

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

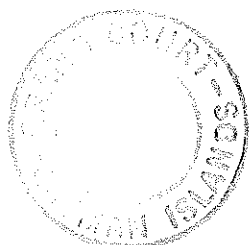
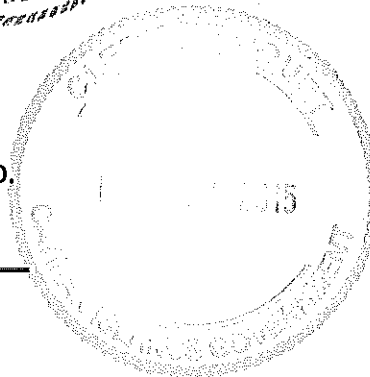


0080  
OF 2015 NRCC

**IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)**

**AND**

**IN THE MATTER OF HARBINGER CLASS PE HOLDINGS (CAYMAN), LTD.**



**WINDING UP PETITION**

**TO THE GRAND COURT**

The humble petition of NYROY/RBC Acct# 1583 Pledged to Royal Bank of Canada (the "Petitioner") shows that:

**Preamble**

1. The Petitioner presents this petition for the winding up of Harbinger Class PE Holdings (Cayman), Ltd. (the "Company") and the appointment of official liquidators.
2. The Petitioner is a contributory of the Company and seeks the winding up of the Company pursuant to section 92(e) of the Companies Law (2013 Revision) on the grounds that it is "just and equitable" to do so, and particularly upon the grounds that there has been a failure of the substratum of the Company.

**Background and Corporate Structure of Company**

3. The Company was originally incorporated on 16 December 2008 under the laws of the Cayman Islands as an exempted limited company with Registration Number 221118.
4. The registered office of the Company is at Elian Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands.

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5. The Company was incorporated as a subsidiary of Harbinger Capital Partners® Offshore Fund I, Ltd ("Offshore Fund") for the purposes of holding class PE shares issued by Harbinger Capital Partners Master Fund I, Ltd. (the "Master Fund"), representing an undivided interest in certain of the Master Fund's private equity and other illiquid investments (collectively, the "Private Portfolio"). The Master Fund has share classes A, A II, B, B II, LU, PE, LS series I and LS series II.
6. The Company's Memorandum of Association and Articles of Association are dated December 30, 2008. The Company has no business other than holding shares in the Master Fund and compulsorily redeeming the shares of the Company.
7. The authorised share capital of the Company is US\$50,000 divided into 100 management shares of US\$0.01 par value each ("Management Shares"), and 4,999,900 participating redeemable Shares of US\$0.01 par value each ("Class PE Shares").
8. All of the Management Shares are under the control of the Directors who are located in the Cayman Islands.
9. The Class PE Shares are owned by persons that were shareholders in the Offshore Fund who sought to redeem their Offshore Fund shares prior to 31 December 2008. The Petitioner does not know the geographical location of the Class PE shareholders.
10. As far as the Petitioner is aware, the Private Portfolio includes shares in Harbinger Group Inc., which is a US corporation; an interest in Asian Coast Development Ltd., which is a Canadian company whose majority shareholder is a U.S. corporation, Harbinger Capital Partners LLC; and receivables from the Master Fund Class LS Shares, the main asset of which is shares of stock in LightSquared Inc., a U.S. corporation.

#### **Management Structure**

11. The investment manager is Harbinger Capital Partners LLC (the "Investment Manager"), a Delaware limited liability company controlled by Philip A. Falcone ("Falcone"). Harbinger Holdings, LLC, a Delaware limited liability company also controlled by Philip A. Falcone, serves as the manager of the Investment Manager. The Investment Manager provides fund management

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services to the Company. The Investment Advisor is Harbert Fund Advisors Inc. whose head office is in Birmingham, Alabama, USA.

### History of Shareholding

12. The Petitioner originally subscribed for shares in the Offshore Fund. Those shares were generally redeemable on or after the first anniversary of the date of the applicable purchase on giving 90 days prior written notice.
13. The Offshore Fund invested in the Master Fund, which issued Class A shares to the Offshore Fund.
14. Due to the bankruptcy of certain affiliates of Lehman Brothers Holdings, Inc., and in particular Lehman Brothers International (Europe) on 30 September 2008, the directors of the Master Fund capitalized a new class of shares (the "Class LU Shares") with all of the assets, rights and liabilities believed to be associated with the Master Fund's relationships with Lehman, together with an amount sufficient to fund the liabilities believed to be owed to Lehman, assuming the foregoing assets and rights were inadequate to do so (collectively, the "Lehman Assets"). The Master Fund issued the Class LU Shares to the Offshore Fund and Harbinger Capital Partners Fund I, L.P. in proportion to their investment in the Master Fund at 30 September 2008. The Offshore Fund subsequently contributed these Class LU shares to Harbinger Class L Holdings (Cayman) Ltd., a Cayman Islands exempted company ("Class L Holdings") which issued shares ("Class L Shares"), which are only compulsorily redeemed by Class L Holdings at such time as the net value associated with the Lehman Assets is ultimately determined and liquidated.
15. Effective 31 December 2008, the Master Fund capitalized a new class of shares (the "Class PE Master Shares") with assets of the Private Portfolio. The Master Fund issued the Class PE Master Shares to the Offshore Fund and Harbinger Capital Partners Fund I, L.P. in proportion to their respective investments in the Master Fund as of 31 December 2008. Effective 31 December 2008, the Offshore Fund contributed these Class PE Master Shares to its newly formed subsidiary -- namely the Company. The directors of the Company were the same as those who then served as the directors of the Offshore Fund.

16. Shareholders in the Offshore Fund who had sought to redeem any of their shares prior to 31 December 2008 received their redemption payment in cash proceeds, Class L Shares and Class PE Shares.
17. The Petitioner received Class PE Shares and Class L Shares as a shareholder of the Offshore Fund who had sought to redeem shares it held in the Offshore Fund prior to 31 December 2008. As of 31 January 2015, the Petitioner holds 359.83 shares of Class PE, Series 2 shares in the Company with NAV of US\$151,315, and 912.61 shares of Class PE, Series 4 shares in the Company with NAV of US\$377,685.
18. Holders of Class PE Shares may not voluntarily redeem Class PE Shares and such shares are transferable only in certain limited circumstances. The Company, in the discretion of its board of directors, may cause a mandatory redemption of the Class PE Shares of any shareholder, and may also elect to distribute available net cash flow from realization proceeds or current income attributable to any of the assets of the Private Portfolio held indirectly by the Company.
19. The December 2008 Supplement to the Confidential Offering Memorandum of the Offshore Fund states that the Investment Manager will use commercially reasonable efforts to dispose of or otherwise realize the assets of the Private Portfolio by the end of 2010, subject to market conditions.

#### **Description of Class PE Assets**

20. Harbinger Group Inc. ("HRG") shares are one of the Class PE assets. HRG is a diversified holding company focused on acquiring businesses with attractive assets that it considers to be undervalued or fairly valued and growing its acquired businesses. The common stock trades on the New York Stock Exchange ("NYSE") under the symbol "HRG."
21. There is no reason these shares could not be sold as there is, of course, a ready, liquid market, namely the NYSE.

22. Asian Coast Development (Canada) Ltd. ("ACDL") is another Class PE asset. ACDL is an international development company specializing in integrated resort destinations. ACDL, through a wholly-owned subsidiary, is the developer of the Ho Tram Strip, a group of integrated resorts and residential development located on more than 400 acres of land including beach land in Ho Tram, Vietnam and approved in an Investment Certificate issued by the Government of Vietnam. The first phase of its development – The Grand Ho Tram Strip – opened its doors in 2013 and includes a 541 room five-star hotel, a world-class entertainment facility, restaurants, high-tech meeting space, an exclusive VIP area, a championship golf course, as well as a variety of beach-front recreation activities. The Ho Tram Strip is one of the region's largest integrated resort projects with major future development phases including an additional 559 rooms and further leisure amenities. Harbinger Capital Partners LLC is the majority owner of ACDL along with minority owners Pinnacle Entertainment and New City Capital. It is important to note that HRG is not an investor in ACDL, and indeed operates businesses which are completely unrelated to ACDL and the Ho Tram Project. ACDL stated that Harbinger Capital's announcement in September 2014 of an additional funding commitment to the Ho Tram Project of US\$50 million (of which nearly US\$27 million is provided by the Master Fund with a commitment to provide approximately US\$15 million more) underscores the commitment of both Harbinger Capital and Falcone to the project.
23. ACDL shares are privately traded and there is no indication that there is any near term possibility that these shares either can be sold or that the Master Fund is seeking to do so or the Company is demanding that the Master Fund do so to achieve liquidity for compulsory redemption of Class PE Shares.
24. In July 2010 the Master Fund borrowed US\$336 million of principal from Jeffries & Co. In 2012 the loan was repaid using cash and a new US\$190 million loan facility from Jeffries & Co which was, like the 2010 loan, secured on all the assets of the Master Fund, including the Class PE Assets. Upon the sale of Master Fund assets, including Class PE Assets, all or a portion of the proceeds were used to repay the balance of the loan. Although the 2012 Jefferies & Co loan, as was the case with the July 2010 loan, was an obligation of the Master Fund as a whole, the liabilities for the loan are allocated internally to Class LS shares of the Master Fund, which were

created after 31 December 2008. If Class PE Assets were sold and the proceeds used to pay the loan, the Class PE Master Shares could require payment by Class LS back to it of those sums. On that basis a receivable was generated between Class PE Master Shares and Class LS shares, which is now a Class PE Master Shares asset.

25. In 2014 the Master Fund obtained financing under which Class PE Assets are not collateral but as at 31 May 2013 the Private Portfolio assets included a US\$172,506,063 receivable from the Master Fund attributable to the Class LS shares.
26. During 2014 Class PE Master Share assets were sold but the proceeds were used to pay loans. As at 31 December 2014 total cash borrowed by Class LS from Class PE was US\$257,816.964 including interest.
27. The vast majority of Class LS Assets as at 31 March 2014 consist of LightSquared shares, trade claims and debt and warrants valued at about US\$538.27 million.
28. Harbinger acquired LightSquared in March 2010 for US\$1.05 billion in cash and controls about 96 percent of its stock. LightSquared owns the rights to use a part of the wireless spectrum. The U.S. Federal Communications Commission had blocked LightSquared's plan to use that spectrum for mobile phones after GPS-device makers and users – including the U.S. military and commercial airlines – said it might interfere with their navigation.
29. LightSquared, backed by Harbinger, filed for bankruptcy protection in the United States in May 2012, listing assets of US\$4.48 billion and debt of US\$2.29 billion.
30. According to a letter from Harbinger Capital Partners dated 21 April 2015, pursuant to the LightSquared Plan of Reorganization, upon LightSquared's emergence from bankruptcy, the Harbinger Funds, collectively, will receive:
  - 30.1. New LightSquared Series A Preferred equity in the amount of their LightSquared Inc. subordinated secured claim (approximately US\$210 million, depending on the date of emergence).

- 30.2. In consideration for the contribution to reorganized LightSquared at emergence from bankruptcy of Harbinger's legal claims against the GPS industry, the United States and Charles Ergen and affiliates, (a) an additional US\$130 million of new LightSquared Series A Preferred equity, (b) 44.45% of the common equity of reorganized LightSquared, and (c) the right to acquire, at any time, another 3% of the common equity from another sponsor at a predetermined price.
- 30.3. LightSquared's emergence from bankruptcy is subject to a number of conditions, including LightSquared successfully raising certain exit financing and the U.S. Federal Communications Commission's ("FCC") approval of LightSquared's post-emergence ownership. Harbinger Capital Partners stated in its 21 April 2015 letter to investors that it anticipated that those processes will take approximately six to nine months.
31. Additionally, the Harbinger Funds have committed to provide US\$150 million of a \$1.5 billion second lien debt facility arranged by Jefferies, the proceeds of which will be used to repay certain LightSquared prepetition senior secured indebtedness on the date of LightSquared's emergence from bankruptcy.
32. Accordingly to press reports, what will happen next for LightSquared is unclear. When the plan goes into effect, LightSquared will be owned by investors including Centerbridge, Fortress and a unit of J.P. Morgan Chase & Co. Mr. Falcone and his Harbinger Capital will keep more than 44% of the equity, although Harbinger won't have a say in day-to-day operations. LightSquared will need to wait for various basic regulatory approvals just to get out of bankruptcy, and then seek the approvals that will allow it to use the network. LightSquared isn't able to fully use wireless spectrum that it owns without support from the FCC. The FCC hasn't granted the approvals necessary for LightSquared to use its network due to concerns over interference with GPS networks. As recently as March 17, 2015, a government lawyer told Judge Chapman, the LightSquared bankruptcy judge, that the Federal Communications Commission still cannot predict whether it will approve use of the spectrum.
33. Accordingly, there is no prospect in the immediate future of the Master Fund Class LS Shares LightSquared assets being sold, and no indication that the Master Fund has any intention to try

to do so or that the Company is demanding that the Master Fund do so. In fact it seems as if the Master Fund and/or the Company may be committed to supporting further loans as a part of the bankruptcy exit plan. This means there is no prospect in the immediate future of the receivable that was generated between Class PE Master Shares and Class LS shares being repaid, thereby generating liquidity for compulsory redemption of Class PE Shares.

34. The lack of liquidity in the Class PE Master Shares assets is further illustrated by the fact that no compulsory redemptions of Class PE Shares have taken place since 31 May 2014.
35. Despite this the 21 April 2015 letter to investors announces that "At this time the investment manager, with the approval of the board of directors, has elected to partially reinstate management fees to 50 basis points on each investor's indirect interest in LightSquared effective May 1, 2015, as we have successfully established a path towards emergence from [bankruptcy]."

#### **U.S. Securities and Exchange Commission ("SEC") Lawsuit and Appointment of Monitor**

36. On 27 June 2012, the SEC filed two civil actions asserting claims against the Investment Manager and certain of its affiliated entities and persons, including its principal, Falcone (together the "Harbinger Parties"), under the Securities Act of 1933, the Securities Exchange Act of 1934, and/or the Investment Advisers Act of 1940, and various rules promulgated pursuant to those Acts. The SEC alleged that Falcone: (1) borrowed \$113.2 million from one of his Funds at an interest rate lower than the Funds' borrowing costs, without disclosing the loan to investors, (2) allowed certain large investors in the Funds to redeem their investments while imposing more restrictive redemption conditions on other investors, and concealing this disparate treatment, and (3) attempted to artificially constrict the supply of a certain security in order to force short-sellers of that security to sell at elevated prices.
37. On 22 April 2013, the Harbinger Parties reached an agreement with the enforcement staff of the SEC on a form of consent and final consent judgment (together, the "Settlement") relating to the settlement of all matters regarding the above-mentioned civil action. The Settlement was made without the Harbinger Parties admitting or denying any of the SEC's allegations.

38. Under the terms of the Settlement, the Harbinger Parties consented to the entry of a final judgment that, subject to certain exceptions, bars Falcone for a period of two years (after which Falcone may seek the consent of the SEC to have the bar lifted) from acting as or being an associated person of a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognised statistical rating organization, as those terms are defined in Section 3 of the Securities Exchange Act of 1934 and Section 202 of the Investment Advisers Act of 1940. The Settlement does not limit Falcone from owning or controlling HRG or from serving as an officer or director, including continuing in his role as Chief Executive Officer or Chairman of the Board of HRG.
39. The Settlement also ordered the appointment of a Monitor for a period of two years. The Monitor's term will expire on 5 February 2016.
40. The Monitor's powers and responsibilities are set forth in the Final Consent Judgment between Falcone, Harbinger and the SEC dated 16 September 2013 and an Order Appointing Independent Monitor dated February 5, 2014. The Monitor is to attempt to ensure the Harbinger Parties' compliance with the Settlement and other obligations to investors in some of the funds managed by Harbinger, and to attempt to ensure the fair and equitable treatment of all investors in the various Harbinger funds. This specifically includes:
- 40.1. monitoring compliance with the injunction barring Falcone from working in the securities industry, except for his role in winding down the Harbinger funds. See Final Consent Judgment §§ I.A and I.B.
- 40.2. ensuring that the Harbinger Parties "take all actions reasonably necessary to expeditiously satisfy all pending or hereafter received redemption requests of investors in the [Harbinger Funds] ... [which] may include the orderly disposition of the assets of the Harbinger Funds." *Id.* § I.C.
- 40.3. monitoring the LightSquared bankruptcy proceeding to ensure that the investors are treated fairly in a final disposition of the Harbinger Funds' interests in the reorganized LightSquared following the conclusion of the Bankruptcy Court proceedings. *Id.* § I.D.

41. The Monitor's sole power is to observe the actions of the Harbinger Parties and their managers and report to the SEC on his findings. The Monitor cannot take any action against the Harbinger Parties or require them to take any actions or prevent them from taking any actions. He cannot take control of the Company nor take steps to realise assets and distribute proceeds to shareholders of the Company. The Monitor issues quarterly reports, four of which have been issued to date.
42. During the period of the bar, Falcone may remain associated with Harbinger and its investment advisory affiliates (together, the "Harbinger Advisers") provided that (i) the Harbinger Advisers take all actions reasonably necessary to expeditiously satisfy all pending or hereafter received redemption requests of investors in the funds managed by the Harbinger Advisers, which may include the orderly disposition of assets; (ii) the Harbinger Advisers do not raise new capital or make capital calls from existing investors; and (iii) the Harbinger Parties cooperate with the Independent Monitor, including by providing access to requested books, records and documents.
43. The Monitor's most recent report was issued on 5 February 2015, and addressed his views on the Harbinger Parties' compliance with the Final Judgment.
44. While the Monitor does have certain duties in connection with the Offshore Fund, he is (notably) not appointed in regard to either the Company or the Master Fund. Accordingly, the shareholders of the Company do not even have the benefit of the limited powers of the Monitor.

#### **Failure of Substratum**

45. Despite the fact that the Company stated that it would use commercially reasonable endeavours to complete redemption of the Class PE Shares by 2010, it has failed to do so.
46. Indeed, the Company has admitted that it has no timeline for redeeming the investors' investments. In a document sent to investors on 14 February 2014 titled "Notice to Investors Regarding Transfers and Secondary Transactions," the Company wrote: "Although Harbinger continues to explore opportunities for liquidity for individual positions where we believe it can

be achieved at reasonable prices, the ultimate timing of liquidity is unknown.” The Company therefore recommended that investors who wanted to liquidate their investments should do so on secondary markets, where they would be forced to sell at “substantial price concessions” – that is, at a steep loss.

47. The February 2015 Monitor’s report confirms that despite asset sales, no redemptions of Master Fund Shares are planned.
48. The Class PE Master Shares’ assets which are liquid, HRG shares quoted on the NYSE, have not been realised for over 6 years and no explanation has been given for this. The illiquid assets of the ACDL shares and Master Fund Class LS receivable show no signs of being able to be realised directly in the foreseeable future, and the Company has not indicated any plan for realising these assets or when there may be further compulsory redemptions of Class PE Shares. In the case of the Master Fund Class LS receivable the liquidity situation has worsened rather than got better since the establishment of the Company due to the Class PE assets sale proceeds being used to pay loans for which Class LS shares are liable such that the Company’s shareholders did not receive cash from Class PE Master Shares’ assets sales but a receivable from a share class whose assets are more illiquid than the Class PE Master Shares assets apparently were.
49. Accordingly, the Company has failed in achieving the stated objective of realising Class PE assets to pay sums due to shareholders who redeemed from the Offshore Fund prior to 31 December 2008, such as the Petitioner, which the Company said it would use commercially reasonable efforts to do by 2010. Instead much of the cash realised from sale of Class PE assets was converted into an even more illiquid asset in the form of a receivable from Class LS of the Master Fund whose asset are shares in a company that has been, and still is, in bankruptcy since 2012 and whose exit from bankruptcy is, amongst other things, contingent on further commitment of loan funds by Harbinger companies.
50. In light of the foregoing, the substratum of the Company has failed and it is just and equitable that it should be wound up in order that the Company can seek to sell the Class PE Master Shares or compel the Master Fund to sell the Class PE assets as quickly as possible and the proceeds distributed to the Class PE shareholders.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Company be wound up in accordance with the Companies Law (2013 Revision).
2. Bart M. Schwartz of SolutionPoint International, Inc., 415 Madison Avenue, New York, New York, and David Griffin of FTI Consulting, 2D Landmark Square, 64 Earth Close, SMB, PO Box 30613, Grand Cayman KY1-1203, Cayman Islands, be appointed as Joint Official Liquidators of the Company.
3. The Joint Official Liquidators not be required to give security for their appointment.
4. The Joint Official Liquidators be authorised to act jointly and severally and exercise any of the following powers within and outside the Cayman Islands specified in Part I and Part II of the Third Schedule to the Companies Law without further sanction or intervention of the Court, namely the powers:
  - (a) to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions;
  - (b) to engage attorneys and other professionally qualified persons to assist them in the performance of their functions;
  - (c) to take possession of, collect and get in the property of the Company and for that purpose to take all such proceedings as they consider necessary;
  - (d) to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents and for that purpose to use, when necessary, the Company seal;
  - (e) 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 sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;
  - (f) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the Company, with the same effect with the respect of the Company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the Company in the course of its business;
  - (g) to promote a scheme of arrangement pursuant to section 86 of the Companies Law;

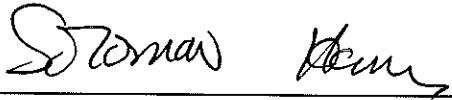
- (h) to convene meetings of creditors and contributories; and
  - (i) to do all other things incidental to the exercise of their powers.
5. The Joint Official Liquidators' remuneration and expenses be paid out of the assets of the Company in accordance with section 109 of the Companies Law, the Insolvency Practitioner's Regulations 2008 (as amended) and Order 20 of the Companies Winding Up Rules 2008 (as amended);
  6. The Joint Official Liquidators be at liberty to meet all disbursements reasonably incurred with the performance of their functions;
  7. The Joint Official Liquidators shall have the authority to appoint such Cayman Islands attorneys, and United States attorneys as they may consider necessary to advise and assist them in the performance of their duties and to remunerate them for their reasonable fees and expenses out of the assets of the Company as an expense of the liquidation;
  8. The Joint Official Liquidators be at liberty to and do pay their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs, and for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as expenses of the winding up;
  9. No suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court pursuant to section 97 of the Companies Law;
  10. No disposition of the Company's property by or with the authority of the Joint Official Liquidators in the carrying out of their duties and functions and the exercise of their powers under this Order shall be avoided by virtue of section 99 of the Companies Law;
  11. Any act required or authorised to be done by the Joint Official Liquidators may be done by any one of them;
  12. The Petitioner's costs of and incidental to the Petition be paid from the assets of the Company, to be taxed on the indemnity basis if not agreed;

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13. Such other orders as the Court considers necessary including but not limited to an order:
- 13.1. regulating the conduct of the Company's affairs in the future;
  - 13.2. requiring the Company seek to sell the Class PE Master Shares or compel the Master Fund to sell the Class PE as quickly as possible and have the proceeds distributed to the Class PE shareholders.

AND your Petitioner will ever pray etc.

DATED the <sup>14</sup>~~22nd~~ day of May 2015



**SOLOMON HARRIS**  
**ATTORNEYS-AT-LAW FOR THE PETITIONER**

**NOTE:** This petition is intended to be served on 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 *7th August* at 10.00 a.m. Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.

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