

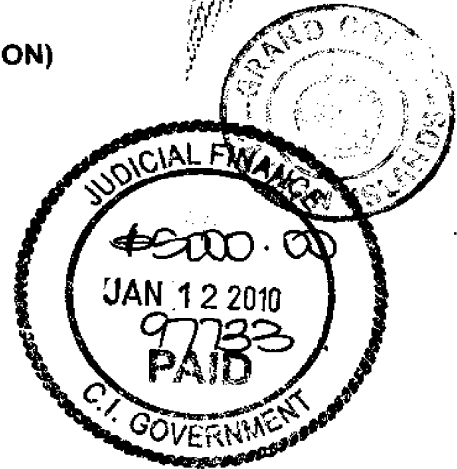
CAUSE NO. FS00024 OF 2010

IN THE GRAND COURT OF THE CAYMAN ISLANDS
(FINANCIAL SERVICES DIVISION)

IN THE MATTER OF THE COMPANIES LAW (2009 REVISION)

AND IN THE MATTER OF DFG HEDGE FUND LIMITED

PETITION



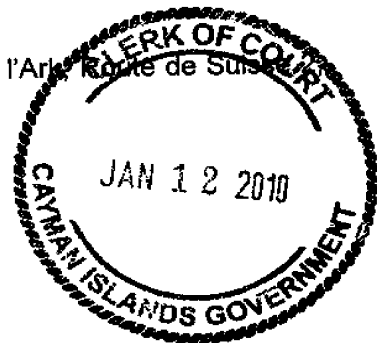
TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of:

Mr. Michael Gerard O'Shea, whose address is Villa de l'Arche, Route de Suisse

1296 Coppet / Founex, Switzerland,

shows that:



A. The Company

1. DFG Hedge Fund Limited (the "Company" or the "Fund") is an exempted limited liability company which was incorporated in the Cayman Islands on 21st April 2006 as an open-ended investment company. Its registered number is 166270.
2. The registered office of the Company is situated at M & C Corporate Services Limited, Uglan House, P.O. Box 309 GT, South Church Street, George Town, Grand Cayman, Cayman Islands.

3. The Company is registered as a regulated mutual fund with the Cayman Islands Monetary Authority. Accordingly, its activities were and are regulated, initially under the Mutual Funds Law (2003 Revision), then under the Mutual Funds Law (2007 Revision), and currently under the Mutual Funds Law (2009 Revision).
4. The authorised share capital of the Company is:
 - (a) USD 200,010 divided into 10 founder shares of USD 1.00 par value each and 20,000,000 ordinary shares of USD 0.01 par value each ("**Dollar Shares**"); and
 - (b) EUR 200,000 divided into 20,000,000 ordinary shares of EUR 0.01 par value each ("**Euro Shares**").
5. The Company is organised as a feeder fund and its total assets (to the extent not retained in cash) are invested in the ordinary shares of DFG Master Hedge Fund Limited (the "**Master Fund**"), which is an exempted limited liability company incorporated in the Cayman Islands on 21 April 2006.
6. The stated investment objective of the Company and the Master Fund was and is to provide shareholders with long-term capital growth by investing in a theme-driven global macro portfolio (see the Company's prospectus dated 29 June 2006 (the "**Prospectus**"), page 4).
7. The underlying funds or investments in which the Company (through the Master Fund) invested and invests are situated in a number of different countries.

8. The Investment Manager of the Company and the Master Fund is and was at all material times Diversica Financial Group BV (the "**Investment Manager**"), a company incorporated under the laws of the Netherlands.

9. The Administrator of the Company and the Master Fund is and was at all material times TMF FundAdministrators BV (the "**Administrator**"), a company incorporated under the laws of the Netherlands.

10. The minimum investment in the Fund was and is EUR 1,000,000 in the case of Euro Shares, and USD 1,000,000 in the case of Dollar Shares. The Fund does not appear to have imposed these minimum investment requirements: during the Extraordinary General Meeting held on 26 November 2009 (the "**EGM**"), Mr. Anthony Warnars on behalf of the Fund stated that the Fund had 15 shareholders; however, the annual accounts for the year 2007 state that the proceeds of issued shares from the Fund's inception until the end of 2007 amounted to just USD 10,817,968. (The Petitioner has not been able to verify if more shares were sold to investors after the year 2007 but this seems unlikely. Reference is made to what is stated regarding the Fund's Assets Under Management ("**AUM**") in §35, 37 and 74 below.)

11. If the Company were to be wound up, assets are likely to be available for the Petitioner. According to the latest available audited accounts of the Company (being the accounts for the year ended 31 December 2007), the Company's assets exceed its liabilities.

B. The Petitioner

12. The Petitioner is a holder of fully paid-up shares in the Company. The Petitioner therefore is a contributory within the meaning of s. 89 of the Companies Law (2009 Revision) (the "**Companies Law**"). Furthermore, all of the shares in respect of which he is a contributory were originally allotted to him, or have been held by him and registered in his name for a period of at least six months immediately preceding the presentation of this Petition. The Petitioner therefore is entitled to present this Petition pursuant to s. 94 of the Companies Law.

13. On or about 30 April 2007, Kerten Investments SARL ("**Kerten**"), a company incorporated in Luxembourg of which the Petitioner is the ultimate sole shareholder, purchased and became the registered holder of 25,000 fully paid-up Euro Shares (EUR Series 5) in the Company against a Net Asset Value ("**NAV**") date of 30 April 2007. The purchase consideration was EUR 2,500,000. On 31 December 2007 these shares were converted to 24,836.405 EUR Series 1 shares.

14. On or about 27 July 2007, Credit Suisse London Nominees Limited ("**CS London Nominees**"), acting as nominee for Credit Suisse Switzerland AG ("**Credit Suisse**"), which in turn acted as nominee for Kerten, purchased and became the registered holder of 15,000 fully paid-up Euro Shares (EUR Series 7) in the Company against a NAV date of 30 June 2007. The purchase price was EUR 1,500,000. On 31 December 2007 these shares were converted to 14,650.23 EUR Series 1 shares.

15. On or about 23 October 2008 CS London Nominees (acting as nominee for Credit Suisse, which in turn acted as nominee for Kerten) gave notice in accordance with the Company's Articles of Association (the "**Articles**") that it wished to redeem 14,650.23 shares in the Company (which it held beneficially for Kerten) with a Redemption Day (as defined in the Prospectus) of 2 January 2009. Those shares were redeemed in the circumstances set out later in this Petition.
16. On 20 April 2009, the Administrator confirmed a transaction by which all shares in the Company which had previously been held by and registered in the name of Kerten (together with all rights pertaining to the shares which had previously been held by or on behalf of Kerten) were transferred to the Petitioner.
17. By Deed of Transfer dated 15 December 2009, Credit Suisse and CS London Nominees transferred all rights and obligations pertaining to all shares which they had held in the Fund on behalf of Kerten, to the Petitioner.

C. Basis for the just and equitable winding-up of the Company

18. The Petitioner respectfully seeks an order under s. 92(e) of the Companies Law that the Company be wound up on the basis that it is just and equitable to do so.
19. The grounds for this Petition can be summarised briefly as follows. These grounds will be dealt with in more detail under the headings set out below:

Section D below: The Company has failed, in a timely manner, to file audited (or any other) accounts, has failed to provide information to

shareholders, and has supplied incorrect and/or misleading information both at the time of subscription for shares in the Company and subsequently; that information was relied upon by shareholders in making subscription and redemption decisions. The information which the Company did provide has been late and sporadic, thus impeding the ability of shareholders to make informed investments decisions.

Section E below: The Company's NAV is said to have risen and fallen significantly in a way which does not conform to market performance. The explanation that was finally provided by the Fund indicates that the NAV which was applied in view of the partial redemption mentioned in §50 et seq. below, has been set too low.

Section F below: The Company has failed to disclose a significant conflict of interest concerning the Company's largest single investment.

Section G below: The Company has invested almost all of its assets by value in an almost completely illiquid investment, which means that the Company is, in practice, unable to comply with any redemption requests and consequently shareholders are in effect locked into the Company.

Section H below: The Company has purported to suspend redemptions of shares in circumstances which are not permitted by the Articles.

Section I below: There is no other effective relief.

Section J below: Summary.

D. Failure to file accounts, late provision of accounts, failure to provide information to shareholders, and late and sporadic provision of information

(1) Obligations of the Company in relation to accounts and other financial statements

20. Articles 129-131 and 146 of the Articles provide:

"129. *The Directors shall cause proper books of account to be kept with respect to:*

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place;*
- (b) all sales and purchases of goods by the Company;*
- (c) the assets and liabilities of the Company.*

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

130. *The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Shareholders not being Directors and no Shareholder (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by statute or authorised by the Directors or by the Company in general meeting.*

131. *The Directors shall from time to time cause to be prepared profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.*
146. *The first fiscal period of the Company shall begin on the date of incorporation of the Company and end on 31st December 2006 and thereafter the fiscal year shall end on 31st December in each year unless the Directors prescribe some other period therefor."*
21. As far as the Petitioner is aware, no determination has been made by the Directors or the general meeting under Article 130 that any shareholder shall have any right of inspecting any account or book or document of the Company. Consequently, no shareholder has any entitlement to inspect such books of account or other documents of the Company.
22. The requirement under Article 131 to prepare profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law is or includes a reference to the requirement to prepare audited accounts pursuant to s. 8 of the Mutual Funds Act (2003 Revision). This was replaced by s. 8 of the Mutual Funds Act (2007 Revision) and then by s. 8 of the Mutual Funds Act (2009 Revision).
23. Furthermore, the Prospectus states (at page 7):

"Reports and Financial Statements

Annual financial statements of the Fund and Master Fund will be made up to 31 December in each year. An annual report and the audited financial statements of the Fund and Master Fund will be sent to Shareholders as soon as practicable and in any event within six months of the financial year end.

The Fund and the Master Fund will prepare and circulate to Shareholders within four months of the end of the relevant period a half-yearly report which will include unaudited

financial statements for the Fund and the Master Fund. The first half-yearly report will cover the period ending 30 June 2007."

And the Prospectus also states (at page 28):

"REPORTS AND FINANCIAL STATEMENTS

The financial year of each of the Fund and the Master Fund will end on 31 December in each year.

An annual report and audited financial statements for the Fund and the Master Fund in respect of each financial year prepared in accordance with IFRS [International Financial Reporting Standards] will be sent to Shareholders as soon as practicable and in any event within six months of the end of the Fund's financial year. The first audited financial statements will cover the period from the date of the Fund's incorporation until 31 December 2006. ...

The Fund and the Master Fund will prepare and circulate to Shareholders within four months of the end of the relevant period a half-yearly report which will include unaudited financial statements for the Fund and the Master Fund. The first half-yearly report will cover the period ending 30 June 2007.

Audited annual financial statements and half-yearly unaudited financial statements of the Fund and the Master Fund will be posted to each Shareholder at its registered address free of charge and will be made available for inspection at the offices of the Administrator and the registered office of the Fund."

(2) Breach of the obligations of the Company in relation to accounts and other financial statements

24. In breach of (1) the requirements of Article 130, (2) s. 8 of the Mutual Funds Law (2003 Revision) (and the equivalent sections of the later Mutual Funds Laws), and (3) the representations made in the Prospectus, from the date of its incorporation until 13 November 2009 the Company failed to file or provide copies of any audited accounts, annual reports, half-yearly reports or unaudited financial statements whatsoever for the Company or the Master Fund. On 13

November 2009, the Company provided the Petitioner with a copy of the annual report and audited accounts for the period from 21 April 2006 to 31 December 2007. However, the Company has still not filed or provided the Petitioner with a copy of the half-yearly statements for the half-year ending 30 June 2007, the half-yearly statements for the half-year ending 30 June 2008, and the annual report and audited accounts for the year to 31 December 2008. The Company is in breach of its obligations to do so.

25. The Company has failed or refused to comply with those obligations in spite of repeated requests by the Petitioner to do so and, indeed, in spite of repeated requests by its own Administrator to do so. Numerous requests were made by and on behalf of the Petitioner to the Company and the Administrator requesting information and documentation, including requests for (a) audited financial statements for the Company and the Master Fund, (b) half-yearly reports, (c) draft reports (if final reports were not available) together with an explanation as to why final reports had not been produced, and (d) an estimated date for the completion of the audit.

(3) Requests for other information and documentation

26. Furthermore, numerous requests were also made by and on behalf of the Petitioner to the Company and the Administrator for other information and documentation, including:
- (a) The figure for the AUM of the Company.
 - (b) Details of the interests of the Directors, the Investment Manager and other persons associated with the Company and in the Company itself.

- (c) NAVs for the Company since October 2008, including specifically the NAV for 31 December 2008.
- (d) Clarification as to the reason for the fall in NAV from September 2008 to November 2008.
- (e) Detail of the valuation methodology employed.
- (f) Detail of the investments of the Company and a report of the Company's activities.
- (g) The amount of fees (if any) deducted from the redemption payment.
- (h) Kerten's percentage (both direct and indirect) of shares in the Company.

(4) The Administrator's frustrations with the Company's lack of response

27. By an e-mail dated 27 April 2009 to Mr. Brian Walsh of Kerten, the Administrator stated:

"Just to inform you we have again formally requested the Board of Directors of DFG Hedge Fund Ltd. and DFG Master Hedge Fund Limited as well as the Board of Diversica Financial Group BV in very clear terms to respond to your questions. We have had no clear response from them on our earlier queries / letters and have indicated that we require their response before May 1, 2009.

We are doing everything in our power as administrator to get the answers to your questions released as soon as possible, but we are not getting a lot of cooperation, which we can not accept."

28. The Administrator further responded to Kerten's requests by an e-mail dated 26th May 2009, stating *inter alia* that the Administrator was not in a position to finalise the December NAV because of a failure on the part of the Company to provide information. The Administrator stated:

"we are currently considering our position towards the fund, functioning as administrator for the fund has become close to impossible."

(5) Attempts to convene an EGM to seek the requested information

29. The Petitioner's unanswered questions as to the percentage of his shareholding meant that the Petitioner was unable to ascertain whether he had (directly or indirectly) the requisite 25% interest to require the Directors to convene an EGM (Article 50(3)). Therefore, by a letter dated 4 September 2009 from the Petitioner's Dutch solicitors (Spigthoff) to the Company's Dutch solicitors (Simmons & Simmons), the Petitioner requested confirmation that the Directors would convene an EGM, failing which an advertisement would be placed in the Financial Times in order to enable the Petitioner to receive contact from other shareholders.

30. On 8 September 2009, Simmons & Simmons e-mailed Spigthoff stating:

"We hereby inform you that the Directors of the DFG Fund shall convene a shareholders meeting for the purposes of discussing the questions and issues raised by your clients.

We will immediately instruct Cayman Island lawyer[s] to deal with the required formalities and procedures with respect to such shareholders meeting ... It is the serious intention to hold the shareholders meeting before the end September."

31. Following further requests to the Administrator to provide the requested information, Spigthoff received a letter dated 16 September 2009 from Allen & Overy, the Administrator's solicitors, which stated *inter alia*:

"TMF [the Administrator] has submitted all of your client's requests to the Funds with the question if TMF is free to respond to your client's questions ... The answer by the Fund's lawyers, Simmons & Simmons, was negative."

32. In spite of its assurances, the Directors failed to convene an EGM before the end of September. On 6 October 2009 Spigthoff again wrote to the Company requesting various information and also stating *"You agreed that an EGM would take place as soon as possible. ... Please confirm ... when the EGM will take place ..."*

33. On 9 October 2009 Simmons & Simmons e-mailed Spigthoff requiring Kerten to provide a formal requisition of an EGM pursuant to Articles 50(3) and (4), but again failing to provide sufficient information to allow Kerten to know whether it had a 25% or more interest in the Company.

(6) The eventual provision of certain limited information by the Company in October 2009, the remaining outstanding information, and the Company's false representations

34. In a newsletter dated 12th October 2009 and a letter dated 14th October 2009, the Company eventually provided certain limited information concerning the Company. The information in these documents revealed as follows.

35. *First*, the letter dated 14 October 2009 revealed that the Company's previous statements as to the AUM of the Company have been false.

(a) In his e-mail of 10 May 2007 to Mr. Walsh of Kerten, Mr. Warnars of the Company stated that the AUM of the Company amounted to 25 million (without however specifying the currency).

- (b) In his e-mail of 5 March 2008 to Mr. Walsh of Kerten, Mr. Warnaars of the Company stated that the AUM of the Company amounted to 65 million, again without specifying the currency. The Company also stated that it expected several hundred millions of Euros worth of prospective investments:

"CONFIDENTIAL"

DFG Hedge Fund, Ltd. – Current AUM – 65 mln Including Kerten

Institutional strong commitments for the next several months (advance discussions and due diligence process):

<i>UK Institutional 1:</i>	<i>20 mln (March, April and June)</i>
<i>US Institutional distributor 1:</i>	<i>75 mln (March – in process of due diligence)</i>
<i>US Institutional 11:</i>	<i>100 mln (June)</i>
<i>NL Family office:</i>	<i>40 mln (pending due diligence and in tranches – it appears they are allocating in 10 mln monthly tranches)</i>
<i>Middle East:</i>	<i>in talks for 250 mln – 500 mln (target date in June – but we might start a new fund with them - it is rather large)</i>
<i>NL Banks:</i>	<i>10 mln in (April, and May)</i>
<i>Three UHNI (UK, NL)</i>	<i>30 mln (Additional)"</i>

- (c) Through information contained in the Fund's annual statements for 2007 and statements made by the Fund's management during the EGM, it has transpired that both the statement of May 2007, regarding the AUM of "25 million", and the statement of March 2008, regarding the AUM of "65 million", are untrue.
- (d) It appears from the annual accounts for 2007 that, when the Fund was launched in April 2006, it started with zero AUM. This is apparent from the overview entitled "Statement of changes in net assets attributable to holders of non-voting redeemable shares, aggregated" on page 11 of the annual accounts for 2007. In this overview, the "Net assets at beginning of period" are stated as zero. The overview also shows that over the whole of 2007 the proceeds of the issued shares amounted to USD

10,817,968 (as reported on page 11 of the Annual Report for 2007). Of this amount, EUR 4 million was contributed by the Petitioner (i.e. USD 5,321,272 based on the average USD/EUR exchange rate of 0.7517, as reported on page 31 of the Annual Report for 2007). This means that approximately half of the aggregate amount that was invested by way of subscriptions in the Company in 2007, came from the Petitioner and from Kerten. The Petitioner has no means of assessing whether any other investments had been made in the Fund at the time when his and Kerten's subscriptions were made; nor can the possibility be excluded that the Petitioner and Kerten were in fact the only shareholders at that time.

- (e) According to the letter dated 14 October 2009, as of 31 August 2009, the Company's AUM amounted to only USD 19.6 million (EUR 12.7 million), which was after the NAV had been adjusted from EUR 55 per share at the month's end of April 2008 to EUR 165 per share at the month's end of May 2008. The Petitioner notes that, other than the Petitioner's own redemptions as referred to in this Petition, no redemptions have taken place. Consequently, in March 2008 the Company overstated its AUM by approximately 500%.
- (f) During the EGM, when asked how these figures relate to the Funds' earlier statements in May 2007 that the AUM amounted to (EUR or USD) 25 million, Mr. Warnars of the Fund initially denied that the Fund had ever made any statements to the effect that the AUM would have been "25 million". When confronted with his e-mail of May 2007 at the EGM Mr. Warnars conceded that these statements had been "*a mistake which should have been corrected earlier*".

- (g) During the EGM, Mr. Warnaaars, acting on behalf of the Fund, also denied that the Fund had ever held an AUM of "65 million", or that he had ever made a statement to that effect. When confronted with his e-mail of 5 March 2008, Mr. Warnaaars apparently changed his mind and stated that he had meant to refer to a certain currency account which held 6.5 million and that it had been a mistake. This explanation is incompatible with the above quotation from the e-mail of 5 March 2008 and is therefore clearly incorrect.
- (h) For the sake of completeness, it is noted that, although the Fund has undertaken to circulate formal minutes of this meeting, the Petitioner has still not received these.
36. *Secondly*, section 5 of the letter sent under cover of e-mail from Simmons & Simmons dated 14 October 2009 confirmed that the financial statements of the Company for the years ended 2007 and 2008 had still not been concluded but failed to provide any explanation for the delay.
37. *Thirdly*, information contained in the newsletter dated 12 October 2009 regarding the Fund's AUM, also (finally) revealed that the Petitioner held more than 25% of the issued shares in the Company. Further, the newsletter referred to "*the coming EGM*" but without providing any details as to when it would take place or what the agenda would be.
38. *Fourthly*, neither the newsletter dated 12 October 2009 nor the letter dated 14 October 2009 included any details as to i) the holdings of the Company; or ii) the underlying transactions and positions which determined the calculation of the

NAV. Consequently, the Petitioner had and continues to have insufficient information to enable him to verify the calculation of the NAV used to quantify the Redemption Price, which in turn is used to determine his redemption payment (see Section E below).

(7) The EGM

39. On 26 November 2009, the EGM of the Company took place. The Petitioner's complaints as outlined above still remain and, as stated in § 35 above, are compounded by the Company's responses at the EGM.

E. Non market-conforming performance of investments

(1) Obligations of the Company in relation to calculation and payment of Redemption Price

40. The shares of a shareholder in the Company are, in principle, redeemable at the option of the shareholder on any Redemption Day (defined as the first business day of January, April, July and October – Article 1) following at least 60 calendar days' notice given by the shareholder (Article 45).

41. The Redemption Price for the shares redeemed is to be calculated according to a formula set out in Articles 42 to 45 and subject to the terms specified in the Prospectus (Article 45(1)).

42. The Prospectus (page 20) provides that:

"The Redemption Price per Share of a particular series will be equal to the Net Asset Value per Share of that Series as at the Valuation Day immediately preceding the relevant Redemption Day."

43. As for the timing of payment of the Redemption Price, the Prospectus (page 20) provides:

"The Fund will normally remit 95 per cent of the redemption proceeds payable on the redemption of Shares within one month of the relevant Redemption Day with the remaining 5 per cent remitted after the preparation of the next following audited annual financial statements or half-yearly unaudited financial statements whichever is sooner."

44. In addition, the Prospectus (page 47) provides:

"The most recent Net Asset Value per Share, once calculated, will be notified by the Administrator as soon as reasonably practicable to Shareholders."

45. Furthermore, in an e-mail dated 12 September 2007 from Mr. Warnaaars of the Company to Mr. Walsh of Kerten, the Company confirmed that the Administrator:

"will release the NAV on a monthly basis – third week of the month. This is most important than our newsletters and research notes."

(2) Redemption by or on behalf of Kerten

46. On 8 October 2008, Kerten received from the Company the statement of the NAV for 31 August 2008, which was stated to be EUR104.71 per share.

47. On the basis of this NAV, and the Petitioner's (and Kerten's) confidence in the Fund's liquidity based on the repeated assurances regarding the size of the Fund, on or about 23 October 2008, CS London Nominees (on behalf of Kerten) gave notice to the Company that it wished to redeem 14,650.23 Euro Series 1 Shares in the Company held on behalf of Kerten for redemption on 31st December 2008.

(3) Late payment of Redemption Price

48. According to Article 45(1) and the Prospectus (page 20), payment of the proceeds of redemption (or at least 95% of the proceeds of redemption) was due no later than one month after 2 January 2009 (being the first business day of January 2009).
49. However, in spite of requests for payment, no payment was received until 10 July 2009. No explanation was provided for the late payment, nor was any interest paid on the late payment.

(4) No details of calculation of Redemption Price

50. Finally, on 10 July 2009, the redemption request of 23 October 2008 resulted in the payment, received on 10 July 2009, of EUR 905,823.72. No details or explanation were provided (1) as to the figure for the NAV which had been applied in order to calculate this Redemption Price, (2) as to how that NAV had been calculated, (3) as to whether this payment represented 100% of the redemption amount due or only 95% or some other figure and if so what, or (4)

what fees, if any, had been deducted or by whom and in respect of what in calculating this Redemption Price.

51. If the payment received was intended to represent 100% of the Redemption Price, it is to be inferred that there had been a substantial drop in the value of the Company of almost 41% in the three month period between the price most recently communicated to Kerten prior to submission of its redemption notice (viz 31 August 2008 NAV communicated on 8 October 2008 of EUR 104.71) and the Redemption Day. The last NAV per share communicated after submission of the redemption notice submitted (and before the Redemption Day) was EUR 99.45 for 30 September 2008 and was reported on 17 November 2008. This indicated a 38% fall in value between 30 September 2008 and the Redemption Day (being 2 January 2009). The Fund gave no indication of the precipitous fall it now claims to have occurred during the redemption notice period. Subsequently, between 22 January 2009 and 30 July 2009 no NAV information was reported. The NAV of 31 December 2009 was only submitted at the end of July 2009, i.e. more than 6 months after this information was due. The NAV per share on the Redemption Day was EUR 61.83 (viz., a total Redemption Price of EUR 905,823.72 divided by the number of shares redeemed, namely, 14, 650.23).

(5) Eventual provision of details regarding calculation of Redemption Price, and the substantial fall and rise in the NAV

52. On 28 July 2009 the Company provided Kerten with a document entitled "Statement of Holdings" prepared by the Administrator. This Statement of Holdings revealed:

- (a) That the December 2008 NAV per share was EUR 61.83, which represented a 40.95% decrease since Credit Suisse had submitted its redemption request on 23 October 2008.
 - (b) That between April and May 2009 there had been a significant increase in the Company's NAV of 168% (*viz.*, from a NAV per share of EUR 55.09 in April 2009 to a NAV per share of EUR 165.63 in May 2009).
53. Consequently, according to the Company there was (1) a substantial *decrease* in the NAV of the Company immediately following Kerten's redemption request and before the Redemption Day for that redemption, coupled with (2) a substantial *increase* in the NAV of the Company immediately following the relevant Redemption Day and once Kerten's shares had been redeemed at the lower figure. Such a significant decrease and subsequent increase in the NAV has not been sufficiently explained by the Company. In the newsletter dated 12 October 2009, the Company attributed the increase in the NAV per share between April 2009 and May 2009 from EUR 55.09 to EUR 165.63 to the Company's "*mineral project*".
54. In the newsletter dated 12 October 2009, the Company appears to imply that the increase in the NAV is caused by a third party valuation of the "*mineral project*".
55. During the EGM on 26 November 2009, the Company further clarified that the huge increase in the NAV could be attributed to an investment related to Aurelio Resource Corporation, Inc. ("**Aurelio**"), a listed company incorporated in Nevada, United States of America, controlled by the father of Mr. Warnaars, a Director of

the Company. This investment was made by a subsidiary of the Company, Telifonda (Cayman) Limited ("**Telifonda**"), a special purpose vehicle established by the Investment Manager.

56. During the EGM, Mr. Warnars on behalf of the Fund stated that this investment relates to a loan of USD 2 million which Telifonda had, in effect, provided to Aurelio in early 2008. In fact, it appears from Aurelio's publicly available SEC filings that the Company has invested USD 3.5 to 4 million in this "*mineral project*", such investment consisting of the following amounts:
- (a) USD 2.5m consideration paid for which Telifonda acquired 100% of Bolsa Resources Inc. ("**Bolsa**") (a subsidiary of Aurelio which held the copper mining assets). According to the Form 10 K filed by Aurelio for the fiscal period ended 31st December 2008, this cash consideration was offset against a bridging loan of USD 2 million which Telifonda advanced to Aurelio on 1st October 2008. The Form 10 K does not specify the arrangements between the parties regarding the remaining cash consideration of USD 500,000;
 - (b) USD 1.45m unsecured loan with a term of four years, which was advanced to AIX Corporation, a wholly owned subsidiary of Aurelio, on a non-recourse basis; and
 - (c) USD 50,000 in view of the purchase of a 3 % NSR royalty interest in Aurelio's Gailanes gold project.
57. The loan portion of the investment was allegedly converted into 1,137,500 shares in the capital of Bolsa. It appears that in a report dated 22 June 2009, Evans &

Evans, an investment bank without apparent expertise in the mining or resource industry, valued these assets to be worth between USD 16.1 and 16.7 million as at 31 May 2009. According to the Fund, this valuation caused the huge upswing in the NAV as at that the same date. The Petitioner has not been provided with a copy of the Evans & Evans valuation.

58. As stated, the Company only included the abovementioned alleged rise in value in the NAV of 31 May 2009, and not in the NAV's for previous months, notwithstanding that definitive agreements in respect of the Company's and Telifonda's investments in Aurelio and Bolsa were presented to the Aurelio Board on 14 November 2008. The Aurelio Board approved these and authorised officers of the Company to execute and seek approval of the Aurelio stockholders. The Company controlled this transaction, through the appointment of its own Directors to the Board of Aurelio, through the large shareholding in Aurelio held directly by the Company and by the Company's connected parties, as well as through the father/son relationship between the Aurelio Board Chairman (Dr Frederik Warnaaars) and a Director of the Company (Mr. Antony Warnaaars).
59. Neither the Fund nor any of the persons and entities involved with the Fund have provided the Petitioner with any underlying evidence in support of the Company's 31 May 2009 NAV. During the EGM the Fund remained vague about the date on which the actual transaction described in §55 above was effected. Instead the Company has merely pointed to the SEC's approval, which was allegedly required for this transaction and was allegedly only granted in March 2009. Mr. Warnaaars also stated, however, that SEC approval had already been requested

in June/July 2008. This indicates that the transaction was generating value for the Company well before Kerten submitted its redemption notice on 23 October 2008.

60. Pursuant to the questions asked by the Petitioner and on behalf of Kerten during the EGM, the Company committed to providing additional information regarding the Aurelio transaction. In its letter of 10 December 2009, the Company states that on 28 February 2009, the Aurelio shareholders approved the acquisition of the entity which held the mining rights. The Company has not, however, provided any evidence in support of this statement. Despite being requested, the Company has not stated on which date this transaction was agreed or offered any explanation as to why the value attributed to Aurelio's mining rights did not previously form part of the Company's portfolio.

61. Once again, given the Company's unresponsiveness and lack of information as to the exact timing of the Aurelio transaction, the Petitioner has no possibility of establishing whether the alleged value of this transaction should or should not have been included in the NAV of 31 December 2008. If this transaction is deemed to have materialized prior to 31 December 2008, the value of this investment should have been included in the NAV of that date and the Petitioner and Kerten should have benefited from the substantially higher NAV arising therefrom. In that case, the payment to which the Petitioner and Kerten were entitled should not have been EUR 905,823.72 (being the amount that was finally paid out on the basis of the NAV of 61.83), but closer to a range of EUR 2.3 million (being the value of the redeemed shares against an NAV of approximately 160). This would mean that if it would transpire that the Fund incorrectly failed to

(b) an e-mail dated 4 September 2008 from [redacted]

Company which *inter alia* stated:

"Regarding the mine transaction – has been work in progress – transaction is not done. If the transaction is done we would then price it at PAR – not at ZERO.

The transaction will require two - three independent parties to value it and then approved by E&Y and our administrator.

DFG Hedge Fund believes there is significant upside to this transaction. In the next few months DFG Hedge Fund will realise this transaction should DFG Hedge Fund want to proceed with this transaction.

Currently our mining deal is not in effect until our due diligence process is complete.

Finally, DFG Hedge Fund is the largest individual shareholder of Aurelio Resources Group."

65. Neither of these e-mails, nor so far as the Petitioner is aware, any other communication from the Company or its representatives to the Petitioner, disclosed the father/son relationship between Mr. Warnaaars and the president of Aurelio, Dr Frederik Warnaaars.
66. The failure of Mr. Warnaaars to declare his interest in the transactions with Aurelio as detailed above, constitutes a breach of Article 86(2) which permits a contract

or arrangement with the Company in which a Director of the Company enters into subject to the proviso that "*the nature of [the Director's] interest is or has been declared in accordance with [the] Articles*". So far as the Petitioner is aware, there has been no declaration of interest by Mr. Warnaaars in this respect.

67. Furthermore, the Prospectus was an "*offering document*" within the meaning of s. 2 of the Mutual Funds Law (2003 Revision) (and the equivalent sections of the later Mutual Funds Laws).

68. The Prospectus (pages 48-49) states that:

"Save as disclosed herein, no Director has any interest, direct or indirect, in the promotion of or in any assets which are proposed to be acquired, disposed of by or leased to the Fund and no Director has a material interest in any contract or arrangement entered into by the Fund which is unusual in nature or conditions or significant in relation to the business of the Fund, nor has any Director had such an interest since the Fund was incorporated."

69. In the circumstances set out above, the Prospectus failed to describe the equity interests in the Company in all material respects, and failed to contain such other information as was necessary to enable a prospective investor in the Company to make an informed decision as to whether or not to subscribe for or purchase the equity interests. Consequently, the Company is in breach of its obligations under s. 4(6) of the Mutual Funds Law (2009 Revision).

G. Illiquidity of investments and effective lock-in of shareholders

70. The Company is and was at all material times intended to operate as an open-ended investment company (Prospectus, page 4). In other words, it is and was

at all material times intended to operate as a collective investment fund capable of issuing and redeeming shares at any time.

71. The Prospectus (pages 4 and 8) described the various types of investments in which the Company would be investing, dividing them into various so-called "tactical books". The Prospectus (pages 4 and 8) assured potential investors that "These books are designed to be independent from each other ... with the aim of diversifying the Master Fund's exposure". While at least one of these "tactical books" (viz., the "multi-strategy book") could invest in "less liquid" investments, others of the "tactical books" (viz., the "global macro book") were intended to invest in "liquid" investments.
72. Page 8 of the Prospectus further states that "The Master Fund's risk profile will be quantified by **expected drawdown**, **expected volatility** and **expected market factors exposure**." (emphasis added) Accordingly, the Master Fund, and indirectly, the Fund, were required when considering investment strategy and the liquidity of investments, to bear in mind the expected levels of redemptions by shareholders. It follows that the Fund was compelled to ensure a certain minimum liquidity within the Fund so as to enable the Fund to meet shareholders' redemption requests. On the basis of the matters set out in the Petition, this requirement has not been adhered to.
73. On 31 July 2009 the Company sent a notice dated 28 July 2009 purporting to suspend capital transactions in the Company with effect from 1 August 2009, to include the suspension of subscriptions and redemptions of shares in the Company. The notice stated that the suspension of subscriptions and

redemptions was due to “*the illiquidity of one of the Fund’s core holdings*” and “*Broad capital market illiquidity*”. It is to be inferred that the “*core holding*” referred to is the mineral asset acquired from Aurelio. The Company has stated on multiple occasions (including in the Company’s notice to shareholders dated 10 December 2009 entitled “*Partial Redemption and In Kind Payment Transaction*” which is cited in more detail in §76 below) that the mineral asset forms the majority of the Company’s assets and is very illiquid.

74. The fact that the vast majority of the assets of the Company appear to be invested in this project is further underlined by the Company’s letter of 14 October 2009. In this letter, the Company indicated that the AUM at that time (*viz.*, after Kerten’s redemption) amounted to approximately USD 19.6 million. In that letter, the Company stated that in the fourth quarter of 2008, one client redemption occurred (*viz.*, Kerten’s redemption). The AUM as at December 2009 may be calculated by reducing the amount of USD 19.6 million with the percentage by which the NAV rose between December 2008 and September 2009. The latest NAV that has been reported is the NAV of the end of August 2009, of 159.33 per share which was received on 28 September 2009. Assuming that by the end of September the NAV per share was still approximately EUR 160, the AUM of the Company in December 2008 must have been around USD 7.57million (NAV of 31 December 2008 EUR 61.81). If this is correct, the USD 4 million transaction (that is to say, the purchase of Bolsa from Aurelio) would at that time have constituted approximately half of the Company’s AUM.

75. The investment in Aurelio is inherently and severely illiquid. At the EGM on 26 November 2009, the Company confirmed that it could take 10 to 20 years for the mining project purchased from Aurelio to start delivering copper. Consequently, the Company has invested the majority of its assets in a single project which is by its nature illiquid. As a result, the Directors of the Company have purported to be obliged to suspend all redemptions of shares in the Company and it appears that this purported suspension will last into the foreseeable future.
76. Meanwhile, in its letter of 8 December 2009, the Company has stated that it has allegedly sold its interest in the abovementioned mining project in exchange for a promissory note (the BP Resource Note) issued by a certain, not specified, third party in the market. Further, on 11 December 2009 the Company provided the Petitioner and Kerten with a notice to the shareholders dated 10 December 2009, in which the Fund offers its shareholders the possibility to partially redeem their interest in the Fund to the extent that it relates to the interest in the mining project. In this letter, the Company indicates that the promissory note now is its core asset. In the letter, the Fund also states that the BP Resource Note has a long term maturity, is highly illiquid in nature, and that the aim of this offer is to reduce the Fund's exposure to the BP Resource Note and improve its liquidity. However, neither in the letter, nor in the notice does the Fund provide an indication as to the identity of the debtor, the value or terms of the promissory note, or the amount that may be expected upon redemption (which it indicates may be in the distant future). Indeed, it must be inferred that this transaction was close to maturity at the time of the EGM, yet no information was tendered at that time. Once again, the complete lack of information by the Company makes it impossible to make an informed decision as to this "offer".

77. Despite repeated requests from the Petitioner, the Fund has failed to supply any meaningful information regarding the transaction. Given that the shareholders have absolutely no indication of the payment which the Company is willing to make, they have little choice other than to retain their shares in the Company, thus locking in their investment in the Company indefinitely. This means that the Company can no longer fulfil its stated objective as an open-ended investment company. The substratum of the Company has therefore been lost.

78. The Petitioner notes that the Fund's conduct described above is contrary to the mandate of the Fund. The Funds very name, "Diversica", is derived from an investment strategy aimed at diversifying risk by placing its assets in three different asset allocation books, these books being (i) the Global Macro Book; (ii) the Long Short Value Book; and (iii) the Multi Strategy Book. This is apparent from a presentation supplied by or on behalf of the Fund on 12 March 2007 prior to subscription. According to this presentation, both the Global Macro book and the Long/Short value book would contain liquid instruments. Only the Multi-Strategy book would contain illiquid instruments. By placing practically all of the funds entrusted to it into one, highly illiquid asset in a related party transaction, the Fund exceeded its mandate given to it by its shareholders.

H. Suspension of redemptions in circumstances not permitted by the Articles

(1) Suspension of redemptions – provisions in the Articles

79. As stated in paragraph 73 above, the Company has purported to suspend subscriptions and redemptions of shares in the Company.
80. The provisions on which the Company purported to rely in that notice were contained within Article 44(1)(b) and (c). These provide:

"The Directors may suspend the calculation of the Net Asset Value and the Net Asset Value per Share during:

...

- (b) any period when any emergency exists as a result of which disposal by the Company or the Master Fund of investments which constitute a substantial portion of its assets is not practically feasible;*
- (c) any period when for any reason the prices of a material portion of the investments of the Company or the Master Fund cannot be reasonably, promptly or accurately ascertained; ..."*

(2) Article 44(1)(b) and (c) not triggered here

81. However, the requirements of Article 44(1)(b) and (c) are not satisfied here. There is no "emergency" (within the meaning of Article 44(1)(b)). Any illiquidity in the Fund's investments is due to the deliberate decision of the Fund to invest a substantial portion of its assets in an investment which is inherently illiquid. Furthermore, it is not the case (within the meaning of Article 44(1)(c)) that the prices of a material portion of the investments of the Company or the Master Fund cannot be reasonably, promptly or accurately ascertained. There is no material impediment to ascertaining those prices. Indeed, the Company has expressly *not* suspended the calculation of the NAV (as per the notice of suspension of capital transactions dated 28 July 2009). Accordingly and contrary to the Company's stated position, it is possible to continue to calculate the NAV with reasonable accuracy.

82. Thus, the Directors have no power in the present circumstances to suspend the calculation of the Net Asset Value.

(3) No power to suspend redemptions when NAV not suspended

83. Furthermore, Article 44(2) provides:

"No Shares will be issued or redeemed or exchanged on any Subscription Day or Redemption Day, as the case may be, when the determination of Net Asset Value is suspended as above. ..."

And Article 45(1), proviso (e), provides:

"If the determination of the Redemption Price is suspended beyond the day on which it would normally occur by reason of a declaration by the Directors pursuant to Article 44 (suspension of the calculation of Net Asset Value) the right of the Applicant to have his Shares redeemed pursuant to this Article shall be similarly suspended ..."

84. Consequently, the redemption of shares may only be suspended when the calculation of the Net Asset Value is itself suspended. However, the notice of suspension of capital transactions made it clear (with emphasis added) that:

*"The Board has ... decided **not** to suspend NAV calculations and will continue to supply monthly NAV's as it believes that this is in the interest of Shareholders."*

85. Accordingly, given that the calculation of the NAV is not suspended, there is no right in the Company to suspend redemptions of shares. The effect of the Company's actions is to purport to suspend redemption of shares in the Company because of purported difficulties in calculating the NAV, but

nevertheless to continue to calculate the NAV. The Petitioner does not know whether or not this is in order to allow the fees of the Investment Manager to continue to be drawn, given that the fees of the Investment Manager are calculated (at least in part) according to the NAV (Prospectus, pages 6 and 26).

I. No other effective relief

86. Under the Articles, only the holder(s) of Founder Shares may appoint or remove the Directors (Articles 9(1) and 109-110). The Founder Shares are held by the Investment Manager (Prospectus, page 44). The Petitioner therefore has no right to remove any of the Directors, or to vote on any resolution seeking to remove any of the Directors.

J. Summary

87. For the reasons set out above, the Petitioner respectfully submits that in all the circumstances it is just and equitable that the Company be wound up.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- (1) The Company be wound up under the provisions of the Companies Law (2009 Revision).
- (2) Mr. Geoffrey Varga and Mr. Mark Longbottom, both of Kinetic Partners (Cayman) Limited, 1st Floor, The Harbour Centre, 42 North Church Street, PO Box 10387,

Grand Cayman, Cayman Islands, be appointed as joint official liquidators of the Company.

- (3) The liquidators be authorised to exercise any of the powers listed in the Third Schedule to the Companies Law (2009 Revision) without the further sanction or intervention of the Court.
- (4) The liquidators be authorised to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs.
- (5) The liquidators do file with the Clerk of the Court a report in writing of the position of the Company and the progress which the liquidators have made with the winding up of the Company, with the realisation of its assets and in relation to any other matters connected to the winding up of the Company, at such time and in such manner as the Court may direct.
- (6) The liquidators be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of the Company.
- (7) The liquidators be at liberty to seek such rectification (if any) of the register of members of the Company as they shall think fit (pursuant to s. 112 of the

Companies Law (2009 Revision) and O. 12, r. 2 of the Companies Winding Up Rules 2008).

- (8) The liquidators and their staff be remunerated out of the assets of the Company at the usual customary rate.
 - (9) The liquidators be at liberty to apply generally.
 - (10) The costs of the Petition and the Petitioner be paid out of the assets of the Company.
 - (11) Such further or other relief be granted as the Court deems appropriate.
- AND** your Petitioner will ever pray, etc.

Dated the 12th day of January 2010

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