

IN THE GRAND COURT OF THE CAYMAN ISLANDS

440  
CAUSE NO: OF 2005

IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

AND IN THE MATTER OF PHILADELPHIA ALTERNATIVE ASSET FUND, LIMITED

**PETITION**



TO THE GRAND COURT

THE HUMBLE PETITION of BNP Paribas Security Services ("BNP"), Citco Global Custody N.V. ("Citco"), MB Absolute Return Fund, Limited ("MB"), Rothschild Banque Privée Edmond de Rothschild Europe ("Rothschild") and SG Private Bank (Suisse) SA ("SG"), together ("the Petitioners") shows that:

**The Fund**

1. Philadelphia Alternative Asset Fund, Ltd. ("the Fund") is an exempted limited liability company organised and incorporated under the Companies Law (2004 Revision) of the Cayman Islands ("the Law").
2. The registered office of the Fund is situated at M&C Corporate Services Limited, PO Box 309 GT George Town, Grand Cayman, Cayman Islands.
3. Share capital of the Fund is \$50,000 divided into 5,000,000 shares of US\$0.01 each, issued as redeemable participating shares.
4. The objects for which the Fund was established are unrestricted.

**The Petitioners**

5. The Petitioners are all registered shareholders in the Fund and in the case of BNP, Citco, Rothschild and SG, act as custodians for one or more underlying beneficial owners.

## **Background Information**

6. The Fund was incorporated on 28 May 2004 for the purpose of investing in a wide range of capital market instruments. The Fund was registered under the Mutual Funds Law of the Cayman Islands on July 30 2004 and commenced operations on July 1 2004. The Fund was managed by Philadelphia Alternative Asset Management, LLC, a company incorporated in Delaware which operated in Oakville, Ontario ("PAAM"). PAAM was controlled and run by Paul Eustace ("Eustace"). The Fund was administered by UBS Fund Services (Cayman) Limited ("the Administrator").
7. The Fund received direct subscriptions from certain non-US investors. US investors invested through an entity called Philadelphia Alternative Asset Feeder Fund, LLC ("the Feeder Fund"). Eustace and PAAM also sought investments into a separate United States partnership, Philadelphia Alternative Asset Fund, LP ("the LP").

## **The Commodity Futures Trading Commission Complaint**

8. The US Commodity Futures Trading Commission ("CFTC") filed a Motion for a restraining order and preliminary injunction in the United States District Court Eastern District of Pennsylvania on June 22, 2005. On June 23 2005, a Federal Judge in Philadelphia granted a Temporary Order ("the June 23 2005 Order") against PAAM and Eustace that, inter alia, (i) froze their assets; (ii) prevented them from destroying or altering books and records; (iii) appointed a Temporary Receiver, C. Clarke Hodgson Jnr, to take control of their assets ("the Receiver"). The Complaint included allegations that (i) frauds had been committed in relation to the sale of futures contracts and (ii) fraud had been committed in relation to the sale of options. The Complaint related mainly to the LP, but included allegations that PAAM and Eustace had disseminated false information showing that the Fund had made gains between February and April 2005, whereas the actual position was that the Fund had encountered losses of more than US\$140million between February and May 2005, having accepted total investor funds of over US\$230million.
9. On August 2 2005 the CFTC filed an Amended Complaint which included allegations that PAAM and Eustace hid the trading losses of the Fund from the Administrator of the Fund through the use of at least one trading account operated in the name of the Fund, but which was withheld from the Administrator.

## The Fund's Assets

10. The Receiver who, as set above, is not appointed over the Fund, has recovered approximately US\$69.4 million in assets from the Fund's brokers, and a further \$7.2 million from other parties. Some of these assets belong to the Fund.

## The Directors of the Fund

11. The Directors of the Fund are Scott Somerville and David Lashbrook, both Directors of Maples Finance Limited. On or around 29 August 2005, both of the Directors tendered their resignations, which will take effect three months thereafter according to clause 10.4 of the Agreement for the Provision of Directors dated July 29 2004. In the circumstances, and having tendered their resignation, there is no effective control of the Company.
12. It is not anticipated on information available that the Fund has any substantial creditors. The Petitioners believe there will be a surplus available for distribution amongst shareholders.
13. In the light of the foregoing, including the fact that the Fund has ceased active trading there has been a loss of the sub-stratum of the Fund. In the circumstances, it is just and equitable that the Company be wound up, pursuant to the Companies Law (2004 Revision), section 94(d). The Petitioners hereby petition *qua* contributory pursuant to that section.

## YOUR PETITIONERS THEREFORE HUMBL Y PRAY THAT:

1. The Fund be wound up by the Court under the provisions of the Companies Law (2004 Revision)
2. Such other order as the Court thinks fit.

DATED the 22nd day of September, 2005.



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**WALKERS**

Attorneys-at-Law for the Petitioners

**NOTE:** This petition is intended to be served on the Registrar of Companies and the Fund

**INDORSEMENT**

This Petition having been presented to the Court on \_\_\_\_\_ 2005 will be heard at the Grand Court of the Cayman Islands on:

Date: \_\_\_\_\_ 2005

Time: 10.30 a.m.

(or as soon thereafter as the Petition may be heard)

This Petition is presented by Walkers, Attorneys-at-Law, Walker House, Mary Street, P.O. Box 265 GT, George Town, Grand Cayman, for the Petitioners whose address for service is care of his said Attorneys-at-Law.