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AJW Master Fund, Ltd., AJW Offshore II, Ltd., and AJW Master Fund II, Ltd.*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

<p>In re:</p> <p>AJW OFFSHORE, LTD.,</p> <p>Debtor in a Foreign Proceeding.</p>
<p>In re:</p> <p>AJW MASTER FUND, LTD.,</p> <p>Debtor in a Foreign Proceeding.</p>
<p>In re:</p> <p>AJW OFFSHORE II, LTD.,</p> <p>Debtor in a Foreign Proceeding.</p>
<p>In re:</p> <p>AJW MASTER FUND II, LTD.,</p> <p>Debtor in a Foreign Proceeding.</p>

Chapter 15  
Case No. 13- \_\_\_\_\_

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**DECLARATION OF IAN STOKOE**

I, Ian Stokoe, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. I am one of the Joint Official Liquidators (“**Joint Official Liquidators**” or “**Petitioners**”) of AJW Offshore Ltd. (“**Offshore I**”), AJW Master Fund, Ltd. (“**Master Fund I**”), AJW Offshore II, Ltd. (“**Offshore II**”), and AJW Master Fund II, Ltd. (“**Master Fund II**”) (collectively the “**Offshore Funds**”). I was appointed by the Grand Court of the Cayman Islands, Financial Services Division (the “**Cayman Islands Grand Court**”) to oversee the foreign proceedings, as I understand are defined in section 101(23) of title 11 of the United States Code (the “**Bankruptcy Code**”), of the Offshore Funds—Matter Nos. 202 of 2011 for Offshore I, 200 of 2011 for Master Fund I, 204 of 2010 for Offshore II, 60 of 2011 for Master Fund II (collectively, the “**Cayman Islands Proceedings**”). I am authorized, as one of the foreign representatives of the Offshore Funds, as defined in section 101(24) of the Bankruptcy Code, to commence Chapter 15 proceedings.<sup>1</sup>

2. My fellow Joint Official Liquidator, David Walker, and I are partners of PwC Corporate Finance & Recovery (Cayman) Limited. I have more than 30 years of experience in corporate restructuring, insolvency, and investigating complex financial transactions in the United Kingdom and the Cayman Islands. David Walker has more than 20 years of experience with corporate restructuring and insolvency matters in the Caribbean, Australia, and Canada. Mr. Walker and I are both residents of the Cayman Islands.

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<sup>1</sup> See the orders appointing Petitioners as Joint Official Liquidators (collectively, the “**Winding-Up Orders**”), dated April 6, 2011 for Offshore II, April 5, 2011 and May 30, 2011 for Master Fund II, December 20, 2011 for Offshore I, and December 20, 2011 for Master Fund I. The Winding-Up Orders attached to the Verified Petition of Foreign Representatives Ian Stokoe and David Walker in Support of Applications for Recognition of Foreign Main Proceedings Pursuant to 11 U.S.C. § 1517 and Additional Relief (the “**Verified Petition**”) as **Exhibit A**.

3. I hereby submit this declaration (the “**Declaration**”) in support of (i) the Verified Petition, and (ii) the Motion for Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code Pending Recognition of Foreign Main Proceeding (the “**Motion for Provisional Relief**”) seeking recognition of the Cayman Islands Proceedings as foreign main proceedings and for additional and provisional relief under sections 108, 1504, 1507, 1509, 1515, 1517, 1519, and 1521 of the Bankruptcy Code.

4. I submit this declaration based upon the information presently available to me. I believe that Corey Ribotsky (“**Ribotsky**”), the NIR Group LLC (“**NIR**”), and First Street Manager II LLC (“**First Street**”) possess numerous records and documents belonging to the Offshore Funds that have yet to be turned over. Despite efforts to obtain these documents, David Walker and I have generally received limited cooperation from Ribotsky, NIR, and First Street. Therefore, except as where otherwise indicated, this declaration is based upon a review of third-party pleadings and records; the books and records of the Offshore Funds that we have been able to collect, including some produced by Admiral Administration, Ltd. (“**Admiral**”), the Offshore Funds’ former administrators; the books and records of the Onshore Funds (as defined below); our own work as liquidators; and the communications and dealings we have had with the investment managers for the Offshore and Onshore Funds, as well as with personnel from the U.S. Securities and Exchange Commission (the “**SEC**”).

**A. Offshore I and Master Fund I**

5. Offshore I was incorporated as an exempted limited liability company under the Cayman Islands Companies Law in 2001. It was designed primarily to accommodate eligible non-U.S. investors. A true and correct copy of Offshore I’s Certificate of Incorporation is annexed as **Exhibit A**. At the time of incorporation, Offshore I was called AJW/New

Millennium Offshore, Ltd. That name was later changed on November 18, 2002 to AJW Offshore, Ltd. A true and correct copy of the Certificate of Incorporation on Change of Name is annexed as **Exhibit B**.

6. Master Fund I was incorporated as an exempted limited liability company under the Cayman Islands Companies Law in 2007. A true and correct copy of Master Fund I's Certificate of Incorporation is annexed as **Exhibit C**. Since they were incorporated, the registered offices of Offshore I and Master Fund I have always been in the Cayman Islands. (After being appointed as liquidators, the Petitioners changed the registered offices of the Offshore Funds within the Cayman Islands to PricewaterhouseCoopers, P.O. Box 258, Strathvale House, Grand Cayman, KY1-1104, Cayman Islands.)

7. NIR was the sole owner of First Street, which owned 100% of Offshore I's voting shares. Offshore I, in turn, owned approximately 70% of Master Fund I. Given that First Street was the investment manager of Offshore I and owned all of its voting shares, and that Offshore I owned approximately 70% of Master Fund I's shares, First Street indirectly held the power to vote 70% of the shares of Master Fund I. Added to those facts, NIR controlled the investment manager entity of the only other shareholder of Master Fund I, AJW Qualified Partners I, LLC ("**Qualified Partners I**"). Consequently, NIR indirectly held the power to vote all the shares of Master Fund I through its control of the entities that acted as investment managers.

8. Offshore I represented to investors that it was managed by its directors, Ribotsky and Martin Lang ("**Lang**"), the latter of whom was a resident of the Cayman Islands. Lang was appointed a director on February 19, 2001 and resigned on September 23, 2011. Master Fund I's original directors were Ribotsky, Lang, and Susan Bjuro ("**Bjuro**"), who was also a Cayman Islands resident. On May 16, 2007, Bjuro resigned as directors of Master Fund I. On September

23, 2011, Lang resigned as director of Master Fund I and was replaced by Robert M. Cohen, a former employee of NIR.

9. A private placement memorandum for Offshore I was provided to potential investors in connection with the investment by Offshore I in Master Fund I. The private placement memorandum described the funds as exempted companies incorporated under the laws of the Cayman Islands and instructed investors to contact the Cayman-based administrator of the funds for subscription information. The memorandum also informed investors that, as Cayman entities, Offshore I and Master Fund I could be subject to winding-up proceedings in the Cayman Islands.

10. Offshore I and Master Fund I retained Admiral in the Cayman Islands as their administrator, registrar, and transfer agent. Admiral was responsible for maintaining the Offshore Funds' corporate books and records, communicating with shareholders, ensuring that all filings were timely made with Cayman Islands authorities, processing subscriptions and redemptions, and providing clerical services in connection with the day-to-day administration of the Offshore Funds.

11. The Offshore Funds were audited by a Cayman company. Marcum & Kliegman (Cayman) was Offshore I's and Master Fund I's auditor.

12. In addition to his involvement with the Offshore Funds and Qualified Partners I, Ribotsky also managed two other AJW funds that were based in the United States: New Millennium Capital Partners II, LLC ("New Millennium Capital Partners II") and AJW Partners, LLC ("AJW Partners I"). While the U.S.-based funds had similar PIPE investment strategies as the Offshore Funds, they were not directly related to the feeder/master fund structure of the Offshore Funds.

**B. Offshore II and Master Fund II**

13. In November 2008, Ribotsky restructured the AJW fund entities, which essentially consisted of setting up new funds that were a mirror-image of the old funds, but with “II” or “III” added to their names. To restructure Offshore I and Master Fund I, Ribotsky formed Offshore II (again, designed principally to accommodate eligible non-U.S. investors), AJW Qualified Partners II, LLC (“**Qualified Partners II**”), and Master Fund II. The ownership structure of Master Fund II also mirrored the ownership structure for Master Fund I. The sole shareholders and feeder funds of Master Fund II were Offshore II and Qualified Partners II, just as Offshore I and Qualified Partners I were the sole shareholders of Master Fund I.

14. In October 2008 Offshore I wrote to investors advising that it intended to “restructure their investments.” Investors were required to elect one of three different options regarding their shareholding, which basically consisted of either:

1. Option 1 an exchange of shares in Offshore I for Class A shares in Offshore II with a lock-up period of 3 years and payment cap of 12.5% of Offshore II’s available cash (as defined), with quarterly redemptions to resume after the expiry of the lock up period on 120 days’ notice and a reduced Investment Management fee of 15%;
2. Option 2 an exchange of shares in Offshore I for Class B shares in Offshore II with no lock-up period and 90 days’ notice for redemptions, but subject to a redemption cap of 12.5% of the aggregate NAV of the investor’s shares per redemption period, with requests in excess of the 12.5% redemption cap to be redeemable on the future redemption dates. However, this was subject to a payment cap of 12.5% of Offshore II’s available cash (as defined). This option provided for Investment Management fees being reduced to 17.5%. Importantly, the letter stated that “full redemption requests will generally be satisfied over eight (8) quarters.”; or
3. Option 3 no exchange of shares held on Offshore I with a wind down of positions over time by compulsory redemptions on a pro rata basis. Again, reference was made to the time in which an investor could exit their investment, namely “it is generally expected to take approximately

36 months or longer to successfully sell the securities of all of the portfolio companies held by the Company.”

15. Petitioners believe that a similar offer was made to investors in Qualified I.

16. It appears that most investors in Offshore I and Qualified Partners I elected to exchange their shares for shares in Offshore II and Qualified Partners II.

17. Based on the information available at this time, Petitioners understand that the restructuring transferred a “vertical slice” of the assets from the old funds—*i.e.* a pro rata share of each entity’s securities and cash equivalent to the NAV of the shares held by investors electing to exchange—to the new funds.

18. Offshore II and Master Fund II were incorporated as exempted limited liability companies under the Cayman Islands Companies Law. True and correct copies of Offshore II’s and Master Fund II’s Certificates of Incorporation are annexed as **Exhibit D**. On incorporation, Master Fund II was called AJW Special Assets Fund, Ltd. On October 22, 2008, its name was changed to AJW Master Fund II, Ltd. A true and correct copy of the Certificate of Incorporation on Change of Name is annexed as **Exhibit E**. Offshore II and Master Fund II are based in the Cayman Islands. Their registered offices have always been in the Cayman Islands. (As noted earlier, Petitioners moved the registered office address within Cayman after their appointment.)

19. Offshore II and Master Fund II also retained Admiral in the Cayman Islands as their administrator, registrar, and transfer agent. Admiral fulfilled the same role as with respect to Offshore I and Master Fund I: maintaining the corporate books and records, communicating with shareholders, ensuring that all filings were timely made with Cayman Islands authorities, processing subscriptions and redemptions, and providing clerical services in connection with the day-to-day administration of the Offshore Funds.

20. Petitioners believe Offshore II and Master Fund II also retained Marcum & Kliegman (Cayman) as their auditor.

21. The private placement memoranda for Offshore II that was provided to potential investors in connection with the investment of Offshore II in Master Fund II described the funds as exempted companies incorporated under the laws of the Cayman Islands. They also instructed investors to direct inquiries concerning subscription information to the Cayman-based Administrator. The private placement memoranda also indicated that, as Cayman entities, Offshore II and Master Fund II could be subject to winding-up proceedings in the Cayman Islands.

22. First Street was the investment manager of Offshore II and Master Fund II. As had been the case with Offshore I, First Street owned 100% of the voting shares of Offshore II. Offshore II, in turn, owned the majority of Master Fund II. As a result, because First Street owned all of the voting shares of Offshore II and was the fund's investment manager, and given that Offshore II owned a majority of Master Fund II's shares, First Street also indirectly held the power to vote the shares of Master Fund II. In addition to its ownership and control of First Street, NIR controlled the investment manager entity of Qualified Partners II, which was the only other shareholder of Master Fund II. Consequently, through its ownership and control of the investment managers, NIR indirectly held the power to vote all the shares of Master Fund II.

23. After Petitioners were appointed over the Offshore Funds, First Street and NIR's ability to vote on behalf of, and otherwise manage and control, the Offshore Funds transferred to Petitioners.

24. As of the date Petitioners were appointed, Corey Ribotsky and Sarah Kelly, a resident of the Cayman Islands, were the directors Offshore II and Master Fund II. Offshore II's



founding shareholders were Corey Ribotsky and Cayman residents Ann-Marie Cathro, Emilie Cameron, and Martin Lang.

**C. The Investment Strategy of the Offshore Funds**

25. All of the Offshore Funds appear to have pursued the same type of investment strategy. Each was a type of fund that is generally referred to as a PIPE fund, meaning they made private investments in public equities. PIPE funds trade across the whole market spectrum, providing funding to public companies with a wide range of financial strength. Petitioners understand that the Offshore Funds traded at the distressed end of the market, predominantly providing funding to businesses that could not obtain financing from more traditional sources. Petitioners also understand that some AJW Funds provided funding to start-up companies.

26. The Offshore Funds purchased notes from public companies (“**Issuers**”) pursuant to sale and purchase agreements between the Offshore Funds and the Issuers, whereby the Offshore Funds would lend funds to the Issuer subject to agreed interest and repayment terms in the form of convertible debentures. The debentures allowed the Offshore Funds to convert their debt to stock at a predetermined, and usually significant, discount to market price. This conversion mechanism was the primary mode of repayment by the Issuers. The idea was that the Offshore Funds would turn around and sell the stock for a price in excess of the conversion price.

**D. Events Leading to Liquidation**

27. From what Petitioners have been able to ascertain, by mid-to-late 2007, Ribotsky’s PIPE investment strategy began to fail. Many of the companies that received financing from the Offshore Funds were struggling, on the verge of bankruptcy, or defunct. Many defaulted on their loan and conversion obligations to the Offshore Funds.

28. Rather than disclose these facts to investors and write down the fair value of the Offshore Funds, Ribotsky chose to “restructure” the outstanding debt by issuing new debentures to the same delinquent and nonperforming companies. Ribotsky rolled the outstanding principal, interest, and default penalties into new debentures which provided even greater conversion discounts for the Issuer’s shares. In reality, though, these greater conversion discounts were an illusory benefit at best. While the restructuring strategy contractually entitled the Offshore Funds to a greater number of shares, for many of the Issuers, there was little, if any, trading volume for their stock by late 2007. As such, the assets of the Offshore Funds consisted largely of conversion rights and ownership stakes in illiquid and failing companies.

29. As the investments failed, Ribotsky’s strategies became more questionable. Upon information and belief, some investors began to raise questions as information began to leak out, including through the reaction of the Offshore Funds to requests for information from investors and its failure to meet redemption requests. Some investors may also have obtained information, albeit in an incomplete or misleading manner, via their own review of the securities held by the fund or general word of mouth.

30. Eventually, the SEC instituted an investigation into Ribotsky’s and NIR’s investment management of the Offshore Funds and certain U.S.-based funds with similar investment strategies: Qualified Partners I, Qualified Partners II, AJW Partners I, AJW Partners II, LLC, New Millennium Capital Partners II, and New Millennium Capital Partners III, LLC (collectively, the “**Onshore Funds**” and with the Offshore Funds, the “**AJW Funds**”). On September 28, 2011, the SEC initiated a lawsuit against Ribotsky and NIR by filing a Complaint (as amended on August 17, 2012, the “**SEC Complaint**”). A true and correct copy of the SEC Complaint is annexed hereto as **Exhibit F**. The SEC Complaint alleges allegations of

wrongdoing on the part of Ribotsky and NIR, specifically in connection with their roles managing the investments of the Offshore Funds, including (i) artificially inflating the apparent financial performance of the AJW Funds to justify performance fees based on Ribotsky's calculation of AJW Funds' assets under management and unrealized gains; (ii) impermissibly transferring money from certain Offshore Funds to other funds to satisfy redemption requests; and (iii) failing to conduct due diligence regarding a sale of \$43.2 million worth of AJW Funds' assets to U.S. persons (*i.e.*, the Fairhills Promissory Notes (as defined below)) that has yielded no return for the funds.

31. The factual allegations in the SEC Complaint could also form the basis for claims by the Offshore Funds against various entities located in the United States, including Ribotsky, NIR, First Street, and other parties. As pleaded in the SEC Complaint, Ribotsky engaged in fraud and self-dealing through NIR and First Street, causing the AJW Funds, including the Offshore Funds, millions of dollars in losses. Among other things, the debt-instrument restructuring in 2008 allowed Ribotsky to record more unrealized gains for investments and to avoid disclosing what otherwise would have been an ever-growing number of defaulted loans held by the AJW Funds. Ribotsky used this pattern of restructuring defaults to justify artificially high unrealized gains and asset values, which increased his management and performance fees.

32. Ribotsky thus created a scheme to keep up the appearance that the investments made by the AJW Funds were successful when, in fact, they were not. Ribotsky's incentive for the scheme was to generate inflated management fees for the investment managers that were under his ownership and control because their management fees were based, in substantial part, on Ribotsky's calculation of the value of each fund's assets under management and unrealized gains. Ribotsky earned management fees equal to 2% of the AJW Funds' assets and

performance fees equal to 20% of the AJW Funds' supposed annual profits, which consisted of realized and unrealized gains.

33. Master Fund I's creation, as set forth in the SEC Complaint, was also intended to perpetuate Ribotsky's scheme. At the time Master Fund I was created, Qualified Investors I was facing investor redemption requests totaling \$39 million that were payable in June and September 2007, but had only \$13 million in actual cash. At the same time, Offshore I had \$124 million in cash on hand and was facing relatively modest investor redemption requests of only \$28 million. Given the lack of cash available in Qualified Partner I to pay its investor redemption requests, Ribotsky used the cash in Offshore I, a separate fund, to pay the outstanding redemption requests of investors in Qualified Partners I. Upon information and belief, the payments were made by transferring the money through Master Fund I.

34. In the SEC Complaint, the SEC also sets forth allegations that could serve as the basis for causes of action by the Offshore Funds against other parties. For example, the SEC alleges that Ribotsky caused the AJW Funds to enter into a series of nine transactions during the fourth quarter of 2008 in which the AJW Funds sold convertible PIPE debentures that NIR valued at \$43.2 million to certain entities controlled by Edward Bronson (such entities are hereafter collectively referred to as "**Fairhills**"). Fairhills did not pay cash for these convertible debentures, though. Instead, Ribotsky agreed to accept, as full payment for the purchase of the debentures, promissory notes from Fairhills that were payable three to six months after the transactions closed (the "**Fairhills Promissory Notes**"). Bronson also executed personal guarantees that obligated him to pay the full purchase price for the debentures in the event that Fairhills could not or did not pay. By recording the transaction involving the debentures as "sales," despite the fact that the Funds did not actually receive any money, Ribotsky and his

entities recorded \$18 million in net realized gains in 2008 and NIR received performance fees on these gains.

35. Petitioners do not believe Ribotsky and NIR conducted any meaningful due diligence on Bronson or Fairhills prior to entering into the transactions. When payment on the debentures came due, Fairhills and Bronson defaulted on their repayment and guarantee obligations.

**E. Appointment of Joint Official Liquidators**

36. On September 13, 2010, ThreeAM SPC, Ltd., a creditor of Offshore II, filed a petition seeking the winding up of Offshore II. Acting through First Street, Ribotsky initially opposed Offshore II's winding up. The petition was heard by the Cayman Islands Grand Court and, on April 6, 2011, the court ordered Offshore II to be wound up and appointed Petitioners as Joint Official Liquidators.

37. On March 30, 2011, Ribotsky sought to put Master Fund II into a voluntary liquidation by signing a resolution on behalf of Offshore II and Qualified Partners II (the only shareholders of Master Fund II). Messrs. Simon Whicker and Kris Beighton of KPMG were appointed Joint Voluntary Liquidators of the Master Fund. On April 5, 2011, the Cayman Island Grand Court (without a hearing) ordered Master Fund II to proceed under a court supervised liquidation and appointed Simon Whicker and Kris Beighton of KPMG as the Joint Official Liquidators. Petitioners thereafter applied for an order removing KPMG as Joint Official Liquidators of Master Fund II and appointing Petitioners, based on the fact that they had already been appointed as Joint Official Liquidators of Offshore II. The Cayman Islands Grand Court issued that order on May 30, 2011.

38. Shortly after their appointment over Offshore II and Master Fund II, Petitioners learned that neither fund held significant tangible assets in its own name. Rather, the funds held beneficial interests in assets held by other AJW Funds.

39. To establish control of Offshore II's and Master Fund II's assets, Petitioners negotiated an agreement, the Portfolio Control Agreement ("PCA"), with First Street. In basic terms, the PCA provided that First Street could conduct sales only with Petitioners' consent. No such sales proved possible during October 2011.

40. At or about the same time, NIR requested permission and agreed to withdraw its entities from acting as investment managers of the AJW Funds and asked that Petitioners be appointed as liquidators over every AJW Fund, including the Onshore Funds.

41. Accordingly, on October 31, 2011, Petitioners were appointed as Joint Voluntary Liquidators of Offshore I and Master Fund I.<sup>2</sup> Thereafter, because those funds were unable to pay their debts with interest for the next 12 months, on December 20, 2011, the Cayman Islands Grand Court ordered that Offshore I's and Master Fund I's liquidation come under the court's supervision and appointed Petitioners as Joint Official Liquidators.

42. Subsequently, on January 9, 2012, the investment managers of the Onshore Funds signed resolutions in which they resigned as managers and appointed Petitioners as joint liquidators of the Onshore Funds. From what Petitioners understand, the SEC was informed of this in advance and did not oppose.

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<sup>2</sup> Shortly after Petitioners were appointed as Joint Voluntary Liquidators, Offshore I's and Master Fund I's directors informed Petitioners that the funds would not be able to provide declarations of solvency, meaning that the funds could not pay their debts plus interest within a 12-month period. As a result, under section 124 of the Cayman Islands Companies Law, Petitioners were required to apply to the Cayman Islands Grand Court for an order for the liquidations of Offshore I and Master Fund I to proceed under the Cayman Islands Grand Court's supervision.

43. Following Petitioners' appointment as liquidators over every AJW Fund and the resignation of the NIR entities, the NIR entities' authority over the AJW Funds was effectively revoked. The PCA was therefore no longer required and it was terminated on January 17, 2012.

**F. History of the Liquidation**

44. As of the initiation of the Cayman Islands Proceedings, the assets of the Offshore Funds' assets fall primarily into four categories. First, the Offshore Funds held approximately \$427,000 in cash in bank and brokerage accounts that, prior to the liquidation, were located in the U.S. and Cayman Islands. Second, the Offshore Funds hold callable secured convertible notes and warrants issued largely by U.S. entities for which Uniform Commercial Code filings are required to perfect securities interests over the assets of the Issuers. Third, the Offshore Funds have causes of action against various Issuers. Fourth, the Offshore Funds have potential claims against Ribotsky, First Street, NIR, Fairhills, and the Offshore Funds' former professionals, almost all of whom are located in the U.S.

45. As of today, Petitioners are in the midst of a lengthy and complex liquidation process for which they are the sole persons authorized to act on behalf of the Offshore Funds. Petitioners have conducted a substantial amount of work on behalf of the Offshore Funds' estates and creditors. Petitioners have hired various professionals, including Cayman Islands and United States counsel. Some highlights of the work Petitioners have performed on behalf of the Offshore Funds' estates are as follows:

**1. Creditor and Investor Coordination**

46. Cayman Islands law requires that when a company is wound up, the joint official liquidators must hold meetings of creditors and investors and provide those parties with the opportunity to form a liquidation committee to assist the joint liquidators in their functions.

Petitioners sought direction from the Cayman Islands Grand Court to avoid duplication of effort between the Offshore Funds' separate liquidation proceedings. The Cayman Islands Grand Court ordered the formation of one liquidation committee to cover all of the Offshore Funds.

47. The members of the Offshore Funds' liquidation committee (the "**Liquidation Committee**") are Field Nominees Ltd A/C 1365335, Citco Global Custody NV Ref BBH LUX Peak Partners, Nobilis Inc, KDTC acting as nominee for Theta Multistar Mid Volatility Fund, Kas Trust Bewaarder Finless, Coolectief Beheer Fonds B.V., and AJW Manager, LLC ("**AJW Manager**"). Because AJW Manager is related to Ribotsky, Petitioners are seeking the entity's removal as a member of the Liquidation Committee pursuant to the direction of the Cayman Islands Grand Court.

48. The role of the Liquidation Committee is to act as representatives for the general body of creditors and investors. The Liquidation Committee has met on multiple occasions to agree on a strategy for asset realization, appoint third parties to assist Petitioners in this process, and evaluate potential causes of action.

49. One of the Liquidation Committee's functions is to review and, where appropriate, approve Petitioners' fees before the fees are submitted for approval to the Cayman Islands Grand Court. Indeed, the Liquidation Committee has reviewed and approved Petitioners' fees from the period of appointment through August 31, 2012.

50. Petitioners are in frequent communication with the Liquidation Committee. Petitioners use the Liquidation Committee as a confidential sounding board regarding issues that may arise in the liquidations. Petitioners have also held multiple meetings with the Offshore Funds' general creditors and investors, most recently on August 14, 2012.



51. Petitioners have also issued the following reports and letters to creditors and investors, in accordance with the Winding-Up Orders:

- AJW Offshore II Ltd. (In Official Liquidation) First Report to Creditors and Contributories, May 21, 2011;
- AJW Offshore II Ltd. (In Official Liquidation) report to Court for the period 6 April 2011 to 31 May 2011, June 29, 2011;
- Update Letter regarding AJW Offshore II, Ltd. & AJW Master Fund II, Ltd., December 15, 2011;
- AJW Offshore, Ltd. & AJW Master Fund Ltd. (Both In Official Liquidation) First Report to Creditors and Contributories, February 1, 2012;
- AJW Group (In Liquidation) Report to Creditors and Investors, February 10, 2012;
- AJW Group (In Liquidation) Brief Update to Creditors and Investors, May 4, 2012; and
- AJW Group (In Liquidation) Report to Creditors and Investors, August 9, 2012.

## 2. Asset Realization

52. Petitioners, in conjunction with the Liquidation Committee, retained Hull Capital Management, LLC and Gemini Strategies LLC, Inc. (collectively, "**Hull/Gemini**") to assist Petitioners in asset realization.

53. Hull/Gemini has carried out an extensive review of the AJW Funds' portfolio and assisted Petitioners with a strategy for generating value from the portfolio. The Offshore Funds were supposed to have received repayment of debt from Issuers principally via the conversion of debt to equity at a predetermined, and usually significant, discount to recent market price, followed by the immediate sale of the stock at a price in excess of the conversion price. Given the very low trading prices and trading volumes of the majority of the surviving Issuers, this strategy would require many years—in some cases, hundreds of years, if ever—to fully convert

and trade all the outstanding debt. Accordingly, Petitioners are seeking to negotiate settlements with Issuers, where appropriate, and have already consummated some settlements.

54. In addition to generating value from the portfolio, Petitioners and the Liquidation Committee have been evaluating causes of action against former management and professionals as well as other third parties. Considering that the allegations in the SEC Complaint predate 2007, Petitioners are cognizant of the fact that the statutes of limitations on potentially valuable causes of action may have imminent expiry dates. Petitioners, therefore, seek to promptly preserve these potential causes of action.

### **3. Books and Records**

55. Petitioners have obtained the Offshore Funds' books and records held by Admiral. A significant portion of the Offshore Funds' investment and accounting records, however, are held by NIR. Although NIR has produced some documents, it has not been fully cooperative and many requests for records remain outstanding, including without limitation, bank statements, invoices paid or owed by the Offshore Funds, historic debenture schedules, engagement letters with service providers, and details and calculations to support investment manager fees.

#### **G. Recognition of the Cayman Islands Proceedings and the Additional and Provisional Relief Requested will Benefit All Creditors**

56. The Cayman Islands Proceedings provide for a centralized process to assert and resolve claims against the Offshore Funds' estates, and to make distributions to the Offshore Funds' creditors. Relief and recognition are requested to protect the Offshore Funds' assets and maintain, as well as maximize, value for the Offshore Funds' creditors. Central administration of these assets is critical to any meaningful realization of their value. Specifically, Petitioners must assess and analyze the Offshore Funds' ownership stake in various entities and the Offshore Funds' ability to enforce the conversion provisions of various debentures. Petitioners also

believe, based on their own investigation to date and the SEC's numerous allegations, that the Offshore Funds have valuable causes of action against Ribotsky, NIR, First Street, Fairhills, and the Offshore Funds' former professionals.

57. During their tenure, Petitioners have requested various documents from Ribotsky and his entities. Although some documents have been produced, it appears significant critical documents have not yet been turned over. Petitioners also believe the Offshore Funds' former professionals, namely U.S. law firms, hold important records belonging to the Offshore Funds. For Petitioners to administer effectively the Offshore Funds, Petitioners require access to those books and records, as well as those persons

58. The Cayman Islands Proceedings and the relief requested herein will protect the Offshore Funds' assets, provide Petitioners with access to information necessary to assemble the assets and claims of the Offshore Funds for administration, enforce and protect the Offshore Funds' rights against third parties with respect to such assets, and maximize the value of the Offshore Funds' assets for the benefit of their creditors.

59. Thus, Petitioners now seek recognition of the Cayman Islands Proceedings as foreign main proceedings in order to garner and administer the Offshore Funds' assets that may be located and held in the United States for the benefit of all of the Offshore Funds' creditors.

60. Petitioners also seek additional relief so that limitations periods may be tolled and Petitioners may conduct discovery. Identifying and preserving these causes of action will safeguard the Offshore Funds' assets. It will also promote the efficient administration of those assets, thereby preventing piecemeal disposition or degradation of assets that would undermine the Cayman Islands Proceedings and harm the Offshore Funds and their creditors.

61. This relief should be granted on a permanent and provisional basis so that Petitioners can gain access to urgently needed critical information and ensure that applicable limitations periods do not expire. Petitioners have sought to obtain information necessary to complete their investigations into the Offshore Funds' affairs, but have been met with only limited cooperation. Accordingly, Petitioners request an order prior to recognition that provides the right and power to issue subpoenas, examine witnesses, take evidence, and seek production of documents.

62. Considering that the allegations in the SEC Complaint predate 2007, Petitioners fear that these causes of action have imminent expiry dates. Consequently, Petitioners request an order that explicitly acknowledges that the statutory tolling and extensions provided for in section 108 of the Bankruptcy Code apply for the Offshore Funds from the date of the filing of the Verified Petition. Moreover, I understand that Petitioners currently have the ability to enforce the Fairhills Promissory Notes pursuant to section 1509(f), which allows foreign representatives—notwithstanding recognition—“to sue in a court in the United States to collect or recover a claim which is property of the debtor.” Out of an abundance of caution and to avoid unnecessary litigation, Petitioners request a provisional order (i) explicitly specifying that section 1509(f) applies to Petitioners, and (ii) allows them to collect on the Fairhills Promissory Notes and other notes of the Offshore Funds' estates. This relief is urgently needed in order to identify and safeguard all of the Offshore Funds' assets and to efficiently administer the Offshore Funds' assets in the Cayman Islands Proceedings.


63. In the event the Offshore Funds gain access to assets in the U.S., there is a risk that opportunistic creditors could take action against the recoveries and thus cause irreparable harm by diminishing the value of the estates. Application of section 362 on a provisional basis

will prevent creditors from disrupting the orderly reconciliation of claims by creditors; such relief will thus promote the fair distribution of the Offshore Funds assets in a single, centralized forum. Moreover, creditors will not be prejudiced by this relief because they will retain their ability to file a claim in the Cayman Islands Proceedings and to oppose the recognition of this Verified Petition. Further, Petitioners believe that the Offshore Funds will be entitled to this relief automatically after this Court considers this Verified Petition seeking recognition of the Cayman Islands Proceedings as foreign main proceedings. Granting this provisional relief will simply save the Offshore Funds from incurring unnecessary costs and from confronting needless distraction respecting actions that will in any event be enjoined.

WHEREFORE, Petitioners respectfully request that this Court enter orders (i) recognizing the Cayman Islands Proceedings as foreign main proceedings and granting additional relief upon recognition; (ii) granting provisional relief prior to recognition; and (iii) granting such other and further relief as may be just and proper.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 4<sup>th</sup> day of January 2013.

  
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Ian Stokoe