

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 564 OF 1996

IN THE MATTER of THE COMPANIES LAW (REVISED)

and

IN THE MATTER OF THE GLOBAL OPPORTUNITY  
FUND LIMITED

PETITION



TO: HER MAJESTY'S GRAND COURT OF THE CAYMAN ISLANDS

The Humble Petition of THE GLOBAL OPPORTUNITY FUND LIMITED (hereinafter referred to as "the Company") whose registered office is at the offices of Coopers & Lybrand, P.O. Box 219G, Butterfield House, Fort Street, George Town, Grand Cayman showeth that:-

1. The Company is a Cayman Islands exempt company whose date of incorporation is the 18th of February, 1992.
2. The authorised share capital of the Company is denominated into several currencies as follows:
  - (a) US\$600,000 divided into 100 founder's shares of US\$1 par value each and 59,990,000 unclassified shares of US\$0.01 par value each; and
  - (b) ¥15,000,000 divided into 15,000,000 unclassified shares of ¥1 par value each; and
  - (c) ECU150,000 divided into 15,000,000 unclassified shares of ECU0.01 par value each.
3. The present issued share capital is:
  - (a) US\$32,040.25
  - (b) ¥952.59
  - (c) ECU2,894.60
4. The objects for which the Company is established are unrestricted and the Company has full power and authority to carry out any object not prohibited by any law as provided by Section 6(4) of the Companies Law, CAP. 22 as amended. The Company was incorporated as an open-ended

investment vehicle governed by the laws of the Cayman Islands. Investors in the Company hold participating shares which are subdivided into four classes. Each class of share has a priority claim over a specific portfolio of assets ("the Sub-Fund") acquired with the proceeds of the capital subscriptions for that Sub-Fund's class of shares.

5. The Company presently has four Sub-Funds, being The Hedge Fund, The Asian Index Fund, The European Index Fund and The Apollo Fund.
6. The Company's assets were managed by Intercapital Asset Management Limited, a company registered in England and Wales, pursuant to an investment advisory agreement dated the 4th of March, 1992. Intercapital Asset Management Limited was placed into compulsory liquidation on the 4th of April, 1995 and was the subject of an investigation by the Investment Management Regulatory Organisation ("IMRO").
7. Morgan Stanley Bank Luxembourg S.A. (MSBL) acts as the Company's custodian and administrative agent, registrar and transfer agent. The Company's auditors are Coopers & Lybrand (Cayman). Its Domiciliary Agent was CIBC Bank and Trust Company (Cayman) Limited ("CIBC") but they have since resigned. Its registered office is c/o Coopers & Lybrand, Butterfield House, George Town, Grand Cayman.

#### MSI / MSIL

8. From April 1992 Morgan Stanley International ("MSI") advanced monies to certain investors in the Company ("the Investor Borrowers") to allow them to leverage their acquisition of shares in the Sub-Funds. These loans were secured by mortgages of the shares acquired and their associated rights and property. On 23rd of June, 1994, The Growth Fund, was incorporated as an open-ended investment company governed by the laws of the Cayman Islands to allow investors to leverage their investment into The Hedge Sub-Fund of the Company. MSI provided loans to The Growth Fund for the purchase of shares by The Growth Fund in The Hedge Sub-Fund. As security for the loans The Growth Fund pledged its shares in the Company to MSI. Certain of the investors purchased shares in The Growth Fund as a means of leveraging their Hedge Sub-Fund Holdings. As of 1st February 1994 MSI novated its loan agreements to Morgan Stanley International Limited ("MSIL").

#### Decline of the Company's NAV

9. On 7th March, 1995 the Company's directors, being at that time Mr. Geoffrey de Sibert, Mr. John

Bryan and Ms. Virginie Taittinger, resolved to suspend all redemptions from and subscriptions into the Company indefinitely. This followed a significant decline in the valuation of the net asset value ("NAV") of the Company caused in part by foreign exchange transactions entered into at the beginning of 1995. Furthermore, certain warrants held by the Company since April, 1993 and listed on the Luxembourg Stock Exchange were found to be overvalued. Following the directors' resolution on 7th March, 1995 suspending all redemptions from and subscriptions into the Company, the majority of the Company's assets were liquidated and converted into cash.

10. On 7th March, 1995 MSIL demanded repayment of all loans made to the Investor Borrowers and The Growth Fund. Following the failure of the Investor Borrowers and The Growth Fund to repay the loans, MSIL enforced their security over the pledged shares. This resulted in MSIL holding in total approximately 93% of the issued share capital. These shares were subsequently transferred to nominee companies ("the Morgan Stanley Shareholders").

11. Ms. Taittinger, Mr. de Sibert and Mr. Bryan resigned as directors on 22nd March 1995, 22nd April 1995, and 30th May 1995 respectively. On 11th April 1995 Stuart Hendel, Richard Portogallo and Ken Neuhaus, who are all employees of Morgan Stanley Group companies were appointed directors. On 18th April, 1995 Ken Neuhaus resigned and was replaced in July of that year by John Shook, also a Morgan Stanley Group employee. The intention was that these Morgan Stanley employees would be interim directors of the Company until such time as its affairs could be wound up.

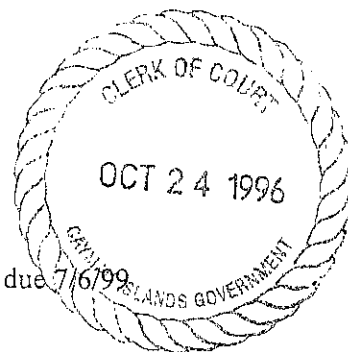
12. After lifting the suspension of the redemption of shares in the Company on 26th May, 1995 the Company made a pro rata redemption of shares from The Hedge Sub-Fund, whereby approximately 97% of the participating shares relating to that Sub-Fund were redeemed and the proceeds paid out to shareholders. As a result of this the Morgan Stanley Shareholders' shareholding was reduced to approximately 57% of the Company's issued share capital. The current position in respect of assets in the Sub-Funds as follows:

**The Hedge Fund**

<u>Currency</u>	<u>Units</u>	<u>Description</u>
DEM	169,397	Bank Austria AG Warrants due 7/6/99
USD	500,000	DynaMedix Corp. Conv. Secured Promissory Notes 7.00% due 9/1/97
Cash	US\$869,110.36	

## The Apollo Fund

<u>Currency</u>	<u>Units</u>	<u>Description</u>
DEM	18,103	Bank Austria AG Warrants due 7/6/99
Cash	US\$1,316,293.54	



There are no assets in the European Index and Asian Index Sub-Funds.

### Loss of Substratum

13. The Company was established for the purpose of conducting investment business as a mutual fund. As a result of the reduction in the valuation of the NAV of the Company and the matters set out below, it is no longer in a position to continue this business activity. None of the shareholders in the Company have intimated that they would be prepared to recapitalise the Company and, indeed, they are now of a consensus that it should be compulsorily wound up. The Company's Investment Advisor is now in liquidation and was subject to an investigation by IMRO and as a result of extensive international press coverage surrounding the Company's collapse it is not in a position to elicit further third party investment business.
14. The Company presently holds US\$2,159,896.91 along with certain Austrian warrants and promissory notes in which there is no ready market. Upon the Company's liquidation and after the expenses of the liquidation, these assets should be paid by way of dividend to the shareholders in accordance with Article 152 of the Articles of Association of the Company.
15. On 29th February, 1996 at an Extraordinary General Meeting of the Company, a special resolution was put to the members to consider placing the Company into liquidation subject to the supervision of the Grand Court in Cayman. The special resolutions were defeated, with greater than one-third of those present voting against; the Morgan Stanley Shareholders voted for the resolution, with other shareholders present being mostly those Investor Borrowers who continue to hold shares in the Company (together to be known as the "Minority Shareholders") voting against. The reason advanced by representatives of the Minority Shareholders for voting against the resolution was that an investigation conducted by a Liquidator would be expensive and that the same function could be achieved by the appointment by the minority shareholders of an "independent board".
16. On the basis that most of the Minority Shareholders are the same as those who have intimated claims against the Company and taken proceedings against MSBL in Luxembourg, the Morgan Stanley

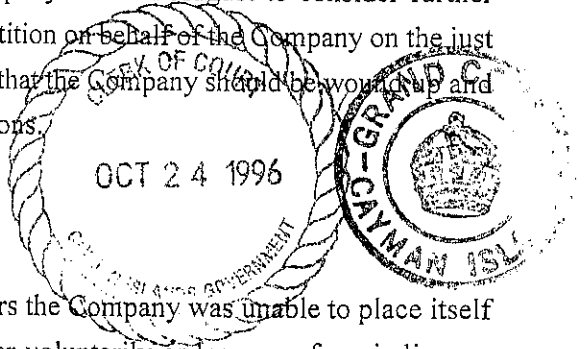


Shareholders have stated that such an appointment is unacceptable to them. Their view is that a Liquidator is in the best position to conduct and be seen to be conducting an impartial investigation of the Company's affairs that is in the interests of all the parties.

17. As a result of this opposition to the Company being placed into liquidation subject to the Court's supervision a further EGM was convened by the Company on 13th August to consider further resolutions sanctioning the directors' presentation of a petition on behalf of the Company on the just and equitable grounds. At this EGM the consensus was that the Company should be wound up and the requisite majorities voted in favour of these resolutions.

### The Deadlock

18. As a result of the opposition of the Minority Shareholders the Company was unable to place itself into liquidation by means of a Special Resolution either voluntarily or by way of a winding up subject to Court supervision. Because of the predicament of the Company it is also unable to continue its business activities. Accordingly, there was a degree of shareholder deadlock as to the future of the Company. However, as a result of the present course of action adopted by the board of directors in seeking sanction to present a petition on the Company's behalf, the Investor Borrowers and other shareholders have now agreed that the Company should be wound up, although on a compulsory petition.
19. The Investor Borrowers and Shareholders in The Growth Fund have intimated potential claims against the Company. The IMRO investigation found that Mr. de Sibert as a director and agent of the Company and The Growth Fund, knowing that the NAV of the Company had been miscalculated to an inflated value, misrepresented the position to those investors. As a result of the misrepresentation, they purchased shares direct in the Company or indirectly through shares in The Growth Fund. The Growth Fund shareholders have as a result of this alleged misrepresentation purported to rescind their shareholdings and claim proprietary interests in assets in the Sub-Funds. Those who borrowed to invest directly into the Company have intimated claims against the Company for breach of contractual duty and misrepresentation. Whilst the Company's view is that these claims have no merit, The Growth Fund shareholders' and Investor Borrowers' view is that these are matters that in the circumstances should be dealt with by a Liquidator.
20. Proceedings have been issued against MSBL in the Luxembourg Courts by a number of investors alleging negligence in relation to the Company's NAV.



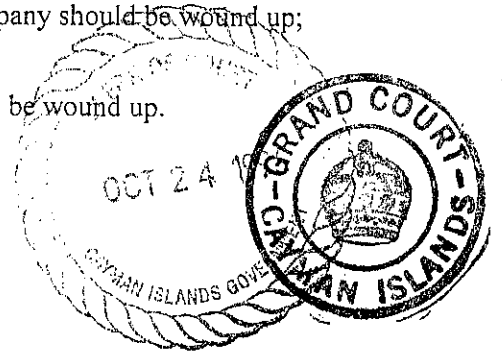
**Conclusion**

21. As a result of the reduced valuation of its NAV the Company has ceased to carry on its business and the carrying on of the business had become, in a practical sense, impossible. Therefore, the Company's substratum has been lost. The Company is not in a position to continue its business in the future without further capital from the members and the prospects of the members providing this further capital are at best minimal and in reality non-existent. Accordingly, the Company is not in a position to resume its business either now or some time in the near future. The compulsory winding up of the Company's undertaking provides the best method of satisfying any concerns and of eventually making distributions to shareholders. Specifically, Article 152 of the Articles of Association of the Company provides how the distribution of the Company's assets upon a winding up should be effected.
22. For the reasons set out above the Company is and will continue to be in no position to continue its business.
23. The Investor Borrowers have stated that they believe they have claims against the Company and have taken proceedings in Luxembourg against MSBL. They have continually pressed for an independent investigation of the Company's affairs that an independent Liquidator is best placed in the circumstances to undertake to the satisfaction of all concerned.
24. The assets of the Company, being the various contracts, securities and other negotiable instruments that made up the assets of the various Sub-Funds have, on direction of the board of directors, been liquidated as far as possible. As the Company holds a considerable amount of cash and is not intending to trade any further, it wishes to dividend this money to its shareholders after the satisfaction of any prior expenses. On the grounds that:
- (a) the Company is in no position to continue its business as it has lost its substratum;
  - (b) all the parties require the conduct of an independent investigation that a Liquidator is best placed to undertake;
  - (c) there are substantial cash deposits to be paid out to shareholders after all claims have been independently investigated and agreed or rejected;

(d) there was shareholder deadlock in the passing of a Special Resolution to the voluntary winding up of the Company or its winding up subject to this Court's supervision where the Minority Shareholders were opposed to the relevant resolution; and

(e) that all shareholders now agree that the Company should be wound up;

it is in the circumstances just and equitable that the Company be wound up.



YOUR PETITIONER THEREFORE HUMBLY PRAYS as follows:-

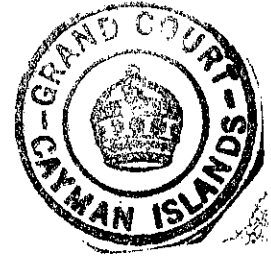
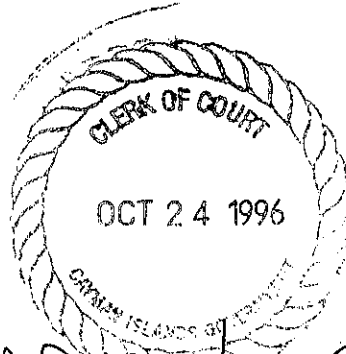
- (a) That the Global Opportunity Fund Limited be wound up by this Honourable Court pursuant to the provisions of the Companies Law (1995 Revision).
- (b) That Christopher Morris, Chartered Accountant of Deloitte & Touche (UK), and Ian Wight, Chartered Accountant of Deloitte & Touche (Cayman) be appointed Joint Official Liquidators of the Company and that the Joint Official Liquidators be authorised to do any acts or things considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs.
- (c) That the Joint Official Liquidators be authorised to exercise all the powers set out in Section 108 of the Companies Law (Revised) without the further sanction or intervention of this Honourable Court.
- (d) That the Joint Official Liquidators do file with the Clerk of the Court a report in writing as to the position of and the progress made with the winding up of the Company and with the realisation of the assets thereof and as to any other matters connected with the winding up of the Company, every six calendar months or as the Court may from time to time direct.
- (e) That the Joint Official Liquidators be at liberty to employ attorneys, counsel and professional advisors whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit.
- (f) That the Joint Official Liquidators and their staff be remunerated out of the assets of the Company at the following hourly rates:-

- (i) Partner - US\$400.00 per hour
- (ii) Senior Manager - US\$275.00 per hour
- (iii) Senior Accountant - US\$220.00 per hour
- (iv) Staff Accountant - US\$145.00 per hour
- (v) Administrative Staff - US\$85.00 per hour

(g) Such further and/or other relief as this Honourable Court deems appropriate.

AND YOUR PETITIONER will ever pray etc.

DATED this 24<sup>th</sup> day of October, 1996.



W.S. Walker & Co  
 W.S. WALKER & COMPANY  
 Attorneys-at-law for the Petitioner

NOTE: This petition is intended to be served on Bruce Campbell & Co. and Maples & Calder, attorneys-at-law for the Investor Borrowers and the Morgan Stanley Shareholders respectively.

INDORSEMENT

This petition, having been presented to the Grand Court of the Cayman Islands on the \_\_\_\_\_ day of \_\_\_\_\_, 1996 will be heard at the Grand Court of the Cayman Islands on:

DATE: Jan 9-10, 1997

TIME: 10:00 a.m./p.m.

(or as soon thereafter as the petition can be heard).