

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: 119 OF 2009

IN THE MATTER OF SECTIONS 94 AND 104 OF THE COMPANIES LAW  
(2007 REVISION)

AND IN THE MATTER OF DD GROWTH PREMIUM FUND

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WINDING-UP PETITION

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To: The Grand Court of the Cayman Islands

The petition of Alpha Transport Platform Inc. c/o Strathmore Capital LLP, 102 Sydney Street, London SW3 6NJ ("Alpha") (the "Petitioner") shows that:

**Background**

1. DD Growth Premium Fund (the "Fund") was incorporated on 19 November 2004 as an exempted company under the laws of the Cayman Islands to operate as a private investment fund.
2. The registered office of the Fund is situated at PO Box 309, Uglund House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.
3. The authorised share capital of the Fund is
  - 3.1. 25,000 Euros, divided into:
    - 3.1.1. 10 Founder Shares with par value of 0.001 Euro per share; and

- 3.1.2. 24,999,990 ordinary shares with par value of 0.001 Euro per share;  
and
  - 3.2. US\$25,000, divided into
    - 3.2.1. 25,000,000 ordinary shares with par value of US\$0.001 per share.
4. The principal object for which the Fund was established is to carry on the business of a private investment fund for the benefit of non-US persons and US tax exempt investors (or entities comprised primarily of US tax exempt investors).
5. The Fund's management is undertaken by companies within the Dynamic Decisions Group of companies. Full details are set out below.
6. According to the financial statements for the Fund for the year ended 31 December 2007, the net assets attributable to holders of redeemable participating shares of the Fund were US\$59,002,278. According to the financial statements for the DD Growth Premium Master Fund in which the Fund invests ("the Master Fund") for the year ended 31 December 2007, the net assets attributable to holders of redeemable participating shares of the Master Fund were US\$343,723,307.
7. According to the December 2008 Newsletters sent to investors in the Fund and the DD Growth Premium 2X Fund (which also invests in the Master Fund), the overall assets under management of the Master Fund were approximately US\$550,000,000 at the end of December, 2008.

#### **The Petitioner**

8. Alpha is an investor and shareholder in the Fund. According to a statement received from the administrator of the Fund, as at 31 December, 2008, Alpha held 145,839.207 shares in the Fund. These shares were acquired on 2 October 2006. Alpha's investment in the Fund is held as part of a portfolio managed by

Strathmore Capital LLP ("Strathmore"). At all material times and in the events pleaded below, Strathmore acted as agent on behalf of Alpha.

9. The Investment Manager provided detailed monthly risk reports and other transparency information to Alpha.

## **The Fund**

### *Offering Memorandum*

10. The Petitioner's investment in the Company is governed by, inter alia, the Offering Memorandum dated 23 February 2007 (as supplemented on 13 December 2007 and 9 January 2008) (the "Offering Memorandum")

### *The Board*

11. According to the Company's most recent Offering Memorandum dated 14 January 2009 (the validity of which is disputed), at that date, its Directors were Alberto Micalizzi, Nicos Christofides, Umberto Frascati, Adnan Hassan, Michael Nobel and Humphrey Polanen.
12. Alberto Micalizzi is also the Chairman and Managing Director of Dynamic Decisions Group Limited, the CEO of the Investment Manager, a director of Dynamic Decisions Capital Management (Cayman) Limited ("the Manager") and since 2001 has been the CEO of Dynamic Decisions S.r.l, an affiliate of the Investment Manager.

### *The Manager, Investment Manager & Administrator*

13. The Fund's investment management is undertaken by the Manager and the Manager has power to delegate its investment management powers and authority to the Investment Manager.

14. The Investment Manager is an English limited company which has full discretion, subject to the control and review by the Directors, to invest the assets of the Master Fund in a manner consistent with the investment objective, approach and restrictions described in the Offering Memorandum.
15. The Administrator of the Fund is PNC Global Investment Servicing (Europe) Limited (formerly known as PFPC International Ltd.).

*Redemption of shares in the Fund*

16. The Fund is required by its Offering Memorandum to redeem participating shares at the redemption price. The redemption price is calculated as the net asset value per share of the relevant class of shares calculated at the relevant Redemption Day which unless otherwise determined by the Directors is the first calendar day in each month, except where such day is not a Business Day when the redemption day will be the first Business Day.
17. Written notice of redemption must be received by the Administrator within 30 days prior to the applicable redemption day
18. The Petitioner may not have sighted the latest Amended and Restated Articles of Association of the Fund. Despite this, a letter from the Board to the Petitioner (further details are provided below) stated that pursuant to Article 76 of the Amended and Restated Articles of Association of the Fund, the Directors have the power to suspend redemptions.

*Investment Strategy of the Fund*

19. The Petitioner's investment in the Fund is governed by, inter alia, the Offering Memorandum. The investment objective of the Fund is stated to be to achieve absolute returns by investing substantially all of its capital through a "master-

feeder” structure in the Master Fund. The Master Fund is also a Cayman Islands exempted entity. The Fund and the Master Fund began operations on 5 January 2005. DD Growth Premium 2X Fund, another Cayman Islands exempted entity, also invests, directly or indirectly, in the Master Fund on a leveraged basis.

20. The Offering Memorandum contains the proposed investment strategy to be adopted by the Fund. Specifically:

20.1. The investment objective of the Fund and the Master Fund is to seek to achieve absolute returns. The Fund seeks to achieve its investment objective by investing substantially all of its assets in the Master Fund. The Master Fund seeks to achieve its objective generally by investing in approximately 40-50 long/short pairs in US and European equities, with a focus on large-caps; and

20.2. Neither the Fund nor the Master Fund will:

20.2.1. Expose more than 20 per cent of its gross assets to the creditworthiness or solvency of any one counterparty;

20.2.2. Invest more than 20 per cent of its gross assets in the securities of any one issuer; or

20.2.3. Invest in real estate or physical commodities.

21. It was in reliance on the terms of a prior version of the Offering Memorandum that the Petitioner decided to invest in the Fund. The Petitioner’s legitimate expectation, as dictated by the Offering Memorandum, was that the Fund would hold large-cap US and European equity positions traded in a market-neutral quantitative style. Until recently, Strathmore believed, based on information provided by the Investment Manager, that this was indeed the investment strategy adopted by the Fund and the Master Fund. However, since some time in 2008,

this position has changed dramatically in circumstances which cause the Petitioner a great deal of concern.

## **Recent Events**

### *Termination of the Prime Brokerage Agreement*

22. On 12 December 2008, Strathmore received notice by email from the Investment Manager that the Prime Brokerage Agreement between Morgan Stanley and the Master Fund had been terminated pursuant to the terms under that agreement with 20 days' notice.

### *Change of auditor*

23. In the same email, Strathmore was informed that the auditors of the Fund were to change from PricewaterhouseCoopers to Deloitte for the Fund's December 2008 audit and the audit of the Fund thereafter.

### *Unexplained bond exposure*

24. On 15 and 16 December 2008, Strathmore received risk reports for 28 November and 12 December 2008 respectively. These reports disclosed bond exposure in the Fund's investment portfolio of over 28%. A later risk report for 31 December 2008 showed bond exposure of 54.8%. Bond exposures of these magnitudes were highly abnormal for the Fund as the stated investment program of the Fund is to invest in long/short pairs in US and European equities, with a focus on large-caps.
25. Upon further inquiry, Strathmore was told that the Fund held positions in two liquid European government bonds and a liquid European corporate bond.
26. In its January 2009 investor letter, the Fund noted that valuations (other than OTC options) would be carried out by KPMG, which had been appointed "as a

third-party auditor for the purpose of valuing specific assets". Such an exercise should not have been necessary, given the Fund's liquid equities mandate.

27. As a result of the report of the appointment of KPMG, Strathmore contacted the Investment Manager on 12 January 2009, questioning the Fund's holdings of illiquid assets. The Investment Manager stated that the illiquid assets comprised less than 5% of the net asset value of the Fund.

*Late issue of net asset value*

28. The Fund's net asset value for November 2008 was not issued by the Administrator until 14 January 2009, while the Fund's net asset value for December 2008 was not issued by the Administrator until 24 February 2009. These were both issued very late, considering the nature of the Fund's investment strategy and past practice.

29. No NAV has been issued for January or February 2009 by the Administrator at all.

*Suspension of Redemptions*

30. On 23 January 2009, Strathmore submitted redemption documentation in advance of the 31 January 2009 redemption deadline for the 2 March 2009 redemption date.
31. On 27 February 2009, Strathmore was informed by letter from the Fund that pursuant to Article 76 of the Amended and Restated Articles of Association of the Fund the directors had purportedly determined to suspend to all redemptions from the Fund and the Master Fund with immediate effect on the grounds that there "exists a state of affairs where disposal of a substantial portion of investments by the Fund would not be reasonable or practical or would be seriously prejudicial to the non-redeeming shareholders". The letter also purported to confirm that a deferral of payment of outstanding redemption proceeds would also remain in effect,

although the Investment Manager had not previously advised Strathmore of any such deferral. A corresponding letter was sent to investors, including the Petitioner, in DD Growth Premium 2X Fund. The Petitioner does not admit the right or entitlement of the Fund to suspend redemptions.

32. Further, the letters stated that the directors had reviewed the portfolio of the Master Fund and had engaged independent advisors to review the same and that, until an outcome from this review was known, the directors had decided to take steps to limit the trading of the Master Fund's assets by the Investment Manager. Finally, the letters advised that Mr Alberto Micalizzi had resigned from the board of the Fund and DD Growth Premium 2X Fund.
33. The Petitioner has not been provided with any further details in relation to the status of redemptions following the letter of 27 February 2009, despite several attempts to glean information, particularly in light of the events as set out above.
34. Representatives of Strathmore made numerous attempts to contact representatives of the Investment Manager, including Alberto Micalizzi, and members of the Board, including Humphrey Polanen and Nicos Christofides. The only responses were one email from Humphrey Polanen stating that he had given permission to the Administrator to send Strathmore the latest Memorandum and Articles of Association of the Fund (which the Administrator later indicated it did not have) and two phone conversations with Humphrey Polanen on 2 March 2009 in which he indicated that at that stage there was no evidence to suggest significant wrongdoing and that an independent firm had been appointed to investigate.
35. Further, on 2 March 2009, representatives of Strathmore attended at the offices of the Investment Manager in London. Alberto Micalizzi was not there. Other employees of the Investment Manager refused to answer their questions and showed them to a conference room where such employees arranged a call with counsel to the Investment Manager and the Fund. Counsel provided little

information on such call other than indicating that the Board had retained an outside party whose name they would not disclose to conduct an investigation.

36. As a result of the conduct of the Investment Manager referred to above, on 10 March 2009, Appleby, the Petitioner's attorneys wrote to the Directors of the Fund requiring information in respect of the Fund to be provided as a matter of urgency failing which urgent legal action would be taken. That letter was ignored.

*Shareholder update*

37. On 13 March 2009, Humphrey Polanen addressed the Petitioner during a shareholder telephone call (in which shareholders were not permitted to ask questions) and stated that:

37.1. The Board had been handling a number of administrative and legal matters;

37.2. Alberto Micalizzi had recently stated that the Fund had incurred substantial trading losses in 2008, primarily between August and November, and that the total assets of the Master Fund might only be US\$20-30,000,000 excluding certain "illiquid assets", referred to in paragraph 37.5 below, compared to some US\$550,000,000 reported at year-end;

37.3. The Board had since been urgently trying to verify the accuracy of Mr Micalizzi's statements and ascertain how the trading losses were incurred;

37.4. KPMG had been appointed to undertake a forensic accounting review of the Funds which was expected to take some time;

37.5. The Board had little information concerning the investment in bonds, and were not even sure if the bonds were genuine. It appeared that the Master Fund might hold certain illiquid assets in the nature of commodity-linked bonds and at the present time the Board was able to establish very little information in respect of the bonds, including how much was paid for

them, whether additional monies were owed in respect of them, whether the bonds were genuine, the value of any of them and whether they could be liquidated. The bonds claim to be issued by Nevada corporation on behalf of an Australia corporation and purport to be convertible to a commodity described as "high-speed diesel D2 low sulphur content";

- 37.6. Irregularities in redemptions were being investigated;
- 37.7. Redemptions would remain suspended until more information was available;
- 37.8. The matter has been brought to the attention of the Financial Services Authority in the UK;
- 37.9. The Board had substantially limited the authority of the Investment Manager until more information is known;
- 37.10. The Board proposed to request an unanimous written resolution of the shareholders of the Master Fund to place the Master Fund into voluntary liquidation. If such resolution was not passed, the Board would shortly convene an extraordinary general meeting of the Master Fund to consider such a resolution. In addition, the Board would shortly convene an extraordinary general meeting of the Fund at which the voluntary liquidation of the Fund would be proposed;
- 37.11. 36.11 If the shareholders resolved to place the Fund and the Master Fund into liquidation, the Boards of those companies would recommend that individuals from KPMG in the Cayman Islands and the UK be appointed as joint voluntary liquidators; and

37.12. The Board was not in a position to speculate on how long the aforementioned liquidations may take and when, if at all, capital might be returned to shareholders.

### **Consequences of Recent Events**

38. It appears that the Fund lost a substantial amount of its assets by virtue of the Master Fund's investment in an illiquid bond, such investment being contrary to various representations and/or statements that the Master Fund only traded in liquid instruments. It appears that the investment in the illiquid bond was organised and executed by Alberto Micalizzi. It further appears that the Investment Manager remains in place and continues to trade under unknown restrictions. This is an unsatisfactory state of affairs and it is unacceptable for the Board to have made no provision to safeguard the assets of the Funds.
39. The Petitioners have initiated inquiries in order to ascertain the whereabouts of Mr Micalizzi. To date, those inquiries have been unsuccessful.
40. It appears that there has been gross mismanagement by the Investment Manager and/or Manager, without adequate supervision or oversight by the Board, and assets of the Fund are at risk of dissipation, which may have occurred already.
41. The Petitioner has no confidence or faith in the Board's purported investigation of the gross mismanagement and has no comfort as to when the outcome of such purported investigation will be known. It is unlikely that the Board's investigation will prevent any dissipation of assets.
42. The Board is wrongfully seeking to effect a voluntary liquidation in circumstances when it appears that the Fund may be insolvent, which requires the appointment of an independent insolvency practitioner to investigate and seek to recover the substantial losses that the Fund has reported.

43. Coupled with the risk of dissipation of its assets, there is no realistic hope that the Fund will ever be profitable without further capital contributions which it is unlikely that any of the members, including the Petitioner, will contribute.
44. In fact, the opportunity to provide the investors with absolute returns never materialised and/or has proved worthless and/or cannot be pursued.
45. Further, neither the Petitioner nor the 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 Fund at the time they subscribed.
46. For the reasons set out above, there has been gross mismanagement and misfeasance, the Fund can no longer carry out the business for which it was formed, and the substratum of the Fund has failed.
47. The members of the Fund have a legitimate interest in the affairs of the Fund, the conduct of its Directors, and the responsibility for the investment in the illiquid bond which has resulted in colossal losses to be investigated as a matter of urgency by an independent provisional liquidator to prevent further mismanagement and dissipation of assets. It is likely that there are claims to be pursued against the Fund's Directors, Investment Manager, the Manager and other related entities for the benefit of the Fund's members including the Petitioner.
48. In all the premises, it is just and equitable for the Fund to be wound up.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Fund be wound up by the Court under the provisions of the Companies Law (2007 Revision);
2. G James Cleaver and Richard Fogerty of Zolfo Cooper be appointed as Joint Official Liquidators of the Fund ("the Liquidators");

3. The Liquidators be authorised to exercise any of the powers conferred on them by the Court pursuant to Section 110(2) and Parts I and II of the Third Schedule of the Companies Law (2007 Revision) without the further sanction or intervention of the Court;
4. The Liquidators be authorised to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Fund and the winding up of its affairs and to prevent the dissipation of the Fund's assets;
5. The 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 Fund with the realisation of the assets thereof and to any other matters connected to the winding up of the Fund, as the Court may direct;
6. The 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 Fund;
7. The Liquidators and their staff be remunerated out of the assets of the Fund at the usual customary rate;
8. The Liquidators be at liberty to apply generally;
9. The costs of the Petition and the Petitioner be paid out of the assets of the Fund;
10. The Liquidators cause a copy of this Petition to be delivered to the Registrar of Companies;
11. Such further or other relief be granted as the Court deems appropriate.

Dated the 7 day of March 2009

Filed the        day of March 2009

*Appleby*

**Appleby**

Attorneys-at-Law for the Petitioner

**NOTE:**

It is intended to serve this Petition upon:

1. The Registrar of Companies; and
2. The Fund at its registered office.

THIS PETITION WAS FILED by Appleby of Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. JW/MH/09616.004), Attorneys-at Law for the Petitioner.

## NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts,  
George Town, on 2009 at 10.00am.

Any correspondence or communication with the Court relating to th hearing of this  
Petition should be addressed to the Registrar of the Financial Services Division of the  
Grand Court at PO Box 495, Grand Cayman KY1-1106, Telephone 345 949 4296.