

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



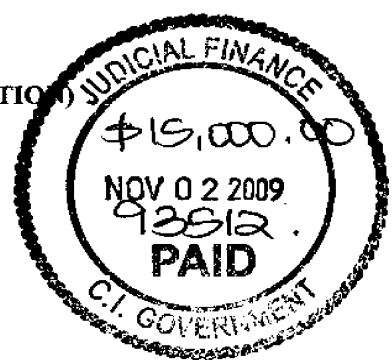
Fes00001

CAUSE NO. OF 2009

IN THE MATTER OF THE COMPANIES LAW (2009 REVISION)

AND

IN THE MATTER OF LAURUS OFFSHORE FUND, LTD (IN LIQUIDATION)



---

PETITION

---

TO THE GRAND COURT

The humble petition of Gordon MacRae and G. James Cleaver as Joint Voluntary Liquidators (“JVLs”) of Laurus Offshore Fund, Ltd (In Voluntary Liquidation) (the “Company”) c/o Zolfo Cooper, 4<sup>th</sup> Floor, Bermuda House, Grand Cayman, Cayman Islands shows that:-

**Introduction**

1. The Company was incorporated in the Cayman Islands as an exempted company with Registration number 106511 on 8 December 2000 and has its registered office c/o Zolfo Cooper, 4<sup>th</sup> Floor, Bermuda House, Grand Cayman, Cayman Islands.
2. On 3 December 2008, the Company was placed into voluntary liquidation by way of shareholder resolution and Gordon MacRae and G. James Cleaver were appointed joint voluntary liquidators.
3. The JVLs humbly petition for an order pursuant to s. 131 of the Companies Law (2009 Revision) for the continuation of the winding up of the Company under the supervision of the Court on the grounds that:-
  - 3.1. the Company is or is likely to become insolvent; and/or

- 3.2. the supervision of the Court would facilitate a more effective, economic or expeditious liquidation of the Company in the interests of the contributories and creditors;
4. An order is also sought appointing Gordon MacRae and G. James Cleaver as joint official liquidators of the Company.

### **Background**

5. The Company was incorporated to operate as an open-ended investment fund and to act as one of two feeder funds in a master/feeder investment structure (the "Laurus Master/Feeder"). Laurus Master Fund, Ltd (in liquidation) (the "Master Fund") is the master fund of the Laurus Master/Feeder. The other feeder fund in the Laurus Master/Feeder is Laurus U.S. Fund, LP, a limited partnership established under the laws of the State of Delaware (the "Onshore Fund"). The Company owns approximately 89% of the issued share capital of the Master Fund with the Onshore Fund owning the remaining 11% of the issued share capital of the Master Fund (together, "the Master Fund Shareholders").
6. Laurus Capital Management, LLC ("LCM") acted as the investment manager to both the Master Fund and the Company pursuant to the terms of an investment management agreement entered into between the parties and amended from time to time (the "IM Agreement").
7. By unanimous written resolution of the Master Fund Shareholders dated 23 September 2008, it was resolved that the Master Fund be placed into voluntary liquidation and Christopher Johnson and Russell Smith be appointed as joint voluntary liquidators. By Order of this Court dated 18 December 2008, the voluntary liquidation of the Master Fund was placed under the supervision of the Court and Christopher Johnson and Russell Smith were appointed joint official liquidators of the Master Fund (the "Master Fund JLS").

8. By notice in the Cayman Islands Gazette dated 22 December 2009, the JVLs advertised the voluntary liquidation of the Company and their appointment and called for all creditors of the Company to prove in the voluntary liquidation by 30 January 2009.

**Insolvency**

9. The JVLs have assessed the assets and liabilities of the Company and have determined that the Company is either currently insolvent or is likely to become insolvent.
10. The assets of the Company are:-
  - 10.1. 89% of the participating shares issued by the Master Fund;
  - 10.2. an investment in Valens Offshore Fund ("Valens");
  - 10.3. cash of US\$2,569,627.02 (as at 30 September 2009) held in a bank account and under the control of the JVLs.
11. Due to the liquidation of the Master Fund the Company is not able to redeem its shares in the Master Fund. The Company can only realise its investment in the Master Fund once the Master Fund JLs have realised sufficient assets in the liquidation of the Master Fund to enable a distribution to be made to its shareholders (being the Company and the Onshore Fund). It is not immediately clear when the Master Fund JLs will be in a position to make such a distribution to the Company and the Onshore Fund, however, the Master Fund JLs have indicated that they are working towards a 3 year realisation plan. Furthermore, as the net asset value of the Master Fund is not being calculated, the JVLs are not in a position to accurately value the Company's shareholding in the Master Fund.
12. The Company's financial statements dated 31 December 2008 (which were not prepared, and have not been approved, by the JVLs) record that the Company's investment in Valens has a book value of US\$35,459,171 however the financial statements also record a corresponding liability to LCM. Furthermore, the Company is currently unable to realise its investment in Valens as redemptions from that fund are suspended. It is not clear when the suspension will be lifted to enable the Company's investment in Valens to be realised.

13. As a result of the illiquidity of the Company's investments in the Master Fund and Valens, the only asset available to pay the current creditor claims against the Company is cash of US\$2,569,627.02 held by the JVLs.
14. The Company has current creditor claims of US\$10,540,068 being:-
  - 14.1. US\$1,405,197 claimed by LCM to be due for investment management fees earned in 2008 pursuant to the IM Agreement; and
  - 14.2. US\$9,134,871 claimed to be due to investors for the redemption of shares of the Company prior to the commencement of the voluntary liquidation.
15. In addition to the current creditor claims against the Company, the JVLs have also incurred fees and expenses in the sum of US\$552,262.66 (as at 30 September 2009), US\$128,953.85 of which remains outstanding.
16. In addition to its current claims, the JVLs are also aware of contingent claims by LCM for investment management fees the payment of which was deferred pursuant to the terms of the IM Agreement. The IM Agreement provides for the payment of fees to LCM calculated by reference to the net asset value of the Company (the "IM Fees"). The IM Agreement also provides that prior to the beginning of any fiscal year, LCM may elect to defer payment of any and/or all IM Fees that will be earned in that fiscal year to a future date. Prior to fiscal years 2001, 2002, 2004, 2005 and 2006, LCM elected to: defer to 2015 the IM Fees earned in 2001, 2002 and 2004; defer to 2010 the IM Fees earned in 2005; and defer to 2011 the IM Fees earned in 2006. The Company's financial statements dated 31 December 2008 (which were not prepared, and have not been approved, by the JVLs) record that LCM had earned IM Fees of US\$83,992,825 which LCM elected to defer pursuant to the terms of the IM Agreement.

**More effective and expeditious liquidation in the interests of creditors and contributories**

17. The JVLs consider that continuing the liquidation under the supervision of the Court will facilitate a more effective, economic, and expeditious liquidation in the interests of creditors and contributories.

18. Continuing the liquidation under the supervision of the Court will ensure that no creditor with a current debt can seek to gain an advantage over other creditors by initiating proceedings against the Company for the recovery of that debt. Instead, the stay of proceedings against the Company that will come into force upon a supervision order being granted will ensure that all creditors' claims are treated equitably and in accordance with the proof of debt process provided for by the Companies Winding Up Rules, 2008.
19. Additionally, although the JVLs have determined that the Company is either insolvent or likely to become insolvent, it is conceivable that ultimately the realisation of the Company's investments in the Master Fund and Valens Fund may be sufficient to pay all liabilities of the Company and thereafter allow a distribution to be made to the Company's contributories. By bringing the liquidation under the supervision of the Court the JVLs will be able to constitute a liquidation committee made up of creditors and contributories to ensure that all stakeholders of the liquidation will have a voice in relation to the process of the liquidation of the Company, the actions undertaken by the liquidators, and the payment of liquidators fees and expenses.

#### **Appointment of Official Liquidators**

20. Gordon MacRae and G. James Cleaver are "qualified insolvency practitioners" (as that term is defined by s89(1) of the Companies Law (2009 Revision)) who meet the qualification, residency, independence and insurance requirements of Regulations 4, 5, 6 and 7 of the Insolvency Practitioners Regulations 2008 and are therefore eligible to be appointed joint official liquidators of the Company. Both Mr MacRae and Mr Cleaver consent to appointment as the joint official liquidators of the Company.

#### **WHEREFORE YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:-**

1. The voluntary winding up of the Company continue under the supervision of the Court;
2. Gordon MacRae and G. James Cleaver be appointed as joint official liquidators of the Company.

3. The costs of, and incidental to this petition, be paid out of the assets of the Company as an expense of the official liquidation.
4. Such other orders or directions as the Court thinks fit.

AND your Petitioners will ever pray etc.

DATED the 30<sup>th</sup> day of October 2009



\_\_\_\_\_  
SOLOMON HARRIS  
ATTORNEYS-AT-LAW FOR THE  
PETITIONER

NOTE: This petition is not intended to be served on the Company

**THIS PETITION** was **FILED** by **SOLOMON HARRIS** of 3<sup>rd</sup> Floor, FirstCaribbean Bank, P.O. Box 1990, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Petitioners whose address for service is that of their said Attorneys-at-law.

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on 2009 at 10.00 am.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.