

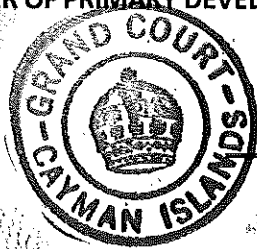
IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 0055 OF 2015

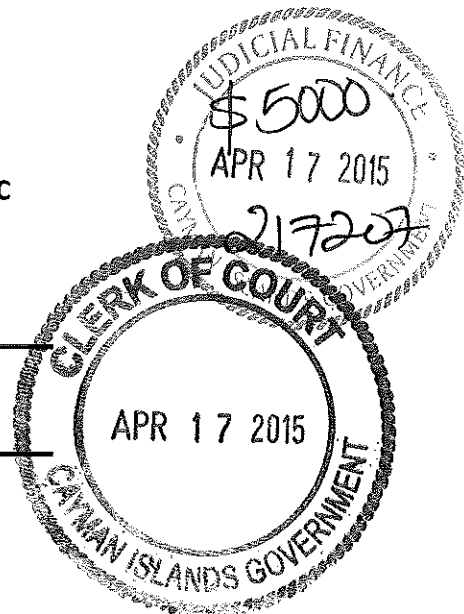
IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND

IN THE MATTER OF PRIMARY DEVELOPMENT FUND (CAYMAN) SPC



PETITION



TO THE GRAND COURT

THE HUMBLE PETITION of Primary Development Fund (Cayman) SPC, PO Box 61, 4th Floor, Harbour Centre, George Town, Grand Cayman KY1-1002, Cayman Islands (the "Company") shows that:

Summary

1. The Company seeks the appointment of receivers over one of its segregated portfolios, being Helvetia Trading Fund Segregated Portfolio (the "Helvetia Portfolio"), pursuant to section 224 of the Companies Law (2013 Revision)(the "Companies Law"), upon the grounds that:
 - a) the assets attributable to the Helvetia Portfolio are insufficient to discharge the claims of the creditors of the Helvetia Portfolio; and
 - b) the appointment of receivers will enable the orderly closing down of the business of the Helvetia Portfolio and the distribution of Helvetia Portfolio's assets to those persons entitled to have recourse thereto.

2. As further particularised below, the Helvetia Portfolio, which traded exclusively in the foreign exchange markets on a highly leveraged basis, has incurred significant losses as a result of the

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decision by the Swiss National Bank ("SNB"), on or about 15 January 2015, to remove the exchange rate floor which pegged the value of the Swiss Franc to the Euro.

Background – Corporate Structure

3. The Company was incorporated in the Cayman Islands on 11 January 2011 as a segregated portfolio company under the Companies Law, and is registered by CIMA under the Mutual Funds Law.
4. The authorised share capital of the Company is the aggregate of USD 50,100, EUR 50,000, CHF 50,000 and GBP 50,000, divided into a pool of 5,000,000 Participating Shares of par value USD 0.01 per share, a pool of 5,000,000 Participating shares of par value EUR 0.01 per share and a pool of 5,000,000 Participating Shares of par value CHF 0.01 per share and a pool of 5,000,000 Participating Shares of par value GBP 0.01 per share (collectively "Participating Shares") and 100 Voting Shares of par value USD 1.00 per share ("Voting Shares").
5. The Helvetia Portfolio is a segregated portfolio of the Company. The Company has 12 other segregated portfolios. The 5,000,000 participating shares of value EUR 0.01 per share of the Company are designated to the Helvetia Portfolio.
6. The Voting Shares of the Company are held by Primary Development Holdings Ltd, the sponsor of the Company.
7. The directors of the Company are Mr Sam Bratchie and Mr Ray George (the "Directors").
8. The Investment Manager of the Helvetia Portfolio is KSA Consulting Network GmbH (the "Investment Manager") which provides investment management services pursuant to an investment management agreement dated 1 June 2013.
9. IFINA (BVI) Limited is the Administrator of the Helvetia Portfolio.
10. Baker Tilly (Cayman) Ltd is the auditor of the Company.

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Investment Objective and Strategy of Helvetia Portfolio

11. As set forth in the Supplemental Information Memorandum (the "Supplemental IM") of the Helvetia Portfolio dated September 2013, the investment objective of the Helvetia Portfolio (the "Investment Objective") is to *"seek to provide double-digit absolute levels of return from taking long and short positions in the FOREX, bond and equity markets"*.
12. The primary investment strategy pursued by the Investment Manager for achieving the Investment Objective was to take advantage of the decision by the SNB, in September 2011, to set and hold an exchange rate floor of 1.20 Swiss Francs to 1 Euro, through the buying and selling of foreign exchange ("FX") currency trading positions with low volatility in currency pairs, in particular the Swiss Franc vs Euro cross (the "Currency Pair"). The Currency Pair represented the Helvetia Portfolio's main exposure to the FX markets.
13. The Helvetia Portfolio's primary trading position was investing in short positions in relation to the Currency Pair. This meant that the Helvetia Portfolio stood to make gains if the value of the Swiss Franc depreciated against the Euro. In order to crystallise a gain, the Currency Pair would be sold by the Helvetia Portfolio. Conversely, the Helvetia Portfolio stood to make losses if the value of the Swiss Franc appreciated against the Euro and losses would be crystallised if the Currency Pair were sold.
14. The entry prices of FX trades were set by the Investment Manager and were selected based on the condition of the market at the time the trades were executed. When an open position trade was executed, the Investment Manager would also set a pre-determined stop-loss level to exit the trade and thereby limit any losses.
15. The Helvetia Portfolio utilised leverage, which provided the Helvetia Portfolio with the ability to enhance returns. The Supplemental IM states that the leverage employed may be as much as 40 times the net asset value of the Fund. The amount of leverage used was variable and decided by the Investment Manager on a trade by trade basis.

16. The Helvetia Portfolio traded FX positions through three broker firms; CitiFX Pro ("CitiFX"), Interactive Brokers LLC ("IB"), and Sensus Capital Markets Limited ("Sensus") (each a "Broker" and together the "Brokers") pursuant to terms and conditions entered into between the Company (for and on behalf of the Helvetia Portfolio) and the respective Broker. CitiFX was the principal broker used by the Helvetia Portfolio.
17. The Helvetia Portfolio operated margin accounts with each of the Brokers. The amounts required to be held by the Helvetia Portfolio in each respective margin account, and the rights of the respective Broker in the event a margin account was deficient, were set by the terms and conditions agreed with the relevant Broker.
18. According to the terms and conditions governing the Helvetia Portfolio's brokerage account with IB, as agreed by the Company (for and on behalf of the Helvetia Portfolio) on 17 February 2014, in the event that at any time there was a deficiency in the margin account, that deficiency would have to be met by the end of the third business day, otherwise IB would be entitled to liquidate the positions held by the Helvetia Portfolio on the fourth business day following the margin deficiency until such time as the margin deficiency was cleared. The agreed terms and conditions included the following:

"A margin deficiency in the portfolio margin account or sub-account, regardless of whether due to new commitments or the effect of adverse market movements on existing positions, must be met within three business days. Failure to meet a portfolio margin deficiency by the end of the third business day will result in a prohibition on entering any new orders, with the exception of new orders that reduce the margin requirement. Failure to meet a portfolio margin deficiency by the end of the third business day will result in the prompt liquidation of positions on the fourth business day, to the extent necessary to eliminate the margin deficiency."

19. Pursuant to the terms and conditions governing the Helvetia Portfolio's brokerage account with CitiFX, as agreed by the Company (for and on behalf of the Helvetia Portfolio) on 28 August 2013, if a call for further payments into the margin account to cover a deficiency was not met on the same

business day on which the call was made, CitiFX were entitled to liquidate the positions held by the Helvetia Portfolio. The agreed terms and conditions included the following:

“Citi’s margin policies require you to maintain at all times such margins as Citi, in its sole discretion, may from time to time request. Citi will exercise considerable discretion in setting and collecting margin. Without limiting the foregoing, you understand that, if the amount of margin credited to your account falls below the maintenance margin level established by Citi for trading on CitiFX Pro (which will be specified as a percentage of your initial margin requirement in regard to each currency pair available for trading). Citi will call for additional margin to be deposited in the Account. Unless otherwise specified by Citi, you will be required meet the margin call no later than the close of business on the day such request is received. Further, if you fail to provide additional margin within the time required by Citi or if the amount of margin credited to your account is for any reason falls to fifty per cent (50%) or less of the initial margin requirement (or such other amount as notified to Counterparty by Citi from time to time). Citi may liquidate any or all of your open positions and you will be responsible for all losses resulting from such liquidation.”

20. According to the terms and conditions governing the Helvetia Portfolio’s brokerage account with Sensus, as agreed by the Company (for and on behalf of the Helvetia Portfolio), in the event that the Helvetia Portfolio failed to provide or maintain sufficient margin (an “Event of Default” under the Sensus Customer Agreement), Sensus was entitled to, at its discretion and without prior notice to the Helvetia Portfolio, terminate all open positions held by the Helvetia Portfolio. The agreed terms and conditions included the following:

“26. LIQUIDATION AND SUSPENSION OF ACCOUNTS

26.1. *For the purposes of this Agreement, the following shall constitute an “Event of Default”:*

...

(iv) the Customer fails to provide or maintain sufficient Margin or Customer’s Money for the payment of any fees, charges and expenses to SENSUS, for the payment of any amounts or delivery of Margin to any Prime Broker and/or Counterparty, or as may required otherwise under this Agreement”

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26.2. Without prejudice to Clauses 15 and 27, upon the occurrence of an Event of Default, SENSUS is entitled to take any or all of the following actions, at its discretion, and without prior notice to the Customer:

...

(ii) to terminate and close out (through off-setting or otherwise) any or all Open Positions”

Financial Position of Helvetia Portfolio Prior to the Decision of the SNB to Un-peg the Swiss Franc

21. As at close of business on 14 January 2015 the Helvetia Portfolio had net assets of EUR 2,138,445.

22. The assets of the Helvetia Portfolio as at 14 January 2015 included the following cash balances:

- a) EUR 2,042,273.00 in a margin account at CitiFX;
- b) EUR 298,366.28 in a margin account at Sensus;
- c) EUR 96,500.00 in a margin account at IB; and
- d) EUR 15,445.39 in a bank account at Barclays in the name of the Helvetia Portfolio (the Barclays Account”).

23. The Helvetia Portfolio had a number of open trading positions and unsettled trades on account with the Brokers that netted to a liability of EUR 214,745.00. The Helvetia Portfolio’s other liabilities were EUR 106,106.00 comprised of a shareholder redemption and other amounts due to the Helvetia Portfolio’s service providers.

SNB’s Decision to Remove Exchange Rate Floor and its Effect On The Helvetia Portfolio

24. On 15 January 2015, the SNB, without any previous indication or announcement, made the decision to abandon the pegging of the Swiss Franc to the Euro. This resulted in an immediate 40% increase in the value of the Swiss Franc as against the Euro, causing a complete loss of value of the primary FX trading positions taken by the Helvetia Portfolio. Simultaneously, the SNB abruptly removed its purchase orders from the FX market, meaning that immediately there were no longer any buyers on the market supporting the exchange rate floor of 1.20. The immediate price movement was

followed by extremely low levels of liquidity in trading on CHF currency pairs. As a result, whilst stop-loss levels were triggered in relation to the Helvetia Portfolio's positions, orders could not be executed at the pre-set levels. In response to the complete loss of the value of the Helvetia Portfolio's primary FX trading positions, the Brokers immediately began closing out all of the Helvetia Portfolio's open positions, pursuant to the terms set out at paragraphs 18 – 20 above, at significant losses to the Helvetia Portfolio.

Financial Position of Helvetia Portfolio Following the Closing Out of Its Positions

25. As at close of business on 21 January 2015 the Helvetia Portfolio had net liabilities of EUR 16,725,360.00. This included cash balances of EUR 86,904.21 held in the Barclays Account and EUR 104.20 at IB. It also included total liabilities of EUR 16,812,370.00, representing the mark-to-market value of positions having been liquidated by the Brokers, a shareholder redemption, and other amounts due to the Helvetia Portfolio's service providers.

26. The liabilities of Helvetia Portfolio are primarily made up of liabilities of EUR 16,138,528.00 due to CitiFX and EUR 590,472.00 due to Sensus which are liabilities primarily attributable to CHF short trades. These liabilities represent the net amount due to those Brokers after offsetting the cash balances held by them at 14 January 2015 (referred to in paragraph 22 above) against the amounts due to them as a result of liquidation of the Helvetia Portfolio's FX positions.

Inability of Helvetia Portfolio to Discharge Its Creditor Liabilities

27. The creditors of the Helvetia Portfolio only have recourse to the segregated assets of the Helvetia Portfolio and have no recourse to the general assets of the Company.

28. Clause 15 of the Articles of Association of the Company dated 11 January 2011 states:

General Assets:

15.1. *shall only be available and used to meet liabilities to the creditors of the Company who are creditors of the Company generally and not of any*

[segregated portfolio] who shall thereby be entitled to have recourse to the General Assets for such purposes; and

15.2. *shall not be available or used to meet liabilities to, and shall be absolutely protected from, creditors of any [segregated portfolio] who accordingly shall not be entitled to have recourse to the General Assets, even if the Segregated Portfolio Assets of such [segregated portfolio] are insufficient to satisfy the liability and the Company has General Assets in excess of any minimum capital lawfully required by any regulatory body.*

29. The Helvetia Portfolio currently has assets of EUR 33,964.73 - being cash held in the Barclays Account. The Helvetia Portfolio has no other assets.

30. The Helvetia Portfolio's creditors are comprised of:

- a) CitiFX in the amount of EUR 16,138,528.00;
- b) Sensus in the amount of EUR 590,472.00;
- c) accrued Administrator, accounting and management fees in the total of EUR 17,321.00;
- d) a liability due for the redemption of shares in the amount of EUR 66,048.00.

31. For the above reasons the Directors of the Company have concluded that the assets of the Helvetia Portfolio are insufficient to discharge the claims of its creditors and that Helvetia Portfolio should be placed under the control of receivers to conduct the orderly closing down of the business of the Helvetia Portfolio and the distribution of Helvetia Portfolio's assets to those persons entitled to have recourse thereto.

YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:

- 1) That a receivership order be made pursuant to Section 224 of the Companies Law in relation to the Helvetia Portfolio and that Andrew Morrison and David Griffin of FTI Consulting, 2D Landmark Square, 64 Earth Close, PO Box 30613, KY1-1203, Grand Cayman, Cayman Islands be appointed joint receivers (the "Joint Receivers");
- 2) That the business and segregated portfolio assets of the Helvetia Portfolio shall be managed by the Joint Receivers for the purposes specified in section 224(3) of the Companies Law;

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3) That the Joint Receivers be authorised to exercise the following powers:

- a) to carry on the business of the Helvetia Portfolio so far as may be necessary for its orderly closure;
- b) to pay any class of creditors in full;
- c) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the segregated assets of Helvetia Portfolio or for which the segregated assets of the Helvetia Portfolio may be rendered liable;
- d) to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the Helvetia Portfolio and a contributory or alleged contributory or other debtor or person apprehending liability to the Helvetia Portfolio;
- e) to deal with all questions in any way relating to or affecting the assets or the orderly closure of the Helvetia Portfolio;
- f) to engage staff to assist them in the performance of their functions;
- g) to engage attorneys and other professionally qualified persons to assist them in the performance of their functions;
- h) to take possession of, collect and get in the segregated assets of the Helvetia Portfolio and for that purpose to take all such proceedings as they consider necessary;
- i) to do all acts and execute, in the name and on behalf of the Helvetia Portfolio, all deeds, receipts and other documents;
- j) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or

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sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;

k) to convene meetings of creditors and contributories; and

l) to do all other things incidental to the exercise of their powers.

4) That the Joint Receivers' fees and expenses shall be payable out of the segregated assets of the Helvetia Portfolio pursuant to section 228 of the Companies Law in priority to all other claims;

5) That no suit, action or other proceedings shall be instituted against the Company in relation to the Helvetia Portfolio except with the leave of the Court pursuant to section 226(5) of the Companies Law;

6) That any act required or authorised to be done by the Joint Receivers may be done by any one of them;

7) That the Joint Receivers be at liberty to apply for further directions and generally;

8) That the Company's costs of this Petition shall be paid out of the segregated assets of the Helvetia Portfolio on an indemnity basis;

9) That such other order may be made as the Court thinks fit.

Dated the ^{30th} day of March 2015

Solomon Harris

**SOLOMON HARRIS
ATTORNEYS FOR THE COMPANY**

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on _____ at 10.00am. 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.

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