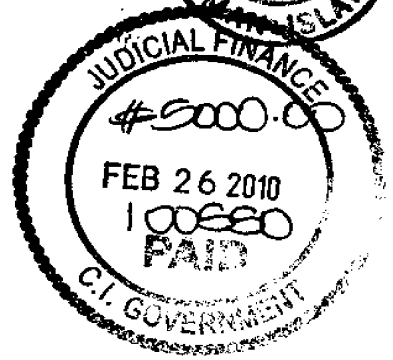


CAUSE NO. FED 0068 OF 2010

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 MASTER HEDGE FUND LIMITED

\_\_\_\_\_  
PETITION  
\_\_\_\_\_



TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of:

DFG Hedge Fund Limited (in Provisional Liquidation), whose registered office is c/o Kinetic Partners (Cayman) Limited, at 1<sup>st</sup> Floor, the Harbour Centre, 42 North church Street, Cayman Islands, PO Box 10387, Cayman Islands (previously of M&C Corporate Services Ltd, Ugland House, PO Box 309 Grand Cayman KY1-1104).

shows that:

**A. Summary**

On 12 January 2010 a Petition was presented to this Honourable Court by Michael Gerard O'Shea ("Mr. O'Shea") to wind up DFG Hedge Fund Limited on the just and equitable grounds. On 11 February 2010, Mark Longbottom and Geoffrey Varga were appointed as Joint Provisional Liquidators over DFG Hedge Fund Limited. The Joint Provisional Liquidators, through their investigations, learned that DFG Hedge Fund Limited holds all of the participating shares in DFG Master Hedge Fund Limited: none of these shares carry voting rights. The only asset of DFG Hedge Fund Limited is its 100% participating shareholding in DFG Master Hedge Fund Limited. Accordingly the Joint Provisional Liquidators now seek to wind up DFG

Master Fund Limited to secure and preserve the value of the assets of DFG Hedge Fund. As will be demonstrated in this Petition, most of the reasons as to why DFG Hedge Fund Limited itself should be wound up equally apply to the Joint Provisional Liquidators' application to wind up DFG Master Hedge Fund Limited.

**B. The Company**

1. DFG Master Hedge Fund Limited (the "Company") is an exempted limited liability company which was incorporated in the Cayman Islands on 21 April 2006.
2. The registered office of the Company is situated at M & C Corporate Services Limited, Ugland House, P.O. Box 309 GT, South Church Street, George Town, Grand Cayman, Cayman Islands.
3. The authorised share capital of the Company is:
  - (a) USD\$200,000 divided into 20,000,000 ordinary shares of par value US\$0.01 each; and
  - (b) EUR200,000 divided into 20,000,000 ordinary shares of par value EUR 0.01 each.
4. The Company is organised as a master fund. According to the Prospectus of DFG Hedge Fund Limited (in Provisional Liquidation) ("DFG Hedge Fund") dated 29 June 2009 ("the Prospectus"), all the assets of DFG Hedge Fund (to the extent not retained in cash) were to be invested in the ordinary shares of the Company.
5. As far as the Petitioner is aware, no other entities were or are designated as feeder funds of the Company.

6. The stated investment objective of the Company, according to the Prospectus was and is to provide shareholders with long-term capital growth by investing in a theme-driven global macro portfolio.
7. The Company and DFG Hedge Fund share the same investment manager, legal advisors, Administrator and directors; and until the appointment of the Joint Provisional Liquidators, the Company and DFG Hedge Fund shared the same registered office.
8. The Prospectus states that there were originally three directors of both DFG Hedge Fund and the Company, namely Henry Makansi, Luc Vuurmans and Antony Wamaars, but it is understood that Antony Wamaars is now the sole director of both companies following the resignation of Mr Vuurmans and Mr Makansi on 18 March 2009 and 26 May 2009 respectively.
9. The Investment Manager of DFG Hedge Fund and the Company is and was at all material times Diversica Financial Group B.V. (the "Investment Manager"), a company incorporated under the laws of the Netherlands.
10. The Administrator of DFG Hedge Fund and the Company was TMF FundAdministrators B.V. ("the Former Administrator"), a company incorporated under the laws of the Netherlands. Mark Longbottom and Geoff Varga of Kinetic, the Joint Provisional Liquidators of DFG Hedge Fund ("the JPLs") have been informed by the Former Administrator that it resigned as Administrator in December 2009. The Former Administrator has informed the JPLs that Amicorp Fund Services N.V. ("Amicorp") was to be appointed as the replacement Administrator, but that the appointment did not take effect. By an email dated 16 February 2010, Amicorp has

confirmed to the JPLs that its appointment as Administrator was considered but did not take effect. It is not known whether there is currently an Administrator in place for the Company.

11. The JPLs have been informed by Maples and Calder, the legal advisors to DFG Hedge Fund and to the Company, that they are owed outstanding fees and that they intend to exercise a lien over their documents and correspondence that they hold on behalf of DFG Hedge Fund until their outstanding fees have been settled.
  
12. If the Company were to be wound up, on the basis of the latest financial accounts available, assets are potentially 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. The 2007 Accounts state:  
  

*"DFG Hedge Fund Ltd has invested all assets in the ordinary shares of the DFG Master Fund Ltd. DFG Master Hedge Fund is therefore consolidated in the annual report of DFG Hedge Fund Ltd."*
  
13. No Accounts have been provided by either DFG Hedge Fund or the Company for 2008 or 2009.
  
14. The Former Administrator has informed the JPLs that Mr. Warnars (the sole remaining director of the Company) has indicated that he intends to appoint a separate voluntary liquidator over the Company. The JPLs understand that Mr. Warnars has approached potential liquidators in the Cayman Islands.

**C. The Petitioner**

15. On the information presently available, to the JPLs in their capacity as such, it seems that DFG Hedge Fund is the holder of 100% of the ordinary shares in the Company. The Petitioner is therefore 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 it is a contributory were originally allotted to it, or have been held by it and registered in its name for a period of at least six months immediately preceding the presentation of this Petition. DFG Hedge Fund, therefore, is entitled to present this Petition pursuant to s. 94 of the Companies Law.

**D. The Petition to Wind up DFG Hedge Fund Limited and the Appointment of Joint Provisional Liquidators**

16. A Petition to wind up DFG Hedge Fund was presented on 12 January 2010, and by order of this Court dated 11 February 2010 the JPLs were appointed.
17. Since the date of their appointment the JPLs have been provided with the corporate records of DFG Hedge Fund by the previous registered office.
18. The Former Administrator has informed the JPLs that all previously suspected investments of DFG Hedge Fund (as referred in paragraph 4 above) were made through the Company, and therefore notwithstanding previous claims in communications to shareholders in the name of DFG Hedge Fund that, for example, it entered into a loan agreement with Aurelio Resource Corporation, and that its main asset is a promissory note issued by Bethpage Limited, it is now believed that DFG

Hedge Fund does not hold any investments directly but that all its assets are invested in the Company. It must therefore be assumed that any reference by the representatives of DFG Hedge Fund in past communications to investors regarding its investments and assets are references to those of the Company.

19. Given that the JPLs have now been informed that the assets of DFG Hedge Fund are held by the Company, the grounds for winding up DFG Hedge Fund apply, to a large extent, to the Company.
20. The Petition to wind up DFG Hedge Fund Limited will be published in the Cayman Islands Government Gazette #5 dated 1 March 2010. The appointment of the JPLs will also be advertised in that edition of the Gazette.

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

21. 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.
22. 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 F below:** The Company has failed, in a timely manner, to file audited (or any other) accounts and has failed to provide information to DFG Hedge Fund. The information the Company has provided has been late and sporadic, thus impeding the ability of DFG Hedge Fund to provide information to its underlying shareholders and thereby allow them to make informed

investments decisions regarding their investments in DFG Hedge Fund.

**Section G below:** DFG Hedge Fund's NAV is said to have risen and fallen significantly in a way which does not conform to market performance. As this is a master/feeder fund structure, the rise and fall in the NAV of DFG Hedge Fund can only be explained by a corresponding rise and fall in the NAV of the Company.

**Section H below:** The Company has failed to disclose to DFG Hedge Fund a significant conflict of interest concerning the Company's largest single investment.

**Section I below:** The Company has invested a significant portion of its assets in an almost completely illiquid investment, which means that the Company is, in practice, unable to comply with any redemption requests and consequently DFG Hedge Fund is in effect locked into the master/feeder fund structure.

**Section J below:** DFG Hedge Fund has purported to suspend redemptions of shares in circumstances which are not permitted by its Articles of Association. It is to be assumed that a similar suspension of redemptions has purportedly taken place at the Master Fund level, although no such declaration has been made, and although the Articles of Association of the

Company, similarly, do not permit a suspension of redemptions in the current circumstances.

**Section K below:** There is no other effective relief.

**Section L below:** Summary.

**F. Failure to file accounts, late provision of accounts, failure to provide information to DFG Hedge Fund, and late and sporadic provision of information**

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

23. Article 142 to 144 of the Company's Articles provides:

- "142. The Board 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.*
143. *The accounting records...shall always be open to inspection by the officers of the Company. No member (other than an officer of the Company) shall have the right of inspecting any accounting record or book or document of the Company except as conferred by law or authorised by the Board.*
144. *A copy of every balance sheet and profit and loss account and such other reports and accounts as may be required by law shall be laid before the Company in general meeting in each year and a copy of every balance sheet and profit and loss account accompanied by a statement which gives the value and other details of the investments comprised in, and the cash position of, the Company at the end of the relevant Accounting Period, shall not later than six months after the last day in that Accounting Period be sent to every Member."*

24. A letter from the representatives of DFG Hedge Fund dated 14 October 2009 confirmed that the financial statements for the years ended 2007 and 2008 had still not been concluded but failed to provide any explanation for the delay.
25. In so far as the JPLs are currently aware, in breach of the requirements of Article 144 from the date of its incorporation until 13 November 2009 the Company failed to file or provide copies of any balance sheet and profit and loss account, or a statement which gives the value and other details of the investments comprised in, and the cash positions of, the Company at the end of the relevant accounting period.
26. Further, on 13 November 2009 DFG Hedge Fund produced a copy of the annual report and audited accounts for the period from 21 April 2006 to 31 December 2007. However, as far as the JPLs are aware, the Company has still not filed or provided DFG Hedge Fund or its shareholders with any statements or annual report or audited accounts for the year to 31 December 2008.

*(2) The Former Administrator's frustrations with the Company's lack of response*

27. In response to requests for information from Kerten Investments SARL ("Kerten"), one of the former shareholders of DFG Hedge Fund, the Former Administrator by an e-mail dated 27 April 2009, 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 Former 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."*

**G. Non market-conforming performance of investments**

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

28. Article 22.1 of the Articles of Association of the Company provides as follows:

*"Applications for the redemption of Ordinary Shares shall, unless the Directors (or any delegate) shall otherwise determine, be deemed to have been given and received at the same time as applications for redemption of shares or interests are received from investors in any Investment Vehicle [defined to include DFG Hedge Fund] and in amounts matching such applications for the redemption of such shares or interests."*

29. Because the Company and DFG Hedge Fund have a consolidated redemption procedure, it is believed that the obligations of the Company in relation to the calculation and payment of the Redemption Price will mirror those of DFG Hedge Fund. In light of the limited documentation relating to the affairs of the Company, the Petitioner will explain below why a redemption by the Company was deemed to have been made on or about 23 October 2008 by reference to the facts and circumstances made known to the JPLs by the Petitioner of DFG Hedge Fund.

30. The shares of a shareholder in DFG Hedge Fund 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 of the Articles of DFG Hedge Fund).

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

32. 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."*

33. 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."*

34. 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."*

35. Furthermore, in an e-mail dated 12 September 2007 from Mr. Warnars to Mr. Walsh of Kerten, the Company confirmed that the Former 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*

36. On 8 October 2008, Kerten received from the representatives of DFG Hedge Fund the statement of the NAV for 31 August 2008, which was stated to be EUR104.71 per share.
37. It would appear that the basis of this NAV, on or about 23 October 2008, CS London Nominees, as nominee for Kerten, gave notice that it wished to redeem 14,650.23 Euro Series 1 Shares in DFG Hedge Fund held on behalf of Kerten for redemption on 31 December 2008. Accordingly, and in accordance with Article 22.1 of the Company's Articles, a redemption in the Company was deemed to have similarly been made on or about 23 October 2008 for a redemption on 31 December 2008.

*(3) Late payment of Redemption Price*

38. According to Article 45(1) of the Articles of DFG Hedge Fund 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).
39. The JPLs have been informed by Mr. O'Shea (who is the petitioner of DFG Hedge Fund) that, 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*

40. Mr. O'Shea has informed the JPLs that, 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. The JPLs understand that 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.
41. If the payment received was intended to represent 100% of the Redemption Price, based upon the information provided to the JPLs by Mr. O'Shea, then it may be inferred that there had been a substantial drop in the value of the Company of almost 41% in the four 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. As advised by Mr. O'Shea, 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 directors of DFG Hedge Fund gave no indication of the precipitous fall it now claims to have occurred during the redemption notice period. Subsequently, it would appear that 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*

42. On 28 July 2009 the director of DFG Hedge Fund provided Kerten with a document entitled "*Statement of Holdings*" prepared by the Former Administrator. As the accounts of DFG Hedge Fund and the Company have been consolidated it is assumed that this Statement provides information about the Company's NAV. This Statement of Holdings revealed:
- (a) That the December 2008 NAV per share was EUR 61.83, which represented a 41% 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 approximating to that of DFG Hedge Fund's NAV.
43. Consequently, according to the director of DFG Hedge Fund there were (1) substantial *decreases* in the NAV of the Company and of DFG Hedge Fund immediately following Kerten's redemption request to DFG Hedge Fund and before the Redemption Day for that redemption, coupled with (2) a substantial *increase* in the NAV of the Company and of DFG Hedge Fund immediately following the relevant Redemption Day and once Kerten's shares had been redeemed at the lower figure. The JPLs have been advised by the Petitioner of DFG Hedge Fund that such a significant decrease and subsequent increase in the NAV has not been sufficiently explained by any of the representatives of DFG Hedge Fund and / or the Company. The JPLs note that in a newsletter dated 12 October 2009, DFG Hedge Fund attributed the increase in the NAV per share between April 2009 and May 2009 from

EUR 55.09 to EUR 165.63 to DFG Hedge Fund's "*mineral project*". Whilst this newsletter purports to be written in relation to DFG Hedge Fund and makes no mention of the Company, it is to be inferred that use of the term "the Fund" is a reference to both DFG Hedge Fund and the Company.

44. The JPLs have been informed by Mr. O'Shea that during an Extraordinary General Meeting of DFG Hedge Fund on 26 November 2009 ("the EGM"), the director of DFG Hedge Fund stated that the huge increase in the NAV could be attributed to an investment of DFG Hedge Fund related to Aurelio Resource Corporation, Inc. ("Aurelio"), a listed company incorporated in Nevada, United States of America, controlled by the father of Mr. Warnars, a Director of the Company. This investment was made by Telifonda (Cayman) Limited ("Telifonda"), a special purpose vehicle established by the Investment Manager (the "Aurelio Investment").
45. As stated above, the Former Administrator has stated that DFG Hedge Fund has made no direct investments, and so the JPLs infer that the Aurelio Investment was in fact made by the Company.
46. The JPLs are told by Mr. O'Shea that during the EGM, Mr. Warnars on behalf of DFG Hedge Fund and, it is assumed on behalf of the Company, stated that the Aurelio Investment relates to a loan of USD 2 million which Telifonda had, in effect, provided to Aurelio in early 2008. The JPLs have been directed to Aurelio's publicly available SEC filings, which appear to show that the Company, through its holding in Telifonda, 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 31 December 2008, this cash consideration was offset against a bridging loan of USD 2 million which Telifonda advanced to Aurelio on 1<sup>st</sup> 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.

47. The JPLs have been advised by Mr. O'Shea that the loan portion of the investment was allegedly converted into 1,137,500 shares in the capital of Bolsa. Further, Mr. O'Shea has advised the JPLs that in a report prepared for Telifonda dated 22 June 2009, Evans & Evans, an investment bank without apparent expertise in the mining or resource industry, purportedly valued these assets to be worth between USD 16.1 and 16.7 million as at 31 May 2009. Mr. O'Shea has been advised by the director of DFG Hedge Fund and the Company, that this valuation caused the huge upswing in the NAV as at the same date. The JPLs understand that, despite requests, the director of DFG Hedge Fund and/or the Company has not provided a copy of the Evans & Evans valuation to underlying shareholders.

48. 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 it appears from Aurelio's SEC filings that definitive agreements in respect of the

Company's investment through Telifonda in Aurelio and Bolsa were presented to the Aurelio Board on 14 November 2008. The JPLs have been led to believe by the Petitioner of DFG Hedge Fund that the Aurelio Board approved these and authorised officers of DFG Hedge Fund and / or the Company to execute and seek approval of the Aurelio stockholders. The Company influenced this transaction through its large shareholding in Aurelio held via Telifonda, and by DFG Hedge Fund and / or the Company's connected parties, as well as through Dr Frederik Warnaars (Aurelio Board Chairman) and Mr. Antony Warnaars (Director of the Company and DFG Hedge Fund), being father and son respectively.

49. The JPLs are informed by Mr. O'Shea that during the EGM the representatives of the Company and DFG Hedge Fund remained vague about the date on which the Aurelio transaction described above was effected. Instead the director of the Company and DFG Hedge Fund have merely pointed to the SEC's approval, which was allegedly required for this transaction and was allegedly only granted in March 2009. Mr. Warnaars also stated, however, that SEC approval was requested in June/July 2008. This indicates that the transaction was generating value for DFG Hedge Fund and / or the Company well before Kerten submitted its redemption notice on 23 October 2008.
  
50. The JPLs understand that pursuant to the questions asked on behalf of Kerten during the EGM, the representatives of DFG Hedge Fund committed to providing additional information regarding the Aurelio transaction. In its letter of 10 December 2009, DFG Hedge Fund states that on 28 February 2009, the Aurelio shareholders approved the acquisition of the entity which held the mining rights. The JPLs understand that no information has been provided in support of this statement. Despite being requested by Mr. O'Shea, the director of DFG Hedge Fund and / or 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 DFG Hedge Fund and / or the Company's portfolio.

51. The Former Administrator has informed the JPLs that it is unable to provide the JPLs with any information concerning the Company's investments or assets.

52. Once again, given the lack of information available to the JPLs as to the exact timing of the Aurelio transaction, the JPLs have no means of establishing whether the alleged value of this transaction should or should not have been included in the NAV of 31 December 2008. It would appear to the JPLs that 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 an investigation is required to ascertain when and why this transaction was entered into by the Company.

**H. Failure to disclose significant conflict of interest concerning the Company's largest single investment**

53. 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."*

54. The Company and DFG Hedge Fund had a substantial conflict of interest concerning the direct and indirect investments of DFG Hedge Fund and / or the Company in Aurelio. The JPLs understand that this conflict of interest was not disclosed to

Kerten (nor, it is to be inferred, was it disclosed to other shareholders of DFG Hedge Fund).

55. At the time of the various transactions which were performed at and around the time of Telifonda's acquisition of Bolsa, and, the JPLs understand, unknown to Kerten (and therefore it is inferred unknown to other shareholders of DFG Hedge Fund), Dr Frederik Warnaars was the father of one of the Directors of DFG Hedge Fund and / or the Company, Mr. Anthony Warnaars and was also Chairman of the Board and Interim Chief Financial Officer of Aurelio.

56. Mr. O'Shea has advised the JPLs that the only information provided to Kerten concerning the Aurelio Investment was as follows:

- (a) an e-mail promoting Aurelio sent by Mr. Warnaars dated 11 October 2007 to the ultimate sole shareholder of Kerten; and
- (b) an e-mail dated 4 September 2008 from Thijs Jochems on behalf of the 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.”*

57. Neither of these e-mails, nor so far as the JPLs are aware, any other communication from DFG Hedge Fund or the Company or its directors, disclosed to underlying shareholders the father/son relationship between Mr. Warnaars and the chairman of Aurelio, Dr Frederik Warnaars.

**I. Illiquidity of investments and effective lock-in of shareholders**

58. DFG Hedge Fund, and by implication the Company, is and was at all material times intended to operate as an open-ended investment company (Prospectus, page 4). The stated investment objective of the Company, according to the Prospectus was and is to provide shareholders with long-term capital growth by investing in a theme-driven global macro portfolio. The offering memorandum seeks to imply that the two companies are and were at all material times intended to operate as a collective investment fund.
59. 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*

*Multistrategy book*") could invest in "less liquid" investments, others of the "tactical books" (viz., "The global macro book") were intended to invest in "liquid" investments.

60. 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 factor exposure.**" (emphasis added) Accordingly, the Company was required when considering investment strategy and the liquidity of investments, to bear in mind the expected levels of redemptions by underlying shareholders. It follows that the Company was compelled to ensure a certain minimum liquidity within the Company so as to enable it to meet shareholders' redemption requests. This requirement has not been adhered to.
61. On 31 July 2009 the director of DFG Hedge Fund sent a notice dated 28 July 2009 purporting to suspend capital transactions with effect from 1 August 2009, to include the suspension of subscriptions and redemptions of shares. It is unclear whether this notice was purportedly sent on behalf of both DFG Hedge Fund and 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 director of DFG Hedge Fund has stated on multiple occasions (including in the notice to shareholders dated 10 December 2009 entitled "Partial Redemption and In Kind Payment Transaction" which is cited in more detail below) that the mineral asset forms the majority of DFG Hedge Fund's assets and is very illiquid.
62. The fact that the vast majority of the assets of DFG Hedge Fund and / or the Company appear to be invested in this project is further underlined the letter of 14

October 2009 from Antony Warnars to Kerten. In this letter, the director of DFG Hedge Fund and the Company indicated that the AUM as at 31 August 09 (viz., after Kerten's redemption) amounted to approximately USD 19.6 million. In that letter, it is stated that in the fourth quarter of 2008, one client redemption occurred (viz., Kerten's redemption). The AUM as at December 2008 may be calculated by reducing the amount of USD 19.6 million with the percentage by which the NAV rose between December 2008 and August 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. 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.

63. The investment in Aurelio is inherently and severely illiquid. The JPLs understand that at the EGM on 26 November 2009, the representatives of DFG Hedge Fund and 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 Director of DFG Hedge Fund and the Company has purported to be obliged to suspend all redemptions of shares in DFG Hedge Fund and the Company and it appears that this purported suspension will last into the foreseeable future.
64. In its letter of 8 December 2009, the director of DFG Hedge Fund has stated that it has allegedly sold its interest in the abovementioned mining project in exchange for a promissory note (the "BP Resource Note"). It must be inferred that the transaction was in fact undertaken by the Company. On 11 December 2009 DFG Hedge Fund provided shareholders with a notice dated 10 December 2009, in which it offers

shareholders the possibility to partially redeem their interest to the extent that it relates to the interest in the mining project. In this letter, DFG Hedge Fund indicates that the promissory note is now its core asset, and the JPLs understand that this should in fact be a reference to the promissory note being the Company's core asset. In the letter, DFG Hedge 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 DFG Hedge Fund provide an indication as to the value or terms of the promissory note, nor 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, the JPLs understand, no information was provided at that time to shareholders.

65. The notice of 10 December 2009, also states that DFG Hedge Fund has decided that it will offer its shareholders the "*option*" to accept a partial redemption and in kind payment. If a shareholder accepts the partial redemption, then it will receive a proportional ownership in the BP Resource Note and its shareholding in DFG Hedge Fund will be reduced on a pro rata basis. If the shareholder declines, then the shareholder will remain invested in DFG Hedge Fund. If the BP Resource Note is held by the Company, then the JPLs surmise that DFG Hedge Fund has entered into a similar agreement with the Company.
66. Further, the notice of 10 December 2009 attempts to impose consent by silence. At the end of the notice, it states "*You, the shareholder is requested to submit your reply to TMF Fund Administrators...by means of this document before December 23, 2009. If no reply is received before this date the Fund will consider*

*Option 1* [acceptance of the Partial Redemption and in kind payment of the proportional shares in the BP resource note and the reduction of shareholding in the Fund pro rata] *as the default option.*”

67. By an e-mail dated 13 January 2010 the Former Administrator sent the following documents to Mr. O’Shea:
- (a) A letter stating “Following the Notice of the Board of Directors to accept and receive partial payment in kind of your investment in DFG Hedge Fund Limited dated December 10 2009, we hereby provide you with the contract note of your redemption as per December 30, 2009.”;
  - (b) Redemption Confirmation; and
  - (c) A notice of the Board of DFG Hedge Fund to place the Company into Voluntary Liquidation.
68. Whilst the JPLs are still investigating the matter, the provisions of the Company’s Articles of Association would suggest that a similar attempt at a quasi-compulsory redemption was forced upon DFG Hedge Fund by the Company.
69. This is a unilateral attempt by the Company and / or DFG Hedge Fund to change the rights of shareholders and is ultra vires.
70. Further, the JPLs note that the Company’s investments appear contrary to their investment objective. The Investment Manager’s name, “Diversica”, appears to be

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 DFG Hedge Fund on 12 March 2007. 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 most of the funds entrusted to it into one, highly illiquid asset in a related party transaction, the Company exceeded its mandate given to it by its shareholders.

**J. Suspension of redemptions in circumstances not permitted by the Articles**

*(1) Suspension of redemptions – provisions in the Articles*

71. The director of DFG Hedge Fund has purported to suspend subscriptions and redemptions of shares. It is not clear whether the Company has suspended redemptions; however if the sole remaining director of the Company has suspended redemptions, in light of the similarities between the Company's Articles and DFG Hedge Fund's articles, it contended that the basis upon which the Company suspended redemptions would mirror the reasons and/or circumstances adopted by DFG Hedge Fund. In light of the lack of available documents relating to the Company, the Petitioner will plead its case on the basis of the facts as advised by the Mr. O'Shea in relation to the suspension of redemptions in DFG Hedge Fund.

72. The provisions on which DFG Hedge Fund purported to rely were contained within Article 44(1)(b) and (c) of its Articles. 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*

73. The JPLs are investigating whether the requirements of Article 44(1)(b) and (c) have been satisfied in the case of DFG Hedge Fund. There does not appear to be an "emergency" (within the meaning of Article 44(1)(b)). And it would appear to the JPLs that any illiquidity in DFG Hedge Fund, and consequently in the Company's investments, is due to the deliberate decision to invest a substantial portion of its assets in an investment which is inherently illiquid. Furthermore, it does not appear to be the case (within the meaning of Article 44(1)(c)) that the prices of a material portion of the investments of DFG Hedge Fund and / or the Company cannot be reasonably, promptly or accurately ascertained. So far, in the course of the JPLs' investigations, there does not appear to be any material impediment to ascertaining those prices. Indeed, DFG Hedge Fund (and most likely 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 director of DFG Hedge Fund's stated position, the JPLs consider that it may be possible to continue to calculate the NAV with reasonable accuracy.

74. Article 24(2) of the Company's Articles of Association similarly provides, *inter alia*, that the directors may declare a temporary suspension of determination of the Net Asset Value during any period (i) when any market is closed which is the main

market for a significant part of the Company's investments, or when trading thereon is restricted or suspended; (ii) when any emergency exists as a result of which disposal by the Company of investments which constitute a substantial portion of its assets is not practically feasible ; (iii) when for any reason the prices of a material portion of the investments of the Company cannot be reasonably, promptly or accurately ascertained; (iv) when remittance of monies which will, or may be, involved in the realisation of, or in the payment for, investments of the Company cannot, in the opinion of the Directors, be carried out at normal rates of exchange; or (v) when proceeds of the sale or redemption of Ordinary Shares cannot be transmitted to or from the Company's account.

75. Therefore, similarly, circumstances do not exist which would justify the suspension of calculation of the NAV of the Company.

76. Thus, if the Company has done so, the director of the Company has no power in the present circumstances to suspend the calculation of the Net Asset Value of either the Company or DFG Hedge Fund.

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

77. Furthermore, Article 44(2) of DFG Hedge Fund's Articles 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 ..."*

78. Article 22.1.5 of the Company's Articles provides:

*"no Ordinary Shares shall be redeemed during any period when the determination of the Net Asset Value of the Company is suspended pursuant to Article 24.2, and if the determination of such Net Asset Value is so suspended the right of the Applicant to have his Ordinary Shares redeemed pursuant to this Article shall be similarly suspended..."*

79. Consequently, the redemption of shares may only be suspended when the calculation of the Net Asset Value is itself suspended. The JPLs note that the notice of suspension of capital transactions by the representative of DFG Hedge Fund 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."*

80. Accordingly, given that the calculation of the NAV is not suspended, there is no right in the Company's Articles to suspend redemptions of shares.

81. As far as the JPLs are aware the Company has not declared a suspension, but given the consolidation of the redemption procedure envisaged by Article 22.1 of the Articles of the Company, and the declaration of the director of DFG Hedge Fund, it is possible that the Company purports to have suspend redemptions. If the Company has not suspended redemptions, the suspension at the level of DFG Hedge Fund cannot be valid for that reason alone.

**I. No other effective relief**

82. The Former Administrator has informed the JPLs that DFG Hedge Fund holds non-voting shares in the Company. Therefore whilst it holds all of the participating shares, the Petitioner does not have the right to remove any of the Directors and/or or to vote on any resolution seeking to remove any of the Directors and place the Company into liquidation, even though this would be in the best interest of the Company's shareholders. Accordingly, the Petitioner seeks the assistance of this Honourable Court by the Petition.

**J. Summary**

83. 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, 1<sup>st</sup> Floor, The Harbour Centre, 42 North Church Street, PO Box 10387, Grand Cayman, Cayman Islands, be appointed as joint official liquidators of the Company (the "Liquidators").

- (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 their usual 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 26 day of February 2010

*Ogler*

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**Ogler**

Attorneys-at-Law for the Petitioner, whose address for service is 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands KY1-9007. Tel: +1 345 949 9876. Fax: +1 345 949 9877. Ref: 421463.00001/CRU/RAR.

**NOTE:** This Petition is intended to served upon:

- (1) The Company at its last known registered office.

#### **NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on *5<sup>th</sup> March* 2010 at ~~9.30am~~ *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.