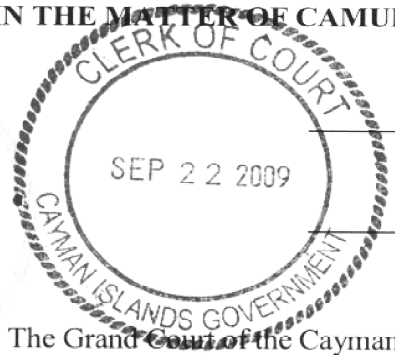
IN THE GRAND COURT OF THE CAYMAN ISLANDS

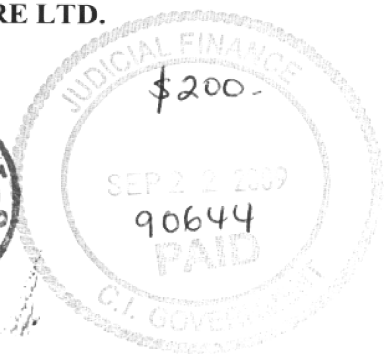
CAUSE NO. 454 OF 2009

IN THE MATTER OF THE COMPANIES LAW (2009 REVISION)

AND IN THE MATTER OF CAMULOS PARTNERS OFFSHORE LTD.



PETITION



To: The Grand Court of the Cayman Islands

The Humble Petition of Kathrein & Co of Wipplingerstr. 25, A-1010, Vienna, Austria ("**the Petitioner**") shows that:

Introduction

1. Camulos Partners Offshore Ltd. ("**the Company**") was incorporated as an exempt company with registration number 149459 on 24 May 2005.

2. The registered office of the Company is at Walkers Corporate Services Ltd, Walker House, PO Box 908 GT, 87 Mary Street, George Town, Grand Cayman, Cayman Islands, British West Indies.

3. The authorised share capital of the Company is US$50,000 divided into 5,000,000 ordinary shares of par value US$0.01 each. The objects for which the Company was established are unrestricted but the Company's primary purpose was the investment of funds received from investors who had subscribed for shares in the Company. Subject to the provisions of the Companies Law, the Company was authorised by its Articles of Association ("**the Articles**"), *inter alia*, to issue shares which were able to be redeemed at the option of the shareholders.

4. The Company is the offshore feeder in a "master-feeder" fund structure. The master fund in the structure is Camulos Master Fund LP, an exempted limited partnership formed under the laws of the Cayman Islands ("**the Master Fund**").

5. Investors subscribed for shares in the Company. In turn, the Company invested substantially all of its assets (i.e. the investors' subscriptions) in shares in the Master Fund.

6. According to the Company's Confidential Private Offering Memorandum dated May 2008 ("**the CPOM**"), the Company's investment objective was to generate, through its investment in the Master Fund, superior risk-adjusted returns from a combination of capital appreciation and current income by opportunistically investing and trading in a diversified portfolio of undervalued and distressed assets.

7. The directors of the Company are David Bree and Don Seymour of dms Management Ltd. Camulos Capital LP, a Delaware limited partnership, is the Company's investment manager ("**the Investment Manager**").

8. The Articles provide that shares in the Company are to be redeemed or are liable to be redeemed at the option of the holder (**"voluntary redemptions**") or upon the directors giving not less than 5 days' notice of redemption to the shareholder ("**compulsory redemptions**" or "**mandatory redemptions**"). The CPOM states on page 22 that settlements of voluntary redemptions and mandatory redemptions will be made in the same manner.

The Petitioner's Shares

9. By a Subscription Agreement executed by the Petitioner on 31 July 2006, the Petitioner subscribed for and on 1 August 2006 was issued with 34,000.000 Class A restricted Series 9 shares in the share capital of the Company. Those shares were subsequently equalised into 27,276.3724 Class A Series 1 redeemable shares in the share capital of the Company ("**the Shares**"). The Subscription Agreement provided, *inter alia*, that the Petitioner subscribed for the Shares on the terms of the CPOM, subject to the Articles.

10. The Articles provide that shares in the Company may be voluntarily redeemed at the end of a calendar quarter on 60 days' prior written notice to the Company or its authorised agent, provided that the directors, with the consent of the Investment Manager, have the discretion to waive or reduce the notice period.

11. On 31 July 2008, pursuant to and in accordance with the provisions of the Articles, the Petitioner, acting through its agent, Concord Management LLC ("**Concord**"), submitted a redemption request in respect of all of the Shares ("**the Redemption Request**"). The redemption date applicable to the Redemption Request was 30 September 2008. The Petitioner had given more than 60 days' notice of redemption and so there was no requirement for the directors to waive or reduce the notice period for the Redemption Request. The Redemption Request was accepted on behalf of the Company by Op Hedge Fund Services (Cayman) Ltd, the Company's administrator (**"the Administrator"**). The redemption price payable to the Petitioner in respect of the redemption of the Shares is US$27,227,268.80 ("**the Redemption Price**"). None of that Redemption Price has been paid to the Petitioner. Therefore, although the Shares were effectively redeemed on 30 September 2008, the Petitioner remains a shareholder in the Company because it has not been paid the Redemption Price.

The Exchange Offer

12. On 3 September 2008, the Investment Manager sent investors a restructuring proposal, comprising an "exchange offer" ("**the Exchange Offer**") pursuant to which investors (including investors such as the Petitioner which had submitted redemption requests falling due on 30 September 2008) were offered the opportunity to exchange their existing Class A shares and Class B shares in the Company for two new classes of shares in the Company, Class N shares and Class I shares.

13. The Petitioner will rely on all of the terms of the Exchange Offer for their full meaning and effect, but in brief summary the Exchange Offer provided that:

    (a) Investors who accepted the Exchange Offer would have their existing Class A shares or Class B shares in the Company exchanged on 1 October 2008 for Class N shares and Class I shares with an equivalent net asset value.

(b) The Class N shares issued pursuant to the Exchange Offer would track the performance of a pool of the Master Fund's more liquid assets, but could not be redeemed at the election of their holders until 30 September 2009, i.e. until 12 months after the effective date of the Exchange Offer, and only then on 90 days' prior notice.

(c) The Class I shares would track the performance of a pool of the Master Fund's significantly less liquid assets, and could not be redeemed at any time at the election of their holders.

(d) The rights of investors to redeem Class N shares and Class I shares would therefore be far more restricted than their existing rights to redeem their Class A shares or Class B shares. Given that the Petitioner had submitted the Redemption Request because it no longer wished to be exposed to the performance of the Master Fund's portfolio of assets, the Exchange Offer was an extremely unattractive proposition for the Petitioner.

(e) Investors who accepted the Exchange Offer had the option (irrespective of whether (i) they had submitted a redemption request falling due on 30 September 2008 or (ii) their shares were subject to a lock up period) to request the redemption of up to 15% of their Class A shares or Class B shares on 1 October 2008, and to have such 15% redemption paid in cash.

(f) Investors such as the Petitioner who had submitted a voluntary redemption request falling due on 30 September 2008 had the option to participate in the Exchange Offer by withdrawing their redemption requests or reducing them to a maximum of 15% of their shares. Such investors were informed that if they did not accept the Exchange Offer then the Company would give effect to their voluntary redemption requests in the same manner set out in the Exchange Offer for mandatory redemptions.

(g) The Company reserved the right to cause a mandatory redemption of the Shares of any shareholder who did not elect to participate in the Exchange

Offer.[1] The Exchange Offer provided that on a mandatory redemption of shares, the redemption price would be settled by payment of 15% in cash and 85% by a pro rata distribution of unspecified assets in kind or (with the shareholder's consent) an interest in a trust set up by the Investment Manager.

(h) A refusal of the Exchange Offer also represented a very unattractive proposition for the Petitioner because (i) no details of the assets to be distributed in kind were provided and (ii) the Petitioner had submitted the Redemption Request because it did not wish to continue to be exposed to the performance of the Master Fund's assets. The Petitioner had a legitimate expectation that the Company would take steps before 30 September 2008 to attempt to liquidate sufficient assets to be able to pay the Redemption Price to the Petitioner in cash. The Company was able to and did calculate the NAV for 30 September 2008, and that NAV must have been calculated based on the value for which the Master Fund could have sold its assets at that time. In the circumstances, there was no good reason why those assets were not sold, but the Company apparently took no or insufficient steps before 30 September 2008 to generate the liquidity necessary to pay the Petitioner in cash. Instead, the Company made the Exchange Offer which (aa) if accepted would fundamentally alter the terms of the Petitioner's investment, and (bb) if not accepted could lead to the Petitioner receiving unspecified assets in kind which it might not be legally entitled to accept or hold.

(i) The Exchange Offer did not specify when the Company would satisfy its obligation to pay the redemption price to investors who accepted the Exchange Offer or to those who did not, and it drew no distinction between those two groups of investors in terms of timing of payment. In deciding

[1] The Exchange Offer actually refers to the Fund reserving such right in relation to any shareholder who "does elect to participate in the Exchange Offer". However, having regard to the Fund's letter to Investors of 24 September 2008 and earlier drafts of the Exchange Offer, the Petitioner believes that the wording of the Exchange Offer contained a typographical error and was obviously supposed to reserve the right to cause a mandatory redemption of the shares of those shareholders who did ***not*** elect to participate in the Exchange Offer.

whether or not to accept the Exchange Offer, the Petitioner relied on the fact that no such distinction was drawn in the Exchange Offer and concluded that its decision on whether to accept or reject the Exchange Offer would not affect the timing of redemption payments to be made by the Company to the Petitioner.

14. In summary therefore, the redemption mechanism specified in the Exchange Offer was as follows:

(a) Irrespective of whether they had submitted a redemption request (before the Exchange Offer was made) falling due on 30 September 2008, the Company would treat investors who gave notice that they accepted the Exchange Offer and elected to redeem up to 15% of their shares as having made a voluntary redemption on 30 September 2008 and would pay them 100% of the redemption price in respect of those shares in cash.

(b) In respect of investors who (i) had submitted a voluntary redemption request and (ii) did not accept the Exchange Offer (such as the Petitioner), the Company would effect their voluntary redemptions in the same manner as it would effect mandatory redemptions of the shares of investors who (i) had ***not*** submitted a voluntary redemption request and (ii) did not accept the Exchange Offer. That is, the redemption proceeds due to all such investors would be settled by the Company making a payment of 15% of the redemption price in cash and settling the remaining 85% of the redemption by the distribution of assets in kind, all such redemptions to be with effect from 30 September 2008.

15. Although the deadline imposed by the Company for acceptance of the Exchange Offer was 16 September 2008, the Petitioner, acting through Concord as its agent, requested and received an extension to that deadline in order to evaluate the Petitioner's options. On 31 July 2008 Concord had provided bank account details to the Company in order that the Company could wire the redemption proceeds in respect of the Redemption Request to the Petitioner. Concord also requested the Company to provide full portfolio details in emails and in telephone conversations

in order to be able to evaluate the positions and assess the Petitioner's ability to take a distribution in-kind of the Company's assets. Although this request was initially refused, it was Concord's understanding that the Investment Manager had agreed to provide the portfolio details on the condition that Concord signed a non-disclosure agreement, which it did on 30 September 2008. A meeting was then arranged at the Investment Manager's office in Stamford, Connecticut, on 9 October 2008, which Concord believed was to enable it to review the full portfolio of the Master Fund. However, upon arrival at that meeting Concord was told that no such review would be allowed to it.

16. The Company has informed the Petitioner that (a) it was the only investor which did not accept the Exchange Offer, and (b) every other investor accepted the Exchange Offer and some of those investors elected to redeem on 30 September 2008 up to 15% of their Class A shares or Class B shares. The Investment Manager continued to press the Petitioner to make the election in relation to the Exchange Offer through the month of October, despite refusing to allow the Petitioner to assess its ability to accept or hold the portfolio positions and to determine what types of accounts it would be necessary to establish for the receipt of those positions. Concord formally rejected the Exchange Offer on behalf of the Petitioner on 24 October 2008. The Shares were therefore effectively redeemed in accordance with the Articles on 30 September 2008, but as noted above the Petitioner remains a shareholder in the Company because it has not been paid the Redemption Price.

17. By an email of 4 November 2008, the Investment Manager requested that Concord provide brokerage account details for a transfer of assets in kind in respect of the Redemption Price, which Concord was unable to do because it did not know what assets the Company proposed to distribute to the Petitioner. In response to the Investment Manager's request for account details, Concord pointed out that the Petitioner was not an eligible lender and that a pro-rata distribution of the types of assets which the Master Fund probably held would not be feasible.

18. The Company's position is that until the purported suspension of redemptions on or around 12 November 2008, it was ready, willing and able to (a) pay 15% of the

Redemption Price to the Petitioner in cash and (b) transfer assets to the Petitioner in kind in respect of the balance of 85%, but that it was prevented from doing so because it was not provided with brokerage account details by Concord. The reasons why it was not possible for Concord to provide brokerage account details to the Company have been explained above. As also noted above, the Petitioner had provided its bank account details to the Company on 31 July 2008. The Company has never provided any explanation of why it did not pay 15% of the Redemption Price in cash to the Petitioner's bank account during the period between 30 September 2008 and 12 November 2008. The Company's failure to do so is inconsistent with its stated position that it was ready, willing and able to make payment to the Petitioner during this period.

The purported suspension of redemptions on or around 12 November 2008

19. Article 67 of the Articles provides that, on six specified grounds ("**the Grounds of Suspension**"), the directors of the Company may declare a suspension of the determination of the Net Asset Value, the subscription of shares or redemption and repurchase of shares, including investors' rights to receive the redemption price (that is, payment of the redemption price which had crystallised on the immediately preceding redemption date). Save in respect of a suspension imposed to ensure the Company complies with anti-money laundering laws and regulations, the power of suspension in Article 67 does not permit a suspension to be imposed or lifted in respect of a particular investor or only some of the investors. Article 67 also draws no distinction between mandatory and voluntary redemptions. In other words, once a suspension has been validly imposed then, *inter alia*, the rights of <u>all</u> investors to receive the redemption price due to them are suspended, irrespective of whether their shares were compulsorily or voluntarily redeemed, and will remain suspended unless and until the suspension is lifted for <u>all</u> investors.

20. On 12 November 2008, the Investment Manager wrote to all investors ("**the 12 November letter**"). The 12 November letter stated, *inter alia*, that "*Given the current market environment... we feel it is in the best interests of the [Master Fund] and its investors to suspend the 15% redemption payment until we have*

satisfied our lenders. Once that is accomplished, we intend to continue to sell assets, raise liquidity, and pay the redemption payment in an orderly manner... the current hedge fund structure of quarterly liquidity has become untenable for investments in distressed debt. I therefore think it is in the best interests of all our investors to receive an orderly distribution of your capital to you in as expeditious a manner as possible...The Board of Directors of the [Company] and the general partner of the domestic fund support our decision. To that end, the Board and the general partner will authorize a suspension of redemptions with respect to the relevant entities, [ie the Company and the domestic fund] provided that ***the suspension will be lifted periodically in order to make distributions of liquidation proceeds to the investors"*** (emphasis added).

21. Consistent with the provisions of the Articles and the CPOM, no distinction was drawn in the 12 November letter between investors who had elected to accept the Exchange Offer and those who had not. In other words, the purported suspension referred to in the 12 November letter applied equally to all categories of investor. The Company therefore purported to suspend (a) the right of the Petitioner to be paid the Redemption Price, (b) the rights of other investors who had redeemed up to 15% of their shares on 30 September 2008 to be paid in respect of their redemptions, and (c) redemptions of the Class N shares and Class I shares held by all other investors in the Company (notwithstanding that such investors had no right to redeem the Class N shares until 30 September 2009 and no right at any time to redeem the Class I shares), in order that the Company could liquidate its investment portfolio and periodically lift the purported suspension to return the cash proceeds to <u>all</u> investors.

22. In a further letter to investors dated 12 February 2009 which was not sent to the Petitioner ("**the 12 February letter**"), the Investment Manager referred to the 12 November letter and "*our decision to suspend the 15% redemption*".

23. The 12 November letter did not specify whether any one or more of the Grounds of Suspension was alleged to exist at that time. The Petitioner contends that:

(a) none of the Grounds of Suspension did exist at the time of the imposition of the suspension, and the imposition of the suspension was therefore invalid and should be set aside; or alternatively,

(b) if any one or more of the Grounds of Suspension did exist at the time of the imposition of the suspension then:

(i) the directors of the Company did not exercise their power to impose a suspension for a proper purpose for the reasons set out in paragraph 49(g)(i) below, and the imposition of the suspension therefore amounted to an abuse of the directors' powers and should be set aside; and/or

(ii) none of the Grounds of Suspension exists now and therefore, pursuant to the provisions of Article 68, the suspension has, or should be deemed to have, terminated, or alternatively,

(c) if any one or more of the Grounds of Suspension did exist at the time of the imposition of the suspension and continues to exist now, by failing to exercise their power to declare the suspension to be at an end the directors have acted improperly:

(i) in the circumstances set out in paragraph 49(g)(i) below; and

(ii) in circumstances where the Company has (aa) paid every other investor the redemption proceeds due to them (as set out in paragraphs 42 to 47); and (bb) asserted in affidavits sworn by the General Counsel of its Investment Manager on 10 June 2009 in Cause No. 191 of 2009 and on 5 August 2009 in Cause No. 365 of 2009 that it had and will continue to have sufficient funds to be able pay the Redemption Price to the Petitioner in cash, but chooses not to make a cash payment unless ordered to do so by the Court; and (cc) on 17 September 2009, proposed to the Grand Court that it could and would take steps to segregate the sum of US$27,227,268.80 (being the Redemption Price) in an escrow

account as a condition of it obtaining what it described as "Interim Injunctive Relief" restraining the Petitioner from presenting any further winding up petition for the winding up of the Company;

and the suspension should therefore be declared to be invalid and at an end, and

that in each of the alternative circumstances set out in paragraphs (a) to (c) above the Petitioner has been treated by the Company in a manner which is unfairly prejudicial to the Petitioner, in that it has not been paid the Redemption Price to which it is entitled and has been discriminated against by the Company.

The Proposal to pay only the Petitioner by an in-kind distribution

24. It is clear from, *inter alia*, the correspondence between counsel for the Petitioner (Campbells) and counsel for the Company (Walkers) that issues exist as to the amount of cash and the value of assets which the Company must, pursuant to its constitutional documents, pay and transfer to the Petitioner in order to satisfy its obligation to pay the Redemption Price of US$27,227,268.80.

25. The Company suggests that it will be able to satisfy that obligation by paying 15% of the Redemption Price (i.e. approximately US$4,084,000) in cash, and by transferring unspecified assets to the Petitioner in kind which, according to the Investment Manager, had a value as at 30 September 2008 equal to 85% of the Redemption Price (i.e. approximately US$23,143,000).

26. The first issue which this raises is why the Company still proposes to pay only the Petitioner in kind. Article 50(j) of the Articles does provide that assets can be distributed to one or more redeeming shareholders in kind on a pro rata or non pro rata basis, but in circumstances where:

(a) the 12 November letter sent to the Petitioner and all other investors clearly stated that the Master Fund's portfolio would be liquidated and that the cash proceeds would be returned to all investors by periodically lifting the purported suspension;

(b) the Company has paid every other investor the redemption proceeds due to them in cash (as set out in paragraphs 42 to 47 below);

(c) the Company asserts that it has and will continue to have sufficient funds to be able pay the Redemption Price to the Petitioner in cash, but chooses not to make a cash payment unless ordered to do so by the Court; and

(d) on 17 September 2009, the Company proposed to the Grand Court that it could and would take steps to segregate the sum of US$27,227,268.80 (being the Redemption Price) in an escrow account as a condition of it obtaining what it described as "Interim Injunctive Relief" restraining the Petitioner from presenting any further winding up petition for the winding up of the Company,

the position adopted by the Company is unjust, inequitable and unfairly prejudicial to the Petitioner and amounts to a breach of the directors' fiduciary duty to act fairly between different sections of investors, and the Company should be ordered to pay the Petitioner the Redemption Price in cash.

The Company contends that it can transfer assets worth less than the Redemption Price

27. The second issue raised by the Company's proposed method of paying the Petitioner, following the lifting of the purported suspension, is that the unspecified assets which the Company proposes to distribute in kind appear to be now worth substantially less than 85% of the Redemption Price.

28. On 26 January 2009 (**"the 26 January letter"**), in its first correspondence with Concord since sending the 12 November letter in which it stated that the Petitioner would be paid in cash, the Investment Manager wrote to Concord reiterating its request for brokerage account details in order to process the transfer of unspecified assets in kind to the Petitioner. In the 26 January letter, sent almost four months after the redemption of the Petitioner's Shares, the Investment Manager suggested for the first time that certain portfolio positions had been "*earmarked [for the Petitioner] immediately after 30 September 2008*". The letter also enclosed

"statements" of an "estimated value of in-kind redemption". Those "statements" suggested that in the three months between 30 September 2008 and 31 December 2008, the value of the assets allegedly "earmarked" for transfer to the Petitioner had fallen by a very substantial amount. Specifically, the Investment Manager estimated that the assets allegedly earmarked for the Petitioner were worth US$18,944,615.32 as at 30 November 2008 and were worth just US$15,915,939.32 as at 31 December 2008.[2] In other words, the Investment Manager estimated that the value of the unspecified assets which it had allegedly earmarked for distribution to the Petitioner to satisfy 85% of the Redemption Price of US$27,227,268.80 had fallen by approximately US$7,227,000 as at 31 December 2008. The Investment Manager asserted in the letter that *"losses attributable to the relevant positions for the period after they were proffered to [the Petitioner] will be exclusively for [the Petitioner's] account"*. The Petitioner has not received any more recent "statements" of the estimated value of the assets allegedly earmarked for distribution to it, but Richard Holahan, the Chief Operating Officer of the Investment Manager, has confirmed in an affidavit sworn on 20 July 2009 in Cause No. 191 of 2009 that the value of the assets has fallen by an unspecified amount since 30 September 2008.

29. The Petitioner contends that a fall in the value of any assets allegedly earmarked for the Petitioner does not affect the Company's obligation to satisfy the Redemption Price of US$27,227,268.80, and makes the following observations regarding the 26 January letter:

(a) Pursuant to Article 50(j) of the Articles, it is the directors of the Company, not the Investment Manager, who have a power to divide the assets of the Company in the context of an in kind redemption. Despite being requested to do so, neither the Company nor the Investment Manager has provided any evidence to Concord or the Petitioner that the directors (or for that matter the Investment Manager) did in fact earmark any assets for distribution to the Petitioner immediately following 30 September 2008 or otherwise, or that the directors of the Company passed any resolutions (at

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[2] The Investment Manager provided no estimate of the value of the assets as at 31 October 2008.

the time or subsequently) in this regard. In his affidavit sworn on 20 July 2009, Mr Holahan suggests that the Administrator has confirmed to him that a separate account has been established in the Company's records to reflect the earmarking of assets for distribution to the Petitioner. He has not specified (i) when that was allegedly done by the Administrator, (ii) on whose request and authority it was done, (iii) when such request was made; or (iv) that the Company still has the specific assets in question available for distribution to the Petitioner.

(b) There has been no suggestion by the Company or the Investment Manager that the "statements" provided by the Investment Manager have been reviewed or approved by the Administrator. Indeed, in conversations with Concord, the Administrator has confirmed that it was not the source of these "statements". They therefore appear to have been created entirely "in house" by the Investment Manager. If assets had been earmarked for the Petitioner and the Administrator had established a separate account in the Company's records to reflect such earmarking prior to 26 January 2009, the Petitioner would expect that the Administrator, not the Investment Manager, would have produced any "statements" to the Petitioner in respect of such assets.

(c) If the Company did earmark assets following 30 September 2008 to satisfy the Petitioner's Redemption Request in the way which it proposes to do following the lifting of the purported suspension, those assets must have included cash of approximately US$4,084,000 which the Company had segregated in order to pay 15% of the Redemption Price to the Petitioner in cash. Despite the fact that the Petitioner provided its bank account details to the Company on 30 September 2008, some 10 months ago, that cash has not been paid to the Petitioner.

(d) No positions have ever been "proffered" to the Petitioner so any losses on the purportedly earmarked positions should not be borne by it.

30. It is agreed by the parties that the Redemption Price payable by the Company to the Petitioner is US$27,227,268.80. The amount of that Redemption Price cannot increase or decrease after 30 September 2008 in any circumstances, whether pursuant to the Articles or otherwise. If the Company was to satisfy that obligation wholly in cash, it would obviously have to pay the sum of US$27,227,268.80 to the Petitioner. If and to the extent that the Company was to purport to satisfy any part of that obligation by transferring assets to the Petitioner in kind, the Petitioner would obviously be unable to liquidate those assets until they have been transferred to it. It therefore follows that in order for the Company to satisfy the Redemption Price of US$27,227,268.80, the aggregate value of the cash and assets transferred to the Petitioner must be US$27,227,268.80 as at the date on which they are transferred by the Company. The historic value which those assets might once have had on 30 September 2008 is irrelevant.

31. The Company's assertion that it is entitled to:

(a) earmark assets as belonging to the Petitioner which it will transfer in satisfaction of the Redemption Price of US$27,227,268.80;

(b) then suspend the payment of redemption proceeds to the Petitioner and not distribute the assets purportedly belonging to the Petitioner; and

(c) then, if and when the purported suspension is ever lifted, satisfy its obligation to pay the Petitioner the Redemption Price of US$27,227,268.80 by distributing assets of significantly less value,

is not supported by the Company's constitutional documents, makes no commercial sense, and would mean that the Petitioner would be unfairly prejudiced as a result of being redeemed in kind rather than in cash, while all of the other investors would benefit at the Petitioner's expense as a result of the Company being able to discharge its liabilities to the Petitioner by transferring assets with a substantially lower value.

The failure of the Company to provide details of the assets which it asserts it has earmarked for distribution to the Petitioner, and the Company's inability to satisfy its obligation to pay the Redemption Price through the transfer of assets in kind

32. If the Company purports to satisfy any part of the Redemption Price by way of an in kind distribution of assets then it can only do so by distributing assets which the Petitioner is permitted by law to accept and hold. This is stated, for the avoidance of doubt, on page 34 of the CPOM.

33. Concord and its attorneys on behalf of the Petitioner have been requesting details of the nature, identity, amount and qualification requirements of the securities and assets which the Investment Manager proposes to transfer in order for the Petitioner to be able to ascertain (a) whether it is permitted by all applicable laws and regulations to accept and hold those assets and, if and to the extent that it is so permitted, (b) the appropriate types of account to which those assets should be transferred.

34. As noted above, since making the Exchange Offer the Investment Manager has refused to disclose any specific information in this respect to Concord or the Petitioner, despite the fact that (a) at the Company's request Concord executed a confidentiality agreement on 30 September 2008, and (b) it is the Company's position that the Petitioner has owned the assets in question since 30 September 2008.

35. In a telephone conversation on 26 September 2008, Mr Holahan of the Investment Manager did describe in general terms how the Investment Manager would effect the in-kind distribution. The Master Fund's portfolio, he claimed, was 400 line items, including 30 unspecified private equity positions and 200 unspecified bank loans.

36. In respect of those bank loans, Mr Holahan suggested that the Petitioner would receive either an assignment or a participation.

37. Mr Holahan accepted and acknowledged that in order to take an assignment of the the bank loans, the Petitioner would have to be an "authorised lender" or an

"eligible assignee". Concord informed the Company that the Petitioner is unlikely to be an "authorised lender" or an "eligible assignee" and so would not necessarily be permitted to take an assignment of these bank loans.

38. Mr Holahan also stated that in order to assign a portion of each of the 200 bank loans, certain minimum transfer requirements must be met. In other words, the amount of the loan assigned must exceed a minimum amount. Concord understands that where the minimum transfer requirements cannot be met, and in other circumstances, such bank loans are generally traded as participations; that is, some form of commitment by one party to pass on to the other party any benefits which it may receive in respect of the loan. As noted above, Mr Holahan acknowledged that this might be necessary in respect of some or all of the bank loans in the Master Fund's portfolio. Such a participating interest would be a derivative instrument created by the Company or the Master Fund which (a) would not provide the Petitioner with any rights against the debtor companies in question, (b) would leave the Petitioner exposed to the credit risk not only of the debtor companies but also of the Company / Master Fund, and (c) would not constitute assets comprising part of the portfolio of the Company or the Master Fund. The provision of such participations to the Petitioner would not therefore constitute an in kind distribution of the assets of the Company or the Master Fund within the meaning of the Company's constitutional documents and would not satisfy the Company's obligation to pay the Redemption Price to the Petitioner.

39. Mr Holahan also mentioned the need for a netting letter for the transfer of the bank loans. It is the Petitioner's understanding that the netting process is used as a way of expediting trade settlement in the case of credits that have been assigned multiple times. The need for a netting letter in this case may indicate that the Company does not hold good title to the assets in question, leaving any transferee, such as the Petitioner, exposed to potential problems in the trade settlement process. Mr Holahan informed Concord that the Petitioner would own a portion of each of the positions in the Company's portfolio as of 1 October 2008 and could begin trying to trade those positions, although settlement would take some

weeks. The Petitioner was of course unable to do so because the assets were not transferred to it.

40. In summary, therefore:

(a) the Petitioner has not been provided with specific details of the assets which the Company alleges that it has earmarked for, and proposes following a lifting of the purported suspension to distribute to, the Petitioner, despite the fact that (i) at the Company's request Concord executed a confidentiality agreement on 30 September 2008, and (ii) it is the Company's position that the Petitioner has owned the assets in question since 30 September 2008; and

(b) some of the types of "assets" which the Company proposes to distribute to the Petitioner in kind (i) may not be capable of assignment to the Petitioner, and / or (ii) are not "assets" of the Company or the Master Fund at all, and therefore cannot be distributed by the Company in kind in satisfaction of the Redemption Price.

The Company has made substantial cash payments to the other investors but has paid nothing to the Petitioner

41. As noted above, the Company has made no payments to the Petitioner in respect of the Redemption Price, either in cash or in kind.

42. On or around 28 or 29 May 2009, however, the Company made a payment to all investors in the Fund who had accepted the Exchange Offer and elected to redeem up to 15% of their shares in the Company ("**the Other Investors**"). The Petitioner is not aware of the precise amount of that payment. In a letter to investors dated 23 April 2009, the Investment Manager stated, *inter alia*, that *"we expect to pay a $50 million distribution to Investors by the end of May as an initial payment of the $237 million redemption payable"*. On 3 July 2009 it was reported on the website www.bloomberg.com (**"the Bloomberg Report"**), based on a letter apparently sent by the Company to the Other Investors on 30 June

2009, that the Company had paid 50% of the 15% redemption to the Other Investors at the end of May 2009, i.e. a much larger payment than had been suggested in the Investment Manager's letter dated 23 April 2009.

43. The position of the Company in respect of this payment is set out in the Second Affidavit of Michael Iuliano sworn on 10 June 2009 in Cause No. 191 of 2009. Mr Iuliano stated (among other things) that:

(a) "*amounts paid to other stakeholders in the Fund* [in May 2009] *were made only in satisfaction of contractual obligations arising in connection with the Exchange Offer (to which the Plaintiff is not a party) and were not payments in respect of any submitted and outstanding redemption requests*" (paragraph 5(b)(iv));

(b) "*the existing suspensions of redemptions (including the right to receive redemption proceeds)... remain in effect and have not been lifted*" (paragraph 5(b)(ii));

(c) it is unclear if the suspensions of redemptions will ever be lifted (paragraph 5(b)(iii); and

(c) "*there has been no decision to wind up fully the affairs of the Fund*" (paragraph 5(a)(i)).

44. The Petitioner observes that Mr. Iuliano's statement in paragraph 5 (b) (iv) of his Second Affidavit is likely to be incorrect. In fact, the Petitioner believes that there were several other investors who had submitted redemption requests for redemption on 30 September 2008 but who, in the event, decided to accept the Exchange Offer. Such investors were given the opportunity to participate in the Exchange Offer by withdrawing their redemption request altogether, or, if they wanted to take the cash redemption payment, by ***reducing*** their redemption requests to a maximum of 15%. The Petitioner believes that certain other investors did reduce their redemption request in response to that invitation by the Fund. Accordingly, the cash payments which those investors have received from

the Fund have been received in relation to outstanding voluntary redemption requests which they had submitted.

45. In light of the above, in a letter to the Company's attorneys dated 11 June 2009, Campbells, the Petitioner's attorneys, sought the Company's explanation for, *inter alia*, the bases upon which:

(a) the Company asserts that it was able to make payments to the Other Investors in May 2009 in respect of the redemption price of their shares without lifting the purported suspension;

(b) the Company asserts that it was able to make such payments without at the same time paying the Redemption Price of US$27,227,268.90 to the Petitioner;

(c) the directors believed it to be consistent with their fiduciary duty to act fairly as between different sections of investors to proceed in this manner; and

(d) Mr Iuliano could state in his sworn evidence that no decision has been taken to wind up fully the affairs of the Company, in circumstances where the 12 November letter stated precisely the opposite.

46. Then, according to the Bloomberg Report, the Company informed the Other Investors in a letter dated 30 June 2009 that the Company expected to pay the balance of the 15% redemption by the end of July 2009. Despite being requested to do so, the Company has failed to confirm to the Petitioner whether that additional payment has been made to the Other Investors, and if it has not been made, whether the Company still intends to make that payment in the near future.

47. To the best of the Petitioner's knowledge, therefore, the Other Investors have been paid approximately either US$118.5 million or US$237 million in cash, representing 50% or 100% of the redemption proceeds of their shares. The Petitioner has been paid nothing.

48. In response to Campbells' letter dated 11 June 2009, the Company asserted (in a letter from its attorneys, Walkers, dated 8 July 2009) that:

(a) the suspension imposed on or around 12 November 2008 applied only to voluntary redemptions;

(b) the Redemption Price is owed to the Petitioner in respect of a voluntary redemption of the Shares and so continues to be suspended;

(c) payments made to the Other Investors were in respect of compulsory redemptions and were therefore not prohibited by the suspension;

(d) the Other Investors were paid pursuant to a contractual obligation arising under the terms of the Exchange Offer;

(e) the Petitioner is in a "class of one"; and

(f) no decision has been taken to wind up fully the affairs of the Fund.

49. The Company's position in relation to the circumstances under which it has paid the Other Investors is disingenuous, clearly contradicted by the relevant documents, and provides yet further evidence of its discrimination against, and unfairly prejudicial treatment of, the Petitioner. In particular, and for the reasons stated above and below:

(a) Neither the Articles nor the CPOM provide the directors with the power to impose or lift a suspension in respect of a particular investor or group of investors, nor do they provide expressly or impliedly that the power to suspend the payment of redemption proceeds applies only to voluntary redemption proceeds and not to compulsory redemption proceeds, or vice-versa. Indeed, on page 22 of the CPOM it is expressly stated that settlements of voluntary redemptions and mandatory redemptions will be made by the Company in the same manner. Once a suspension is imposed, no shares can be redeemed and no payments can be made to any investor, irrespective of how that investor's shares have been redeemed. Once a

suspension is lifted (or otherwise comes to an end), all investors are entitled to be paid the redemption price due to them.

(b) Consistent with the Articles and the CPOM, neither the 12 November letter nor the 12 February letter drew any distinction between compulsory and voluntary redemptions, between those who accepted the Exchange Offer and those who did not, or between the Other Investors and the Petitioner. As stated in paragraph 20 above, the 12 November letter stated that redemptions and the payment of redemption proceeds to all investors was being suspended, and that such suspension would be lifted periodically to pay the cash proceeds of the liquidation of the Company's assets to all investors.

(c) If the suspension had been validly imposed (which it was not), it therefore purported to suspend (a) the right of the Petitioner to be paid the Redemption Price, (b) the rights of the Other Investors to be paid in respect of their 15% redemptions, and (c) redemptions of the Class N shares and Class I shares held by all other investors in the Company (notwithstanding that such investors had no right to redeem the Class N shares until 30 September 2009 and no right at any time to redeem the Class I shares).

(d) The redemptions of the Other Investors' shares were in any event voluntary redemptions rather than mandatory redemptions given that:

(i) The 15% redemption was elected to be made by the Other Investors. They were given the choice whether to do so or not. The Other Investors who had already submitted voluntary redemption request simply reduced the amount of those requests. In respect of those Other Investors who had not previously submitted redemption requests falling due on 30 September 2008, the directors had the power under the Articles to waive or reduce the notice period in respect of their redemption requests, and they exercised that power or must be taken to have exercised that power

in respect of those investors' who had not previously submitted redemption requests but who elected to accept the Exchange Offer and redeem 15% of their shares. Accordingly, the Other Investors' redemptions were in no sense compulsory redemptions; they were quite clearly all voluntary redemptions.

(ii) This is further supported by the express terms of the Exchange Offer, which provided that "*[a]ny shareholder who has previously submitted a redemption request will be given an opportunity to participate in the Exchange Offer by revoking its redemption request* [i.e. if that investor decided to exchange all of its shares for Class N shares and Class I shares and not to redeem any of its shares in return for a cash payment] *or reducing it to a maximum of 15% of net asset value* [i.e. if that investor wished to redeem up to 15% of its shares in return for a cash payment, rather than exchanging all of those shares for Class N shares and Class I shares]". It was therefore expressly stated in the Exchange Offer that the shares of this latter category of investors (i.e. those who (aa) had previously submitted a voluntary redemption request, (bb) accepted the Exchange Offer and (cc) elected to redeem up to 15% of those shares in return for a cash redemption payment) were redeemed by way of voluntary redemption, not by way of mandatory redemption. All such investors have now been paid redemption proceeds in cash in respect of the voluntary redemption of up to 15% of their redeemed shares.

(e) Although the Petitioner's Redemption Request was a voluntary redemption request, the terms of the Exchange Offer provided that if it was not withdrawn "*the Fund shall effect such redemption in the same manner as set forth below for mandatory redemptions*". Even if it was correct that the Other Shareholders' shares had been redeemed by mandatory redemptions (which it is not), having given this representation the Company is estopped from now asserting (as it does) that the

Petitioner is in a "class of one" and can be treated differently from all the Other Investors because their shares were compulsorily redeemed whereas the Petitioner's Shares were voluntarily redeemed.

(f) There was no contractual obligation under the terms of the Exchange Offer (or otherwise) to pay the Other Investors the redemption price in respect of their shares by a particular date, or before the Petitioner was paid.

(g) Further, even if, as the Company contends, the purported suspension only applied to voluntary redemptions and not to compulsory redemptions (which it did not), and the Other Investors' Shares were compulsorily redeemed (which they were not):

(i) On the Company's own case, the purported suspension had no effect on any other investors at the time that it was imposed because (aa) the redemption proceeds due to the Other Investors were not caught by the suspension, (bb) no other investors had any Class A shares or Class B shares at that time (as they had all been exchanged for Class N shares and Class I shares on 30 September 2008), and (cc) all other investors' Class N shares were incapable of being redeemed until 30 September 2009 and their Class I shares were incapable of being redeemed by them at any time. The suspension was therefore imposed specifically to suspend the Company's obligation to pay the Petitioner the Redemption Price. There was no other reason, on the Company's case, for the suspension to be imposed, and no other investor was affected by the suspension. In circumstances where the Company asserts that, from 30 September 2008, it had earmarked assets to distribute to the Petitioner and was ready, willing and able to satisfy the Redemption Price due to the Petitioner in cash and in kind, there can have been no good or valid reason under the Articles for the directors to purport to suspend the Company's obligation to pay the Petitioner the Redemption Price on or around 12 November

2008. The suspension was therefore invalid and of no effect and the Redemption Price is presently due and payable in full to the Petitioner. Further, the purported and wrongful imposition of the suspension in these circumstances discriminated against and was unfairly prejudicial to the Petitioner.

(ii) Even if the suspension had been validly imposed on the Petitioner (which it was not), there would still be no justification for the Company to pay the Other Investors before paying the Petitioner. By doing so the directors have breached (aa) their fiduciary duty to act fairly between different sections of investors, (bb) on the Company's own case, the terms of the CPOM which stated that voluntary and mandatory redemptions would be settled in the same manner, and (cc) the terms of the Exchange Offer, which stated that voluntary and mandatory redemptions would be settled in the same manner and did not state that investors who accepted the Exchange Offer would be paid before investors who did not accept it.

(h) The 12 November letter states unequivocally that a decision was taken to wind down the affairs of the Company, liquidate the Master Fund's portfolio and return the cash proceeds to all investors. The statements in Mr Iuliano's Second Affidavit dated 10 June 2009 and Walkers' letter dated 8 July 2009 that no decision was taken to wind up fully the affairs of the Company are completely contradictory to the terms of the 12 November letter.

Even if the directors had acted in accordance with the Company's constitutional documents the Company's conduct is still unfairly prejudicial to the Petitioner

50. Even if (contrary to the Petitioner's case) it was consistent with the strict legal rights and obligations of the parties under the Company's constitutional documents, it was clearly unjust, inequitable, unfairly prejudicial to the Petitioner and in breach of the directors' fiduciary duty to act fairly between different

groups of investors for the directors to have paid the Other Investors in cash while paying none of the US$27,227,268.80 due to the Petitioner, whether in cash or in kind, in circumstances where (*inter alia*):

(a) the Petitioner submitted the Redemption Request for redemption on 30 September 2008, as it was entitled to do in accordance with the Articles, whereas many of the Other Investors did not;

(b) the Petitioner was under no obligation whatsoever to accept the Exchange Offer which was subsequently made by the Company (the acceptance of which would have fundamentally altered the terms of its investment), and was perfectly entitled to decline to do so;

(c) the terms of the Exchange Offer (on which the Petitioner relied when deciding whether or not to accept that offer) stated that investors would be paid the full amount due to them irrespective of whether they accepted the Exchange Offer, and did not in any way suggest that investors who accepted the Exchange Offer might be paid in priority to those who did not accept the offer (as the Company has now done), giving rise to a legitimate expectation on the part of the Petitioner that it would be paid at the same time as investors who accepted the Exchange Offer;

(d) the 12 November letter (on which the Petitioner relied when deciding whether or not to take any action against the Company in respect of the purported suspension of the payment of redemption proceeds) stated that all investors would have their capital returned to them in cash and made no distinction between the Petitioner and the Other Investors or between voluntary and mandatory redemptions as to the timing or manner of payment; and

(e) the Petitioner has been waiting since 30 September 2008 to receive the Redemption Price of US$27,227,268.80 due to it in circumstances where the Company (i) has already distributed substantially more than that amount to the Other Investors in cash, (ii) has asserted that it has and will continue to have sufficient cash to pay the Redemption Price to the

Petitioner in full, but chooses not to make a cash payment to the Petitioner unless ordered to do so by the Court; (iii) has asserted that it could and would take steps to segregate the sum of US$27,227,268.80 (being the Redemption Price) in an escrow account as a condition of it being granted "Interim Injunctive Relief"; (iv) has been holding assets (which assets must have included cash to the value of approximately US$4,084,000) which it allegedly earmarked on 30 September 2008 to distribute to the Petitioner in kind, but has refused to distribute those assets without providing any valid reason for its refusal to do so; and (v) has stated that the purported suspension may never be lifted.

The Petitioner's position

51. In light of all of the above:

(a) the suspension was not validly imposed; or

(b) if the suspension was validly imposed, it has, or should be deemed to have, been lifted; and/or

(c) the directors have breached their fiduciary duties to act in accordance with the Company's Articles and/or to act fairly as between different sections of investors and/or to exercise their powers for a proper purpose; and/or

(d) the Petitioner has been treated unjustly and inequitably, has been unfairly prejudiced by the Company's conduct, and is entitled to be paid the Redemption Price of US$27,227,268.80 due to it in cash immediately; and/or

(e) it is just and equitable that the Company be wound up and that independent liquidators be appointed to wind up its affairs in a manner which is consistent with the rights of, and fair to, all of the Company's creditors and shareholders; and/or

(f) on a true construction of the Company's constitutional documents and/or in light of the Company's unfairly prejudicial treatment of the Petitioner

and/or on just and equitable grounds the Court should grant one or more of the alternative forms of relief sought below pursuant to Section 95(3) of the Companies Law (2009 Revision).

52. The Company asserts that it has a positive NAV (after deduction of all liabilities, including the liability owed to the Petitioner). Accordingly, the Petitioner would have a tangible interest in the liquidation.

THE PETITIONER THEREFORE PRAYS THAT:

1) The Company be wound up in accordance with the Companies Law.

2) Simon Whicker and Kris Beighton of KPMG, PO Box 493, Century Yard, Cricket Square, Grand Cayman KY1-1106, Cayman Islands 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 shall have power:

   a) 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.

   b) to take possession of, collect and get in all property or assets (of whatever nature) to which the Company is or appears to be entitled;

   c) to do all things as may be necessary or expedient for the protection of the Company's assets;

   d) to do all things (including the carrying on of the business of the Company) as may be necessary or expedient for the beneficial realisation of the property or assets of the Company (including borrowing money);

e) to appoint attorneys, solicitors and other professional qualified persons both in the Cayman Islands and elsewhere to assist them in the performance of their duties;

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 exercise and execute all the powers set out in Part 1 of the Third Schedule of the Companies Law (2009 Revision) without sanction or intervention of the Court and unprejudiced by the generality hereof;

j) 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 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 calls debts, or liabilities; and

k) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets;

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.

6) 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.

7) The Official Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties.

8) For the avoidance of doubt all payments made pursuant to paragraphs 5 to 7 above shall be made as and when they fall due out of the assets of the Company and shall be expenses in the Liquidation.

9) The costs of the Petitioner of and incidental to the Petition be paid forthwith from the assets of the Company, to be taxed if not agreed.

10) In the alternative to the orders sought at paragraphs 1 to 9 above, pursuant to section 95(3) of the Companies Law (2009 Revision) the Company be ordered to pay the Petitioner the sum of US$27,227,268.80 in cash within 7 days, failing which the Company be wound up.

11) In the alternative to the orders sought at paragraphs 1 to 10 above, pursuant to section 95(3) of the Companies Law (2009 Revision) the Company be ordered to refrain from making any payments to or redeeming the shares of any other investors unless and until it has paid the Petitioner the sum of US$27,227,268.80 in cash.

12) In the alternative to the orders sought at paragraphs 1 to 11 above, pursuant to section 95(3) of the Companies Law (2009 Revision):

a) The Company do forthwith pay to the Petitioner in cash such percentage of the Redemption Price as it has paid to the Other Investors in respect of the amounts owing to the Other Investors.

b) If any amounts are still owing to the Other Investors in respect of the 15% redemption then the Company shall make no further payments to those investors without at the same time paying an equal percentage of the Redemption Price in cash to the Petitioner.

13) In the alternative to the orders sought at paragraphs 1 to 12 above, pursuant to section 95(3) of the Companies Law (2009 Revision):

a) Subject to paragraphs c and d below, the Company do forthwith pay to the Petitioner such percentage of the Redemption Price as it has paid to the Other Investors in respect of the amounts owing to the Other Investors.

b) If any amounts are still owing to the Other Investors in respect of the 15% redemption then, subject to paragraphs c and d below, the Company shall make no further payments to those investors without at the same time paying an equal percentage of the Redemption Price to the Petitioner.

c) The Company must settle its obligation to pay the Redemption Price to the Petitioner by paying the Petitioner not less than 15% (i.e. US$4,084,090.32) of the amount of the Redemption Price in cash.

d) Subject to paragraph c above, if the Company purports to settle any part of its obligation to pay the Redemption Price to the Petitioner by the distribution of assets in kind, rather than by payment in cash, then:

i) the fair market value of the assets as of the date on which their transfer to the Petitioner is completed and perfected in all respects must be equal to the Redemption Price of US$27,227,268.80 (less the amount of cash transferred to the Petitioner);

ii) the Company is only permitted to transfer to the Petitioner, in part satisfaction of the Redemption Price, assets which constitute part

of the investment portfolio of the Master Fund and the Company is not permitted to satisfy the Redemption Price by issuing or transferring to the Petitioner assets which (aa) have been issued or otherwise created by the Company or by the Master Fund, the value of which is derived from the value of any part of the Master Fund's investment portfolio or from the Company's shares in the Master Fund; and/or (bb) are not capable of being transferred or otherwise disposed of by the Petitioner without the consent of the Company or the Master Fund or their respective directors, general partner or agents;

iii) the Company is only permitted to transfer to the Petitioner, in part satisfaction of the Redemption Price, assets which the Petitioner is permitted under all applicable laws and regulations to accept and hold;

iv) no later than 21 days before the date ("**the Payment Date**") on which the Company proposes to make an in kind distribution of assets ("**the Proposed Assets**") to the Petitioner, the Company must disclose to the Petitioner sufficient details of the nature, identity, quantity and qualification requirements of the Proposed Assets to enable the Petitioner to ascertain (with its advisors and agents) and confirm to the Company no later than 7 days before the Payment Date (or such later date as the parties may agree) (i) whether or not and the extent (if any) to which the Petitioner is permitted under all applicable laws and regulations to accept and hold the Proposed Assets and, to the extent (if any) that the Petitioner is permitted under all applicable laws and regulations to accept and hold the Proposed Assets, (ii) the account and other details of the Petitioner required for the Company to effect the distribution to the Petitioner of those acceptable assets on or before the Payment Date; and

v) if the Petitioner is not permitted under all applicable laws and regulations to accept and hold any or all of the Proposed Assets, the Company must distribute cash to the Petitioner on the Payment Date in place of those assets which the Petitioner is not so permitted to accept and hold.

14) Such further and / or alternative declarations and orders as the Court may think just and expedient.

15) Costs.

Dated this 22nd day of September 2009

Campbells

CAMPBELLS
Attorneys-at-Law for the Petitioner

Note: It is intended to serve this Petition on the Company.

INDORSEMENT

Notice of Hearing

This Petition having been presented to the Court on 22nd September 2009 will be heard at the Law Courts, George Town, Grand Cayman on 2009 at a.m./p.m. or as soon thereafter as the Petition can be heard.

This Petition is filed by Campbells, Attorneys-at-Law for the Petitioner, whose address for service is that of its Attorneys-at-Law at Fourth Floor, Scotia Centre, George Town, Grand Cayman, Cayman Islands B.W.I. (Ref: JRM/GM/15769).