

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 204 OF 2010

IN THE MATTER OF THE COMPANIES LAW (2010 REVISION)
AND IN THE MATTER OF AJW OFFSHORE II, LTD.



Re-AMENDED PETITION



TO: The Grand Court of the Cayman Islands

THE HUMBLE AMENDED PETITION of Field Nominees Limited of 65 Front Street, Hamilton, HM12, Bermuda, shows that:

A. The Company

1. AJW Offshore II, Ltd ("**the Company**") is an open-ended investment company incorporated on or about 20 October 2008 as an exempted company with limited liability in accordance with the laws of the Cayman Islands.
2. The registered office of the Company is situated at Walkers SPV Limited, 87 Mary Street, George Town, Grand Cayman, KY1-9002, Cayman Islands.
3. The share capital of the Company is US \$50,000 divided into 1,000 management shares of a nominal or par value of US \$0.01 each and 4,999,000 participating shares of a nominal or par value of US \$0.01 each. The Company carries on business in the United States of America.
4. Pursuant to the Company's Memorandum of Association, the objects for which the Company was established are unrestricted. Pursuant to the Company's Private

Placement Memorandum ("PPM"), the Company's primary purpose is that of investing, trading and dealing in public and private securities of all kinds and descriptions, including but not limited to, equity, debt, convertible securities, preferred stock, options, warrants and other financial instruments, all as determined by First Street Manager II, LLC, the Company's Investment Manager ("**the Investment Manager**").

5. The Investment Manager also serves as the Investment Manager of AJW Master Fund II, Limited ("**the Master Fund**"). The Company invests all or substantially all of its assets in the Master Fund.

B. The Petitioner

6. The Petitioner holds 148,914.4926 Class B shares in the Company valued at approximately US\$15.08m as at 31 March 2010 ("**the Shares**"). The Petitioner holds the shares via two separate portfolios, being accounts 1365334 and 1365326. The Petitioner initially acquired 153,676.5525 Class B shares on or about 15 November 2008, of which 4,762.0599 have subsequently been redeemed. The circumstances in which the Petitioner acquired the Shares are set out below.

C. Background

7. The Petitioner originally subscribed for shares in AJW Offshore, Ltd ("**AJW1**") in or about August 2006. AJW1 (formerly known as AJW/New Millennium Offshore, Ltd.) is an open ended investment company incorporated as an exempted company with limited liability in accordance with the Laws of the Cayman Islands.
8. The authorised share capital of AJW1 is US \$50,000 divided into 1,000 management shares and 4,999,000 participating shares. Participating shares are redeemable in accordance with AJW1's governing documentation.
9. At all material times:-
 - (i) AJW1 invested the subscription monies which it received from investors (including the Petitioner) in its subsidiary AJW1 Master Fund, Ltd ("**AJW1**")

Master Fund"). AJW1 Master Fund is an exempted company with limited liability incorporated in accordance with the laws of the Cayman Islands.

- (ii) AJW1 Master Fund in turn invested the subscription monies which it received in furtherance of the investment objectives set out in AJW1's Articles of Association and Private Placement Memorandum.
10. As a result of the structure described above, investors in AJW1 (including the Petitioner) were at all material times indirectly investors in AJW1 Master Fund, which was the ultimate investment and trading vehicle for AJW1.
 11. On 16 October 2008, AJW1 wrote to all its shareholders and stated, among other things, that AJW1 intended to "restructure their investment". The restructure was to be effected by the offering of shares in the Company, with those shares having redemption terms attaching to them which would "better reflect the market and liquidity of the underlying investments and management and incentive fees" ("the 16 October 2008 letter").
 12. In accordance with the 16 October 2008 letter, shareholders of AJW1, including the Petitioner, were required to elect one of three options with respect to their investment (i.e., the restructure). These three options, being Options One, Two and Three, were set out, briefly, in the 16 October 2008 letter. That letter, in part, provided that:-

"I Option One

Under the first option ("Option One"), you will be treated as exchanging your Shares in the Company for Class A shares of the New Company ("Class A Shares"). The Class A Shares will be subject to (i) a reduced Management Fee equal to 1% per annum, payable quarterly in arrears and (ii) a reduced Incentive Fee equal to 15% of the net profits allocable to each Class A Share, subject to the Loss Carryover, if any. Class A Shares will be subject to a three-year lock-up period (i.e. the first New Redemption Date (as defined below) for Class A Shares will be on December 31, 2011). Upon not less than 120 days written notice to the Administrator prior to the end of a three-year lock-up period, a Class A Shareholder may elect, as of the end of such three-year lock-up period, to: (i) redeem all of any amount of Class A Shares,

which redemption would be subject to the Payment Cap (as defined below), as well as the other terms set forth in the New PPM: or (ii) convert all or any amount of Class A Shares into Class B Shares (as defined below). Those Class A Shares as to which no timely election is made will be subject to a new three-year lock-up period.

II Option Two

Under the second option ("**Option Two**"), you will be treated as exchanging your Shares in the Company for Class B shares of the New Company ("Class B Shares"). The Class B Shares will be subject to: (i) a reduced Management Fee equal to 1.5% per annum, payable quarterly in arrears and (ii) a reduced Incentive Fee equal to 17.5% of the net profits allocable to each Class B Share, subject to the Loss Carryover, if any. Class B Shares will not be subject to any lock-up period, and will be redeemable at the end of each calendar quarter (each, a "New Redemption Date") (with the first New Redemption Date being March 31, 2009) upon no less than ninety (90) days' prior written notice to the Administrator. Each Class B Shareholder may redeem Class B Shares having a net asset value of no more than twelve and one-half percent (12.5%) of the aggregate net asset value of its Class B Shares on any New Redemption Date. A Shareholder's redemption request for Class B Shares having a net asset value in excess of 12.5% of the aggregate net asset value of its Class B Shares as of the intended New Redemption Date will be satisfied as of the New Redemption Date, subject to the preceding limitations at such time. Redemption requests (or any portion thereof) received not but satisfied for an intended New Redemption Date will be satisfied in preference to redemption requests received for any subsequent New Redemption Date. Pursuant to the foregoing, full redemption requests will generally be satisfied over eight (8) quarters. Redemptions will be subject to the Payment Cap.

III Option Three

Under the third option ("**Option Three**"), you will remain a Shareholder in the Company ("Remaining Shareholder"). It is expected that, from and after the Effective Date, the Company will not make any investment in a new portfolio

company. It is further expected that the Company will continue to suspend the payment of outstanding redemption proceeds to Shareholders for the foreseeable future. The Company currently expects to liquidate its portfolio company positions over time. During such period, the Company expects to make follow-on investments in existing portfolio companies to support such companies as the Company trades out of them. The Company also expects to effect compulsory redemptions of the Shares held by the Remaining Shareholders on a *pro rata* basis and make corresponding distributions of Current Cash from time to time. "Current Cash" means cash of the Company, after payment of management and incentive fees and expenses and the setting up of reserves for future expenses and reserves to fund future investments in existing portfolio companies, all as determined by the Investment Manager in its sole and absolute discretion. Funding of existing portfolio companies by the Company and the sale of securities by the Company are generally expected to be made *pari passu* with the New Company, although there could be occasions where the Investment Manager determines otherwise. Notwithstanding the foregoing, nothing herein shall prevent the Company from paying redemption proceeds to the Remaining Shareholders in-kind. Due to market conditions discussed in the accompanying letter, it is generally expected to take approximately 36 months or longer to successfully sell the securities of all of the portfolio companies held by the Company. During this period, the remaining Shares will continue to be at risk in the Company, and will be subject to (i) the current Management Fee equal to 2% per annum, payable quarterly in arrears and (ii) the current Incentive Fee equal to 20% of the net profits allocable to each Shares, subject to the Loss Carryover, if any."

13. The "New Company", referred to in the 16 October 2008 letter (per Options One and Two), was (and is) the Company. Thus, in brief, Option One and Option Two required the exchange by shareholders of their shares held in AJW1 for shares in the Company, the essential difference between Option One and Option Two being the Class of shares to be held in the Company, and the differing rights attaching to each of those classes. Option Three provided that shareholders would retain their shares in AJW1, albeit redemptions would be suspended and shareholders would be compulsorily redeemed over the next three or so years, thus effectively signalling the end of the purpose for which AJW1 was incorporated.

14. On or about 10 November 2008 the Petitioner elected Option Two for all of its shares held in AJW1.

15. On or around 15 November 2008 the Petitioner, in accordance with its election, subscribed for, and was issued, 153,676.5525 Class B shares in the Company; those shares were allotted to the aforementioned accounts, in the following proportions:-
 - (i) Account 1365334 - 137,564.6955

 - (ii) Account 1365326 - 16,111.8570

16. The Petitioner's election of Option Two, and subsequent subscription for the Class B shares, was done on the basis that, among other things, pursuant to the 16 October 2008 letter and the Company's Articles of Association and PPM:-
 - (i) the Company was open-ended, such that investors, including the Petitioner, could redeem their shares;

 - (ii) investors, including the Petitioner, who elected Option Two:-
 - (a) were not subject to any "lock up" periods;

 - (b) were, upon 90 days' written notice to the Company, entitled to redeem up to 12.5% of their shares on any Redemption Date (being the last calendar day of each calendar quarter);

 - (c) any redemption request which exceeded 12.5% of an investor's Class B shares would be satisfied on the subsequent Redemption Date(s) in preference to redemption requests submitted for any subsequent Redemption Date; and

 - (d) a redemption request by an investor seeking a redemption of all its Class B shares would generally be paid out over eight (8) quarters ("**the Representation**");

- (iii) redemptions were subject to the Payment Cap (described below); and
 - (iv) the Company would pursue its Investment Objective.
17. In addition, the Petitioner was induced to elect Option Two, despite Option Two having a higher fee regime than that which was put forward for Option One, on the basis that Option Two offered a greater level of liquidity than did Option One and Option Three.

D. The Payment Cap

18. The 16 October 2008 letter, and subsequently the Company's Articles of Association and PPM, provided that Redemption Payments would be subject to a limit of 12.5% of the Company's "Available Cash" as at any Redemption Date. "Available Cash" is defined in the PPM as:-

"cash and cash equivalents of the [Company] on hand as of the applicable Redemption Date".

19. "Available Cash" is thus imprecise, and is subject to determination by the Company, presumably in consultation with the Investment Manager.
20. Additionally, the 16 October 2008 letter, and the Company's Articles of Association and PPM, provide that:-
- (i) if the Payment Cap is reached, Redemption Payments will be limited to the amount of the Payment Cap, with all payments being made on a pro rata basis to redeeming investors in proportion to the number of shares each investor sought to redeem;
 - (ii) redemption requests which remain unsatisfied as a result of the Payment Cap will be satisfied at subsequent Redemption Date(s) in preference to redemption requests received for those subsequent Redemption Date(s); and

- (iii) the Company's Board may, in its sole discretion, cause the Company to make redemption payments in excess of the Payment Cap.

E. The Redemption

21. On or about 15 December 2008 the Petitioner gave written notice ("**the Notice**") to the Company's Administrator, Admiral Administration Ltd., ("**Admiral**") that it wished to redeem all of its Class B shares. The next applicable New Redemption Date was 31 March 2009.
22. Given the restrictions to which the redemption of Class B shares were subject, the Petitioner gave the Notice in reliance on the Representation (viz. that the redemption would be satisfied over the following eight Redemption Dates) as set out in paragraph 16(ii)(d) above.

F. Redemption Payments

23. Since requesting the redemption of its Class B shares, the Petitioner has received the following payments from the Company, on the following dates, in part redemption of its Class B shares:-

- (i) Account 1365334

<i>Redemption Date</i>	<i>Shares Redeemed</i>	<i>Redemption Price</i>	<i>Date Received</i>	<i>% of Shares Held (as at 15 Nov. 08)</i>
31 March 2009	95.6004	\$ 9,678.50	14 July 2009	0.07% (approx.)
30 June 2009	1,549.9154	\$158,150.42	29 January 2010	1.13% (approx.)
30 September 2009	1,151.2489	\$115,324.63	29 November 2009	0.85% (approx.)
31 December 2009	577.2353	\$ 58,002.80	11 March 2010	0.42% (approx.)
31 March 2010	556.6106	\$ 56,358.94	21 May 2010	0.41% (approx)

In addition to the above sums, a further payment in the amount of \$1,522.99 (the equivalent value of 15.2035 shares) was received on 2 December 2009, representing an additional payment in respect of the 30 September 2009 quarter.

(ii) Account 1365326

<i>Redemption Date</i>	<i>Shares Redeemed</i>	<i>Redemption Price</i>	<i>Date Received</i>	<i>% of Shares Held (as at 15 Nov. 08)</i>
31 March 2009	816.2458	\$82,635.99	14 July 2009	5.07% (approx.)

24. The Petitioner has thus received \$481,674.27 being redemption proceeds payable with respect to 4,762.0599 of its Class B shares. Based on the number of the Shares the Company has redeemed since receiving the Notice (via its Administrator), as a percentage of the Petitioner's Class B shares, it will take in excess of 30 years for the Company to fully redeem the Petitioner's Class B shares.
25. Had the Company redeemed 12.5% of the Petitioner's Class B shares on each Redemption Date since receipt of the Notice, the Petitioner should now have received in excess of US \$11m, being the estimated Redemption Price payable in relation to 115,257.41 Class B shares (being three quarters of the Petitioner's Class B shares as at 15 November 2008).
26. In the circumstances, the Petitioner has not received, nor is there any sign of, the greater liquidity for which the Petitioner, along with those other investors who elected Option Two, has paid (and continues to pay).
27. Furthermore, given that those investors (including the Petitioner) who chose Option Two, and who have sought a complete redemption of their shares, will not, based on the current rate of redemptions, be fully redeemed prior to expiry of the three year lock up period to which those who elected Option One are subject, upon the expiry of the said three year lock up period, investors who elected Option Two will be prejudiced given the likely increased number of redemption requests which the Company will need to pay, reducing the pro rated portion of the Company's Available Cash payable to the Petitioner on future Redemption Dates. This is contrary to the principle that investors who elected Option Two would be fully redeemed from the Company before those investors who elected Option One would be entitled to request a redemption of their shares.

28. Given the mismatch between (i) the indication that “*full redemption requests will generally be satisfied over eight (8) quarters*” (i.e., the Representation), and (ii) the actual number of the Petitioner’s Class B shares the Company has redeemed to date, either:-
- (i) at the time the Representation was made there was a genuine intention or expectation on the part of the Company (and the Investment Manager) that it would effect redemption requests at this level, in which case circumstances, in the intervening period, must have changed. If so, it is unjust and inequitable for the Company to insist on the Payment Cap to lock investors, including the Petitioner, into a much longer term of association with the Company than they originally intended; or
 - (ii) at the time the Representation was made there was no genuine intention or expectation on the part of the Company (or the Investment Manager) that it would effect redemption requests at this level, in which case, the Company, in making the Representation, has displayed a complete lack of probity in the conduct of its affairs.

G Unpaid Redemptions

29. On or about 29 December 2010, Admiral circulated two unaudited statements to the Petitioner. The statements were sent by Admiral pursuant to the Notice given by the Petitioner on 15 December 2008 (as referred to in paragraph 21 above).
30. The first statement concerned Account No 1365326. According to the statement there were no additional transactions for the period ending 30 September 2010.
31. The second statement referred to Account No 1365334. Under the heading ‘Transactions’ the following information is provided:

<u>Trans Date</u>	<u>Trans Type</u>	<u>Class/Series</u>	<u>Shares</u>	<u>Amount</u>
<u>30 Jun 2010</u>	<u>Redemption</u>	<u>Class B, Series 1108</u>	<u>-558.9047</u>	<u>(\$56,358.94)</u>
<u>30 Sept 2010</u>	<u>Redemption</u>	<u>Class B, Series 1108</u>	<u>-374.3869</u>	<u>(\$37,114.25)</u>

32. The 'transaction date' refers to the Class B Redemption Date, which is defined in the Company's PPM as being 31 March, 30 June, 30 September and 31 December of each calendar year.

33. The Company's PPM provides that:

"Subject to the Payment Cap, the Redemption Price for Class B Shares generally will be paid, without interest, within thirty (30) days after the applicable Class B Redemption Date (based on unaudited data)."

34. Accordingly, the two redemption payments referred to in the unaudited statements should have been paid on 31 July 2010 and 31 October 2010 respectively.

35. To date no such payment has been received by the Petitioner and the sum of \$93,473.19 remains due and owing.

H Communications with the Company

36. In an effort to understand the Company's liquidity position, and the reason for the limited level of redemptions, the Petitioner, through its Cayman Islands Attorneys, wrote to the Company on 15 February 2010 seeking, among other things, details on the Company's investments, redemption requests, and the way in which

“Available Cash” had been determined up until that time. Despite receiving a lengthy response from the Company’s US Attorneys on or about 1 March 2010 (“the Response”) none of the queries raised by the Petitioner were answered by the Company, nor was the information requested to be disclosed made available. Furthermore:-

- (i) in the Response, the Company’s US Attorneys invited the Petitioner to liaise directly with the Company as regards its various issues and queries (“**the Invitation**”);
- (ii) in accordance with the Invitation, the Petitioner subsequently attempted, on three occasions, to contact Mr. Corey Ribotsky, who is both a Director of the Company and the controlling mind of the Investment Manager, via telephone;
- (iii) on each occasion Mr. Ribotsky was unavailable, and a request was made that Mr. Ribotsky return the Petitioner’s telephone call; and
- (iv) none of the Petitioner’s telephone calls were, or have been, returned by Mr. Ribotsky.

37. In addition to the lack of any meaningful response from the Company to the questions raised by the Petitioner’s Cayman Islands Attorneys in their letter of 15 February 2010, the Company has also not provided the Petitioner, nor to the best of the Petitioner’s knowledge, any other member of the Company:-

- (i) any explanation regarding the continued lack of liquidity of the Company and/or the level of redemption proceeds paid by the Company to those members who elected Option Two, and who have sought a complete redemption (or otherwise) of their shares; or
- (ii) copies of the Company’s statutory audited accounts for the years ended 31 December 2008 or 2009.

I Proceedings in the United States District Court, Eastern District of New York

38. The US Department of Justice has commenced an investigation in to the Investment Manager and the parent company of the Investment Manager.
39. On 7 July 2010 Mr Daryl Dworkin, a senior analyst with Investment Manager, pleaded guilty in the United States District Court, Eastern District of New York to charges of securities fraud and conspiracy in relation to the discharge of his duties with the Investment Manager.

J Conclusion

40. ~~For the reasons set out above, there is no appropriate alternative to liquidation for the Company. Further, regardless of which of the events, referred to in paragraph 28 above, have occurred, the Petitioner has justifiably lost confidence in the Board's conduct and management of the Company's affairs. The shareholders of the Company, including the Petitioner, have a legitimate interest in ensuring that independent liquidators manage the affairs of the Company and investigate the conduct of the Company's directors and service providers, including the Investment Manager, in connection with the conduct of the Company's affairs generally.~~

41. For the reasons set out above, it is contended that there is no appropriate alternative to liquidation for the Company and that the Company should be wound up on one or more of the following grounds:

Just and equitable basis

Loss of Substratum

For the reasons set out in this Petition, in particular those referred to in paragraph 28 above, it is clear that the Company is unable to continue with its stated objectives or strategies set out in its PPM. Further or alternatively pursuant to resolutions dated 30 March 2011

the Master Fund is in voluntary liquidation and in the circumstances the substratum of the Company has been lost.

Loss of Confidence in the Management

- (i) The disparity between the statement that for Class B shares, full redemption requests would generally be satisfied over 8 quarters and the response of the Company to the Petitioner's full redemption requests, coupled with the failure of the Company to provide any explanation or other information to the Petitioner has caused the Petitioner a justifiable loss of confidence in the Company and in the Investment Manager.
- (ii) The Petitioner's confidence in the management of the Company has been further eroded by reason of the Company's failure to pay the redemptions falling due for June and September 2010.

The Need for an Investigation

- (iii) The investigations by the US Department of Justice and the guilty plea of Mr Daryl Dworkin give rise to serious concerns about the management of the Company which concerns should be the subject of an independent professional investigation.

42. In the circumstances, it is just and equitable that the Company should be wound up.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- (1) The Company be wound up under the provisions of the Companies Law (2010 Revision).

- (2) Mr. Geoffrey Varga and Mr. Steven Staatz be appointed as joint official liquidators of the Company.
- (3) The liquidators be authorised to exercise any of the powers listed in the Third Schedule to the Companies Law (2010 Revision) without the further sanction or intervention of the Court.
- (4) The liquidators be authorised to do any act or thing 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 liquidators do file with the Clerk of the Court a report in writing of the position of the Company and the progress which the liquidators have made with the winding up of the Company, with the realisation of its assets and in relation to any other matters connected to the winding up of the Company, at such time and in such manner as the Court may direct.
- (6) The liquidators be at liberty to appoint such 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 liquidators be at liberty to seek such rectification (if any) of the register of members of the Company as they shall think fit (pursuant to s. 112 of the Companies Law (2010 Revision) and O. 12, r. 2 of the Companies Winding Up Rules 2008).
- (8) The liquidators and their staff be remunerated out of the assets of the Company at the usual customary rate.
- (9) The liquidators be at liberty to apply generally.
- (10) The costs of the Petition and the Petitioner be paid out of the assets of the Company.
- (11) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray, etc.

Dated the _____ day of September 2010

Re-dated the 1st day of February 2011

Re-dated the 6th day of April 2011



Ogier

Attorneys-at-Law for the Petitioner, whose address for service is 89 Nexus Way, Camana Bay, Grand Cayman KY1-9007, Cayman Islands, Tel: +1 (345) 949 9876, Fax: +1 (345) 949 9877, (Reference LIT/CRU/SHF/421050.00002)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on 2010 at 10.00am.

Any correspondence or communication with the Court relating to the hearing of this Re-Amended Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495, Grand Cayman, KY1-1106, Tel: (345) 949 4296.