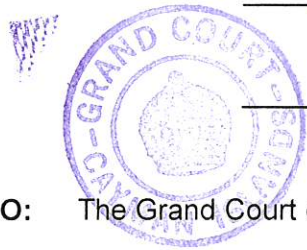


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 218 OF 2009

IN THE MATTER OF the Companies Law (2007 Revision)

AND IN THE MATTER OF Aslan Capital Offshore Fund, Ltd (In Voluntary Liquidation)



PETITION



TO: The Grand Court of the Cayman Islands

**THE HUMBLE PETITION** of BNP Paribas Securities Services Luxembourg (the "**Petitioner**"), of C/o 787 Seventh Avenue, 3rd Floor, New York, New York 10019, United States of America shows that:

- 1 Aslan Capital Offshore Fund, Ltd (the "**Company**") was incorporated in the Cayman Islands as an exempt limited liability company with registration number 113702 on 30 October 2001 under the Companies Law (2001 Revision).
- 2 The registered office of the Company is at Walkers Corporate Services Limited, PO Box 908, Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands.
- 3 The objects for which the Company was established are unrestricted.
- 4 The Petitioner is registered holder of the following shares in the Company, which it holds the account of BNP Paribas Arbitrage SNC #236:
  - 4.1 2,000,000 Class A Series 09/2007 shares in the Company; and
  - 4.2 1,471.774611 Class A Series 01/2002 shares in the Company,representing approximately 58.5% of the participating shares in the Company.
- 5 The Company is the "offshore" feeder fund in a "master-feeder" fund structure with one "offshore" feeder fund and two "onshore" feeder funds.

- 6 The "onshore" feeder funds in the structure are Aslan Capital Funds I (QP), LP and Aslan Capital Fund I, LP, both limited partnerships incorporated in the State of Delaware, USA (the "**Onshore Feeders**").
- 7 The master fund in the structure is Aslan Capital Master Fund, LP, an exempted limited partnership formed under the laws of the Cayman Islands (the "**Master Fund**"). The Company is a Limited Partner (additionally or alternatively, a General Partner) of the Master Fund. Investors subscribed for shares in the Company or the Onshore Feeder. The Company and the Onshore Feeder invested substantially all of their assets (i.e. the investors' subscriptions) in shares in the Master Fund.
- 8 The Company is the majority investor in the Master Fund, holding 69.35% of the value of the limited partnership interests in the Master Fund. Therefore, the Petitioner holds approximately 41% of the financial interest in the Master Fund.
- 9 The investment strategy of the Master Fund, as set out in the Company's Private Offering Memorandum dated September 2006 ("**Offering Memorandum**") was to seek capital appreciation and income through the purchase and sale of debt and equity securities, options and derivative instruments, and other assets where inefficiencies and mispricing create opportunities to earn attractive risk-adjusted returns.
- 10 The Petitioner does not know who the General Partner of the Master Fund is, and the Company has refused and/or failed to provide that information to the Petitioner.
- 11 The Investment Manager of the Company and/or the Master Fund is Aslan Advisors, LP, a Delaware limited partnership (the "**Investment Manager**").
- 12 The management shares of the Company, which hold all the rights to vote at general meetings of the Company (the "**Management Shares**"), are held by the Investment Manager and Aslan Advisors II LP, which is an affiliate of the Investment Manager.
- 13 The Investment Manager, Aslan Capital Management LP, Aslan Advisors II LP, and the Master Fund are all controlled by Mr Bruce Gregory ("**Mr Gregory**").

- 14 The directors of the Company, as at 29 September 2008, were Mr Gregory, Michelle Wilson-Clarke; and Lisa Alexander.
- 15 By written resolutions of the holders of the Management Shares made on 29 September 2008, it was resolved that:
- 15.1 the Company be placed into Voluntary Liquidation;
- 15.2 the Investment Manager (ie, Aslan Advisors, LP) be appointed Voluntary Liquidator of the Company; and
- 15.3 the Voluntary Liquidator be remunerated "on the same basis as is set out in the existing Investment Management Agreement between the Company and Aslan Advisors, LP (in its capacity as the Investment Manager". Those terms include, inter alia, payment of a fixed management fee, payable quarterly in advance, at an annual rate of 1.5% of the net asset value of the Master Fund (the "**Management Fee**").
- 16 The Investment Manager (together with its affiliate Aslan Advisors II LP) appointed itself Voluntary Liquidator of the Company on the above terms, without consulting either the Petitioner or (to the best of the Petitioner's knowledge) the other participating shareholders in the Company. The written resolution was signed by Mr Gregory on behalf of the holders of the Management Shares.
- 17 The Petitioner has been informed that the Onshore Feeder has also determined to wind down its affairs. Therefore, the Master Fund must also be winding down its affairs.
- 18 The Company and the Master Fund are solvent. The members' interests are therefore paramount.
- 19 The Voluntary Liquidator advertised for creditors in the *Cayman Islands Government Gazette* on 27 October 2008, calling for the submission of proofs of debt by 30 November 2008. Mr Gregory was listed as the contact for enquiries on that advertisement.
- 20 For the reasons set out below, the Petitioner, as a contributory in the Company, respectfully seeks, on terms set out more fully below:-

- 20.1 an Order pursuant to Section 131 of the *Companies Law (2007 Revision, as amended)* ("**Companies Law**") for the continuation of the winding up under the supervision of the Court and for the appointment of Stuart Sybersma and Ian Wight of Deloitte (the "**Proposed Independent Liquidators**") as Liquidators of the Company; or alternatively
- 20.2 an order pursuant to Section 121(3) of the Companies Law and that the Proposed Independent Liquidators be appointed as Voluntary Liquidators of the Company.

### **Failure by Voluntary Liquidator to make distributions**

- 21 The Voluntary Liquidator has made no distributions to members. This is notwithstanding that:
  - 21.1 According to the Investment Manager, since around the commencement of the liquidation of the Company a significant proportion of the Master Fund's assets (approximately 50% or more) have been held in cash or liquid securities which could readily be converted to cash;
  - 21.2 the Company has been in liquidation for over 7 months; and
  - 21.3 over 5 months have passed since the deadline for creditors' claims.
- 22 The Voluntary Liquidator has repeatedly promised to make distributions to members, but has failed to honour these promises. By way of example, by letter dated 26 March 2009 from its US counsel Schulte Roth & Zabel LLP, the Voluntary Liquidator advised its intention to distribute approximately US\$20 million to members. Over one month later, the Voluntary Liquidator has failed to make any distributions.

### **Inconsistent and Misleading Information**

- 23 The Accounts for both the Master Fund and the Fund for the years 2007 and 2008 have not been completed or approved by auditors.
- 24 The Investment Manager has sent inconsistent information about the Master Fund's portfolio to different shareholders and interested parties. The market value of the Master Fund's

portfolio given to Dorset Management Inc. ("**Dorset Management**") on or about 7 April 2009 was approximately US\$135 million whereas the portfolios provided to Lyster Watson Management Inc. ("**Lyster Watson**") purporting to show the position of the Master Fund on 9 April 2009 stated a market value of approximately US\$100 million or less.

- 25 Further, securities which were supposedly written to a zero value in the portfolios provided to Lyster Watson were being marked at a price in the portfolios which had been provided to Dorset Management. The Voluntary Liquidator has represented that the portfolio contains different securities to different investors and those securities have been given different values.

#### **Continued trading by the Master Fund during liquidation**

- 26 Given both that the Company was placed into Voluntary Liquidation on 29 September 2008 and that the Onshore Funds have determined to wind-up its affairs, the Voluntary Liquidators ought to have ceased carrying on business (and procured that the Master Fund, which is also controlled by the Investment Manager, cease carrying on business) except in so far as that is beneficial for the Fund's and the Onshore Funds' winding up.
- 27 Nevertheless, the Master Fund (on instructions and/or advice from the Investment Manager) continued trading after the commencement of the Voluntary Liquidation.
- 28 In that respect and by way of illustration since December 2008, the following new positions have been initiated by the Investment Manager of the Master Fund in various asset classes:
- 28.1 1 new High Yield bond;
  - 28.2 5 new Sovereign Credit Default Swap contracts;
  - 28.3 2 new short bond positions;
  - 28.4 40 new short equity positions (including derivatives); and
  - 28.5 15 new long equity positions (including derivatives).
- 29 Additionally, in the month of March 2009, 5 short equity positions were opened and closed.

- 30 The continued trading by the Master Fund is further illustrated by the portfolio information issued by and/or on behalf of the Master Fund. By way of example, the portfolio information dated 31 March 2009 lists 8 new short equity positions (with a market value totalling approximately US\$10 million), 5 new long equity positions (with a market value totalling US\$4.3 million) and 1 new sovereign CDS position in the portfolio which was not present in the 27 February 2009 portfolio.
- 31 Of these 8 newly initiated short equity positions, 5 also do not appear listed in the 9 April 2009 portfolio snapshot, indicating that these positions were closed at some point between 27 February 2009 and 9 April 2009.
- 32 Further, the Investment Manager initiated a new position in the portfolio, at some point after 27 February 2009 and 30 March 2009, by selling short 45,000 shares of Deutsche Bank stock (market price of US\$37.37 as of 30 March 2009 representing a total position of US\$1,681,439.56). This is also illustrative of the active trading engaged in by the Investment Manager.

#### **Significant post-liquidation losses**

- 33 The above-mentioned on-going trading has occurred in the context of very substantial further losses to the value of the Master Fund's portfolio (although, it is not clear whether this trading was the cause of that loss, or whether there might be other explanations).
- 34 A comparison of the portfolio data which the Petitioner has in respect of the Master Fund for 23 March 2009 and 22 April 2009 is as follows.

	<b>23 March 2009</b>	<b>22 April 2009</b>
	<b>(USD)</b>	<b>(USD)</b>
Total Directional Long Credit	14,931,904.11	5,029,459.63
Total Cash + Collateral + FX	159,015,938.00	101,793,039.00
Short Bonds	(42,162,500.00)	(34,288,000.00)
Short CDS	(2,348,397.23)	(3,093,375.47)
Short equity	(44,500,485.26)	139,325.00
Directional Long Equity	51,547,383.95	29,925,540.69
<b>Total</b>	<b>136,483,843.57</b>	<b>99,505,988.85</b>

35 If that data is correct, it suggests a fall in the value of the Master Fund of approximately 27% in a single month. This alone merits investigation by a Court supervised independent liquidator.

#### **The Voluntary Liquidator's conflict of interest**

36 As Voluntary Liquidator, Aslan Advisors, LP owes fiduciary duties to the Company, and has a duty to act in the best interests of the member of the Company.

37 Those fiduciary duties include a duty not to allow a situation to arise where the Voluntary Liquidator's interests (in its capacity as Investment Manager) either may compete or actually compete with his duties as Voluntary Liquidator.

38 There is an inherent and actual conflict of interest in the Investment Manager taking office as the Voluntary Liquidator of the Company. In particular:

38.1 When the Investment Manager appointed itself Voluntary Liquidator, it expressly did so on the basis that it would continue to receive the Management Fee on a quarterly basis. The Management Fee is calculated by reference to the Company's Net Asset Value. It is therefore in the Investment Manager's interests not to make distributions to investors for the Liquidation to continue so that it may continue to charge the Management Fees (as it has presumably done since the commencement of the Voluntary Liquidation). The significant and ongoing delays in making distributions to members have resulted in a financial windfall to the Voluntary Liquidator / Investment Manager.

38.2 There is an inherent conflict in the Voluntary Liquidator examining its own conduct whilst it acted as Investment Manager prior to the commencement of the Voluntary Liquidation (and thereafter). There is an inherent conflict in the Voluntary Liquidator reviewing the payment of past redemption proceeds and in considering whether the payments were proper.

38.3 There is or has been disagreement between the Investment Manager and the Administrator and/or Auditors of the Master Fund and/or the Company in connection with the valuation of the Master Fund's assets and there is again an inherent conflict of interest between the Investment Manager's position and its duties as a Voluntary Liquidator to objectively determine the said valuations where the Investment Manager's past fees have been or are partly dependent upon the valuation of the Master Fund's assets.

39 Further, the Investment Manager has demonstrated it is in fact unwilling or unable to act bona fide in the best interests of the Company and its investors, without taking into account its own interests or the interests of its affiliates. For example, on 24 April 2009, the Petitioner expressed its wish that the Voluntary Liquidator resign, or alternatively, procure that it be replaced by the Proposed Independent Liquidators by vote of the Management Shareholders (all of which are effectively controlled by Mr Gregory), so as to avoid the need for an expensive and time consuming application to the Court. The Voluntary Liquidator said that it would be prepared to do this *provided that*:

39.1 The Petitioner provide an indemnity to the Investment Manager in respect of any liability or costs arising from its decision to resign;

39.2 The Petitioner agree to confidentiality terms, such that it would not publicise the Investment Manager's resignation and/or replacement; and

39.3 There be some form of assurance that the Investment Manager would continue to have a source of income and that its staff would continue to have employment.

These demands were not demands made for the benefit of the Company and its investors, but were demands made for the benefit of the Investment Manager, Mr Gregory, and their various affiliates and employees.

40 Since then, on 28 April 2009, the Voluntary Liquidator has filed an Originating Summons with this Honourable Court, purporting to seek "*directions in relation to whether the [Voluntary Liquidator] should appoint [the Proposed Independent Liquidators] as additional voluntary liquidators and as to whether the Applicant should resign as voluntary liquidators of the Respondent*". That Originating Summons is procedurally and substantively misconceived, and the Court would have no jurisdiction in any event to make the orders sought therein. Filing that Originating Summons was not in the best interests of the Company, and stood to do nothing other than waste further costs and cause additional delays.

#### **Uncertain status of the General Partner(s) of the Master Fund**

41 The Master Fund is a Cayman Islands Exempted Limited Partnership ("**ELP**"), established under the *Exempted Limited Partnership Law (2007 Revision)* ("**ELP Law**"). The operations of the Master Fund are ultimately controlled by its general partner(s).

42 Pursuant to section 4(5) of the ELP law, at least one general partner of a Cayman Islands ELP shall " (a) if an individual, be resident in the Islands; (b) if a company, be registered under the Companies Law or registered pursuant to Part IX of the Companies Law; or (c) if a partnership, be registered pursuant to section 9(1)".

43 The identity and status of the general partner is not known to the Petitioner. In particular:

43.1 The Company's Offering Memorandum states that the General Partner is Aslan Capital Management, LP. However, that entity does not meet the criteria prescribed by s4(5) of the ELP Law.

43.2 The statement filed by the Company pursuant to Section 9 of the ELP Law, which is signed by Mr Gregory, states that there are in fact *four* general partners of the Master Fund, in particular:

- (a) Aslan Capital Offshore Fund, Ltd (ie, the Company);
- (b) Aslan Capital Fund I LP (one of the Onshore Feeders);
- (c) Aslan Capital Fund I, (QP), LP (the other Onshore Feeder); and

(d) Aslan Capital Management LP.

43.3 In contrast to the Section 9 statement which bears his signature, in an affidavit sworn on behalf of the Voluntary Liquidators on 28 April 2009, Mr Gregory says that the general partner is Aslan Advisors LP (ie, the same entity as is the Voluntary Liquidator and Investment Manager), and he asserts that the Company is a limited partner of the Master Fund. Again, Aslan Advisors LP does not meet the criteria prescribed by s4(5) of the ELP Law.

44 In spite of Petitioner's requests that it do so, the Voluntary Liquidator has failed or declined to confirm the identity of the general partner(s) of the Master Fund, or to provide a copy of the partnership agreement.

45 There are several possible matters which may flow from the above, any of which would be of concern to the Petitioner:

45.1 The Company's Offering Memorandum is materially misleading;

45.2 The Voluntary Liquidator does not know or properly understand the structure of the fund of which the Company is a part; and/or

45.3 Mr Gregory has made inconsistent statements on the Section 9 statement and in his affidavit.

#### **Conclusion and the position of the contributories**

46 In the circumstances set out above:

46.1 The supervision of the liquidation by the Court will facilitate a more effective, economic or expeditious liquidation of the Company in the interest of the contributories and creditors; and/or

46.2 The Voluntary Liquidator is not a fit and proper person to continue the liquidation of the Company.

47 In addition to the Petitioner, this Petition is supported by (at least) shareholders holding a further 27.27% of the participating shares in the Company. As such, an overwhelming

majority of the members of the Company – at least 85.8% - support this Petition. The Petitioner does not know the views of the remaining 14.2% of members.

YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:

- (1) The liquidation of the Company be continued under the supervision of the Court.
- (2) Mr Stuart Sybersma and Mr Ian Wight of Deloitte be appointed as Joint Official Liquidators of the Company with power to act jointly and severally (the "**Official Liquidators**").
- (3) The Official Liquidators shall not be required to give security for their appointment.
- (4) The Official Liquidators are hereby authorized to take such steps as may be necessary or expedient for the protection of the Company's assets, and for that purpose may exercise any of the powers specified in Part I and II of the Third Schedule to the Companies Law without further sanction of the Court; and for the avoidance of doubt such powers may be exercised within and outside the Cayman Islands. Specifically, but without prejudice to the generality of the foregoing, the Official Liquidators shall have power:
  - a. to do all things as may be necessary or expedient for the protection of the Company's assets including but not limited to exercising all of the Company's rights as a Limited Partner or General Partner (as the case may be) of the Master Fund;
  - b. to bring or defend any action, suit, prosecution or other legal proceedings, whether criminal or civil, by way of court process or arbitration, in the name and on behalf of the Company;
  - c. to locate, take possession of, collect and get in all property or assets (of whatever nature) to which the Company is or appears to be entitled;
  - d. to do all things (including the carrying on of the business of the Company) as may be necessary or expedient for the beneficial realization of the property or assets of the Company (including borrowing money);

- e. to appoint attorneys, Counsel and other professional qualified persons both in the Cayman Islands and elsewhere to assist them in the performance of their duties and exercise of their powers;
- f. to appoint agents both in the Cayman Islands and elsewhere to do any business which they are unable to do themselves or which can more conveniently be done by an agent, and to employ and dismiss officers and employees of the Company;
- g. to exercise any power which is necessary or incidental to the performance of their duties;
- h. to open and maintain bank accounts in the name of the Company or themselves anywhere in the world as may be necessary for the better performance of their duties;
- i. to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory or other debtor or person apprehending liability to the Company, upon receipt of such sums payable at such times and generally on such terms as may be agreed upon, with power to take securities for the discharge of such debts or liabilities and to give complete discharges in respect of all or such call debts, or liabilities;
- j. to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets;
- k. to locate, protect, secure and take into their possession and control the books, papers and records of the Company including the accounting and statutory records;
- l. to carry out such investigations as they may consider appropriate into the promotion, formation, business dealings, affairs or property of the Company;

- m. to take any such action as may be necessary or desirable to obtain recognition of the appointment of the Official Liquidators in any other relevant jurisdiction and to make applications to the Courts of such jurisdictions for that purpose;

and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands.

- (5) The Official Liquidators be at liberty to and do pay themselves, their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs in priority to all other debts of the Company, and:-

- a. the Official Liquidators shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding-up and the hourly rates and the amount of remuneration shall be determined in accordance with the Insolvency Practitioners Regulations 2008; and

- b. the Official Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties;

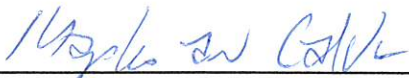
and for the avoidance of doubt all payments made pursuant to paragraphs 5(a) – (b) above shall be made as and when they fall due out of the assets of the Company and shall be expenses in the Liquidation.

- (6) The Official Liquidators shall be at liberty to apply for additional joint liquidators to be appointed to the Company.

- (7) During the period of their appointment, any act required or authorised to be done by the Official Liquidators may be done by any one of them.

- (8) The Official Liquidators be directed to constitute an appropriate Liquidation Committee as soon as practicable.
- (9) The Official Liquidators be at liberty to apply for further directions relating to the winding up of the affairs of the Company and the distribution of its assets.
- (10) In the alternative to the above, Aslan Advisors, LP be removed as Voluntary Liquidator of the Company and Mr Stuart Sybersma and Mr Ian Wight of Deloitte be appointed as Joint Voluntary Liquidators in its place,
- (11) The costs of the Petitioner and incidental to the Petition be paid forthwith from the assets of the Company, to be taxed if not agreed with the Official Liquidators (or Voluntary Liquidators, as the case may be).
- (12) Such other orders and directions may be made as the Court thinks fit.

**DATED** the 1st day of May 2009

  
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**Maples and Calder**

**NOTE:** It is intended to serve this Petition on Aslan Capital Offshore Fund Ltd

This Petition is presented by Maples and Calder, attorneys for the Petitioner, whose address for service is PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: AAG/JSE/650686/16624342)