

APPLEBY

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 0050 OF 2009 (ASCJ)

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF DD GROWTH PREMIUM 2X FUND (IN OFFICIAL LIQUIDATION)

Order

UPON the application of the Joint Official Liquidators of DD Growth Premium 2X Fund (the **JOLs** and the **Company**) dated 21 July 2015

AND UPON reading the letter dated 27 July 2015 from counsel for the JOLs

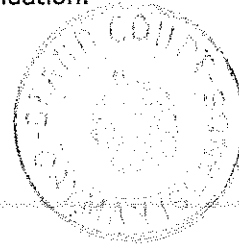
AND UPON reading the Fifth Affidavit of Tammy Fu dated 21 July 2015 and the Second Affidavit of Tammy Fu dated 18 June 2013

IT IS ORDERED that:-

1. The Security Funding Agreement entered into between the Company and Unione di Banche Italiane S.c.p.A dated 16 July 2015 as appended to this Order be and hereby is sanctioned.
2. The costs of this application shall be an expense of the liquidation.

Dated this 28 day of July 2015

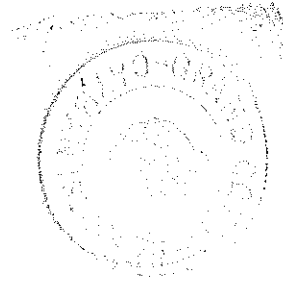
Filed this 29 day of July 2015



The Hon. Chief Justice Anthony Smellie QC
CHIEF JUSTICE OF THE GRAND COURT

THIS ORDER was filed by Appleby, Attorneys-at-Law, for and on behalf of the JOLs whose address for service is Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref: JW/JS/318234.0009)

Appendix



22 July 2013

Tammy Fu
Zolfo Cooper
Suite 776
10 Market Street
Camana Bay
Grand Cayman
Cayman Islands
KY1-9006

Gordon MacRae
Zolfo Cooper
Suite 776
10 Market Street
Camana Bay
Grand Cayman
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KY1-9006



By e-mail and post

Dear Sirs

Re: **DD Growth 2X Premium Fund (the "Company")**

We refer to:

- (a) the Funding Agreement dated 12 November 2009 (the **Funding Agreement**) between the Company (acting through its joint official liquidators, Tammy Fu and Gordon MacRae of Zolfo Cooper (the **Joint Liquidators**)) and Unione di Banche Italiane S.c.p.A (the **Lender**), as amended by the letter agreement dated 19 May 2010 between the Company (acting through the Joint Liquidators) and the Lender; and
- (b) the Further Funding Notice dated 8 June 2010 served under clause 3.2 of the Funding Agreement (the **Further Funding Notice**) between the Company (acting through the Joint Liquidators) and the Lender;

in each case as amended by the letter agreement dated 6 January 2012 between the Company (acting through the Joint Liquidators) and the Lender.

We adopt the definitions used in the Funding Agreement and the Further Funding Notice, as applicable.

WHEREAS:

- (A) pursuant to the Funding Agreement and the Further Funding Notice, the Lender advanced Funding to the Company in the amounts set out in the Funding Agreement and the Further Funding Notice, such Funding to be utilised as set out in such agreement and notice in respect of the claim against RMF Investment Management indicated in the table in clause 2 of the Further Funding Notice as Claim Reference No. 1 (the **RMF Claim**) and the other claims indicated in the Further Funding Notice (together with the RMF Claim, the **Funded Claims**);

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Such payments shall be made promptly following the date of this letter agreement.

2.2 The parties hereto acknowledge that the outstanding fees (together with any expenses and taxes or other amounts thereon) and any future fees (together with any expenses and taxes or other amounts thereon) of:

- (i) Appleby are the object of the Appleby CFA and the Lender shall in no way be obligated to pay directly or indirectly any such fees (together with any expenses and taxes or other amounts thereon) or advance any Funding to the Company to put it in funds such that it is in a position to pay any such fees (together with any expenses and taxes or other amounts thereon); and
- (ii) the Joint Liquidators shall be paid from the balance of the Current Funding Amount following the payment of US\$293,000 to Appleby and thereafter out of any Litigation Recoveries as contemplated by Cayman Islands law and the Lender shall in no way be obligated to pay directly or indirectly any such fees (together with any expenses and taxes or other amounts thereon) or advance any Funding to the Company to put it in funds such that it is in a position to pay any such fees (together with any expenses and taxes or other amounts thereon).

3. AMENDMENTS TO FUNDING AGREEMENT AND FURTHER FUNDING NOTICE

The parties hereto further agree that the Funding Agreement and the Further Funding Notice shall be amended as follows:

- (i) Clause 3.3(d) of the Further Funding Notice shall be deleted; and
- (ii) Clause 4.6 of the Funding Agreement shall be amended such that a new Clause 4.6(a1) shall be inserted below Clause 4.6(a) and above Clause 4.6(b) which shall read as follows:
"a1) secondly, any excess shall then be paid in satisfaction of amounts due and payable to Appleby pursuant to the Appleby CFA other than the Success Fees as defined therein";
- (iii) the reference to "secondly" in Clause 4.6(b) shall be changed to "thirdly";
- (iv) Clause 4.6 of the Funding Agreement shall be amended such that a new Clause 4.6(b2) shall be inserted below Clause 4.6(b)(ii) and above Clause 4.6(c) which shall read as follows:
"b2) fourthly, any excess shall then be paid in satisfaction of amounts due and payable to Appleby pursuant to the Appleby CFA constituting the Success Fees as defined therein"
- (v) the reference to "thirdly" in Clause 4.6(c) shall be changed to "fifthly";
- (vi) the reference to "4.6(a) and (b) in Clause 4.6(c) shall be changed to "4.6(a), (a1), (b) and (b2)";
- (vii) references in the Funding Agreement and the Further Funding Notice to Richard Fogerty and G. James Cleaver as joint official liquidators shall, from 30 May 2012, be read as references to Tammy Fu and Gordon MacRae.

4. REPRESENTATIONS AND UNDERTAKINGS

As the date hereof:

- (a) The Company represents and warrants to the Lender as follows:

- (i) the Company is a Cayman company in official liquidation and the particulars of the Liquidation in Recital A of the Funding Agreement are true and correct;
- (ii) the Joint Liquidators have been duly appointed as joint official liquidators of the Company in accordance with the laws of the Cayman Islands and (subject only to the approval of this letter agreement by the Grand Court) have the requisite legal and corporate authority to enter into this letter agreement on behalf of the Company;
- (iii) the execution, delivery and performance of this letter agreement by the Company does not and will not (a) contravene any provision of the Company's articles or bylaws, (b) violate any law or regulation, or any order or decree of any court or governmental authority, (c) result in the creation or imposition of any lien or security interest on any property of the Company; and
- (iv) subject only to the approval of this letter agreement by the Grand Court, upon execution and delivery hereof by the Company, this letter agreement shall constitute the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

- (b) The Joint Liquidators represent and warrant to the Lender that since their appointment:
 - (i) they have not caused any Security to be placed over the Company or its assets;
 - (ii) they are not aware of any Security being placed over the Company or its assets; and
 - (iii) they have not agreed to distribute any Litigation Recoveries to any other person, in priority to the Lender save as agreed with the Lender.
- (c) The Company and each Joint Liquidator undertake that in no circumstances shall they seek to recover any amounts (including for the avoidance of doubt, any fees of legal counsel to the Company and/or the Joint Liquidators) from the Lender in the event a costs award is made against the Company in respect of any Claim or in any other circumstances.

5. ASSIGNMENT AND TRANSFER

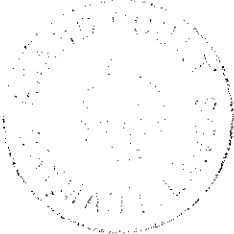
- 5.1 The Company may not assign or transfer any of its rights or obligations under or in respect of this Agreement.
- 5.2 The Lender may, at any time, assign, transfer or novate either in law or in equity all or any of its rights, benefits and/or obligations in respect of this Agreement, in whole or in part, as contemplated by Clause 9 of the Funding Agreement.

6. INCORPORATION

Clauses 10 (provided that Andrea Agodi shall be deemed to be deleted as a recipient of notices to that Lender), 11 and 13.2, 13.3, 13.5 and 13.6 of the Funding Agreement shall be incorporated herein, *mutatis mutandis*, and this letter agreement shall be read as if such Clauses had been set out herein.

7. COUNTERPARTS

This letter agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each



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