

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 24 OF 2021 () RPJ

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF BAF LATAM CREDIT FUND

WINDING UP PETITION



TO: THE GRAND COURT

The humble petition of (i) Amissima Assicurazioni Multi-Credit Strategy Fund, a Sub-Fund of Amissima Diversified Income ICAV, whose registered office is c/o Carne Global Financial Services Limited, 2nd Floor, Block E, Iveagh Court, Hartcourt Road, Dublin D02 YT22, Ireland ("**Amissima Assicurazioni**"); (ii) Amissima Vita Multi-Credit Strategy Fund, a Sub-Fund of Amissima Diversified Income ICAV, whose registered office is c/o Carne Global Financial Services Limited, 2nd Floor, Block E, Iveagh Court, Hartcourt Road, Dublin D02 YT22, Ireland ("**Amissima Vita**"); (iii) Multi Credit Strategy, a compartment of Athora Lux Invest S.C.Sp., whose registered office is c/o BNP Paribas Securities Services, 3, rue Jean Piret, L-2350, Luxembourg ("**Athora**"); and (iv) Tranquilidade Multi-Credit Strategy Fund, a Sub-Fund of Tranquilidade Diversified Income ICAV, whose registered office is c/o Carne Global Financial Services Limited, 2nd Floor, Block E, Iveagh Court, Hartcourt Road, Dublin D02 YT22, Ireland ("**Tranquilidade**") (Amissima Assicurazioni, Amissima Vita, Athora and Tranquilidade together, the "**Petitioners**"), shows that:

Introduction

1. The Petitioners present this petition seeking the winding up of BAF Latam Credit Fund (the "**Fund**") pursuant to section 92(e) of the Companies Act (2021 Revision) (the "**Companies Act**") on the grounds that it is just and equitable that the Fund be wound up.

2. This is because, as described in detail below, there has been continued mismanagement of the Fund and its assets by the Investment Manager (as defined below) and, despite the Petitioners' requests that such mismanagement be addressed by the board of directors of the Fund (the "**Board**"), the Board has taken no steps to rectify the mismanagement of the Fund. As a result, the Petitioners have a justifiable lack of confidence and/or have irretrievably lost trust and confidence in the conduct and management of the affairs of the Fund. In particular:
 - (a) there has been a serious and demonstrable lack of probity by the Board in the conduct of the Fund's affairs (as described further at **paragraphs 22 to 42** below);
 - (b) the acts and omissions of the Board have been contrary to the interests of the Fund (as described further at **paragraphs 43 to 59** below);
 - (c) there has been a sustained refusal by the Investment Manager to provide information to the Petitioners, despite their entitlement to such information (as described further at **paragraphs 60 to 66** below); and
 - (d) as a result of the matters of which the Petitioners are aware, it is clear that there is a need for independent investigation into the Fund's affairs (as described further at **paragraphs 86 to 88** below).

The Fund

3. The Fund was incorporated in the Cayman Islands on 29 May 2014 as an exempted company with limited liability and with registration number 288458. The Fund has, since 14 July 2014, been registered as a mutual fund with the Cayman Islands Monetary Authority with reference number 1138432. The registered office of the Fund is c/o Intertrust Corporate Services (Cayman) Limited ("**Intertrust**"), of 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands.
4. The Fund is a *credit fund*, which is to say that its investment activities concern its entry into loan arrangements with borrowers in accordance with the Fund's investment

objectives and strategies, which are summarised in the organisational documents¹ of the Fund in the following terms:

"The Fund's investment objective is to achieve long-term capital growth while seeking to minimize the risk of loss by strategically investing its capital in an actively managed portfolio of commercial loans to South American companies, with such portfolio comprised primarily of: (i) medium term pre-export revolving facilities; (ii) medium term asset based loans (capex financing); (iii) import financing transactions and (iv) medium term secured working capital loans"

5. Pursuant to the Fund's memorandum and articles of association dated 29 May 2014 (the "**Articles**"), the Fund's share capital is US\$50,000 divided into 100 management shares of a par value of US\$0.01 each (the "**Management Shares**") and 4,999,900 participating shares of a par value of US\$0.01 each (the "**Shares**").
6. The Fund offered two classes of Shares: Class A Shares and Class B Shares, in addition to 100 Management Shares. At all material times, the Management Shares have been held by BAF Capital S.A., a company (incorporated in the form of a *Sociedad Anónima*) organised pursuant to the laws of Uruguay, which is the investment manager of the Fund (the "**Investment Manager**").

The Board and Duties of the Board

7. According to the information available to the Petitioners², the Board is comprised of five directors:
 - (a) Mr Jonathan Roney, an independent director based in the Cayman Islands;
 - (b) Mr John Ackerley, an independent director based in the Cayman Islands;
 - (c) Mr Carlos Valladares, an independent director based in Florida, USA;
 - (d) Ms Analia Moreda, an affiliate of the Investment Manager; and

¹ Page 16 of the Offering Memorandum (as defined at **paragraph 13** below)

² This information is contained in the most recent register of directors in the possession of the Petitioners (dated 27 July 2016), although it is noted pages 37 – 38 of the Offering Memorandum provide that Ms Dolores Beramendi (an affiliate of the Investment Manager), and not Ms Lina Reyes, is the fifth director.

- (e) Ms Lina Reyes, an affiliate of the Investment Manager.
8. The Board has, at all material times, had duties to the Fund, *inter alia*, as follows:
- (a) to supervise and monitor the Investment Manager to ensure it complies with or acts in a manner consistent with:
 - (i) its fiduciary obligations to the Fund;
 - (ii) the terms of the Investment Management Agreement;
 - (iii) the Offering Memorandum; and
 - (iv) the Advisory Board Charter (defined below);
 - (b) to inform itself adequately and/or sufficiently of the manner in which the affairs of the Fund were being conducted by the Investment Manager; and
 - (c) to take all reasonable care and exercise all due skill and diligence in managing the affairs of the Fund.

The Petitioners

9. The Petitioners are shareholders of the Fund as follows:
- (a) Amissima Assicurazioni is the registered holder of 33,318.16 Shares;
 - (b) Amissima Vita is the registered holder of 133,215.55 Shares;
 - (c) Athora is the registered holder of 208,560.65 Shares; and
 - (d) Tranquilidade is the registered holder of 58,196.52 Shares,
- which, taken together, represent around 58.61% of the Fund's issued share capital. All of the Petitioners have held their Shares for at least six months immediately preceding the presentation of this petition.
10. Apollo Management International LLP ("**AMI**") acts as the portfolio manager of each of the Petitioners and the Petitioners therefore act, for all material purposes, by AMI. While this petition is presented by the Petitioners pursuant section 94(1)(c) of the Companies Act, in

the interests of concision and where appropriate, the Petitioners and AMI are referred to together herein as ("**Apollo**").

Duties of the Investment Manager

The Investment Manager

11. The Investment Manager's appointment is governed by the First Amended and Restated Investment Management Services Agreement dated 21 June 2019 entered into between the Fund and the Investment Manager (the "**Investment Management Agreement**"), the relevant terms of which are more fully described at **paragraph 19** below.

Establishment of the Advisory Board

12. Following the Petitioners' investments into the Fund, and as a result of their increasing concerns regarding the management of the Fund and its investments, in October 2018 representatives of Apollo raised concerns with representatives of the Investment Manager. Following further discussions between Apollo and the Investment Manager (and other investors of the Fund), the Fund and the Investment Manager agreed to the implementation of enhanced information and supervisory protocols in favour of certain of the Fund's investors.
13. Accordingly, on 4 February 2019, the Investment Manager entered into a side letter with Apollo (the "**Side Letter**"), pursuant to which the Investment Manager agreed to the establishment of an 'advisory board' (the "**Advisory Board**"). The:
 - (a) Advisory Board is comprised of five members – three members are designated by Apollo and two members are designated by other investors in the Fund;
 - (b) purpose of the Advisory Board was to create a contractual framework which provided, *inter alia*, obligations of the Investment Manager (in addition to its obligations to the Fund under the Investment Management Agreement) to other members of the Advisory Board;
 - (c) operation of the Advisory Board is governed by a written charter (the "**Advisory Board Charter**") by which the Investment Manager undertook, as more specifically described below, certain obligations to provide specific categories of information

to members of the Advisory Board and to seek the prior informed approval of members of the Advisory Board before engaging in certain investment activities on behalf of the Fund; and

- (d) Investment Management Agreement³ and the Private Offering Memorandum of the Fund dated June 2019 (the "**Offering Memorandum**")⁴ contain comparable obligations to those contained in the Advisory Board Charter.

The Advisory Board Charter

- 14. Under the Advisory Board Charter, members of the Advisory Board are entitled to the provision of information concerning the Fund's investments and the Advisory Board is empowered to provide "*guidance, approval, or monitoring, as applicable, on behalf of the [Fund]*" in line with the Advisory Board Charter⁵.
- 15. The Advisory Board Charter also provides that the following information with respect to each of the Fund's underlying investments and the subject borrower entity, is required to be provided by the Investment Manager to the Advisory Board members:
 - (a) at monthly meetings:
 - (i) any management discussion and analysis including, as applicable, an update on what has happened in the past month in the regulatory environment; and
 - (ii) any activity regarding mergers and acquisitions; and
 - (b) on at least a quarterly basis, details of: revenue; EBITDA; CAPEX; working capital; total debt; current cash; balance sheet; profit and loss statement; statement of cash flows; availability or management for a call post-financials; and a completed financial information report (in a prescribed format which is set out in Schedule A to the Advisory Board Charter).

³ Clause 6.8 of the Investment Management Agreement

⁴ Pages 39 to 40 of the Offering Memorandum

⁵ Provided at Section I (*Statement of Purpose*) of the Advisory Board Charter

16. The Investment Manager is also required by the Advisory Board Charter⁶ to seek the approval of the Advisory Board in advance of, in summary:
- (a) any debt-for-equity swap proposed in respect of any of the Fund's investments;
 - (b) the full or partial forgiveness of any of the Fund's investments represented by a loan;
 - (c) the sale of any of the Fund's investments at a price more than 10% below the par value of such investment; or
 - (d) any situation which may give rise to a conflict of interest for the Fund.
17. Further, pursuant to the Side Letter entered into between Apollo and the Investment Manager, Apollo is entitled to, in summary:
- (a) monthly meetings with the Investment Manager;
 - (b) a monthly summary of the Fund's investment portfolio, unaudited portfolio valuation information, and Apollo's capital account balance;
 - (c) other inspection and information rights with respect to the Fund and the Investment Manager, at a reasonable time and frequency; and
 - (d) immediate notice upon:
 - (i) the occurrence of any event that could have a material adverse effect on the Fund or any significant investment of the Fund;
 - (ii) any litigation or regulatory or enforcement action against the Fund; and
 - (iii) any default with respect to any of the Fund's investments.

The Offering Memorandum

18. The Offering Memorandum contains the following relevant terms:

⁶ Section II (*Organization*), paragraph B

- (a) Executive Summary⁷ – Investment Objective and Strategies: *"The Fund's investment objective is to achieve long-term capital growth while seeking to minimise the risk of loss by strategically investing in its capital in an actively managed portfolio of commercial loans to South American companies, with such portfolio comprised primarily of: (i) medium-term pre-export revolving facilities; (ii) medium term asset based loans (capex financing); (iii) import financing transactions and (iv) medium term secured working capital loans."*;
- (b) Executive Summary⁸ – Advisory Board: *"An Advisory Board of the Fund has been appointed by the [Board] to address conflicts of interest, affiliate transactions, valuation methodologies and reviewing and providing or withholding consent for other issues pre-identified in this [Offering] Memorandum..."*;
- (c) Executive Summary⁹ – Investment Restrictions: *"As from the Effective Date: (i) the Fund may not grant new loans to existing borrowers (except extensions or refinancing of existing loans) or engage new borrowers; and (ii) without the consent of the Advisory Board, the Fund may not forgive existing loans or restructure any existing loan in a debt-for-equity swap"*;
- (d) Investment Objective and Strategy¹⁰ – Investment Objective: *"The Fund's investment objective is to achieve consistent, positive returns with low volatility and minimal correlation to equities, bonds and other hedge fund strategies..."*;
- (e) Investment Objective and Strategy¹¹ – Investment Strategy:
"Under normal market conditions, the Investment Manager intends to achieve the Fund's objective by investing a majority of the Fund's total assets in medium term loans to mid-sized companies based in South America. The Investment Manager seeks to limit the Fund's investment risk in the strategy by diversifying the composition of its investment portfolio among different types of loans. The portfolio consists primarily of (i) medium term pre-export revolving facilities; (ii) medium

⁷ Page 16 of the Offering Memorandum

⁸ Page 17 of the Offering Memorandum

⁹ Pages 18-19 of the Offering Memorandum

¹⁰ Page 24 of the Offering Memorandum

¹¹ Page 24 of the Offering Memorandum

term asset based loans (capex financing); (iii) import financing transactions; and (iv) medium term secured working capital loans.

The asset based loans forming part of the portfolio will typically be secured by assets such as (but not limited to): export contracts, warehouse receipts, account receivables, security interests in acquired equipment, pledges over crops, pledges over shares and pledges over other assets, mortgages, guarantee trusts involving trust property such as (but not limited to) shares, real property and collection or credit rights as collateral and / or other property.";

(f) Certain Risk Factors¹² – Potential Conflicts of Interest:

"The Investment Manager ... [and Board]... may, in the course of their business, have potential conflicts of interest with the Fund. Each will at all times have regard in such event to its obligations to act in the best interests of the Ordinary Shareholders so far as practicable, having regard to its obligations to other clients, when undertaking any investments where conflicts of interests may arise and they will endeavour to resolve such conflicts fairly.

[...]

There is no prohibition on the Fund entering into any transactions with other collective investment schemes managed by the Investment Manager (or any of the IM Affiliates) which have similar investment objectives to those of the Fund, including but not limited to the sale, transfer or assignment of an investment (i.e. security, loan or other assets) or the sale of an option to buy such an investment or the holding of a security interest by the Fund over such an investment which may also be held by such an investment scheme with the same or different prioritisation as a creditor, provided that such transactions are carried out as if effected on commercial terms negotiated at arm's length and all other requirements set forth in this [Offering] Memorandum, if applicable are satisfied.";

(g) Management and Administration¹³ – Advisory Board:

¹² Pages 34 and 36 of the Offering Memorandum

¹³ Pages 39-40 of the Offering Memorandum

"The Investment Manager will have a monthly meeting with the Advisory Board to provide information about the Fund and its investments in accordance with the Investment Management Agreement.

[...]

The Investment Manager shall seek approval of the Advisory Board in advance of (i) any debt-for-equity swap of a portfolio investment, (ii) the full or partial forgiveness of any existing loan, (iii) any situation which may give rise to a conflict of interest, including affiliate transactions and (iv) any sale of any investment at a price more than 10% below the par value of such investment..."

The Investment Management Agreement

19. The Investment Management Agreement contains the following material terms:

- (a) Clause 5.1 (*Appointment of Investment Manager*)¹⁴: *"The Fund appoints the Investment Manager to manage the investment of the Portfolio until its appointment shall be terminated as hereinafter provided, and the Investment Manager hereby accepts such appointment and agrees to assume the obligations set forth herein";*¹⁵
- (b) Clause 5.2 (*Appointment of Investment Manager*)¹⁶: *"Except as expressly provided in this [Investment Management Agreement], or as the Investment Manager may be otherwise authorized, the Investment Manager has no authority to act for or represent the Fund and the Investment Manager shall not be deemed an agent of the Fund";*
- (c) Clause 6.1 (*Duties of the Investment Manager*)¹⁷: *"The Investment Manager shall manage the Portfolio on a discretionary basis in pursuit of the investment objective*

¹⁴ Page 7 of the Investment Management Agreement

¹⁵ "Portfolio" is defined at Clause 2.1 (*Definitions*) of the Investment Management Agreement as *"all the assets and Investments of the Fund at any time under the management of the Investment Manager hereunder including, for the avoidance of doubt, any uninvested cash"*.

¹⁶ Page 7 of the Investment Management Agreement

¹⁷ Page 7 of the Investment Management Agreement

and approach and subject to the investment restrictions described in the Offering Memorandum or as otherwise stipulated by the [Board] from time to time...";

- (d) Clause 6.8 (*Duties of the Investment Manager*)¹⁸: *"The Investment Manager shall seek the approval of the Advisory Board in advance of: (i) any debt-for-equity swap of a portfolio investment, (ii) the full or partial forgiveness of any existing loan, (iii) any situation which may give rise to a conflict of interest, including affiliate transactions or (iv) the sale of any investment at a price more than 10% below par... which decision (including, for the avoidance of doubt, the identity of the purchaser) will require in any case the unanimous prior approval from the members of the Advisory Board";*
- (e) Clause 14.1 (*Fees and Expenses*)¹⁹: *"In consideration of and as compensation for its services to the Fund hereunder, the Fund shall pay to the Investment Manager the Management Fee and the Performance Fee...";*
- (f) Clause 16.1 (*Non-Exclusive Relationship*)²⁰: *"The services of the Investment Manager hereunder are not to be deemed exclusive. The Fund acknowledges that the Investment Manager and its directors, officers, employees or Associates may from time to time act as investment manager, manager, investment adviser or dealer in relation to, or be otherwise involved in, investment funds established by parties other than the Fund which have similar objectives to that of the Fund";*
- (g) Clause 17 (*Conflicts of Interest*)²¹:

"Clause 17.1 Since the services provided by the Investment Manager hereunder are not exclusive, it is, possible that the Investment Manager or any of its directors, officers, employees or Associates may, in the course of business, have potential conflicts of interest with the Fund. In such event, the Investment Manager shall disclose its interest or the interest of any of its directors, employees or associates to the Advisory Board and seek the approval of the Advisory [B]oard in advance of any of those situations giving rise to the conflict of interest.

¹⁸ Page 10 of the Investment Management Agreement

¹⁹ Page 14 of the Investment Management Agreement

²⁰ Page 16 of the Investment Management Agreement

²¹ Pages 17-18 of the Investment Management Agreement

Clause 17.2 Where the Investment Manager has or may have a conflict of interest with the Fund [it] shall disclose its interest to the Advisory Board and seek its approval in advance of any situation that may give rise to such conflict of interest including affiliate transactions.

Clause 17.3 The Investment Manager or any of its Associates may invest in, directly or indirectly, or manage or advise other investment funds or accounts which invest in assets which may also be purchased or sold by the Fund. Neither the Investment Manager nor any of its Associates shall be under any obligation to offer investment opportunities of which any of them become aware to the Fund or to account to the Fund in respect of (or share with the Fund or inform the Fund of) any such transaction or any benefit received by any of them from any such transaction, but will allocate such opportunities on an equitable basis between the Fund and other clients.

Clause 17.4 The Investment Manager shall not and shall procure that any Associate of the Investment Manager shall not deal, as principal or agent for a third party, with the Fund except where dealings are carried out as if effected on normal commercial terms negotiated at an arm's length basis...".

20. Schedule 4 (*Information to be provided to the Advisory Board*) provides that the following information, with respect to each underlying investment and the related company, is required to be provided by the Investment Manager to the Advisory Board:
- (a) at each monthly meeting:
 - (i) any management discussion and analysis including, as applicable, an update on what happened in the past month in the regulatory environment; and
 - (ii) any activity regarding mergers and acquisitions; and
 - (b) on at least a quarterly basis, details of: revenue; EBITDA; CAPEX; working capital; total debt; current cash; balance sheet; profit and loss statement; statement of cash flows; availability of management for a call post-financials; and a completed financial information report (in a prescribed format that is set out in Advisory Board Charter).

The Petitioners' loss of trust and confidence

21. The Investment Manager has acted in continued breach of its obligations under the Advisory Board Charter, the Offering Memorandum and the Investment Management Agreement by acting unilaterally, without the prior approval of the Advisory Board, and by taking decisions which have been contrary to the interests of the Fund, with minimal or no notice to Apollo (either in its own capacity or in its capacity as a member of the Advisory Board) and/or by failing to provide necessary information in a timely manner or at all, for the purposes of enabling the Advisory Board to properly consider the terms of proposed transactions. As a consequence, Apollo has lost trust and confidence in the management of the Fund.

Lack of probity in the conduct of the Fund's affairs

22. There has been a serious and demonstrable lack of probity by the Board in the conduct of the Fund's affairs, which has resulted in the Petitioners' loss of trust and confidence in the Board. Details of this are set out below.

The subordination of the Fund's security rights to those of an affiliate of the Investment Manager:

23. The Investment Manager has:
- (a) consented to the subordination of the Fund's rights arising in connection with certain share security, relating to loans made by the Fund to borrowers:
 - (i) Industria Agroalimentaria Latam S.A. ("**IAL**"); and
 - (ii) VFG Inversiones y Actividades Especiales S.A. ("**VFG**"),in favour of an affiliate of the Investment Manager, BAF Trade Finance Fund (in Voluntary Liquidation) ("**BAF TF**"). This share security was granted in respect of loans advanced by BAF TF to IAL and VFG but subsequently, it was amended so that it also secured the obligations under loans that had been advanced by the Fund to IAL and VFG. The amended security arrangements gave priority to BAF TF in respect of rights of enforcement and recoveries;
 - (b) failed to provide any commercial rationale for allowing this to Apollo; and

- (c) failed to provide any explanation or disclosure to Apollo in respect of:
 - (i) the obvious conflict of interest that arises in the circumstances of BAF TF's affiliation to the Investment Manager; or
 - (ii) the reason for the entry by BAF TF into voluntary liquidation on 19 July 2019 or the potential consequence that may have, given the interposition of BAF TF in the Fund's investment activities.

Structural subordination of the Fund to BAF TF:

24. The Investment Manager has also caused the Fund to enter into loan agreements in circumstances where the Fund's rights of recovery have been structurally subordinated to those of BAF TF. In particular, the Fund has loaned sums to:

- (a) South American Hydro Power Generation S.A. ("**SAHP**"); and
- (b) South American Food Company S.A. ("**SAFC**"),

where the borrower counterparties' indebtedness arises at 'HoldCo' level (the "**HoldCo Borrowers**").

25. This is in contrast to otherwise comparable transactions entered into by BAF TF, pursuant to which BAF TF loaned money to entities in the same group, at 'OpCo' level (the "**OpCo Borrowers**"). As a result, BAF TF will stand to recover its loans in priority to the Fund because in the event of default by the OpCo Borrowers, the Fund's potential recoveries, which would be dependent on the OpCo Borrowers' ability to distribute their income upwards, will be materially reduced as a consequence of the OpCo Borrowers' insolvency. The Investment Manager has clearly placed the interests of BAF TF, an affiliate of the Investment Manager, ahead of the interests of the Fund in procuring this outcome.

26. The Investment Manager failed to provide proper disclosure of these impairments, and has provided no commercial justification for allowing the Fund to advance sums under these conditions, to Apollo and/or to the Advisory Board following its establishment. No explanation has been given to Apollo regarding why the interests of BAF TF have been preferred over the Fund, nor does Apollo know to whom the economic interests in BAF TF accrue, or how it accrues to them. This has happened, and continues, despite the Board's duty to act in the best interests of the Fund, and despite the Investment Manager's

obligations to inform, and seek the prior approval of the Advisory Board regarding, "*any situation which may give rise to a conflict of interest*".

27. Similarly, the Fund has been placed in a position of comparative disadvantage to BAF TF in respect of a debt-for-equity transaction pursuant to which loans that had been advanced by the Fund to entities affiliated to Vicentín S.A.I.C. ("**Vicentin**") were cancelled²² and the Fund instead acquired interests in Frigorífico Regional Industrias Agroalimentarias Reconquista S.A. ("**FRIAR**"). Conversely, the loan advanced by BAF TF to FRIAR remained outstanding. As a result of this arrangement the Fund (as an equity holder) became structurally subordinated to BAF TF (as a creditor). The Investment Manager has attempted to characterise certain of these corporate actions as 'payment in kind' transactions, rather than the 'debt-for-equity' transactions they clearly are. It is supposed that the Investment Manager is attempting this in a bad faith attempt to place these transactions outside of the range of transactions that require the Investment Manager to seek prior approval of the Advisory Board. This attempt to circumvent its obligations is misconceived in any event, since the Investment Manager's obligation to seek the approval of the Advisory Board applies in respect of "*the full or partial forgiveness of any of the Fund's investments represented by a loan*" (as referred to at **paragraph 16(b)** above).
28. In pursuing these transactions, the Investment Manager has placed the interests of its affiliate, BAF TF, ahead of those of the Fund and in failing to prevent this, the Board has failed to act in the Fund's interests.

Refusal to comply with requests for the purposes of enabling the Advisory Board to approve transactions

29. The Investment Manager has failed to address matters raised by Apollo (in its capacity as member of the Advisory Board) relating to transactions in respect of which Advisory Board approval has been sought.
30. In respect of the FRIAR transaction (as described above at **paragraph 27** above), Apollo, in an attempt to ensure that the proposed debt-for-equity transaction provided for fair treatment of the Fund, requested:

²² Including the loans advanced to VFG, as described at **paragraph 23(a)** above.

- (a) that fully executed transaction documents be provided to the Advisory Board;
- (b) that BAF TF's loan agreement be provided to the Advisory Board, so that it could determine its impact on the existing structural subordination; and
- (c) that the transaction documentation provide for, *inter alia*:
 - (i) an obligation on the part of BAF TF to capitalise (or convert) a portion of the loan advanced to FRIAR on or before 13 August 2022;
 - (ii) a requirement that BAF TF obtain the Fund's prior consent to any amendment or transfer of the subject loan, including any action to accelerate upon default; and
 - (iii) provide for anti-dilution and deadlock resolution mechanisms, as well as a mechanism to regulate priority rights as between the Fund and BAF TF,(together, the "**FRIAR Approval Conditions**").

31. Despite Apollo's efforts, the FRIAR Approval Conditions remain unsatisfied and the Fund's position of subordination to BAF TF remains. As a consequence of this, Apollo remains concerned that the Investment Manager will continue to effect transactions in a manner in which its affiliate, BAF TF, is preferred and/or its interests are prioritised, to the detriment of the Fund. Apollo is also concerned about the circumstances surrounding the FRIAR transaction, given that there have been well-publicised allegations of wrongdoing (including criminal allegations) in connection with certain refinancing arrangements pursued by Vicentin in Argentina. In the circumstances of these allegations, the Investment Manager's ongoing lack of transparency creates further concerns for Apollo.

The transfer of indebtedness to the Fund to a comparatively inferior borrower entity:

32. Without proper explanation or rationale, the Investment Manager authorised the transfer of a borrower counterparty's repayment obligations to the Fund (being a comparatively credit-worthy borrower counterparty) to an inferior counterparty.
33. In particular, the Investment Manager caused the Fund to enter into a loan arrangement with SAFC as borrower. The sums advanced by the Fund to SAFC were then used to repay loans that had been made by the Fund to IAL and Vicentin.

34. This resulted in the exposure of the Fund (in respect of outstanding, but unpaid loans) to SAFC – which was a comparatively less credit-worthy borrower. Apollo understands that SAFC's financial condition has been adversely impacted by the entry by one of its main subsidiaries, Alimentos Refrigerados S.A., into a restructuring process in Argentina.

The transfer of debts to / from BAF TF:

35. Without proper explanation or rationale, the Investment Manager authorised the assumption by the Fund of the rights and obligations of *lender*, in respect of a loan that had initially been entered into by BAF TF (as lender) and Bioceres S.A. ("**Bioceres**") (as borrower), by way of an apparent "cross trade". As far as the Petitioners are aware, the subject loan was then converted into shares in Bioceres, in relation to which a stock sale agreement applies.
36. The outcome of this transaction has been that the Fund will not be entitled to benefit from any increase in the value of the subject shares in Bioceres, but will be exposed to the potential diminution in value of the shares.
37. The Investment Manager has refused to provide any explanation that justifies the entry into this transaction by the Fund.

Waiver granted in respect of declaration of dividends by a defaulting borrower:

38. Without proper explanation or rationale, the Investment Manager granted a waiver of the Fund's rights in connection with negative covenants relating to the ability of a borrower counterparty to declare dividends. This waiver was granted despite the fact that the borrower counterparty, SAHP, was at that time in default of its obligations to make interest payments arising on its indebtedness to the Fund.
39. No proper justification has been given by the Board or the Investment Manager regarding the granting of this waiver.

Failure to conduct the operations of the Fund in accordance with offering materials:

40. As a result of the manner in which the Board and Investment Manager have conducted the operations of the Fund, the Fund's investment profile no longer reflects the credit and loan investments disclosed in the Fund's offering materials (see above at **paragraph 4**).

41. The breaches of the Investment Manager's obligations have all occurred under the supposed supervision and oversight of the Board, which is obliged to act in the interests of the Fund. The inescapable corollary of this is either that the Board:
- (a) was aware of these events and took no steps to prevent them; or
 - (b) was insufficiently apprised of these events, in dereliction of its duties as directors of a Cayman Islands fund.
42. Neither explanation is acceptable and that leads to the obvious conclusion that there has been a serious lack of probity on the part of the Board.

Acts and/or omissions of the Board

43. The Board failed to supervise and monitor the Investment Manager adequately or at all to ensure it complied with or acts in a manner consistent with:
- (a) the Investment Manager's fiduciary obligations to the Fund;
 - (b) the terms of the Investment Management Agreement;
 - (c) the Offering Memorandum; and
 - (d) the Advisory Board Charter.
44. The Board failed to inform themselves adequately and/or sufficiently and/or at all of the Investment Manager's failure to conduct itself properly and/or in accordance with its aforementioned duties.
45. The Board failed to take all reasonable care and/or exercise all due skill and diligence in managing the affairs of the Fund in each of the respects set out below.

Failure properly to perfect certain security interests:

46. The Investment Manager has failed to take, and the Board has failed to ensure the taking of, proper steps to protect the Fund's exposure to borrower counterparties, by neglecting to perfect security interests that have been granted in favour of the Fund over receivables and other assets. In particular, the Fund neglected to provide notice of the assignment by way of security, of certain receivables to the Fund, in support of loans issued by the Fund

to Generación Mediterránea S.A. ("**GEMSA**"), IAL, VFG, Molino Cañuelas S.A.C.I.F.I.A., Vicentín and Corporate Leasing S.A. ("**Corporate Leasing**"), respectively, as a result of which such security will not hold against third parties and its enforceability is therefore seriously compromised.

47. No proper explanation has been given by the Investment Manager or the Board for this omission, which has resulted in the Fund's exposure to third parties who may have competing claims over assets purported to be secured in favour of the Fund. Furthermore, neither the Investment Manager nor the Board have taken any steps to remediate these deficiencies despite requests that they do so.

Failure to claim in the insolvency of certain of the Fund's borrower counterparties:

48. The Investment Manager has failed to take and the Board has failed to ensure the taking of proper steps to ensure that the Fund's interests are protected in the event of borrower counterparties commencing liquidation proceedings (or other analogous proceedings). In particular, the Fund failed to file claims in respect of its interests in certain guarantees provided by Vicentín in its restructuring process, as a result of which the Fund did not receive any distribution (or other recovery) from Vicentín's estate.

Subordination of the Fund's interests to BAF TF:

49. The Board has permitted or failed to take steps to prevent the Investment Manager conceding the Fund's priority of recovery to an affiliate of the Investment Manager, where there were obvious impairments on recovery in connection with loans made by the Fund, thereby engaging in self-dealing or allowing a position of conflict of interest, as noted at **paragraphs 23 to 28** above.
50. The Investment Manager has failed to provide proper disclosure of impairments on recovery in connection with loans that have been made where priority of recovery was conceded to an affiliate of the Investment Manager, and has since refused to provide any commercial justification for doing so, as noted at **paragraphs 23 to 28** above. The Board has failed to take any or any sufficient steps to ensure such disclosure was made.

The transfer of indebtedness to the Fund to a comparatively inferior borrower entity:

51. As noted at **paragraphs 32 to 34** above, the Fund authorised the transfer of indebtedness to the Fund to a counterparty with a higher risk profile. This has resulted in the exposure

of the Fund (in respect of outstanding, but unpaid loans) to entities in respect of which little (if any) recovery is expected. The Board has failed to take any or any sufficient steps to prevent this

Transfer of debt to / from BAF TF:

52. The Board has permitted or failed to take steps to prevent the Investment Manager from causing the Fund to transfer to the Fund the lender's rights in respect of a loan originally made by BAF TF to Bioceres in a 'cross trade' as noted at **paragraphs 35 to 37** above. No proper explanation has been provided in relation to this, and the transaction appears to have benefitted BAF TF, to the detriment of the Fund.

Waiver granted in respect of declaration of dividends by a defaulting borrower:

53. The Board has permitted or failed to take steps to prevent the Investment Manager from causing the Fund to grant a waiver in respect of certain negative covenants prohibiting the declaration of dividends, notwithstanding that the relevant borrower, SAHP, was in default, as noted at **paragraphs 38 to 39** above. The Board and the Investment Manager have failed to provide any explanation for this decision.

Conflicts of interest:

54. The issues raised in **paragraphs 23 to 37** above relate to conduct in which the Investment Manager allowed its own interests to conflict with those of the Fund and/or engaged in related party dealings and/or failed to protect the Fund. The Board has prioritised or suffered the prioritisation of the interests of BAF TF, which is affiliated to the Investment Manager.
55. Further, the Investment Manager caused the Fund to enter into transactions with its affiliates or other entities managed by it, including transactions whereby the security interests of the Fund and such entities had different prioritisation, otherwise than on "*commercial terms negotiated at arms' length and all other requirements set forth in the [Offering Memorandum]... are satisfied*" and without "*regard, in ... the event [of a conflict of interest] to its obligations to act in the best interests of the Ordinary Shareholders [of the Fund] so far as practicable, having regard to its obligations to other clients and... to endeavour to resolve such conflict fairly*".

56. The Advisory Board was not informed even about the entry of BAF TF into voluntary liquidation and no evidence has been produced to demonstrate that the arrangements involving the Fund and BAF TF were approved by the Board, having regard to their duties to act in the best interests of the Fund and to avoid conflicts of interests.

Assumption of the liabilities of other debtors

57. On the basis of the information available to Apollo, it is understood that under certain transaction documentation that has been settled by the Investment Manager and entered, or is proposed to be entered into, between the Fund and certain underlying borrower companies regarding the restructuring of debts payable to the Fund, the Investment Manager has caused the Fund to undertake to pay the costs and expenses incurred by the subject borrower companies in connection with: the negotiation and entry into the arrangements; and the maintenance of the secured assets. Such an undertaking is provided for in broad terms and does not require that the costs and expenses be documented. So far as Apollo is aware, the Fund has provided undertakings to each of loan restructurings involving:

- (a) FUNF Investments S.A. ("FUNF");
- (b) VIER Overseas S.A. ("VIER");
- (c) MDQ Investments S.A. ("MDQ"); and
- (d) TDI Overseas S.A. ("TDI"),

(which are more fully described at **paragraphs 63(d)** and **63(e)** below).

58. The Investment Manager has failed to provide any satisfactory justification for agreeing to these undertakings; stating only that the undertakings were provided to "*get [the relevant borrower companies] to enter into the negotiated foreclosure[s]*". This is not an appropriate explanation for such an unusual concession, and it causes further concern regarding the judgment and/or motivations of the Investment Manager and the Board.
59. The Board has failed adequately or at all to supervise and monitor the Investment Manager and/or to take any or any adequate steps to prevent breaches of duty described at **paragraphs 23 to 58** above and/or to protect the Fund's interests.

Refusal to provide information to Apollo and/or the Advisory Board

60. The Investment Manager has failed or refused to provide information, or has provided insufficient and incomplete information, to Apollo (acting in its own capacity and in its capacity as member of the Advisory Board), that would otherwise enable Apollo and/or the Advisory Board to determine whether those managing the Fund are acting in accordance with their duties.

Failure to seek Advisory Board consent to transaction(s):

61. In contravention of the terms of the Advisory Board Charter, the Offering Memorandum and the Investment Management Agreement, the Investment Manager has repeatedly failed to seek the Advisory Board's consent in advance of necessary transactions, or has failed to comply with the conditions upon which the Advisory Board has provided its consent. In particular:
- (a) the debt-for-equity transaction with SAHP, pursuant to which the loans advanced by the Fund to SAHP were cancelled and the Fund instead obtained equity interests in Cartellone Energía y Concesiones S.A. ("**CECSA**"), was effected on 27 February 2020, without the prior consent of the Advisory Board having been sought. This happened despite the Investment Manager having expressly undertaken to the Advisory Board to obtain its consent prior to closing the transaction. The Investment Manager subsequently, in an improper and bad faith reversal of the representations it had made to the Advisory Board, asserted that it had not in fact been required to obtain the Advisory Board's consent; and
 - (b) the debt-for-equity transaction involving FRIAR (referred to above at **paragraph 27** above) was effected on 12 August 2020, without the prior consent of the Advisory Board having been sought. The Investment Manager's request for approval came a day later, on 13 August 2020. In response, Apollo (in its own capacity and in its capacity as a member of the Advisory Board) communicated the FRIAR Approval Conditions (referred to above at **paragraph 30**). These have not been discharged by the Investment Manager and the transaction therefore remains unapproved by the Advisory Board.
62. Further examples of the Investment Manager's failure to seek the Advisory Board's consent to relevant transactions are described below at **paragraphs 80 to 83**.

Refusal to provide information in a timely manner, upon request:

63. The Investment Manager has continually refused to provide information and/or has provided partial and incomplete information upon reasonable request by Apollo regarding the management of the Fund and its assets. In particular:
- (a) the Investment Manager refused to provide sufficient information or detailed updates of the status of negotiation regarding a proposed transaction involving Línea de Transmisión del Litoral S.A. ("LITSA"). In particular, the Investment Manager has refused and/or failed to provide, *inter alia*:
 - (i) a detailed explanation of the funds flow process, including how payments in foreign currencies will be made in light of legal restrictions regarding such payments;
 - (ii) status updates on ongoing legal proceedings / disputes in which LITSA is concerned;
 - (iii) an update on the status of the approval (or documents to effect the approval) of the LITSA transaction by relevant governmental / regulatory authorities, including the *Argentine Electricity Regulator* and the *Argentine Antitrust Authority*;
 - (iv) draft transaction documentation incorporating the comments provided by Apollo (in its capacity as member of the Advisory Board); and
 - (v) organisational documents relating to LITSA;
 - (b) the Investment Manager also refused to provide information relating to loans advanced to SAHP, including, *inter alia*:
 - (i) details of the necessary governmental / regulatory approvals;
 - (ii) details of the share security; and
 - (iii) a detailed description of the background and status of negotiations – specifically, how it was that the terms were agreed;

- (c) the Investment Manager provided incomplete information relating to the debt-for-equity transaction pursuant to which the Fund obtained equity interests in FRIAR. In particular, notwithstanding that the transaction was conditionally approved on 13 August 2020 and certain transaction documents executed on 12 August 2020, certain intercreditor documents (reflecting comments provided by Apollo in its capacity as Advisory Board member) remain outstanding and have not been provided to Apollo (referred to above at **paragraph 30**); and
- (d) the Investment Manager provided incomplete information regarding entities in which the Fund holds equity interests as a result of *debt-for-equity* transactions (in relation to which the Investment Manager is required, but failed, to seek the prior consent of the Advisory Board – see **paragraphs 16(a), 18(g) and 19(d)** above) in each case in respect of restructured real estate finance deals originally entered into by the Fund. In particular:
 - (i) in respect of a *debt-for-equity* transaction relating to FUNF, pursuant to which the Fund acquired equity interests in Plineto S.A. (a wholly owned subsidiary of FUNF) ("**Plineto**"), in consideration for which FUNF's loan obligations to the Fund (originally in the principal amount of US\$7,300,000) and any related security granted in respect of the same were cancelled and/or discharged; and
 - (ii) in respect of a *debt-for-equity* transaction relating to VIER, pursuant to which the Fund acquired equity interests in Remifasol S.A. (a wholly owned subsidiary of VIER) ("**Remifasol**"), in consideration for which VIER's loan obligations to the Fund (originally in the principal amount of US\$11,592,400) and any related security granted in respect of the same were cancelled and/or discharged; and
- (e) the Investment Manager provided incomplete information regarding transactions involving "*the full or partial forgiveness of any of the Fund's investments represented by a loan*" (in relation to which the Investment Manager is required, but failed, to seek the prior consent of the Advisory Board – see **paragraphs 16(b), 18(g) and 19(d)** above), in each case in respect of restructured real estate finance deals originally entered into by the Fund. In particular:

- (i) in respect of a transaction relating to MDQ, pursuant to which certain rights to acquire full ownership over certain real estate properties were transferred to Remifasol, in consideration for which MDQ's loan obligations to the Fund (originally in the principal amount of US\$8,761,000) and any related security granted in respect of the same were cancelled and/or discharged;
- (ii) in respect of a transaction relating to BRAF Development One Ltd ("**BRAF**"), pursuant to which certain rights to acquire full ownership over certain real estate properties were transferred to Plineto, in consideration for which BRAF's loan obligations to the Fund (originally in the principal amount of US\$2,650,000) and any related security granted in respect of the same were cancelled and/or discharged; and
- (iii) in respect of a proposed transaction relating to TDI, pursuant to which certain rights over certain real property were transferred to Plineto, in consideration for which TDI's loan obligations to the Fund (originally in the principal amount of US\$8,000,000) and any related security granted in respect of the same were cancelled and/or discharged.

64. In respect of the transactions outlined at **paragraphs 63(d)** and **63(e)** above, in each case, the Investment Manager has refused to provide sufficient or complete information to Apollo (acting in its capacity as member of the Advisory Board) in order to enable it to assess whether consent should be provided to the proposed entry into these transactions and the terms thereof. In particular, the Investment Manager has failed to provide documentation evidencing:

- (a) the Investment Manager's calculation of the value of the:
 - (i) equity interests; and/or
 - (ii) interests in or rights to real estate interests,

that it is proposed be provided in consideration for the forgiveness of indebtedness to the Fund;

- (b) the documentation evidencing the existence and scope of the interests in or rights to real estate interests to which the proposed transactions relate; or
 - (c) the analysis supporting the Investment Manager's conclusion that it is appropriate to forgive the debts outstanding and payable by the Fund's debtor counterparties under these proposed transactions.
65. The Investment Manager has, at various times, sought to excuse these refusals and delinquencies in the provision of information to Apollo and/or the Advisory Board, by reference to disruption caused by the COVID-19 pandemic and, in particular, its impact in Latin America; and various other exogenous circumstances, but these are not acceptable explanations for sustained breaches of the Investment Manager's obligations.
66. Apollo has, at all material times, been entitled to information to enable it to determine whether the Board and/or the Investment Manager are acting in accordance with their duties and obligations. The information rights are clearly defined and described in the Advisory Board Charter, and in the Side Letter. The Investment Manager has in some cases denied Apollo its rights (such as the obligation to provide minutes of Advisory Board meetings, which have not been provided despite there being an obligation to provide them under the Advisory Board Charter, and despite the Investment Manager's assurances that they would be provided²³), and in others, the Investment Manager has improperly alleged that Apollo has no rights, and that it is not under obligations to provide information. Even the limited information provided to Apollo confirms a number of serious breaches of duty by the Investment Manager and the Board which has resulted in the Petitioners' loss of trust and confidence in the management of the Fund.
67. The Investment Manager has betrayed its disregard for the Advisory Board process. As part of Apollo's ongoing attempts to address the mismanagement of the Fund and in particular the Investment Manager's refusal to provide sufficient information to the Advisory Board, on 23 March 2020, a Chairman of AMI wrote to the Chief Executive Officer of the Investment Manager, reiterating the Investment Manager's obligations pursuant to the Advisory Board Charter and stressing the importance of providing Apollo (in its capacity as member of the Advisory Board) with sufficient information:

²³ Including during an Advisory Board meeting on 28 December 2020

"We started these [Advisory Board] calls last July and the results were disappointing. We didn't get the monthly data we were looking for, and if it came, it came much later than we expected. You have to understand that these accounts are held in [...] companies which have monthly regulatory reporting requirements so it is with this in mind that we are focused on receiving timely information and understanding the portfolio marks carefully. [...] We found that the team wasn't particularly open in the communication, the agendas were not fulsome enough on the calls, and we did reflect these concerns in our conversations to the team. Our agenda was to try to be helpful, and add value given our experience where needed."

68. On 30 June 2020, Apollo wrote to the Investment Manager proposing to discuss a revised fee arrangement that would align incentives. The response from the Chief Executive Officer of the Investment Manager included his stated belief that he did not consider Advisory Board meetings productive: noting that "[i]n the best case, they are informative" and that they kept the Investment Manager "immersed in [...] never ending deliberations and information requests driven by lawyers of marginal usefulness".

Apollo's attempts to resolve matters by correspondence

69. On 2 November 2020, Apollo sent a letter to the Board (to which the Investment Manager was copied) (the "**Apollo Letter**"). In that letter, Apollo detailed its concerns regarding the conduct, management and operations of the Fund, the lack of proper oversight and supervision of the Investment Manager by the Board and noted that the good faith and reliance that Apollo had placed in the Advisory Board process as a means of addressing concerns with the mismanagement of the Fund and its assets, had been eroded as a result of the actions and omissions of the of the Investment Manager, and the failure of the Board to address them. The letter required that immediate steps be taken by the Board to address the ongoing mismanagement of the Fund and its underlying investments. A response was requested within 15 days.
70. On 16 November 2020 (one day before the expiration of the 15 day deadline set by the Apollo Letter), a letter was sent by a Board member, Mr Jonathan Roney, on behalf of the Board to Apollo (the "**Board's Response**"). The Board's Response was brief and indicated that the Board was unaware of the serious allegations described in the Apollo

Letter and indicated the Board's intention to "*investigation [...] and take such action as may be appropriate*".

71. On 27 November 2020, the Investment Manager sent a letter to the Board (to which Apollo was copied), in which the Investment Manager purported to respond to the concerns raised by Apollo in the Apollo Letter (the "**Investment Manager's Letter**").
72. Regrettably, the Investment Manager failed to substantively engage with the concerns raised by Apollo: indeed, a number of statements made by the Investment Manager in the Investment Manager's Letter were untrue, misleading and inaccurate. The letter also betrayed a concerning lack of awareness on the part of the Investment Manager regarding the duties and obligations of an Investment Manager, and the fiduciary duties and obligations of members of the Board: as a result of this, serious concerns remain about the lawful extent to which the Board delegated and/or the Investment Manager has assumed, the duties of the Board.
73. On 4 January 2021, Apollo instructed its Cayman Islands counsel, Walkers to issue a letter to the Board which detailed Apollo's concerns regarding the acts and omissions of the Board (in the context of the correspondence referred to at **paragraphs 69 to 72** above) (the "**Letter Before Action**"). The Letter Before Action set out in detail the bases upon which Apollo has lost its trust and confidence in the Board and indicated that, in the absence of certain specified steps being taken within 14 days of the Letter Before Action (including, the resignation of the Investment Manager and replacement with a party agreed by the Advisory Board and the resignation of all members of the Board affiliated to the Investment Manager), it was anticipated Apollo would take such further steps as may be necessary to protect its rights and interests. A response was requested within 14 days (on 18 January 2020).
74. On 6 January 2021, Cayman Islands counsel to the Fund, Ogier, sent a response to the Letter Before Action ("**Ogier's First Letter**"), in which Ogier indicated that the Board is "*considering*" the issues raised in the Letter Before Action, and notwithstanding that no substantive response was provided in respect of Apollo's concerns, Ogier indicated that the Fund rejected the assertion that the Fund was not being managed properly by the Board and "*remains of the view that there is no justifiable basis for investors to lose confidence in its management of the Fund.*"

75. Furthermore, though Ogier's First Letter alleged that it had had insufficient time to provide a fulsome response to the concerns raised in the Letter Before Action, Ogier's First Letter also revealed that Ogier has been aware of the matters in issue since at least 2 November 2020 (having been instructed by the Fund to investigate the same upon receipt of the Apollo Letter); and had been in possession of the relevant documentation since at least 10 December 2020. This posture coheres with that adopted by the Board, which as at the date of the Letter Before Action, had been delinquent on substantive response to the Apollo Letter for some 64 days.
76. On 15 January 2021, Ogier sent a second letter to Walkers ("**Ogier's Second Letter**") which expressed Ogier's expectation that the Board would request an extension to the deadline for its response to the Letter Before Action, from 18 January 2021, to 1 February 2021. In the event, no such request was received prior to 18 January 2021 and as at the date of this Petition, no request for an extension has been received. The reason for this is unknown.
77. Since issuing the Letter Before Action, Apollo has learned that one of the members of the Board, Mr Jonathan Roney, an independent director from Intertrust, resigned from Intertrust in December 2020. This information was gleaned as a result of Apollo's own investigations. Neither its occurrence, nor its impact on the management of the Fund has been communicated to Apollo by the Board or by the Investment Manager.
78. As shown in the preceding paragraphs, Apollo has attempted to engage in good faith communications with the Board on several occasions in respect of the numerous failures of governance, in an attempt to avoid legal proceedings, but the Board (and the Investment Manager) has continually failed to provide clear or adequate responses to the concerns raised by Apollo, and have failed to take the steps reasonably requested by Apollo to remediate them.
79. Apollo's lack of confidence and loss of trust in the manner in which the affairs of the Fund have been conducted is itself justified by the failure of the Board and/or Investment Manager to provide Apollo with any sufficient or adequate explanation for the failures and breaches of duty set out in the Letter Before Action.

Further Recent Developments

80. Furthermore, since the issuance of the Apollo Letter, Apollo has become aware of further breaches by the Investment Manager of its obligations under the Advisory Board Charter in respect of debt-for-equity transactions and the transactions involving the forgiveness of loans into which the Fund is invested, in each case as further outlined at **paragraphs 63(d)** and **63(e)** above, in respect of FUNF; VIER; MDQ; BRAF; and TDI.
81. In respect of these transactions, in each case as further outlined at **paragraphs 63(d)** and **63(e)** above, the following events have occurred:
- (a) on 5 November 2020, the Investment Manager sent an email to the Advisory Board which stated that sufficient information had been provided to the Advisory Board for the purposes of determining whether it was appropriate for the Investment Manager to procure the Fund's entry into the transactions, and further, that the interests of the Fund's investors would be "*harm*ed" if the Fund did not enter into the transactions on 6 November 2020;
 - (b) on 5 November 2020, by return email, Apollo (in its capacity as member of the Advisory Board) emailed the Investment Manager detailing the further and/or outstanding information that was required in order to properly consider the proposed transactions and in particular, whether it would be in the best interests of the Fund's investors to enter into them. Apollo requested that the Investment Manager refrain from taking further steps to effect such transactions until such time as the outstanding information had been provided and the Advisory Board has provided its approval(s);
 - (c) on 8 November 2020, the Investment Manager sent an email to Apollo providing its response to certain of the issues raised in Apollo's email dated 5 November 2020. In response to Apollo's request that the Investment Manager refrain from taking steps to effect the transactions, the Investment Manager stated that the request was "*unfounded*"; wrongly alleging that the proposed transactions did not require approval by the Advisory Board as they did not "*fall under the relevant categories in the [Advisory Board] Charter*"; and
 - (d) finally, on 10 November 2020, Apollo sent a further email to the Investment Manager reiterating the information required to be provided by the Investment Manager in accordance with its obligations under the Advisory Board Charter, the

Side Letter and the Offering Memorandum and in order to enable the Advisory Board to carry out its duties and functions. Moreover, Apollo confirmed that the relevant transactions fell clearly within the scope of the transactions requiring the Investment Manager to seek prior approval of the Advisory Board.

82. Apollo is aware that, notwithstanding the absence of Advisory Board consent, these transactions have been completed / closed by the Investment Manager, in breach of its obligations under the Advisory Board Charter, the Side Letter and the Offering Memorandum.
83. Moreover, notwithstanding the concerns raised by Apollo in the Letter Before Action in respect of the LITSA transaction (referred to above at **paragraph 63(a)**), the Investment Manager continues to refuse to provide detailed updates of the status of negotiation regarding the LITSA transaction. Apollo understands from the Investment Manager that the LITSA transaction is currently 'on-hold', but remains concerned, given the course of conduct adopted by the Investment Manager to date, that the Investment Manager will fail to seek Advisory Board consent in respect of the LITSA transaction. The failure to seek such approval (in advance of completing such transaction) is a breach of the Advisory Board Charter and the equivalent provisions under the Fund's organisational documents.
84. These recent developments indicate the Investment Manager's complete disregard for its obligations pursuant to the Advisory Board Charter, the Investment Management Agreement, the Side Letter and the Fund's organisational documents (including the Offering Memorandum). Further, the Board's failure to ensure that the Investment Manager conducts the management and operation of the Fund in compliance with its duties and obligations shows that the Board is not discharging its duties to the Fund.
85. This indicates that notwithstanding Apollo's attempts, made in good faith, to bring to the Investment Manager's attention its obligations (and failures to comply with such obligations) to the Fund, the Investment Manager appears to have no intention of seeking the prior approval of the Advisory Board in respect of any transactions carried out for and on behalf of the Fund. These breaches have all occurred since the issuance of the Apollo Letter on 2 November 2020, in response to which it is worth noting again that on 16 November 2020, by the Board's Response, the Board indicated its intention to undertake "*investigation [...] and take such action as may be appropriate*". While Apollo's position

regarding the Board's purported knowledge or otherwise, of the matters set out in the Apollo Letter and/or the Letter Before Action is described at **paragraphs 41 to 42** above, it is clear that the Board – while on express notice of the acts and omissions of the Investment Manager and while purporting to take appropriate steps in response to the matters raised in the Apollo Letter, has in fact continued to allow the Investment Manager to act in breach of its obligations to the Advisory Board and to the Fund. In these circumstances it is unreasonable to expect any of the Fund's investors to have any trust or confidence in the Board.

Need for independent investigation into the Fund's affairs

86. In view of the ongoing conduct of the Board, the Investment Manager and their principals, including the Investment Manager's failure to provide information in accordance with its obligations, there is an evident need for a proper, independent investigation into the affairs of the Fund.
87. No contractual or other ability to remove or change the composition of the Board or the Investment Manager exists as an avenue of recourse for the Petitioners.
88. In the circumstances outlined above, it is just and equitable to wind up the Fund and to place it under the control of independent official liquidators, in order to ensure that its affairs are properly and promptly wound up, so that its assets may be properly administered and value returned to it's the Fund's stakeholders; prevent further mismanagement of the Fund by the Board (and the Investment Manager); and enable an independent investigation into the Fund's affairs.
89. Apollo has no other alternative in these circumstances but to seek to wind up the Fund.

Relief sought

90. In the premises:
 - (a) the Petitioners are contributories of the Fund and have standing to present this petition under Section 94(1)(c) and 94(3) of the Companies Act;
 - (b) the Fund is not conducting its affairs in accordance with the Fund's organisational documents (including, the Offering Memorandum) and, accordingly, not in

accordance with the legitimate expectations of the Fund's investors (including the Petitioners);

- (c) there has been a serious and demonstrable lack of probity in the conduct of the Fund's affairs;
- (d) the acts and / or omissions of the Board have not been in the best interests of the Fund;
- (e) there has been a sustained refusal by the Investment Manager to provide information to Apollo (including in its capacity as a member of the Advisory Board) that would otherwise enable Apollo and the Advisory Board to determine whether those managing the Fund are acting in accordance with their duties;
- (f) there is a need for independent investigation into the conduct of the Fund's affairs;
- (g) it is just and equitable that the Fund be wound up pursuant to Section 92(e) of the Companies Act; and
- (h) there is no alternative or other remedy or cause of action available to the Petitioners which would satisfactorily protect their interests or the interests of the other stakeholders of the Fund.

Nomination of Joint Official Liquidators

91. The Petitioners nominate Mr Jeffrey Stower and Mr Jason Robinson of KPMG, SIX Cricket Square, 282 Shedden Rd, George Town, Cayman Islands, for appointment as joint official liquidators of the Fund.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Fund be wound up in accordance with section 92(e) of the Companies Act.
2. Mr Jeffrey Stower and Mr Jason Robinson of KPMG of SIX Cricket Square, 282 Shedden Rd, George Town, Cayman Islands, be appointed as joint official liquidators of the Fund (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 Fund.
5. The JOLs shall be authorised to do any acts or things considered by them to be necessary or desirable in connection with the dissolution of the Fund and the winding up of its affairs, including but not limited to obtaining recognition of the JOLs and/or their appointment and/or powers in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
6. In addition to the powers set out in Part II of the Third Schedule to the Companies Act, the JOLs shall be authorised to exercise all the powers set out in Part I of the Third Schedule to the Companies Act and Section 110(2) thereof without the further sanction of this Honourable Court.
7. Without limitation to the generality of the foregoing, the JOLs shall be authorised and be granted leave to:
 - (a) bring or defend any action or other legal proceeding in the name and on behalf of the Fund and to engage attorneys for such purposes in order to secure the assets of the Fund;
 - (b) take all action required consistent with applicable law to carry on the business of the Fund so far as may be necessary for its beneficial winding up;
 - (c) exercise the rights to which a registered holder of any shares or securities registered in the name of the Fund, or to which an owner or any shares or securities held by or on behalf of the Fund (whether as principal or as agent), is entitled including, but without prejudice to the generality of the foregoing power, the right to receive dividends and the benefits of other corporate actions in relation to such shares or other securities; the right to attend meetings and to exercise any voting power pertaining to such shares or other securities and to direct nominees of the Fund in whose name shares or other securities beneficially owned by the Fund are registered to exercise all or any such rights as the JOLs shall direct;
 - (d) take control of such of the direct and/or indirect subsidiaries (the "**Subsidiaries**") of the Fund, and/or joint ventures, investment, associated companies, business or other entities (together, the "**Associated Companies**") in which the Fund holds an

interest (or such shares of such Subsidiaries and/or Associated Companies as are owned directly or indirectly by the Fund), in each case wherever located (together, the "**Group**"), as the JOLs shall think fit; and/or to call or cause to be called such meetings of such Subsidiaries and/or Associated Companies and/or to sign such resolutions (in accordance with the provisions of any relevant constitutional or related documentation of such companies) and take such other steps, including applications to appropriate courts and/or regulators, as the JOLs shall consider necessary to appoint or remove directors, legal representatives, officers and/or managers to or from such Subsidiaries and/or Associated Companies, and in each case take such steps as are necessary to cause the registered agents (or other equivalent corporate administrators) of such Subsidiaries and/or Associated Companies to give effect to the changes to the boards of directors, legal representatives, officers and/or managers or such companies or entities including, without limitation, effecting changes to the company registers of such Subsidiaries or Associated Companies as may be deemed appropriate by the JOLs; and/or to take such other action in relation to all such Subsidiaries or Associated Companies as the JOLs shall think fit for the purpose of protecting the assets of the Fund and managing the affairs of the Fund (which, for the avoidance of doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies);


- (e) open and operate bank accounts in the name of the Fund or in their own name on behalf of the Fund in the Cayman Islands or elsewhere; and
 - (f) communicate on the Fund's behalf with the regulators, as appropriate.
8. No disposition of the Fund'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 Act.
9. The JOLs shall 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 (as amended).

10. Subject to Section 109(2) of the Companies Act and the Insolvency Practitioner's Regulations 2008 (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Fund for their own remuneration.
11. No suit, action or other proceeding shall be proceeded with or commenced against the Fund except with the leave of the Court pursuant to Section 97 of the Companies Act and subject to such terms as the Court may impose.
12. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Fund as an expense of the liquidation.
13. The Petitioners' costs of and incidental to the Petition shall be paid forthwith out of the assets of the Fund as an expense of the liquidation, such costs to be taxed on an indemnity basis if not agreed with the JOLs.
14. The JOLs shall be at liberty to apply generally.
15. Such further or other relief as this Honourable Court deems fit.

AND your Petitioners will ever pray etc.

DATED the 27th day of January 2021

FILED the day of January 2021



WALKERS
Attorneys at Law for the Petitioners

NOTE: This Petition is intended to be served on the Fund at its registered office, currently Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands.

AND: The Cayman Islands Monetary Authority

This **PETITION** is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, for the Petitioners 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 _____:00 am/pm.

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.