

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD NO. 130 OF 2011

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)

AND

IN THE MATTER OF LYDIAN OVERSEAS PARTNERS MASTER FUND LTD (IN VOLUNTARY LIQUIDATION)



PETITION



The humble petition of Lydian Offshore SPV Ltd. (the "Company" or "Lydian Offshore SPV"), a limited liability company organized under the laws of the Cayman Islands, with a registered address located at Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands, and with registration number 219355, shows that:

#### Background

1. Lydian Overseas Partners Master Fund Ltd., a Cayman Islands exempted company (the "**Master Fund**") was incorporated on 8 July 1999 with registration number 90972 to act as a "master fund" to Lydian Overseas Partners Fund Ltd., a Cayman Islands exempted company (the "**Cayman Feeder**") and Lydian Partners II L.P., an affiliated Delaware U.S.A. limited partnership (the "**US Feeder**" and together with the Cayman Feeder, the "**Feeders**"), each of which also was formed in July 1999.
2. The authorized share capital of the Master Fund is US\$100,000 divided into 10,000,000 shares of a nominal or par value of US\$0.01. The registered office of the Master Fund is at Walkers House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands.

### **Liquidation of the Master Fund**

3. The Master Fund was placed into voluntary liquidation in the Cayman Islands pursuant to a special resolution of the sole shareholder on 17 March 2011. Walkers Corporate Services Limited were appointed as voluntary liquidator in respect of the Master Fund. The notice of voluntary liquidation was filed with the Registrar of Companies on 23 March 2011.
4. Further to paragraph 19 below, in accordance with Section 127 of the Companies Law (as amended), the liquidator of the Master Fund convened a final meeting of the sole shareholder of the Master Fund on 13 May 2011 (the "**Final Liquidation Meeting**") to lay accounts before the meeting and to show how the winding up of the Master Fund had been conducted. The final resolutions were passed at the Final Liquidation Meeting and the final return was filed with the Registrar of Companies on 13 May 2011 with the result that the Master Fund is currently deemed to be dissolved on 15 August 2011 (the "**Dissolution Date**").

### **Deferral of Date of Dissolution**

5. The Company is an interested party in the liquidation of the Master Fund by virtue of the Participation (as defined below) and requires the deferral of the Dissolution Date for the reasons more fully explained below.
6. The Feeders conducted all of their investment and trading activities through the Master Fund. Lydian Asset Management L.P. ("**Lydian**") served as the investment manager to the Master Fund and the Feeders and made all investment decisions on their behalf.
7. Pursuant to the Private Placement Memorandum of the Cayman Feeder, the investment objective of the Master Fund and the Feeders was to maximize capital appreciation over time through investments primarily in convertible bonds and other equity-linked securities. In pursuing its investment objective, the Master Fund and the Feeders utilized a global convertible bond arbitrage strategy. This strategy attempted to take advantage of the pricing anomalies between a convertible security and its underlying equity or debt security.

8. On September 16, 2008, Lydian apprised their investors of the significant and adverse consequences to the Master Fund and the Feeders of the bankruptcy of Lehman Brothers Holdings, Inc. ("**Lehman**") and the fact that four Lehman UK entities had been placed in administration, including Lehman Brothers International (Europe) ("**LBIE**"). LBIE was one of eight prime brokers utilized by Master Fund. In addition, the Master Fund's portfolio included swap and other derivative positions with respect to which LBIE was the counterparty, as well as corporate bonds issued by Lehman.
9. Lydian recommended to the Master Fund's and the Cayman Feeder Fund's Boards of Directors (the "**Board**") (and to the general partner of the US Feeder) that each Feeder create a special purpose vehicle ("**SPV**") to hold the Master Fund's economic interest in positions held at Lehman and its affiliates, including LBIE (such economic interest, the "**Lehman Assets**").
10. Accordingly two special purpose vehicles were created in 2008 -- Lydian Offshore SPV and Lydian SPV Ltd. ("**Lydian SPV**" and together with Lydian Offshore SPV, the "**SPVs**") – in order to hold the portion of the Master Fund's Lehman Assets attributable to each of the Feeders, respectively. Each SPV is wholly-owned by the Master Fund.
11. This transfer of each Feeder's respective economic interest to the corresponding SPV was designed to enable investors to better understand the size and scope of their Lehman Assets exposure resulting by (i) separating the valuation of the SPV from the valuation of the remaining Master Fund assets; and (ii) affording investors further transparency into the portfolio value as provided by the Master Fund's Administrator.
12. In November 2008, each of the Feeders and the Master Fund executed a participation agreement (the "**Participation Agreement**") pursuant to which a participation was granted to each of the SPVs, effective as of September 30, 2008 (the "**Participation**"), of the Master Fund's entire interest in the Lehman Assets. The interest totals US\$244,614,797.97.

13. The Participation Agreement between the Master Fund and the Company obligates the Master Fund to distribute 93.63% of any economic recoveries from the Lehman claims to the Cayman Feeder and the Participation Agreement between the Master Fund and Lydian SPV obligates the Master Fund to distribute 6.37% of any economic recoveries from the Lehman claims to the US Feeder.
14. In August 2010, Lydian advised its investors in the Feeders that notwithstanding the unprecedented losses suffered by the Master Fund and the Feeders in the last quarter of 2008, and despite the impressive returns over the eighteen months to August 2010, the Feeders were continuing to operate with a much smaller capital base than they did prior to the financial crisis. Accordingly, Lydian recommended that it would be most efficient if the Master Fund and the Feeders cease operations as of September 30, 2010.
15. U.S. and UK Bankruptcy law both allow claimholders to transfer their claims to third parties. This is a very common practice and there are in fact companies who make a business out of speculating on the value of bankruptcy claims.
16. To effectuate the U.S. transfer, the Lydian Offshore SPV filed with the U.S. bankruptcy court on September 30, 2010 the appropriate notice(s) to effectuate a transfer of 93.63% of the Master Fund's Lehman claims to Lydian Offshore SPV.
17. Similarly, the Lydian SPV filed with the U.S. bankruptcy court on September 30, 2010 the appropriate notice(s) to effectuate a transfer of 6.37% of the Master Fund's Lehman claims to Lydian SPV (this transfer, together with the transfer described in Paragraph 16 is referred to hereafter as the "**Assignment.**"). Following the relevant filings evidencing the Assignment in accordance with the US Bankruptcy Code, Lydian Offshore SPV is the assignee of, and therefore the legal owner of 93.63 % and Lydian SPV is the assignee of, and therefore the owner of 6.37% of the Master Fund's Lehman claims and each is entitled to receive directly their pro rata portion of any distributions thereunder that are made in the US.

18. Similar notices to effectuate the Assignment were filed in the UK with the LBIE Administrator, it being understood at the time that the LBIE Administrator would recognize the Assignment in the UK.
19. Following the cessation of operations of the Master Fund and the Cayman Feeder, the Master Fund and Cayman Feeder were placed into voluntary liquidation. Further information in respect of the liquidation of the Master Fund is set out at paragraphs 3 and 4 above.
20. On May 27, 2011, the LBIE Administrator, contrary to Lydian's prior understanding and contrary to the LBIE Administrator's prior general communications to creditors on the subject, communicated to Lydian that it would not consent to the Assignment. The LBIE Administrator indicated that certain of the relevant agreements (including the Margin Lending Agreement dated March 7, 2005 and the Customer Account / Prime Brokerage Agreement dated January 29, 2003 (the "CCA")) with the Master Fund required consent to assignment and as outlined below in relation to the CAA, there was a need for all Lehman entities to provide consent to any assignment. The LBIE Administrator was not prepared to provide the consent on behalf of all Lehman entities.
21. The CCA (the prime brokerage agreement governing Lydian's relationship with Lehman Brothers), contained in Clause 1 the following provision: "*You hereby agree that the parties to this Agreement shall consist of you and Lehman Brothers Inc, Lehman Brothers International (Europe), Lehman Brothers Finance SA, Lehman Brothers Special Financing Inc, Lehman Brothers Holdings Inc and any of their subsidiaries, parents, affiliates, divisions, officers, directors, agents and employees now existing or hereafter created, including successors and assigns (each such entity or person being referred to hereinafter as Lehman Brothers or a "**Lehman Brothers Entity**," unless otherwise specified, and all such entities and persons being collectively referred to hereinafter as "**Lehman Brothers**")*".
22. Clause 13 (Waiver, Assignment and Notices) included the following sentence "*Any assignment of your rights and obligations hereunder per your interest in any property*

*held by or through Lehman Brothers without obtaining the written consent of an authorised representative of Lehman Brothers shall be null and void".*

23. The most conservative reading of the assignment provision would require the consent of each Lehman affiliate and other person and entity across the globe comprising the defined term "Lehman Brothers." No consensus view had yet been reached as to which of that enormous number of persons and entities' consents would be required. LBIE expressed the view that the least conservative position would be to require the consent of each of the corporate entities named in Clause 1 *i.e.* Lehman Brothers Inc, Lehman Brothers International (Europe), Lehman Brothers Finance SA, Lehman Brothers Special Financing Inc and Lehman Brothers Holdings Inc.
24. Until the LBIE Administrator reaches a conclusion regarding the interpretation of the assignment clause, it will not consent to the Assignment.
25. Without resolution of the above issues, it now becomes necessary to stay the effective date of dissolution of the Master Fund. If the date of the dissolution is not deferred and the Master Fund formally dissolves, the Company may potentially lose the benefit of the Participation as there will be no legal entity (*i.e.* the Master Fund) which will be able to pass through funds received from Lehman or deal with Lehman in respect of further negotiation. The Company requires additional time to negotiate with Lehman and for Lehman to confirm their approach with respect to the assignment.

Your Petitioner therefore humbly prays that an order be made that:

1. the date on which the dissolution of the Master Fund is to take effect be deferred to 15 August 2012, being one year after the original date of dissolution;
2. the petitioner have liberty to apply to vary the date set out at (1) above;

3. such further orders as seem just to this Honourable Court.

DATED this 15<sup>th</sup> day of July 2011

  
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WALKERS  
ATTORNEYS-AT-LAW FOR THE PETITIONER

THIS PETITION was filed by Walkers, Walker House, 87 Mary Street, George Town, PO Box 265, Grand Cayman KY1-9001, Cayman Islands, Attorneys-at-law for and on behalf of the Petitioner whose address for service is that of their said Attorneys-at-law.

TIME ESTIMATE: The estimated length of the hearing of this Petition is 30 mins.

**Note: It is not intended that this Petition be served on anyone.**

#### ENDORSEMENT

This Petition having been presented to the Court on the \_\_\_\_ day of July 2011 will be heard at the Court House, George Town, Grand Cayman on the \_\_\_\_ day of \_\_\_\_\_ 2011 in the forenoon/afternoon, or as soon thereafter as the Petition can be heard.

**THIS PETITION** was filed by Walkers, Walker House, 87 Mary Street, George Town, PO Box 265, Grand Cayman KY1-9001, Cayman Islands, Attorneys-at-law for and on behalf of the Petitioner whose address for service is that of their said Attorneys-at-law.