

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD ⁰²²⁸ OF 2010

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)

AND

IN THE MATTER OF BLUE ELITE FUND, LTD.



WINDING UP PETITION



TO THE GRAND COURT

The humble petition of UBS Fund Services (Cayman) Ltd. ("Petitioner") shows that:

Preamble

1. The Petitioner presents this petition ("Petition") for the winding up of Blue Elite Fund, Ltd. (the "Company"). The Petitioner is a shareholder ("Member" or "Shareholder") of the Company, holding:
 - 1.1. 38,792.475 Class L-IK Series F 0205 shares registered in the name of UBS Fund Services (Cayman) Ltd. Ref Alpha Hedge Fund Ltd ("Alpha");
 - 1.2. 32,233.364 Class L-IK Series F 0205 shares registered in the name of UBS Fund Services (Cayman) Ltd. Ref Yellow Fund Ltd. ("Yellow").
2. As set out in further detail in this Petition, the Company is indebted (the "Petition Debt") to the Petitioner in respect of the remaining value due in respect of the compulsory redemption by the Company of a proportion of the Petitioner's shares on 31 October

2008 and in respect of the redemption of the Petitioner's Class L-IK Shares. The Petition Debt is currently due and payable by the Company to the Petitioner.

3. The Petitioner seeks the winding up of the Company pursuant to Section 92(d) of the Companies Law (as amended) on the grounds that the Company's failure to pay the Petition Debt demonstrates that the Company is unable to pay its debts.

Incorporation and Constitutional Documents, Purpose and Share Capital of the Company

4. The Company was incorporated on 8 January 2003 as an exempt company under the laws of the Cayman Islands with Registration Number 122353 and is a "regulated mutual fund" within the meaning of the Mutual Funds Law (2009 Revision). The registered office of the Company is situated at Citco Fund Services (Cayman Islands) Limited, 89 Nexus Way, Camana Bay, P.O. Box 31106 SM, Grand Cayman, Cayman Islands. To the best of the Petitioner's knowledge the Company, as a fund of funds, has investments in funds based in several countries, including Switzerland, the United States, and the Cayman Islands.
5. The constitutional documents of the Company include the following:
 - 5.1. Confidential Explanatory Memorandum dated April 2004;
 - 5.2. Articles of Association dated 10 September 2007 ("2007 Articles");
 - 5.3. Confidential Explanatory Memorandum dated 10 September 2007;
 - 5.4. Supplement to 2007 CEM, dated June 2010.
6. The Company was incorporated to operate as an open-ended investment fund. The investment objective of the Company is to achieve capital appreciation through investing

the Company's assets among a select group of investment managers or in private investment funds sponsored by investment managers.

7. The authorized share capital of the Fund consists of 10,000,000 Common Shares issuable in multiple series, having a par value of \$.01 (U.S.) per share. The total number of Common Shares that were in issue and outstanding as at 31 December 2008, according to the Audited Financial Statements of the Company for the year ended 31 December, 2008 was 1,060,079.68, divided into the following classes and series:

- Class A Series 1 Common Share - 34,951.45 shares outstanding
- Class B Series 1 Common Share - 42,393.64 shares outstanding
- Class C Series 1 Common Share - 145,190.15 shares outstanding
- Class C Series 2 Common Share - 11,377.38 shares outstanding
- Class C Series 9 Common Share - 21,220.40 shares outstanding
- Class D Series 1 Common Share - 39,139.69 shares outstanding
- Class D Series 5 Common Share - 6,815.05 shares outstanding
- Class E Series 1 Common Share - 460,343.74 shares outstanding
- Class E Series 2 Common Share - 5,687.74 shares outstanding
- Class E Series 3 Common Share - 44,959.20 shares outstanding
- Class E Series 3 2008 Common Share - 5,688.69 shares outstanding
- Class E Series 4 Common Share - 4,573.11 shares outstanding
- Class E Series 11 Common Share - 9,471.03 shares outstanding
- Class F Series 1 Common Share - 191,090.11 shares outstanding
- Class F Series 2 Common Share - 1,661.10 shares outstanding
- Class F Series 3 Common Share - 2,581.90 shares outstanding
- Class F Series 4 Common Share - 16,552.48 shares outstanding
- Class F Series 6 Common Share - 5,005.44 shares outstanding
- Class F Series 8 Common Share - 11,377.38 shares outstanding.

8. The Petitioner is unable to determine the total number, classes and series of Common Shares in issue as at 31 December 2009, as no Audited Financial Statements of the Company have been distributed to the Petitioner for the year ended 2009.

Directors and Management Structure

9. The directors of the Company are:
 - 9.1. Mr. Mark R. Graham;

- 9.2. Mr. Edward Brendan Lynch; and
 - 9.3. Mr. Gregory Tolaram (collectively, the “Directors” or “Board of Directors”).
10. The investment manager of the Company is Blue Alternative Asset Management, L.L.C., a U.S.-based limited liability company (the "Investment Manager"). The Investment Manager’s principal office is located at 546, 5th Avenue, 14th Floor, New York, NY 10036, U.S.A. Mark R. Graham is the sole principal of the Investment Manager. The Investment Manager is responsible for investment decisions relating to the allocation of Company assets among various investment managers.

Articles of Association

11. Relevant provisions in the 2007 Articles are:
- 11.1 Article 25, states that shares to be redeemed pursuant to Articles 27 to 29 shall be deemed to remain in issue until and including close of business on the Redemption Day on which they are to be redeemed, and from that time until paid the Redemption Price shall be deemed to be a liability of the Company. “Redemption Price” is defined in Article 2(a) to be the price at which shares shall be redeemed determined in accordance with Article 29(a).
 - 11.2 Article 28(b) provides that the Directors, in their absolute discretion, may at any time by notice in writing to any Member compulsorily redeem all or any part of a Member’s holding of shares on any Redemption Day. Upon such Redemption Day, such shares shall be redeemed in all respects as if the holder thereof had submitted a Redemption Request pursuant to Article 27(d).

- 11.3 Article 29(d) states that upon the date of redemption of a share, the holder shall cease to be entitled to any rights in respect thereof (excepting always the right to receive the Redemption Price including the proceeds of sale of any Investments placed in a liquidating account and accordingly his name shall be removed from the Register with respect thereto and the share shall be cancelled.
- 11.4 Article 29(e) states that a Member who is making a redemption will receive approximately 90% of the Redemption Price no later than 30 days after whichever is the later of (i) the Redemption Day on which the redemption was effected, and (ii) the date of receipt by the Company or its agent of the certificate(s) (if applicable). Promptly after the receipt by the Company of its audited financial statements for the relevant fiscal year, the Company will pay to the redeeming Member the balance, if any, of the amount to which such Member is entitled, or such Member will be obligated to repay to the Company the excess, if any, of the amount previously paid over the amount to which such Member is entitled.
- 11.5 Article 29(g) provides that payment of the Redemption Price may, at the absolute discretion of the Directors, be satisfied in whole or in part by the transfer of assets of the Company provided that the Company shall transfer to a redeeming Member that proportion of the assets of the Company which is then equivalent in value to the Redemption Price of the shares to be redeemed (or such redeemed part thereof which is being so satisfied). If the Directors determine to distribute the Investments in kind (instead of paying all or a part of the Redemption Price in cash), such Investments may be transferred directly to the redeeming Member or may be transferred to a liquidating account and sold by the Company for the

benefit of the redeeming Member in which case payment of that proportion of the Redemption Price attributable to such Investments will be delayed until such Investments are sold and the amount payable in respect of such Investments will depend on the performance of such Investments through to the date on which they are sold.

- 12 UBS AG Global Asset Management (“UBS”) was, at all material times, authorised by the Petitioner to, among other things, act on its behalf in connection with Petitioner’s investment in the Company.
- 13 The Petitioner made the following requests to redeem shares in the Company:
 - 13.1 On 25 June 2008, UBS submitted a request to redeem all 124,85449 remaining shares held by the Petitioner in the Company, specifically 68,192.29 shares registered in the name of UBS Fund Services (Cayman) Ltd. Ref Alpha Hedge Fund Ltd. and 56,662.20 shares registered in the name of UBS Fund Services (Cayman) Ltd. Ref Yellow Fund Ltd. on 30 September 2008;
 - 13.2 By letter from UBS to the Company dated 29 October 2008, a full redemption of Class F Series F01 Shares registered in the name of UBS Fund Services (Cayman) Ltd. Ref Yellow Fund Ltd for the value date of 31 December 2008.
14. However, the Directors implemented a compulsory redemption (“Compulsory Redemption”), pursuant to which the Company, effective as of 31 October 2008, redeemed a percentage of each shareholder’s shares as of that date, representing the portion of the Company’s value attributable to certain “Designated Assets” of the Company and suspended redemptions from the Company and the determination of net

asset value as of 29 September 2008 with the consequence that pending redemption requests for 30 September 2008 and 31 December 2008 would be postponed until the suspension was lifted.

15. In relation to the Compulsory Redemption, the Company stated it would pay the proceeds of such redemption “in-kind” with the Designated Assets, but because the Designated Assets were “generally not transferable”, the assets would be held in a separate book entry account, the Compulsory Redemption Account (“CRA”) in the Company’s name “for the benefit of the Shareholders in the manner contemplated by the [Company’s] Articles of Association and the positions in the CRA would be liquidated and the proceeds from liquidated positions would be distributed as soon as reasonably practicable after receipt by the Company.”
16. By letter to the Shareholders of the Company dated 3 November 2008, the Directors stated that those underlying positions of the Company not transferred to the CRA would continue to be held by the Company (“Remaining Shares”) and that, after 31 October 2008, there would be a change in reporting: namely, although calculation of NAV had been suspended, estimated performance figures (and each Shareholder’s *pro rata* share thereof) would be distributed in separate statements for each of the CRA and the Remaining Shares.
17. In a letter from the Company to Shareholders dated 20 May 2009, the Company set out various options that were to be given to Shareholders in relation to the Remaining Shares, including to liquidate, *in toto*, their Remaining Shares through an in-kind distribution of their *pro rata* share of the Company's underlying assets.

18. The Petitioner elected to liquidate its Remaining Shares by converting the Remaining Shares registered in the name of UBS Fund Services (Cayman) Ltd. Ref Alpha Hedge Fund Ltd and UBS Fund Services (Cayman) Ltd. Ref Yellow Fund Ltd into Class L-IK Shares. (“Class L-IK Shares”).
19. By letter to the shareholders dated 6 May 2010 the Company announced various options available to holders of interests in the CRA including an option to receive a distribution in kind of the underlying positions of the CRA.
20. The Petitioner elected to receive a distribution in kind of the underlying positions of the CRA and notified the Company accordingly.
21. The Company informed the Petitioner that the in kind distribution of underlying positions for the Petitioner’s CRA interest and the in kind distribution of the Petitioner’s pro rata share of the Company’s underlying interests for the Petitioner’s L-IK Shares would be effected as at the value date of 30 June 2010.
22. The Petitioner received statements from the Company’s administrator, Citco Fund Services, for the value of the CRA Interests and the L-IK share as at 30 June 2010 as follows:

22.1. NAV of Alpha Position as at 06/30/10: US\$6,109,383.94

22.2. NAV of Yellow Position as at 06/30/10: US\$5,076,396.80

(Together “June Debt”)

Not all the transfers of shares from the Company to the Petitioner necessary to complete the in kind distribution of underlying positions for the Petitioner’s CRA Interest and the in kind distribution of the Petitioner’s pro rata share of the Company’s underlying

interests for the Petitioner's L-IK Shares were achieved as at the value date of 30 June 2010.

23. On 6 September 2010, the Petitioner and the Company agreed Heads of Terms which (inter alia) set out:

23.1. the Company would pay the June Debt partly in kind and partly by cash;

23.2. the Company would transfer all shares from the Company to the Petitioner necessary to complete the in kind payment ("In Kind Shares") part of the June Debt by 31 October 2010;

23.3. The Petitioner would receive a pro rata share of the Company's Cash as stated on its 30 June 2010 balance sheet in the sum of \$735,053.48 for Alpha and \$612,158.11 for Yellow(together "Pro Rata Cash Debt");

23.4. The Petitioner would receive cash for the difference between the June Debt, the value of the In Kind Shares and the Pro Rata Cash ("Trueing up Debt")

23.5. Upon calculation of the Trueing up Debt the Petitioner would receive a further US\$10,000 in cash ("Further Cash").

24. Since 30 June 2010, the total value of the In Kind Shares transferred by the Company to the Petitioner and the cash payments made by the Company to the Petitioner is \$9,294,046.70 (the "Assets/cash Transferred"), comprising \$5,057,200.41 in respect of Alpha and \$4,236,846.29 in respect of Yellow.

25. The Trueing up Debt is \$544,522.59, calculated as follows:

June Debt:	\$11,185,780.74
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Less Pro-Rata Cash Debt: \$1,347,211.59

Less Assets/cash Transferred: \$9,294,046.70

Trueing up Debt: \$544,522.59.

26. The Pro Rata Cash Debt has been due and payable by the Company to the Petitioner since 30 June 2010.
27. The Trueing up Debt has been due and payable by the Company to the Petitioner since 14 October 2010.
28. Pursuant to the terms of the Heads of Agreement, the Company's attorneys, Priestleys, are holding US\$500,000.00 in an escrow account as trustees for the benefit of the Petitioner as security for the payment of the Trueing up Debt.
29. By e-mail from the Petitioner's attorneys to the Company's attorneys dated 14 October 2010, the Petitioner demanded payment of the Pro-Rata Cash Debt and the Trueing up Debt amounting to US\$1,891,734.18 ("Payment Demanded"). The Payment Demanded has not been paid as at the date of this Petition.
30. Giving the Company credit for the US\$500,000.00 security referred to in paragraph 28 hereof, the total amount currently due and payable from the Company to the Petitioner is US\$1,391,734.18 (the "Petition Debt").
31. Accordingly as at the date hereof, the Petition Debt is due and payable from the Company to the Petitioner and the Company's failure to pay the Petition Debt, despite demand having been made by the Petitioner, demonstrates that the Company is unable to pay its debts and should therefore be wound up.


YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Company be wound up in accordance with the Companies Law (2009 Revision).
2. Geoff Varga and Mark Longbottom, both of Kinetic Partners (Cayman) Ltd. of Ground Floor, Harbour Centre, P.O. Box 10387, Grand Cayman, KY1-1004, Cayman Islands, be appointed as Joint Official Liquidators of the Company.
3. The Joint Official Liquidators not be required to give security for their appointment.
4. The Joint Official Liquidators be authorised to take such steps as may be necessary or expedient for the protection of the Company's assets, and for that purpose may exercise any of the powers specified in Part I and II of the Third Schedule to the Companies Law (2009 Revision) without further sanction of the Court, and for the avoidance of doubt such powers may be exercised within and outside the Cayman Islands. Specifically, but without prejudice to the generality of the foregoing, the Joint Official Liquidators shall have the power:
 - 4.1. to bring or defend any action or other legal proceeding in the name of and on behalf of the Company;
 - 4.2. to take possession of, collect and get in the property of the Company and for that purpose to take all such proceedings as they consider necessary;
 - 4.3. to carry on the business of the Company so far as may be necessary for its beneficial winding up;
 - 4.4. to engage Attorneys and other professionally qualified persons to assist them in the performance of their functions; and

- 4.5. to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions.
5. The Joint Official Liquidators be authorised to act jointly and severally.
6. The Joint Official Liquidators be at liberty to apply for further directions concerning their functions and the exercise or proposed exercise of their powers.
7. No suit, action or other proceeding may be proceeded with or commenced against the Fund except with the leave of the Court and subject to such terms as the Court may impose.
8. The remuneration and expenses of the Joint Official Liquidators be paid out of the assets of the Company.
9. The Petitioner's costs of and incidental to this Petition be paid from the assets of the Company as expenses within the liquidation.

AND your Petitioner will ever pray etc.

DATED the 18th day of October 2010


SOLOMON HARRIS
ATTORNEYS-AT-LAW FOR THE PETITIONER

NOTE: This Petition is intended to be served on the Company and the Cayman Islands Monetary Authority

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on _____ 2010 at 10.00 a.m. 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 PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.

This Petition was presented by **SOLOMON HARRIS** of 3rd Floor, FirstCaribbean House, P.O. Box 1990, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Petitioner whose address for service is that of its said Attorneys.