**IN THE GRAND COURT OF THE CAYMAN ISLANDS**
**FINANCIAL SERVICES DIVISION**

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**CAUSE NO. FSD OF 2014**

**IN THE MATTER OF THE COMPANIES LAW**

**AND IN THE MATTER OF WIMBLEDON FINANCING FUND LTD**

JUDICIAL FINANCE $5000 FEB 24 2014 189383 PAID C.I. GOVERNMENT

FEB 24 2014

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**WINDING UP PETITION**

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**TO**: The Grand Court of the Cayman Islands

**THE HUMBLE PETITION** of Herbert S Feinberg IRA, DVFG Benefits, Inc. Pension Plan, Claire Annechini IRA, Lester Clippinger IRA, Seravalli Financial Group Inc. PSP, The Belk Foundation, The Benedict Foundation for Independent Schools, Lilly Thoma IRA and Warren A. Hunter IRA (the "**Petitioners**") shows that:-

**The Company**

1. Wimbledon Financing Fund Ltd (the "**Company**") was incorporated on 21 March 2007 as an exempted company, registration number 184214.

2. The registered office of the Company is at Mourant Ozannes Corporate Services (Cayman), 94 Solaris Avenue, Camana Bay, Grand Cayman, Cayman Islands.

3. The share capital of the Company is US$ 50,000 consisting of 4,999,900 non-voting, redeemable participating shares of par value of US$ 0.01 per share (the "**Shares**") and 100 voting, non-redeemable, non-participating shares of par value of US$ 0.01 per share (the "**Management Shares**").

4. The Company is a fund in a "master-feeder" fund structure. It is the offshore feeder fund for Wimbledon Financing Master Fund Ltd, a Cayman Islands company (the "**Master Fund**"). Wimbledon Fund L.P. is a Delaware, United States of America, multi-series

limited partnership and the onshore feeder fund to the Master Fund. Investors invested funds in the onshore and offshore funds (the "**Wimbledon Investors**") which were then placed with the Master Fund for investment (the "**Structure**")

5. The Structure's primary investment objective was to achieve current income and capital appreciation by investing in investment pools managed by investment managers ("**Wimbledon Assets**").

6. The confidential offering memorandum of the Company lists the directors of the Company as Ian Goodall and Martin Lang of International Management Services Ltd. Sarah Kelly of International Management Services replaced Martin Lang as a director, and she and Mr. Goodall are the Company's current directors.

7. The confidential offering memorandum of the Company lists the auditors of the Company as Deloitte & Touche. The Company's administrator is listed as Fortis Prime Fund Solutions (Cayman), however Fund Administration, Inc is the current Administrator. The portfolio manager is listed as Weston Capital Asset Management LLC ("**Weston**"). Weston is listed as the owner of the Management Shares.

**The Petitioners**

8. The Petitioners are:

   a. Herbert S Feinberg IRA, with a registered address of Five Autumn Terrace, Alpine, NJ 07260, United States of America;

   b. DVFG Benefits, Inc. Pension Plan, with a registered address of DVFG Benefits, c/o Thomas A. Schirmer, 2804 SE Dune Drive, Unit 1209, Stuart, FL 34996, United States of America;

   c. Claire Annechini IRA, with a registered address of 205 Clothier Springs Road, Phoenixville, PA 19460, United States of America;

   d. Lester Clippinger IRA, with a registered address of 1554 Paoli Pike #307, West Chester, PA 19380, United States of America;

   e. Seravalli FinancialGroup Inc. PSP, with a registered address of 10059 Sandmeyer Lane, Philadelphia, PA 19116, United States of America;

   f. The Belk Foundation, with a registered address of 2801 W. Tyvola Road, Charlotte, NC 28217, United States of America;

g. The Benedict Foundation for Independent Schools, with a registered address of 524 Bay Drive, Vero Beach, FL 32963, United States of America; Lilly Thoma IRA, with a registered address of 3241 Route 5, Dunkirk, NY 14048, United States of America;

h. Lilly Thoma IRA, with a registered address of 3241 Route 5, Dunkirk, NY 14048, United States of America

i. Warren A Hunter IRA, with a registered address of 34 Oak Pond Passage, Beaufort, SC 29906, United States of America.

9. The Petitioners are investors and shareholders in the Company the total amounts invested by the Petitioners are set forth below:

| | **Subscription Date** | **Amount (US$)** |
|---|---|---|
| Herbert S Feinberg IRA | 2/1/2008 | 100,000 |
| DVFG Benefits, Inc. Pension Plan | 9/1/2008 | 250,000 |
| Claire Annechini IRA | 1/1/2008 | 100,000 |
| Lester Clippinger IRA | 12/1/2007 | 100,000 |
| Seravalli Financial Group Inc. PSP | 4/1/2008 | 150,000 |
| The Belk Foundation | 12/1/2007 | 2,000,000 |
| The Benedict Foundation for Independent Schools | 7/1/2008 | 300,000 |
| Lilly Thoma IRA | 2/1/2008 | 100,000 |
| Warren A Hunter IRA | 4/1/2008 | 100,000 |

**Factual Background**

10. On 30 December 2008, the Company suspended redemptions.

11. On 18 September 2009, Weston informed investors that it would be liquidating the Wimbledon Assets and that payouts would begin in 2010. Weston also subsequently represented that investors would recover more than 85% of their investments. Weston represented that the Wimbledon Assets would be liquidated by the fourth quarter of 2012.

12. On or about 31 December 2009, contrary to the representations above, the Master Fund entered into an agreement with Gerova Financial Group Ltd ("**Gerova**") and/or its affiliates to transfer the Wimbledon Assets to Gerova and/or its affiliates in exchange for shares in Gerova (the "**Gerova Agreement**"). The transaction was allegedly based upon

the premise that in exchange for the Wimbledon Assets the Master Fund would receive what were alleged to be valuable preferred shares in Gerova which were traded on the New York Stock Exchange and accordingly capable of being liquidated.

13. Despite the Gerova Agreement being a fundamental change in the business of the Structure and being conditional upon investors holding at least 51% of the equity in the Structure not objecting to the transaction, investors were not informed of the transaction until mid-January. When investors were informed of the Gerova Agreement they were told by Weston that the transaction was entirely in the discretion of Weston and they were not given the opportunity to vote on the transaction. The Gerova Agreement was represented to be in the best interest of the Wimbledon Investors as a result of it having a core asset of US$ 115 Million dollars in cash and a promising reinsurance business which would be run by Marshall Manley, Gerova's recently appointed Chief Executive Officer, who was described as an insurance expert.

14. Shortly after the Gerova Agreement closed, the core asset of Gerova, namely the US$ 115 Million dollars in cash, was returned to Gerova's initial investors leaving Gerova virtually insolvent.

15. On April 8, 2010 after only four months of employment by Gerova, Mr. Manley resigned as Chief Executive Officer.

16. On 23 February 2011, the New York Stock Exchange halted trading in Gerova shares pending disclosure of additional information concerning Gerova operations, management restructuring and business plans.

17. In May 2011, Gerova's securities were de-listed.

18. To the best of the knowledge of the Petitioners at the time Gerova was de-listed no shares in Gerova had been registered in the name of the Master Fund and the Wimbledon Assets remained in the Master Fund.

19. By way of agreement dated 6 July 2011, Gerova and its affiliates, the Master Fund and Weston entered into a settlement, which purported to rescind the Gerova Agreement (the "**Settlement Agreement**"). The Settlement Agreement states that the Master Fund believed it was fraudulently induced to enter into the Gerova Agreement. It provides further that the parties agreed to rescind the Gerova Agreement, with the Master Fund maintaining ownership of the Wimbledon Assets and any shares in Gerova purportedly

issued to the Master Fund being cancelled and voided. The Settlement Agreement further provided that the Master Fund would pay Gerova US$ 500,000 and would be required to pay a further US$ 2,000,000 to Gerova, if Gerova paid the Master Fund US$ 2,000,000 on or before 31 March 2012. Whereas Weston caused the Master Fund to pay US$ 2.5 Million to Gerova pursuant to the Settlement Agreement, Gerova never paid the US$ 2 Million to the Master Fund as required by the agreement.

20. By way of a further agreement dated 6 July 2011, Gerova and its affiliates, the Master Fund and Weston secretly entered into an agreement, which also purported to unwind the Gerova Agreement (the "**Unwind Agreement**"). The Unwind Agreement purported to transfer the Wimbledon Assets to the Master Fund in consideration of, among other things, (i) the Master Fund forgiving in excess of US$ 3 Million dollars of loans made by the Master Fund to Gerova and/or its affiliates, (ii) more than US$ 4 Million in distributions from the Master Fund and taken by Gerova insiders, and (iii) making the following payments (totaling US$ 5,259,897):

a. US$ 500,000 to Gerova Management Inc;
b. US$ 259,897 to DPRE Enterprises, a company owned and/or controlled by David Bergstein, a suspected Gerova insider;
c. US$ 1,250,000 to Jason Galanis the Chief Executive Officer of Gerova Advisors LLC ;
d. US$ 700,000 to Wimbledon C;
e. US$ 300,000 to Gion Funding, a company also owned and/or controlled by David Bergstein;
f. US$ 1,800,000 to Weston.

(collectively the "**Additional Payments**"). The Settlement Agreement and Unwind Agreement resulted in more than US $14 Million being taken from the Master Fund to pay Weston, Gerova insiders, and others.

21. Despite the Settlement Agreement and the Unwind Agreement both purporting to terminate the Gerova Agreement, only the Settlement Agreement was disclosed to the Wimbledon Investors.

22. On or about the 3 August 2011, the closing date of the Unwind Agreement the following purportedly occurred:

a. The Master Fund entered into an agreement dated 3 August 2011 with a new shell

company, Arius Libra Inc ("**Arius**"), in which it purported to transfer the Wimbledon Assets to Arius in exchange for an ownership interest in Arius (the "**Arius Agreement**"). The Wimbledon Assets were purportedly transferred to Arius subject to payment obligations of the Master Fund which were exhibited to the agreement and were identical to the Additional Payments required in the Unwind Agreement;

b. Arius provided a promissory note, secure noted, and entered into pledge agreement (which is also executed by the Master Fund) all dated 3 August 2011 with Swartz IP Services Inc ("**Swartz**") which provide that in exchange for Swartz lending Arius US$ 8 Million dollars Arius pledged the Wimbledon Assets to Swartz (the "**Swartz Lending**");

c. Arius provided two promissory notes, a secured note and entered into a pledge agreement with Weston Capital Partners Master Fund II Ltd ("**Partners II**"), another fund managed by Weston. These documents were all dated 3 August 2011 and provided that in exchange for Partners II lending Arius US$ 9 Million, Arius pledged the Wimbledon Assets to Partners II (the "**Partners II Lending**").

23. Wimbledon Investors were not informed of the Arius Agreement until December 2011. Once disclosed Weston represented to Wimbledon Investors that the Wimbledon Assets had been used to secure an US$ 8 Million dollar loan (the terms of which were not disclosed at the time) to fund the termination of the Gerova Agreement and to invest in a medical-billing entity called Pineboard. It was represented that as a result of the investment in Pineboard substantial revenue would be generated.

24. The Partners II Lending was not disclosed to the Wimbledon Investors.

25. On 20 September 2012, Partners II applied for summary judgment in the State Court of New York against Airus for breach of the promissory note provided in relation to the Partners II Lending. On 4 April 2013, Partners II, obtained summary judgment against Arius from the State Court of New York in the amount of $6,619,586.77.

26. It was subsequently discovered that the purported investment in Pineboard was virtually worthless and Arius was no more than a shell company. Accordingly, to the extent that the Master Fund received an interest in Arius Libra, which is unknown, the interest appears to be worthless.

27. On 3 May 2013, the directors of the Company wrote the investors stating the following:

a. That title to some of the Master Fund's assets had not been transferred to Arius Libra. However, no indication of what assets had been transferred or where the other assets of the Master Fund were was provided;

b. That the Company had not produced audited accounts for the financial years ended 2011 and 2012 and was in breach of its obligations to the Cayman Islands Monetary Authority ("**CIMA**");

c. That the Company was in default of its annual payment obligations to CIMA;

d. That the Company's directors required funding in the region of US$ 200,000 to finance steps to be taken on behalf of the Company and that in the absence of such funding they would have no option but to recommend that the Company and the Master Fund be placed into voluntary liquidation.

**Grounds**

I. Loss of Substratum

28. As a result of the foregoing, it is clear that:

a. the Company, which is an open-ended mutual fund, has permanently suspended redemptions and its ability to accept new subscriptions has been terminated permanently;

b. the Company's objective of investing in investment pools managed by investment managers is no longer possible;

c. the Company is no longer carrying on investment business in accordance with the reasonable expectations of its participating shareholders;

d. the directors of the Company do not appear to know where the assets of the Company and the Master Fund are.

29. In light of the above factors, it is apparent that the substratum of the Company is gone and that the winding up of the Company should be ordered.

II. Failure to file accounts

30. The Company has failed to file audited accounts since 2011 and is accordingly in breach of its obligations under s. 8(2) of the Mutual Funds Law (2009 Revision)

III. Matters which require investigation

31. The location of the Wimbledon Assets are currently unknown. What assets were transferred to Arius is currently unknown. What remedies or rights the Company may have in relation to the Gerova and Airus Libra transactions is unknown. The directors of the Company having stated that they are unable to perform their obligations to the Company, the appointment of liquidators is necessary so the appropriate investigations into the Company and these transactions can be performed.

32. There is evidence that the Gerova Agreement and the Arius Agreement were not arms length transactions as a result of the relationships between Weston, Gerova and Arius.

IV. Company is unable to pay its debts

33. As set out in paragraph 16 above, the Company is in default of its payment obligations to CIMA and the directors do not have access to funds to allow them to perform their duties.

34. The Company and the Master Fund appear to have transferred all assets to third parties and to the extent that anything was received in exchange, which is unknown, it appears to be worthless.

**Summary**

35. In light of the foregoing, it would be just and equitable to wind up the Company on the grounds that (i) it has lost its substratum, (ii) it has failed to file audited accounts since 2011, (iii) an investigation into its affairs is required, and (iv) it is insolvent.

36. Further or alternatively, the Company is unable to pay its debts and should be wound up pursuant to section 92(d) of the Companies Law (2013 Revision).

This Petition is issued by Broadhurst LLC, Attorneys-at-Law for the Petitioners, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, Grand Cayman, Cayman Islands, B.W.I.

**THE PETITIONERS THEREFOR HUMBLY PRAY THAT:**

(1) The Company shall be wound up by the Court in accordance with the Companies Law (2013 Revision);

(2) Chris Johnson and Russell Homer of Chris Johnson Associated Ltd, Elizabethan Square, Shedden road, George Town, Grand Cayman, KY1-1104 be appointed Joint Official Liquidators of the Company (the "**Joint Official Liquidators**");

(3) The Joint Official Liquidators shall not be required to give security for their appointment;

(4) The Joint Official Liquidators be authorized to act jointly or severally and within and outside the Cayman Islands;

(5) The Joint Official Liquidators may take such action as may be necessary or desirable to obtain the recognition of their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose;

(6) The Joint Official Liquidators be at liberty to appoint counsel, attorneys, professional advisors, whether in the Cayman Islands or in the United States as they may consider necessary to advise and assist them in the performance of their duties.

(7) That the costs of, and incidental to, presenting this Petition shall be paid out of the assets of the Company as an expense within the liquidation.

(8) The Joint Official Liquidators be at liberty to apply generally;

(9) Such further or other relief as may be deemed just by this Honourable Court.

Dated this day of February 2014

BROADHURST

**Broadhurst LLC**
Attorneys-at-Law for the Petitioners

NOTE: This Petition is intended to be served on the Company.

This Petition is issued by Broadhurst LLC, Attorneys-at-Law for the Petitioners, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, Grand Cayman, Cayman Islands, B.W.I.