

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



Cause No. FSD 2012

IN THE MATTER OF THE COMPANIES LAW (2011 REVISION)
AND IN THE MATTER OF FLETCHER INCOME ARBITRAGE FUND LTD



WINDING UP PETITION

TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of FIA Leveraged Fund (in Official Liquidation) ("Leveraged") of c/o Ernst & Young Ltd, 62 Forum Lane, Camana Bay, PO Box 510, Grand Cayman KY1 -1106, Cayman Islands shows that:



Preamble

1. Leveraged seeks an Order for the winding up of Fletcher Income Arbitrage Fund Ltd (the "Company"). The Company is unable to pay its debts. Further or alternatively, it would be just and equitable to wind up the Company on the grounds that (i) it has failed to file audited accounts since 2009, (ii) it is insolvent, (iii) it has lost its substratum, (iv) an investigation into its affairs is required, (v) its directors are directors or affiliates of the Investment Manager, (vi) the Investment Manager is the subject of an investigation by the Securities Exchange Commission (the "SEC"), and (vii) both the Company and at least one of its feeder funds, Leveraged, are the subject of investigations by the Cayman Islands Monetary Authority ("CIMA").

The Company

2. The Company was incorporated as an exempted company with registration number 74068 on 30 May 1997.
3. The registered office of the Company is at Walkers Corporate Services Limited, 87 Mary Street, George Town, Grand Cayman, KY1-9001, Cayman Islands.

4. The share capital of the Company is US\$100,000 consisting of 10,000,000 shares with a par value of US\$0.01 per share.
5. The Company is an intermediate fund in a multi-level "master-feeder" fund structure involving companies variously incorporated in the Bahamas, Bermuda, Delaware and the Cayman Islands (together, the "Structure").
6. The Company's stated investment objective is to achieve returns in the range of 10-15% per annum primarily by exploiting price inefficiencies and anomalies in both equity and fixed income securities around the world.
7. The Investment Manager's SEC ADV filing on 4 April 2012 lists the Company's directors as Stewart Turner and George Ladner. Prior directors of the Company include Denis Kiely and Peter Zayfert.
8. The Company's auditor is Eisner Amper. The Company's administrator is SS&C.

The Petitioner

9. Leveraged was incorporated in the Cayman Islands as an exempted company with registration number 80270 on 13 March 1998. Leveraged is a feeder fund at the base of the Structure. Immediately prior to its winding up, Leveraged's directors were Stewart Turner and Teddy Stewart. Denis Kiely resigned as a director of Leveraged on 21 November 2011 and Peter Zayfert resigned on 21 July 2011.
10. As set out below, investors that had invested a total of US\$100m on 1 April 2008 in exchange for Series N Shares in Leveraged (the "Series N Investors") presented a winding up petition against it on 31 January 2012. Leveraged was wound up by an order of the Grand Court of the Cayman Islands dated 18 April 2012.

The Structure

11. The stated investment objective of Leveraged was to invest all of its assets in the Company. The Series N Investors invested a total of US\$100m into

Leveraged on or about 1 April 2008. Leveraged invested substantially all of its assets, either directly or indirectly through a Bahamian fund known as FIAL I Fund Ltd ("FIAL I"), in the Company. As set out below, Leveraged is a creditor of the Company. Further or alternatively, Leveraged is a shareholder in the Company.

12. In addition to Leveraged, another feeder fund, Fletcher Fixed Income Alpha Fund Ltd ("**Alpha**"), also invested all or most of its assets, approximately US\$25m, into the Company. Alpha was voted into Voluntary Liquidation by its members on 9 May 2012.
13. The Company in turn invested substantially all of its assets in Fletcher International Inc ("**FII**"), a company incorporated under the laws of Delaware. FII in turn invested all of its assets in Fletcher International Ltd ("**FILB**"), a limited liability company incorporated under the laws of Bermuda, which acted as the ultimate master fund in the Structure.
14. As at 19 May 2011, FILB's directors included Mr. Moez Kaba and Denis Kiely. The Investment Manager's SEC ADV filing on 4 April 2012 lists FII's directors as Stewart Turner, George Ladner and Teddy Stewart and FILB's directors as Stewart Turner, Teddy Stewart, Floyd Sanders and James Keys.
15. Citco Fund Services (Cayman Islands) Limited was originally appointed as administrator to Leveraged, the Company, FII and FILB but resigned and was replaced by SS&C (the "**Administrator**") in May 2010. At the same time, Eisner Amper replaced Grant Thornton as auditors to those companies.
16. As noted by the Chief Justice of the Cayman Islands in his judgment dated 18 April 2012 (as described below), it appears that the assets of the Structure were treated as synonymous with the assets available to Leveraged for redemption of the Series N Investors.
17. No audited accounts for the Structure, the Company, FII or FILB have been signed off or filed since those for the year ending 31 December 2009. No audited accounts for Leveraged have been signed off or filed since those for the

year ending 31 December 2008. No monthly net asset valuations ("NAVs") (audited or unaudited) have been produced in relation to those companies since June 2011. The Administrator has advised that this is due to a lack of information being provided by the Investment Manager.

Management

18. Fletcher Asset Management, Inc. (the "Investment Manager") is the Investment Manager of all of the companies within the Structure, including the Company and Leveraged.
19. The Investment Manager is controlled by Alphonse Fletcher Jr. As at 20 May 2011, the Investment Manager's directors were Alphonse Fletcher Jr., Kell Benson, Denis Kiely, Moez Kaba and Stewart Turner. According to the Investment Manager's website, Mr. Kaba has been replaced by Angela Dorn. Mr. Kiely resigned as a director of all funds affiliated to the Structure and the Investment Manager on 21 November 2011.
20. The Investment Manager is currently the subject of an investigation by the SEC. Leveraged, as previously controlled by the Investment Manager, and the Company are also currently the subject of investigations by CIMA.

The Appointment of Joint Official Liquidators over Leveraged

21. On 31 January 2012 a winding up petition was presented to the Grand Court of the Cayman Islands by the Series N Investors who, between them, invested US\$100m into Leveraged. The petition claimed that Leveraged was unable to pay its debts and that it would be just and equitable to wind it up on the following bases:
 - a. it had failed to file audited accounts since 2008;
 - b. it had no directors for the period from 21 November 2011 until 24 January 2012; and
 - c. the replacement directors were also directors and/or advisors of the Investment Manager and the Investment Manager appeared to be the

subject of an investigation by both the SEC and the US Federal Bureau of Investigation.

22. That petition was opposed by Leveraged, which relied upon affidavit evidence given by Stewart Turner, a director of Leveraged as well as Arbitrage, FII, FILB and the Investment Manager.
23. By its order dated 18 April 2012, the Cayman Court wound up Leveraged and appointed Robin McMahon and Roy Bailey, both of Ernst & Young, as its Joint Official Liquidators (the "**Liquidators**"). In his written Judgment of the same date the Chief Justice found *inter alia* that:
 - a. there was an ongoing investigation being conducted by CIMA into Leveraged's affairs;
 - b. the approach taken by Leveraged in its arguments in opposition to the Petition appeared to treat the assets of the Structure (ultimately of FILB) as synonymous with the assets available to Leveraged itself for redemption of the Series N Investors;
 - c. the assets transferred to the Series N Investors, comprising shares in a Delaware SPV ("**FILBCI**"), in purported satisfaction of their redemption were, in essence, a right to invest US\$65m in shares of United Community Banks Inc. ("**UCBI**") (the "**Option**");
 - d. the asset chosen by Leveraged's directors for the distribution in kind to the Series N Investors was commercially worthless when compared to the value of the debt it purported to redeem. Accordingly, it did not discharge the debt due to them;
 - e. Leveraged stated that the purported redemption in kind of the Series N Investors required 70% of the capital available to the Structure;
 - f. following its purported redemption in kind there appeared to be remaining net assets in the Structure of approximately US\$37m;
 - g. on any view, Leveraged was very doubtfully solvent; and

- h. it was clear that it was no longer possible for the purposes for which Leveraged was formed – to maximise shareholders' investments – to be achieved. Accordingly Leveraged's substratum had failed.
- 24. Accordingly, the Grand Court held that Leveraged should be wound up both on the basis that it was unable to pay its debts and that it was just and equitable for it to be wound up.

The Liquidation of Leveraged

- 25. Since their appointment, the Liquidators have commenced investigations into the business of Leveraged and the Structure. Those investigations have been hindered by delay and the lack of co-operation provided by Leveraged's former directors and the Investment Manager.
- 26. The production of information and records by the former directors of Leveraged has been the subject of a material and unjustified delay, particularly given the involvement of the former directors in both the management of the rest of the Structure and the Investment Manager. Following an extension of time granted by the Liquidators and subsequent further delay, the directors provided a qualified Statement of Affairs on 6 June 2012.
- 27. To date the Investment Manager has provided little or no cooperation to the Liquidators and has:
 - a. only provided very limited information to the Liquidators;
 - b. failed to provide any information on the assets of the Structure in response to the Liquidators' requests;
 - c. turned away the representative of the Liquidators from their offices at 48 Wall Street when they attended to collect the books and records of Leveraged, in accordance with the Liquidators' duties under the Cayman Islands' Companies Law;
 - d. not provided any statements of affairs to the Liquidators, as required by section 101 of the Companies Law (2011 Revision) and is now

guilty of a criminal offence under section 101(7) of the Companies Law;

- e. relied upon a confidentiality agreement governing the earlier release of information to the Series N Investors in order to prevent those investors from passing that information on to the Liquidators; and

28. As a result of their investigations, which are still ongoing, the Liquidators have found that:

- a. the Structure itself appears to be suspicious, in that it is overly complicated and was not properly disclosed in Leveraged's Offering Memorandum. The excessive number of companies in the Structure allowed fees to be drawn by the Investment Manager at multiple levels, without any benefit to investors;
- b. there are a number of related-party transactions, which appear to be circular and lack any proper commercial rationale;
- c. a large amount of fees appear to have been drawn out of the Structure by the Investment Manager;
- d. substantial fees also appear to have been drawn out of the Structure by other entities related to the Investment Manager, including Duhallow Financial Services, L.L.C. ("DFS") which allegedly assisted in the maintenance and preparation of certain financial records and statements, assisted in the preparation of NAVs and provided tax and audit services. DFS charged fees to Leveraged, the Company, FII, FILB and other entities in the Structure and was paid over US\$3.3m in 2008 and 2009. DFS is owned and controlled by Denis Kiely, who until 21 November 2011 was a director of 45 entities affiliated to the Investment Manager; and
- e. the Investment Manager's fees are primarily based upon investment performance. However, given the substantial loss of value of the

Company's investments referred to below, it is difficult to understand how such substantial fees could be justified.

Company's inability to pay its debts

29. On 13 February 2012 the Company purported to sell all or substantially all of its shares in FILB back to FILB in exchange for a payment in-kind of FILBCI shares having an aggregate value of US\$136,135,806.
30. On the same day, the Company purported to:
 - a. pre-pay two promissory notes (originally totalling US\$32m), provided by Leveraged to two of its redeeming Series N Investors on 15 June 2011 as a payment in kind for their redemptions, by transferring 33,095.34814 FILBCI shares to those noteholders, for a purported value of US\$33,095,348.14; and
 - b. compulsorily redeem an unspecified amount of its shares that were held by Leveraged; and
 - c. transfer its remaining 103,040.45786 FILBCI shares to Leveraged, for a purported value of US\$103,040,457.86 in satisfaction of that redemption liability.
31. Leveraged then purported to transfer those FILBCI shares onto the remaining Series N Investors.
32. As the Grand Court has already held, those shares were commercially worthless when compared to the value of the debt they purported to redeem. Accordingly, they did not discharge the debt owed by Leveraged to the Series N Investors.
33. It follows that the FILBCI shares did not discharge the debt owed by the Company to Leveraged following the compulsory redemption. Accordingly the Company has not satisfied its liability to Leveraged, which has been due and owing since 13 February 2012.

34. In addition, in the light of the admissions made to the Grand Court on behalf of Leveraged during the hearing of the petition that:
- a. the key asset in the Structure had been the Option; and
 - b. the Structure had remaining net assets of approximately US\$37m,
- there is no prospect of the Company discharging this liability. In the circumstances, the Company is unable to pay its debts.

Loss of Substratum and Assets

35. Both Leveraged and Alpha invested all or substantially all of their assets in the Company and, before the purported redemption of the Series N Shareholders, represented over 90% of the total investment in the Company. Leveraged and Alpha are now in official and voluntary liquidation respectively and wish to exit the Structure.
36. The Series N Investors invested a total of US\$100m into Leveraged on or about 1 April 2008. In addition, there are also existing investors in Leveraged. As at 13 April 2012, the other investors' interest was valued at US\$22,301,138. Leveraged also has outstanding redemption creditors of US\$30,470,131.
37. The Option appears to have limited or no value. According to the Statement of Affairs signed by the former directors on 6 June 2012, the net assets of Leveraged were valued at US\$22,300,627. As at the 13 April 2012, the net assets of the Company were valued at US\$41,276,282. These figures are based on an unrealistically high valuation of certain assets held within the Structure and exclude the Series N Investors unsatisfied debt claim for US\$136,135,806.
38. Excluding the assets transferred to FILBCI, the fair value attributed to the direct underlying investments held at FILB and FII has reduced from US\$192,840,771 to US\$119,662,626 from 30 June 2011 to 13 April 2012. The number of investments held has similarly reduced from 24 to 12. During that time the redemption requests of the Series N Investors of Leveraged and the investor of Alpha have remained unsatisfied. The Series N Investors claim together with

those submitted by Alpha result in creditor claims against the Company exceeding US\$180m.

39. Given it appears that all the investors (save perhaps those related to the Investment Manager) wish to exit the Structure, it is impossible and/or impractical to meet the investment objective. There appears to have been a very substantial loss in the value, with substantial sums having been paid to the Investment Manager and related entities. There is a requirement for an investigation into the causes of the loss of value and into the conduct of the directors, Investment Manager and service providers.

Related Party Transactions and Inconsistent Treatment of Investors

40. Of the non Series N Investors in Leveraged, most if not all are funds affiliated with the Investment Manager. These include funds within the Richcourt Group, of which the Investment Manager acquired a controlling stake in June 2008. Immediately on acquiring the controlling stake, the Investment Manager replaced the directors with Denis Kiely and Stewart Turner.
41. There were a high volume of transactions with the funds affiliated to the Investment Manager and within the Richcourt Group, including redemptions paid out of Leveraged totalling US\$32,920,047 for the period 1 April 2010 to 31 May 2011. A schedule provided by the Administrator indicates that a significant proportion of those redemptions were paid in cash.
42. In addition to those redemption payments another investor of Leveraged, Corsair (Jersey) Limited, received US\$20,795,175 in redemption payments of which US\$12,400,000 was paid in cash. The redemption proceeds both in kind and in cash were assigned to entities related to the Richcourt Group. Eisner Amper, the auditors for the Structure, have found in their draft report that these redemptions were calculated on an overstated NAV. Leveraged's balance sheet at 13 April 2012 shows overpayments of US\$13,094,886 still owing to Leveraged, some two years after the redemption payments.
43. Redemptions payments made by the Company in the period from January 2010 to July 2011 indicate that cash payments of US\$43,873,951 were made to satisfy

various requests. Of this amount US\$27,199,145 was paid in cash to Leveraged and FIALI.

44. By contrast, during this period the Series N Investors were purportedly redeemed in kind by the provision of promissory notes by the Company assigned to the investors, with no full or partial cash redemptions being offered.
45. There was a similar use of promissory notes to purportedly satisfy the initial redemption of the independent investor in Alpha. As reflected in the Company's balance sheet, this promissory note of US\$10,091,785 remained outstanding as at 13 April 2012.

Control of the Structure and Opaque Transactions

46. Whilst the Structure encompassed a number of entities in various jurisdictions, management and control of the entities was centralised. The same directors were appointed over a number of the entities in the Structure, many or all of whom were either directors of the Investment Manager or otherwise associated with it.
47. The Structure was thus managed as a single entity without the appropriate checks and balances normally expected in order to ensure the rights of each company and their stakeholders were protected.
48. The apparent result of this was the opportunity for numerous complicated and opaque transactions within the Structure, the commercial rationale for which are unclear. These include entities affiliated with the Investment Manager being able to subscribe into the Structure in-kind, transactions involving multiple changes of share classes and dealings that appear circular in nature.

Grounds for Winding Up

49. In the light of the matters set out above, the Company is unable to pay its debts and should be wound up pursuant to section 92(d) of the Companies Law (2011 Revision).

50. Further or alternatively, it would be just and equitable to wind up the Company on the grounds that (i) it has failed to file audited accounts since 2009, (ii) it is insolvent, (iii) it has lost its substratum, (iv) an investigation into its affairs is required, (v) its directors are directors or affiliates of the Investment Manager, (vi) the Investment Manager is the subject of an investigation by the SEC, and (vii) both the Company and at least one of its feeder funds, Leveraged, is the subject of an investigation by CIMA.

THE PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Company shall be wound up by the Court in accordance with the Companies Law (2011 Revision).
2. Robin Lee McMahon of Ernst & Young Ltd., 62 Forum Lane, Camana Bay, P.O. Box 510, Grand Cayman, KY1-1106, Cayman Islands and Roy Bailey of Ernst & Young, Jayla Place, Wickhams Cay I, Road Town, Tortola VG1110, British Virgin Islands be appointed as Joint Official Liquidators of the Company (the "**Joint Official Liquidators**");
3. The Official Liquidators shall not be required to give security for their appointment.
4. The Official Liquidators are hereby authorised to take such steps as may be necessary or expedient for the protection of the Fund'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 (2011 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 Official Liquidators shall have power:
 - a) to bring or defend any action or other legal proceeding in the name of and on behalf of the Fund;

- b) to take possession of, collect and get in the property of the Fund and for that purpose to take all such proceedings as they consider necessary;
 - c) to carry on the business of the Fund so far as may be necessary for its beneficial winding up;
 - d) to engage Attorneys and other professionally qualified persons to assist them in the performance of their functions; and
 - e) to engage staff (whether or not as employees of the Fund) to assist them in the performance of their functions.
5. The Official Liquidators be authorised to act jointly and severally.
 6. The Official Liquidators shall be at liberty to apply for further directions concerning their functions and the exercise or proposed exercise of their powers.
 7. The Official Liquidators shall within 14 days notify all known creditors and shareholders of their appointment and there shall be no other requirement to advertise.
 8. No suit, action or other proceeding shall 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.
 9. No disposition of the Fund's property by or with the authority of the Official Liquidators in carrying out of their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Law (2011 Revision).
 10. The remuneration and expenses of the Official Liquidators shall be paid out of the assets of the Fund.
 11. The costs of and incidental to these applications shall be paid from the assets of the Fund as expenses within the liquidation.

YOUR PETITIONERS WILL EVER PRAY ETC

Dated this 8th June 2012



MOURANT OZANNES
Attorneys for the Petitioner

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

INDORSEMENT

Notice of Hearing

This Petition having been presented to the Court on June 2012 will be heard at the Law Courts, George Town, Grand Cayman on day of 2012 at am/pm or as soon thereafter as the Petition can be heard.

This PETITION was presented by Mourant Ozannes, Attorneys-at-Law for the Petitioner, whose address for service is 94 Solaris Avenue, Camana Bay, PO Box 1348, Grand Cayman, KY1-1108 (Ref: 8001508/55308933/1)

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