

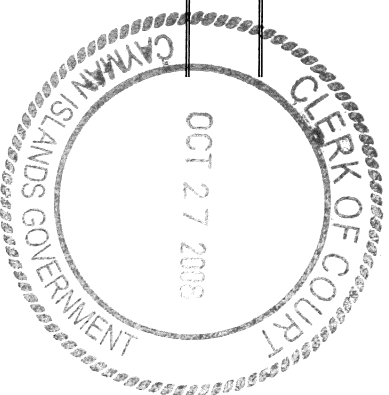
IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: **G504** OF 2008

IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)  
AND IN THE MATTER OF PALM BEACH OFFSHORE, LTD  
(HEREINAFTER REFERRED TO AS "THE COMPANY")

\_\_\_\_\_  
PETITION  
\_\_\_\_\_



TO THE GRAND COURT

The humble petition of PALM BEACH OFFSHORE, LTD 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 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 Petitioner

4. The Company's directors make this petition further to a resolution of the Board to wind up the Company, dated 24 October 2008.

## The Company

5. The following appointments were made by the Company since its incorporation, namely:
  - (a) The directors were David Harrold, Bruce Prévost, David Bree and Blair Brinkley;
  - (b) The investment manager of the Company appointed pursuant to an Investment Management Agreement is Palm Beach Capital Management, LLC ("**PBCM**"); and
  - (c) The administrator of the Company appointed pursuant to an Administration Agreement is Admiral Administration, Ltd.
6. The Company was formed for the following purposes and 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 organized 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 acquires short-term notes (each a “Note” and, collectively, the “Notes”) originated by an affiliate, PB Finance Holdings II, LLC (“PBF Holdings II”).

(a) “The Notes are issued pursuant to loans made by PBF Holdings II 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) “Although PBF Holdings II 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”). PBF Holdings II 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 PBF Holdings II were to be secured by the Principal Issuer in certain inventory purchased by the Principal’s 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 and 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 tan 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 the merchandise in the United States.

7. 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.
8. 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.

9. 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.**”).

#### **The Fraud**

10. The principal issuer from which the US Fund and PBF Holdings II acquired all or substantially all of the short terms notes was called Petters Company Inc. (“**PCI**”);
11. 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;
12. The US Fund has no assets other than the short term notes issued by PCI and/or associated companies.
13. 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.
14. Mr. Petters and his associates also won and control the shares and management of two other companies Nationwide Resources Inc. (“**NIR**”) or Enchanted Family Buying Company (“**Enchanted**”).
15. 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, PBF Holdings II 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.
16. This fraudulent scheme came to light after 24 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 September 2008.
17. By letter dated 26 September 2008, after the existence of PCI's scheme became public PBCM wrote to the investors explaining its "*belief that there has been serious wrongdoing [at PCI] and that the Funds have been affected.*"
18. On 27 September 2008 the investors were informed by PBCM and others that redemptions of shares had been suspended.
19. By letter dated 6 October 2008, PBCM wrote to the 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”*
20. The Company has substantially lost all of its funds by reason of the fraud outlined above as the Investment Notes in the US Fund are worthless due to the absence of any significant underlying assets. Accordingly, there is no prospect of investors in the Company 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.
21. There is no realistic hope that the Company, will ever be profitable.
22. The Company has never held and/or does not hold valid or real investments and the Investment Notes are of negligible value.
23. 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.
24. The members of the Company have a legitimate interest that the affairs of the Company, the conduct of its directors and the responsibility for PCBMT's investment in the fraudulent scheme be investigated by an independent liquidator.
25. In all premises it is just and equitable to wind up the Company.
26. It was resolved at the Director's Meeting of the Company that if, as appeared likely, Offshore II would enter liquidation then it was appropriate that the Company also enter liquidation, if in the Court's opinion it was just and equitable to do so. It was also agreed that it would be appropriate for Kinetic Partners, the firm proposed

to have their principals become liquidators of Offshore II, to also become liquidators of the Company, given the time and cost savings in so doing.

#### **Consent of Official Liquidators**

27. Geoffrey Varga of Kinetic Partners Cayman LLP and Neil Morris of Kinetic Partners US LLP have consented to act as Joint Official Liquidators of the Company.

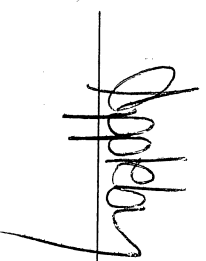
#### **YOUR PETITIONER THEREFORE HUMBLLY PRAYS THAT**

1. The Company, PALM BEACH OFFSHORE, LTD may be wound up the Court under the provisions of the Companies Law (2007 Revision);
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 Petitioner 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; and
11. such further or other relief be granted as this Court deems appropriate.

Dated the 27 day of October, 2008.

  
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APPLEBY

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

THIS PETITION was presented by Appleby of Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. [THW/10413.004]), Attorneys-at Law for the Company.