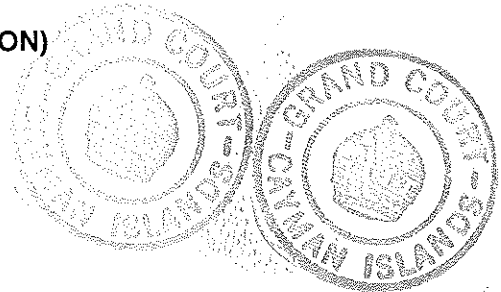
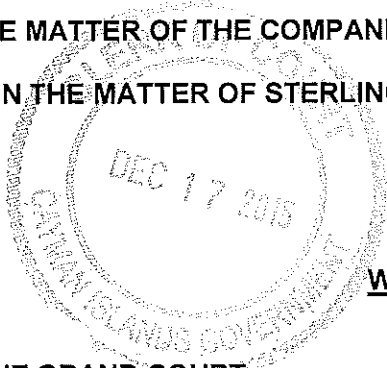


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 200 OF 2015 (IMJ)

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)  
AND IN THE MATTER OF STERLING MACRO FUND



WINDING UP PETITION

TO THE GRAND COURT

The humble petition of Worthing Properties Limited whose registered office is c/o Moore Stephens International Services (BVI) Limited, Palm Grove House, PO Box 3186, Road Town, Tortola, British Virgin Islands, (the "Petitioner") shows that:

**Introduction**

1. Sterling Macro Fund (the "**Company**") was incorporated in the Cayman Islands on 27 August 2002 as an exempted company with limited liability and with registration number 119581. The Company was incorporated and is registered pursuant to the Cayman Islands Companies Law (as Revised) (the "**Companies Law**"). The registered office of the Company is at Appleby Trust (Cayman) Limited, PO Box 1350, Clifton House, 75 Fort Street, George Town, Grand Cayman, Cayman Islands.
2. The Company carries on business as a mutual fund and is registered as such with the Cayman Islands Monetary Authority ("**CIMA**") with licence number 5898 under the Mutual Funds Law (as Revised).
3. The Company was established by Mr Isaac Dabah ("**Mr Dabah**") through his management and investment company GMM Capital LLC; a privately owned hedge fund sponsor investing primarily in the public equity markets of Israel and the United States. The purpose of the Company is to realise more than average returns against lower than average risk, taking advantage of prevailing positive market conditions.
4. Mr Dabah is the manager of the Company and its controlling mind.

5. The Petitioner is a member of the Company holding 9,750.1240 Series A shares (the "**Worthing Shares**"), having subscribed for the Worthing Shares pursuant to a subscription agreement dated 15 October 2002 (the "**Subscription Agreement**"). As at 31 July 2015, the Petitioner is the sole shareholder of the company holding 100% of the Company's total issued share capital by way of shares.

### **Summary**

6. The Petitioner seeks a winding up order in respect of the Company on the basis that it is just and equitable that the Company be wound up for the following reasons:
- (a) At some time on or after 18 May 2012 and prior to 31 December 2012, the Company purported to transfer the entirety of the Worthing Shares to Victory Hills S.A. ("**Victory Hills**"), a company wholly unrelated to the Petitioner, without the Petitioner's knowledge or authority (the "**Unlawful Share Transfer**").
  - (b) The Company then took steps to conceal the Unlawful Share Transfer by failing or refusing to provide the books and records of the Company to the Petitioner:
    - (i) periodically, as was the established course of conduct of the Company between late 2002 and February 2012;
    - (ii) upon the repeated requests of the Petitioner pursuant to clause 2(d) of the Subscription Agreement, which entitled the Petitioner to inspect the Books and Records of the Company, on 15 December 2014 and 2 March 2015;
    - (iii) following the filing of an Originating Summons in this Honourable Court on 2 June 2015 seeking a declaration that the Petitioner was entitled to the Books and Records of the Company (as defined therein) pursuant to clause 2(d) of the Subscription Agreement (the "**Inspection Application**").
  - (c) The Company further sought to conceal the Unlawful Share Transfer by:
    - (i) opposing the Inspection Application without any proper grounds and advancing a case premised on the Petitioner having an interest in the

Company (and in particular disputing only that Mr Hendrik Johannes Keilman ("**Mr Keilman**") was not authorised to represent the Petitioner) with full knowledge that the Petitioner's interest in the Company had been fraudulently misappropriated by Victory Hills;

- (ii) attempting to delay the determination of the Inspection Application by (i) filing evidence well in breach of the time periods set by the Grand Court Rules (1995 Revision) (the "**GCRs**"); (ii) seeking an adjournment and leave to file further evidence without good cause; (iii) filing inadmissible and scandalous evidence; and (iv) seeking to change its position in respect of the grounds for opposing the Inspection Application less than 24 hours prior to the hearing of the Inspection Application;
- (iii) filing evidence in this Court during the course of the Inspection Application that repeatedly acknowledged the Petitioner's investment in the Company and made no reference whatsoever to Victory Hills or the Unlawful Share Transfer;
- (iv) causing the attorneys representing the Company in the Inspection Application (both counsel and Leading Counsel) to make representations to this Court to the effect that the Petitioner was a member of the Company and causing the same attorneys not to bring to the Court's attention the Unlawful Share Transfer or of the existence of Victory Hills;
- (v) deliberately not complying with the terms of the Order of this Court made in the Inspection Application requiring the Company to deliver up all of the Books and Records of the Company (as defined in the Originating Summons) (the "**Inspection Order**") including, *inter alia*, all bank statements mirroring withdrawals and deposits of fund and/or other assets in any of the Company accounts; and
- (vi) causing proceedings to be brought in the Commercial Law section of the Court of Amsterdam in which a Samuel David Katz ("**Mr Katz**") alleges that he is beneficially entitled to all of the shares in the Petitioner and seeks a declaration that he is thereby entitled to the Worthing Shares, without disclosing the Unlawful Share Transfer (the "**Katz Proceedings**").

- (d) The conduct of the Company through Mr Dabah in relation to the Unlawful Share Transfer and its subsequent concealment clearly constitutes a fraud on the Petitioner, which justifies the immediate winding up of the Company and independent scrutiny or investigation of the Company's affairs.
- (e) A review of the financial statements of the Company indicate that there are apparent irregularities in respect of the management and accounting of the Company that justify investigation by independent officers.

## **Background**

### *Worthing*

- 7. The Petitioner was incorporated in the British Virgin Islands as an International Business Company on 24 June 2002 with company registration number 500830. Moore Stephens International Services (BVI) Limited ("**Moore Stephens**") acts as its registered agent. On 4 September 2002, Moore Stephens appointed Dominion Management Holdings Limited ("**Dominion**"), as the sole director of Worthing. Mr Keilman was the sole director of Dominion at all material times.
- 8. Mr Keilman was appointed as a director of the Petitioner on 15 December 2011 and remained a director until he resigned on 1 March 2015. On 1 March 2015 Surya Management BV, of Keienbergweg 111, 1101 GC Amsterdam, the Netherlands and Company Number 57512671 was appointed as the sole director ("**Surya**") of the Petitioner.
- 9. On 20 March 2013, Stichting Administratiekantoor Dauzac, of Hessenbergweg 111, 1101 BS Amsterdam, the Netherlands and Company Number 14058867 ("**Dauzac**") was appointed as the sole director of Surya. Mr Keilman was appointed as the sole director of Dauzac on 12 March 2013. Mr Keilman is therefore, and has always been, the authorised representative of the Petitioner.
- 10. Mr Keilman, Mr Cas Renders and Niaga Holdings Limited, a company organised under the laws of the British Virgin Islands with its address at Room 803, Jubilee Centre, 42 Gloucester Road, Wan Chai, Hong Kong, China, are the registered shareholders of the Petitioner.

11. Worthing was struck off by the BVI registrar of corporate affairs (the "**Registrar**") on 1 November 2012 for non-payment of fees, but it was restored to the Registrar on 30 March 2015. As a result of the restoration to the Registrar there has been continuous line of legal personality in respect of the Petitioner since incorporation and all actions of the Petitioner were ratified upon restoration.

*The Petitioner's Investment in the Company*

12. In early 2002, R.I.G. Investments N.V.'s ("**RIG**") (a company that was beneficially owned and controlled by Mr Keilman at all material times) then subsidiary, Gloria Vanderbilt Trademark B.V. ("**Gloria Vanderbilt**") (now called Sama Trademark Investments B.V. ("**Sama**")), sold certain trademark rights held by it. On 10 April 2002, a transfer of US\$16,329,916.56 (the "**Sale Proceeds**") was made by Jones Apparel Group USA Inc. ("**Jones Apparel**") (the purchaser of the trademark rights) to Gloria Vanderbilt. The Sale Proceeds were then transferred to RIG. The transfer from Gloria Vanderbilt to RIG was initially treated as an intercompany loan, but was later formalised as the payment of a dividend in the sum of US\$22,000,000.00 to RIG.
13. US\$9,880,000 was then transferred from RIG to Savlamor, Investments Ltd ("**Savlamor**") via another company, Telescope Holdings Limited ("**Telescope**") between 11 and 18 July 2002. Savlamor was initially established as a special purpose vehicle for the purposes of the Petitioner's investment in the Company; however, it was later decided to utilise the Petitioner for this purpose instead, and US\$9,800,000 (the "**Investment Amount**") was transferred from Savlamor to the Petitioner's account at Hyposwiss Private Bank Ltd. ("**Hyposwiss**") on 30 October 2002.
14. The first tranche of the Investment Amount, in the sum of US\$8,000,000 was transferred from the Petitioner to the Company on 31 October 2002. The second tranche of the Investment Amount, in the sum of US\$1,800,000 was transferred from the Petitioner's account at Hyposwiss to the Company on 22 January 2003.
15. The Subscription Agreement sets out the terms upon which Worthing subscribed for shares in Sterling and it is supplemental to an offering memorandum issued by Sterling and dated 17 September 2002 (the "**OM**"). The Subscription Agreement was entered into by the Petitioner on 15 October 2002.

16. The above facts regarding the source of the Investment Amount were put in evidence by the Petitioner in the course of the Inspection Application together with a full documentary trail of the source and the transaction. The Company did not dispute any of the evidence regarding the source of the Investment Amount during the Inspection Application in either of the two Affidavits filed by the Company following the putting of these facts into evidence. However, on 23 November 2015 (after the Inspection Application), Mr Dabah swore an affidavit in the Katz Proceedings disputing that the source of the Investment Amount derived from RIG and instead claiming that the trademark rights were owned by Mr Katz (the "**Dabah Affidavit**"). No documentary evidence is provided by Mr Dabah to support this assertion.

*The Company*

17. The Company was incorporated in the Cayman Islands on 27 August 2002 as an exempted company with limited liability and carrying on business as a mutual fund registered with CIMA under the Mutual Funds Law (as revised).
18. According to the OM:
- (a) The Board of Directors is or was comprised of Edgardo Khafif and Ernest A Morrison (a partner in the Bermuda law firm of Hallet, Whitney & Patton).
  - (b) American Investments Holding USA, Inc., a Delaware corporation acts as the investment manager to the Company pursuant to the terms of an investment management agreement (the "**Investment Manager**").
  - (c) International Fund Administration, Ltd., located in Bermuda acts as the administrator of the Company pursuant to the terms of an administrative services agreement. However, in the Dabah Affidavit, Mr Dabah states that the current fund administrator is Liccar & Co.
  - (d) The Company offers non-voting participating shares to qualified non-US persons.
  - (e) A Shareholder can redeem shares in the Company as of the first business day of each calendar quarter on at least 10 calendar days' written notice (a "**Shareholder Redemption**" and "**Shareholder Redemption Notice**"). No Shareholder Redemption Notice has ever been issued by the Petitioner in

respect of the Worthing Shares and the Petitioner has never received any redemption proceeds in respect of the Worthing Shares that would be payable following a Shareholder Redemption.

- (f) The Company can in its sole discretion redeem compulsorily any or all of a shareholder's shares at any time, on 5 calendar days' notice for any purpose, including, but not limited to regulatory requirements of the Company or the Investment Manager (a "**Compulsory Redemption**" and "**Compulsory Redemption Notice**"). No Compulsory Redemption Notice has ever been served on the Petitioner and the Petitioner has never received any redemption proceeds in respect of the Worthing Shares that would be payable following a Compulsory Redemption;
- (g) The Investment Manager, in its sole discretion, has the power to effect a mandatory redemption of all outstanding shares at the then-current NAV per Share. In the event of any such mandatory redemption, the Company will be wound up and dissolved ("**Mandatory Redemption**"). The Petitioner has never received any notice of a Mandatory Redemption. The Petitioner has never received any redemption proceeds in respect of the Worthing Shares that would be payable following a Mandatory Redemption and the Company has not been wound up and dissolved.
- (h) The shares are not transferrable or assignable by the investor without the prior consent of the Investment Manager and the shares are subject to restrictions contained in the Articles of Association.
- (i) Ernst & Young LLP are the independent auditors of the Company. Although audit fees have been paid, the Petitioner has never been provided with audited financial statements for the Company, including under the Inspection Order.

19. The Subscription Agreement relevantly provides that the courts of the Cayman Islands have exclusive jurisdiction over any action, suit or proceeding with respect to the Subscription Agreement and it is to be governed, construed and enforced in accordance with the laws of the Cayman Islands;

20. The Articles of Association of the Company relevantly provide:

- (a) A "Shareholder" for the purposes of the Articles of Association is defined as a person who is registered in the Register of Shareholders as the holder of any Share in the Company and where two or more persons are so registered as the joint holders of Shares, the person whose name stands first in such register as one of such joint holders.

The Petitioner has not been provided with the Register of Shareholders; however it must be presumed that the Petitioner remains on the Register of Shareholders because no lawful authority could have been provided to the Registered Office of the Company to remove the Petitioner from the Register of Members;

- (b) The authorised share capital of the Company consists of \$50,000.00 divided into 100 Management Shares having a nominal value of \$0.01 each and 4,999,900 Participating Shares having a nominal value of \$0.01 each;
- (c) Participating Shares (as defined) shall be redeemable at the option of the Shareholder holding such Shares at the Net Asset Value of such Shares on the applicable Redemption Day (as defined) as specified in the Articles;
- (d) Subject to the provisions of the Companies Law and except as provided in the Articles, the Directors may, in their sole and absolute discretion redeem compulsorily all or any portion of a Shareholder's Shares (as defined) at any time on 5 calendar days' notice for any purpose, including but not limited to, regulatory requirements of the Company or the Investment Manager. As noted above, the Petition has never been notified of a Compulsory Redemption or received any redemption proceeds;
- (e) Without prejudice to the general Compulsory Redemption powers, where a Shareholder holds Class A Shares and is not permitted to invest in Hot Issues (as defined), such Shares will upon written notice be redeemed compulsorily and the proceeds applied to purchase Class B Shares at the then current NAV per Share;
- (f) Where a Shareholder holds Class B Shares and is permitted to invest in Hot Issues (as defined), such Shares will upon written notice be redeemed

compulsorily and the proceeds applied to purchase Class A Shares at the then current NAV per Share;

- (g) upon the redemption or repurchase of a Participating Share being effected pursuant to the Articles, the Shareholder shall cease to be entitled to any rights in respect thereof and accordingly its name shall be removed from the Register of Shareholders with respect thereto. As noted above, the Petitioner has never made a Shareholder Redemption request or received any redemption proceeds that would be payable;
- (h) Except as required by law, no person shall be recognised by the Company as holding any Share upon any trust, and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or any other rights in respect of any Share except an absolute right to the entirety thereof in the registered holder(s) as recorded in the Register of Shareholders; and
- (i) In relation to transfers of shares, the instrument of transfer of any Share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the Shares until the name of the transferee is entered in the Register of Shareholders. The Petitioner has never executed a share transfer in respect of the Worthing Shares in any form whatsoever.

21. Neither the OM, the Subscription Agreement, nor the Articles contain any limitation or restriction on the rights of a shareholder to present a petition against the Company.

*Information Provided by the Company*

22. From 17 December 2002 until 8 February 2012, the Petitioner was provided with regular information packs regarding the Company, which contained details of the financial performance of the Company during the preceding interim. Specifically, the Petitioner was provided with the information set out in Schedule 1 to this Petition.
23. The information pack received on 8 February 2012, confirms the following in relation to the Company as of 31 December 2011:

- (a) The Petitioner held 9,750.1240 A Series shares in the Company with a NAV per share of US\$2,318.91019 (total NAV of US\$22,609,661.88);
  - (b) Stillwater Market Neutral Fund Ltd. II held 2,473.4274 A series shares in the Company with a total NAV of US\$5,735,656.05;
  - (c) The total assets of the Company were valued at US\$29,529,911.17 (comprised almost entirely of securities owned at market value, cash and interest and dividends receivable);
  - (d) The total liabilities of the Company were US\$1,184,593.23;
  - (e) The Net Asset Value was US\$28,345,317.94; and
  - (f) No redemptions were payable.
24. By contrast, the information pack received pursuant to the Order, dated 29 April 2013, confirms the following in relation to the Company as of 31 December 2012:
- (a) The Petitioner no longer held any interest whatsoever in the Company and was not named as a shareholder;
  - (b) Victory Hills now held 9,750.1240 A Series shares in the Company (quite clearly these are the Worthing Shares given the coincidence of quantity and timing) with an NAV per share of US\$2,572.77781 (total NAV of US\$25,084,902.64);
  - (c) Stillwater Market Neutral Fund Ltd. II held 1,495.6391 A series shares in the Company with an NAV per share of US\$2,638.778853 (total NAV of US\$3,945,467.03);
  - (d) The total assets of the Company were valued at US\$30,755,413.03 (comprised almost entirely of securities owned at market value, cash and interest and dividends receivable);
  - (e) The total liabilities of the Company were US\$1,822,312.02;
  - (f) The Net Asset Value was US\$28,933,101.01; and
  - (g) No redemptions were payable.

25. It is clear from this information pack comparison that at some point during 2012 the Worthing Shares were unlawfully transferred or assigned to Victory Hills. There is, however, no reference in the information packs to any transfer or redemption of the Worthing Shares or any purchase by, or assignment to, Victory Hills.
26. Following the receipt of the 8 February 2012 information pack, the Petitioner never received any further information about the Worthing Shares

#### *Requests for Information*

27. The Petitioner wrote to the Company, at its registered office by letters dated 15 December 2014 and 2 March 2015 requesting certain information in relation to the Worthing Shares (the "**Letters**"). No information was received pursuant to the Letters; however, the Company never denied that the Petitioner had an interest in the Company and never stated, impliedly or expressly, that the Worthing Shares had been unlawfully transferred to Victory Hills.

#### *The Inspection Application*

28. The Petitioner filed the Inspection Application on 2 June 2015.
29. On 3 July 2015 an Acknowledgement of Service was filed by the Company notifying the Petitioner of its intention to defend the Inspection Application; however, no evidence in opposition was served by the Company until 21 September 2015 (and even then only in unsworn form) when the Company filed the First Affidavit of Itzhak Weinstock ("**Weinstock 1**"). The deadline for service of the Company's evidence was 20 July 2015. Leave was not sought for the late filing of this evidence as required by GCR O.28, r.1A(4).
30. The Company's evidence was only served following repeated enquiries and requests for the evidence by the Petitioner's attorneys. No explanation was ever provided by the Company for the substantial delay in the service of its evidence and non-compliance with the GCRs.
31. Weinstock 1 contained (i) unsubstantiated and wholly irrelevant allegations of forgery against Mr Keilman; (ii) put in issue the Katz Proceedings, which had no bearing on the

matters at issue in the Inspection Application; and (iii) put in issue Mr Keilman's bankruptcy status when this was entirely irrelevant.

32. The Inspection Application was due to be heard on 20 October 2015, but the Company sought an adjournment in order to file further evidence, despite the Company having no right to file further evidence and being unable to identify any additional evidence that the Company wished to put before the Court.

33. The Company then refused to agree directions proposed by the Petitioner that provided for an adjournment and an opportunity to file further evidence because the Company did not know if it could meet the deadlines. This was further indication of a deliberate attempt to delay the Inspection Application.

34. At the hearing on 20 October, this Court granted leave to the Company to file further evidence, although the Court advised the Company that it was at risk of costs if it continued to oppose the Inspection Application in the absence of a viable defence, the Company indicated it would continue to do so. The Company subsequently filed the First Affidavit of Amnon Shibolet dated 30 October 2015 ("**Shibolet 1**") and the First Affidavit of Michel Deckers dated 30 October 2015 ("**Deckers 1**"). Shibolet 1 and Deckers 1 were inadmissible and scandalous:

(a) Weinstock 1, Shibolet 1 and Deckers 1 offended GCR O.41, r.5 almost in their entirety because Mr Weinstock, Mr Shibolet and Mr Deckers purported to give evidence in respect of matters that were clearly not within their knowledge, without any supporting documentary evidence.

(b) Weinstock 1, Shibolet 1 and Deckers 1 all related to matters that had no relevance to the Inspection Application, namely the Katz Proceedings and Mr Keilman's bankruptcy.

(c) Weinstock 1, Shibolet 1 and Deckers 1 contained a significant amount of hearsay and unqualified opinion evidence as well as references to Judgments in foreign proceedings, which were wholly inadmissible.

(d) Shibolet 1 and Deckers 1 thereafter consisted almost entirely of scandalous and unfounded allegations against Mr Keilman.

35. Notably, at no point did any of the evidence filed in the Inspection Application make reference to Victory Hills or assert that the Petitioner no longer had an interest in the Company.
36. At the final hearing of the matter on 18 November 2015, Leading Counsel for the Company conceded that the evidence that the Petitioner sought to have struck out was inadmissible and agreed not to rely on it. It is possible to infer from this that the filing of Shibolet 1 and Deckers 1 was solely for the improper purpose of delaying the determination of the Inspection Application.
37. The Company then filed its skeleton argument in relation to the 18 November 2015 hearing less than 24 hours before the hearing was scheduled to commence and in breach of the Court's order of 18 November 2015. In its skeleton argument the Company for the first time sought to argue that the Petitioner was not entitled to the information sought, an argument which it had expressly conceded at the hearing of 20 October 2015.
38. The Company still did not dispute the Petitioner's entitlement to the Books and Records on the grounds that it was not a shareholder in the Company. Instead the Company sought to argue that the Petitioner was entitled to the Books and Records pursuant to the Law, *specifically in its capacity as a shareholder of the Company*, but was not entitled to the Books and Records pursuant to clause 2(d) of the Subscription Agreement. This change in position was another attempt by the Company to delay the determination of the Inspection Application.

*Representations made during Inspection Application*

39. The evidence filed by the Company in the Inspection Application, *inter alia*, contained the following representations regarding the Worthing Shares:
  - (a) As to Weinstock 1:
    - (i) At paragraph 6 (emphasis added) – "Mr Katz has advanced a claim ... that Mr Keilman has dishonestly sought to appropriate for himself an investment which in fact belongs to Mr Katz – **namely Worthing, and its interest in Sterling**";

- (ii) At Paragraph 11, Mr Weinstock confirms that on or about 22 October 2002 Worthing invested US\$8 million in Sterling. No reference is made to that investment being redeemed at any point.
  - (iii) At page 40 of IW-1, the statement of claim in the Katz Proceedings states at paragraph 1 – "Katz has brought this action to obtain a court ruling establishing that he is entitled to the investment which he made through the agency of the legal entity Worthing Properties Limited (BVI) (Worthing) in the Sterling Macro Fund Ltd. (Sterling Macro Fund)."
  - (iv) At page 41 of IW-1, the statement of claim in the Katz Proceedings states at paragraph 12 – "Thereafter, as far as Katz is aware, nothing happened with Worthing in the period from the end of October 2002 until 10 July 2013."
  - (v) At page 42 of IW-1, the statement of claim in the Katz Proceedings states at paragraph 20 – "It is an established fact however, that Katz is the ultimate beneficiary of the investment in the Sterling Macro Fund. Worthing was established as his company and the bank account to which the funds from the Sterling Macro Fund were to be transferred is undisputedly Katz' account."; and
  - (vi) At page 43 of IW-1, the statement of claim in the Katz Proceedings states at paragraph 26 – "Katz' interest in this claim is that he is currently confronted with two parties who dispute his ultimate entitlement to 100% of the shares in Worthing. Keilman has even demanded payment from the Sterling Macro Fund of USD 22,627,142.73, the amount he believes the Worthing investment is worth (Exhibit 9)."
- (b) As to Shibolet 1:
- (i) At paragraph 2, Mr Shibolet stated that he is the attorney of Mr Katz and is authorised by Mr Katz and the Company to give the evidence. Mr Katz asserts an entitlement to the Worthing Shares in the Katz Proceedings and authorised his attorney to give evidence on behalf of the Company in the Inspection Application. It can be inferred from this that Mr Katz and

the Company are colluding to conceal the Unlawful Share Transfer by bringing the Katz Proceedings and opposing the Inspection Application.

- (ii) At paragraph 7 – "Following Katz's commencement of the Netherlands Action against Keilman, Keilman, purporting to act as an agent of Worthing, commenced this action seeking information and records from Sterling. Keilman, however, is not an authorized representative of Worthing. ... Further, he has attempted to steal the shares of Worthing from its sole shareholder Katz **and with it Worthing's valuable investments of approximately \$20 million...**";
  - (iii) At paragraph 11 – "Alternatively, there is no urgent need to provide this information to Keilman (in fact he has not asked for nor received any information from Sterling for nearly four years) and such can wait until the resolution of the Netherlands Action **or a determination of the Amsterdam court that Keilman speaks for Worthing and is entitled to such information, which Sterling has agreed to abide by.**";
  - (iv) At Paragraph 19 – "The evidence is clear that Keilman was acting as a trustee for Katz in establishing Worthing, ... and that his action in this Court is an attempt to gain information on Worthing to which he is not entitled and to further a fraud **to misappropriate Worthing's shares and its investment in Sterling.**"
- (c) As to Deckers 1:
- (i) At paragraphs 2-3 Mr Deckers states that he represents Mr Katz in the Katz Proceedings and that he is authorised by both Mr Katz and the Company to give the evidence. Mr Katz asserts an entitlement to the Worthing Shares in the Katz Proceedings and authorised two of his attorneys to give evidence on behalf of the Company in the Inspection Application. It can be inferred from this that Mr Katz and the Company are colluding to conceal the Unlawful Share Transfer by bringing the Katz Proceedings and opposing the Inspection Application.

- (ii) At Paragraph 9 – "While I understand that in the usual state of affairs it might be reasonable for a nominal company representative to request and obtain some of the information requested in this proceeding, such requests made by Keilman in the current proceedings should be rejected..."

40. The representations made both orally and in writing by the Company's counsel during the Inspection Application included the following regarding the Worthing Shares:

(a) As to Mr Harris' submissions at the hearing on 20 October 2015:

- (i) Mr Harris stated that "the Company does not contest that in the ordinary course, Worthing would be entitled to the documents and Worthing's entitlement is therefore not in dispute. The sole issue in dispute is Mr Keilman's authority to act for Worthing. The Company is on notice that Worthing has essentially been stolen by Mr Keilman. Mr Katz in the Dutch Proceedings has alleged that Mr Keilman used \$9.8 million of Mr Katz's money to invest in Sterling through Worthing. The fact that they have been put on notice of Mr Keilman's actions and that he was in serious breach of his fiduciary duties, which puts into question his standing in the proceedings means that Sterling have to oppose the application."

(b) As to the Company's Skeleton Argument dated 17 November 2015:

- (i) Paragraph 8(6) of the Skeleton – "Worthing would have entitlement to documents on a proper request being made pursuant to the Companies Law (2013 Revision) and general law. That is not the application which was made.";
- (ii) Paragraph 13 of the Skeleton – "**Sterling acknowledges Worthing's right to documents under general law and the Companies Law.** However, that is not the basis of these proceedings. Moreover, the requests would only be valid to the extent that they were actually made by Worthing rather than Mr. Keilman.";

(c) As to Mr Lowe QC's submissions at the hearing of 18 November 2015:

(i) "My Lord, what the note actually said was that Mr Harris noted that the Defendant does not contest that in the ordinary course the Plaintiff [the Petitioner] would be entitled to the documents. That is the note in the bundle.";

(ii) The following exchange took place between Tom Lowe QC and the Honourable Justice Quin, QC:

"TL: My Lord, under these proceedings they are entitled to the documents if they are properly requested by someone authorised to request them.

CQJ: But the fundamental point is that Worthing is entitled to the documents.

TL: My Lord, we don't accept that Worthing is properly at court.";

(iii) Mr Lowe QC later stated– "My Lord, we said in our skeleton that there is an entitlement to this information under the statute. If you don't have financial statements prepared they are not entitled to them. All I am outlining is that the statutory provisions give Worthing the right to most of these documents. I would just like to say that Mr Harris is correct in his assertion. There is no suggestion that they don't have the right to the documents. The suggestion is that they don't have the right under clause 2(d). They are entitled to the document, just not under these proceedings."

(iv) Mr Lowe QC then conceded – "I am going to have to accept that Worthing is entitled to the documents. It is really a question about costs. Once I concede that entitlement, it becomes a matter of discretion. We don't need to waste the time arguing."; and

(v) Finally Mr Lowe QC stated - : "I understand that it is an arid argument about Clause 2(d), but all you have is a pleading and an originating

summons. I just wanted to say that Mr Harris was correct in asserting that they are entitled to the documents in the ordinary course."

41. At no point during the course of the Inspection Application was the Petitioner's entitlement to the Worthing Shares or the existence of Victory Hills and its alleged interest in the Company ever raised either in evidence or in submissions.
42. At no point during the Katz Proceedings has the Petitioner's entitlement to the Worthing Shares or the existence of Victory Hills and its alleged interest in the Company ever been raised either in pleadings, evidence or in submissions. In fact, the entire purpose of the Katz Proceedings is stated as being to obtain a declaration that Mr Katz is entitled through his alleged interest in the Petitioner to the Worthing Shares.

*Company's Conduct Post-Inspection Application*

43. The Company has deliberately chosen not to comply with the terms of the Inspection Order. In particular, the Company has failed to provide any bank statements mirroring withdrawals and deposits of fund and/or other assets in any of the Company accounts as expressly requested in the Originating Summons and now asserts that such disclosure would be "disproportionately onerous".
44. The refusal to deliver up the bank statements of the Company raises serious concerns that the bank statements contain evidence of misappropriation or dissipation of the Company's assets, which the Company is seeking to conceal.
45. The Company has also failed to produce any audited statements in respect of the Company, despite the fact that (i) the Company is registered by CIMA and therefore is required by the Mutual Funds law to produce audited financial statements; and (ii) the information packs provided show audit fees being paid, from which it can be inferred that audited accounts have in fact been prepared.

*Victory Hills*

46. The Petitioner has no knowledge whatsoever of Victory Hills. Until the information packs were received on 3 December 2015 pursuant to the Order of the Court dated 18 November 2015, the representatives of the Petitioner had never heard of Victory Hills and knew nothing of its alleged shareholding in the Company. Victory Hills was never

referred to during the Inspection Application or the Katz Proceedings (which have ostensibly been brought for the purpose of obtaining the Worthing Shares).

47. The Petitioner has no direct knowledge of the identity of the directors of Victory Hills. Following investigation by the Petitioner, it appears that:
- (a) Victory Hills is a Panamanian company that was established on or about 18 May 2012;
  - (b) Mr Katz is the director / president and treasurer;
  - (c) Ricardo A. Durling is a director and secretary;
  - (d) Orlando Lopez is a director / vice president; and
  - (e) The registered agent is Durling & Durling.
48. There is no explicable or legitimate basis for the unlawful transfer of the Worthing Shares to Victory Hills. In particular:
- (a) No Shareholder Redemption Notice has ever been issued by the Petitioner in respect of the Worthing Shares and the Petitioner has never received any redemption proceeds in respect of the Worthing Shares.
  - (b) No Compulsory Redemption Notice has ever been served on the Petitioner and the Petitioner has never received any redemption proceeds in respect of the Worthing Shares.
  - (c) The Petitioner has never executed a share transfer in respect of the Worthing Shares.
  - (d) No person or entity has any beneficial or equitable interest in the Worthing Shares and no such interest would be recognised by the Company in any event pursuant to the Articles.
49. The Register of Members for the Company has never been provided to the Petitioner or to the Court.

*FTI Review*

50. On 7 December 2015, the Petitioners engaged FTI Consulting (Cayman) Ltd to review the Books and Records received pursuant to the Order (the "FTI Review"). A preliminary report of the findings of the FTI Review was issued on 9 December 2015 (the "FTI Report"). The preliminary findings of the FTI Review are that:
- (a) The financial information provided pursuant to the Inspection Order was high level in nature and provided very limited visibility on the underlying assets of the Company and the reasons for material movements in the financial statements;
  - (b) Notwithstanding the limited nature of the information, there are certain issues apparent from the review that warrant further investigation, namely:
    - (i) The unexplained change in the investor of record from the Petitioner to Victory Hills (i.e. the Unlawful Share Transfer);
    - (ii) The redemptions by Stillwater Market Neutral Fund between January 2010 and September 2013, and in particular, the fourth and final redemption during 2013 when there was a significant increase in the unrealised value of securities, which Stillwater appears likely to have received the benefit of and which may not be legitimate;
    - (iii) A redemption payable of US\$0.3 million recorded in the September 2015 balance sheet, which must relate to Victory Hills, indicating that the assets of the Company are potentially being distributed to Victory Hills in circumstances where Victory Hills is not lawfully entitled to the assets;
    - (iv) Securities owned by the Company appear to have been subject to large increases in value, for reasons that are unexplained by the information packs reviewed. For example, the value of the securities increased by 74% from \$32.4 million to \$56.4 million over the period from December 2012 to December 2013. There were no corresponding increases in liabilities or shareholders' equity during the same period and in fact Stillwater Market Neutral Fund's final redemption occurred during this period;
    - (v) The increase in value of the securities resulted in significant increases in the performance fees incurred, with \$2.4 million accrued in 2014,

compared with a maximum of US\$0.4 million over the preceding four years;

- (vi) A receivable related to a 'bridging loan' of \$4.5 million was written off in full during December 2008. It is not known whether the removal of two other historical loans in the total amount of \$14.5 million from the balance sheet during 2012 to 2013 was as a result of either repayment or further write-downs; and
- (vii) The only audited financial statements that have been provided relate to the year ended 31 December 2006. This is notwithstanding that the financial statements show that audit fees were periodically accrued and paid and that Sterling is registered under the Mutual Funds Law (as Revised). In light of the securities issues identified at (ii), (iv) and (v) above in particular, a comparison of the yearly audited accounts with the unaudited financial statements is essential.
- (viii) In the period July to September 2015, securities reduced in value from US\$57.4m to US\$53.3m for reasons unexplained by the documents reviewed.

51. The findings of the FTI Report confirm the Petitioner's grave suspicions that it has been the victim of fraudulent conduct by the Company through its controlling mind, Mr Dabah and that there has been, and continues to be, significant irregularities in the accounting and management practices of the Company for the benefit of the directors, administrators or Investment Managers and to the detriment of the Petitioner as sole shareholder.

52. The Petitioner is also extremely concerned that:

- (a) there is now a very high likelihood that the Company will take or is taking whatever steps necessary to remove the assets of the Company from the Petitioner's and this Court's reach, if in fact the assets of the Company have not already been misappropriated or otherwise dissipated (noting that neither the latest financial statements for the Company nor the bank statements nor the

audited financial statements have been provided by the Company to the Petitioner pursuant to the Order); and

- (b) additionally, now that the Company is on notice that the Petitioner is aware of the Unlawful Share Transfer, the Company will seek to further prejudice the Petitioner's position by ex post unlawfully "redeeming" the Petitioner's interest in the Company; or attempting to dilute the Petitioner's shareholding through the issuance of share capital; or creating a false paper trail to justify the Unlawful Share Transfer.

53. In light of the above findings and circumstances, the Petitioner seeks:

- (a) that the Company be placed under the control of independent office holders;
- (b) a full investigation by independent investigators be undertaken in relation to the Unlawful Share Transfer and the conduct and management of the Company, its directors (whether actual or shadow) and Mr Dabah;
- (c) the assets of the Company be secured and realised for distribution to creditors and the Petitioner, as the sole shareholder of the Company; and
- (d) in the event that assets have been misappropriate or dissipated, that action be taken to recover the assets for distribution.

54. In the circumstances, the Petitioner believes that it is just and equitable that the Company should be wound up for the reasons set out above.

#### **Nomination of Joint Official Liquidators**

55. The Petitioner nominates David Martin Griffin and Andrew Richard Victor Morrison of FTI Consulting (Cayman) Ltd. for appointment as joint official liquidators of the Company.

#### **YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. That the Company be wound up in accordance with the Companies Law.
2. David Martin Griffin and Andrew Richard Victor Morrison of FTI Consulting (Cayman) Ltd. be appointed as joint official liquidators of the Company (the "JOLs").

3. The JOLs shall not be required to give security for their appointment.
4. The JOLs shall have the power to act jointly and severally in their capacity as liquidators of the Company.
5. The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the appointment of the JOLs in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
6. The JOLs be authorised to exercise all the powers set out in Parts I and II of the Third Schedule to the Companies Law within and outside the Cayman Islands without the further sanction of this Honourable Court.
7. The JOLs conduct a full investigation in respect of the Unlawful Share Transfer, the conduct of the Company's directors and managers and the financial management of the Company and file a with the Clerk of the Court a report in writing detailing the results of the investigation and to any other matters connected to the winding up of the Company, as the Court may direct.
8. No disposition of the Company's property by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Law.
9. The JOLs be at liberty to appoint attorneys, counsel and 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 in accordance with Order 25 of The Companies Winding Up Rules 2008 (as amended).
10. Subject to section 109(2) of the Companies Law and the *Insolvency Practitioner's Regulations 2008 (as amended)*, the JOLs be authorised to render and pay invoices out of the assets of the Company for their own remuneration and the JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties.
11. The Petitioner's costs of and incidental to the Petition shall be paid out of the assets of the Company forthwith as an expense of the liquidation on an indemnity basis, such costs to be taxed if not agreed with the JOLs.

12. The JOLs be at liberty to apply.

13. Such further and/or other relief as this Honourable Court deems appropriate.

AND your Petitioner will ever pray etc.

DATED the 10<sup>th</sup> day of December 2015.



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**WALKERS**  
Attorneys at Law for the Petitioner

**NOTE:** This petition is intended to be served on:

The Company  
c/o Appleby Trust (Cayman) Limited  
PO Box 1350, George Town  
Clifton House  
75 Fort Street  
Grand Cayman  
Cayman Islands

And

Cayman Islands Monetary Authority  
Elizabethan Square  
80 Shedden Rd  
George Town  
Grand Cayman  
Cayman Islands

This Petition is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, for the Petitioner whose address for service is care of their said Attorneys at Law.

### NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on \_\_\_\_\_ at 10:00am.

Any correspondence or communication with the Court relating to the 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.

## SCHEDULE 1

Item	Date
Portfolio statement showing NAV	as at period ending 31 December 2002
Portfolio statement showing NAV	as at period ending 28 February 2003
Portfolio statement showing NAV	as at period ending 29 February 2004
Portfolio statement showing NAV	as at period ending 31 March 2004
Portfolio statement showing NAV	as at period ending 31 May 2004
Accountant's compilation report	14 June 2006
Accountant's compilation report	11 July 2006
Accountant's compilation report	21 August 2006
Accountant's compilation report	13 September 2006
Accountant's compilation report	9 October 2006
Accountant's compilation report	15 November 2006
Accountant's compilation report	18 December 2006
Statement of condition	as at 31 December 2006
Financial statements	as at 31 December 2006
Accountant's compilation report	21 February 2007
Accountant's compilation report	10 April 2009
Accountant's compilation report	12 September 2008
Accountant's compilation report	7 November 2008
Accountant's compilation report	8 June 2009
Accountant's compilation report	25 September 2009
Accountant's compilation report	27 October 2009
Accountant's compilation report	28 January 2010
Accountant's compilation report	12 May 2010
Accountant's compilation report	4 August 2010
Accountant's compilation report	1 November 2010
Accountant's compilation report	5 April 2011
Accountant's compilation report	24 May 2011
Accountant's compilation report	27 September 2011
Accountant's compilation report	8 November 2011
Accountant's compilation report	8 February 2012