

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



FSD CAUSE NO. 156 OF 2019

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)

AND

IN THE MATTER OF MKM LONGBOAT MULTI-STRATEGY FUND LIMITED (DISSOLVED)



PETITION



TO: The Grand Court of the Cayman Islands.

The humble petition of Roy Bailey as trustee ("**Trustee**") of the unclaimed assets of MKM Longboat Multi-Strategy Fund Limited (Dissolved) (the "**Company**") c/o EY Cayman Ltd, 62 Forum Lane, Camana Bay, P.O. Box 510, Grand Cayman, KY1-1106, Cayman Islands shows that:

1. The Trustee, a former joint voluntary liquidator of the Company, presents this petition pursuant to the Companies Winding Up Rules, 2008 (as amended) (the "**CWRs**") O. 23, r. 5 to fix the basis and amount of his fee for acting as trustee of unclaimed assets which have been held on trust by him pursuant to s. 153 of the Companies Law (2018 Revision) (the "**Companies Law**") (the "**Unclaimed Assets**").

Background

2. The Company was incorporated on 8 September 2005 and its directors were Mr. David Bree, Mr. Keith DeCarlucci and Mr. Andrew Galloway. The investment manager of the Company was MKM Longboat Capital Advisors LLP.
3. The Company was one of two feeder funds in a master-feeder structure and substantially all of the Company's assets were invested in the ordinary shares of the master fund, MKM Longboat Multi-Strategy Master Fund Limited ("**the Master Fund**"). MKM Longboat Multi-Strategy Fund L.P., a limited partnership registered in the Cayman Islands, was the second feeder fund through which investors could make an indirect investment in the Master Fund.

THIS PETITION was FILED by **BEDELL CRISTIN** of 53 Market Street, Unit 3211, Camana Bay, P.O. Box 1990, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Petitioner whose address for service is that of his said Attorneys-at-law.

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4. Based on the Company's issued prospectus dated 2 May 2008, the majority of the Master Fund's assets were invested in Europe with minimal restrictions as to its ability to invest in instruments including listed and unlisted equities, securities of other investment funds, debt securities, bank debt, hybrid securities, options, warrants and other derivative instruments (exchange-traded or over-the-counter).
5. On 1 December 2008, there was a compulsory redemption of all remaining investors in the Company.
6. On 31 August 2010, the Company had remaining assets of \$14.4m, liabilities and tax accruals of \$14.4m and nil net assets available for distribution to investors.

Appointment of Joint Voluntary Liquidators

7. The Trustee and Mr. Robin Lee McMahon were appointed as Joint Voluntary Liquidators ("JVLs") of the Company on 30 November 2010 by a special resolution of the Company.
8. On 15 September 2014, Ms. Claire Loebell of EY Cayman Ltd. signed a consent to act as JVL of the Company, replacing Mr. McMahon who retired from EY Cayman Ltd.

Actions of the JVLs following Appointment

9. Following the appointment of the JVLs, the relevant statutory requirements were dealt with by the JVLs.
10. The JVLs' appointment was advertised in the Cayman Gazette on 4 January 2011. The advertisement stated that,

"Creditors of the Company are to prove their debts or claims on or before 28th January 2011, and to establish any title they may have under the Companies Law (2010 Revision) or are to be excluded from the benefit of any distribution made before the debts are proved or from objecting to the distribution."

11. During the liquidation, the JVLs recovered assets, paid all known valid liabilities and declared and paid distributions to investors. At the conclusion of the voluntary liquidation, there

remained 17 investors whose distributions were unpaid due to either insufficient KYC or wire instructions having been provided (the "**Former Investors**").

12. The JVLs concluded the voluntary liquidation and filed their final return with the Registrar of Companies on 28 May 2018. The Company was dissolved on 27 August 2018.
13. The dissolution of the Company was advertised in the Cayman Gazette on 24 June 2019. The advertisement stated, inter alia, that:

"CREDITORS OF THE COMPANY are to prove their debts or claims on or before 22 July 2019 to establish any title they may have under the Companies Law (2018 Revision), or are to be excluded from the benefit of any distribution made before the debts are proved or from objecting to the distribution."

Actions of Trustee

14. On 25 September 2018, Ms. Loebell ceased her employment with EY Cayman Ltd. The Trustee has since administered the remaining assets held on trust pursuant to section 153 of the Companies Law.
15. Since the dissolution of the Company, the Trustee and his staff have spent time specific to the Company relating to the following tasks:
 - a. Periodic bank reconciliations and accounting;
 - b. Advertised for creditor claims in the Cayman Islands Gazette as required by Order 23 Rule 4 (1) of the CWR;
 - c. Written to all Former Investors, further corresponded with 10 of the 17 Former Investors and responded to an enquiry from a fully paid investor;
 - d. Reviewed KYC and wire instructions provided by Former Investors;
 - e. Calculated monies due to Former Investors (after deduction of costs) and arranged payments to Former Investors;

- f. Prepared a report to the Financial Secretary regarding the balance of Unclaimed Assets to be transferred to the Financial Secretary.
16. On 16 May 2019, letters were sent by the Trustee to the last known addresses of Former Investors requesting that they contact the Trustee should they wish to receive payment of the funds held by the Trustee. The letters stated, *inter alia*, that:
- "The former Joint Voluntary Liquidator holds unclaimed funds for you in respect of the declared distributions. These have been held in a trust account following dissolution pursuant to Section 153 of the Companies Law (2018 Revision). Any monies remaining in the hands of the former Joint Voluntary Liquidator on 26 August 2019, shall be transferred, net of any costs, to the Cayman Islands Financial Secretary to be administered by the Financial Secretary pursuant to the Public Management Finance Law."*
17. On 18 July and 22 July 2019, the Trustee's staff made a final attempt, by email, to contact those Former Investors that had not responded to the 16 May 2019 letter.
18. In total, 10 of the Former Investors responded to the 16 May 2019 letter or their subsequent follow up correspondence. Since that time, the Trustee's staff have liaised with those 10 Former Investors by telephone and email to establish:
- a. whether they wish to receive their unclaimed monies;
 - b. the further information and documents required in order for the Trustee to pay out the monies; and
 - c. deficiencies in KYC information and wire instructions requiring rectification prior to the Trustee paying out the monies.
19. Of the 10 Former Investors that responded to the Trustee, 6 have since provided both satisfactory KYC information and wire instructions.

Application to Fix Trustee's Fees for Administering Liquidation Trust

20. This application is brought for an order pursuant to CWR O. 23, r. 5 to fix the basis and amount of the Trustee's fee for acting pursuant to s. 153 of the Companies Law.

WHEREFORE YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:-

1. The fees of the Trustee for acting in the capacity of trustee pursuant to Section 153 of the Companies Law are approved for payment out of the Unclaimed Assets pursuant to CWR O. 23, r. 5.
2. The costs of, and incidental to this petition, be paid out of the Unclaimed Assets.
3. Such other orders or directions as the Court sees fit.

AND your Petitioner will ever pray etc.,

DATED the 16th day of August 2019



BEDELL CRISTIN
ATTORNEYS-AT-LAW FOR THE
PETITIONER