

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No.: <sup>340</sup> of 2009

BETWEEN:

MR. VIVEK MATHIAS

PLAINTIFF

AND:

PLEXUS GLOBAL SELECT FUND LTD.

DEFENDANT

**WRIT OF SUMMONS**

TO: Plexus Global Select Fund Ltd. of Citi Hedge Fund Services (Cayman) Limited, 5<sup>th</sup> Floor, Cayman Corporate Centre, P.O. Box 10293, George Town, KY1-1003, Grand Cayman, Cayman Islands.

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman, Cayman Islands, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued: 15 July 2009.

NOTE - This Writ may not be served later than 4 calendar months (*or, if leave is required to effect service out of the jurisdiction, 6 months*) beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

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## STATEMENT OF CLAIM

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1. The Defendant ("the Company") was incorporated as an open-ended investment company incorporated under the laws of the Cayman Islands on 30 April 2007.
2. Shares in the Company comprise classes of participating shares designated Class A1 and A2 with a par value of US\$0.001 and designated Class B1 and B2 designated with a par value of € 0.001.
3. The Plaintiff ("Mr Mathias") was at all material times a shareholder in Plexus Global, holding 14,867.1789 Class B-2 Shares.
4. The material provisions of the Articles of Association of the Company provided as follows:
  - 4.1. "1. *In these Articles...*
    - 4.1.1. "*Net Asset Value per Participating Share*" means the value of the Investment Account of a particular class or series of Participating Share ... at the relevant time divided by the number of Participating Shares of that class or series then in issue..."
    - 4.1.2. "*Offering Memorandum*" means the offering memorandum ... issued by the Company in respect of the first class(es) or series of Participating Shares, as amended or supplemented from time to time, and any other offering document that may

*be issued in relation to the offering of any further class or series of Participating Shares."*

4.1.3. *"Redemption Date" means the first Business Day of each calendar quarter or any other day or further days as the Directors may, in their absolute discretion, adopt from time to time (a "Quarterly Redemption Date") or, in respect of certain classes of shares of the Company (as specified by the Directors), the second and/or fourth Quarterly Redemption Date of each calendar year, or any other day or further days as the Directors may in their absolute discretion adopt from time to time."*

4.1.4. *"Redemption Price per Participating Share" in respect of any class or series of participating Share means the Net Asset Value per Participating Share calculated by reference to the terms of, and after deduction of any amount ... set out in the applicable Offering Memorandum ..."*

4.2. *"10. The rights and restrictions attaching to the Participating Shares are as follows: ....*

4.2.1. *(c) Redemption by the Holder*

*Save to the extent that the provisions of any applicable Offering Memorandum provide to the contrary, the holder of any class or series of Participating Shares may...by the delivery to the Company's duly authorised agent of a redemption request ... in such form as the Directors may from time to time determine at least 6 calendar months ... prior to the relevant Redemption Date, require the Company to redeem, and subject to the provisions of the Companies Law, these Articles and the applicable Offering Memorandum the Company shall redeem all (or some only ...)..."*

- 4.3 Clause 20 provided that "Investment Accounts" would be established in the books of the company and set out the assets and profits to be credited to such Investment Accounts as well as the liabilities and losses to be debited to such Investment Accounts.
- 4.4 "29 *The rights attaching to any class or series of share ... may be varied or abrogated by the Directors without the consent of the holders of shares of such class or series if the Directors determine that such change is not materially adverse to the interests of the holders of shares of such class; but otherwise with the consent in writing of the holders of two-thirds of the issued shares of such class or series or, with the sanction of a resolution passed by not less than a two-thirds majority of the holders of shares of the class or series present in person or by proxy at a separate general meeting of the holders of the shares of the class or series. ... For such purposes, the Directors may treat any or all of the said classes or series of shares as forming one class or series if they consider that such classes or series would be affected in the same way by the proposals under consideration but, in any other case, shall treat them as separate classes or series.*"
- 4.5 "163 *Subject to the Companies Law and the rights attaching to the various classes or series of shares, the Company may at any time and from time to time by Special Resolution alter or amend these Articles in whole or in part*"
5. In exercising the powers and discretions conferred upon them by the Articles of Association the Directors owed the Company a fiduciary duty to act in good faith in the best interests of the Company and to exercise those powers only for the purposes for which they were conferred.

6. The Offering Memorandum issued to Mr. Mathias in relation to the B-2 Class of Shares was the Offering Memorandum dated 30 April 2007 ("the 2007 Offering Memorandum"). The 2007 Offering Memorandum provided as follows:

6.1. *"The following definitions apply throughout this Offering Memorandum unless the context otherwise requires:*

6.1.1. *"Redemption Date" the first Business Day of each calendar quarter and/or such other or further day or days as the Directors may in their discretion determine and notify to Shareholders"*

6.1.2. *"Valuation Date" the last Business Day of each calendar month ...and/or such further or other day or days as the Directors may in their discretion determine and notify to the Shareholders. The Business Day prior to each ... Redemption Date... shall be a Valuation Date"*

6.2 *"Class A-2 and B-2 Shareholders may redeem all or some of their Class A-2 and B-2 Shares on the second and/or the fourth Redemption Date of each calendar year (excluding extraordinary Redemption Dates, if any), subject to a minimum of six months' prior written notice, in each case, by delivering a duly completed redemption request ... to the Administrator six calendar months prior to the relevant Redemption Date. ... Redemptions are, ... for settlement within 12 to 15 Business Days of the calculation and publication of the Net Asset Value ... at a redemption price per Share of the Relevant Class determined by reference to Net Asset Value on the corresponding Valuation Date."*

7. At all material times Citi Hedge Fund Services (Ireland) Ltd acted as the Company's Administrators. Under the Administration Agreement (which is not in Mr. Mathias' possession) the Administrator was authorised by the Company

to conduct correspondence concerning redemption requests on its behalf and as its agent.

8. On 26 September 2008 Mr. Mathias submitted a redemption request to the Administrators in respect of all his remaining Class B-2 Shares in the Company for redemption on 31 March 2009. The request was acknowledged by the Company's Administrators, Citi Hedge Fund Services (Ireland) Ltd., on 29 September 2008.
9. On 19 March 2009 Citi Hedge Fund Services (Ireland) Ltd. notified Mr. Mathias that the market value of his shareholding was €750,242.45.
10. On 23 March 2009 Mr. Mathias by email requested confirmation that everything was in order for his redemption of all his shares in the Company to proceed on 1 April 2009.
11. Citi Hedge Fund Services (Ireland) Ltd immediately replied on 23 March 2009 in the following terms:

*"I have checked your redemption from [the Company] and everything is in order for the redemption to go ahead - once the 31<sup>st</sup> March NAV is received."*

12. In responding as aforesaid Citi Hedge Fund Services (Ireland) Ltd acted as agent for and on behalf of the Company.
13. On 26 March 2009 Mr Mathias received by email a copy of a circular to holders of participating shares in the Company ("the Circular"). The Circular contained the following statements:

13.1. *"We, the Directors, are writing to update you regarding the impact of the current market disruption on the Company and to ask you to consider and, if you think it appropriate, approve our proposal to amend*

*the terms of the Company's offering memorandum (the "Offering Memorandum") and vary the rights attached to your Shares to permit the Directors to effect an orderly wind-down of the Company..."*

13.2. *"Proposal - We have therefore decided to:*

13.2.1. 1. *cancel the 1 April 2009 Subscription Date and Redemption Date...*

13.2.2. 3 *seek the consent of the Shareholders to amend the Offering Memorandum and effect a variation to the rights attaching to the Shares to:*

13.2.2.1. 1 *cancel all future scheduled Subscription Dates and Redemption Dates; ..."*

13.3. *"The text of the key proposed changes to the Offering Memorandum is set out in the Appendix to this Circular."*

13.4. *"We enclose with this Circular at the Appendix hereto a written resolution of the holders of Class A-1, A-2, B-1 and B-2 Shares of the Company to approve the proposed variation of their Class rights. In order for the written resolution to be carried, it must be passed by Shareholders holding at least two-thirds of the issued Shares of Classes A-1, A-2, B-1 and B-2. As all Classes in the Company will be affected in the same way by the proposals, all Classes will be treated as a single Class for this purpose."*

13.5. The Appendix consisted of a draft written resolution to the following purported effect, if passed:

13.5.1. *“(c) the provisions in the Offering Memorandum relating to the redemption of Shares at the option of Shareholders be amended as follows:*

13.5.1.1. *Notwithstanding any other provision of this Offering Memorandum to the contrary, Shares may not be redeemed at the option of the holder, but only by way of compulsory redemption at the discretion of the Directors.*

13.5.1.2. *The Directors may, for the purpose of effecting redemptions and distributions, designate extraordinary Redemption Dates and/or Valuation Dates, as required.*

13.5.1.3. *(g) the rights attached to Shares are modified in the manner described in and contemplated by the changes to the Offering Memorandum set out in this resolution.”*

14. On or shortly after 31 March 2009 Citi Hedge Fund Services (Ireland) Ltd confirmed to Mr. Mathias that the NAV of the Class B-2 Shares in the Company was €48.57 per share.

15. By reason of the communications between Mr. Mathias and Citi Hedge Fund Services (Ireland) Ltd, Mr Mathias and the Company entered into a collateral agreement whereby he would be give up his Class B-2 Shares in return for payment by the Company of the Redemption Price:

15.1 he had requested a redemption thereby offering to the Company to relinquish his shares in return for payment;

15.2 By permitting Citi Hedge Fund Services (Ireland) Ltd to confirm to Mr Mathias that everything was in order accepted his offer;

15.3 The NAV calculation for 31 March 2009 fulfilled the condition subsequent to the agreement.

16. The proposed resolution contained in the Appendix annexed to the Circular could have had no effect:
  - 16.1 Mr. Mathias and the Company had concluded a separate collateral agreement permitting him to redeem his shares as aforesaid. Such an agreement could not be varied without his consent.
  - 16.2 The 2007 Offering Memorandum could not have been amended by the proposed Resolution.
    - 16.2.1 The 2007 Offering Memorandum was the basis on which Mr. Mathias subscribed for Class B-2 Shares;
    - 16.2.2 The Company could only alter its Offering Memoranda for future subscriptions or offers;
    - 16.2.3 The 2007 Offering Memorandum contained no provision permitting it to be varied by the shareholders of the Company let alone the directors.
  - 16.3 The proposed change to the definition of Redemption Date could only have been made by an amendment to the Company's Articles of Association.
17. By the Resolution purportedly amending the Offering Memoranda the Directors had not exercised any power conferred on directors by Clause 1 of the Articles of Association to specify "other or further" Redemption Dates.
  - 17.1 The purported resolution was a Shareholders' resolution. The resolution to amend the Offering Memorandum does not purport to be a resolution by the Directors and the Directors did not make any resolution.

- 17.2 The Directors did not in fact exercise any such discretion and did not properly consider whether they should make such a decision;
- 17.3 The elimination of Redemption Dates was not a determination of "*other* or *further*" Redemption Dates within the meaning of Clause 1 of the Articles of Association.
18. The only means of eliminating the Redemption date was by causing the definition of Redemption Date in Clause 1 of the Articles of Association to be amended. The purported resolution did not attempt to achieve this. There was no resolution to amend the Articles but only a resolution to amend the offering Memorandum.
19. Even if the definition of Redemption Dates was amended such amendment amounted to a variation of a class right and Mr. Mathias and the Class B-2 Shareholders did not separately approve any variation of the rights of the Class B-2 Shares in the Company as required by Clause 29 of the Articles.
20. The Directors were not entitled to treat all shareholders as being within the same class for the purposes of Article 29 and a resolution by all the shareholders was of no effect under Article 29 to alter the rights of Mr Mathias and other Class B-2 Shareholders.
- 20.1 The Directors could not have reasonably concluded that the variation of rights being proposed affected the Class B-2 Shares in the same way as all the other shares because a redemption request had only been made in respect of the Class B-2 Shares. Removal of the 1 April 2009 Redemption Date from the definition of Redemption Date only affected the Class B-2 Shares.
- 20.2 The Directors knew of the following facts and matters, namely that:

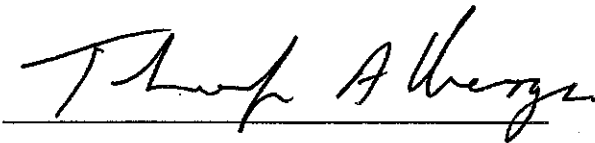
- 20.2.1 Mr Mathias had made a redemption request in respect of all of his remaining shares which the Company was obliged to honour on 1 April 2009;
- 20.2.2 Mr. Mathias would not have accepted the variation of the redemption rights attached to the Class B-2 Shares;
- 20.2.3 There were no other redemption requests outstanding which would have been affected by a cancellation of the Redemption Date on 1 April 2009.
- 20.3 It is to be inferred that the resolution insofar as it concerned the Redemption Date of 1 April 2009 was proposed for the purpose of preventing Mr. Mathias from exercising his rights.
- 20.4 In recommending the resolution for cancellation of the 1 April 2009 Redemption Date the Directors acted in breach of their fiduciary duty to act in the best interests of the Company and only exercise powers for the purposes for which they were conferred.
21. On 2 April 2009 the Directors wrote to the shareholders of the Company and informed them that the resolution had been passed by the holders of two-third of the shares in issue. Mr. Mathias has not been furnished with any evidence that the resolution was passed before 1 April 2009.
22. On 3 April 2009 Citi Hedge Fund Services (Ireland) Ltd wrote to Mr. Mathias and informed him that the redemption which was to have taken place on 1 April 2009 had been purportedly cancelled. The Company has since by letter of 20 May 2009 confirmed that it will not honour Mr. Mathias' redemption right.
23. By reason of the matters aforesaid Mr. Mathias was entitled to redeem his shares either pursuant to the Articles of Association or the collateral contract pleaded above and did so with effect from 1 April 2009 at the NAV given to him for 31 March 2009. He is therefore entitled to €722,098.88.

24. Further Mr. Mathias is entitled to interest on the €722,098.88 at the daily rate of €133.54 (the rate prevailing for the time being under the *Judicature Law* (2007 Revision) and the *Judgment Debts (Rates of Interest) Rules* (2008 Revision) being €14,155.24 in total to the date hereof or he is entitled to interest on such sum that is found to be due to him at such rate and for such period as the Court finds to be just pursuant to Section 34 of the *Judicature Law* (2007 Revision) and section 3(b) of the *Judgment Debts (Rates of Interest) Rules* (2008 Revision).

**AND THE PLAINTIFF CLAIMS**

1. Payment of €722,098.88 the sum due to Mr. Mathias.
2. A declaration that the Resolution purporting to amend the Offering Memorandum was of no effect as far as the Plaintiff is concerned.
3. Interest pursuant to Section 34 of the *Judicature Law* (2007 Revision) and section 3(b) of the *Judgment Debts (Rates of Interest) Rules* (2008 Revision).
4. Costs.

Dated: 15 July 2009



Thorp Alberga Attorneys-at-law for the Plaintiff

**Acknowledgement of service of writ of summons (0.12, r.3)****DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman, Cayman Islands.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

**Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No.: of 2009

BETWEEN:

MR. VIVEK MATHIAS

PLAINTIFF

AND:

PLEXUS GLOBAL SELECT FUND LTD.

DEFENDANT

**ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)  
 yes  no

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)  
 yes  no

Service of the Writ is acknowledged accordingly

(Signed).....  
Attorney for

**Please complete overleaf**

**Notes on address for service**

**Attorney:** Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

**Defendant in person:** Where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Thorp Alberga  
Attorneys-at-Law  
2<sup>nd</sup> Floor, Harbour Place  
103 S. Church Street  
P.O. Box 472  
George Town  
Grand Cayman, KY1-1106  
Cayman Islands  
Attorney: Mr. Chris McDuff  
Ref: CMD/M0844-003

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

