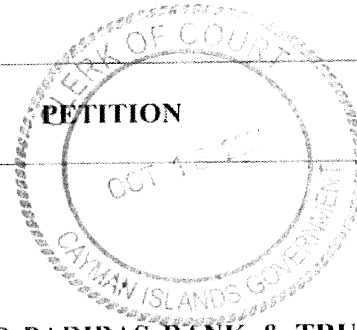


CAUSE NO: G0478 OF 2008

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)  
AND IN THE MATTER OF **PALM BEACH OFFSHORE II, LTD.**  
(HEREINAFTER REFERRED TO AS "THE COMPANY")



TO THE GRAND COURT

**THE HUMBLE PETITION** of **BNP PARIBAS BANK & TRUST CAYMAN LTD (The Bare Trustee for the Second Petitioner)** of P.O. Box 10632, Piccadilly Centre, 4<sup>th</sup> Floor, Elgin Avenue, George Town, Grand Cayman KY1-1006, Cayman Islands ("the **First Petitioner**") and **ARIS MULTI-STRATEGY OFFSHORE FUND, LTD** a Cayman Islands exempted company of M & C Corporate Services Limited, Uglan House, South Church Street, P.O. Box 309, George Town, Grand Cayman KY1-1104, Cayman Islands ("the **Second Petitioner**") (collectively referred to as "**The Petitioners**") shows that:-

**Background**

- 1 The Company is an open-ended investment company incorporated as an exempted company under the laws of the Cayman Islands.
- 2 The registered office of the Company is situated at the Anchorage Center, 2<sup>nd</sup> Floor, P. O. Box 32021, Grand Cayman KY1-1208, Cayman Islands.
- 3 The share capital of the Company is US\$50,000 divided into 5,000,000 redeemable participating shares of US\$0.01 each.

- 4 The principal objects for which the Company was established are to carry on the business of an investment company and for that purpose to acquire and hold, either in the name of the Company or in the name of any nominee various assets including shares stocks debentures, debenture stock, bonds, notes, obligations and securities issued or guaranteed by any company wherever incorporated or carrying on business.

#### **The Petitioners**

- 5 The Petitioners invested on behalf of their clients in the said Company by acquiring the following:-

10,025 Class A, Series 0907 (Initial Series) Shares valued as of 31<sup>st</sup> July 2008 at US\$10,993,957.35.

The First Petitioner holds the said interests in the Company as bare trustee for the Second Petitioner pursuant to a custodian agreement between it and the First Petitioner dated 31<sup>st</sup> August 2004 but has refused to bring or join these proceedings on behalf of the Second Petitioner. The Second Petitioner brings this Petition on behalf of the Trustee to enforce the said trust.

- 6 According to the financial statements for the Company dated 31<sup>st</sup> December 2007, the Company had assets of US\$115,736,763.00. A number of other investors will support this Petition.

#### **The Company**

- 7 The following appointments were made by the Company since its incorporation, namely:-

(1) The directors were Bruce Prévost, David Harrold, David Bree, Don Seymour and Ronan Guilfoyle.

(2) The investment manager of the Company appointed pursuant to an Investment Management Agreement is Palm Beach Capital Management, LLC ("PBCM").

(3) The administrator of the Company appointed pursuant to an Administration Agreement is Admiral Administration, Ltd.

8 The Company is required by its Articles of Association to redeem participating shares at the redemption price calculated as the price equal to the Net Asset Value per share at the redemption dates (which were monthly) on receipt of 90 days' notice. The directors had power to suspend redemptions.

9 The Petitioners and other investors invested in the Company pursuant to and in reliance, *inter alios*, on a Private Offering Circular produced by the Company dated 14<sup>th</sup> September 2007 which stated that the Company had been formed for the following purposes or to pursue the following investment strategy:-

(1) All of the Company's assets were to be invested in unsecured Promissory Notes ("**Investment Notes**") issued by Palm Beach Finance II, L.P. ("**the US Fund**"), a private investment fund organised in June 2004 as a limited partnership under the laws of the State of Delaware, USA.

(2) The investment objective of the Company was to achieve consistent and advantageous rates of return by investing in Investment Notes issued by the US Fund.

(i) The US Fund pursues its objective of achieving "*consistent, advantageous rates of return through the purchase of secured notes relating to transaction financing of new, in-the-box, pre-sold, name brand products.*"

(ii) "*The US Fund currently acquires all of the short-term notes (each a "Note" and, collectively, "the Notes") originated by its affiliate, PBFP Holdings, LLC ("PBFP Holdings").*

(a) "*The Notes are issued pursuant to loans made by PBFP Holdings to inventory brokers or their affiliates.*"

- (b) *“The interest rates paid on the Notes will vary from time to time, but essentially involve a sharing in the spread generated by the inventory broker between the initial purchase price of the merchandise being financed and the sale price to the purchaser.”*
  - (c) *“Other funds managed by the Investment Manager have in the past and may in the future also purchase Investment Notes.”*
  - (d) *“Although PBFP Holdings may purchase Notes issued by one or more inventory brokers or their affiliates, substantially all the notes are currently issued by one inventory broker or affiliates thereof (“the Principal Issuer”). PBFP Holdings sells the Notes to the US Fund for a price generally equal to the principal amount of such Notes.”*
- (iii) The short term Notes so acquired by the US Fund and PBFP Holdings were to be secured by the Principal Issuer in certain inventory purchased by the Principal Issuer’s parent company from the proceeds of the Notes, such security was to consist of liens, insurance and a purchase order in respect of the inventory. In particular:-
- (a) Note proceeds were to be used to pay the cost of specific identified merchandise the issuer was acquiring and with respect to which the issuer had received one or more purchase orders for such merchandise;
  - (b) Aggregate property and casualty insurance had to be in force that named the US Fund as loss payee and covered the purchased merchandise in an amount greater than the respective aggregate Note principal amounts while related merchandise was in transit to the related inventory purchaser(s);

- (c) The respective collateral agent, and/or the US Fund had to file against the Principal Issuer appropriate UCC-1 financing statements covering the specific inventory, sales contract and proceeds related to the Note and the US Fund must have filed against the respective collateral agent appropriate UCC-1 financing statements;
- (d) The Note obligor should have been a United States resident rated "IA2" or better by Dun & Bradstreet, Inc. or "BBB-" or better by Standard & Poor's that was not an Affiliate of the collateral agent, the General Partner or the issuer, was not a government or governmental subdivision or agency and was not more than 60 days delinquent in the payment of any receivable relating to an outstanding Note purchased by the US Fund;
- (e) The Note related to a contract that required payment in full in not later than 60 days from the date on which the purchaser received the merchandise;
- (f) The merchandise purchase arose in the ordinary course of the issuer's business in connection with the purchase and sale of merchandise in the United States.

10 The purchased merchandise had to be goods that were consumer brand name, new, in-the box products in one of the following categories: (a) household goods, (b) apparel, (c) sporting goods, (d) electronic goods or (e) other goods that the General Partner or the Investment Manager had approved in writing.

11 In the premises, on the true construction of its memorandum, the main object for which the Company was formed was to pursue the specific opportunity of acquiring and holding the Notes issued by the US Fund which were themselves backed by the interests in genuine purchases and sales of excess inventory secured by liens and insurance as described in the Private Offering Circular and as set out above.

- 12 The US Fund was formed as a Limited partnership under the laws of the state of Delaware. It is managed by their common general partners, Palm Beach Capital Management, L.P., also a Delaware limited partnership (“**the General Partner**”) and its general partner, Palm Beach Capital Corp., a Delaware corporation (“**the PBC Corp.**”).
- 13 It is believed that the Company was formed to be the successor to the Palm Beach Finance Offshore Fund Ltd of which PBCM was also investment manager and which had the same registered office, officers, administrators and custodian arrangements as the Company.
- 14 In the premises it was reasonable for anyone reading the Private Offering Circular subscribing for shares to assume that the investment strategy as described above was one which PCBM had already successfully implemented previously and that the statements of what it intended to do with new subscription monies were also implied statements as to what it had done in the past.
- 15 The Petitioners subscribed for their shares at US\$1,000.00 per share. They received their last NAV statements on or about 7<sup>th</sup> August 2008 which reflected an NAV per share of US\$1,096.6541 and stated that their investments in the Company were worth US\$10,993,957.35 in respect of 10,025 Class A, Shares 0907 (Initial Series) Shares.

#### **The Fraud**

- 16 PBCM has admitted to the Petitioners and others in the course of conversations and meetings and in discussions in September 2008 (as to which see below) that:-
- (1) the principal issuer from which the US Fund and PBFP Holdings acquired all or substantially all of the short term notes was called Petters Company Inc (“**PCI**”);
  - (2) all of the monies or substantially all of the monies provided by the Company to the US Fund in return for the promissory notes issued by the US Fund to the Company were used by the Fund to acquire the short term notes issued by PCI;

- (3) the US Fund has no assets other than the short term notes issued by PCI and/or associated companies.
- 17 The shares in PCI were held directly or indirectly by one Thomas Petters, a resident of Minnesota and/or by another body corporate called Petters Group Worldwide Inc (“PGW”) the shares of which are also owned and controlled by Mr. Petters. Mr. Petters together with others also controls the management of PCI and PGW.
- 18 Mr Petters and his associates also own and control the shares and management of two other companies Nationwide Resources Inc (“NIR”) or Enchanted Family Buying Company (“**Enchanted**”).
- 19 The issue of short term notes acquired by the US Fund was part of a fraudulent scheme devised by PGW, PCI, NIR, Mr. Petters and others to induce investors to provide funds. In particular:-
- (1) Mr. Petters and others created numerous fictitious sales confirmations purportedly from NIR or Enchanted in the pretence that the latter were vendors of excess inventory.
  - (2) The vast majority of the sales orders issued by NIR or Enchanted did not relate to any merchandise purchased or ordered by either of them and neither were able to deliver any of the merchandise.
  - (3) Mr. Petters and others also caused PCI to issue purchase orders in respect of the excess inventory which NIR and Enchanted had purported to sell when PCI was not expecting to take delivery of any goods and knew the sales by NIR and Enchanted were not genuine.
  - (4) Mr. Petters and others also caused PCI to issue purchase orders in respect of purported further onward sales of the non-existent goods to buyers such as “BJ Wholesale” and “Sam’s Club” when no such onward sale had taken place.

- (5) PCI then fraudulently pledged the non-existent merchandise as security for the investments.
- (6) Mr. Petters and his associates caused PCI to obtain insurance in respect of the non-existent goods by arranging for representatives of insurance companies to tour warehouses containing electronic goods owned by other companies, while falsely representing that the goods were those sold to PCI.
- (7) The short-term notes issued by PCI in respect of these transactions were not secured on any goods and were not supported by any genuine sales or purchase orders which would ever be fulfilled by delivery of merchandise.
- (8) In many instances, funds from the Company, PBFP Holdings and the US Fund were sent directly to NIR or Enchanted. In turn, those companies directed the funds to PCI (less a commission) without any merchandise changing hands.

20 This fraudulent scheme came to light after 24<sup>th</sup> September, 2008 when agents from the US Federal Bureau of Investigations executed search warrants at PCI's offices as well as the homes and vehicles of various employees and agents of PCI. The evidence in support of the warrant was made public on 26<sup>th</sup> September 2008.

21 By letter dated 26<sup>th</sup> September 2008, after the existence of PCI's scheme became public PBCM wrote to investors explaining its "*belief that there has been serious wrongdoing [at PCI] and that the Funds have been affected.*"

22 On 27<sup>th</sup> September 2008 the Petitioners and others were informed by PBCM and others that redemptions of shares had been suspended.

23 By letter dated 6<sup>th</sup> October 2008 PBCM wrote to the Petitioners and other investors and stated that:-

*"1. The US Attorney's office views [PBCM] and its principals as victims alongside with you... They hold all of the investigatory information at this point and see nothing that implicates us;*

....

*3. A lawsuit against PBCM and us individually cannot possibly produce even a quarter penny against a dollar of loss even if successful in every way imaginable, but we guarantee that it will cost many times that because we will not be able to focus on the asset recovery effort"*

24 The Company has substantially lost all of its funds and neither the Petitioners nor other investors have any prospect of being repaid all of their funds or any portion of those funds within the ordinary timescale envisaged by them and the Company at the time they subscribed.

25 There is no realistic hope that the Company will ever be profitable.

26 The Company has never held and/or does not hold valid or real investments. These Notes it acquired from the US Fund and the short term notes which were acquired by the US Fund from PCI were invalid and/or wholly worthless.

27 Further or alternatively, the Company does not hold the investments it was authorised by its objects clause to acquire and hold in that none of the Notes issued by the US Fund were backed by genuine notes or other securities issued by PCI as Principal Issuer.

28 The opportunity to acquire such Notes was in fact never genuinely available to the Company and/or never materialised and/or has proved worthless and/or cannot be pursued without further capital which none of its members will contribute.

- 29 For the reasons set out above the Company can no longer carry out the business for which it was formed and the substratum of the Company has failed.
- 30 The members of the Company have a legitimate interest that the affairs of the Company, the conduct of its directors and the responsibility for PCBM's investment in the fraudulent scheme be investigated by an independent liquidator.
- 31 In all the premises it is just and equitable to wind up the Company.

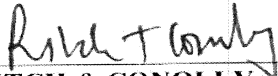
**YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:**

- (1) the Company, **PALM BEACH OFFSHORE II, LTD.**, may be wound up the Court under the provisions of the Companies Law (2007 Revision); or
- (2) should the Court make an Order winding up the Company, that Geoffrey E. Varga and Neil Morris of George Town, Grand Cayman (to hold their offices jointly and severally) be appointed Joint Official Liquidators of the Company;
- (3) the Joint Official Liquidators are authorised jointly and severally to exercise any of the powers listed in section 109 of the Companies Law (2007 Revision) without the further sanction or intervention of the Court;
- (4) the Joint Official Liquidators be authorised to do any act 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;
- (5) the Joint Official Liquidators do file with the Clerk of the Court a report in writing of the position of and progress made with the winding up of the Company with the realisation of the assets thereof and to any other matters connected to the winding up of the Company, as the Court may direct;
- (6) the Joint Official Liquidators be at liberty to appoint counsel, attorneys, 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 and to remunerate them out of the assets of the Company;

- (7) the Joint Official Liquidators and their staff be remunerated out of the assets of the Company at their usual customary rates;
- (8) the Joint Official Liquidators be at liberty to apply generally;
- (9) the costs of the Petition and the Petitioners be paid out of the assets of the Company;
- (10) the Joint Official Liquidators cause a copy of this Petition to be delivered to the Registrar of Companies;
- (11) such further or other relief be granted as this Court deems appropriate.

**DATED** the 13<sup>th</sup> day of October 2008

  
\_\_\_\_\_  
**RITCH & CONOLLY**  
Attorneys-at-Law for the Petitioners

**NOTE:** It is intended to serve this Petition on the registered office of **PALM BEACH OFFSHORE II, LTD.** and the Registrar of Companies.

This Petition is presented by Ritch & Conolly, Attorneys-at-Law, PO Box 1994 GT, Queensgate House, 113 South Church Street, George Town, Grand Cayman, for the Petitioners whose address for service is care of their said Attorneys-at-Law (Ref. CB)

11500\_Court Documents/Palm Beach Offshore II, Ltd/Petition/FINAL 13Oct2008

**INDORSEMENT**

This Petition having been presented to the Court on  
Court of the Cayman Islands on:

2008 will be heard at the Grand

Date: 2008

Time: a.m.

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