

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 395 OF 1999

BETWEEN:                    LUIS ROBERTO DEMARCO ALMEIDA

Plaintiff

AND:                            OPPORTUNITY FUND

Defendant

WRIT OF SUMMONS

To:                            OPPORTUNITY FUND  
                                  having its registered office at  
                                  Midland Bank Trust Corporation (Cayman) Limited  
                                  PO Box 1109 GT  
                                  George Town  
                                  Grand Cayman

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 fourteen [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 495GT, 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 24th Day of June 1999

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

1. The Plaintiff is a citizen and resident of Brazil.
2. The Defendant is a company incorporated in and carrying on business, inter alia, through its offices in the Cayman Islands, having its registered office at P.O. Box 1109GT, George Town, Grand Cayman. The Defendant is and has at all material times been a multi-class mutual fund regulated under the Mutual Funds Law(Revised) of the Cayman Islands.
3. The Defendant issued a Private Placement Memorandum ("the Memorandum") which has been supplemented from time to time, the most recent supplemented memorandum being issued on or about 11<sup>th</sup> May, 1998. On or about 31st October 1997 the Plaintiff executed a Subscription Agreement subscribing to the offer contained in the Memorandum in the sum of US\$500,000.00 in respect of the Money Market Fund of the Defendant (" the Fund") and subsequently became a registered shareholder of the Fund having a shareholder number 1001213-368. The Plaintiff will refer to the Memorandum and the Subscription Agreement for their full legal terms and effect.
4. It was an express term of the Memorandum, and thus of the contractual relationship existing between the parties, that shares issued to the Plaintiff by the Defendant would be redeemed upon request according to the procedure contained in the Memorandum and the Defendant's redemption request form.
5. On or about 5th November 1997, following switching requests made by the Plaintiff, the Plaintiff's investment in the Money Market Fund of the Defendant was switched to the Brazilian Aggressive Equities Sub-Fund of the Defendant in the gross amount of US\$150,000.00 and to the Fixed Income Derivatives Sub-Fund of the Defendant in the

gross amount of US\$350,000.00 respectively. The Plaintiff then submitted a redemption request to the Defendant and on or about 1st April 1998 US\$30,000.00 of his investment in the Fixed Income Derivatives Sub-Fund was redeemed. The Plaintiff submitted a further switching request to the Defendant and on or about 3rd September 1998 the Plaintiff's investment in the Fixed Income Derivatives Sub-Fund was switched by the Defendant, as instructed, to the Brazilian Aggressive Equities Sub-Fund in the gross amount of US\$200,000.00. On or about 5th April 1999 following a further switching request from the Plaintiff the Defendant switched the Plaintiff's investment in the Brazilian Aggressive Equities Sub-Fund to the Conservative Arbitrage Fund of the Defendant in the gross amount of US\$30,000.00 and the Plaintiff's investment in the Fixed Income Derivatives Sub-Fund was switched by the Defendant, also to the Conservative Arbitrage Fund of the Defendant, in the gross amount of US\$60,000.000

6. By 2 redemption requests in writing, respectively dated 5th April 1999 and 28th May 1999, ("the redemption requests") the Plaintiff directed the Defendant to make the following redemptions from the Fund:

- (a) US\$400,000.00 from the Brazilian Aggressive Equities Sub-Fund,  
and
- (b) the entire balance of the Plaintiff's investment of US\$500,000.00 (incorporating the request at (a) above) from the Brazilian Aggressive Equities Sub-Fund, the Conservative Arbitrage and and the Fixed income Derivatives Sub-Fund.

7. In breach of its contractual obligations set out in paragraph 4 above, the Defendant has refused or neglected to act in accordance with the redemption requests and continues to do so.
8. Moreover, by reason of such breach the Plaintiff has suffered loss and damage in the amount of the sums which the Defendant has refused to redeem, together with interest thereon from the dates of the redemption requests, until payment or judgment to be assessed by the Court. (The Plaintiff is unable to particularise his claim for interest until such time as the extent of the benefits accruing to his shareholdings since the redemption requests has been determined).

AND THE PLAINTIFF CLAIMS:

1. An order that the Defendant do forthwith redeem, in accordance with the Plaintiff's instructions contained in the redemption requests and the terms of the Memorandum, the Plaintiff's shareholdings with the Defendant.
2. Further or alternatively, damages for breach of contract.
3. Such further and other relief as may be necessary or just.
4. Interest, to be assessed by the Court at such rate(s) and for such period(s) as the Court shall deem just.
5. Costs.

Dated this 24th day of June 1999

*Quin and Hampson*  
QUIN & HAMPSON  
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: OPPORTUNITY FUND  
having its registered office at  
Midland Bank Trust Corporation (Cayman) Limited  
PO Box 1109 GT  
George Town  
Grand Cayman

THIS WRIT was issued by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, B.W.I.

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 installments or otherwise.

*See over for notes for guidance*

## 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 his 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.

BETWEEN:	<b>LUIS ROBERTO DEMARCO ALMEIDA</b>	Plaintiff
AND:	<b>OPPORTUNITY FUND</b>	Defendant

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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.
 

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  2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)
 

<input type="checkbox"/> yes	<input type="checkbox"/> no
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  3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*).
 

<input type="checkbox"/> yes
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Service of the Writ is acknowledged accordingly

(Signed) .....

[Attorney] for

[Defendant in person]

Address for service:

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

Messrs. Quin & Hampson  
Attorneys-at-Law  
Third Floor, Harbour Centre  
P. O. Box 1348  
George Town,  
GRAND CAYMAN

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

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