

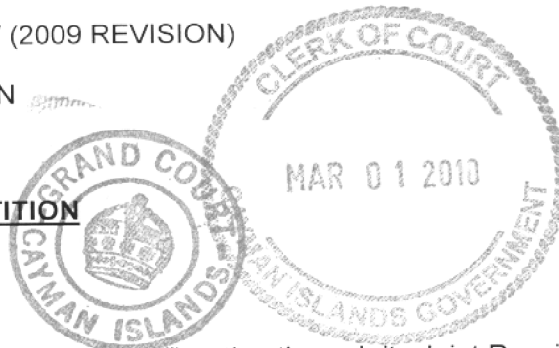
IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

FSD CAUSE NO: 0069 OF 2010

IN THE MATTER OF: THE COMPANIES LAW (2009 REVISION)

AND IN THE MATTER OF: K2 CORPORATION

PETITION



TO THE GRAND COURT

The humble petition of K2 CORPORATION ("**the Company**") acting through its Joint Receivers, Alastair Beveridge and Richard Fogerty of Zolfo Cooper, PO Box 1102, 4<sup>th</sup> Floor, Building 3, Cayman Financial Centre, Grand Cayman, KY1-1102, Cayman Islands ("**the Receivers**") shows that:

1. The Company was incorporated under the laws of the Cayman Islands on 17 October 1997 as an exempted company with limited liability.
2. The registered office of the Company is located at P.O. Box 309, Uglund House, South Church Street, George Town, Grand Cayman, Cayman Islands.
3. The Company was set up for the purpose of carrying on business as an investment company, and commenced business on 1 February 1999.
4. The objective of the Company was to provide stable returns to holders of subordinated capital notes, by investing in a diversified portfolio of high grade credit risk, which was managed with strict parameters designed to maintain asset quality and to eliminate market risk.
5. The portfolio was predominantly funded by subordinated capital notes and senior debt issues from medium term note and commercial paper programmes. This allowed the Company to access the Euro markets, and through its wholly owned subsidiary, K2 (USA) LLC, the domestic US markets.
6. To assist in the carrying out of this objective, the Company appointed Dresdner Bank AG London to provide it with investment, treasury management and operational support

pursuant to a management agreement (the "**Management Agreement**") entered into between Dresdner Bank AG London Branch, the Company, K2 (USA) LLC and the Law Debenture Trust Corporation (Channel Islands) Limited.

7. Following the disappearance of traditional sources of funding in the markets, the Company largely relied on repurchase agreements and certain support facilities provided by Dresdner Bank AG London Branch, namely a backstop facility (the "**Backstop Facility**") and a mezzanine facility (the "**Mezzanine Facility**" and together the "**Support Facilities**"), in each case entered into on 18 March 2008 between the Company and Dresdner Bank AG London Branch. The purpose of the Support Facilities were to provide the Company with sufficient liquidity and back-stop support to enable either the orderly sale of the assets and/or a put of the assets to Dresdner Bank AG London Branch at or above market prices to ensure the repayment of the senior secured liabilities of the Company.
8. On 11 May 2009 Commerzbank AG ("**Commerzbank**") acquired all of the rights and assumed all of the obligations of Dresdner Bank AG under the Support Facilities by virtue of universal succession under the German Transformation Act (*Umwandlungsgesetz*).
9. Asset values continued to decline during the 6 month period to 31 March 2009, and at that time, the Company's total reserves and retained earnings showed a loss of US\$1.22 billion. Despite a subsequent rise in asset prices after March 2009, the Company's net asset value and therefore the value of the subordinated capital notes remained deeply negative.
10. On 28<sup>th</sup> May 2009 Commerzbank agreed to waive amounts of interest to be accrued under the Mezzanine Facility and to fall due on the Mezzanine Final Repayment Date to the extent that the Company did not have monies available to it on such date.
11. On 1 June 2009, the Company exercised certain of its rights under the Backstop Facility, and all of its remaining assets were sold to Commerzbank subject to and in accordance with the terms of the Backstop Facility with settlement during the course of June 2009. This exercise of rights was necessary to ensure that the Company's remaining senior debt and other secured liabilities, including outstanding amounts under the Mezzanine

Facility, could be paid in full as and when they fell due for payment as the Backstop Facility was due to expire on 30 June 2009.

12. This exercise resulted in settlement of asset transfers from the Company to Commerzbank throughout June 2009. On 24 July 2009, the last of the Company's last outstanding medium term notes matured and at that time neither the Company nor K2 (USA) LLC had any debt outstanding other than amounts outstanding under the Mezzanine Facility, certain fees and expenses owed to third parties and unsecured subordinated capital notes.
13. On 30 June 2009 the Backstop Facility expired other than the shortfall provisions set out in Clause 5.6 of the Backstop Facility which were extended to 16 September 2009.
14. On 15 September 2009, Commerzbank and the Company entered into a Fee & Expenses Payment Deed (the "**Deed**") which provided that Commerzbank undertook to the Company to pay (subject to a pre-agreed cap) all properly incurred fees, costs and expenses of certain named third parties including a receiver appointed over the Company. In addition Commerzbank agreed pursuant to a letter agreement dated 15 September 2009 to waive any fees due to it under the Management Agreement to the extent that the Company had insufficient funds available to it to pay them.
15. On 16 September 2009 the Company issued a shortfall demand to Commerzbank pursuant to and in accordance with Clause 5.6 of the Backstop Facility.
16. On 24 September 2009 the Company repaid all amounts due and payable under the Mezzanine Facility (other than amounts of interest waived pursuant to the letter referred to in paragraph 10 above). The repayment of the Mezzanine Facility meant that the Company no longer had any remaining assets, other rights or property capable of yielding proceeds to discharge claims owing to the holders of capital notes.
17. Pursuant to a Security Trust Deed dated 2 June 1998 amended and restated 30 April 2002, between The Law Debenture Trust Corporation (Channel Islands) Limited (the "**Security Trustee**") and the Company (the "**Security Trust Deed**"), the Company created a number of fixed charges, security assignments and security interests under English Law (other than certain specified security interests which were created under New York law) and a floating charge governed by English law together compromising

security over all the Company's assets, property and undertaking except for the Company's rights under the Fee Letter (as that term is defined in the Master Definitions Schedule signed for the purposes of identification by, amongst others, the Company and the Security Trustee (the "**Master Definitions Schedule**")), as set out in clauses 3 and 4 of the Security Trust Deed.

18. The security was granted by the Company in favour of the Security Trustee to secure the payment and discharge to the Secured Creditors (as defined in the Master Definitions Schedule) of all Secured Liabilities (as defined in the Master Definitions Schedule) which may become due, owing or payable to them.
19. Following the service of an Enforcement Event Notice, the Security Trustee was obliged to appoint a Receiver (as defined in the Master Definitions Schedule) pursuant to Clause 10.1 (Appointment of Receiver) of the Security Trust Deed.
20. The Receivers understand that the Security Trustee received an Enforcement Event Notice on 25 September 2009. As a result of the Enforcement Event Notice the Receivers were appointed by the Security Trustee on 28 September 2009.
21. Clause 10.3 of the Security Trust Deed provides that the "...the Receiver shall act at all times as agent of [the Company]...". Further, under the specific powers set out in clause 11.1 of the Security Trust Deed the Receiver "...has, and is entitled to exercise...all of the rights, powers and discretion of an administrative receiver under the Insolvency Act 1986 (including, without limitation, the First Schedule thereto), whether or not such Receiver is an administrative receiver, in addition to those conferred by the Act on any such receiver appointed under the Act."
22. Accordingly, by virtue of clause 11.1 of the Security Trust Deed and the powers afforded by Schedule 1 to the English Insolvency Act 1986, the Receivers have "Power to present or defend a petition for the winding up of the company".
23. Pursuant to their position as agents of the Company and to these powers, the Receivers have caused the Company to present this Petition.
24. As detailed above, all the assets of the Company, with the exception of the Deed and the books and records of the Company, had been realised and the proceeds received

therefrom were used in making the repayments of secured liabilities described in paragraphs 11 and 16 above in each case prior to the Receivers appointment.

25. The Company therefore has no assets available for distribution to subordinated capital noteholders or any other unsecured creditors (if any).
26. As the Company's substratum has gone it seeks its liquidation and dissolution.
27. Further, in the circumstances, it is just and equitable that the Company should be wound up.

Your Petitioner therefore humbly prays:

1. That the Company be wound up by the Court subject to the provisions of Part V of the Companies Law (2009 Revision).
2. That Alastair Beveridge and Richard Fogerty be appointed as Joint Official Liquidators and be authorised to exercise all the powers set out in section 110(2) and Parts I and II of the Third Schedule to the Companies Law (2009 Revision) without further sanction or intervention of this Honourable Court.
3. That the Joint Official Liquidators be authorised to any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs.
4. That the Joint Official Liquidators do file with the Clerk of the Court a report in writing of the position of and the progress made with the winding up of the Company and with the realisation of the assets thereof and as to any other matters connected to the winding up of the Company, in accordance with CWR Order 10, or at such further and other times as the Court may direct.
5. That the Joint Official Liquidators be at liberty to employ attorneys, counsel and 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.

6. That the Joint Official Liquidators and their staff be remunerated for their professional services and time in accordance with Part III of the Insolvency Practitioners Regulations 2008.
7. That the Joint Official Liquidators have liberty to apply for such further directions with respect to the winding up of the Company and its affairs and the conduct of the liquidation as they shall consider necessary from time to time.
8. That the Petitioner shall have its costs of this Petition paid out of the assets of the Company in accordance with CWR Order 25 rule 8.
9. Such further and/or other relief as this Honourable Court deems appropriate.

AND your Petitioner will ever pray etc.

DATED the 26<sup>th</sup> day of February 2010.

  
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**WALKERS**  
Attorneys at Law for the Petitioner

**NOTE:** This petition is intended to be served on the Registrar of Companies