IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 0266 **OF 2010**

B E T W E E N :

(1) NICHOLAS FREELAND AND DAVID A.K. WALKER
(Joint Official Liquidators of Grand Island Master Fund Limited,
Grand Island Income Fund, Grand Island Commodity Trading Fund,
and Grand Island Commodity Trading Fund II)

PLAINTIFFS

(1) CLOSE BROTHERS (CAYMAN) LIMITED
(2) JOHN SUTLIC

DEFENDANTS

WRIT OF SUMMONS

TO: Close Brothers (Cayman) Limited and John Sutlic
Harbour Place, 4th Floor
103 South Church Street
George Town, Grand Cayman
Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P. O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 29th day of November 2010.

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

The Plaintiffs

1. The Plaintiffs are the Joint Official Liquidators of Grand Island Master Fund Limited ("GIMF"), Grand Island Income Fund ("GIIF"), Grand Island Commodity Trading Fund ("GICTF I"), and Grand Island Commodity Trading Fund II ("GICTF II"), collectively the "Funds".

2. The Plaintiffs were appointed joint voluntary liquidators of the Funds by special resolutions of their shareholders passed at extraordinary general meetings on 17th June 2008, and subsequently appointed joint official liquidators by orders of the Grand Court made on 21st July 2008 bringing the voluntary liquidations under Court supervision.

The Funds

3. GICTF I is an exempted limited liability company incorporated on January 31, 2003.

4. GIMF is an exempted limited liability company incorporated on September 23, 2003.

5. GICTF II is an exempted limited liability company incorporated on September 23, 2003.

6. GIIF is an exempted limited liability company incorporated on March 8, 2006.

7. GICTF I and GICTF II were both "feeder funds" into GIMF. GIIF was a separate "stand-alone" fund.

THE CLAIM AGAINST THE FIRST DEFENDANT

8. The First Defendant is a CIMA licensed fund administrator and was at all material times the administrator of the Funds.

9. The First Defendant holds itself out on its website as a "*leading financial services provider in the Cayman Islands*" with a stated aim "*to make a positive impact on our clients' business ... and reducing risks*".

10. The First Defendant further holds itself out on its website specifically as a professional service provider of fund administration services and currently describes itself in the following terms:

> *"Having over 30 years of experience in the Cayman Islands financial services sector, we provide Fund Administration and registrar and transfer agency services to Funds with net assets in the region of US$9billion and have developed specialization across a diverse range of investments in virtually all mainstream structures and strategies"*

"We have access to independent pricing sources, extensive knowledge of US GAAP and International Financial Reporting Standards, and a thorough monitoring system that is realised (sic.) by our internal audit monitoring programs, which is conducted both locally and annually by Close Brothers Group plc."

The Administration Agreements

11. By an Administration Agreement dated 21st March 2003, GICTF, and by Administration Agreement dated 1st October 2003, GIMF, and GICTF, and by an Administration Agreement dated 3rd October 2003, GICTF II, each respectively appointed the First Defendant to act as the administrator and in particular to "*have general charge of the conduct of the Fund's affairs and shall conduct on behalf of the Fund all day to day administration, correspondence and business of the Fund*" [Clause 7.1].

12. By an Administration Agreement dated April 2006, GIIF, and by Administration Agreement dated August 2006, GICTF, appointed the First Defendant to act as the administrator and in particular to "*have general charge of the conduct of the Fund's administrative affairs and shall conduct on behalf of the Fund all day to day administration, correspondence and business of the Fund*" [Clause 7.1].

13. The Plaintiffs will refer to the Administration Agreements as may be necessary for their full terms and effect.

14. The following were in particular material terms of the Administration Agreements:

"EXERCISE OF POWERS

5.1 In exercising its powers, duties, discretions and functions under this Agreement, the Administrator is (subject as provided herein) authorized to act for the Fund and on the Fund's behalf and in the Fund's name in the same manner and with the same force and effect as the Fund might or could do

DUTIES

7.1 <u>General</u>

..., the Administrator shall have general charge of the conduct of the Fund's affairs and shall conduct on behalf of the Fund all day to day administration, correspondence and business of the Fund

Without prejudice to the generality of the foregoing the Administrator shall:-

7.1.1 at its own expense, provide or procure such office accommodation, secretarial staff and other facilities as may be required for the purpose of fulfilling its duties under this Agreement;

7.1.2 calculate the Net Asset Value of the Fund and compute the subscription price and redemption price of each share;

7.1.3 on behalf of the Fund determine the number of shares to be issued, allotted or redeemed or converted in respect of each class of Share, the amounts receivable and payable by the Fund and arrange the issue, allotment redemption and conversion of such Shares;

7.1.4 perform the duties of keeping the accounts of the Fund and the register of shareholders of the Fund, for the proper conduct of the Fund's affairs;

Implied Terms

15. There were further terms of the said agreements, to be implied by law, that the First Defendant would perform their duties with reasonable care and skill and in particular with the degree of care and skill to be expected of a professional, competent and prudent fund administrator.

16. The Plaintiffs will refer to and rely upon, *inter alia*, the "Guide to Sound Practices for Hedge Fund Administrators" issued by the Alternative Investment Management Association (AIMA) and the Dublin Funds Industry Association (DFIA) (now the Irish Funds Industry Association (IFIA)) (the "AIMA Guide") as indicative of sound practices for fund administration.

17. Further in accordance with their own representations, which include "*specialization across a diverse range of investments in virtually all mainstream structures and strategies*" and "*access to independent pricing sources, extensive knowledge of US GAAP and International Financial Reporting Standards, and a thorough monitoring system that is realised (sic.) by our internal audit monitoring programs, which is conducted both locally and annually by Close Brothers Group plc*" the degree of care and skill reasonably to be expected of the First Defendant is to be judged against the standards of a professional fund administrator holding itself out as having specialised knowledge, ready access to independent pricing sources, knowledge of accounting principles and a thorough internal audit monitoring system.

Fiduciary Duties

18. As administrators, agents and the person "*having general charge of the conduct of the Funds' affairs and conducting on behalf of the Funds all day*

to day administration, correspondence and business of the Funds", the First Defendant was a fiduciary to the Funds.

19. The First Defendant owed the following fiduciary duties to the Funds:

(1) A duty to act in good faith;

(2) A duty not to place itself in a position where its duty to the Funds conflicted with its own interests; and

(3) A duty to act in the best interests of the Funds.

The Funds' trading and losses

20. All investment and trading of the Funds was carried out by a Jamaican individual named Robert Christopher T. Girvan ("Girvan"), whose initials were "RCTG".

21. Girvan was at all material times a director of the Funds and the sole portfolio manager of the investment manager, Caribbean Commodities Limited ("CCL").

22. From early 2003 until May of 2008, the Funds sustained severe and substantial trading losses. Throughout that time, the First Defendant failed to learn of or record such losses by reason of their failure to perform their duties as administrators, their failure to comply with their own internal procedures, their unquestioning acceptance of what they were told by

Girvan, and their unquestioning acceptance of documents provided by Girvan at face value. By the First Defendant's failings Girvan was able to cause monies belonging to the Funds to be transferred into his personal account and to be used for his own improper purposes.

23. On 11th August 2010, Girvan pleaded guilty to 21 counts which included the following:

(1) Stealing property belonging to GICTF, namely monies and/or a debt owed to the value of US$5,172,198.

(2) Stealing property of GICTF II to a value of US$2,412,906.

(3) Stealing from GIIF property to a value of US$535,621.

(4) Stealing from GIMF property valued at US$1 million.

(5) Money laundering between January 2006 and June 2008, disguising property which in whole or in part represented proceeds of criminal conduct, namely by using funds appropriated from discretionary account holders and fund investors, to pay subscription redemptions by other investors, which were based on false investment reports, for the purpose of avoiding prosecution.

(6) Stealing property of others to the value of US$1.1 million by transferring the funds from an account at one bank to his personal account at Smith Barney Bank.

(7) Stealing by transferring US$25,000 in funds from one bank account to his personal account at Smith Barney Bank.

(8) Money laundering, by transferring US$150,000 in stolen funds to an account held by a named individual outside the jurisdiction to avoid prosecution or the making of a confiscation order.

(9) Money laundering, by transferring stolen funds totalling US$840,000 to accounts held by Sabrina Forrest Girvan outside the Cayman Islands for the purpose of avoiding prosecution or the making of a confiscation order.

24. Girvan was able to commit these criminal acts against the Funds due to the failures of the First Defendants as hereinafter appears.

25. As a result of the failures of the First Defendants as hereinafter appears, the net asset value statements ("NAVs") issued by the First Defendant in respect of the Funds were incorrect.

26. The incorrect NAVs were relied upon by the Funds' investors when they placed further subscriptions in the Funds. If the Funds' investors had known the true NAVs and the true trading performance of the Funds they would not have made any additional investments in the Funds after the preliminary losses were sustained.

27. Had the fact that Girvan was providing false statements been discovered, as it should have been, he would have been removed as portfolio manager and losses would have not occurred.

The Failures of the First Defendant

28. Wrongfully and/or in breach of fiduciary duty and/or in breach of contract the First Defendant failed in their duties as administrators in the particular respects hereinafter set out. The Plaintiffs reserve the right to supplement or amend these allegations after discovery and/or interrogatories herein.

Conflict of Interest

29. At all material times the First Defendant had irreconcilable conflicts of interest.

30. The promoter of the Funds was Naul Bodden. He was a director of the Funds and of the Investment Manager, CCL, and of another company, RCTG Investments Limited ("RCTG"), into whose accounts monies belonging to the Funds were wrongfully transferred by the First Defendant, or its affiliate Close Bank (Cayman) Limited ("Close Bank"). Bodden had a very close business relationship with the First Defendant. He had been at Ernst & Young, Cayman together with the First Defendant's managing director, Linburgh Martin, and they had both been shareholders of Chartered Trust Services Limited which was sold to the First Defendant and/or their affiliates

in 2001. Prior to discovery and/or interrogatories herein it is not known whether Bodden retained a financial interest in the First Defendant. Bodden was a client of the First Defendant and/or their affiliates in respect of other companies through which he conducted various other business activities.

31. The First Defendant apparently administered and/or prepared accounts for RCTG, a third party controlled by Bodden and Girvan into whose accounts money belonging to the Funds was wrongfully transferred by the First Defendant or its affiliate Close Bank.

32. The First Defendant's affiliate investment arm, Close Asset Management (Cayman) Limited ("CAM"), was an investor into the Funds. CAM made redemptions which were inflated by reason of the incorrect NAVs prepared by the First Defendant.

33. Another affiliate of the First Defendant, Grange Nominees Limited, was an investor into the Funds. Grange Nominees Limited made redemptions and were paid dividends which were inflated by reason of the incorrect NAVs prepared by the First Defendant.

34. The First Defendant's employee, the Second Defendant, was a director of the Funds.

Failure to secure or properly account for the monies of the Funds

35. The First Defendant failed to ensure that all monies belonging to the Funds remained in accounts in the name of and controlled by the Funds.

36. The First Defendant transferred subscription monies belonging to the Funds out of the accounts held in the name of the respective Funds at their affiliate Close Bank into accounts at Scotia which were not in the name of the Funds nor controlled by the Funds.

37. Of the accounts into which the subscription monies were transferred, one was in the name of the investment manager, CCL, another was the personal account of Girvan and two were in the name of a third party, RCTG related to two of the directors (Girvan and Bodden).

38. The subscription monies should only have been transferred to an account in the name of the GIMF (in the case of subscriptions into GICTF I and GICTF II or subscriptions directly made into GIMF) or to an account in the name of GIIF.

39. The transfer of monies belonging to the Funds to third parties put it beyond the control of the Funds and caused it to become commingled with monies belonging to others.

40. As appears below, the First Defendant failed properly to account for the payments in the books of account of the fund, and as a result was unable to produce correct NAVs.

41. The First Defendant knew or ought to have known from the fact that it prepared financial statements for RCTG , that monies transferred by the First Defendant to the accounts of RCTG were being commingled with monies of other third parties on behalf of whom two of the directors of RCTG, Girvan and Bodden, were carrying on unlicensed investment business using RCTG as a vehicle for their activities.

42. The transfer by the First Defendant of monies belonging to the Funds to third parties was willful misconduct, alternatively reckless or grossly negligent. It was a deliberate breach of contract. It was a deliberate breach of trust and amounted to conversion. The First Defendant is liable to account to the Funds for the monies so transferred.

Failure to obtain direct confirmation of the dealings by the Funds

43. The First Defendant failed to obtain confirmations of the trading activity and month end positions of the Funds directly from Scotia, but instead accepted documents from Girvan, the individual supposedly trading on the Funds' behalf.

44. As the First Defendant knew, Girvan was an unknown individual with no qualifications, who was not a member of any professional body, had no systems, no office administration or employees, no internal controls, no segregation of duties and upon whom no competent administrator could reasonably rely upon.

45. The Plaintiffs rely upon the AIMA Guide which provided (in 2004) as follows (Section 3 and 3.3):

> *The calculation of the NAV is a vital task because the price at which investors buy and sell the shares or units of the fund is based on its NAV. It is also the key determinant in calculating the fees that the manager earns. Therefore, it is difficult to overstate the importance of accurate and timely calculation of the NAV.*
>
> *The starting point for the calculation of the NAV is to build up the trade history of the fund, in order to have an accurate picture of the fund's assets. Then, up to date prices – where possible, obtained from an independent source - need to be applied to those assets in order to work out their value. In order for the administrator to gain confidence that its record of the fund's holdings and prices is accurate, reconciliations with the statements provided by the prime broker, custodian or the manager must be performed. Finally, fees will be calculated and the NAV finalised.*
> ...
>
> *In calculating a reliable NAV, it is not sufficient that the administrator merely captures the trades and prices the securities. A thorough and complete reconciliation to the prime broker and other brokers needs to be carried out. This is important simply because the administrator needs to make sure that its accounting numbers are backed up by physical assets held by the custodian, prime broker and/or other brokers.*
>
> *In considering what should be reconciled, the simple answer is: everything. All assets held by the fund should be reconciled between the administrator's records and those of the relevant third parties; this will include assets or collateral held with prime brokers, futures brokers, CFD counterparties, OTC counterparties, custodians or any other group.*

The reconciliations should encompass nominal holdings, value and transactions entered into during the period. In short, the administrator should be able to show that the prime broker is reflecting the same trades, holding the same positions and valuing those positions in line with the administrator's own records. Any material break in reconciliation must be resolved before the NAV can be finalised.

It is preferable that the reconciliation is electronic. The purpose of the reconciliation is to resolve the differences and this must, by definition, be done manually. Therefore, when examining the administrator's reconciliation process it is important to focus not only on how they do the reconciliation but also on how they resolve the differences.

46. The failure to obtain confirmations directly from Scotia was contrary to the First Defendant's own internal procedures. Prior to discovery and/or interrogatories as to the First Defendant's internal procedures the Plaintiffs rely upon the admission to that effect contained in an email from Norma Matheson of the First Defendant dated 11th March 2008.

47. By failing to obtain direct confirmation from Scotia, the First Defendant allowed Girvan to filter the information being provided to it, to provide false statements and to commit the criminal offences to which he has pleaded guilty as outlined above.

48. The failure to obtain direct confirmation from Scotia was contrary to sound and accepted practice, contrary to the First Defendant's own internal procedures and constituted willful misconduct and gross negligence.

Failure properly to keep the accounts of the Funds

49. The First Defendant failed to keep proper books of account for the Funds.

50. In circumstances where:

(1) the Funds' monies had been paid away to third parties, and

(2) commingled in the third party accounts with monies received from other sources, and

(3) the initial payments to the third parties was not entered in the books of account of the Funds as a loan to those third parties with a book value based upon an assessment of the recoverability of that loan, and

(4) there was no contractual agreement with the third parties into whose accounts the monies were paid, and

(5) there were no control mechanisms in place to enable the activity in the third party accounts to be monitored,

it was not possible to account for the monies of the Funds in the books of accounts of the Funds.

Failure to produce correct NAVs

51. The First Defendants failed to produce correct NAVs for the Funds.

52. In the circumstances set out above, no proper NAVs could be produced, and accordingly all NAVs produced by the First Defendant were incorrect.

Failure properly to deal with subscriptions and redemptions

53. The subscriptions and redemptions were all based upon incorrect NAVs.

54. Further, the First Defendant accepted subscriptions in GIMF to the value of US$4,667,275 without any payment having been received in respect of the subscriptions. Full particulars are set out in Schedule A attached hereto.

Failure to act upon numerous "red flags" and alert the Funds or the Regulatory Authorities to Girvan's misconduct

55. Throughout the course of their activities as administrators, the First Defendant was presented with obvious forgeries, incredible explanations for discrepancies and was even placed on express notice by Scotia that a statement presented to the First Defendant by Girvan as a genuine Scotia statement was not a Scotia statement. It was informed by Girvan that he was using a numbered Swiss bank account with the intention of deceiving the Canadian financial regulatory authorities.

56. At no time did the First Defendant inform the other directors of the Funds, the auditors or the regulatory authorities of the Cayman Islands that they had received a false Scotia statement from Girvan and had been told by Girvan that he was using a numbered Swiss bank account with the intention of deceiving the Canadian financial regulatory authorities.

57. By reason of their failure to carry out their duties as administrators or to follow their own internal policies and procedures, they failed to discover and so alert the other directors of the Funds, the auditors or the regulatory authorities of the Cayman Islands that the Funds were being managed by Girvan as a Ponzi scheme.

58. Pending discovery and/or interrogatories herein, the plaintiffs rely upon the following:

(1) Throughout the period during which the First Defendant acted as administrator they were sent obviously false documents by Girvan which they accepted at face value without inquiry.

(2) As early as July 10th 2003 Ray Murphy ("Murphy"), an employee of the First Defendant was aware that the statements received purporting to be from Scotia contained discrepancies which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(3) On July 15th 2003 Murphy stated in an email to Girvan that two directors Bodden and the Second Defendant were meeting with himself and a person with the name of "Nick" (assumed to be Nick Hollowell an employee of the First Defendant) to discuss the Scotia discrepancies and stated that "we cannot leave differences of this magnitude without complete investigation and in this regard we will need full Scotia statements for the period April 3 to June 30".

(4) It is not known what investigation, complete or otherwise was in fact carried out by the First and/or Second Defendant. Had a proper investigation been carried out the fact that Girvan was producing forged statements would have been discovered in July 2003 at the latest. In spite of this the First Defendant purported to produce a NAV

(5) Further discrepancies which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and which demonstrated that the purported statement was false were discovered by Murphy in September 2003. In spite of this the First Defendant purported to produce a NAV

(6) On 16th March 2004 Douglas Curtis ("Curtis"), an employee of the First Defendant informed the directors of GIMF, including the Second Defendant, that the accounts at Scotia should be in the name of GIMF. An obviously absurd response was supplied by Girvan by email dated 16th March 2004 sent to Curtis and the Second Defendant which demonstrated that investors would have unlimited liability for losses incurred if accounts at Scotia were held in the name of GIMF. Such an explanation was so absurd that it could not reasonably have been believed by either Curtis or the Second Defendant. In spite of this the First Defendant purported to produce a NAV.

(7) On 9th June 2004, Curtis noted that on the statement purportedly issued by Scotia that a transfer of US$100,000 which had not been made until 13th May 2004 appeared on the statement for 4th May 2004. The

erroneous entry also referred to "*Close Asset Management*" as being the payer when it was sent by Close Bank. The Second Defendant was a recipient of the relevant email in which this was raised. These were errors which no bank of the standing and reputation of Scotia could reasonably be believed to have made and demonstrated that the purported statement was false. In spite of this the First Defendant purported to produce a NAV.

(8) In July 2004 auditors requested back-up for collateral of c.US$9M and margin of c.US$5.8M on a confirm, as well as asking about the computer system used, how the trade process works. The First Defendant did not have such information and sought it from Girvan. At the same time Curtis noted that there was a discrepancy in commissions shown on a 'Scotia' confirm (received from Girvan) and as shown on a fax from Scotia.

(9) In November 2004 the auditors detected pricing differences as at 31st March 2004 between those shown on Bloomberg and those shown on the Scotia statements.

(10) Further discrepancies were discovered by the auditors in December 2004 in relation to July and August 2003 open positions when comparing the statements the auditors had obtained directly from Scotia and the statements which the First Defendants had obtained from Girvan.

(11) In December 2004 Curtis recognised that the First Defendant was failing in its duties (and failing to comply with its own internal

procedures) and requested that bank statements be supplied directly from Scotia in future.

(12) By email dated 6th December 2004 sent directly by Donough O'Brien of Scotia to Curtis of the First Defendant, the First Defendant was expressly informed that *"Although the statements that you are reconciling these positions to appear to be ours they are not. Therefore we cannot explain the difference in question."* Thus by the latest 6th December 2004 the First Defendant was put on actual notice that it had received false statements from Girvan. In spite of this the First Defendant purported to produce a NAV.

(13) In May 2005 a statement purportedly issued by Scotia contained an error in the *"brought forward balance"*. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(14) Queries were raised by the auditors of the First Defendant in June 2005 in relation to cash confirmations from Scotia which allegedly included a market value of short positions which would not be considered cash. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(15) In August 2005 Curtis noted a number of discrepancies with information received from Scotia.

(16) In November 2005 Leon Rhule ("Rhule"), an employee of the First Defendant, discovered that the statements purportedly issued by Scotia did not include a transfer of US$50,000 made by Scotia to Close Bank. This omission is one which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false. In spite of this the First Defendant purported to produce a NAV.

(17) On 10th May 2006 Rhule stated that the First Defendant required a dedicated account at Scotia in respect of the newly established GIIF and requested that a GIIF account be established at Scotia. No such account was ever opened.

(18) On 5th June 2006 Rhule noted a discrepancy in the commission statements received by the First Defendant.

(19) On 7th July 2006 Rhule noted another discrepancy in relation to commissions.

(20) On 14th August 2006 the auditors informed Curtis of in the auditors' words *"significant differences in the cash balances"* according to confirmations received direct from Scotia.

(21) On 15th August 2006 Girvan provided an explanation for the differences which was so incredible that no competent fund administrator could have accepted and which put them on notice that the Fund was operating illegally.

i. Girvan wrote to Curtis *"Scotia Capital is just a trading house. Wealth management controls our money. We have a numbered account to avoid taxes, penalties or investigations from Revenue Canada or other Canadian Financial Authorities"*.

ii. Girvan provided an obviously fabricated letter (without an address) from a fictitious person *"Richard Duncan"* with the title of *"Personal Director Private Asset Services"* from a fictitious entity *"Scotia Capital Private Wealth Asset Management"*.

iii. The First Defendant having been informed that Girvan was operating a numbered Swiss bank account with the expressed intention of the deception of the Canadian Financial Authorities was on notice that the Fund was being operated illegally and had a duty to report that illegality to the regulatory authorities.

iv. No reputable administrator would have continued to administer the Funds in the light of this information if it believed it to be true.

v. In spite of this the First Defendant purported to produce a NAV.

(22) On 3rd October 2006 Rhule noted a discrepancy in relation to crude oil trade.

(23) On 4th October 2006 Rhule noted a statement error of US$1,000 one which no bank of the standing and reputation of Scotia could reasonably bc expected to have made, and demonstrated that the purported statement was false.

(24) On 9th November 2006 Rhule noted a discrepancy in the statements in that a redemption payment appears on the Close Bank statement as having been received from Scotia, but is not on the Scotia statement. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false. In spite of this the First Defendant purported to produce a NAV.

(25) On 11th December 2006 Rhule noted that the opening balance on the statement was incorrect. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(26) On 3rd January 2007, Girvan sent to the First Defendant an obviously fabricated document purporting to be for the purchase of commercial paper for *"GENERAL ELECTIC (sic) Inc."* and another obviously fabricated document relating to other commercial paper allegedly purchased.

(27) On 10th January 2007 Rhule noted that the opening balance was incorrect on the statement provided by Girvan. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false. In spite of this the First Defendant purported to produce a NAV.

(28) On 9th February 2007 Rhule noted that the opening balance was incorrect on the statement provided by Girvan. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(29) On 5th March 2007, Girvan sent to the First Defendant an obviously fabricated document purporting to confirm profit on commercial paper for *"GENERAL ELECTIC (sic) Inc."*

(30) Another obviously fabricated document was sent on 8th March 2007, and on 2nd April 2007. In spite of this the First Defendant purported to produce a NAV.

(31) On 5th April 2007, Rhule noted that the opening balance was incorrect on the statement provided by Girvan. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(32) On 10th April 2007 Rhule noted that the date on the purported GIIF statement was wrong 31st January instead of 31st March. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(33) On 23rd April 2007 Girvan sent to the First Defendant an obviously fabricated document. Rhule requested Girvan to ensure Scotia sends

statements directly to Rhule and copied to Curtis. This never occurred. In spite of this the First Defendant purported to produce a NAV.

(34) On 2nd May 2007, Girvan sent to the First Defendant an obviously fabricated document.

(35) On 7th May 2007, Rhule noted that he had not received any statements direct from Scotia.

(36) On 5th June 2007, Girvan sent to the First Defendant an obviously fabricated document.

(37) On July 4th Girvan sent to the First Defendant an obviously fabricated document.

(38) On 20th July 2007 Girvan provided an explanation to the First and Second Defendants for Scotia not providing statements direct to the First Defendant that was so incredible that no competent fund administrator could possibly have accepted.

(39) On 23rd July 2007, the auditors informed Rhule of a discrepancy arising out of statements they had received direct from Scotia.

(40) On 2nd August 2007 Girvan provided to the auditors and Rhule an explanation for Scotia not being able to provide transactions statements for trades direct to the First Defendant that was so incredible that no competent fund administrator could possibly have accepted.

(41) On 6th August 2007 Girvan sent to the First Defendant obviously fabricated documents.

(42) On 8th August 2007 Rhule noted that the statements provided omitted commissions. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(43) On 5th September 2007 Girvan sent to the First Defendant obviously fabricated documents.

(44) On 6th September 2007 Rhule noted that the opening balance on the statements provided was wrong. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(45) On 4th October 2007 Girvan sent to the First Defendant obviously fabricated documents one of which was marked *"PRIVATE & COFIDENTIAL" (sic.).*

(46) On 5th November 2007 Girvan sent to the First Defendant obviously fabricated documents one of which was again marked *"PRIVATE & COFIDENTIAL" (sic.).*

(47) These documents also on their face purported to show the purchase of an interest rate bond in the sum of US$28.5M at a time when the First Defendant was reporting a NAV of US$27.1M. It purported to show a profit of US$670,978 in a single month which was equivalent to a 32% per annum equivalent profit. The document contained an error on its face in that it purports to show that 8 more units were redeemed than were purchased.

(48) On 8th December 2007 Girvan sent to the First Defendant obviously fabricated documents one of which was again marked *"PRIVATE & COFIDENTIAL" (sic.)*.

(49) On 12th December 2007 Rhule noted errors and discrepancies in the documents provided. These were errors which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(50) On 3rd January 2008 Girvan sent to the First Defendant obviously fabricated documents one of which was again marked *"PRIVATE & COFIDENTIAL" (sic.)*.

(51) On 21st February 2008 Rhule again requested hard copy statements from Scotia. This was now over 3 years since they were first requested in December 2004 and throughout that period the First Defendant had purported to produce NAVs.

(52) On 5th March 2008 Girvan sent to the First Defendant obviously fabricated documents.

(53) On 6th March 2008 Girvan sent to the First Defendant obviously fabricated documents.

(54) These documents also on their face purported to show the purchase of an interest rate bond in the sum of US$29M at a time when the First Defendant was reporting a NAV of US$32.5M. It purported to show a profit of US$591,747 in a single month which was equivalent to a 27% per annum equivalent profit.

(55) On 6th March 2008 Rhule noted a discrepancy on the statements in relation to gold trading. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(56) On 6th March 2008 Rhule noted there were missing subscription and redemption payments in the statements. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(57) On 6th March 2008 Rhule noted that the opening balance on a statement provided was wrong. This was an error which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(58) On or about 8th March 2008 Girvan faxed an obviously false letter to the First Defendant containing explanations so incredible that no competent fund administrator could have accepted.

(59) On 10th March 2008 Rhule noted contradictory information on the statements provided. These were errors which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

(60) On 11th March 2008 Norma Matheson stated that to meet the First Defendant's internal procedures it was necessary either for the First Defendant to receive statements directly from Scotia or for them to be present when they were opened by Girvan. The Plaintiffs rely upon this

as an admission that the First Defendant had blatantly ignored its own internal procedures for the previous 5 years. Throughout that period the First Defendant had continued to purport to issue NAVs.

(61) On 3rd April 2008 Girvan sent obviously fabricated documents to the First Defendant.

(62) On 8th April 2008 Girvan sent obviously fabricated documents to the First Defendant. These documents also on their face purported to show the purchase of an interest rate bond in the sum of US$29M at a time when the First Defendant was reporting a NAV of US$33.7M. It purported to show a profit of US$558,568 in a single month which was equivalent to a 23% per annum equivalent profit. .

(63) On 9th April 2008 Rhule noted errors and omissions on the statements provided. These were errors and omissions which no bank of the standing and reputation of Scotia could reasonably be expected to have made, and demonstrated that the purported statement was false.

59. In so far as it may be necessary, the Plaintiffs aver that the First Defendant's failures set out above amount to willful misconduct and/or gross negligence.

THE CLAIM AGAINST THE SECOND DEFENDANT

60. The Second Defendant was a director of the Funds during the following periods:

(1) GICTF from 20th November 2003 to 26th May 2008;

(2) GIMF from 5th November 2003 to 26th May 2008;

(3) GICTF II from 20th November 2003 to 26th May 2008;

(4) GIIF from 10th March 2006 to 26th May 2008.

61. The Second Defendant was at all material times the Chief Financial Officer and Director of the First Defendant having, according to the First Defendant, joined the First Defendant "*with a mandate to focus on operational finance, strategic planning and risk management, as well as leveraging from his extensive experience with international hedge funds by serving in a fiduciary capacity to Close Brothers' expanding offshore hedge fund client base.*" The Second Defendant is a member of the Canadian Institute of Chartered Accountants and a former council member of the Cayman Islands Fund Administrators Association.

62. As a director of the Funds, the Second Defendant was a fiduciary to the Funds.

63. The Second Defendant owed the following fiduciary duties to the Funds:

(1) A duty to act in good faith;

(2) A duty not to place himself in a position where his duty to the Funds conflicted with his own interests; and

(3) A duty to act in the best interests of the Funds.

Director's Duties of Care and Skill

64. The Second Defendant further owed duties of care, skill and diligence as a director of the Funds:

(1) He owed a duty to exercise the degree of care which an ordinary person would take in looking after his own financial affairs;

(2) As a professional director, being a chartered accountant and employee and director of the First Defendant, he owed the Funds duties to exercise the degree of skill to be expected of a professional with his qualifications and status, being a chartered accountant with great experience of Funds and Fund administration;

(3) He owed a duty to be diligent in relation to the companies' affairs and its oversight. The degree of diligence in relation to the affairs of the Funds was heightened by the following facts and matters:

i. that there were only 3 directors;

ii. that one of the directors was the individual carrying out the trading activities of the Funds and effectively had sole day to day control of the Funds;

iii. that the investment manager was an unknown individual with no qualifications, who was not a member of any professional body, had no systems, no office administration or employees, no internal controls, no segregation of duties and upon whom no reliance could be placed.

iv. that he was the sole "independent" director and had allowed himself to be held out as such to investors;

v. that he was the nominee or representative of the First Defendant, the administrator to the Funds;

vi. That as an employee of the First Defendant, the administrator of the Funds he had direct access to information concerning the affairs of the Funds.

65. The Plaintiffs will rely upon the AIMA's Offshore Alternative Fund Directors' Guide as evidence of proper practice for the directors of the Funds.

66. The Director's Guide provides as follows:

2. THE BOARD

2.1 Skills, experience, age and other commitments

Any Director should have sufficient and relevant knowledge and experience to carry out his duties as Director. He should also be able to devote sufficient time to carry out those duties .... Whilst the Administrator (or another service provider) may be willing to provide one of the Directors, it is better to avoid appointing Directors who represent the advisers or service providers to the Fund because of potential for conflicts of interest.

- *Directors should make their own assessment of risk and risk mitigation - i.e. as to how they are managing the risks perceived through delegation, controls, procedures, etc. and*
- *Delegation without oversight is not effective – all delegated activities need some level of periodic upward reporting to the Board.*

Typical requirements of Fund Directors might be:

- *Attendance at quarterly Board meetings, with set agenda and written papers circulated in advance of the meeting, to allow proper preparation time;*
- *Such meetings will review and approve annual audited accounts (unless there is an audit committee, which will report to the Board,*

which may approve accounts and associated documentation and review and approve semi-annual accounts;

- *Further, specially convened meetings for discussion of "one-off" matters - e.g., nominations of additional or replacement Directors, changes to service providers' contracts or to the prospectus.*

3. *BOARD MEETINGS*

3.1 *Frequency of meetings*

Board meetings should be held sufficiently frequently so that the Board is effectively able to carry out its role

4. *RELATIONSHIP BETWEEN THE BOARD AND INVESTMENT MANAGER*

The Investment Manager will, for legal purposes, often be treated under the laws of its jurisdiction as a fiduciary of the Fund (e.g., this is the case for UK based Investment Managers). As a result, the Investment Manager may owe several duties to the Fund, including:

- *A duty of good faith;*
- *A duty to avoid conflicts of interest between itself and the Fund, as well as between the Fund and other clients of the Investment Manager; and*
- *A duty not to profit secretly from the Fund.*

The scope of any fiduciary duties owed by the Investment Manager to the Fund will be based on the scope of the Investment Manager's role. As a result, the Investment Management Agreement ("IMA") and related documentation of the Fund (e.g., the prospectus) will be of primary importance. The informed consent of the Fund, as evidenced either in the IMA or otherwise (e.g., by Board action) would be a defence to a claim that such fiduciary duties have been breached. In certain respects, the Fund and the Investment Manager may limit the scope of these fiduciary duties by mutual agreement, although such limitations should be explicit and unambiguous.

In addition to fiduciary duties, an Investment Manager may also have other obligations to the Fund for which claims may be made in case of breach. These could include causes of action for:

- *Negligence;*
- *Misrepresentation; and*

- *Breach of contract.*

The Board's ongoing review of the Investment Manager's performance will necessarily include an evaluation of whether or not these duties have been fulfilled.

The Failures of the Second Defendant

67. Wrongfully and/or in breach of fiduciary duty and/or in breach of his duties of care as a director of the Funds, the Second Defendant failed to perform his duties to the Funds in the particular respects hereinafter set out. The Plaintiffs reserve the right to supplement or amend these allegations after discovery and/or interrogatories herein.

68. The Second Defendant failed to take any or any proper interest in the affairs of the Funds or to supervise or monitor the activities of his co-directors adequately or at all.

69. The Second Defendant failed to detect the obvious deception and falsification of the Funds' financial position and performance being carried out by Girvan.

70. The Second Defendant permitted funds to be transferred by the First Defendant to accounts in the names of third parties at Scotia.

71. By an email sent to his co-directors Girvan and Bodden on or about 11th December 2007, the Second Defendant admitted that he never sees them anymore. The Plaintiffs will rely upon this as an admission that the Second Defendant was in gross dereliction of his duties as an independent professional director in not taking any interest in the affairs of the Funds.

72. In the same email the Second Defendant asked about whether hard copies of Scotia statements were received by mail or courier. In response Girvan confirmed that no hard copies were received.

73. The only minutes of meetings of the board of directors and board resolutions relate to formal matters such as changes to agreements or accepting late subscriptions or redemptions or changes thereto. There is no evidence that the directors ever held meetings to discuss in substance the affairs of the Funds.

74. In so far as it may be necessary, the Plaintiffs aver that the Second Defendant's failures set out above amount to willful misconduct and/or gross negligence.

Vicarious Liability of the First Defendant

75. At all material times the Second Defendant was a director and employee of the First Defendant. Accordingly the First Defendant is vicariously liable for the acts and omissions of the Second Defendant as a director of the Funds.

Quantum

76. By reason of the breach of fiduciary duty set out above, the First and/or Second Defendants are liable to account to the Plaintiffs for the monies wrongfully transferred to Scotia out of the control of the Funds.

77. The total amount transferred by the First Defendant to Scotia was US$ $29,205,491.67.

78. The amount actually returned to the First Defendant by Scotia was US$17,425,536.11.

79. Accordingly there is a sum of US$11,779,955.56 which is due and payable to the Plaintiffs by the First and/or Second Defendants as being monies wrongfully transferred by the First Defendant to third party accounts at Scotia.

80. By reason of the First Defendant producing incorrect NAVs, payments were made by the Funds by way of redemption and, in the case of GIIF quarterly distributions, which ought not to have been paid. The First Defendant is

accordingly liable for the amounts wrongfully paid based upon the incorrect NAVs, being a total of US$5,103,413.10. The Plaintiffs will give credit for any recoveries from persons redeemed, less the costs incurred in respect of recovering the same.

81. By reason of the First Defendant accepting subscriptions into GIMF by persons who had not provided cash consideration or insufficient cash consideration, the First Defendant is liable for the loss of capital payable to GIMF. The total amount is US$4,667,275. The Plaintiffs will give credit for any recoveries from persons owing capital contributions, less the costs incurred in respect of recovering the same.

82. By reason of their own breaches of fiduciary duties and breaches of contract the First Defendant is liable to return to the Funds the fees, commissions and other charges (including director's fees for the Second Defendant) which were not properly earned. The total amount is US$497,866.54. In view of the gross failures of the First and/or Second Defendants, the Plaintiffs aver that no fees were properly earned and payable and the whole of the fees paid by the Funds to the First Defendant should be returned.

83. Further or alternatively, but for the First and/or Second Defendants' failures set out above the fraud would not have gone undetected, and the Funds would not have required the services of all the professionals engaged and/or

appointed to investigate and report on the fraud and to attempt to recover the maximum amount possible for the Funds. As such, the Plaintiffs are entitled to recover all the costs they have incurred as JOLs and the costs of the Receiver, and in respect of investigating the fraud, recovering funds from Scotia, and administering the distribution of the recovered funds. These costs are ongoing.

84. The Plaintiffs will give credit for the sum of US$5,635,484.85 paid to the Funds, having been recovered by Receivers appointed by the Grand Court.

AND THE PLAINTIFFS CLAIM:

(1) Under paragraph 79 the sum of US$11,779,955.56; and

(2) Under paragraph 80 the sum of US$5,103,413.10; and

(3) Under paragraph 81 the sum of US$4,667,275; and

(4) Under paragraph 82 the sum of US$497,866.54

(5) Alternatively, damages; and

(6) Interest under the Judicature Law or pursuant to the inherent jurisdiction of the Court at such rate and for such period as the Court considers just; and

(7) Further or other relief; and

(8) Costs.

Dated this 29th day of November 2010

Conyers Dill & Pearman
Attorneys at Law for the Plaintiff

This Writ of Summons and Statement of Claim were filed by Messrs Conyers Dill & Pearman, Attorneys-at-Law for and on behalf of the Plaintiffs, whose address for service is Boundary Hall., Cricket Square, P.O. Box 2681, Grand Cayman KY1-1111, Cayman Islands

SCHEDULE A

GIMF NON-CASH SUBSCRIPTIONS

21.05.03	RCT Girvan	US$100,000
	Naul Bodden	US$100,000
	Donald Hunter	US$100,000
01.10.03	Holt Hunter	US$63,575
	Holt Hunter	US$15,297
	Holt Hunter	US$1,016,998
	Donald Hunter	US$24,801
	Donald Hunter	US$983,336
	RCT Girvan	US$24,801
	RCT Girvan	US$256,833
	Naul Bodden	US$256,833
	Naul Bodden	US$24,801
01.11.03	Holt Hunter	US$200,000
01.10.06	Donald Hunter	US$1,500,000

No. 8

Acknowledgement of service of writ of summons (0.12, r.3)

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

   After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

   If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

   If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

   If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.

3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.

5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.

6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.

7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.

8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD_____ OF 2010

B E T W E E N :

J. I. NICHOLAS FREELAND AND DAVID A.K. WALKER
(as Joint Official Liquidators of Grand Island Master Fund Limited, Grand Island Income Fund, Grand Island Commodity Trading Fund, and Grand Island Commodity Trading Fund II)

PLAINTIFFS

AND

(1) CLOSE BROTHERS (CAYMAN) LIMITED
(2) JOHN SUTLIC

DEFENDANTS

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1.	State the full name of the Defendants by whom or on whose behalf the service of the Writ is being acknowledged. (1) Close Brothers (Cayman) Limited; and (2) John Sutlic
2.	State whether the Defendants intends to contest the proceedings (tick appropriate box) ☐ yes ☐ no This is pending the Court's determination of the Defendants' application to strike.
3.	If the claim against the Defendants is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendants intends to apply for a stay of execution against any judgment entered by the Plaintiffs (tick box)

☐ yes ☐ no

See above.

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for (1) Close Brothers (Cayman) Limited; and (2) John Sutlic

Please complete overleaf

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiffs' Attorney (or by plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Conyers Dill & Pearman
Boundary Hall, Cricket Square
PO Box 2681
Grand Cayman KY1-1111

Ref: LDD/702857

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.