

IN THE GRAND COURT OF THE CAYMAN ISLANDS

312 ✓  
CAUSE NO: [ ] OF 2005

IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

AND IN THE MATTER OF UNIVEST MULTI-STRATEGY FUND II LTD



**PETITION**



TO THE GRAND COURT OF THE CAYMAN ISLANDS

THE HUMBLE PETITION of Univest High Yield Fund Ltd. ("High Yield") and Univest Convertible Arbitrage Fund Ltd ("Arbitrage") (together "the Petitioners") of M&C Corporate Services Ltd., P.O. Box 309 GT, Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands shows that:

**The Fund**

1. Univest Multi-Strategy Fund II Ltd. ("the Fund") is an exempted limited liability company organised and incorporated under the Companies Law (2004 Revision) of the Cayman Islands ("the Law").
2. The registered office of the Fund is situated at M&C Corporate Services Ltd., P.O. Box 309 GT, Uglan House, South Church Street, George Town, Grand Cayman, Cayman Islands.
3. The share capital of the Fund is US\$50,000, divided into 5,000,000 shares of US\$0.01 each, issued as Management shares.
4. The objects for which the Fund was established are unrestricted.

**The Petitioners**

5. The Petitioners are exempted limited liability companies organised and incorporated under the Law.

6. The registered office of the Petitioners is M&C Corporate Services Ltd., P.O Box 309GT, Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands.
7. The objects for which the Petitioners were established are unrestricted.

### **Background Information**

8. Pursuant to the Assignment Agreement dated 19 November 2004 between Mosaic Composite Ltd. ("Mosaic"); a company incorporated in the Bahamas, and the Fund, Mosaic assigned all rights, title and interest which it had in a Cash Settled Equity Barrier Call Option ("the Option") to the Fund, in return for the Class A and Class B Participating Shares in the Fund. Although the Assignment Agreement was dated 19 November 2004, the assignment of the Option was effective as of 29 October 2004.
9. Pursuant to a Letter Agreement dated 1 November 2004 between the Petitioners and Mosaic ("the Letter Agreement"), Mosaic sold to the Petitioners 16,667 Class A shares in the Fund for US\$15 million. Of the 16,667 Class A shares, High Yield purchased 11,667, with Arbitrage purchasing the remaining 5,000. The aforesaid Class A shares in the Fund are non-voting Participating Shares.
10. Norshield Asset Management (Canada) Ltd. ("NAM"), a Canadian registered company, is the investment manager of the Fund. NAM holds the management shares in the Fund.
11. NAM acts as an investment manager and investment advisor to a variety of hedge funds and alternative investment products, some of which are sold as shares in Olympus United Funds Corporation (Canada), a subsidiary of Olympus United Holdings Corporation (Canada) ("Olympus").
12. The sole director of the Fund is John Xanthoudakis, the Chief Executive Officer of the Norshield Group, which includes NAM.
13. On 29 June 2005 the Ontario Securities Commission ("the OSC") applied to the Ontario Superior Court of Justice ("the Canadian Court") for an order appointing RSM Richter Inc. ("RSM") as receiver of all the assets, undertakings and

properties of NAM, Norshield Investment Partners Holdings Ltd., Olympus United Funds Holdings Corporation, Olympus United Funds Corporation, Olympus United Bank and Trust SCC and Olympus United Group Inc. ("the Debtors").

14. On 29 June 2005, the Canadian Court appointed RSM as receiver ("the Receiver") of, inter alia, all the Debtors' current and future assets, undertakings and properties of every nature and kind whatsoever. The Receiver was appointed for a period of 15 days, subject to further order of the Canadian Court.
15. In support of the application for the appointment of the Receiver, the OSC relied on the preliminary report prepared by RSM following its original appointment by the OSC on 2 June 2005 as a Monitor of NAM. RSM was initially appointed to monitor the ongoing business and financial affairs of NAM to ensure that funds under its management were preserved and protected.
16. The preliminary report of RSM outlined the difficulties it had encountered in obtaining information and documents from NAM that it required to complete the review that it had been appointed to conduct. In addition, RSM noted that it had been hampered in its efforts due to the incomplete and unreliable books and records of the Norshield Group and, significantly, the lack of assistance from John Xanthoudakis and other key personnel. RSM stated that it had not been provided with documents that it had requested from the Norshield Group, detailing, inter alia, the business activities of NAM.
17. Following the appointment of RSM as Monitor of NAM, on 23 June 2005 the directors of the Petitioners wrote to NAM, marked to the attention of John Xanthoudakis, and to the administrator of the Petitioners ("the 23 June Letter"). The 23 June Letter, inter alia, requested that NAM promptly provide the Petitioners with full details of each class of shares on issue in each of certain Companies including the Fund, full details of all investments held by each of certain Companies including the Fund and copies of all redemption notices. No response was received from NAM, or John Xanthoudakis to the 23 June letter.

## Protection of the Fund's Assets

18. In light of the foregoing and in particular the contents of the preliminary report prepared by RSM, the Petitioners are concerned by the absence of information from the management of the Fund and the continued management of the Fund and its assets by John Xanthoudakis and NAM.
19. The Petitioners hold only the non-voting Participating Shares in the Fund. The management and voting shares are held by NAM as the investment manager. Accordingly, the Petitioners are unable to take the steps necessary to replace John Xanthoudakis as a director of the Fund and to terminate the services of NAM as the investment manager.
20. As at 31 May 2005 the net asset value of the Fund was US\$36,243,008. As it is not anticipated that the Fund has any or any substantial creditors, the Petitioners believe there should be a substantial surplus available for distribution amongst the shareholders.
21. In light of the foregoing, it is just and equitable that the Fund be wound up.
22. The Petitioners hereby petition *qua* contributory pursuant to section 94 (d) of the Law.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

- (1) The Fund be wound up by the Court under the provisions of the Companies Law (2004 Revision).
- (2) Such other Order may be made as the Court thinks fit.

DATED the 11<sup>th</sup> day of July 2005



WALKERS

Attorneys-at-Law for the Petitioners

**NOTE:** This Petition is intended to be served on the Registrar of Companies and the Fund

**INDORSEMENT**

This Petition having been presented to the Court on \_\_\_\_\_ will be heard at the Grand Court of the Cayman Islands on:

Date:

Time: 10.30 am

(or as soon thereafter as the Petition can be heard)

This Petition is presented by Walkers, Attorneys-at-Law, Walker House, Mary Street, P.O. Box 265 GT, George Town, Grand Cayman, for the Petitioners whose address for service is care of their said Attorneys-at-Law.