhibits a consolidated index of the exhibits submitted by that Party from the start of the emergency proceeding to that date in both exhibit number order and chronological order.

53. An exhibit shall be deemed authentic and admissible unless another Party expressly and promptly challenges the authenticity or admissibility of the exhibit. In the event of such challenge, the Party that submitted the challenged exhibit shall be entitled to respond, within a time limit determined by the Emergency Arbitrator, prior to a decision by the Emergency Arbitrator on the challenge.

54. All exhibits and legal authorities shall be submitted in complete form (including all attachments and/or enclosures) unless they are voluminous and submitting an extract or extracts of the document in question does not distort its meaning, in which case the submitting Party shall indicate in which respect the extract of the exhibit or legal authority is incomplete and shall make the entire document available to the opposing Party upon that Party's request.

55. No substantive Submissions, evidence or legal authorities not authorized by Part VI of this P.O.#1 may be submitted unless a Party shows good cause, including an explanation for why the information in question could not have been submitted in accord with the schedule in Part VI, and the Emergency Arbitrator so orders following observations from the other Party. A request to make new submissions or to submit new exhibits or legal authorities shall not include the submission, exhibit or legal authority in question, which shall only be filed when and if ordered by the Emergency Arbitrator. If the Emergency Arbitrator grants such an application, the Emergency Arbitrator shall ensure that the other Party is afforded sufficient opportunity to make its observations on the submission or document.

C. Witnesses and Experts (if any)

56. Without prejudice to any statutory right that a Party may have to obtain and submit testimony from hostile or third-party witnesses in a different fashion, any witness or expert evidence on which a Party relies shall be submitted in the form of a written witness statement (from any fact witness), or an expert report (from any independent expert witness), dated and signed by the witness or expert in question.

57. Any person may provide a witness statement or give evidence at a hearing, including the Parties and their directors, officers, employees or other representatives. Fact witnesses with relevant expertise may express opinions related to their expertise in their witness statement.

58. Witness statement(s) and expert report(s) shall constitute direct evidence (evidence-in-chief), and the witness or expert shall not be subject to a direct examination other than to confirm his or her identity and to correct any errors in his or her statement or report.

59. Subject to paragraph 56, only witnesses from whom witness statements have been submitted, or expert witnesses from whom expert reports have been submitted, may testify at the hearing.

60. Any witness or expert from whom a witness statement or expert report has been submitted must be made available for examination at the hearing unless both the opposing party and the Emergency Arbitrator notify the Party proffering that witness in writing that examination will not be required. Cross-examination of a fact witness shall not be limited to the scope of the witness statement; any redirect examination shall be limited to the scope of the cross-examination.

61. Each Party shall be responsible for summoning its own witnesses and experts to any hearing, and shall advance the costs of appearance of such witnesses.

62. If a witness or expert is called to appear at a hearing and fails to do so without providing a reason considered valid by the Emergency Arbitrator, the Emergency Arbitrator may in its discretion disregard the witness's witness statement or expert's expert report and/or draw such inferences as it considers appropriate in relation to the witness's or expert's failure to appear. In the event that the Emergency Arbitrator decides to consider the witness's witness statement or the expert's expert report, it may ascribe less weight to that evidence, having regard to the circumstances including the fact that the witness or expert was not subject to cross-examination.

63. If a Party has not called another Party's fact or expert witness for cross-examination, that fact will not be deemed as an admission by that Party nor will it imply that the Party accepts that the substance of the witness's witness statement or the expert's expert report is correct or proven. The Emergency Arbitrator will, in its discretion, assess the weight of the written evidence of a witness or expert who is not called to testify at the hearing.

64. Notwithstanding the foregoing, at the request of a Party or on its own initiative the Emergency Arbitrator may order any Party to provide for, or to use its best efforts to provide for, the appearance for testimony at a hearing of any person.

65. It shall not be improper for a Party, its directors, officers, employees or other representatives, or its counsel, to interview witnesses or potential fact or expert witnesses, or to discuss their prospective testimony with them, including for the purpose of establishing the facts relevant to the arbitration, preparing witness statements or expert reports and preparing for the hearing. In all cases, a Party will seek to ensure that a witness statement or expert report reflects the witness's own account of relevant facts, events and circumstances, or his or her own opinion, as reflected in the witness statement or expert report.

66. Drafts, working papers or any other documentation created by an expert witness for the purpose of providing expert evidence in the emergency proceeding, and any communications between the expert and a Party or its counsel in relation to that purpose, shall be privileged, provided, however, that all documents relied upon by an expert in formulating his or her opinions shall be identified in the expert's report.

D. Hearing

67. The Parties shall meet and confer regarding the start time for the July 5, 2022 hearing. On or before June 28, 2022, the Parties shall notify the Emergency Arbitrator of their agreement (or positions, with brief justification, if no agreement is reached) on the proposed start time.

68. The Emergency Arbitrator will set aside eight (8) hours for the hearing on July 5, 2022. Following receipt of Respondent's submission on June 30, 2022, the Emergency Arbitrator will notify the Parties of the expected duration of the hearing. Each Party will be entitled to 50% of the total time allotted for the hearing.

69. The final merits hearing shall be held virtually through a video platform such as Zoom.

70. The Parties shall jointly make the arrangements for the video platform, and notify the Emergency Arbitrator of those arrangements, by no later than June 28, 2022. The video platform shall be

able to accommodate sharing of documents. The Emergency Arbitrator notes that the ICDR is able to support and facilitate these arrangements by hosting a Zoom videocall, and invites the Parties to confer with the Case Administrator regarding costs and procedures if this is of interest to them. The fees and costs of the virtual hearing services provider will be borne by the Parties in equal shares ("50-50"), without prejudice to any decision of the Emergency Arbitrator as to the allocation of costs.

71. The Parties shall jointly make the arrangements for the services of a court reporter to attend and transcribe verbatim the hearing with live-note or a comparable service. The fees and costs of the court reporter, and of the transcripts prepared, will be borne by the Parties in equal shares ("50-50"), without prejudice to any decision of the Emergency Arbitrator as to the allocation of costs. Final, edited transcripts of the hearing shall be circulated to the Parties and the Emergency Arbitrator as soon as possible. Within two (2) calendar days of receiving the hearing transcript, the Parties shall have the opportunity to suggest corrections to the transcripts as first presented. The Emergency Arbitrator shall resolve any disagreement between the Parties as to the propriety of such corrections.

72. The Emergency Arbitrator shall be in full charge of all hearings, including with respect to the procedure for examining witnesses, and shall be entitled to limit or refuse a Party's examination of a witness when, after hearing the Party, it considers that the matters regarding which the witness would testify are sufficiently proven by other evidence or that the particular witness testimony is irrelevant.

73. The use of demonstrative exhibits (such as charts, graphics, tabulations, and slide presentations) is allowed at the hearing, provided that no new evidence is contained in them and that all evidence or argument relied on in the demonstratives is cited in them.

74. In consultation with the Parties, the Emergency Arbitrator will determine at the end of the hearing whether there shall be any post-hearing submissions. If so, the Emergency Arbitrator will address the filing date, length, format, and content of the post-hearing submissions. The Emergency Arbitrator will also issue directions on the Parties' statements of costs at the end of the hearing.

Place of the arbitration: New York, U.S.A.

Date: June 22, 2022.

Jay Alexander, Emergency Arbitrator

AMERICAN ARBITRATION ASSOCIATION
Arbitration No. 01-22-0003-5568-1-MS

In the Matter of the Arbitration of a Certain Controversy Between

GENESIS ASIA PACIFIC PTE. LTD.,

Claimant,

- against –

THREE ARROWS CAPITAL LTD,

Respondent.

CLAIMANT GENESIS ASIA PACIFIC PTE. LTD.'S SUPPLEMENTAL SUBMISSION IN SUPPORT OF ITS RULE 38 MOTION FOR EMERGENCY RELIEF

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Michael Mix
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Attorneys for Claimant Genesis Asia Pacific PTE. LTD.

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Other Authorities

1. Claimant Genesis Asia Pacific PTE. LTD. ("Genesis") respectfully makes this supplemental submission in support of its motion, dated June 15, 2022, seeking emergency relief pursuant to AAA Rule 38 (the "Motion") against Respondent Three Arrows Capital LTD ("Three Arrows").

PRELIMINARY STATEMENT

2. Respondent Three Arrows is reportedly in the midst of an unprecedented implosion. According to numerous news reports, due to recent market volatility (and excessive leveraged trading in the face of rapidly declining markets), Three Arrows has suffered massive losses, all very quickly, and in turn defaulted on many loan obligations to many crypto lenders, including to Genesis. News reports have conveyed that Three Arrows has stopped communicating with many counterparties (a category that includes Genesis), but other reports, including from Three Arrows itself, indicate that Three Arrows is talking to other creditors about solutions. These extraordinary events justify extraordinary relief, under Rule 38, to prevent Three Arrows from dissipating assets over which there is no dispute it owes Genesis.

3. Most notably, at the initial conference with the arbitrator (the "June 21 Hearing"), Three Arrows declined to commit not to dissipate these assets – even though Three Arrows was repeatedly entreated to make that commitment. As if the situation were not alarming enough already, Three Arrows is pointedly refusing to commit not to hand away assets that it owes Genesis. New York law clearly allows a restraint of assets in such a case.

4. As set forth in greater detail in Genesis's Statement of Claim dated June 15, 2022, the exhibits thereto, Genesis's Rule 38 letter dated June 15, 2022 (the "Rule 38 Letter"), and the accompanying Witness Statement of Arianna Pretto-Sakmann (the "Pretto-Sakmann Witness Statement"), Three Arrows, a Singapore-based cryptocurrency hedge fund, defaulted on its loan

obligations to Genesis by failing to deliver certain "Additional Collateral" to meet margin calls. Such default resulted in Three Arrows' entire loan balance becoming due and owing.

5. The facts contained in the Statement of Claim, the exhibits thereto, and the Pretto-Sakmann Witness Statement comprise the basic facts underpinning Genesis's "Initial Submission" for purposes of Genesis's emergency motion. The Pretto-Sakmann Witness Statement also corrects several misstatements made by counsel for Three Arrows at the June 21 Hearing.

6. The Pretto-Sakmann Witness Statement further clarifies the relief sought in this motion, as that relief has changed due to the extreme volatility of the marketplace. As of June 23, 2022, that total outstanding loan balance owing from Three Arrows to Genesis equals $2,363,105,165.

7. Three Arrows has previously delivered $694,350,289.40 of collateral consisting of BTC and ETH to Genesis (that value is as of June 23, 2022), and because that collateral is already in Genesis's possession, Genesis is not seeking emergency relief with respect to those assets. Three Arrows has pledged shares worth $470,457,555.52 as of June 23, 2022, and because those shares are already in Genesis's constructive possession, Genesis is not seeking emergency relief with respect to those assets.

8. That leaves $1,198,297,320 due and owing to Genesis, as of June 23, 2022, which is the subject of this emergency motion. Genesis thus seeks an order requiring Three Arrows to place into escrow certain AVAX and NEAR tokens specifically pledged to Genesis (which as of June 23, 2022 are valued at $93,105,701.40), and place into escrow sufficient assets to cover the remaining $1,105,191,619 unsecured amount, including but not limited to the Deribit Shares and Starkware Shares that Three Arrows already informed Genesis that it has in its possession and could advance as additional collateral. Alternatively, Genesis respectfully requests that Three Arrows be

enjoined from taking any action to withdraw, transfer, sell, encumber, dissipate, or hypothecate the AVAX and NEAR tokens pledged to Genesis, or the $1,105,191,619 unsecured amount, including the Deribit and Starkware Shares.

9. This relief is warranted under New York law. New York courts are permitted to issue injunctions in aid of arbitration where there is a risk that an award would be rendered ineffectual, and when such standard is met, the movant does not need to meet the other traditional injunction factors. In light of the broad equitable powers given to an arbitrator, Genesis respectfully requests that the arbitrator utilize this standard. Here, as set forth below and in the Pretto-Sakmann Witness Statement, there are a litany of news reports and other public statements showing that Three Arrows has suffered massive defaults, owes significant amounts to numerous lenders, and has stopped responding to many of these entities. Three Arrows' conduct and the unprecedented nature of the situation leads to a significant risk that any award in Genesis's favor at any eventual merits hearing will be rendered ineffectual.

10. Even if the arbitrator utilizes the traditional injunction factors, Genesis has met this standard. Genesis has shown a likelihood of success on the merits on its claim for breach of contract, and the Pretto-Sakmann Witness Statement shows how the defenses set forth by Three Arrows' counsel at the June 21 Hearing are meritless. Genesis will be irreparably harmed in the absence of an injunction because the amounts sought are specifically identifiable and owing to Genesis. And the equities tip in Genesis's favor because Three Arrows is merely being asked to comply with its contractual obligations. If Three Arrows is forced to escrow funds that it owes to Genesis, it will not be prejudiced; but if not, Genesis faces the risk that Three Arrows will settle its numerous other debts with Genesis' money, leaving Genesis irreparably injured.

11. In sum, Genesis has established its entitlement to the relief requested, and Genesis respectfully requests that its Rule 38 motion be granted.

STATEMENT OF FACTS

12. The relevant facts are set forth in Genesis's Statement of Claim, the exhibits thereto, the Rule 38 Letter, and the accompanying witness statement of Arianna Pretto-Sakmann (which in turn authenticates, affirms, verifies, and incorporates by reference the Statement of Claim, the exhibits thereto, and the Rule 38 Letter).

ARGUMENT

13. At least two principles of New York law support the relief sought by Genesis in this motion. First, Genesis is entitled to the relief set forth in CPLR 7502(c), which permits courts to issue injunctions in aid of arbitration where there is a risk that an ultimate award would be rendered ineffectual. Second, Genesis has met the traditional factors for a preliminary injunction under CPLR 6301 because it has shown a likelihood of success on the merits, will be irreparably harmed absent injunctive relief, and the balance of the equities tips in Genesis's favor.

I. GENESIS IS ENTITLED TO AN INJUNCTION IN AID OF ARBITRATION TO PREVENT THREE ARROWS FROM DISSIPATING ASSETS AND RENDERING ANY AWARD INEFFECTUAL

14. CPLR 7502(c) permits a court to issue an injunction in aid of arbitration, particularly if the relief a party seeks in arbitration may be rendered ineffectual absent injunctive relief. While CPLR 7502(c) facially applies to court applications, Genesis respectfully requests that the arbitrator utilize his broad equitable powers[1] and apply this doctrine to Genesis's current application under Rule 38.

[1] *See Millicom Int'l V. N.V. v. Motorola, Inc.*, No. 01 Civ. 268 (SHS), 2002 WL 472042, at *8 (S.D.N.Y. Mar. 28, 2002) ("arbitrators have broad discretion in fashioning remedies and may grant equitable relief that a Court could not") (citation and quotation marks omitted); *Levin v. Glasser, P.C. v. Kenmore Property, LLC*, 70 A.D.3d 443, 445 (1st Dep't 2010) ("the cases grant arbitrators broad authority to resolve disputes" and "to achieve what the arbitration

15. CPLR 7502(c) provides, in pertinent part, that a court:

> May entertain an application . . . for a preliminary injunction in connection with an arbitration that is pending or that is to be commenced inside or outside this state . . . but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief. The provisions of articles 62 and 63 of this chapter shall apply to the application . . . except that the sole ground for the granting of the remedy shall be stated above.

(emphasis added).

16. Thus, to show entitlement to injunctive relief pursuant to CPLR 7502(c), the movant must solely demonstrate that the arbitral award would be rendered ineffectual without the granting of the injunction. *See, e.g.*; *H.I.G. Capital Mgmt. v. Ligator*, 233 A.D.2d 270, 271 (1st Dep't 1996) (granting injunction in aid of arbitration where there was "uncontrolled disposal of respondents' assets, which might render an award ineffectual"); *Chiaverelli v. State Univ. of N.Y. Health Sci. Ctr.*, 248 A.D.2d 712 (2d Dep't 1998) (granting injunction in aid of arbitration and enumerating standard set forth in CPLR 7502(c)); *50-09 2nd Street LLC v. Ianvil Associates, Inc.*, Index No. 606055/01, 2002 WL 1769973, at *4 (Sup. Ct. N.Y. Cty. Apr. 28, 2002) (ordering funds to remain in escrow in aid of arbitration where respondent had "serious cash flow problems"); *Port of Authority of New York and New Jersey v. Weiss & Hiller, P.C.*, 168 A.D.3d 648 (1st Dep't 2019) (affirming denial of motion to vacate temporary restraining order over escrowed funds when defendant was threatened with insolvency, "demonstrat[ing] the need to continue the temporary restraining order so that any arbitration award would not be rendered ineffectual"). In determining such an application under CPLR 7502(c), the court should not consider the merits of the petitioner's arbitrable claims. *Guarini v. Severini*, 650 N.Y.S.2d 4, 4 (1st Dep't 1996).

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tribunal believes to be a just result, it may shape its remedies with a flexibility at least as unrestrained as that employed by a chancellor in equity") (citation and quotation marks omitted).

17. There is no question here that in the absence of a preliminary injunction pending arbitration, there is significant risk that an eventual award will be rendered ineffectual. The facts underlying this motion, as set forth in the Pretto-Sakmann Witness Statement, are extraordinary. Three Arrows is in the midst of a substantial liquidity crisis. It has defaulted on loans, failed to meet margin calls, and even failed to release client funds. It further has decided to stop communicating with those lenders and other counterparties, leading one prominent trader to describe Three Arrows' actions as "ghosting." These are not just rumors and innuendo; Three Arrows' failures have been documented in numerous publications, including the *Wall Street Journal* and *The Financial Times*. Given Three Arrows' widespread defaults and radio silence, there is substantial risk that by the time a final award is rendered in this arbitration – likely to be over a year from now – such an award would be rendered meaningless and there will be no assets left to make Genesis whole. As such, an injunction is warranted.

II. GENESIS IS ENTITLED TO A PRELIMINARY INJUNCTION OVER SPECIFICALLY IDENTIFIABLE ASSETS

18. Alternatively and additionally, Genesis also easily meets each of the elements necessary for traditional injunctive relief pursuant to CPLR 6301. CPLR 6301, states:

> A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff.

19. To obtain a preliminary injunction, a plaintiff must demonstrate: (1) likelihood of success on the merits; (2) irreparable injury absent the injunction; and (3) a balancing of the equities in its favor. *Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 431, 33 N.Y.S.3d 43, 45

(1st Dep't 2016). Injunctive relief is appropriate "to maintain the status quo until there can be a full hearing on the merits." *Pamela Equities Corp. v. 270 Park Ave. Cafe Corp.*, 62 A.D.3d 620, 621, 881 N.Y.S.2d 44, 45 (1st Dep't 2009) (citation omitted).

A. Genesis Has Shown a Likelihood of Success on the Merits

20. Genesis can establish a *prima facie* case showing their right to relief on the merits which is necessary to demonstrate a "likelihood of success on the merits." *Matter of Witham v. Finance Invs., Inc.*, 52 A.D.3d 403, 403 (1st Dep't 2008). Genesis is not required to show that success is a certainty, only that it is likely. *Terrell v. Terrell*, 279 A.D.2d 301, 303 (1st Dep't 2001); *Props for Today, Inc. v. Kaplan*, 163 A.D.2d 177, 177 (1st Dep't 1990). "Where denial of injunctive relief would render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be accordingly reduced." *Republic of Lebanon v. Sotheby's*, 167 A.D.2d 142, 145 (1st Dep't 1990); *Gramercy Co. v. Benenson*, 223 A.D.2d 497, 498 (1st Dep't 1996) (same).

21. In this arbitration, Genesis has asserted one cause of action, for breach of contract. A claim for breach of contract requires the plaintiff to establish "(1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages." *VisionChina Media Inc. v. Shareholder Representative Services, LLC*, 109 A.D.3d 49 (1st Dep't 2013). Genesis has established a prima facie case showing that it is likely to succeed on its claim.

22. Genesis has established that its predecessor-in-interest and Three Arrows are parties to the 2019 MLA, and its predecessor-in-interest transferred its interest in the 2019 MLA to Genesis. Genesis has established and it and Three Arrows are parties to the 2020 MLA. Genesis also has established that it performed under both agreements, including by duly lending cryptocurrency to Three Arrows under the terms of various term sheets.

23. As set forth in greater detail in the Statement of Claim, both MLAs permit Genesis to request Three Arrows to post "Additional Collateral" in the event that the value of the collateral already posted by Three Arrows declined relative to the outstanding amount of the loan. Genesis did so, and duly and properly issued the First Notification and the Second Notification to Three Arrows on June 12 and 13, 2022. Three Arrows failed to pay the required Additional Collateral, and failed to the contest the amount of Additional Collateral required (in fact, Three Arrows specifically acknowledged the First Notification); such failure constituted an "Event of Default" under the MLAs, and the entire amount of the loans immediately became due and owing. Three Arrows has failed to pay the outstanding value of the loan, thus breaching the MLAs and damaging Genesis.

24. As explained in more detail in the Pretto-Sakmann Witness Statement, none of the defenses referenced by Three Arrows' counsel at the June 21 Hearing hold water:

- Counsel argued that Genesis did not provide the terms sheets underlying the outstanding loans, but the Pretto-Sakmann Witness Statement exhibits the relevant term sheets and Telegram chats reflecting the amounts owing by Three Arrows.
- Counsel stated that Genesis did not seek the proper amount of Additional Collateral to be posted by Three Arrows (even though he did not say what the proper amount should be), yet the Pretto-Sakmann Witness Statement explains that these amounts are correct and Three Arrows never challenged the amounts set forth in the First Notification and Second Notification. Such failure, by itself, constitutes an Event of Default under the MLAs.
- Counsel for Three Arrows supposed that Ms. Pretto-Sakmann and the Risk team do not have authority to act on behalf of Genesis, but her Witness Statement describes how

she, as a director of Genesis, had authority to send the Notice of Default and the Risk team had authority to send the margin calls.

25. In sum, Three Arrows has not sufficiently rebutted Genesis's prima facie case.

B. <u>Genesis Has Shown That It Will Suffer Irreparable Injury Absent the Injunction</u>

26. "The mere existence of a remedy at law is not in itself sufficient ground for refusing relief in equity by injunction. To deprive a plaintiff of the aid of equity by injunction it must also appear that the remedy at law is plain and adequate; in other words, that it is as practical and efficient to secure the ends of justice and its proper and prompt administration as is the remedy in equity." *Ascentium Capital LLC v. Northern Capital Assoc. XIII, L.P.*, No. 650481/2012, 2014 N.Y. Misc. LEXIS 1962, at *17 (Sup. Ct. N.Y. Cty. Apr. 25, 2014) (citation. quotation marks, and ellipses omitted). The "theoretical availability of monetary damages will not prevent equitable relief in the form of an injunction when the underlying circumstances demonstrate that the legal remedy is not adequate." *Id*. at *18 (citations omitted).

27. Although a party seeking monetary relief is generally not entitled to a preliminary injunction, courts will find that a party has suffered irreparable harm and is entitled to a preliminary injunction where the "monies at issue are identifiable proceeds that are supposed to be held for the party seeking injunctive relief." *AQ Asset Mgmt. LLC v. Levine*, 111 A.D.3d 245, 259, 974 N.Y.S.2d 332, 342 (1st Dep't 2013). In such cases, courts have the power to order assets placed into escrow to preserve the status quo. *See also Fieldstone Capital, Inc. v. Loeb Partners Realty*, 105 A.D.3d 559, 560, 963 N.Y.S.2d 120, 122 (1st Dep't 2013) ("in order to preserve the status quo, the contested accounts should be frozen and the funds held in escrow pending a determination as to the rights of the parties"); *360 W. 11th LLC v. ACG Credit Co. II, LLC*, 46 A.D.3d 367, 367, 847 N.Y.S.2d 198, 198 (1st Dep't 2007) ("Since the purpose of a preliminary injunction is to maintain

the status quo pending a hearing on the merits, rather than to determine the parties' ultimate rights, the motion court exercised its discretion appropriately in granting plaintiffs' motion to the extent of directing defendant to place into escrow a certain sum of money.") (internal citation omitted); *Morri N.Y. Foods Corp. v. DeFilippo*, 34 A.D.3d 223, 224, 824 N.Y.S.2d 19, 20 (1st Dep't 2006) (affirming an order directing the parties to deposit certain monies which were "specifically identifiable, and their loss was likely during the pendency of the action"); *Sau Thi Ma v. Lien*, 198 A.D.2d 186, 186, 604 N.Y.S.2d 84, 85 (1st Dep't 1993) ("if the requested [preliminary injunction escrowing funds] is not granted, a substantial amount of money may be dissipated or otherwise unavailable for recovery"); *Suttongate Holdings Ltd. v. Laconm Mgmt. N.V.*, No. 652393/2015, 2016 N.Y. Misc. LEXIS 4410, at *7 (Sup. Ct. N.Y. Cty. Nov. 17, 2016) ("Here, Plaintiff has a valid security interest in specific funds to which it is due. An injunction directing the funds at issue to be deposited in an escrow account pending a determination of the parties' rights and obligations would preserve the status quo").

28. Here, the AVAX and NEAR tokens pledged to Genesis – worth $93,105,701.40 as of June 23, 2022 – are "specifically identifiable." They were plainly pledged to Genesis in the 2022 Pledge Agreement as security for Three Arrows' repayment obligations. The 2022 Pledge Agreements lists the specific wallets in which those AVAX and NEAR tokens are being held.[2] And the 2022 Amendment specifically states that if Three Arrows does not meet its obligations under the 2019 MLA, the AVAX and NEAR tokens "shall be taken into [Genesis's] possession as they are identified as Collateral under this Agreement."

[2] *See Leidel v. Project Investors, Inc.* No.: 16 Civ. 80060 (KEM), 2021 WL 4991253, at *2 (S.D. Fla. May 17, 2021) ("The cryptocurrency assets at issue are specific, identifiable property and can be traced in" certain wallet addresses"); *Heissenberg v. Doe*, No. 21 Civ. 80716 (RKA) (DLB), 2021 WL 8154531, at *1 (S.D. Fla. Apr. 23, 2021) (same).

29. The rest of the amounts due and owing to Genesis – $1,105,191,619 as of June 23, 2022 – are also identifiable proceeds. They are amounts that Three Arrows borrowed from Genesis, and were due to return. Three Arrows plainly owes such amounts under the terms of the MLA. At very least, Three Arrows should be ordered to place into escrow the Deribit Shares and Starkware Shares that it previously told Genesis that it had in its possession (and was willing to pledge to Genesis).

30. For the same reason, the $14,597,708.67 in Loan Fees and $14,637,702.39 in Late Fees are identifiable and Three Arrows should be ordered to place such amounts into escrow.

31. In the alternative, if the Arbitrator is not inclined to order Three Arrows to place assets into escrow, Genesis respectfully requests that Three Arrows be enjoined from taking any action to withdraw, transfer, sell, encumber, dissipate, or hypothecate those AVAX and NEAR tokens, the other $1,105,191,619 owing to Genesis, including but not limited to the Deribit Shares and Starkware Shares, and the $14,597,708.67 in Loan Fees and $14,637,702.39 in Late Fees pending a final decision on the merits of this action. *See Bd. of Managers of the 235 E. 22nd St. Condo. v. Lavy Corp.*, 233 A.D.2d 158, 161 (1st Dep't 1996) ("even though a plenary action seeking monetary damages against both defendants herein and the ultimate purchaser may be available to plaintiff in the event the event the property is transferred, the extinguishing of plaintiff's lien, which is plaintiff's only security for the past due common charge, clearly constitutes harm warranting injunctive relief"); *Zonghetti v. Jeromack*, 150 A.D.2d 561, 562 (2d Dep't 1989) (ordering injunction preventing dissipation of assets because "the uncontrolled sale and disposition by the defendants of their assets would threaten to render ineffectual any judgment which the plaintiffs might obtain") (citation omitted); *Ascentium*, 2014 N.Y. Misc. LEXIS 1962, at *18 ("Contrary to

defendants' arguments that plaintiff has only a monetary interest in the outcome of its claim, plaintiff has established irreparable injury due to the possibility of the loss of its secured claim").

C. The Balance of the Equities Tips in Genesis's Favor

32. In deciding whether to grant a preliminary injunction, the Court must weigh (i) the harm that would befall Three Arrows if injunctive relief is granted, against (ii) the harm that would befall Genesis if injunctive relief is denied. *See Sau Thi Ma*, 198 A.D.2d at 186-87 ("While the existence of some wrongdoing may impel a result for one side, the 'balance of the equities' usually simply requires the court to look to the relative prejudice to each party accruing from a grant or a denial of the requested relief"); *Gramercy Co. v. Benenson*, 223 A.D.2d 497, 498 (1st Dep't 1996) ("[B]alance of the equities tilts in favor of plaintiffs, who merely seek to maintain the status quo . . . ."). In weighing these factors, the scale tips decidedly in favor of granting relief to Genesis.

33. Three Arrows will not be harmed if it is required to place assets into escrow, which will ensure that those assets are available in the event Genesis prevails in this arbitration. *See Sau Thi Ma*, 198 A.D.2d at 187, 604 N.Y.S.2d at 85 ("we can perceive no great harm to defendants if the monies . . . are kept in escrow by their counsel pending resolution of the matter.").

34. By contrast, if an injunction is not issued, Genesis will suffer substantial and irreparable harm. As set forth above, if Three Arrows is not enjoined, Genesis will be deprived of a specifically identifiable amount to which it is entitled if it prevails in this arbitration.[3]

[3] Even if the Arbitrator believes that Genesis has not met the standards under the CPLR provisions cited in this brief, Genesis respectfully requests that the Arbitrator use his equitable powers to fashion a remedy reflecting the extraordinary circumstances of this case. 23A Carmody-Wait 2d § 141:228 (where "parties agree to arbitration under the rules of a named association and such rules empower the arbitrator to grant any relief which he or she deems just and equitable, an award granting equitable relief is proper, even though such relief could not or would not be granted in litigation before a court.").

CONCLUSION

35. For the reasons cited herein, Genesis respectfully requests that its motion be granted in all respects and that the following relief be granted: 1) ordering Three Arrows to place into escrow the AVAX and NEAR tokens pledged by Three Arrows to Genesis as security pending the resolution of this arbitration, or alternatively, enjoining Three Arrows from taking any action to withdraw, transfer, sell, encumber, dissipate, or hypothecate those AVAX and NEAR tokens; 2) ordering Three Arrows to place into escrow sufficient assets to cover the remaining $1,105,191,619 outstanding unsecured borrowings as of June 23, 2022, including but not limited to the Deribit Shares and Starkware Shares, or alternatively, enjoining Three Arrows from taking any action to withdraw, transfer, sell, encumber, dissipate, or hypothecate that $1,105,191,619, including the Deribit and Starkware Shares; and 3) ordering Three Arrows to place into escrow $14,597,708.67 in Loan Fees and $14,637,702.39 in Late Fees that Three Arrows owes as of June 23, 2022, or alternatively, enjoining Three Arrows from taking any action to withdraw, transfer, sell, encumber, dissipate, or hypothecate that $14,597,708.67 in Loan Fees or $14,637,702.39 in Late Fees.

Dated: New York, New York
June 23, 2022

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